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**SUPREME COURT OF THE STATE OF WASHINGTON**

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IN RE THE WELFARE OF J.D.E.C. and J.C.,

Minor Children.

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**RESPONSE TO PETITIONER'S MOTION FOR  
DISCRETIONARY REVIEW**

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## I. INTRODUCTION

Growing up in foster care, five-year-old J.D.E.C. and three-year-old J.C. had no prospects for return to their father's care. He had not seen them for over two years, and he remained unable to remedy his serious parental deficiencies. The children were languishing.

The Department of Children, Youth and Families (DCYF) filed termination petitions, and the court scheduled the termination trial to occur during the COVID-19 pandemic. In response to the pandemic, this Court entered an emergency order permitting juvenile courts to hold termination hearings remotely, including by telephone. In this case, the trial court allowed the father to choose to participate by telephone or by attending and watching the remote video in a courtroom following COVID-19 safety protocols.

The father chose to appear by telephone and actively participated, challenging DCYF's case. Present during the trial and represented by counsel, he heard the evidence, consulted

with his attorney, testified, presented witness testimony, and cross-examined witnesses. Consistent with this Court's ruling in *In re the Welfare of M.B.*, 195 Wn.2d 859, 467 P.3d 969 (2020), the father received a fundamentally fair trial, and his due process rights were protected with appropriate procedural safeguards. He presents no basis for this Court's review under RAP 13.4(b).

## **II. RESTATEMENT OF ISSUES**

Were the father's due process rights protected during the remote termination trial where he appeared by telephone, was represented by counsel, consulted privately with his attorney numerous times throughout, testified, cross-examined witnesses, and presented witness testimony?

## **III. STATEMENT OF THE CASE**

### **A. 2014–2020: The past and current dependency cases**

C.G.-R. is the father of J.D.E.C., age five, and J.C., age

three. RP 39.<sup>1</sup> C.G.-R. is also the father of three older children. RP 249-50, Ex. 17 at 2; Ex. 22 at 2. In 2014, the trial court entered orders removing the older three children due to C.G.-R.'s mental health instability and domestic violence in the home. Ex. 17 at 3; Ex. 22 at 3. The court established dependency, DCYF offered C.G.-R. services for over three years, and after the parents failed to remedy their deficiencies, the court terminated all parental rights to the older children in 2017. RP 65-67, 95-96, Ex. 22 at 4.

A year earlier, in August 2016, the court removed then 10-month-old J.D.E.C. from parental care due to continued incidents of domestic violence between the parents and C.G.-R.'s escalating mental health instability. RP 64, 66-67, Ex 17 at 1. The court removed J.C. from parental care immediately after her birth in 2017 due to the parents' failure to engage in services and their inability to keep the children safe. RP 130-31,

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<sup>1</sup> The mother of both children entered voluntary relinquishments, the court terminated her parental rights, and she did not appeal. RP 30-32, 296, CP 408-15, 423-26.



250; Ex. 22. C.G.-R minimally complied with court-ordered services and, at the time of the July 2020 trial, he was not engaging in services. RP 66, 95, 130-32, 155-56.

At trial, J.D.E.C. had been living in foster care for over three of his four years, and two-year-old J.C. had been living in foster care her whole life. RP 131. During that time, C.G.-R. never maintained a relationship with the children and never addressed his parental deficiencies. RP 71-72, 80, 131-32, 143, 155. The children did not know C.G.-R. RP 132. The GAL for the children opined, “this case has been a terrible example of children languishing in foster care” and urged the court to terminate parental rights to “allow the children to move forward” with a permanent, stable family. RP 79-80.

#### **B. Procedural Protections at the July 2020 Trial**

DCYF filed the termination petitions in Whatcom County, but due to pending criminal charges alleging C.G.-R. intimidated and harassed then Whatcom County Superior Court Judge Raquel Montoya-Lewis, and a harassment no contact

order preventing C.G.-R. from entering the county courthouse, all of the Whatcom County superior court judges recused themselves from hearing the case. CP 349; Ex. 10, 11. The trial took place in Skagit County Superior Court, four months into the COVID-19 global health pandemic. RP 6, 52, Ex 9, 10, 11.

