NO. 1000804

SUPREME COURT OF THE STATE OF WASHINGTON

In the matter of the Detention of

BRUCE RAFFORD

Petitioner,

ANSWER TO PETITION FOR REVIEW

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I. INTRODUCTION

This case does not meet the standards for acceptance of review set forth in Rule of Appellate Procedure (RAP) 13.4(b). This Court should deny review because the Court of Appeals properly applied court rules, this Court's precedent, and other Court of Appeals precedent to the unique facts of this case, concluding that the Department of Social and Health Services Special Commitment Center (SCC) could appeal as a matter of right a superior court order requiring it to pay over $30,000 per month towards Petitioner Bruce Rafford's care, housing, and supervision.

The Court of Appeals also correctly concluded that the former statutes, in place at the time of the superior court's order, did not allow the superior court to order the SCC to pay for housing and other non-treatment costs associated with a sexually violent predator's Less Restrictive Alternative placement. The Court of Appeals correctly noted that in 2021 the Legislature changed the law so that now the SCC must pay for these costs.

Because the SCC must now pay for these costs under the new legislation, there are no constitutional issues or issues of substantial public interest that should be addressed by this Court.

II. IDENTITY OF RESPONDENT

Respondent Department of Social and Health Services Special Commitment Center asks this Court to deny the Petitioner's Petition for Review.

III. DECISION BELOW

The decision for which Petitioner Bruce Rafford seeks review is an unpublished opinion filed on June 14, 2021 by Division I of the Court of Appeals, *State of Washington v. B.R.*, No. 81416-8-I, 2021 WL 2420107 (Wash. Ct. App. June 14, 2021) (unpublished). A copy of the Court of Appeals' June 14, 2021, unpublished opinion is attached as Appendix A, and a copy of the Court of Appeals'

July 13, 2021 order denying Mr. Rafford's motion for reconsideration is attached as Appendix B.

IV. COUNTERSTATEMENT OF THE ISSUES PRESENTED FOR REVIEW

A. Did the Court of Appeals properly apply this Court's precedent, and other Court of Appeals precedent, when it allowed the SCC to appeal a superior court order as a matter of right when the SCC was not a party to the superior court action, but was ordered to pay over $30,000 per month to a private company for the Petitioner's care, housing, and supervision?

B. The recent change in the statute that requires the SCC to pay for housing and other costs associated with a Sexually Violent Predator's Less Restrictive Alternative placement renders any argument that there is a constitutional or public interest at issue moot.

V. COUNTER-STATEMENT OF THE CASE

In 2004, Bruce Rafford was civilly committed as a Sexually Violent Predator (SVP). CP 40. The superior court committed Mr. Rafford to the custody of the Department of Social and Health Services (Department) for placement at the SCC, a total confinement facility operated by the Department. RCW 71.09.040(4). CP 40. Neither the

Department nor the SCC was a party to the superior court proceedings.

In 2014, the superior court ordered that Mr. Rafford be housed at the Pierce County Secure Community Transition Facility (PCSCTF), which is a Less Restrictive Alternative (LRA) located on McNeil Island. CP 40.

In 2017, the Court modified Mr. Rafford's LRA order from the PCSCTF to a different LRA placement called Aacres WA, LLC (Aacres), a company that had a preexisting contract with the SCC to provide LRA services to SVPs. CP 249. Two years later, Aacres closed many of its operations and cancelled many of its contracts. CP 250. As a result, Mr. Rafford's LRA placement at Aacres was no longer available. CP 214.

Rather than revoke Mr. Rafford's LRA and return him to the SCC, the SCC allowed Mr. Rafford to move back to his previous LRA, the PCSCTF. Very shortly thereafter,

Mr. Rafford petitioned the superior court to modify his LRA placement to the Complete Care Company (CCC). CP 248-50. CCC did not have a contract with the SCC and charged over $30,000 per month, which was approximately $12,000 more *per month* than other sex offender LRA facilities. CP 214-215. While Mr. Rafford says that the state took no action to place him in a community LRA, he neglects to inform the Court that the law from 2017 to 2020 required the resident, not the SCC, to petition the court for an LRA modification. *See* former RCW 71.09.090 (2020).

The SCC, which was not a party at the superior court, nonetheless appeared and objected to paying CCC's extraordinary costs, pointing out that other LRA facilities were available to take Mr. Rafford that would charge far less. CP 141. The SCC argued that, under the statute at that time, the SCC was obligated to pay only for costs related to "treatment" in an LRA placement, not costs related to housing

or supervision.[1] CP 207; RCW 71.09.110. The term treatment was defined in former RCW 71.09.020(20) (2020) (now codified at RCW 71.09.020(21) to mean sex offender treatment by a licensed provider.

