NO. 101582-8

SUPREME COURT OF THE STATE OF WASHINGTON

In re Dependency of G.M.W.

RESPONSE TO PETITION FOR REVIEW

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I. INTRODUCTION

As members of the Upper Skagit Indian Tribe, G.M.W. and his parents are entitled to the protections of the federal and Washington Indian Child Welfare Acts (ICWA and WICWA). These Acts require the Department of Children, Youth, and Families (DCYF) to provide active efforts to prevent the breakup of the Indian family and guarantee indigent parents of Indian children the right to court-appointed counsel. Moreover, the dependency statute requires that all parents be personally served with a notice and summons and the allegations made against them unless such service is not possible.

Here, the family was afforded each of these protections: The father was personally served in accordance with the statutes governing service; he was afforded court-appointed counsel upon request and demonstration of indigence; and the court placed G.M.W. in a Tribal foster home at the disposition hearing only where it found DCYF made active efforts to prevent the breakup of the Indian family.

The Court of Appeals carefully analyzed the trial court's action in relation to each of these important rights, consistent with tenets of statutory construction and this Court's prior precedent, and found no error. This Court should decline the father's request for review as the Court of Appeals' decision does not conflict with precedent, does not involve a question of law under the Constitution, and does not raise an issue of substantial public interest.

II. STATEMENT OF THE ISSUES

1. Was the father properly served where the notice and summons was left at his place of usual abode, with a person of suitable age and discretion, and where such service did not conflict with the more specific dependency service provisions?

2. Does the father's right to counsel if indigent require the trial court to sua sponte appoint him counsel before he has appeared in the dependency matter?

3. Did the trial court correctly conclude DCYF made active efforts where DCYF collaborated with the Tribe, maintained G.M.W. in a Tribal foster home, supported regular visitation, and made repeated efforts to engage the parents?

III. STATEMENT OF THE CASE

A. G.M.W.'s Birth Gave Rise to DCYF and Tribal Intervention

On January 8, 2021, DCYF received a referral from Skagit Valley Hospital detailing the birth of G.M.W. CP 3. The mother smoked heroin four times a week while pregnant and did not have prenatal care. CP 3. G.M.W. tested positive for heroin and amphetamines, and required morphine to manage withdrawal symptoms. CP 3-4.

G.M.W. was the father's third child, the mother's fourth, and their only child in common. CP 3-4. None of the parents' seven combined children were in their care. CP 3-4. Both parents were members of the Upper Skagit Indian Tribe, and G.M.W. was eligible for membership. CP 3-4. On the same date as the hospital referral, DCYF caseworker Sarah Faber called the Tribal representative, Felice Keegahn, to inform her of G.M.W.'s birth, efforts to contact the parents, and her visit with G.M.W. CP 3-4.

G.M.W. suffered from respiratory distress and hypoxemia and showed signs of withdrawal, including difficulty feeding. CP

3-4. G.M.W. was diagnosed with neonatal abstinence syndrome and oxygen desaturation. CP 3-4. The father visited only twice while G.M.W. was in hospital. 02/16/21RP 40.[1] DCYF caseworker Nicole Patterson was unable to locate the father despite leaving a voicemail, messaging five separate Facebook accounts that might belong to him, and making a referral to the DCYF parent locator. CP 4. The parents informed the hospital they were homeless, but living together. CP 3.

Ms. Patterson requested the hospital, if it had contact, to inform the father of a meeting DCYF scheduled to plan for G.M.W.'s release. CP 4. DCYF sent meeting invitations to all of the father's potential Facebook accounts. CP 4. Neither parent participated. CP 4.

The Tribe noted the father had active warrants with Skagit County Superior and Upper Skagit Tribal Courts and was

[1] There are multiple volumes of Reports of Proceedings. In citing to the RP, the date of the hearing precedes the RP referenced.

avoiding apprehension. CP 5. DCYF, after consultation with the Tribe, sought out-of-home placement, filing a dependency petition on January 15. CP 5-7. Ms. Patterson continued efforts to locate father to alert him of the filing of the petition and the shelter care hearing. 01/19/21RP 4.

