

No. 14-35185

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

**RHONDA LEDFORD; RAYMON GREGSTON; JO MCKINNEY; SHANE
PENROD; KIM MCCORMICK; BOB ROBINSON; GRACIE REYNA;
TOM DE KNIF; FRANK FARNWORTH; DIANA CARNELL; PHILLIP
GREGSTON; LISA LITTLEFELD; ADDISON FORDHAM,**

Plaintiffs-Appellees,

vs.

**IDAHO DEPARTMENT OF JUVENILE CORRECTIONS, AN
EXECUTIVE DEPARTMENT OF THE STATE OF IDAHO,**

Defendants

**SHARON HARRIGFELD, IDJC Director; BETTY GRIMM, IDJC Juvenile
Corrections Center — Nampa Superintendent**

Defendants-Appellants.

Appeal from the United States District Court for the District of Idaho
Case No. 1:12-cv-00326-BLW
Honorable B. Lynn Winmill, presiding

**APPELLEES' MOTION TO STRIKE PORTIONS OF APPELLANTS'
EXCERPTS OF RECORD CONTAINING SEALED DOCUMENTS AND
UNREDACTED PERSONAL INFORMATION OF MINOR CHILDREN**

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I. INTRODUCTION

Appellees seek an Order striking from the Appellants' Excerpts of Record all of the following documents.

Document	Dkt.	E.R. Pages
Affidavit of Phillip J. Collaer in Support of Defendants [sic] Motion for Summary Judgment	36	275-279
Deposition Transcript of Sharon Harrigfeld	36-1	280-347
Deposition Transcript of Betty Grimm	36-2	348-431
Deposition Transcript of Rhonda Ledford	36-3	432-515
Deposition Transcript of Addison Fordham	38	772-820
Deposition Transcript of Tom DeKnijf	38-1	821-879
Deposition Transcript of Frank Farnworth	38-2	880-949
Deposition Transcript of Julie Cloud	38-3	950-1030
Deposition Transcript of Crystal Moerles	38-4	1031-1077
Deposition Transcript of Laura Roters	38-5	1078-1146
Deposition Transcript of Jo McKinney	38-6	1147-1200
Deposition Transcript of Tom Knoff	38-7	1201-1249

The basis for the Appellees' motion to strike is that Dkts. 36 and 38— both of which consist of deposition transcripts of parties and witnesses filed by Defendants in support of their motion for summary judgment on November 25, 2013— were ordered sealed by the District Court on March 5, 2014. E.R. 2104 (Dkt. 64, Docket Entry Order). These and other documents filed by the Appellants in their Excerpts of Record currently contain the names and other personally identifying information of minor children in violation of the Federal Rules of Appellate Procedure, the Circuit Rules, and the laws of the State of Idaho that

impose an affirmative duty upon the Appellants to keep such information confidential.

II. STATEMENT OF FACTS

On November 25, 2013 Defendants Idaho Department of Juvenile Corrections, IDJC Director Sharon Harrigfeld, and former JCC Nampa Superintendent Betty Grimm filed deposition transcripts and other documents in support of their motion for summary judgment.

While reviewing the Defendants' evidence in preparing to oppose summary judgment, Plaintiffs' counsel found the evidence to have been entirely unredacted and to contain the names and other personally identifying information of minors, most of whom are or were juvenile offenders incarcerated at the Idaho Department of Juvenile Corrections.

This was in violation of Fed. R. Civ. P. 5.2, which requires filing parties to redact such information, but also the applicable confidentiality provisions of the Idaho Public Records Act (I.C. § 9-340B), the Idaho Juvenile Corrections Act (I.C. § 20-501, et seq.), and Local Rule 5.5 of the District Court of Idaho, which mandates the redaction of the names of minor children.

The Plaintiffs therefore filed a motion to strike the Defendants' motion for summary judgment in its entirety for having disclosed such information in violation of their legal duty to safeguard it. The Court did not grant that motion to strike, but issued the following Docket Entry Order on March 5, 2014:

“DOCKET ENTRY ORDER--The parties informed the Court that the names of juveniles were included in two filed documents that should be sealed. The Court will seal them both and direct counsel to file redacted copies. NOW THEREFORE IT IS HEREBY ORDERED, that the Clerk is directed to seal two filings 36 & 38 and counsel are directed to file copies with the names of juveniles redacted. Signed by Judge B. Lynn Winmill. (caused to be mailed to non Registered Participants at the addresses listed on the Notice of Electronic Filing (NEF) by (dm)” Dkt. 64

Defendants subsequently re-filed those documents on March 10, 2014 under Dkts. 68 and 69.