Despite this clear definition of treatment, the superior court ordered the SCC to pay all of the CCC's costs, including its start-up costs, staff-monitored housing, and basic maintenance costs. The SCC appealed as a matter of right. CP 22-24. In a response to a motion to stay, Mr. Rafford argued that the appeal was not proper as a matter of right. CP 9. On May 18, 2020, in a notation ruling, the Court of Appeals' Commissioner ordered the parties to submit briefing on the issue of whether the appeal was as a matter of right under RAP 2.2(a) or instead subject to discretionary review under RAP 2.3(b).

[1] In the LAWS OF 2021, ch. 236, § 6, the Legislature amended Chapter 71.09 RCW, effective July 25, 2021, so that now the Department is responsible for arranging and paying for housing and other services in addition to treatment for SVPs on LRAs.

See Notation Ruling attached as Appendix C.

After the parties submitted briefing on that issue, the Commissioner held that as a non-party who was ordered to pay for a proposed LRA placement, the SCC could appeal as a matter of right under RAP 2.2(a)(3) because the superior court's order affected a substantial right of the SCC's that, in effect, determined the action. This ruling was also in a notation ruling entered on June 2, 2020. *See* Notation Ruling attached as Appendix D. The Commissioner allowed this issue to again be placed before the entire panel. *Id*.

The Court of Appeals agreed with the Commissioner, finding that "because DSHS has a pecuniary interest in the proceeding, DSHS may appeal under RAP 2.2(a)(3) without seeking discretionary review." *B.R.*, 2021 WL 2420107, at *2.

On the merits, the Court of Appeals found that the superior court had abused its discretion in ordering the Department to pay for CCC's startup costs and supervised housing costs, because these costs are not related

to SVP treatment. However, the Court of Appeals noted that the Legislature recently amended the statute, and now the Department must pay for housing associated with an LRA. This Petition for Review by Mr. Rafford followed.

VI. REASONS WHY REVIEW SHOULD BE DENIED

Review is not warranted here because none of the criteria in RAP 13.4(b) are met. Mr. Rafford argues that the Court of Appeals' decision on appealability is reviewable by this Court under RAP 13.4(b)(1). However, the decision does not conflict with a decision of this Court, because *McHatton* address the ability of parties to the commitment to appeal and it is uncontested that the SCC is not a party to the underlying commitment. *In the Matter of the Detention of McHatton*, 197 Wn.2d 565, 485 P.3d 322 (2021) Second, Mr. Rafford argues that the Court of Appeals' decision on the merits involves a significant constitutional question and an issue of substantial public interest. RAP 13.4(b)(3) and

RAP 13.4(b)(4). However, he is wrong, because Mr. Rafford has no right to the LRA of his choice and it is the court, and not Mr. Rafford, that sets the conditions for his release.

A. Review Is Not Warranted Under RAP 13.4(b)(1) Because the Decision Confirms With Applicable Precedent

Review is not warranted under RAP 13.4(b)(1) because the Court of Appeals properly interpreted this Court's opinions, including the recent decision in *In the Matter of the Detention of McHatton*, 197 Wn.2d 565, 485 P.3d 322 (2021) and precedent from several Court of Appeals cases, when it determined that the SCC could appeal the superior court's order as a matter of right under RAP 2.2(a)(3) and RAP 3.1. While RAP 3.1 provides that only aggrieved parties may appeal, it is well established that an aggrieved party includes anyone whose pecuniary interests have been affected. *See, e.g.*, *State v. Taylor*, 150 Wn.2d 599, 603, 80 P.3d 605 (2003). Here, Mr. Rafford does not dispute (and indeed cannot

seriously dispute) that the SCC fits this category, because the superior court's order required it to pay over $30,000 per month.

RAP 2.2(a)(3) allows for appeal as a matter of right from "[a]ny written decision affecting a substantial right in a civil case that in effect determines the action and prevents a final judgment or discontinues the action." The Court of Appeals correctly held, these requirements are met here. First, Mr. .Rafford does not dispute that the superior court's order affected the Department's substantial right, nor could it. The order plainly did so by requiring the Department, over the Department's objection, to pay over $30,000 per month to a private non-contracted LRA facility selected by Mr. Rafford, a cost approximately $12,000 *per month* more than the Department paid contracted LRA facilities.

Second, the order effectively determines the action and prevents a final judgment by ordering the Department's payment of Mr. Rafford's LRA costs at a new facility. The Court of Appeals correctly looked

to *State v. G.A.H.*, 133 Wn. App. 567, 137 P.3d 66 (2006), where the Court found that the Department could appeal an order as a matter of right when it was ordered to assume financial responsibility for the welfare of a dependent child. *State v. G.A.H.*, 133 Wn. App. at 574. Here, the superior court's order mandated the Department to pay thousands of dollars per month more than the Department was previously paying.

