NO. 98368-2

SUPREME COURT OF THE STATE OF WASHINGTON

SUSAN CHEN as parents and natural guardians of J.L., a minor, and L,L., a minor, and NAIXIANG LIAN, as parents and natural guardians of J.L., a minor, and L.L., a minor,

Petitioners,

v.

KATE HALAMAY, M.D., and ALLEGRO PEDIATRICS (previously known as Pediatric Associates),

Respondents.

RESPONDENTS' ANSWER TO PETITION FOR REVIEW

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I. IDENTITY OF RESPONDING PARTIES

Respondents Kate Halamay, M.D., and Allegro Pediatrics submit this Answer to Petition for Review.

II. COURT OF APPEALS DECISION

In its February 10, 2020 unpublished opinion, Division I affirmed the trial court's summary judgment dismissal of the lawsuit Susan Chen and Naixiang Lian as parents and guardians of J.L. and L.L. (collectively Chen)[1] brought against Dr. Kate Halamay and Allegro Pediatrics, and the trial court's subsequent denials of Chen's motions to reconsider and to vacate the judgment. *Slip Op.* at 1. Division I explained in detail why each of Chen's arguments failed. As relevant here, Division I, citing *Taylor v. Enumclaw Sch. Dist.*, 132 Wn. App. 688, 694, 133 P.3d 492 (2006), rejected Chen's argument that the trial court should have appointed a guardian ad litem for J.L. and L.L., because RCW 4.08.050 authorizes a parent to initiate a lawsuit as guardian on behalf of a minor child, and because Chen did not ask the trial court to appoint a guardian ad litem at any time before it entered its order granting summary judgment. *Slip Op.* at 16. Given that Chen had not raised any argument that Chen's *pro se* appearance as parents and guardians of the minor children, J.L. and L.L., somehow constituted the

[1] Respondents use the same collective reference to the appellants as "Chen" as the Court of Appeals used except where the context warrants distinctions amongst the various appellants. No disrespect is intended.

unauthorized practice of law, Division I's opinion did not address any such argument. Chen first raised that argument in Chen's motion to reconsider, *see* Motion for Reconsideration, p.2, which the Court of Appeals denied, *see* App. B to Petition for Review.

III. COUNTERSTATEMENT OF ISSUES PRESENTED FOR REVIEW

1. Did the Court of Appeals properly reject the argument that, absent appointment of a guardian ad litem, the trial court lacks jurisdiction to dismiss with prejudice claims *pro se* parents bring on behalf of their minor children, when, under RCW 4.08.050, parents are authorized to initiate lawsuits on behalf of their minor children, and when neither the parents nor any other relative or friend of the minor children asked to have a guardian ad litem appointed until after entry of the order dismissing the claims on summary judgment?

2. Did the Court of Appeals properly deny a motion for reconsideration that raised for the first time an argument that allowing *pro se* parents to pursue claims on behalf of their minor children somehow constitutes the unauthorized practice of law?

IV. COUNTERSTATEMENT OF THE CASE

A. Factual Background.

On October 23, 2013, Dr. Halamay contacted Child Protective Services based upon her belief that Ms. Chen's minor son, J.L., had

potentially life-threatening renal, abdominal, liver, weight loss, failure to thrive, and gastrointestinal issues without a clear etiology, and that the gravity of J.L.'s condition was such that diagnostic studies and follow-up examinations could not be delayed, and based upon her reasonable suspicion that J.L.'s parents were not following up on medically necessary care. CP 24-25, 79-80, 162. Dr. Halamay had been treating J.L. since August 31, 2013, CP 19, 74, 91-98, and Ms. Chen had previously refused to follow medical advice for J.L.'s care. CP 20-21, 75-76, 111-15.

