NO. 93678-1

SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, DSHS,
Respondent

vs.

HOLLY R. SNYDER,
Petitioner

RESPONDENT'S ANSWER TO MOTION FOR DISCRETIONARY REVIEW

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I. INTRODUCTION

The Court of Appeals properly determined Holly Snyder's appeal was untimely and, as such, the Court should deny Ms. Snyder's petition for review. Ms. Snyder failed to file an administrative appeal within 30 days of receiving constructive notice of the Department of Social and Health Services' (Department) decision upholding an initial finding of child abuse or neglect. The Department sent Ms. Snyder notice of its decision via certified mail to the address she had confirmed less than one week before. This notice complied with RCW 26.44.125(4). Such notice also complied with due process requirements, as it was reasonably calculated to reach Ms. Snyder. The Court of Appeals determined her appeal filed two years after adequate notice was sent was untimely and properly dismissed her claim.

II. COUNTERSTATEMENT OF THE ISSUES

Review is not warranted in this case, but if review were accepted, the issues presented would be:

A. Is the Department required to provide actual notice of its decision to a perpetrator of child abuse or neglect when RCW 26.44.125(4) states the decision must be sent by certified mail, return receipt requested, to the person's last known address?

B. Does the United States Constitution require the Department to provide actual notice of a finding of child abuse or neglect to the perpetrator?

III. COUNTERSTATEMENT OF RELEVANT FACTS

The Department received a report alleging that Ms. Snyder had abused or neglected a child in 2010. After an investigation, the Department found Ms. Snyder "admitted that she used a towel to lock the older children in their bedroom at night." Administrative Record (AR) at 16. The Department determined that due to the serious risk of substantial harm to the children, especially in the case of an emergency, Ms. Snyder was responsible for negligent treatment or maltreatment of a child. AR at 16. On March 21, 2011, the Department sent Ms. Snyder a letter advising her of its determination. AR at 39-44. The letter advised Ms. Snyder of her right to seek review of the determination and was sent via certified letter to her home address of 412 W. Longfellow, Spokane, WA 99205. AR at 45. Records from the United States Postal Service indicated Ms. Snyder received the letter on March 31, 2011 at 9:09 a.m. AR at 45.

Ms. Snyder requested an internal review of the finding on April 6, 2011, and listed her address on the review request form as 412 W. Longfellow, Spokane, WA 99205. AR at 46. The return address on the

envelope Ms. Snyder used to mail the form to the Department was the same 412 W. Longfellow address, and the envelope was postmarked April 7, 2011. AR at 47.

Less than one week later, on April 12, 2011, the Department sent Ms. Snyder a letter upholding the founded finding. AR at 48. The letter explained to Ms. Snyder that she could request an administrative review, but to do so she would need to file a written request with the Office of Administrative Hearings (OAH) within 30 calendar days. AR at 48.

The Department mailed the letter to Ms. Snyder via certified mail to the same 412 W. Longfellow address. AR at 49. The post office attempted delivery on April 14, 2011; April 21, 2011; and April 29, 2011. AR at 49. The letter was ultimately returned to the Department unclaimed on May 4, 2011. AR at 49. Ms. Snyder did not promptly forward her mail to her new address, nor did she update her address with the Department.

Nearly two years later, Ms. Snyder began an internship program with a local community college. AR 17. She was dismissed from the program after a background check revealed that she had a finding of negligent treatment. AR at 17. She filed a request for a hearing with OAH. AR at 64. The administrative law judge (ALJ) dismissed Ms. Snyder's appeal for lack of jurisdiction because the appeal was not filed timely. AR at 15. The ALJ specifically found it was reasonable for the Department to attempt to serve

Ms. Snyder at the address she had provided to the Department shortly before the review letter was mailed. AR at 15-21. On review, the superior court and Court of Appeals upheld dismissal of the claim for lack of timeliness. *See, State v. Snyder*, 194 Wn. App. 292, 376 P.3d 466 (2016).