Other than appeal, there was no option for the SCC other than to pay the $30,000 per month or face contempt of court, because the SCC was not a party to the action and did not have a statutory right to seek a modification of the LRA Order. While the SCC can file a motion to modify under certain conditions, funding is not among those conditions. *See* RCW 71.09.098. Further, the decision whether to proceed with the motion is left to the prosecution, not the SCC. *See* RCW 71.09.098(5). The Court of Appeals correctly determined that the superior court's order requiring the

Department to pay CCC affected a substantial right and determined the action as it pertained to the SCC's interests.

Petitioner argues that *McHatton* stands for the proposition that RAP 2.2(a) never applies to modifications of a SVP's LRA order. *See* Petition for Review at 1, 3-11. However, *McHatton* dealt with RAP 2.2(a)(8) and ARP 2.2(a)(13). Further, Petitioner fails to engage with *McHatton*'s reasoning, which is inapplicable here. As the Court of Appeals correctly pointed out, *McHatton* addressed when a SVP himself appeals the revocation of his LRA under RAP 2.2(a)(8) and RAP 2.2(a)(13), not when the Department appeals an order mandating payment for an LRA under RAP 2.2(a)(3). The Court held that RAP 2.2(a)(13), which provides for appeal as a matter of right from a final order after judgment, does not apply to an LRA revocation order because there is no "final disposition of the sexually violent predator"; to the contrary, the trial court retains jurisdiction until the person's unconditional release. *McHatton*, 197 Wn.2d at 571. And via their continuing status as an SVP, the individual would continue

to receive annual reviews of whether LRA placement is warranted. *Id.*, *see also Id.* at 570, ("The LRA placement revocation altered the nature of *McHatton's* confinement but did not alter his status as a civilly committed SVP").

By contrast, here, the order appealed from does not concern the SVP's placement, which remains under ongoing review, but rather finally determines the Department's financial obligations. As to the Department, that order effectively discontinued the action, with no procedure for review other than appeal. Mr. Rafford's arguments that the order entered is not final because the court's jurisdiction over Mr. Rafford continues until his civil commitment ends, and his reliance on dependency cases such as *A.G.*, are also misplaced, because those cases deal with and address the rights of parties to the action. *In re Dependency of A.G.*, 127 Wn. App. 801, 807, 112 P.3d 588 (2005) (order dismissing termination petition not appealable under RAP 2.2(a)(3) because decision does not end dependency action, which is still in place).

Contrary to Rafford's position, the superior court's order is a final ruling for the SCC and thus, the Court of Appeals properly allowed the appeal to continue as an appeal as a matter of right. The Court of Appeal's ruling that the appeal was an appeal as a matter of right does not conflict with prior rulings from this Court or from the Court of Appeals. When a party's rights are affected and there is no recourse, the appeal is as a matter of right. *Ferguson Firm, PLLC v. Teller & Associates, PLLC,* 178 Wn. App. 622, 630, 316 P.3d 509 (2013).

B. Recent Changes in the Statute Eliminate Any Claimed Constitutional or Public Interest Issues Warranting this Court's Review under RAP 13.4(b)(3) and (4)

Earlier this year, the applicable statute was changed to provide that the Department must pay for housing and other non-treatment costs for SVPs in LRA placements. Mr. Rafford mentions this change only in a footnote, in which he acknowledges that he does not seek review of the portions of the opinion addressing housing and maintenance costs,

which would be governed by the newly enacted statute. Petition for Review at 12 n.1.

Nonetheless, Mr. Rafford maintains that the portion of the opinion specifically requiring that the Department pay CCC's start-up costs warrants this Court's review as an issue of constitutional and substantial public importance. He is wrong.

First, many of Mr. Rafford's arguments are addressed to the broad point that the Department should be required to pay for non-treatment-related costs—which is not an issue of substantial public importance under the new statutory scheme. Under the previous statute, as the Court of Appeals correctly held, the Department was not mandated by law to pay for any housing costs of an LRA and was only mandated to pay for costs relating to treatment. RCW 71.09.110 But in reality, the Department typically elected to do so when the costs were reasonable. The Department, for instance, paid for Mr. Rafford's LRA housing at Aacres and at the PCSCTF. CP 156.

During this past legislative session, in LAWS OF 2021, ch. 236, § 6 (effective July 25, 2021), the Legislature amended Chapter 71.09 RCW, effective July 25, 2021, so that now the Department is responsible for arranging and paying for housing and other services in addition to treatment for SVPs on LRAs.

Many sections of the SVP statute were extensively amended this past session. Now, unlike before, the Department has a role in planning LRA placements and is the entity that must identify a LRA placement that satisfies statutory criteria. RCW 71.09.090(1)(b). And most important for this case, the Department now has a legislative mandate to financially support LRAs, including paying for necessary housing. RCW 71.09.096(6).