As a result of Dr. Halamay's report, a social worker transported J.L and Ms. Chen to Seattle Children's Hospital, where examinations showed gross malnutrition and muscle wasting resulting from suspected medical neglect. CP 25-26, 163-200. J.L. was removed from Ms. Chen's custody and DSHS initiated dependency proceedings. After investigation of Dr. Halamay's report, the Redmond Police Department determined there was probable cause to charge Ms. Chen with criminal mistreatment in the second degree under RCW 9A.42.030 and referred the case to the King County Prosecutor. CP 25-26, 47-68. Ultimately, both the dependency proceedings and the criminal charge against Ms. Chen were dropped. 2/24/27 RP 4–5.

B. Procedural Background

On October 24, 2016, Ms. Chen and Mr. Lian "as parents and natural guardians" of their minor children J.L. and L.L. (collectively Chen)[2] filed a "*pro se*" complaint against Dr. Halamay and Allegro, claiming that Dr. Halamay was medically negligent in reporting Ms. Chen to Child Protective Services and that Allegro was liable under respondeat superior. CP 1-7. Chen claimed that Dr. Halamay misdiagnosed J.L.'s medical condition, failed to contact certain of J.L.'s other treating physicians, failed to review his full medical records, and failed to provide accurate information to CPS, resulting in J.L.'s removal from the home and causing developmental delay and brain damage to J.L., and pain and suffering to J.L., his brother and parents.

On November 18, 2016, counsel for Dr. Halamay and Allegro by letter advised Chen that they would be filing a motion for summary judgment. CP 70. On December 8, 2016, Dr. Halamay and Allegro then filed their summary judgment motion, supported by Dr. Halamay's declaration, excerpts from J.L's medical records, and a redacted copy of the police report regarding the police department's investigation of the CPS report. CP 16-200. They argued that all of Chen's claims were barred by the immunity afforded under RCW 26.44.060 for good faith reporting of

[2] *See* footnote 1, *supra*.

child abuse, that Chen's medical negligence claims under chapter 7.70 RCW should be dismissed for lack of expert testimony needed to support them, and that Chen's other claims should be dismissed because they were without factual or legal merit and not among the exclusive claims allowed under chapter 7.70 RCW. CP 16-36.

The summary judgment hearing was originally noted for January 6, 2017. *See* CP 16. After Chen hired an attorney, the defendants agreed to continue the hearing date for six weeks to February 24, 2017. CP 218-19; 2/24/17 RP 14. About a week later, Chen's attorney withdrew without filing a response to the summary judgment motion. *Id*.

On February 13, 2017, Chen filed a *pro se* motion for an eight-month continuance, CP 209-11, claiming that Chen needed time to amend the complaint and redact information about the minor children, required a Mandarin interpreter, and was "told recently that we cannot represent the children in this claim as parents," and was "now talking with an attorney who has interest in our case." CP 210-11. At the summary judgment hearing before Judge Jeffrey Ramsdell on February 24, 2017, Ms. Chen appeared with her former attorney from her criminal matter who told the court that she was not representing Chen but was appearing as a witness to explain that Chen's case was "complicated" and that Chen needed more time to find an attorney. 2/24/17 RP 2-12. Although Chen had requested a

Mandarin interpreter for the hearing, both the attorney and the interpreter informed the court that Ms. Chen wanted a Cantonese interpreter. 2/24/17 RP 1-4, 11, 16. The defendants agreed to a short continuance to obtain a Cantonese interpreter, 2/24/17 RP 13-15, and Judge Ramsdell, after offering some later dates in May which did not work for Ms. Chen, granted a continuance and set the new hearing date for May 12, 2017, warning Ms. Chen to confirm that date "to her incoming counsel as a … done deal." 2/24/17 RP 19-24.

On April 13, 2017, Dr. Halamay and Allegro filed a renewed motion for summary judgment. CP 241-56. Chen failed to file a timely response. CP 260. Instead, on May 10, 2017, Ms. Chen filed a notice of unavailability and requested that the May 12 hearing be rescheduled. CP 263-66. Based on Ms. Chen's representation that she was unavailable, Judge Ramsdell excused the parties from attending the May 12 hearing, and indicated that he would rule on the merits based on the materials filed. CP 268, 280. On May 11, 2017, Judge Ramsdell granted the summary judgment motion. CP 279-80.