Ms. Patterson, DCYF's attorney, the Guardian Ad Litem, and Tribal Representative Keegahn attended the shelter care hearing. CP 26. Ms. Patterson testified regarding her efforts to inform the parents of the hearing. 01/19/21RP 4. DCYF had multiple addresses for both parents, including the maternal grandmother's address, where the Tribe reported the parents may be staying. CP 5. Ms. Patterson had not been able to serve the parents but had physically searched for them, called and texted them, and messaged them on Facebook about the hearing. 01/19/21RP 4. She was in her vehicle searching for the parents during the remote hearing. 01/19/21RP 4. Tribal Representative Keegahn assisted DCYF in locating the parents and had no

objection to the court entering a shelter care order in their absence. 01/19/21RP 5.

The court found DCYF made reasonable efforts to inform the parents G.M.W. had been placed into custody and to inform them of their legal rights. CP 32. The court placed G.M.W. in foster care unless a relative or suitable other person was located. CP 32. The Tribe supported the placement. 01/19/21RP 8.

B. DCYF Served the Father by Substitute Service and the Court Entered a Default Order of Dependency, which the Tribe Supported

The same day as the shelter care hearing, Ms. Patterson drove to the address of the maternal grandmother on Hulbush Lane and personally served the mother with the dependency petition and notice and summons. CP 40-44. The mother said she would see the father later in the day and would deliver his copy of the petition and notice and summons to him. CP 45-49. The Hulbush address was registered with the Tribe and known to be the father's residential address. 07/06/21RP 10.

That day, Ms. Patterson also mailed, certified first-class, a copy of the dependency petition and notice and summons to two addresses on file for the father and general delivery in Burlington. CP 46. The notice and summons indicated a dependency petition had been filed, provided the dates and times for a case conference, noted upcoming court hearings, and provided advice regarding the right to a fact-finding hearing and court-appointed counsel. CP 19-21, 48. Specifically, the summons indicated the parent must qualify for a court-appointed lawyer and contact the Office of Assigned Counsel to request one. CP 19-21. A physical address, telephone number, and website were provided. CP 19-21.

One week later, DCYF sent an ICWA notice via certified mail to the father's mailing address listed on the petition. CP 50-64. The notice informed the father that a dependency petition had been filed, a fact-finding hearing would be held on February 16 (address, phone number and directions included), and of his right to court-appointed counsel if indigent. CP 54. DCYF received

and filed with the court, confirmation of receipt of the ICWA notice, signed for by "RS," as "agent."[2] CP 111, 189.

On February 4, the parents called in to the case conference, set to discuss G.M.W.'s well-being and the services recommended to address parental deficiencies. 02/16/21RP 36. The parents had not visited G.M.W. since his release from the hospital. 02/16/21RP 41. Ms. Patterson informed the parents of their right to an attorney. 02/16/21RP 37. The father reported not having a phone. CP 78. Following the meeting, Ms. Patterson made a referral for a phone bundle for him. CP 78. The father noted the best way to reach him was through the mother. 02/16/21RP 37, CP 78.

The parents did not obtain counsel or appear at the fact-finding hearing on February 16. 02/16/21RP 32. The court heard testimony of Ms. Patterson's active efforts, the parent's lack of engagement and inability to safely parent, and entered

[2] The father's initials are G.M.W. 02/16/21RP 29.

dependency orders by default. CP 89-103. The court held a disposition hearing two weeks later and maintained placement in foster care, ordered services for the parents, and found DCYF made active efforts. CP 121. At the Tribe's request, the court reserved finding whether the parents' continued custody of G.M.W. was likely to result in serious emotional or physical damage to him. CP 120.

Tribal Representative Keegahn provided expert testimony through her declaration filed March 12. CP 139-142. She noted G.M.W. was placed in a foster home approved by the Tribe and the parents' continued custody of G.M.W. was likely to result in serious emotional or physical damage. CP 139-142. She opined that DCYF made active efforts to provide remedial services and rehabilitative programs to the parents. CP 139-142.

