NO. 101582-8

SUPREME COURT OF THE STATE OF WASHINGTON

In re Dependency of G.M.W.

DCYF ANSWER TO BRIEF OF AMICI CURIAE

ROBERT W. FERGUSON
Attorney General

Lauren Danskine
Assistant Attorney General
WSBA #50151
3501 Colby Avenue, Suite 200
Everett, WA 98201
(425) 257-2147
OID: 91145

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Rules

I. INTRODUCTION

The Court of Appeals correctly held that service in a dependency proceeding can be effectuated by substitute personal service. The court preserved the availability of this statutorily authorized mode of personal service when delivering a summons to a person of suitable age and discretion at a parent's place of usual abode. In doing so, the court did not diminish the important due process and statutory safeguards that protect against substitute personal service in the problematic hypotheticals Amici cite. RCW 4.28.080(16)'s requirements prevent effectuating service at an address the parent is unlikely to frequent or by leaving the summons with the parent's abuser, who necessarily is not a person of suitable discretion. The blanket prohibition Amici seek would serve only to eliminate a means of effectuating service that, because of these statutory and due process protections, is reasonably calculated to provide a parent timely notice.

Here, the Court of Appeals correctly determined that substitute personal service of the father was appropriate. The Department of Children, Youth, and Families (DCYF) caseworker effectuated service when she left the summons at the only address the father's Tribe was aware of and where the caseworker later met with the father. She left the summons with the mother who, based on the specific facts of this case, was of suitable age and discretion. Substitute personal service was reasonably calculated to provide notice to the father.

Review by this Court is unnecessary.

II. STATEMENT OF THE CASE

DCYF's Statement of the Case is outlined in its answer to the father's Petition for Discretionary Review and is incorporated herein by reference.

III. ARGUMENT

This answer responds to the joint Amici Brief of the Family Violence Appellate Project; King County Department of Pubic Defense; Washington Defender Association; Pier

Petersen; Infinitum Legal Counsel, P.S.; Desmond Law Group, P.S.; Thurston County Public Defense; Washington State Office of Public Defense; Stebbins Ullrich, LLP; ABC Law Group, LLP; Alford & Associates, PLLC; and Tessneer Law, PLLC. This answer collectively refers to these groups as "Amici."

While there may be situations where substitute personal service will not be reasonably calculated to provide timely notice to the parent, and thus would be improper, those facts were not present here. The hypothetical situations Amici cite are already prohibited by the plain language of RCW 4.28.080(16), unaltered by the Court of Appeals decision. First, service may only be effectuated at a parent's usual place of abode, which, while not confined to one potential residence, must be one at which they can reasonably be expected to receive notice. Second, RCW 4.28.080(16)'s requirement that the documents be left with an individual of suitable discretion guards against Amici's concerns that DCYF will rely on abusers to facilitate service of their victims. These circumstances were not present in this case,

and the Court of Appeals decision does not inhibit the statutory protections already in place that prevent these hypothetical harms from occurring in other cases. This Court should decline review.

A. The Court of Appeals Appropriately Harmonized the Service Statutes and Reiterated the Prohibition on Parties Serving One Another

This Court need not grant review of the Court of Appeals decision, which appropriately harmonized statutes governing service and restated the well-established prohibition upon one party serving another.

First, the Court of Appeals appropriately followed the tenets of statutory construction when it found that the specific service statute that applies in dependency matters, RCW 13.34.070, does not conflict with the general service statute, RCW 4.28.080. 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). The court correctly noted that these two statutes are

not in conflict and can be "easily harmonized." *In re Dependency of G.M.W.*, 24 Wn. App. 2d 96, 117, 519 P.3d 272, 284 (2022).

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" and 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).

RCW 13.34.070 requires personal service in dependency proceedings and provides additional parameters due to the unique nature of dependency cases. *See, e.g.*, RCW 13.34.070(8) (requiring certified mail). However, nothing in RCW 13.34.070 limits personal service to only hand-to-hand delivery. 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. The Court of Appeals correctly determined the statutes do not conflict.

Second, there is no dispute that one party may not serve another in a dependency proceeding. As the Court of Appeals correctly recognized below, this is expressly prohibited by both CR 4(c) and the specific language of RCW 13.34.070(9). *G.M.W.*, 519 P.3d at 285. Here, service was not effectuated by the mother, but by the caseworker when she left the summons for the father at his place of usual abode with a person of suitable age and discretion then resident therein. Contrary to Amici's assertions, further review by this Court is not required to address this undisputed statement of law, plainly outlined in the court's decision below.

B. Service in this Case was Proper and the Statute Already Guards against Amici's Hypothetical Harms

While Amici posit hypothetical situations in which substitute personal service may not fulfill its underlying goal – being reasonably calculated to provide timely notice – those circumstances are not present in this case and are already

prohibited by the plain language of RCW 4.28.080(16). *See Brief of Amici Curiae* at 6-14.