Chen then moved for reconsideration raising a plethora of new arguments, including that (1) the court's failure to appoint a guardian ad litem rendered the action on behalf of J.L. and L.L. "a nullity"; and (2) the court should appoint counsel to represent the plaintiffs based on the alleged

complexity of the case. CP 281-97. Judge Ramsdell denied the motion, CP 308-09, and Chen filed a notice of appeal from the orders granting summary judgment and denying reconsideration. CP 310-18.

Chen next sought appointment of counsel and a guardian ad litem to assist with her appeal. *See, e.g.*, CP 322-26, 616-20; *see also* CP 410-20, 518-22. Following the Supreme Court's denial of Chen's request for the appointment of counsel at public expense, *see* CP 616, the trial court (Judge Ken Schubert) appointed attorney Kevin Khong as guardian ad litem for the limited purpose of assisting J.L. and L.L. by explaining to them "the current status of the proceedings and what options the minors have at this point." CP 617-20. Attorney Khong appeared, filed a report, and was discharged by the court. CP 556-76, 622-24, 1272-74.

On May 10, 2018, Chen filed a *pro se* motion to vacate the summary judgment dismissal and denial of reconsideration, raising multiple claims, including that (1) the failure to appoint a guardian ad litem deprived the court of jurisdiction over J.L. and L.L.'s claims; and (2) J.L. and L.L. were entitled to adequate representation under the sixth amendment, which their parents could not provide because they are not attorneys and English is their second language. CP 632-72. On May 14, 2018, Chen filed a supplemental submission asking that counsel be appointed to assist J.L. with the motion to vacate. CP 970-77. Judge Schubert granted that request and appointed

counsel to represent J.L. for the limited purpose of preparing a reply on the motion to vacate and appearing at the show cause hearing, which was set for July 19, 2018. CP 1269-71.

J.L.'s court-appointed counsel filed a reply in support of the motion to vacate the judgment, CP 1496-1502, arguing that Chen's second request for a continuance should have been granted because of Chen's *pro se* status, and asserting for the first time that Chen's claims against Dr. Halamay were for "intentional misconduct" and therefore not subject to chapter 7.70 RCW. *Id.* At the hearing on the motion to vacate before Judge Suzanne Parisien, J.L.'s appointed counsel argued that additional medical records obtained after the summary judgment order constituted new evidence justifying vacation of the order, 7/19/18 RP 6-7, and that Ms. Chen's second request for a continuance should have been granted because, as a *pro se* litigant, she was ignorant of discovery procedures, *id* at 12.

After hearing argument, Judge Parisien denied the motion to vacate. Judge Parisien found not only that there was no showing that the purportedly new evidence could not have been brought at the time of the original summary judgment motion or that it would have changed anything in the case, but also that "the case itself is not meritorious" and "this Court can state on the record that clearly the referral was made in good faith and that mandatory reporting is encouraged to protect children." 7/19/18 RP

18; *see also* CP 1532-34. Chen then filed a *pro se* motion to set aside the judgment or, in the alternative, to reconsider the denial of the motion to vacate, CP 1542-48, which Judge Parisien denied, CP 1578.

Chen then filed a notice of appeal from the denials of the motion to set aside or reconsider and the motion to vacate. CP 1580-87.

C. Procedural Background – Court of Appeals.

Division I consolidated Chen's two appeals, *Slip Op*. at 10, and affirmed the trial court's orders in an unpublished opinion, *Slip Op*. at 1. Division I addressed and rejected each of Chen's arguments, *see Slip Op.* at 12-20, including the argument that the trial court lacked jurisdiction over J.L. and L.L., because the trial court did not appoint a guardian ad litem, *Slip Op*. at 16. As to that argument, Division I explained, citing *Taylor*, 132 Wn. App. at 694, that RCW 4.08.050 authorizes a parent to initiate a lawsuit as guardian on behalf of a minor child, which Ms. Chen and Mr. Lian did, and that Chen had made no request to appoint a guardian ad litem before the trial court entered the order granting summary judgment. *Slip Op*. at 16.