IV. REASONS WHY REVIEW SHOULD BE DENIED

The Court should deny Ms. Snyder's petition for review because RCW 26.44.125(4) does not require the Department to provide actual notice of its decisions to alleged perpetrators. The statute merely requires the notice to be sent via certified mail, return receipt requested, to the person's last known address. The Department followed the statutory requirements. Furthermore, RCW 26.44.125's requirement to provide constructive notice meets the due process requirements of the federal constitution. The Court of Appeals properly determined Ms. Snyder had constructive notice of the Department's decision in April 2013, its decision is consistent with state and federal law, and its decision does not present a significant question of constitutional law or substantial public interest. *See* RAP 13.4(b).

A. RCW 26.44.125(4) Merely Requires the Department to Send Determinations Via Certified Mail to the Last Known Address. Actual Notice is Not Required.

State law requires the Department to take certain steps to notify an alleged perpetrator of child abuse or neglect of its determination. RCW

26.44.125 sets forth the process a person can follow to seek review of a Department finding of child abuse or neglect. Following notification of the Department's initial finding, the alleged perpetrator may seek an internal review. RCW 26.33.125(2). Within thirty days, the Department must complete its internal review and send notice of its ultimate determination to the alleged perpetrator. RCW 26.44.125(4).

The manner in which the ultimate determination is communicated to the alleged perpetrator is dictated by the legislature. "The notification must be sent by certified mail, return receipt requested, to the person's last known address." RCW 26.44.125(4). Actual notice is not required.

Contrary to Petitioner's assertions, Pet. for Review at 8, RCW 26.44.100(4) is inapplicable. It states: "[t]he duty of notification *created by this section* is subject to the ability of the department to ascertain the location of the person to be notified. The department shall exercise reasonable, good-faith efforts to ascertain the location of persons entitled to notification *under this section.*" RCW 26.44.100(4) (emphases added). Both sentences explicitly reference "this section." The section is RCW 26.44.100. The section, when read in total, applies to initial notification of an allegation and the "department's investigative findings." *See* RCW 26.44.100(2). The section does not mention the Department's review decision, which is contained in an entirely different section – RCW

26.44.125. Thus, by its plain language, the heightened requirements in subsection four only apply to notice of the allegation and the initial investigative findings, not the review determination.

The Department complied with RCW 26.44.125(4)'s notice requirements. The Department used the address Ms. Snyder had provided one week earlier and sent her notice in a manner (certified mail with return receipt requested) that had worked only two weeks prior. AR at 45. Furthermore, even if the heightened standard of using reasonable good-faith efforts applied, the Department utilized such efforts in this case by sending the letter promptly through the United States Postal Service, which attempted delivery to Ms. Snyder's address three times, unlike in *Ryan v. Department of Social and Health Services*, 171 Wn. App. 454, 287 P.3d 629 (2012).

In *Ryan*, the Court of Appeals determined the Department's efforts to provide notice were insufficient. None of the insufficiencies identified in that decision exist in this case. First, in *Ryan* the court found that the Department knew that the alleged perpetrator did not live at the address that was used for service. Here, at the time that the letter was sent the Department had every reason to believe that the address was correct and that certified mail would be an effective form of notice, especially since Ms. Snyder had provided it only one week earlier,

knowing that the address she provided would be used to deliver the results of the review. Second, in *Ryan*, the Department was aware of the alleged perpetrator's place of employment and had a working message phone number for her. Here, the appellant provided only an address to be used for communication regarding the internal review. AR at 46.

There is also a third fact that is distinguishable from the facts in *Ryan* - Ms. Snyder had notice of the founded finding when she requested internal review and was also on notice that a review decision would be mailed to her within sixty days of her request. Despite having reason to know that the Department would mail its decision to her, she almost *immediately* moved to a new residence after submitting her request and failed to notify the Department or leave a forwarding address with the United States Post Office. She easily could have contacted the Department or the Post Office to update her address, but she did not. Instead, she argues that the Department should have taken additional steps to determine that she had moved and to find her new address.

The statutory requirements for service of the results of an internal review of a founded finding are clear, and the Department complied with the statutory requirements. There is no significant question of law in need of resolution, and therefore review should be denied.

B. Due Process Merely Requires the Department to Provide Constructive Notice of Its Review Determination to an Alleged Perpetrator of Child Abuse or Neglect.