Second, Mr. Rafford's claim that due process mandates that the Department pay the *start-up costs* of his chosen LRA does not warrant this Court's review. Due process does not mandate the State pay the *start-up costs*

for a company simply because it wishes to enter this field. Mr. Rafford has lived continuously at an LRA facility since 2014. No one in this case has argued that Mr. Rafford must be returned to a secure confinement facility such as the SCC. Petitioner suggests that a community placement LRA, such as Aacres or CCC, is "less restrictive" than the Pierce County Secure Community Transition Facility (PCSCTF) LRA placement. Petition for Review at 2, 7-9. There is no evidence in the record to support Petitioner's claim that a community LRA is less restrictive than the PCSCTF.

Further, due process does not require that the Department pay for the start-up costs of *any* LRA that the SVP proposes, with no limits on the extravagance of the accommodations. If this were the case, the State would have no leverage to negotiate quality care at an affordable cost with reputable providers. Quite simply, due process does not require the Department to hand a SVP a blank check when he plans his LRA placement.

VII. CONCLUSION

Because none of the criteria for accepting review in RAP 13.4(b) are satisfied, the Department requests that the Court deny Mr. Rafford's Petition for Review.

This document contains 2789 words, excluding the parts of the document exempted from the word count by RAP 18.17.

RESPECTFULLY SUBMITTED this 7th day of October, 2021.

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CERTIFICATE OF SERVICE

I, Milli Cunningham, state and declare as follows: I certify that on October 7, 2021, I served a true and correct copy of this **ANSWER TO PETITION FOR REVIEW** and this **CERTIFICAT OF SERVICE** on the following parties to this action, as indicated below:

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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 7th day of October, 2021, at Olympia, Washington.

MILLI CUNNINGHAM
Legal Assistant

APPENDIX

APPENDIX A

APPENDIX A

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In the Matter of the Detention of BRUCE S. RAFFORD, Respondent.	No. 81416-8-I DIVISION ONE UNPUBLISHED OPINION

SMITH, J. — Bruce Rafford is civilly committed as a sexually violent predator (SVP). Pursuant to RCW 71.09.092 and following the court's order permitting him to seek a less restrictive alternative (LRA), Rafford proposed his conditional release to Complete Care Company LLC. The trial court accepted his proposal and ordered the Department of Social and Health Services/Special Commitment Center (DSHS) to pay Complete Care over $30,000 per month for Rafford's care, housing, and supervision.

DSHS appeals, asserting that the trial court lacked authority to require it to pay all costs associated with Rafford's treatment and housing at Complete Care. Rafford asserts that, under RAP 2.2, DSHS cannot appeal because it was not a party to the proceeding below. As to the latter assertion, because DSHS has a pecuniary interest in the proceeding, DSHS may appeal under RAP 2.2(3) without seeking discretionary review. As to the former issue, because the court ordered DSHS to pay costs beyond those related to Rafford's treatment, the court erred. Therefore, we remand to the trial court to modify its order consistent with this opinion.

BACKGROUND

Under the sexually violent predator act (SVPA), chapter 71.09 RCW, "when an offender's sentence is about to expire, the State may file a petition alleging that the offender is an SVP." In re Det. of Reyes, 184 Wn.2d 340, 343, 358 P.3d 394 (2015). An SVP is an individual "convicted of or charged with a crime of sexual violence . . . who suffers from a mental abnormality or personality disorder which makes the person likely to engage in predatory acts of sexual violence if not confined in a secure facility." RCW 71.09.020(18). If a jury finds that an offender is an SVP, they "shall be committed to the custody of the [DSHS] . . . for control, care, and treatment until such time as" the person's condition has changed and they no longer meet the definition of an SVP or conditional release to an LRA "is in the best interest of the person and conditions can be imposed that would adequately protect the community." RCW 71.09.060(1).

At their annual show cause review hearing, an individual may seek conditional release to an LRA. RCW 71.09.090(1). An LRA is defined as "court-ordered treatment in a setting less restrictive than total confinement" which satisfies the statutory requirements. RCW 71.09.020(6). If the court finds probable cause exists to allow for conditional or unconditional release, the court must hold a full trial addressing the individual's release. RCW 71.09.090(2)(c). There, the SVP must propose a specific LRA that meets five statutory requirements under RCW 71.09.092. If the SVP is entitled to placement in an LRA, the court, based on recommendations by the Department of Corrections (DOC), orders conditions required to protect the community and orders DSHS to

pay the costs associated with the SVP's treatment at the LRA. RCW 71.09.096; RCW 71.09.110.

FACTS

On July 1, 2004, the Snohomish County Superior Court civilly committed Rafford as an SVP. Specifically, the court committed Rafford to the custody of DSHS for placement in the Special Commitment Center (SCC) on McNeil Island.

On November 19, 2013, the SCC authorized Rafford to petition for release to a Secure Community Transition Facility (SCTF). Five months later, the court conditionally released Rafford to Pierce County's SCTF.