Chen then filed a motion to reconsider, arguing for the first time that the parents' bringing of a *pro se* lawsuit on behalf of their minor children constituted the unauthorized practice of law and that therefore the dismissal of J.L. and L.L.'s claims should be without prejudice. *See* Motion for Reconsideration, p. 2. The Court of Appeals denied the motion for

reconsideration. *See* App. B to Petition for Review.

V. ARGUMENT WHY REVIEW SHOULD BE DENIED

Under RAP 13.4(b), a petition for review will be accepted only:

> (1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or
> (2) If the decision of the Court of Appeals is in conflict with a published decision of the Court of Appeals; or
> (3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or
> (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

Here, repeatedly citing "RAP 13.4(b)(1)-(4)" as if all four grounds support acceptance of review, *Pet. at 2, 8, 12*, Chen seeks review of Division I's affirmance of the trial court's dismissal of the minor children's claims with prejudice without first appointing a guardian ad litem that Chen had not previously requested, and Division I's denial of Chen's motion for reconsideration in which Chen claimed for the first time that allowing *pro se* parents to pursue claims on behalf of their minor children somehow constitutes the unauthorized practice of law. Because the Court of Appeals' opinion and denial of reconsideration are not in conflict with any decision of this Court or any published Court of Appeals decision so as to warrant review under RAP 13.4(b)(1) or (2), and because Chen's petition involves no significant question of constitutional law or issue of substantial public interest so as to warrant review under RAP 13.4(b)(3) or (4), this Court

should deny Chen's petition for review.

A. Division I's Denial of Reconsideration Based on Chen's Previously Unmade Argument About Unauthorized Practice of Law Is Not in Conflict with any Decision of this Court or any Published Decision of the Court of Appeals, Nor Does It Raise a Significant Question of Constitutional Law or an Issue of Substantial Public Interest that Should Be Determined by this Court.

Chen asserts, *Pet. at 8,* that Division I's decision "creates a new rule permitting *pro se* representation" that ignores statutes and rules prohibiting the unauthorized practice of law, conflicts with decisions of this Court, and "raises an issue of substantial public interest that this Court should decide." Chen is wrong.

First, nothing in the Court of Appeals' unpublished decision addresses *pro se* representation of a child by a parent at all, because Chen did not make any "unauthorized practice of law" argument in Chen's opening appellate brief or reply brief. Chen first raised the issue of unauthorized practice of law in a motion for reconsideration of the Court of Appeals' decision, and Division I was well within its discretion to decline to address the argument. *See, e.g.*, *In re Estates of Palmer*, 145 Wn. App. 249, 262 n.8, 187 P.3d 758 (2008) (rejecting argument raised for the first time in a motion for reconsideration because "it has long been the rule that we will not consider questions presented to us for the first time in a motion for rehearing or reconsideration") (citing, *e.g., Hous. Auth. of King County*

v. Northeast Lake Wash. Sewer & Water Dist., 56 Wn. App. 589, 595 n.5, *rev. denied*, 115 Wn.2d 1004 (1990).

Second, Division I did not create a "new rule permitting *pro se* representation" when it denied Chen's motion to reconsider, and its one-sentence order denying the motion for reconsideration does not raise any question of substantial public interest so as to warrant review under RAP 13.4(b)(4).