**1. Supreme and superior court emergency orders**

On February 29, 2020, Governor Jay Inslee issued Proclamation 20-05, announcing a state of emergency for all counties throughout the state of Washington due to the “extreme risk of person-to-person transmission” of COVID-19, “a public disaster that affects life, health, property or the public peace.” Proclamation 20-05 at 1 (Feb. 29, 2020). This Court responded to Governor Inslee’s proclamation by authorizing county courts to “adopt, modify, and suspend court rules” in order to “address the emergency conditions” of their counties. Order at 1, *In the Matter of the Response By Washington State Courts to the Public Health Emergency in Washington State*, No. 25700-B-602, (Wash. Mar. 4, 2020).

On April 30, 2020, this Court issued Order No. 25700-B-622, an extended and revised order regarding dependency and termination cases. Order at 1, *In re the Matter of Statewide Response by Washington State Courts to the COVID-19 Public Health Emergency*, No. 25700-B-622, (Wash. Apr. 30, 2020). The order encouraged courts to hear all non-emergent matters “by video, telephone, or other means that do not require in-person attendance” so long as all participants “are able to suitably participate.” *Id.* at 3, ¶ 5. The order required courts to allow parents “the opportunity to speak confidentially with their attorneys prior to cross-examination of witnesses.” *Id.* at 3, ¶ 4. On May 29, 2020, this Court issued Order No. 25700-B-626, its third revised and extended order regarding court operations. Order at 1, *In re the Matter of Statewide Response by Washington State Courts to the COVID-19 Public Health Emergency*, No. 25700-B-626, at 1 (Wash. May 29, 2020). The Court’s order provided that superior courts should begin conducting non-emergent civil matters “by telephone, video or

other remote means, or in person with strict observance of social distancing and other public health measures. *Id.* at 3, ¶ 2. This order was active at the time of this termination trial.

On June 15, 2020, the Skagit County superior court issued Administrative Order No. 20-8. Order at 1, *In the Matter of Emergency Response to COVID-19 Outbreak*, No. 20-8 (Skagit County. Sup. Ct. June 16, 2020). This emergency order established safe protocols for conducting court hearings and required any person attending court proceedings to wear masks in the courthouse and maintain social distancing. *Id.* at 3, ¶ 5. The order further acknowledged that during the pandemic crisis, “telephonic and video hearings have been a substantial success” and mandated that “in all cases where video hearings are held, telephonic participation shall also be available.” *Id.* at 4, ¶ 7. The order established that all bench trials “shall be conducted telephonically and by video” and all parties “shall comply with the Bench Trial Protocols and Procedures”

published by the superior court. *Id.* at 3, ¶ 4. This order was in place at the time of the trial.

The superior court published trial procedures for video bench trials, “**binding on all parties,**” “due to the COVID-19 health crisis.” *Superior Court of Washington, Court of Skagit, Remote Bench Trial Protocol and Procedures*, at 1 (emphasis added by the court). The protocols set expectations for witnesses and parties to appear by video, but authorized in-person appearances if requested by motion more than five court days before trial. *Id.* at 1, ¶ 2. The protocols required parties to exchange witness and exhibit lists and copies of exhibits “at least two days before” a mandated pre-trial conference scheduled the week prior to trial. *Id.* at 1, ¶ 3. Finally, the protocols set forth the court’s video trial process, including requirements for breakout rooms “to allow private communications” between attorneys and clients and recognized that “parties and witnesses will have their own copies of exhibits” pursuant to the protocols. *Id.* at 3-4, ¶ 7(c), (d) and (f).

## **2. The trial court followed the emergency procedures**

The termination trial was held on July 21, 22, and 31, 2020. CP 416, 440. Pursuant to the binding bench trial protocols, one week prior to trial, DCYF submitted Pre-Trial Conference Summaries to the court and all parties, which included identification and contact information for all witnesses and a list of exhibits. CP 346, 361. DCYF provided copies of all exhibits to the court and parties four days prior to trial. CP 369, 392. C.G.-R. did not submit pre-trial conference summaries, a witness list, or an exhibit list and did not move for in-person appearance.

