Supreme Court of the State of Washington

Opinion Information Sheet

Docket Number: 81687-5

Title of Case: In re Det. of D.F.F.

File Date: 07/14/2011

Oral Argument Date: 09/15/2009

SOURCE OF APPEAL

Appeal from Whatcom County Superior Court

06-6-00179-7

Honorable Ira J Uhrig

JUSTICES

Barbara A. Madsen Dissent Author

Charles W. Johnson Signed Dissent

Gerry L. Alexander Signed Lead Opinion

Tom Chambers Signed Concurrence

Susan Owens Signed Lead Opinion

Mary E. Fairhurst Signed Dissent

James M. Johnson Concurrence Author

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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

In the Matter of the	)	No. 81687-5
Detention of	)	
	)	En Banc
D.F.F.[?]	)	
	)	Filed July 14, 2011
	)	

SANDERS, J.* -- We are asked to decide whether Superior Court Mental Proceedings Rules (MPR) 1.3, which provides involuntary commitment proceedings "shall not be open to the public, unless the person who is the subject of the proceedings or his attorney files with the court a written request that the proceedings be public," violates the right to open administration of justice under article I, section 10 of the Washington Constitution. As a preliminary issue, we must first determine whether respondent D.F.F. has standing to challenge MPR 1.3 under article I, section 10.

FACTS AND PROCEDURAL HISTORY

Respondent D.F.F. was involuntarily committed for psychiatric treatment

* Justice Richard Sanders is serving as a justice pro tempore of the Supreme Court pursuant to Washington Constitution article IV, section 2(a).

? The initials D.F.F. are used in place of respondent's name because this matter concerns her involuntary commitment proceedings.

No. 81687-5

under chapter 71.05 RCW. The trial judge closed her proceedings to the public as a matter of course pursuant to MPR 1.3.

D.F.F. challenged her commitment on appeal, arguing mandatory closure under MPR 1.3 violated her rights under article I, section 10's open administration of justice. The Court of Appeals held MPR 1.3 was unconstitutional, reversed D.F.F.'s commitment order, and remanded for further proceedings. See In re Det. of D.F.F., 144 Wn. App. 214, 226-27, 183 P.3d 302 (2008).1 We granted the State's

petition for review. 164 Wn.2d 1034, 197 P.3d 1185 (2008).

ANALYSIS

I. Standing

We first address whether D.F.F. has rights under article I, section 10, which afford her standing to challenge the constitutionality of MPR 1.3. Article I, section 10 pronounces: "Justice in all cases shall be administered openly . . . ." The State does not dispute that D.F.F. has rights under article I, section 10 as a member of the public. But the State argues that open justice under article I, section 10 merely protects her right to attend her own commitment proceedings, and thus there was

1 D.F.F. also argued the State failed to prove essential elements to support commitment. Because the Court of Appeals reversed D.F.F.'s commitment order on constitutional grounds, it did not reach that issue. D.F.F, 144 Wn. App. at 227 n.8. Nor do we.

no violation since she did attend her own commitment proceedings. The State reasons D.F.F. has no standing to claim a violation based upon the general public's inability to attend.

The State misconstrues and minimizes D.F.F.'s rights under article I, section 10. Our constitution mandates that "[j]ustice in all cases shall be administered openly . . . ." Const. art. I, § 10. The open administration of justice assures the structural fairness of the proceedings, affirms their legitimacy, and promotes confidence in the judiciary. See State v. Momah, 167 Wn.2d 140, 148, 217 P.3d 321 (2009); In re Pers. Restraint of Orange, 152 Wn.2d 795, 812, 100 P.3d 291 (2004). D.F.F. is a member of the public and the target of a civil action to involuntarily confine her.2 Article I, section 10 provides for her right as a member

of the public to attend the proceedings, but also her individual right to have the proceedings open to the observation and scrutiny of the general public. This court observed in John Doe v. Puget Sound Blood Center, 117 Wn.2d 772, 780-81, 819 P.2d 370 (1991), that open justice under article I, section 10 "is not an abstract theory of constitutional law, but rather is the bedrock foundation upon which rest all the people's rights and obligations. In the course of administering justice the courts protect those rights and enforce those obligations. Indeed, the very first enactment

2 "[C]ommitment is a deprivation of liberty. It is incarceration against one's will, whether it is called 'criminal' or 'civil.'" Application of Gault, 387 U.S. 1, 50, 87 S. Ct. 1428, 18 L. Ed. 2d 527 (1967).