Third, Division I's decision not to address Chen's untimely argument on motion for reconsideration is not in conflict with any decision of this Court or any published decision of the Court of Appeals so as to warrant review under RAP 13.4(b)(1) or (2). Chen asserts, *Pet. at 8*, that the Court of Appeals' decision and denial of reconsideration conflicts with this Court's decision in *Wash. State Bar Ass'n v. Great W. Union Fed. Sav. & Loan Ass'n*, 91 Wn.2d 48, 586 P.2d 870 (1978), which Chen cites for the propositions that the '"pro se' exceptions are quite limited and apply only if the layperson is acting solely *on his own behalf*," *Pet. at 7*, and that "only those persons who are licensed to practice law in this state may do so without liability for [un]authorized practice …," *Pet. at 9*. But neither Division I's unpublished opinion nor its denial of reconsideration is in conflict with *Great Western*.

Great Western involved a lawsuit for damages against a bank for

unlawfully charging both sellers and buyers in real estate transactions for the preparation of legal documents that were not drafted by attorneys. *Great Western* at 50-53. Nothing in *Great Western* said anything about whether parents who as guardians are authorized to bring claims on behalf of their minor children under RCW 4.08.050, *see Taylor*, 132 Wn. App. at 694, engage in the unauthorized practice of law if they do so *pro se*. Nothing in *Great Western* had anything to do with any of the issues before Division I on Chen's appeal or motion for reconsideration. Chen has not shown that Division I's unpublished decision and denial of reconsideration are in conflict with *Great Western* or any other decision of this Court so as to warrant review under RAP 13.4(b)(1).[3]

Chen also asserts, *Pet. at 12*, that Division I's decision and denial of reconsideration is in conflict with *In re Dependency of E.M.*, 12 Wn. App. 2d 510, 458 P.3d 810 (2020), which Chen cites for the proposition that "[o]nly legal counsel can advocate for the legal rights and interests of a child." *See In re E.M.*, 12 Wn. App. 2d at 517. That case dealt with the

[3] Chen claims, *Pet. at 8*, that Division I's decision also conflicts with this Court's decision in *Hagan & Van Camp, P.S. v. Kassler Escrow, Inc.*, 96 Wn.2d 443, 635 P.2d 730 (1981), but never explains how. Chen just states with regard to *Hagan*, *Pet. at 9-10*, that it struck down as an "unconstitutional extension of legislative power" RCW chapter 19.62, which the Legislature enacted in response to *Great Western*, authorizing non-lawyers to perform services that the court had defined as the practice of law. Yet, as is true with *Great Western*, nothing in *Hagan* had anything to do with parents' ability as guardians to bring and pursue *pro se* claims on behalf of their minor children and Hagan presents no conflict with the Division I's decision here.

trial court's power to strike the appearance of a privately retained attorney for a child in a dependency action under RCW 13.34.100. *Id.* at 519-20. In context, the quoted sentence simply explains that because attorneys and guardians ad litem have different roles, appointment of both may be appropriate in some dependency cases under RCW 13.34.100. *Id.* at 518. This case, unlike *In re E.M.*, is not a dependency case and RCW 13.34.100 does not apply. Chen has not shown that Division I's decision is in conflict with *In re E.M.* or any other published decision of the Court of Appeals so as to warrant review under RAP 13.4(b)(2).

Fourth, although Chen, *Pet. at 7, 10-11*, cites a number of federal decisions in which federal courts required dismissal without prejudice of claims brought *pro se* by non-attorney parents on behalf of their minor children,[4] those cases were all premised on federal law prohibiting non-attorney parents who are not represented by counsel from pursuing claims on behalf of their minor children. None of those federal cases were decided under Washington law. Moreover, conflict between Division I's decision based on Washington law and one or more decisions of federal courts based on federal law is not a basis for review under RAP 13.4(b).

[4] In particular, Chen cites *Johns v. Cty. of San Diego*, 114 F.3d 874, 877 (9th Cir. 1997); *Osei-Afriyie v. Med. Coll.*, 937 F.2d 876, 877 (3d Cir. 1991); *Cheung v. Youth Orchestra Found., Inc.*, 906 F.2d 59, 61 (2d Cir. 1990); *Meeker v. Kercher*, 782 F.2d 153, 154 (10th Cir. 1986).