Prior to the start of the proceeding, the court confirmed that the Zoom video technology worked and all parties had audio connection. RP 14. The court repeated this process after every recess and break in proceedings. RP 84, 164, 221, 285. All parties appeared by Zoom video except C.G.-R., who appeared by phone. RP 14-17. After his attorney provided extra

assistance on the first day, C.G.-R. had no difficulty calling in to the trial. RP 6-9.

At the start of trial, C.G.-R. moved for a continuance until the end of the pandemic. RP 17-19. The court denied C.G.-R.'s motion, explaining that whenever C.G.-R. wished to consult with his attorney, that would be allowed "via a breakout room in the Zoom application." RP 22-23. The court "assigned" the breakout room and "opened" it for C.G.-R. to consult with his attorney. RP 26. The court noted that C.G.-R. could have attended the trial in person or from his attorney's office. RP 23. During testimony, C.G.-R. blurted out, "I'm able to drive up there and go to the courtroom and be in person. That's what I want. That's what I'm requesting." RP 46. Nevertheless, he continued to attend the trial via telephone and made no motion for in-person appearance.

C.G.-R. only twice claimed he could not hear the proceedings. RP 42-43, 152. The first time, the court admonished him that he could not hear because he was "talking

over” his attorney. RP 42-43. The second time, the court clarified that no one was speaking. RP 152.

On two occasions, C.G.-R. voluntarily absented himself from the proceedings. The first occurred when C.G.-R. did not re-join the proceedings after a short morning break. RP 60-61. Later, C.G.-R. admitted he misunderstood, thinking the morning session was over until after lunch. RP 85. C.G.-R. missed 40 minutes of testimony during this absence. RP 61-85. Later, C.G.-R. left the proceedings during his mother’s testimony. RP 205, 216.

Throughout the trial, the court initiated breakout rooms for C.G.-R. to speak with his attorney at least twelve times, totaling nearly two hours for consultation. RP 25 (5 minutes), 60 (20 minutes), 85-86, 88 (5 minutes), 111 (2 minutes), 138 (15 minutes), 167 (7 minutes) 183 (30 minutes), 216-17 (3 minutes), 227 (3 minutes), 248 (3 minutes), 253 (10 minutes), 266 (3 minutes). The court granted at least eight breakout sessions at C.G.-R.’s request. RP 25, 88, 167, 183, 216-17, 227,



248, 266. The court also initiated sessions after witnesses and during breaks and encouraged C.G.-R. to call his attorney for further consultation at the close of the first day of trial. RP 60, 111, 138, 163, 253. The court never denied a request for C.G.-R. to consult with his attorney confidentially.

In addition to C.G.-R.'s access to his attorney through the Zoom breakout rooms, he had direct access to his attorney by phone and email. On the first day of the trial, the attorney called C.G.-R. to help him enter into the hearing. RP 8. After the noon recess that day, C.G.-R.'s attorney indicated that he spoke with C.G.-R. over the noon hour. RP 83, 85.

After the conclusion of DCYF's case, C.G.-R. asked to call previously undisclosed witnesses; his attorney indicated that through "ongoing conversations" with his client during the proceeding and after hours, C.G.-R. requested additional witnesses. RP 181-82, 222, 252. The court granted C.G.-R. extra time to prepare. RP 182-83. C.G.-R. and his mother also provided the attorney with email evidence via text message

during the trial. RP 204. C.G.-R. had the ability to text on his phone and had previously texted the social worker. RP 150.

C.G.-R. demonstrated his agitation with the process throughout the trial, interrupting twenty-six times during two days of testimony. RP 21-23, 25, 28, 32-33, 37-38, 42, 99, 106-107, 111, 114, 122, 133, 152, 158, 163, 167, 192, 216, 226, 245, 247. The court muted C.G.-R. when he talked over the attorneys' argument and unmuted him when the attorneys finished talking. RP 23, 36, 37, 38. The court warned C.G.-R. about interrupting. RP 23, 38. The court also muted C.G.-R. when he called the social worker a "moron" or interrupted witness testimony. RP 114, 133, 158-61. Again, the court unmuted C.G.-R. as soon as the witness finished answering the question. *Id.* At times, C.G.-R. talked over his own attorney. RP 42, 111-12, 192, 247.