In March 2017, the court found probable cause that Aacres Property Holdings LLC, an LRA residence, met the statutory requirements and that Rafford's release to Aacres was in his "best interest and conditions could be ordered to adequately protect the community." Accordingly, the trial court set a trial date for Rafford's conditional release.

After the trial, the court concluded that Rafford's conditional release to Aacres was in his best interest and included conditions necessary to protect the community. Therefore, the court ordered DSHS to release Rafford to Aacres and noted that DSHS and Aacres had a contract for their treatment and care of SVPs. The court's order on release included residential conditions, treatment conditions, supervision conditions, standard conditions, and special conditions.

In October 2019, Aacres went out of business. Two months later, Complete Care agreed to provide secure housing and treatment to Rafford. In

March 2020, the DOC investigated Complete Care, making recommendations to the court regarding necessary conditions at the Complete Care facility.

At a hearing regarding Rafford's LRA placement with Complete Care, in April 2020, the State, Rafford, and the DSHS were represented. On DOC's recommendations, the court ordered conditions necessary to protect the community. The court found that Rafford's release to Complete Care complied with the statutory requirements and concluded that "[c]ontinued conditional release to a community [LRA] . . . is in Mr. Rafford's best interest and includes conditions that will adequately protect the community." The order required DSHS to pay funds to Complete Care for Rafford's placement, living expenses, and care at the Complete Care facility in Graham, Washington. Specifically, the court's order provided that "DSHS/SCC shall pay for the following costs:" (a) $2,000 "to reimburse [Complete Care] for start-up expenses previously purchased by the company, (i.e., bed, mattress, sheets, dresser, etc.)"; (b) $2,235 "a month in administrative costs" including "costs associated with transporting Mr. Rafford in the community, and administrative activities such as program planning, health care management, and staff training"; (c) $1,935 "a month for basic maintenance," including "rent, food, utilities and community inclusion"; and (d) $25,836 "a month for staff costs" for "one on one supervision by a staff member." The court ordered DSHS to pay a total of $30,006 per month to Complete Care. It concluded "that the payment to [Complete Care] are costs relating to Mr. Rafford's treatment."

The State did not contest that Rafford's placement at Complete Care

could be in his best interest or that the court's order contained adequate conditions to protect the community. However, DSHS contested the portion of the order requiring it to pay Complete Care for Rafford's placement, living expenses, and care at Complete Care's facility. The court ordered Rafford to be conditionally released to Complete Care's facility on May 13, 2020.

DSHS appeals.

ANALYSIS

DSHS's Ability To Appeal

Rafford asserts that, under RAP 2.2, the State may not appeal the order modifying the LRA. Because aggrieved parties may appeal if they have a pecuniary interest under RAP 3.1 and because the order constituted a written decision affecting a substantial right that in effect determines the action under RAP 2.2(a)(3), we disagree.

"The appealability of superior court decisions is governed by the Rules of Appellate Procedure." In re Det. of McHatton, ___ Wn.2d ___, 485 P.3d 322, 324 (2021). "We review interpretations of court rules de novo." McHatton, 485 P.3d at 324.

In general, "[t]hose who are not parties to an action may not appeal." Aguirre v. AT&T Wireless Servs., 109 Wn. App. 80, 85, 33 P.3d 1110 (2001); see also RAP 2.2(a)(8) (A *party* to a case may appeal "[a] decision ordering commitment, entered after . . . a sexual predator hearing."). However, "Washington courts have long recognized that, under some narrow circumstances, persons who were not formal parties to trial court proceedings,

but who are aggrieved by orders entered in the course of those proceedings, may appeal as 'aggrieved parties.'" State v. G.A.H., 133 Wn. App. 567, 574, 137 P.3d 66 (2006). Specifically, under RAP 3.1, "an aggrieved party may seek review by the appellate court." And an aggrieved party is "one whose personal right or pecuniary interests have been affected." State v. Taylor, 150 Wn.2d 599, 603, 80 P.3d 605 (2003).

In G.A.H., G.A.H. was being held in juvenile detention on several charges, and DSHS was not a party to G.A.H.'s detention review hearing. 133 Wn. App. at 570-71. At the hearings, the court ordered G.A.H's release to DSHS "for assessment of services and a possible foster care placement." G.A.H., 133 Wn. App. at 570-71. Subsequently, the court ordered DSHS to place G.A.H. in foster care. G.A.H., 133 Wn. App. at 571. DSHS placed G.A.H. in foster care but appealed the juvenile court's orders, arguing that the court did not have authority to order DSHS to place G.A.H. in foster care. G.A.H., 133 Wn. App. at 571-72.