C. The Father Appeared and the Court Denied His Motion to Vacate

The Skagit County Public Defender's Office filed a Notice of Appearance for the father on May 21. CP 207-209. On June 15, the court held a first dependency review hearing; the father

was not present, but his attorney appeared on his behalf. CP 216-234. The court found DCYF made active efforts and that the father was not compliant with court-ordered services or making progress toward reunification. CP 216-234.

One week later, the father filed a Motion to Set Aside Default for Improper Service. CP 236-245. He argued service was improper because he was served by substitute service at an address that was not his usual place of abode and the documents were given to the mother, a party. CP 239-240.

The trial court found DCYF properly served the father, despite the Hulbush address not being listed in the petition, because it was known by DCYF and the Tribe as his residential address. 07/06/21RP 18. Additionally, it was the address where the DCYF caseworker successfully spoke to the father in April. 07/06/21RP 22. The court found DCYF "went above and beyond" by also mailing the father the service documents via certified mail to additional addresses known to DCYF. 07/06/21RP 22. Finally, the court found substitute service

through the mother was proper because she was not a contrary party. 07/06/21RP 22.

D. The Court of Appeals Affirmed in a Published Decision

The father appealed the trial court's denial of his motion to vacate and raised two issues for the first time on appeal: that ICWA and WICWA required the trial court to automatically appoint him counsel and that DCYF failed to make active efforts.

In a published decision, the Court of Appeals affirmed. *In re Dependency of G.M.W.*, 519 P.3d 272 (2022). The court found the father was properly served through substitute personal service, that neither ICWA nor WIWCA required the automatic appointment of counsel, and that DCYF made active efforts. *Id*. at 282-90. Judge Coburn dissented regarding service and active efforts. *Id*. at 290-97.

The father now petitions this Court for review pursuant to RAP 13.4(1)-(4)))).

IV. ARGUMENT

The Court of Appeals correctly determined the father was properly served and that the rights of the Native family were adequately protected where DCYF made active efforts and the father's right to court-appointed counsel, if indigent, was unimpeded. This opinion does not conflict with the decisions of this Court or the lower court's own precedent. The father raises no issues of constitutional magnitude or of substantial public interest to warrant review. Because he fails to meet his burden under RAP 13.4, this Court should deny review.

A. The Father was Properly Served

The Court of Appeals correctly found the DCYF caseworker properly served the father via substitute personal service when she left a copy of the notice and summons at his place of usual abode with an adult of suitable age and discretion.

1. RCW 4.28.080 and RCW 13.34.070 permit substitute personal service

RCW 4.28.080 and RCW 13.34.070 outline the requirements for effective service of process. The former

governs civil matters generally and the latter sets forth additional parameters for service in dependency cases. These statutes can and should be read in harmony to allow substitute personal service in dependency cases.

RCW 4.28.080 sets forth various requirements to effectuate personal service in civil cases, but does not specifically address personal service in dependency actions. RCW 4.28.080(16) is a catch-all provision that sets forth the requirements for personal service in "all other cases" not covered in the preceding provisions, which provide requirements for service in specific situations. RCW 4.28.080(16) provides that service shall be made "to the defendant personally or by *leaving a copy of the summons at the house of his or her usual abode with some person of suitable age and discretion then resident therein*." RCW 4.28.080(16) (emphasis added).

Decades after it enacted the general service statute, the Legislature enacted RCW 13.34.070(8), (9) . These provisions are specific to service in dependency proceedings and provide

additional parameters due to the unique nature of these cases. RCW 13.34.070(8) requires parties to be served "personally as soon as possible following the filing of the petition." Crucially, nothing in RCW 13.34.070 limits the methods of personal service to only hand-to-hand delivery, as the father suggests. Mot. at 24. Thus, substitute personal service, at the party's usual place of abode under RCW 4.28.080(16) is a valid means of service in dependency cases.