On the day of the court's ruling, C.G.-R. did not appear, but his attorney indicated that he had shared access information with C.G.-R. RP 287. The court directed the attorney to call his

client. RP 288. C.G.-R's mother answered and explained that C.G.-R. would not appear because he was in Olympia "in contact with the legislature." RP 290

The court terminated C.G.-R.'s parental rights, finding that DCYF proved beyond a reasonable doubt that both children were dependent and had lived out of the home for several years, that dispositional orders had been entered, and that social workers expressly and understandably offered all reasonably available, necessary services that were capable of correcting C.G.-R's parental deficiencies. RP 292-93, CP 417-18, 428-29. By clear, cogent and convincing evidence, the court found little likelihood that the children would be returned in the near future given that C.G.-R. admitted "he has made little progress" and services were offered "to no avail." RP 293-94, CP 419, 430. Finally, the court found that C.G.-R. had never visited J.D. and had not visited J.D.E.C. for years and, therefore, continuing the parent-child relationship diminished the children's "prospect for early integration into a stable and permanent home" and, it

was in the children's best interest to terminate parental rights. RP 294, CP 419-20, 430-31. The court found C.G.-R. currently unfit to parent. CP 420, 431.

The father timely appealed, raising a due process challenge. CP 437-38, 450-54. The Court of Appeals issued a published decision affirming the dependency, and this motion follows.

#### **IV. ARGUMENT WHY REVIEW SHOULD BE DENIED**

The trial court's remote hearing procedures protected the father's procedural due process rights. Prior to the commencement of trial, this Court and the Skagit County Superior Court issued detailed orders enabling courts to conduct trials during the COVID-19 pandemic, simultaneously protecting public health and the due process rights of parties. The trial court followed those protocols during the trial to terminate C.G.-R.'s parental rights. The father received a fundamentally fair trial with appropriate procedural safeguards

that allowed his full participation in the proceeding and access to his attorney.

Although C.G.-R. appeared by telephone throughout the trial, Skagit County's binding protocols allowed participants to request in person appearance, and the court instructed the father that the courthouse was open for him to attend and watch the proceedings on video. The trial court provided C.G.-R. ample opportunities to consult and communicate with his attorney and ensured that all parties could hear the proceedings. The father presented testimony, cross-examined witnesses, and actively participated in the trial. The remote proceeding gave C.G.-R. a meaningful opportunity to be heard and defend. His procedural due process challenge should be rejected and his motion for discretionary review denied.

**A. Consistent with Due Process Requirements, the Trial Court Provided C.G.-R. a Meaningful Opportunity to be Heard**

Parents have a fundamental liberty interest in the custody, care, and management of their children. *In re the*

*Welfare of A.W.*, 182 Wn.2d 689, 702, 344 P.3d 1186 (2015). Procedural due process places limitations on governmental decisions that affect an individual's liberty or property interests. *Id.* at 701. "Due process is a flexible concept, but at a minimum it requires the right to notice and an opportunity to be heard." *Id.* The court reviews alleged violations of due process de novo. *In re Welfare of M.B.*, 195 Wn.2d 859, 867, 467 P.3d 969 (2020).

The right to be heard ordinarily includes the right to be present. *In re Welfare of L.R.*, 180 Wn. App. 717, 723, 324 P.3d 737 (2014). However, there is no absolute constitutional right for a parent to personally attend a dependency proceeding. *See Id.* For example, if an incarcerated parent cannot appear in person, they "must be given a meaningful opportunity to be heard and defend through alternative procedures." *M.B.*, 195 Wn.2d at 868.

Despite the global health pandemic, G.C.-R. had notice of the court's emergency protocols and procedures, received

advance notice of witnesses and exhibits, had access to his attorney before, during, and after the trial, and participated fully in the trial. He received a meaningful opportunity to be heard and defend, and his due process claim fails.