Fifth, Chen baldly asserts without citation to authority, *Pet. at 12*, that "Division One's manifest error" in affirming the trial court's dismissal with prejudice of minors' claims brought by *pro se* parents "affects minors' constitutional rights of access to the court." But "'naked castings into the constitutional sea are not sufficient to command judicial consideration and discussion.'" *In re Pers. Restraint of Rhem*, 188 Wn.2d 321, 328, 394 P.3d 367, 370 (2017) (quoting *In re Rosier*, 105 Wn.2d 606, 616, 717 P.2d 1353 (1986)). Moreover, J.L. and L.L. were never denied access to any court. To the extent that Chen's argument can be construed as an assertion that children have a due process right to appointed counsel, children "do not have a categorical due process right to appointment of counsel." *In re E.M.* at 517. Moreover, it was this Court, and not the Court of Appeals, that denied Chen's request for appointment of counsel for her appeal. Chen has not shown that Division I's decision or denial of reconsideration raises a significant question of law under the Constitution of this state or of the United States so as to warrant review under RAP 13.4(b)(3).

B. Division I's Affirmance of The Trial Court's Failure to Appoint a Guardian ad Litem Is Not in Conflict With Any Decision of This Court or Published Decision of the Court of Appeals, Nor Does It Involve a Significant Question of Constitutional Law or an Issue of Substantial Public Interest

Chen contends, *Pet. at 12-16*, that Division I misapplied RCW 4.08.050 when it held that Chen had failed to cite authority for the

proposition that the trial court was required to *sua sponte* appoint a guardian ad litem for J.L. and L.L., and that, absent appointment of a guardian ad litem, the trial court lacked jurisdiction over the claims their parents brought on behalf of the minor children. Chen is mistaken.

Chen argues, *Pet. at 12*, that Division I's decision conflicts with "controlling precedents" and creates an issue of "substantial public interest" because it did not hold that the trial court was required to appoint a guardian ad litem *sua sponte*. Division I's decision does not conflict with controlling precedents or raise an issue of substantial public interest.

Division I correctly concluded that the trial court was not required to appoint a guardian ad litem because no party sought such an appointment until after entry of summary judgment. *Slip Op. at* 16-17. RCW 4.08.050 authorized Ms. Chen and Mr. Lian to initiate a lawsuit on behalf of their minor children as their legal guardians. *See Taylor v. Enumclaw Sch. Dist.*, 132 Wn. App. 688, 694, 133 P.3d 492 (2006). RCW 4.08.050(1) requires a trial court to appoint a guardian ad litem for a minor plaintiff if the minor "has no guardian, or in the opinion of the court the guardian is an in improper person," and then when the minor is plaintiff and under the age of 14 "upon the application of a relative or friend of the infant." As Division I correctly observed, *Slip Op. at* 16, no one applied for appointment of a guardian ad litem until after the entry of summary

judgment. And the trial court never opined that the parents were improper persons to act as guardians.

Chen asserts, *Pet. at 12-13*, that Division I's decision conflicts with cases such as *Newell v. Ayers*, 23 Wn. App. 767, 598 P.2d 3, *rev. denied*, 92 Wn.2d 1036 (1979), which observed that "appointment of a guardian ad litem is mandatory" under RCW 4.08.050. But, nothing in *Newell* would require a different result in this case. To the contrary, in *Newell*, Division III held that failure to appoint a guardian ad litem was not jurisdictional and thus affirmed the judgment against the defendant minors because "the failure to appoint a guardian is a technical error which did not affect the result of the trial." *Newell*, 23 Wn. App. at 772.[5] Thus, even if the failure to appoint a guardian ad litem were error, *Newell* would not require reversal.