As both statutes relate to the same subject matter – service of process to obtain personal jurisdiction over a party – they should be construed harmoniously if possible. *Hallauer v. Spectrum Pros., Inc.*, 143 Wn.2d 126, 146, 18 P.3d 540 (2001). Here, there is no conflict in these statutes, and "the two can be easily harmonized." *G.M.W.*, 519 P.3d at 284. Had the Legislature intended to limit personal service in dependency cases to hand-to-hand service, it could have done so, particularly where the Legislature imposed other obligations on service in dependency cases, including requiring certified mail. RCW

13.34.070(8). As written, RCW 13.34.070(8) requires personal service, which includes substitute personal service. No conflict exists between these provisions.

2. The DCYF caseworker served the father via substitute personal service

Here, the DCYF caseworker – not the mother – served the father by substitute personal service by leaving the summons at his place of usual abode. The father fails to show service was improper.

Substitute personal service requires the petitioner to leave a copy of the petition at the defendant's "usual abode with some person of suitable age and discretion then resident therein." RCW 4.28.080(16). The term "usual abode" means "such center of one's domestic activity that service left with a family member is reasonably calculated to come to one's attention within the statutory period for [the] defendant to appear." *Northwick v. Long*, 192 Wn. App. 256, 262, 364 P.3d 1067 (2015).

Ms. Patterson properly concluded the Hulbush address was the father's usual abode based on the mother's assertion at

the time of service that she would see him later and would deliver the documents to him, and the Tribe's representation that this was his residential address on record.[3] 07/06/21RP 10.

Moreover, Ms. Patterson, and not the mother, effectuated service. Mot. at 20. Substitute personal service is effective once the notice and summons is provided to a person of suitable age and discretion at the party's usual place of abode. RCW 4.28.080. Substitute personal service does not require the suitable person[4] physically deliver the documents to the party. Much like service via mail, service is complete upon mailing, not upon receipt, and is effectuated by the person depositing the mail in the mailbox, not the postal worker delivering it to the recipient. *Jones v. Stebbins*, 122 Wn.2d 471, 476, 860 P.2d 1009 (1993). As the Court of Appeals correctly noted, service here was not

[3] Notably, the father called in to a meeting held by DCYF after service occurred. 02/16/21RP 36. That meeting was listed in the summons; it is reasonable to assume he was aware of the meeting because he received the served documents.

[4] The Legislature did not exclude parties from the category of allowable "persons."

effectuated by second-hand service of the summons by the mother, which would have been prohibited by RCW 13.34.070. *G.M.W.*, 519 P.3d at 285. Rather, Ms. Patterson properly served the father at his usual place of abode.[5]

The Court of Appeals determined service was proper after a careful statutory analysis, consistent with precedent interpreting the service statutes. This Court's review is not warranted.

B. The Court Appointed the Father Counsel in Accordance with ICWA and WICWA

ICWA and WICWA provide a right to counsel for indigent parents of Indian children, but do not require a court to automatically impose court-appointed counsel upon a Native parent who has not requested counsel. The father's interpretation is not supported by the statutes' plain language or their accompanying regulations and is impractical in application. The

[5] Below, the father argued the Hulbush address was not his usual place of abode, but has abandoned that argument here.

father was repeatedly notified of his right to counsel, and the court appointed counsel for him upon his first appearance.

1. ICWA and WICWA provide a right to counsel for indigent parents

ICWA provides that "[i]n any case in which the court determines indigence, the parent … shall have the right to court-appointed counsel in any removal, placement, or termination proceeding." 25 U.S.C. § 1912(b). Similarly, WICWA provides that "[i]n any child custody proceeding under this chapter in which the court determines the Indian child's parent … is indigent, the parent or Indian custodian shall have the right to court-appointed counsel." RCW 13.38.110.

2. Neither Act requires the automatic appointment of counsel

While both Acts provide a right to counsel, this right must be executed by the parent. The father's argument for automatic appointment of counsel is problematic for four reasons.