On appeal, we concluded that, although DSHS was not a party to the proceedings below, "DSHS may appeal this matter as an 'aggrieved party' under RAP 3.1" and the statute governing juvenile courts. G.A.H., 133 Wn. App. at 574. Specifically, we reasoned that because "DSHS was ordered to assume custodial and financial responsibility of G.A.H.'s welfare," DSHS was "an aggrieved party" that could appeal as a matter of right. G.A.H., 133 Wn. App. at 575. We also rejected the respondents' claim that DSHS had to seek discretionary review, because we concluded that the juvenile court order was a

final order "appealable as a matter of right" under RAP 2.2(a)(1). G.A.H., 133 Wn. App. at 576.

Like DSHS's position in G.A.H., here, the trial court ordered DSHS to assume financial responsibility for all of the expenses related to Rafford's placement at Complete Care. Accordingly, DSHS was an aggrieved party with a substantial pecuniary interest affected by the court's decision. Cf. In re Guardianship of Lasky, 54 Wn. App. 841, 844, 850, 776 P.2d 695 (1989) (concluding that an attorney did not have an interest in the court's order to remove him as an individual's guardian but that he did have a pecuniary interest in his fees and in the sanctions that the court imposed on him). And like in G.A.H., DSHS did not have to seek discretionary review because the court's order was a "written decision affecting a substantial right in a civil case that in effect determines the action and prevents a final judgment." RAP 2.2(a)(3). Specifically, it is a final judgment in that DSHS is now required to pay Complete Care. Therefore, we conclude that DSHS may appeal the court's order as a matter of right. And we review the merits of DSHS's challenge to the trial court's order.

Rafford cites In re Detention of Peterson, 138 Wn.2d 70, 980 P.2d 1204 (1999), for the proposition that "subsequent orders related to the underlying commitment are generally reviewable only under RAP 2.3." Peterson relies heavily on In re Dependency of Chubb, where the court held that the language of RAP 2.2(a) and the statute governing dependency review hearings "indicate[ ] that appeal by right applies only to disposition decision following the finding of

dependency or *to a marked change in the status quo,* which in effect amounts to a new disposition." 112 Wn.2d 719, 724-25, 773 P.2d 851 (1989).

In Peterson, the court similarly held that the dependent could not appeal the trial court's probable cause decision under RCW 71.09.090(2). 138 Wn.2d at 83, 90. Following Peterson's annual show cause hearing, the court ordered his continued commitment. Peterson, 138 Wn.2d at 83. The court distinguished the show cause hearing from the full hearing, which follows if the court finds probable cause. Peterson, 138 Wn.2d at 85-86. It concluded that "[t]he show cause hearing is in the nature of a summary proceeding wherein the trial court makes a threshold determination." Peterson, 138 Wn.2d at 86.

In Peterson, the court did not make a statement regarding whether or not the orders following the full hearings are appealable, and that is what is at issue here. The court's order regarding Rafford's LRA did not maintain the status quo: it modified the conditional release order to commit Rafford to Complete Care and require DSHS to pay Complete Care. Thus, these cases are distinguishable, and Rafford's reliance thereon is misplaced.

Finally, our Supreme Court recently addressed a similar issue in McHatton. There, McHatton was conditionally released to an LRA, but when he violated a condition of that release, the court revoked his placement at the LRA. McHatton, 485 P.3d at 323. McHatton asserted that the revocation was appealable as a matter of right under RAP 2.2(a)(8) and RAP 2.2(a)(13). McHatton, 485 P.3d at 323-24. RAP 2.2(a)(8) provides for the appeal of an order committing an individual to DSHS's care following the original SVP hearing.

RAP 2.2(a)(13) allows for a party's appeal of a "*Final Order after Judgment*. Any final order made after judgment that affects a substantial right."

With regard to RAP 2.2(a)(8), the court concluded that, "regardless of whether a person is in total confinement or in an LRA, they remain a 'committed person' under the statute." McHatton, 485 P.3d at 324. The revocation was not appealable as a matter of right under RAP 2.2(a)(8) because it did not change the person's status as a committed person. McHatton, 485 P.3d at 324. The court further concluded that the order was not "'final'" for purposes of RAP 2.2(a)(13). McHatton, 485 P.3d at 325. Because McHatton asserted appealability under RAP 2.2(a)(8) and RAP 2.2(a)(13), McHatton is distinguishable because DSHS asserts appealability under RAP 2.2(a)(3). Furthermore, the order requiring DSHS to pay Complete Care affects a substantial right, determines the action, and prevents appeal: it orders DSHS's timely payment of Rafford's LRA costs at a new facility. Accordingly, RAP 2.2(a)(3) authorizes DSHS's appeal.

LRA Costs

DSHS contends that the trial court lacked authority to order it to pay the costs of Rafford's placement at Complete Care. We agree that the trial court went beyond its statutory authority when it ordered DSHS to pay costs other than those related to Rafford's treatment.