of our state constitution is the declaration that governments are established

to protect and maintain individual rights. Const. art. 1, § 1. Const. art. 1, §§ 1-31 catalog those fundamental rights of our citizens." The public monitors the fairness of the proceedings and the appropriateness of the result -- and article I, section 10 grants D.F.F. the right to demand that protection. See Momah, 167 Wn.2d at 148.3 D.F.F. also has a right to open proceedings to permit family, friends, and other interested individuals to be present at the proceedings.4 See Orange, 152 Wn.2d at 812. Not only can those individuals monitor the case and publicly disseminate information about it, but also they may possess specialized or personal knowledge that they can provide to assist D.F.F. If D.F.F.'s rights under article I, section 10 are limited to assuring her presence at her own proceedings, she is robbed of any of the actual benefits of the open administration of justice. D.F.F. has standing to assert an open administration of justice challenge under article I,

section 10 based upon the exclusion of the general public from her commitment

3 "[T]he requirement of a public trial is primarily for the benefit of the accused: that the public may see he is fairly dealt with and not unjustly condemned and that the presence of interested spectators may keep his triers keenly alive to a sense of the responsibility and to the importance of their functions." Momah, 167 Wn.2d at 148.

4 Family, friends, and interested individuals can also individually assert their rights under article I, section 10 as members of the public. However, the full scope of D.F.F.'s article I, section 10 protections are not contingent on those individuals doing so, as the State's argument entails. As a practical matter, family, friends, and other interested individuals may wish to attend but be unwilling to assert their legal right to do so -- whether due to their unfamiliarity with their rights, a lack of time or money to invest in doing so, or a desire not to be formally involved.

proceedings.

II. Constitutionality of MPR 1.3

The constitutionality of a court rule is a question of law. We review questions

of law de novo. State v. Robinson, 153 Wn.2d 689, 693, 107 P.3d 90 (2005). We now consider whether MPR 1.3 is unconstitutional in light of article I, section 10. We hold that it is unconstitutional. This court has clearly and consistently held that the open administration of justice is a vital constitutional safeguard and, although not without exception, such an exception is appropriate only under the most unusual circumstances and must satisfy the five requirements as set forth in Seattle Times Co. v. Ishikawa, 97 Wn.2d 30, 38-39, 640 P.2d 716 (1982), and elsewhere, see, e.g., Momah, 167 Wn.2d at 149; State v. Bone-Club, 128 Wn.2d 254, 258-59, 906 P.2d 325(1995).5 Since the open administration of justice assures the structural fairness of proceedings, a court's failure to consider whether a closure is necessary is a structural error. MPR 1.3 automatically closes the proceedings from the public without requiring or even permitting the trial court to make its constitutionally

mandated determination whether those five

requirements are met. Thus, the procedure set forth in MPR 1.3 violates article I,

section 10.

As a remedy for violation of her article I, section 10 rights, D.F.F. seeks new,

open proceedings. This is an appropriate remedy because courtroom closures affect

the very integrity of a proceeding, regardless of whether the complaining party can

show prejudice. State v. Easterling, 157 Wn.2d 167, 181, 137 P.3d 825 (2006);

accord Waller v. Georgia, 467 U.S. 39, 49, 104 S. Ct. 2210, 81 L. Ed. 2d 31 (1984).

In this vein, we have recognized in criminal cases that a courtroom closure bears the

hallmarks of structural error. See Momah, 167 Wn.2d at 149 (in the context of a

criminal trial, "[a]n error is structural when it 'necessarily render[s] a criminal trial fundamentally unfair or an unreliable vehicle for determining guilt or innocence.'" (second alteration in original) (quoting Washington v. Recuenco, 548 U.S. 212, 218-19, 126 S. Ct. 2546, 165 L. Ed. 2d 466 (2006) (internal quotation marks omitted))).

5 The five requirements are:

> "1. The proponent of closure . . . must make some showing [of a compelling interest], and where that need is based on a right other than an accused's right to a fair trial, the proponent must show a 'serious and imminent threat' to that right.
>
> "2. Anyone present when the closure motion is made must be given an opportunity to object to the closure.
>
> "3. The proposed method for curtailing open access must be the least restrictive means available for protecting the threatened interests.
>
> "4. The court must weigh the competing interests of the proponent of closure and the public.