First, the father's proposed interpretation disregards the statutes' unambiguous language that indigence is a pre-requisite

for court-appointed counsel. He asserts the trial court had sufficient evidence before it to make a finding of indigence and appoint an attorney based on the allegations within DCYF's petition. Mot. at 29. But this rests on the contention that a yet-to-be-proven allegation in DCYF's petition that the father was homeless should be considered dispositive proof of indigence. As the Court of Appeals noted, statutes requiring the appointment of counsel for indigent parties routinely require a screening for indigence. *G.M.W.*, 519 P.3d at 287. This does not "impose additional requirements" upon parents of Indian children. Mot. at 27. Rather, ICWA and WICWA limit the availability of court-appointed counsel to indigent parents, a limitation both the trial and appellate courts recognized. The father fails to articulate why this statutorily-mandated pre-requisite should be disregarded.

Second, the father conflates his right to counsel with an obligation that the court automatically appoint counsel. Neither ICWA nor WICWA contain such a requirement, nor do the

Bureau of Indian Affairs' (BIA's) regulations governing the administration of ICWA. Instead, the regulations require that the parent be notified by the petitioner of their right to counsel if indigent, and then, should the parent appear, by the court. 25 C.F.R. § 23.111(d)(6)(iv), (g) . Notice of the right to counsel is required; automatic appointment of counsel is not. If automatic appointment were required, notice of the right would be meaningless and superfluous. *Spokane Cnty. v. Dep't of Fish & Wildlife*, 192 Wn.2d 453, 458, 430 P.3d 655 (2018) (statutes should be construed to give all language effect).

The father's reliance on the Montana Supreme Court's decision in *Matter of M.E.M.*, 195 Mont. 329, 635 P.2d 1313 (1981), is similarly misplaced. Not only was this decision issued prior to the adoption of the BIA's regulations, which do not endorse its view, but it is also factually distinguishable. In *M.E.M.*, the court overturned a judgment terminating the parental rights of a developmentally-disabled Standing Rock Sioux mother who did not appear for the initial hearings on termination.

Id. at 329. The court "liberally interpret[ed]" the ICWA provision guaranteeing a right to counsel, "given the particular intellectual capacities of this mother," and found the trial court erred in failing to appoint counsel without a request from the mother. *Id.* at 335. Here, the trial court was faced with a parent who had not appeared in court at all and had not otherwise sought representation. *M.E.M.* is not persuasive in deciding the issue before this Court.

Third, the father's proposed approach does not consider whether an Indian parent would choose to request court-appointed counsel; rather, it presumes—without regard to the parent's specific wishes—that he would. ICWA and WICWA contain no mandate for appointed counsel without any consideration of the parents' self-determination and preference. Contrary to the father's assertions, the court's holding below does not require "a specific, formal request," but rather some indication that the parent wishes to invoke his right to counsel. Mot. at 27.

Finally, if a court automatically appointed an attorney to represent a parent who has not appeared, the attorney would be faced with ethical issues regarding how to advocate for their client without direction. RPC 1.2(a) and RPC 1.4 direct that a lawyer shall "abide by a client's decisions concerning objectives of representation and . . . shall consult with the client as to the means by which they are to be pursued." As the Court of Appeals correctly noted, counsel would not know "if the father wanted to waive any purported defects in personal service, to contest shelter care, to challenge the infant's status as a dependent, to have any say in placement, or to visit the infant." *G.M.W.*, 519 P.3d at 287. Appointing unrequested and state-funded counsel—including those who have never had opportunity to meet or talk with a parent—may lead to the trial court and other parties having an incorrect sense that an absent parent's positions are known and understood.

3. The trial court did not infringe upon the father's right to counsel if indigent

DCYF notified the father of his right to counsel and how to exercise it on multiple occasions prior to counsel's appointment at his first appearance before the trial court. This notice and the trial court's action in accordance with the plain language of ICWA and WICWA adequately protected the rights afforded to this Native family.