Under RCW 71.09.110, DSHS "shall be responsible for the costs relating to the treatment of persons committed to their custody whether in a secure facility or under [an LRA]." Treatment is defined as: "sex offender specific treatment

program at the [SCC] or a specific course of sex offender treatment." RCW 71.09.020(20). For a court to order conditional release to an LRA, the SVP must be "treated by a treatment provider who is qualified to provide such treatment," and "the treatment provider [must present] a specific course of treatment and [agree] to assume responsibility for such treatment." RCW 71.09.092(1), (2). To order conditional release, the court must impose conditions necessary to protect the community. RCW 71.09.096(1).

We are asked to determine whether the trial court misapplied RCW 71.09.110 when it determined that all of Complete Care's costs were related to treatment. "As a mixed question of law and fact, we review that decision de novo, applying the law to the facts found by the trial court." In re Guardianship of T.H., 15 Wn. App. 2d 495, 498, 475 P.3d 1045 (2020). "A challenged finding of fact is sufficient when supported by substantial evidence." T.H., 15 Wn. App. 2d at 498. We review a trial court's conclusion with regard to an issue of statutory interpretation de novo. T.H., 15 Wn. App. 2d at 498; In re Pers. Restraint of Parejo, 5 Wn. App. 2d 558, 572, 428 P.3d 130 (2018). And we strictly construe the SVPA. Parejo, 5 Wn. App. 2d at 572.

As an initial matter, DSHS contends that it cannot be ordered to pay any private LRA costs, relying heavily on In re Det. of Campbell, 130 Wn. App. 850, 124 P.3d 670 (2005), to support that contention. In Campbell, Elmer Campbell was a civilly committed SVP. 130 Wn. App. at 852. Years after his commitment, Campbell proposed an LRA with his parents in Wewoka, Oklahoma. Campbell, 130 Wn. App. at 852. The Oklahoma County Mental Health Association provided

a letter to the court stating that "it would 'consider' contracting to supervise Campbell." Campbell, 130 Wn. App. at 852. The DOC opposed Campbell's proposal, asserting that they did not have the resources to supervise out-of-state commitments. Campbell, 130 Wn. App. at 852. We held that, although "a court might designate a service provider other than the DOC or DSHS, it is not necessary for a court to designate private, state-funded, *out-of-state* supervisors in order to provide for the conditional release of SVPs to LRAs when statutory criteria are satisfied." Campbell, 130 Wn. App. at 860 (emphasis added).

Rafford does not seek out-of-state care. And RCW 71.09.096(3) provides that the court may designate placement at an LRA other than DSHS. Unlike the statutory requirement that the individual be treated in Washington,[1] the SVPA does not require that an SVP receive treatment in a public facility. Therefore, the court has authority to order DSHS to pay costs for an SVP's placement in a private LRA, and Campbell is unpersuasive.[2]

[1] See RCW 71.09.092(1), (3) (requiring that the treatment provider be "qualified to provide such treatment in the state of Washington," and that "housing exists in Washington that is sufficiently secure").

[2] DSHS also contends that the trial court violated the separation of powers doctrine when it ordered DSHS to pay Complete Care. We disagree. "The separation of powers doctrine reflects the constitutional distribution of political authority among the three branches of government: the legislative, the executive, and the judicial." In re Det. of Savala, 147 Wn. App. 798, 806, 199 P.3d 413 (2008). "Separate governmental functions are reserved, by the constitution, for the courts and for the legislature." Savala, 147 Wn. App. at 806. Specifically, "[c]ourts interpret, construe, and apply laws made by the legislature." Savala, 147 Wn. App. at 806. Here, although the court's interpretation and application of the law was incorrect with regard to start-up costs, it was simply that: an interpretation of what constitutes treatment under the SVPA. Therefore, the court did not violate the separation of powers doctrine; rather, it acted within the scope of its separate governmental function to interpret and apply the law.

The court found that the costs for start-up expenses, administrative costs, basic maintenance, and staff costs were "related to Rafford's treatment under his LRA." It therefore ordered DSHS to pay these costs to Complete Care.

Complete Care asserted that administrative costs included program planning, health care management, and staff training. Treatment is defined as sex offender specific programming, and the dictionary defines "program" as "a schedule or system under which action may be taken toward a desired goal." WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1812 (2002); see also Lyft, Inc. v. City of Seattle, 190 Wn.2d 769, 781, 418 P.3d 102 (2018) (defining a term by "its usual and ordinary dictionary definition" where the statute provided no definition). Because this cost includes program planning that is necessary for the individual's treatment, the court's finding that the administrative costs are related to treatment is supported by substantial evidence. Accordingly, the court's conclusion is affirmed with regard to these costs.[3]

With regard to the start-up costs, the record does not support the trial court's finding that they were related to treatment. In particular, DSHS should not be compelled to pay for a business venture's birth. Nowhere does the statute order DSHS to pay for start-up costs, and the treatment's definition does not include those costs. Furthermore, start-up costs do not relate to an individual's sex offender programming as required by their treatment provider. Therefore,

[3] DSHS may provide payment for additional costs at its discretion. See RCW 71.09.080(6) ("As funds are available, the secretary may provide payment to the indigent persons conditionally released pursuant to this chapter consistent with the optional provisions of RCW 72.02.100 and 72.02.110, and may adopt rules to do so.").

the trial court's finding with regard to this cost is not supported by substantial evidence and is a legal error in its application of the statute.

