

**IN THE SUPREME COURT OF THE STATE OF
WASHINGTON**

(Division III Case Number 349888)

T.L.M, Respondent

v.

Kerry Milliken, Appellant

**REPLY on Motion to Consolidate Division III Case
Numbers 34988-8-III and 35052-5-III (Supreme
Court Cases 94673-6 and 94674-4)**

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I. Party REPLYING on Her Motion to Consolidate Petitions for

Review: Kerry Milliken

Kerry Milliken -- appellant in Division III case numbers 34988-8-III and 35052-5-III -- moved the State Supreme Court for an Order Consolidating her two Petitions for Review, and now she herein replies to the Answer of 6/29/17 filed by the counsel for T.L.M.

II. Reply to Authority Cited by T.L.M. in Her Answer of 6/29/17:

RAP 5.2(a): T.L.M. argues that the 30 day window to appeal has passed. (Answer to Motion to Consolidate, filed under both State Supreme Court case numbers, on 6/29/17, at page 4.)

RAP 2.2 Rebutts T.M.: However, RAP 2.2 governs finality, and the CHINS process needs review precisely because of its indeterminacy. There was no “final” order until the dismissal, which was granted after a second, serial CHINS petition was filed.

Here are the two RAP 2.2 provisions that explicitly authorize appeal in juvenile, dependency and termination matters:

- (5) Juvenile Court Disposition. The disposition decision following a finding of dependency by a juvenile court, or a disposition decision following a finding of guilt in a juvenile offense proceeding.
- (6) Termination of All Parental Rights. A decision depriving a person of all parental rights with respect to a child.

RAP 2.2(5)&(6).

Application of RAP 2.2: The CHINS matters need to be heard, because, as the opening brief of Ms. Milliken argued, serial CHINS Petitions can be a greater deprivation of parental rights than are dependencies, but with none of the protections of parental rights that exist in dependency or termination cases. (See Opening Brief of Appellant.)

LAR 0.7: T.L.M. also raises Spokane County Local Rule, LAR 0.7 as a basis to deny appeal (also at p.4 of the Answer of 6/29/17), because revision was not sought of the many denials of motions to dismiss.

However, local rules may not contradict civil rules or statutes:

Superior courts may rely on RCW 2.28.150 for authority to create a mode of proceeding necessary to carry out a statutory directive without violating constitutional rights. *Id.* Local rules cannot conflict with court rules or statutes. *Harbor Enter., Inc. v. Gudjonsson*, 116 Wash.2d 283, 293, 803 P.2d 798 (1991).

Mabe v. White, 105 Wash. App. 827, 829, 15 P.3d 681, 682 (2001), and under RCW 2.24.050 it would be contrary to statute to suddenly require that decisions be revised in order to be appealable:

All of the acts and proceedings of court commissioners hereunder shall be subject to revision by the superior court. Any party in interest may have such revision upon demand made by written motion, filed with the clerk of the superior court, within ten days after the entry of any order or judgment of the court commissioner. Such revision shall be upon the records of the case, and the findings of fact and conclusions of law entered by the court commissioner, and unless a demand for revision is made within ten days from the entry of the order or judgment of the court commissioner, the orders and judgments shall be and become the orders and judgments of the superior court, and

appellate review thereof may be sought in the same fashion as review of like orders and judgments entered by the judge.

RCW 2.24.050 (emphasis added).

An order denying a motion to dismiss is interlocutory and is not usually appealable:

...orders denying the motions to dismiss are not appealable, because not final orders. They concluded nothing, but indicated an intention to proceed with the trial.

State v. Wright, 51 Wash. 2d 606, 609, 320 P.2d 646, 648 (1958).

III. Conclusion and Relief Requested

The court is asked to consolidate the reviews of both CHINS cases (Division III case numbers 34988-8-III and 35052-5-III/Supreme Court case numbers 94673-6 and 94674-4), under RAP 3.3(b).

There are *Smith/Troxel* issues at stake. *In re Custody of Smith*, 137 Wash. 2d 1, 13, 969 P.2d 21, 27 (1998), *aff'd sub nom. Troxel v. Granville*, 530 U.S. 57, 120 S. Ct. 2054, 147 L. Ed. 2d 49 (2000). (See Petition for Review.)

Judicial economy and Ms. Milliken's indigence argue for the efficiency of a consolidated appeal for the most complete exploration of these vital issues, at the lowest possible cost to the court and to Ms. Milliken.

Consolidated review is requested.

Respectfully submitted on 7/5/17,



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Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: 94673-6
Appellate Court Case Title: In re the Interest of: T. L. M.
Superior Court Case Number: 16-7-02842-2

The following documents have been uploaded:

- 946736_Answer_Reply_20170706105325SC052767_2037.pdf
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