The other cases on which Chen relies are similarly inapposite, as none would require appointment of a guardian ad litem for minors who appear through their legal guardian. *See Mezere v. Flory*, 26 Wn.2d 274, 277, 173 P.2d 776 (1946) (holding that an *in rem* judgment against property previously conveyed to minors was void because the minors had no notice of the *in rem* proceeding and were not represented "by a guardian or a guardian ad litem."); *Kongsbach v. Casey*, 66 Wash. 643, 644-45, 120 P.

[5] *Newell* also does not discuss whether the minor defendants in that case could have appeared by their legal guardians, as J.L. and L.L. did in this case.

108 (1912) (holding that trial court erred by dismissing lawsuit brought by a minor instead of appointing a guardian ad litem.); *Dependency of A.G.*, 93 Wn. App. 268, 280, 968 P.2d 424 (1998) (holding that failure to appoint a guardian ad litem under RCW 13.34.100 in a proceeding to terminate parental rights is not jurisdictional and "does not necessarily constitute reversible error.").

Chen also claims, *Pet. at 15*, that the trial court "failed to make the initial inquiry" into whether Ms. Chen and her husband were improper persons to serve as guardians. She relies upon RCW 4.08.050, which requires the trial court to appoint a guardian ad litem if the minor "has no guardian, or in the opinion of the court the guardian is an improper person." RCW 4.08.050. But the only facts Chen identifies that should have caused the trial court to find Ms. Chen and her husband to be "improper" as guardians, *Pet. at 15*, are Ms. Chen's language barrier, which the trial court addressed by appointing an interpreter, and that neither parent was an attorney. The trial court did not err by not *sua sponte* appointing a guardian ad litem solely because a minor's legal guardian requires an interpreter or is not an attorney.[6]

Finally, Chen contends, *Pet. at 16*, that the trial court lacked

[6] Indeed, Judge Ramsdell observed at the February 24, 2017 hearing that Chen's pleadings were "very articulate pleadings." 2/24/17 RP 12.

jurisdiction over J.L. and L.L. because the minors were not "properly before the courts." Chen appears to argue that, because the minors did not have a guardian ad litem, they could not be served, and cites as support *Anderson v. Dussault*, 181 Wn.2d 360, 333 P.3d 395 (2014), and *State v. Douty*, 92 Wn.2d 930, 932, 603 P.2d 373 (1979). *Anderson* and *Douty* each dealt with a minor's lack of notice. In *Anderson*, the minor lacked notice of a claim because the minor had no guardian, *Anderson*, 181 Wn.2d at 369, and in *Douty*, the minor lacked notice of a lawsuit because he was never served with the complaint. *Douty*, 92 Wn.2d at 932. Here, the minors do not lack notice because the lawsuit was brought on their behalf by their parents as guardians.

Division I correctly determined that the trial court did not err by not appointing a guardian ad litem *sua sponte*. Moreover, the failure to appoint a guardian ad litem is not jurisdictional. *Dependency of A.G.*, 93 Wn. App. at 280; *Newell*, 23 Wn. App. at 772. And, because this lawsuit was initiated by the minors' parents as their minor children's guardians, there is no jurisdictional issue with service of the complaint.

Chen has not shown that Division I's decision affirming the trial court's failure to appoint a guardian ad litem conflicts with any decision of this Court or any published decision of the Court of Appeals, or presents any significant question of constitutional law or issue of substantial public

interest so as to warrant review under RAP 13.4(b)(1)-(4).

VI. CONCLUSION

For all these reasons, the petition for review should be denied.

RESPECTFULLY SUBMITTED this 10th day of August, 2020.

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CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that under the laws of the State of Washington that on the 10th day of August, 2020, I caused a true and correct copy of the foregoing document, "Respondents' Answer to Petition for Review," to be delivered in the manner indicated below to the following counsel of record:

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DATED this 10th day of August, 2020, at Seattle, Washington.

s/Carrie A. Custer
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FAVROS LAW

August 10, 2020 - 11:39 AM

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