The fact-specific determination of whether substitute service was proper necessarily requires courts to determine whether the person with whom the summons was left was of suitable age and discretion. Courts must also determine whether the record demonstrates that the location at which service occurred was the parent's usual, though not only, place of abode. These existing requirements, subject to scrutiny by the trial court and de novo review by appellate courts, adequately protect the rights of parents to receive notice in dependency matters. This Court need not grant review to address hypothetical harms that are adequately guarded against by existing law.

1. The summons may be left with only a person of suitable age and discretion

Both the plain language of the service statute and the Court of Appeals' interpretation of that statute provide that service at a person's usual place of abode is effective only if the summons is left with a person of suitable age and discretion.

RCW 4.28.080(16); *G.M.W.*, 24 Wn. App. 2d at 119-120. Further guidance from this Court is not required to preclude substitute personal service in the hypothetical situations Amici cite because substitute personal service in such situations is already prohibited by statute.

Amici note that dependency cases may involve parents with divergent interests and, at times, involve domestic violence between parents. *Brief of Amici Curiae* at 8-9. However, Amici's concern that the Court of Appeals decision would allow DCYF to leave a summons with one parent's domestic violence perpetrator or with a parent who has an incentive not to provide the summons to the other parent is misplaced. *See Brief of Amici Curiae* at 8-9.

RCW 4.28.080(16)'s plain language allows the summons to be left at the person's place of usual abode only if it can be left with "a person of suitable age and discretion then resident therein." On its face, this provision necessarily requires trial courts to determine if the individual with whom the summons

was left is of suitable discretion. Given this required analysis, it is highly unlikely that a trial court would find a parent's domestic violence perpetrator to be of suitable discretion. *See Brief of Amici Curiae* at 9. It is also unlikely that a trial court would find a parent with an apparent incentive to prevent the other parent from receiving notice to be of suitable discretion for this purpose. *See id.* In both situations, the underlying goal of service would be thwarted because neither is reasonably calculated to provide the parent with actual notice of the proceedings. *See Sheldon v. Fettig*, 129 Wn.2d 601, 608, 919 P.2d 1209, 1212 (1996); *Wichert v. Cardwell*, 117 Wn.2d 148, 152, 812 P.2d 858, 860 (1991). The Court of Appeals decision in this case does not disturb this existing and undisputed statutory requirement in any way.

Rather, the record here amply demonstrates the mother was a person of suitable discretion for this purpose. When the caseworker arrived at the Hulbush Lane home, the mother noted she would see the father later that day. CP 45-49. There was no

indication of domestic violence or otherwise poor relations between the parents alleged by any party, including the father.[1] On the contrary, the parents attended the case conference together and the father indicated that the best method to reach him was through the mother. 02/16/21RP 37, CP 78. Moreover, the caseworker later met with the parents together at the Hulbush Lane address. 07/06/21RP 22, CP 175.While in a different case, on different facts, the other parent may not be a person of suitable discretion, those facts are not present here.

Further, a blanket prohibition on a parent being of suitable discretion may have the adverse effect of decreasing the likelihood that a summons will be provided in the manner best calculated to provide timely notice to the other parent. Hand-to-

[1] Amici describe the father in this case as the "non-custodial parent" without citation. *Brief of Amici Curiae* at 10. G.M.W. was removed from the care of both parents shortly after birth and, to the best of DCYF's knowledge, there is no parenting plan in place naming either parent as the custodial parent. DCYF is unaware of any basis for characterizing the father as the non-custodial parent.

hand service may not be possible because of the parent's work schedule or other commitments that take them away from their usual abode, meaning the Department would be required to serve the documents via certified mail rather than by leaving them with a suitable adult at the parent's usual abode. This frustrates both the purpose of service, which is to provide timely notice, and the underlying rights of children to speedy resolution of dependency proceedings. *See* RCW 13.34.020.

A case-by-case analysis of the circumstances of service, as was conducted by the trial and appellate court here, will both guard against the harms Amici cite and permit service through the means best calculated to provide timely notice. Further guidance from this Court is not necessary.

2. A person may have more than one place of usual abode

Similarly, the Court of Appeals decision requires courts to determine whether the address at which the summons is left is one at which the parent is likely to receive notice of the proceedings. *G.M.W.*, 24 Wn.App.2d at 118. Rather than reading

the word "usual" out of the statute, as Amici allege, the Court of Appeals simply restated the long-held rule that a person may have more than one place of usual abode. *G.M.W.*, 24 Wn. App. 2d at 118 (citing *Sheldon*, 129 Wn.2d at 609).

Continued application of the rule that a person may have more than one usual place of abode will not inevitably exacerbate family conflict or allow substitute personal service in situations where doing so is not reasonably calculated to provide notice to the parent. *See Brief of Amici Curiae* at 12. RCW 4.28.080(16)'s plain language and the courts' interpretation of that statute guard against the potential issues Amici cite.

Several facts in the record supports a finding that the Hulbush Lane address was a place of usual abode for the father. First, this was the only address the father's Tribe had on file for him. 07/06/21RP 18. Second, the Tribe believed this to be where the father was currently residing. 07/06/21RP 18. Third, when the caseworker arrived at that residence, the mother indicated she would see the father at that residence later in the day. CP 45-49.