**B. The Father's Due Process Rights were Protected Under the *Mathews v. Eldridge* Factors**

Procedural due process prohibits the State from depriving an individual of protected liberty interests without appropriate procedural safeguards. *In re Pers. Restraint Petition of Bush*, 164 Wn.2d 697, 704, 193 P.3d 103 (2008). After identifying a protected substantive liberty or property interest, Washington courts employ a balancing test to decide if the procedures used are sufficient to protect the identified liberty interest. *Washington Indep. Tel. Ass'n v. Washington Utils. & Transp. Comm'n*, 110 Wn. App. 498, 508, 41 P.3d 1212 (2002) (citing *Board of Regents v. Roth*, 408 U.S. 564, 569, 92 S. Ct. 2701, 33 L. Ed. 2d 548 (1972)).

Three elements must be analyzed and balanced when evaluating the adequacy of a procedure: (1) the private interest

at stake, (2) the risk that the procedure used will lead to an erroneous decision, and (3) the government's interest in the procedure used and the fiscal or administrative burden of substitute or additional procedural safeguards. *Mathews v. Eldridge*, 424 U.S. 319, 335, 96 S. Ct. 893, 903, 47 L.Ed.2d 18 (1976).

**1. Both children and parents have private interests at stake**

The first *Mathews* factor is “the private interest that will be affected by the official action.” *Mathews* 424 U.S. at 335. There are significant private interests in this case.

DCYF agrees that C.G.-R has a significant private interest. A parent “has a fundamental liberty interest in the care and custody of [his] children.” *L.R.*, 180 Wn. App. at 724.

Children also have a fundamental liberty interest at stake in these proceedings. *In re Dependency of M.S.R.*, 174 Wn.2d 1, 6-18, 271 P.3d 234 (2012). “Until the State proves parental unfitness, a child *shares* their parent’s interest in an accurate and just decision. These private interests are enormous and



weigh in favor of any reasonable error-reducing procedure.” *M.B.*, 195 Wn.2d at 869. In a termination of parental rights case, this Court identified family integrity, the right to be free from unreasonable risk of harm, possible placement in foster care, and possible return to an abusive home as children’s potential liberty interests. *M.S.R.*, 174 Wn.2d at 15-17. Further, a child has “the right to establish a strong, stable, safe, and permanent home in a timely manner.” *In re Dependency of A.G.*, 93 Wn. App. 268, 279, 968 P.2d 424 (1998).

**2. There is little risk of an erroneous decision.**

The second *Mathews* factor “looks to the risk of erroneous deprivation and the value of the additional procedures sought.” *M.S.R.*, 174 Wn.2d at 18. The State has no interest in separating children from fit parents. *In re Dependency of T.R.*, 108 Wn. App. 149, 159, 29 P.3d 1275 (2001). The parent, child, and state all share an interest in an accurate and just decision. *Lassiter v. Dep’t of Soc. Sers.*, 452 U.S. 18, 31, 101 S.Ct. 2153, 68 L.Ed.2d 640 (1981).

Significant procedural protections are afforded in a termination proceeding. Parents are entitled to notice, representation by counsel, to present evidence and cross-examine witnesses, to access Department records, and to have the case heard by an unbiased tribunal. RCW 13.34.090, 13.34.092, 13.34.096, 13.34.110, 13.34.180.

In addition, the elements set forth at RCW 13.34.180 and 13.34.190 must be established by the high evidentiary standard of clear, cogent, and convincing evidence. To prevail on a petition to terminate parental rights, DCYF must establish the six statutory requirements for termination before an inquiry into the child's best interests under RCW 13.34.190.

Remote fact-finding hearings that comport with the procedures prescribed in the Supreme Court's Emergency Order present a very low risk of error. They provide due process, given the presence of two key safeguards: the parent's ability to listen to and participate in the hearing remotely, and

the parent's ability to confer privately with counsel, including the opportunity to confer before witnesses are cross-examined.

A fact-finding hearing conducted remotely by telephone or videoconference allows the parent to hear all testimony presented and to testify if they so choose. The parent continues to have the right to be represented by counsel and counsel maintains the ability to fully argue any legal issues. The trial court procedures allowed C.G.-R. to testify by phone or video, have communication and consultations with his attorney, and meaningfully review and challenge DCYF's evidence. C.G.-R.'s contentions to the contrary do not withstand scrutiny.