"5. The order must be no broader in its application or duration than necessary to serve its purpose."

Momah, 167 Wn.2d at 149 (quoting Bone-Club, 128 Wn.2d at 258-59 (emphasis omitted) (alterations in original) (internal quotation marks omitted)).

In Momah we listed some of the hallmarks of closures resulting in structural errors:

> [1] the trial court closed the courtroom based on interests other than the defendant's; [2] the closures impacted the fairness of the defendant's proceedings; [3] the court closed the courtroom without seeking objection, input, or assent from the defendant; and . . . [4] the record lacked any hint that the trial court considered the defendant's right to a public trial when it closed the courtroom.

167 Wn.2d at 151.

Here, all four hallmarks exist. The first, third, and fourth are evident:

(1) the trial court closed the courtroom based upon the mandate in MPR 1.3, without considering the interests involved; (3) the court sought no input from D.F.F. concerning the closure; and (4) there is nothing in the record to indicate the trial court considered D.F.F.'s right to the open administration of justice.

The second hallmark questions whether the closure impacted the fairness of D.F.F.'s proceeding. See Momah, 167 Wn.2d at 151. Article I, section 10 protects more than merely a given individual's right to personally attend a trial or proceedings. It protects D.F.F.'s right to have the proceedings open to the watchful eye of the public, to permit the public to scrutinize the proceedings. Such open access to the courts assures the structural fairness of the proceedings and affirms

their legitimacy. It is fundamental to the operation and legitimacy of the courts and protection of all other rights and liberties. "Prejudice is necessarily presumed where a violation of the public trial right occurs." Easterling, 157 Wn.2d at 181. Since the "benefits of a public trial are frequently intangible, difficult to prove, or a matter of chance," though "nonetheless real," a defendant is not required to prove specific prejudice to obtain relief for a public trial violation. Waller, 467 U.S. at 49, 50 n.9.

The closure of D.F.F.'s proceedings satisfies all the Momah hallmarks for a structural error. Structural error entitles D.F.F. to new commitment proceedings.6

This is not the first case where this court has granted a new trial when a trial court closed proceedings without considering the five requirements to permit an exception to the open administration of justice right under article I, section 10 or the right to a public trial under article I, section 22. See Easterling, 157 Wn.2d at 171 (

"We conclude that the trial court committed an error of constitutional magnitude when it directed that the courtroom be fully closed to Easterling and to the public during the joint trial without first satisfying the requirements set forth in [Bone-Club, 129 Wn.2d at 258-59]. The trial court's failure to engage in the required case-by-case weighing of the competing interests prior to directing the courtroom be closed rendered unfair all subsequent trial proceedings."); State v. Brightman, 155 Wn.2d 506, 509, 122 P.3d 150 (2005) ("[T]he trial court erred when it directed that the courtroom would be

closed to spectators during jury selection, without fulfilling the requirements set forth in [Bone-Club]. This error entitles Brightman to a new trial.").7 This result should be of little surprise. The open administration of justice is fundamental to the operation

6 The dissent cites to a Ninth Circuit, Court of Appeals, case, M.L. v. Federal Way Sch. Dist., 394 F.3d 634 (9th Cir. 2005), for the proposition that a structural error analysis is inapplicable in a civil context. Dissent at 6. We note that this split opinion is not dispositive on the issue nor do we rely on the Ninth Circuit to determine state law issues. Several state courts have found structural error in a civil context. See Perkins v. Komarnyckyj, 172 Ariz. 115, 116-20, 834 P.2d 1260 (1992) (applying structural error analysis to procedural error in civil trial); In re Marriage of Carlsson, 163 Cal. App. 4th 281, 293, 77 Cal. Rptr. 3d 305 (2008) ("failure to accord a party litigant his constitutional right to due process is reversible per se, and not subject to the harmless error doctrine"); Lakeside Regent, Inc. v. FDIC, 660 So. 2d 368, 370 (Fla. Dist. Ct. App. 1995) (applying structural error analysis to denial of discovery of "necessary, properly discoverable material" in a civil trial); Canterino v. Mirage Casino-Hotel, 118 Nev. 191, 194, 42 P.3d 808 (2002) (trial judge's ex parte communication with jurors was inherently prejudicial and no further showing was needed to require reversal); In re Adoption of B.J.M., 42 Kan. App. 2d 77, 88, 209 P.3d 200 (2009) (applying structural error analysis to denial of due process right to attend trial in parental rights termination proceeding); Duffy v. Vogel, 12 N.Y.3d 169, 177, 905 N.E.2d 1175, 878 N.Y.S.2d 246 (2009) (trial court's failure to poll jury, an entitlement closely enmeshed with and protective of the right to trial by jury, defied harmless error analysis); McGarry v. Horlacher, 149 Ohio App. 3d 33, 41, 775 N.E.2d 865 (2002) (applying a "structural error" analysis in a civil context finding plaintiff was actually prejudiced as a result of having few peremptory challenges to exercise and it was not necessary to find plaintiff's substantial rights were affected); Sandford v. Chevrolet Div. of Gen. Motors, 292 Or. 590, 614, 642 P.2d 624 (1982) (finding that trial court's failure to poll the jury defied harmless error analysis); In re Termination of Parental Rights to Torrance P., Jr., 298 Wis. 2d