With regard to the remaining costs, including the costs of secure and staff monitored housing and Rafford's basic maintenance, the statute fails to include them in the definition of treatment. These costs are not part of the doctor's treatment but, instead, stem from the care and control of the individual. To that end, with regard to an individual's placement in a DSHS facility, the SVPA specifically provides that DSHS must provide for the individual's "*control*, *care*, and treatment until . . . conditional release to [an LRA]" is ordered. RCW 71.09.060(1). However, the SVPA does not include that same language where it orders DSHS to pay LRA costs or where it defines treatment. It is counterintuitive to expect that indigent SVPs would be in a position to pay for housing, which is necessary for them to receive treatment under an LRA. The legislature recently amended the statute to correct this shortcoming, adding the requirement that DSHS provide "financial support for necessary housing at an LRA." LAWS OF 2021, ch. 236, § 6 (effective July 25, 2021). Unfortunately, the statute's current version does not include that requirement. For this reason, these general facility costs are not related to treatment, and the trial court erred when it concluded that DSHS must pay them. See State v. Swanson, 116 Wn. App. 67, 76, 65 P.3d 343 (2003) (holding that where the statute does not include a particular requirement for the reinstatement of an individual's firearm rights, no requirement exists).

We reverse in part the trial court's order and remand for it to modify the

order consistent with this opinion. Nothing in this opinion eliminates the trial court's discretion to deny an SVP's proposed LRA,[4] and nothing in this opinion lessens DSHS's statutory duty to provide and pay for an SVP's placement in LRAs.

WE CONCUR:

[4] See RCW 71.09.092 (providing that a court may—not shall—enter an order directing conditional release to an LRA, granting the trial court discretion).

APPENDIX B

APPENDIX B

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

In the Matter of the Detention of BRUCE S. RAFFORD, Respondent.	No. 81416-8-I ORDER DENYING MOTION FOR RECONSIDERATION

Respondent Bruce Rafford has filed a motion for reconsideration of the opinion filed on June 14, 2021. The panel has determined that respondent's motion for reconsideration should be denied. Now, therefore, it is hereby

ORDERED that respondent's motion for reconsideration is denied.

FOR THE COURT:

Judge

APPENDIX C

APPENDIX C

The Court of Appeals
of the
State of Washington

RICHARD D. JOHNSON,
Court Administrator/Clerk

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CASE #: 81416-8-I
In re the Det. of Bruce Rafford, DSHS, Appellant v. Bruce Rafford, Respondent

Counsel:

The following notation ruling by Commissioner Masako Kanazawa of the Court was entered on May 18, 2020:

> By June 1, 2020, the parties shall address in writing (up to five pages) whether the order designated in the notice of appeal is appealable under RAP 2.2(a) or subject to discretionary review under RAP 2.3(b).

Sincerely,

Richard D. Johnson
Court Administrator/Clerk

HCL

APPENDIX D

APPENDIX D

The Court of Appeals
of the
State of Washington

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CASE #: 81416-8-I
In re the Det. of Bruce Rafford, DSHS, Appellant v. Bruce Rafford, Respondent

Counsel:

The following notation ruling by Commissioner Masako Kanazawa of the Court was entered on June 2, 2020:

> This is a sexually violent predator case governed by chapter 71.09 RCW. The April 13, 2020 trial court order directing a non-party Department of Social and Health Services to pay for a committed person Bruce Rafford's proposed less restrictive alternative (LRA) housing appears appealable under RAP 2.2(a)(3) ("Any written decision affecting a substantial right in a civil case that in effect determines the action and prevents a final judgment or discontinues the action."). The Department is not a party, so RAP 2.2(d) does not apply.
>
> This case may go forward. The clerk shall issue a perfection schedule. In his merits brief, Rafford may include argument on appealability for consideration by the panel.

Sincerely,

Richard D. Johnson
Court Administrator/Clerk

SOCIAL AND HEALTH SERVICES DIVISION, ATTORNEY GENERALS OFFICE

October 07, 2021 - 5:21 PM

Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	100,080-4
Appellate Court Case Title:	In the Matter of the Detention of Bruce S. Rafford
Superior Court Case Number:	03-2-09944-7

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