**a. The father had access and ability to communicate by phone or video**

C.G.-R.'s active involvement at trial demonstrated he had access and ability to participate. Although he indicated on the first day of testimony that his phone was old, C.G.-R. gave no further indication that it was inadequate for participation. RP 15. The court confirmed that C.G.-R. could hear and be heard throughout the trial. RP 14, 84, 164, 221, 285. C.G.-R.

demonstrated his ability to access the trial by his repeated disruptions as he interrupted and talked over attorneys, witnesses and the court. RP 21-23, 25, 28, 32- 33, 37-38, 42, 99, 106, 107, 111, 114, 122, 133, 152, 163, 167, 192, 216, 226, 245, 247. The only times C.G.-R. argued that he could not hear testimony occurred when no one was talking or when he was talking over the speaker. RP 42-43, 152. The only time C.G.-R.'s phone was silent was when he failed to call in to the proceedings. RP 60-61, 205, 216, 290.

The record establishes that C.G.-R. had the ability to communicate by telephone and the option to participate by video in a courtroom complying with pandemic safety protocols if he chose to do so. RP 23. On the first morning of trial, C.G.-R. affirmed his willingness and ability to attend in person, but he chose to continue to attend by telephone. RP 46. In acknowledging C.G.-R. had a choice to appear by telephone or video, the Court of Appeals did not engage in burden shifting, but recognized these options. C.G.-R.'s argument to the

contrary fails. *See* Motion for Discretionary Review (Pet'r's Mot. Review) at 12.

**b. The father had access to his counsel during trial**

To ensure C.G.-R.'s access to his attorney, the court granted C.G.-R.'s every request to consult with his attorney during trial. RP 25, 88, 167, 183, 216-17, 227, 248, 266. The trial court provided 15 opportunities over two days for C.G.-R. to consult with his attorney and provided additional opportunities for consultation beyond those requested. RP 25, 33, 36, 60, 85-86, 111, 138, 163, 167, 183, 216-17, 227, 248, 253, 266.

C.G.-R. had direct access to his attorney by phone and email. C.G.-R. spoke with his attorney during lunch breaks and after hours. RP 8, 83, 85, 287. He had the ability to text on his phone, and at the conclusion of DCYF's case, C.G.-R.'s attorney indicated that he had "ongoing conversations" with his client during the proceeding and after hours. RP 150, 181-82, 222, 252. C.G.-R. and his mother provided the attorney with

email evidence via text message during the trial. RP 204. The record demonstrates C.G.-R. had access to his counsel throughout the proceedings.

**c. The father was able to review and challenge the evidence**

The superior court established pre-trial protocols to ensure all parties had access to the evidence and witnesses despite the pandemic. *Superior Court of Washington, County of Skagit, Remote Bench Trial Protocol and Procedures*. at 3, ¶ 5. DCYF complied with the protocol and provided witness information, exhibit lists and exhibits to all parties and the court in advance of trial. CP 346, 361, 369, 392. At the close of DCYF's case and after consultation with his attorney, C.G.-R. moved to call three previously undisclosed witnesses; the court granted the request. RP 181-82, 222, 252. C.G.-R. had ample time before and during the trial proceedings to review and challenge the evidence, and his argument to the contrary fails.

**d. The Court of Appeals opinion does not conflict with *In re M.B.***

*In re the Welfare of M.B.*, 195 Wn.2d 859, 467 P.3d 969 (2020) does not support C.G.-R.'s claims that his due process rights were violated. C.G.-R.'s argument fails because, unlike the parent in *M.B.*, he had the opportunity to attend and actively participate in the full termination trial, he heard DCYF's witnesses, he reviewed and challenged the evidence, and he regularly consulted with his attorney, consistent with this Court's emergency orders and due process.

In *M.B.* the father was incarcerated, he was not transported to appear for the termination trial, he appeared by telephone to present his testimony, was only able to listen to a brief amount of cross-examination, and he did not have the opportunity to consult with his attorney. *M.B.*, 195 Wn.2d at 865-66. The limitations on the parent's participation in *M.B.* were not present here.