1, 28, 724 N.W.2d 623 (2006) (applying structural error analysis to denial of the statutory right to counsel in parental right termination proceeding).

7 Our holding here remains true to our holding in Easterling, where we refused to adopt a de minimis exception to the open administration of justice, which would have permitted violation of article I, section 10 if the court determined the defendant suffered only trivial harm from the constitutional violation. 157 Wn.2d at 180; 186-87 (Chambers, J., concurring). There we held that since a trial court is required by the constitution to apply the Bone-Club guidelines, a court would never have occasion to determine whether a constitutional violation was de minimis. Rather, the only question for appeal is whether the closure was justified based upon the trial court's application of the constitutional guidelines. Id. at 181 n.12. An outright failure to apply the constitutional guidelines cannot justify a closure.

and legitimacy of the courts and to the protections of all other rights and liberties.8 See Easterling, 157 Wn.2d at 187 (Chambers, J., concurring) (The open administration of justice "is a constitutional obligation of the courts. It is integral to our system of government."). The jurisdiction of the courts may be set forth on paper, but the

authority of the courts -- like every other branch of government -- is derived from the people. The ability to imprison or involuntarily confine a citizen is an awesome power and, as such, is always at risk to be abused -- with devastating results. It is a historic trend that continues in many parts of the world today, that individuals who disagree with the powers-that-be are labeled mentally ill and their voices are silenced through involuntarily confinement. But the ratifiers of our constitution guaranteed better. The guaranty of open administration of justice is at the very heart of the fairness and legitimacy of judicial proceedings. The public bears witness and scrutinizes the proceedings, assuring they are fair and proper, that any deprivation of liberty is justified. Through this, citizens are guaranteed the strongest protection against unfair or unlawful confinement by the government -- the protection afforded because the public is watching. D.F.F. is entitled to that protection. D.F.F. is entitled to new

8 So fundamental is this protection to a system of justice and a free society that the Washington Constitution provides for it generally in article I, section 10 and again for criminal prosecutions in article I, section 22. Through either source, "the public trial right operates as an essential cog in the constitutional design of fair trial safeguards." Bone-Club, 128 Wn.2d at 259. Article I, sections 10 and 22 assure that this cog is always in operation. See id. (Sections 10 and 22 "serve complementary and interdependent functions in assuring the fairness of our judicial system."). A person is no more subject to involuntary confinement by way of a closed civil trial than he or she is subject to imprisonment by way of a closed criminal trial.

commitment proceedings.

The dissent would hold, even though D.F.F. was involuntarily confined after closed commitment proceedings that violated the open administration of justice under article I, section 10, she is not entitled to new proceedings. The dissent reasons because D.F.F.'s rights under article I, section 10 are those of a member of

the public, she is, at most, entitled to a transcript of her involuntary confinement proceedings due to the constitutional violation. Dissent at 1, 3-4. The dissent severely understates the protections afforded by article I, section 10 and ultimately suggests a remedy that provides D.F.F. no remedy at all. As discussed throughout, article I, section 10 is D.F.F.'s fundamental assurance that her proceedings are observed, scrutinized, and legitimized through administration open to the public.

Were we to follow the dissent's interpretation of article I, section 10, citizens would be afforded no actual protection. If the individual facing involuntary confinement were present at the hearing, he or she would have no enforceable right under article I, section 10 to demand the public's presence. Nor, indeed, would the public. If either complained, the trial court could "remedy" the flagrantly unconstitutional, nonpublic hearing by providing the complaining party with a

transcript of the proceeding.