Due process does not require an alleged perpetrator of child abuse and neglect to receive actual notice of the Department's review determination. Even when the stakes are much greater, such as loss of one's home and property, the United States Supreme Court has not required actual notice. The substantial administrative burden placed on a party by an actual notice requirement outweighs the risk of erroneous deprivation.

Appropriate constructive notice is sufficient to satisfy due process. Due process merely requires "notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Jones v. Flowers,* 547 U.S. 220, 226, 126 S. Ct. 1708, 164 L.Ed.2d 415 (2006) (quoting *Dusenbery v. United States,* 534 U.S. 161, 170, 122 S. Ct. 694, 151 L.Ed.2d 597 (2002)). The "notice required will vary with circumstances and conditions." *Id.* at 227.

Neither the United States Constitution, nor federal and state case law, require actual notice of the Department's action at issue in this case. *See, e.g., Jones*, 547 U.S. at 225 ("Due process does not require that a property owner receive actual notice before the government may take his

property."); *Ryan*, 171 Wn. App. at 472-73 (due process does not require actual notice and "is permissible when the department relies on a last known residence address that . . . it has 'ascertained' to be a reasonably likely residence 'location of the alleged perpetrator.'"). Further, Ms. Snyder provides no substantive argument as to why the Court should now create an "actual notice" requirement regarding Department action.

The Department should not be required to give actual notice in this case because the certified mail sent in this case satisfies due process and statutory notice requirements for internal review and because there is value in the finality of disputes. An actual notice requirement would encourage unsuccessful litigants to play hide-and-seek with opposing litigants in order to thwart the effectiveness of a court's order and enable the unsuccessful litigant to come back years later to reengage in the appeal process. Such a rule would create unreasonable obstacles in the quest for a final resolution. *Mullane v. Central Hanover Bank & Trust Co.,* 339 U.S. 306, 313-314, 70 S.Ct. 652, 94 L.Ed. 865 (1950) ("A construction of the Due Process Clause which would place impossible or impracticable obstacles in the way could not be justified.")

None of the case law cited in in Ms. Snyder's brief requires "actual notice." Although Ms. Snyder and Amicus Northwest Justice Project (NWJP) argue that the Court of Appeals decision conflicts with the United

States Supreme Court decision in *Jones v. Flowers,* it does not and that case is distinguishable in several ways. In *Jones,* Mr. Jones owned a home in Arkansas that he did not live in although he made the monthly mortgage payments for thirty years. *Jones,* 547 U.S. at 223. The property was certified as delinquent after Mr. Jones failed to pay the property tax. *Id.* The State attempted to notify Mr. Jones of the delinquency via certified mail to the address of the home, but the mail was returned "unclaimed". *Id.* at 224. Prior to the sale of the home, the State attempted again to send Mr. Jones a certified letter warning him that the State would proceed with the sale if the taxes were not paid. *Id.* This letter was also returned to the State within two to three weeks, marked "unclaimed". *Id.* The State waited the statutorily required two years and then, without taking further steps to notify Mr. Jones of the impending sale of his home, sold the property to Ms. Flowers, who delivered an unlawful detainer notice to the property that was then passed on to Mr. Jones. *Id.* The United States Supreme Court criticized the State's attempts at notice because Mr. Jones never received notice that there was any type of proceeding against his home, and the State knew he had not received such notice because both of its notices were returned unclaimed. *Id.*

Despite its criticisms, however, the Court did not require the State to provide a homeowner with actual notice before foreclosing on a

person's property. Instead, it required the state to provide "notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Id.* at 226 (quoting *Dusenbery v. United States,* 534 U.S. 161, 170, 122 S.Ct. 694, 151 L.Ed.2d 597 (2002)). The Court instructed that the "notice required will vary with circumstances and conditions." *Id.* at 227 (quoting *Walker v. City of Hutchinson,* 352 U.S. 112, 115, 77 S.Ct. 200, 1 L.Ed.2d 178 (1956)). Also "the means employed must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it." *Id.* at 229 (quoting *Mullane,* 339 U.S. at 313). After balancing the interests, the Court offered up some alternatives to certified mail, such as a non-certified letter or a note posted to the front door of the home at the same address. *Id.* at 235. The Court declined to find that the State was obligated to conduct an open ended search for a different address, and that such a requirement would "impose burdens on the State significantly greater than the several relatively easy options" noted by the Court. *Id.* at 236.