The father was provided notice of his right to appointed counsel if indigent and the steps he needed to take to invoke that right on multiple occasions: in the notice and summons accompanying the dependency petition he was served with; in the ICWA notice he was mailed; and at the case conference he attended. 02/16/21RP 37, CP 43, 104-112.

Nonetheless, the father neither appeared nor requested counsel until several months after the dependency petition was filed. CP 204. Immediately following his first appearance, he was appointed counsel. CP 207-209.

The father's right to counsel was not infringed upon in any way. He was provided notice of the right and, once he chose to exercise it, he was appointed an attorney. Review of a decision consistent with the plain language of ICWA and WICWA is unnecessary.

C. As required by ICWA and WICWA, DCYF made active efforts to prevent the breakup of the family

It is undisputed that DCYF must begin making active efforts from the time it has reason to know a child is or may be an Indian child. 25 U.S.C. § 1912(d); RCW 13.38.040(1)(a). This is crucial to ICWA and WICWA's purposes in remedying the historic destruction of Native families while ensuring the safety of Native children. 25 U.S.C. § 1912(d); RCW 13.38.040(1)(a); *In re of Dependency of Z.J.G.*, 196 Wn.2d 152, 157, 471 P.3d 853, 856 (2020).

Active efforts are "affirmative, active, thorough, and timely efforts intended primarily to maintain or reunite an Indian child with his or her family." 25 C.F.R. § 23.2. Examples include identifying services and helping the parent overcome barriers,

collaborating with the Tribe, searching for family placement options, keeping siblings together, and supporting parental visits. *Id.* Similarly, WICWA requires DCYF to actively work with the parent to engage them in remedial services to prevent the breakup of the family. RCW 13.38.040(1)(a).

Whether active efforts are sufficient to satisfy ICWA and WICWA is a mixed question of law and fact. *In re Dependency of G.J.A.*, 197 Wn.2d 868, 887, 489 P.3d 631, 641 (2021). Here, the Court of Appeals reviewed the underlying findings for substantial evidence, and reviewed de novo whether those findings satisfied ICWA and WICWA. *G.M.W.*, 519 P.3d at 289. Having found that DCYF made active efforts, it affirmed. No action is required by this Court.

1. DCYF made thorough, timely, diligent efforts prior to the disposition hearing

From the beginning of this case, DCYF repeatedly attempted to engage the parents to prevent the breakup of the Indian family, while also ensuring G.M.W.'s placement in a Tribal foster home, coordinating closely with G.M.W.'s Tribe,

and nurturing the important parent-child connection by making visitation available to the family. These efforts, though ultimately unsuccessful, met the threshold required under state and federal law.

At the time of G.M.W.'s removal, two of his older siblings were subject to dependency proceedings where the mother was not making progress. CP 3-4. The court report filed by Ms. Patterson for G.M.W.'s disposition hearing and the uncontroverted allegations in the dependency petition establish DCYF had been working to remedy the mother's parental deficiencies for years. CP 1-8, 71-86.

Following G.M.W.'s birth, DCYF made consistent efforts to engage the parents. Ms. Patterson went to the hospital to meet with the family, but neither parent was present. CP 7. She scheduled a meeting, but neither parent attended. CP 78. She made multiple attempts to contact the father, through calls, texts, and Facebook. 02/16/21RP 36. She attempted to meet with the father in person, sent letters to potential addresses, visited the

Hulbush address, and drove around looking for the parents. 02/16/21RP 36.

Ms. Patterson was successful in reaching the father only once in the weeks prior to the disposition hearing, at the case conference. 02/16/21RP 36. There, the father reported not having a phone, so Ms. Patterson immediately requested one for him. CP 78. The father indicated he could be reached through the mother's phone, for which DCYF had previously provided minutes. CP 5, 78. Active efforts do not require that DCYF be successful in reaching a parent, only that it make active, thorough, timely, and diligent efforts to do so. Mot. at 33. The record supports such a finding here.