But providing a transcript does not fully address the effects of the courtroom

closure. Article I section 10 recognizes that holding court proceedings in the open is core to the integrity of those proceedings. A fundamentally different brand of justice is administered when courts are open and the parties, witnesses, and judge all conduct their affairs in the light of day. Providing a transcript of a closed proceeding falls far short of guaranteeing open justice. Where, as here, D.F.F. was unconstitutionally deprived of her right to have her proceedings conducted in open court, her remedy is not limited to receiving a transcript of a closed proceeding. Rather, it is appropriate here to grant her a new commitment proceeding, where she

can be assured of the legitimacy and fairness flowing from public scrutiny, as guaranteed by article I, section 10.

CONCLUSION

We affirm the Court of Appeals decision. MPR 1.3 automatically closes involuntary confinement proceedings to the public without requiring the court to make the constitutionally mandated determination whether closure is permissible under article I, section 10. We hold MPR 1.3 is unconstitutional. We reverse D.F.F.'s commitment order and remand for new commitment proceedings.

AUTHOR:

Richard B. Sanders, Justice Pro Tem.

WE CONCUR:

Justice Gerry L. Alexander Justice Debra L. Stephens

Justice Susan Owens

J.M. JOHNSON, J. (concurring) -- I concur only in the result of the lead opinion. I write separately to avoid blurring important distinctions between the rights protected by the provisions of article I, sections 10 and 22 of the state constitution.

Superior Court Mental Proceedings Rule (MPR) 1.3 violates article I, section 10 of the state constitution. Both the lead opinion and the dissenting

opinion agree on this point. See lead opinion at 12 ("We hold MPR 1.3 is unconstitutional."); dissent at 1 ("I agree with the general proposition that [MPR] 1.3 runs afoul of article I, section 10 of the Washington State Constitution."). Like my colleagues, I too recognize the constitutional invalidity of MPR 1.3.

Allied Daily Newspapers of Washington v. Eikenberry, 121 Wn.2d 205, 848 P.2d 1258 (1993) controls the present case. In Eikenberry, the

legislature passed a statute requiring courts to ensure that information identifying child victims of sexual assault was not disclosed to the public during the course of trial or in court records. Id. at 207. We held that the legislation at issue violated article I, section 10. Id. at 214. In doing so, we

noted that our past precedents required case-by-case analysis pursuant to the five factors expanded and articulated in Seattle Times Co. v. Ishikawa, 97 Wn.2d 30, 640 P.2d 716 (1982). Eikenberry, 121 Wn.2d at 210-11.

MPR 1.3 presumes closure. However, we held in Eikenberry that legislation that "does not permit . . . individualized determinations, is not in accordance with the Ishikawa guidelines, and is therefore unconstitutional." Id. at 211. The constitutional presumption for courtroom proceedings is openness. Legislation that presumes closure violates the people's constitutional commitment that "[j]ustice in all cases shall be administered openly" in the Washington courts. Wash. Const. art. I, § 10.

Even though the lead opinion arrives at the right result, I cannot concur in its use of precedent. As the dissenting opinion correctly points out, the

lead opinion frequently invokes criminal cases discussing the rights of criminal defendants pursuant to article I, section 22. These cases do not

involve interpretation of the same constitutional provision or the same interests. Our use of the same five factor analysis to review courtroom closures under article I, sections 10 and 221 does not suggest that these constitutional provisions are interchangeable.

Lastly, the lead opinion and the dissenting opinion disagree regarding the appropriate remedy. I agree with the dissent that "structural error" analysis does not apply to the civil context. However, D.F.F., as a respondent committed after a closed hearing, demonstrates sufficient

prejudice to warrant relief. Further, I agree with the lead opinion that the release of a transcript to D.F.F. is clearly not a sufficient remedy. Reversal of the commitment order and remand for new proceedings is the appropriate remedy based on the record in this case.

Conclusion

Despite some flawed reasoning, the lead opinion correctly determines that MPR 1.3 is unconstitutional and reverses D.F.F.'s commitment order. I concur in this result alone.

1 See State v. Bone-Club, 128 Wn.2d 254, 259, 906 P.2d 325 (1995) (importing five factor analysis from article I section 10 cases to the article I, section 22 context).

AUTHOR:

Justice James M. Johnson

WE CONCUR:

Justice Tom Chambers