Unlike the State's actions in *Jones*, the Department's actions with respect to Ms. Snyder were reasonably calculated, under the circumstances of this case, to apprise her of the Department's decision to uphold its finding and her appeal rights with respect thereto. First, the timelines are

very different. In *Jones*, the state waited two years between notice of the delinquency and initiation of the foreclosure proceedings. In contrast, the Department was required to respond to the request for review within thirty days and the Department actually responded within one week. The risk of a person moving under such a short timeline is minimal.

Second, in *Jones* the state never reached the homeowner – the initial notice of delinquency, which proceeded the two-year waiting period, was returned to the state. Here, the Department had recently successfully sent a notice to Ms. Snyder and she had responded by submitting a request for review. She had actual notice of the ongoing proceedings. Ms. Snyder was aware that a founded finding had been issued by the Department when she requested an internal review of the finding. She was aware that she should anticipate a response to her request within 30 days. She supplied the address used by the Department.

Additionally, unlike *Jones,* Ms. Snyder resided in the home at the time she provided the address to the Department and had accepted certified mail at that address only weeks prior to the certified mail at issue. AR at 45. She also confirmed her address with the Department less than one week before the Department mailed the letter. AR at 46. Under those circumstances, a certified letter repeatedly sent to Ms. Snyder at the address she provided was "reasonably calculated, under all the

circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections", especially considering that the property interest affected in *Jones* was a home, compared to Ms. Snyder's potential future interest in a particular area of employment. *See Id.* at 226.

Furthermore, the risk of erroneous deprivation by lack of notice is far less in the case of communication of a review decision than it would be for notice of the initial investigative findings. Due process "is not a technical conception with a fixed content unrelated to time, place and circumstances." *Mathews v. Eldridge*, 424 U.S. 319, 334, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976). Instead, it "is flexible and calls for such procedural protections as the particular situation demands." *Id.* Generally speaking, the nature of the procedures required under the Due Process Clause is dictated by considering those factors specified in *Mathews*:

> First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

Id. at 335. The burden on any party, including a governmental agency such as the Department, to ensure actual notice is provided to another

party for every decision would require parties to exhaustively investigate another party's possible movements. This would be highly burdensome and sometimes impossible. The weight of the burden significantly outweighs any additional protection it would provide to an appellant such as Ms. Snyder. There is no need for the Court to grant review and impose a new standard of actual notice, contrary to Amicus' argument.

Turning to the issues specifically raised by Amicus NWJP, the Department satisfied the public interest inherent in the issue of due process by sending its agency review determination to the address provided by Ms. Snyder only one week earlier. Still, Amicus NWJP argues constructive notice should not be applied in administrative proceedings and, even if constructive notice can be legally sufficient, the court misapplied the doctrine in this case. *Mem. of Amicus Curiae NWJP in Supp. of Pet. for Review* 7 ("NWJP Mem."). NWJP identifies no legal basis for concluding that due process should provide a party with more protection in administrative hearing than in a judicial proceeding and review of the issue it raises is not warranted. NWJP cites to no legal authority which directly supports this request. Furthermore, the manner of providing notice reasonably calculated to reach a person, rather than constructive notice, applies to all people, regardless of socioeconomic status. The Court of Appeals' decision does not unfairly impact low

income or transient individuals, as the process for updating a mailing address is simple and low cost. There is no issue of substantial public interest warranting review.

All litigants have an interest in the efficient prosecution of disputes and bringing finality to the same. As noted above, a rule requiring actual notice would cause legal disputes to be paused for years if a litigant decides to stop actively participating in the case or actively seeks to avoid notice of certain proceedings.[1] Already overburdened, the rule would further burden courts as the number of cases open on a court's docket would drastically increase. Further, agencies would be prevented from conducting their business for vast amounts of time, and regular citizen litigants would likewise be frustrated in their efforts to seek redress for their injuries. It is not too much to require and expect that those actively engaged in administrative or judicial proceedings to maintain involvement during their pendency.