Unlike the father in *M.B.*, the trial court allowed C.G.-R. to appear by telephone, but authorized C.G.-R.'s in-person

appearance. RP 23. C.G.-R. claims he faced limitations nearly identical to those faced by the father in *M.B.* Petitioner's Pet'r's Mot. Review at 11. Yet he was not incarcerated and faced no restrictions on his personal liberty. Ample evidence shows C.G.-R. had both the ability and the permission to attend the trial in person following safety protocols; he simply chose not to do so.

The father suggests he should have been provided access to a computer with a camera and internet access for four days. Pet'r's Mot. Review at 14. The trial court did just that, providing the same access by giving him the opportunity to watch the video in the courtroom. The Skagit County protocols specified how participants could safely appear in the courtroom, with masks and social distancing. Order at 3, *In the Matter of Emergency Response to COVID-19 Outbreak*, No. 20-8, ¶ 5 (Skagit County. Sup. Ct. June 16, 2020).

The court muted C.G.-R. on six occasions, following his verbal outbursts, interruptions, coaching of his witness and



attorney, and name-calling. RP 23, 33, 37-38, 133, 158. However, the trial court unmuted C.G.-R. as soon as the witness completed the answer to the question. *Id.* There is no evidence that C.G.-R. was ever prevented from requesting a consultation with his attorney before, during, or after examination of any witnesses. The record belies C.G.-R.'s assertions to the contrary. Pet'r's Mot. Review at 13.

The trial court provided 15 opportunities over two days for C.G.-R. to break and consult with his attorney. RP 25, 33, 36, 60, 85-86, 111, 138, 163, 167, 183, 216-17, 227, 248, 253, 266. The trial court did not hurry the parties, and in one instance, C.G.-R. spoke to his attorney for 30 minutes. RP 183. In addition, C.G.-R. spoke to his attorney by phone multiple times throughout the trial. RP 8, 83, 85, 181-83, 204, 222, 252, 287.

When a parent is not able to personally appear, *M.B.* requires the court provide a meaningful opportunity for the parent to be heard and defend through the alternative procedure.

*M.B.*, 195 Wn.2d at 868. The procedures utilized by the trial court provided C.G.-R. that meaningful opportunity. The trial court's actions to provide the father access to the hearing and opportunity for consultation with his attorney minimized any risk of erroneous decision.

**e. The State has a well-recognized interest in providing stable and permanent homes for dependent children**

The third *Mathews* factor is “the government’s interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.” *Mathews*, 424 U.S. at 335.

DCYF has an interest in ensuring that the child’s safety and wellbeing are protected. As a result, DCYF has an interest in ensuring a speedy resolution of dependency proceedings “to ensure that children do not remain in legal limbo—with the mental and emotional strain that entails—for any longer than is necessary.” *State v. Parvin*, 184 Wn.2d 741, 762, 364 P.3d 94

(2015). Remote fact-finding hearings support DCYF's interest in a speedy resolution and protecting the child's welfare.

**f. Balancing the *Mathews* factors shows no violation of due process**

The parent's interest must be weighed with other countervailing interests and the safeguards in place to reduce the risk of error. It is unclear how long COVID-19 will necessitate courtroom limitations and social distancing requirements. Conducting a remote hearing and providing the father with access to the courtroom video provided an additional option for access while preventing unnecessary delay that would keep the children in legal limbo.

The balancing of the *Mathews* factors demonstrates that the procedures employed did not violate C.G.-R.'s due process rights. Faced with a worldwide pandemic, the trial court followed Supreme Court and county emergency procedures and held a fundamentally fair hearing consistent with *M.B.* and due process. C.G.-R has not identified any cross-examination he

was unable to perform; any testimony he was unable to give; any witness he was unable to call; any evidence he was unable to view or offer; any discussion he was unable to hold with counsel; or any other deficiency affecting his rights.


This Court should deny review.

## V. CONCLUSION

C.G.-R. fails to satisfy any basis for review under RAP 13.4(b), and this Court should deny his motion for discretionary review.

This document contains 4,977 words, excluding the parts of the document exempted from the word count by RAP 18.17.

RESPECTFULLY SUBMITTED this 17th day of September, 2021.

  
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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 17th day of September 2021, at Bellingham, WA.



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**ATTORNEY GENERALS OFFICE - BELLINGHAM**

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