Further, daily visitation was available to the father while G.M.W. was in the hospital, but he visited only twice. 02/16/21RP 40. A professional visit supervisor was unable to reach the parents to establish visitation. 02/16/21RP 41.

Ms. Patterson worked closely with G.M.W.'s Tribe, beginning the day after his birth. CP 3. DCYF staff consulted the

Tribe on a monthly basis in an attempt to locate the parents and engage them. CP 80. G.M.W.'s foster family were members of his Tribe. 02/16/21RP 40.

This case is unlike *G.J.A.*, relied upon by the father. Mot. at 30, 31. In *G.J.A.*, this Court found DCYF failed to make active efforts over the course of a six-month period because it: did not make referrals for visitation despite the mother's repeated requests; failed to assist her in accessing detox services she requested; did not monitor the mother's progress in treatment; and made irregular attempts to contact her, often using only one method of contact. 197 Wn.2d at 913.

Here, in the seven weeks between G.M.W.'s birth and entry of the dispositional order, Ms. Patterson made repeated attempts to contact the parents via a panoply of means, including social media, text, calls, letters, in-person visits, and by enlisting the assistance of the Tribe, hospital, and parent locator to obtain new contact information. DCYF was unable to establish contact with the father, much less assist him in accessing services.

Visitation with G.M.W. was readily available, but the father did not attend. In addition, DCYF continued to reach out to the mother to offer services. CP 1-8, 71-86.

Over the relatively short time period at issue, DCYF made repeated efforts to engage the parents and Tribe, but were unable to avert the breakup of this Indian family.

2. The trial court properly considered the court report filed before the disposition hearing in making its active efforts finding

Both the father and the dissent below erroneously assert that the trial court erred in considering the court report filed after the fact-finding hearing, but before the disposition hearing, when assessing active efforts. Mot. at 33. First, this Court has clearly ruled that active efforts is a dispositional issue because disposition is the hearing at which a foster care placement is made; thus, an active efforts finding is required at disposition, not at fact-finding. *In re Dependency of A.L.K.*, 196 Wn.2d 686, 690, 478 P.3d 63, 65 (2020). Second, even assuming the court was limited to considering events that occurred prior to the fact-

finding hearing, the efforts cited by the father and dissent, including a referral for the father to obtain a phone, were made prior to that hearing.

3. The QEW provided testimony supporting out-of-home placement and participated in every hearing, concurring with DCYF on G.M.W.'s placement

The QEW, Tribal Representative Keegahn, appeared for every hearing and concurred with DCYF's recommendations for out-of-home placement. The QEW's testimony was reserved upon the Tribe's request, because additional time was needed to submit her declaration. That declaration, once submitted, supported ongoing out-of-home placement as required by RCW 13.38.130(2). CP 140.

Placement in foster care was ordered with the agreement of the Tribe from the time of shelter care through disposition and was supported by QEW testimony, provided as a written declaration filed with the court. The record supports the trial court's finding that DCYF provided active efforts. The Court of

Appeals agreed, and this Court need not review this fact-specific application of this Court's prior holdings.

V. CONCLUSION

The father fails to meet his burden for review under RAP 13.4. Accordingly, this Court should deny his request for review.

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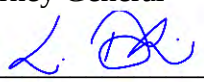
RESPECTFULLY SUBMITTED this 25th day of January, 2023.

ROBERT W. FERGUSON
Attorney General



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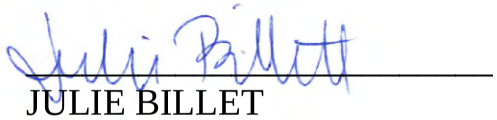
CERTIFICATE OF SERVICE

The undersigned certifies under the penalty of perjury of the State of Washington that on the below date the original Response to Petition for Review to which this Declaration is attached, was filed with the Supreme Court of Washington, through the Court's online filing system. An electronic copy was delivered to all parties of record through the filing portal.

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 25th day of January, 2023, at Everett, Washington.



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