In this case, the Department satisfied due process by providing notice in a manner reasonably calculated to notify Ms. Snyder of its review decision. Ms. Snyder had reason to know that she would receive notice of the Department's determination to reverse or uphold its founded

[1] While the Department believes an actual notice rule would lead to litigants actively avoiding receipt of notice, the Department is not asserting that Ms. Snyder actively sought to avoid notice of the proceedings in this case.

finding at the address she provided to the Department within sixty days of the its receipt of her request. The Department's initial notice of the founded finding, for which Ms. Snyder signed on March 31, 2011, advised her of her appeal rights. AR at 45. The address to which the notice was delivered via certified mail was: 412 W. Longfellow, Spokane, WA 99205. AR at 46. On April 8, 2011, two weeks after signing for the initial notice, Ms. Snyder submitted a written request for internal review of the finding. AR at 46. On her written request, Ms. Snyder identified 412 W. Longfellow, Spokane, WA 99205 as her residence and the address to which the Department should send the outcome of its internal review. AR at 46.

One week later, the Department sent its decision affirming the founded founding to the address Ms. Snyder had identified. AR at 48. The United States Postal Service attempted to deliver the Department's decision on April 14, 2011, April 21, 2011, and April 29, 2011. AR at 49. Unbeknownst to the Department, Ms. Snyder had moved without notifying the Department and without providing a forwarding address to the post office. Then, Ms. Snyder did not make any inquiry with the Department about her case until two years later. AR at 64.

Despite the Department's reasonable efforts to notify Ms. Snyder of the results of its internal review, Ms. Snyder failed to timely request an

administrative hearing. Contrary to NWJP's argument, the move alone did not prevent Ms. Snyder from receiving the letter. This argument fails, as it was Ms. Snyder's failure to notify the Department of her new address and failure to update her mailing address that prevented her from receiving notice. As a participant in administrative litigation, she had a responsibility to provide the new address to the Department. To the extent that Ms. Snyder's ability to receive notice was impacted by her move, her two-year delay in seeking an administrative hearing cannot reasonably be attributed to her financial status. Therefore, her appeal was properly dismissed, and review of her case by this Court is not warranted.

On a final note, NWJP alleges the Department engaged in a 278-day delay of the initial investigation and that the Department inaccurately stated in a notice to Ms. Snyder that it had 60 days to conduct its review when it actually only had 30 days. NWJP Mem. 8. It is unclear what this assertion is offered to show, but NWJP's arguments with respect to this issue fail for a couple of reasons. First, the alleged 278-day delay in the initial investigation is not part of the record and should not be considered by the Court. RAP 13.7(a). In any event, such a delay would be irrelevant to whether adequate notice was provided to Ms. Snyder. Second, NWJP is mistaken that the Department had only thirty days to conduct its agency review instead of the sixty communicated in its letter to Ms. Snyder.

NWJP errs because it relies on the 2013 version of WAC 388-15-093 and not the version which was in effect at the time of the events giving rise to this litigation in 2011.[2] In 2011, the Department had "sixty calendar days" to review a challenge to the founded finding. WAC 388-15-093(3) (2002).

In sum, NWJP has not provided any reasonable argument to suggest that the current scheme of due process as enumerated in *Jones* and *Ryan* is not sufficient to provide a litigant, desirous of continuing to participate in the litigation, notice of the proceedings. Therefore, this Court should deny NWJP's request for a new due process rule which requires actual notice instead of the reasonable and practical steps under the circumstances as currently required by state and federal law because there is no public interest to do so.

V. CONCLUSION

The Department followed clearly set statutory rules when it notified Ms. Snyder of the results of the internal review via certified mail to the address that she supplied. Ms. Snyder's due process rights were not violated when the Department followed her instruction to send the agency review decision to her address. There is no substantial public interest at issue. The motion for discretionary review should be denied.

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[2] Revisions to WAC 388-15-093 appear to have become effective on September 21, 2013.

RESPECTFULLY SUBMITTED this 16th day of December, 2016.

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CERTIFICATE OF SERVICE

I certify that I served all parties, or their counsel of record, a true and correct copy of the Department of Social and Health Services' Answer to Motion for Discretionary Review to the following addresses:

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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 December, 2016, at Spokane, Washington.

Kahren S. McCrow

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