In these appellate proceedings, the Appellants have once again disclosed the names and other personally identifying information of the juvenile offenders in their care by re-filing Dkts. 36 and 38, the same portions of the record which the District Court ordered sealed.

Further, a brief scan of other portions of the Appellants’ Excerpts of Record indicates that other names and/or personally identifying information concerning minors and juvenile offenders was not redacted.

III. ARGUMENT

The Appellants’ use of the sealed documents in their Excerpts of Record violates not only the District Court’s Order sealing those documents, but also Fed. R. App. P. 25(a)(5) and Fed. R. Civ. P. 5.2, which require that the names and other personally identifying information of minors be redacted in all documents filed with the Court.

Further, the Appellants have also violated the confidentiality provisions of the Idaho Public Records Act (I.C. § 9-340B), the Idaho Juvenile Corrections Act (I.C. § 20-501, et seq.), and Local Rule 5.5 of the District Court of Idaho, which mandates the redaction of the names of minor children.

Under Circuit Rule 30-2, “[i]f materials required to be included in the excerpts under these rules are omitted, or irrelevant materials are included, the Court may take one or more of the following actions:

- (a) strike the excerpts and order that they be corrected and resubmitted;
- (b) order that the excerpts be supplemented;
- (c) if the Court concludes that a party or attorney has vexatiously or unreasonably increased the cost of litigation by inclusion of irrelevant materials, deny that portion of the costs the Court deems to be excessive; and/or
- (d) impose monetary sanctions.”

Other authorities confirm that a motion to strike is the appropriate means of dealing with the inclusion of such material. If the excerpts of record contain unauthorized documents or matters that were not part of the district court record, the remedy is a motion to strike the offending material. *Barcamerica Int'l USA Trust v. Tyfield Importers, Inc.*, 289 F3d 589, 595 (9th Cir. 2002); *Kirshner v. Uniden Corp. of America*, 842 F2d 1074, 1078 (9th Cir. 1988).

The Appellees therefore respectfully request that this Court issue an Order striking from the Excerpts of Record the documents which were sealed by order of the District Court.

The Appellees further request that the Court order the Appellants and their attorneys to review and redact all of the documents which they have filed in these proceedings for other possible disclosures of the confidential information of minor children.

For their part, the Appellees have painstakingly reviewed, in a very time-consuming process, all of the over 2,300 pages filed by them in these appellate proceedings in order to ensure that such information is not inadvertently disclosed.

In addition to striking these materials as requested above, the Appellees respectfully suggest that the Court should also consider whether sanctions should issue against the Appellants in view of the fact that this is now the second time that the Defendants have carelessly disclosed such sensitive information despite their affirmative legal duties to safeguard and protect it.

Respectfully submitted,

Date: November 9, 2014

THE LAW OFFICE OF
ANDREW T. SCHOPPE, PLLC



By: _____

ANDREW T. SCHOPPE
Counsel for Plaintiffs-Appellees

DECLARATION OF ELECTRONIC SERVICE

I, Andrew T. Schoppe, hereby declare:

I am and at all times herein mentioned was a citizen of the United States and a resident of Ada County, Idaho. I am over the age of eighteen (18) years and not a party to the within action. My business address is The Law Office of Andrew T. Schoppe, PLLC, 910 W. Main Street, Ste. 358B, Boise, Idaho 83702, and I am a member of this Court.

On November 10, 2014, I served the Appellees' Motion to Strike Portions of Appellants' Excerpts of Record Containing Sealed Documents and Unredacted Personal Information of Minor Children on counsel for the party(ies) named in this action via the Court's electronic filing system (ECF), all of whom are registered electronic filers.

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I certify and declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed at Redlands, California on November 10, 2014.

A handwritten signature in black ink, appearing to read 'ASchoppe', with a stylized flourish at the end.

ANDREW T. SCHOPPE