Finally, the caseworker later met with the father at that address.[2] 07/06/21RP 22, CP 175. All of the evidence before the trial court and the appellate court suggested that the Hulbush Lane address was a place of usual abode for the father.

Amici advance hypothetical situations not present here to demonstrate how application of the court's decision might lead to substitute personal service that would not be reasonably calculated to provide notice to parents in other cases. *Brief of Amici Curiae* at 11-14. Amici note that in some dependency cases, children are placed with relative caregivers in homes where the parents had previously resided, but are now prohibited from residing in pursuant to court order. *Brief of Amici Curiae* at

[2] The father has never alleged any other address to be his place of usual abode. As the court below noted, once DCYF has established a prima facie case by providing a declaration from the person who served process, the burden shifts to the challenging party to show by clear and convincing evidence that service was improper. *G.M.W.*, 24 Wn. App. 2d at 117–18.

12. However, the Court of Appeals decision would likely not authorize substitute personal service in such circumstances.

Where a parent is prohibited by court order from residing in or frequenting a residence, a court will likely find that residence is not the parent's place of usual abode because delivery of a summons to a location where a parent is prohibited from residing or frequenting would not be reasonably calculated to provide them notice. *See Sheldon*, 129 Wn.2d at 608. Substitute personal service in the hypothetical situation Amici reference is already prohibited under the statute and is not authorized by the Court of Appeals decision.

Finally, Amici note that parents in dependency proceedings often face instability. *Brief of Amici Curiae* at 11. However, the Court of Appeals decision does not prevent trial courts from considering the individual circumstances of each parent's case when determining whether the method of service employed was reasonably calculated to provide them notice. A bright line prohibition on service in this manner is unnecessary.

Adequate protections against the harms cited by Amici are already in place, and this Court need not provide further guidance on this issue.

IV. CONCLUSION

While Amici present problematic situations in which substitute personal service could be attempted, service under those circumstances is not authorized by either statute or the Court of Appeals decision. RCW 4.28.080(16) already requires that trial courts consider whether the parent is reasonably likely to obtain notice at the address where service occurred, and whether the person the summons was left with was of suitable discretion. Further guidance from this Court is unnecessary, and this Court should decline review.

This document contains 2,499 words, excluding the parts of the document exempted from the word count by RAP 18.17.

RESPECTFULLY SUBMITTED this 16th day of March, 2023.

ROBERT W. FERGUSON
Attorney General

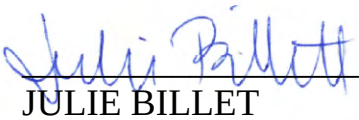
LAUREN DANSKINE
WSBA #50151
Assistant Attorney General

CERTIFICATE OF SERVICE

The undersigned certifies under the penalty of perjury of the State of Washington that on the below date the original DCYF Answer to Brief of Amici Curiae 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 16th day of March, 2023, at Everett, Washington.



JULIE BILLET
Paralegal

ATTORNEY GENERAL'S OFFICE - EVERETT

March 16, 2023 - 12:28 PM

Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	101,582-8
Appellate Court Case Title:	In the Matter of the Dependency of: G.M.W.
Superior Court Case Number:	21-7-00003-4

The following documents have been uploaded:

- 1015828_Answer_Reply_Plus_20230316120423SC536054_4578.pdf
  This File Contains:
  Answer/Reply - Other
  Certificate of Service
  The Original File Name was Amici Response.pdf

A copy of the uploaded files will be sent to:

- Autumn@desmondlaw.org
- Flint@StebbinsUllrich.com
- Larry.Jefferson@opd.wa.gov
- Service@StebbinsUllrich.com
- adamballout@abclawgroup.net
- ali@defensenet.org
- amanda@stebbinsullrich.com
- anita.khandelwal@kingcounty.gov
- ayay@abclawgroup.net
- bryantd@seattleu.edu
- cameron@infinlegal.org
- christopher@desmondlaw.org
- crystal@alfordlawteam.com
- dadre@defensenet.org
- dennice@infinlegal.org
- dennis@desmondlaw.org
- dhawkins@upperskagit.com
- estratton@fvaplaw.org
- felicek@upperskagit.com
- galmonicac@gmail.com
- hyeyoung@desmondlaw.org
- jamison.tessneer.law@gmail.com
- jvanarcken@kingcounty.gov
- katebenward@washapp.org
- laurwilson@kingcounty.gov
- office@infinlegal.org
- pier@sounddefenders.org
- robyn.martin@co.thurston.wa.us
- rsdbelfax@atg.wa.gov
- service@abclawgroup.net
- susan@desmondlaw.org
- tara.urs@kingcounty.gov

- tiffanie.turner@kingcounty.gov
- wapofficemail@washapp.org

Comments:

Sender Name: Julie Billett - Email: julieb@atg.wa.gov
Filing on Behalf of: Lauren Danskine - Email: Lauren.danskine@atg.wa.gov (Alternate Email: evefax@atg.wa.gov)

Address:
3501 Colby Ave., Suite 200
Everett, WA, 98201
Phone: (425) 257-2152

Note: The Filing Id is 20230316120423SC536054