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SUPREME COURT
STATE OF WASHINGTON
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No. 101177-6

SUPREME COURT
OF THE STATE OF WASHINGTON

SEAN SWEREN,
Appellant,

v.

TAMARA WEHNERT and JORDAN DELAPLANE,
Respondents.

ANSWER TO PETITION FOR REVIEW

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I. STATEMENT OF THE CASE

The Appellant is Ms. Sweren, maternal grandmother of A.W. CP 1. The Respondent is Mr. Wehnert, biological father of A.W. CP 4. Respondent Wehnert and Respondent Jordan Delaplane are the biological parents of A.W. CP 1-4. Appellant's petition for grandparent visitation underlies this appeal.

Ms. Delaplane and Mr. Wehnert have a final parenting plan that places A.W. primarily with Mr. Wehnert. CP 3, 85-92. Prior to Mr. Wehnert and Ms. Delaplane separating, Mr. Wehnert spent time with Ms. Delaplane and A.W. in Ms. Sweren's home. CP 52. Ms. Sweren struggled with alcohol abuse and was not allowed to attend the birth of A.W. or the baby shower due to her drinking. CP 52. Mr. Wehnert ultimately made the decision to leave the Sweren home with A.W. on May 14, 2016. CP 52.

After Mr. Wehnert separated from Ms. Delaplane, and during the pendency of the parenting plan case, he did not allow A.W. to be around Ms. Sweren unsupervised. CP 53-54. The only times that Ms. Sweren was around A.W. was during limited family events and when other individuals were present. CP 54.

The court appointed a guardian ad litem in the parenting plan matter between Mr. Wehnert and Ms. Delaplane. CP 65-83.

The guardian ad litem filed an extensive report. CP 65-83. The guardian ad litem raised issues regarding Ms. Delaplane's mother (Ms. Sweren) due to her struggles with alcohol. CP 54-55.

The 2018 final parenting restricts Ms. Delaplane's ability to reside with A.W. at Ms. Sweren's home insofar as the court found that Ms. Sweren's home is not "stable and appropriate housing." CP 86. The court further restricted Ms. Delaplane from allowing Ms. Sweren (referred to in the final order as "Tammy") to transport A.W. due to a long history of DUI offenses. CP 86.

Ms. Sweren has continued to have extremely limited contacted with A.W. after entry of the final parenting plan between Mr. Wehnert and Ms. Delaplane. Ms. Sweren has not had overnights or unsupervised contact with A.W. after entry of the final parenting plan. CP 55-56. During the limited contact Ms. Sweren had with A.W. she would consistently attempt to undermine Mr. Wehnert's parenting and try to instill ideas in A.W.'s mind which were not true. CP 56-57.

Procedural History

On May 29, 2020 the Appellant filed a petition seeking grand parent visitation with A.W. and alleging that every other weekend visitation between Ms. Sweren and A.W. is in A.W.'s best interest.

Ms. Sweren stated that A.W. will likely suffer harm if the visits are denied. CP 5-10.

The matter came before the trial court on May 7, 2021 for mandatory review. Both Respondents filed declarations in opposition of the petition brought by Ms. Sweren. CP 51-117, 165-170. Ms. Delaplane, Ms. Sweren's daughter, filed a declaration in opposition to the petition which described significant alcohol abuse and concerns regarding the safety of A.W. in the presence of Ms. Sweren. CP 165-170.

On August 9, 2021, the court entered an order dismissing the petition. CP 214. The court found that Ms. Sweren had not shown that it is more likely than not that the Petition for Visits will be granted." CP 214. The trial court further found "The key issue in the Court's analysis, however, is whether the child is likely to suffer harm or the substantial risk of harm if the visitation is denied. The court does not find sufficient and credible allegations have been made in this regard." The court denied setting a full hearing. CP 215.

The Court of Appeals affirmed that trial court's ruling. Ms. Sweren now petitions for review.

II. ARGUMENT

A. THE APPELLANT IMPROPERLY RAISES FOR THE FIRST TIME IN THEIR PETITION TO THIS COURT THE ARGUMENT THAT THE STANDARD IMPOSED IN RCW 26.11.040 IS "UNREASONABLE."

RAP 2.5(a) provides, "The appellate court may refuse to review any claim of error which was not raised in the trial court." Ms. Sweren appears to concede in her petition to this Court that the trial court and Court of Appeals reached the proper legal conclusion based upon current law. However, the Appellant argues that the statute is unreasonable as to the burden it places onto a non-parent. The Appellant fails to argue for any exception that would potentially permit this argument being raised for the first time to this Court and as such the Petition for Review should be denied.

The Appellant does not state with any specificity or legal analysis how the statute is "unreasonable." The Appellant makes no claims that the statute violates Ms. Sweren's constitutional rights but rather the Appellant appears to simply not like the result that the statute mandates in this situation. The Appellant completely dismisses the well established legal and constitutional protections

that a biological parent has when raising their child. The Appellant seems to argue that a presumption in favor of the choices that a biological parent makes as to raising their child is unreasonable in a situation where a non-biological parent is attempting to force contact between them and the child. This is contrary to well established legal principals.

'The court must accord at least some special weight to the parent's own determination." *Troxel et vir. v Granville*, 530 U.S. 57, 70, 120 S.Ct. 2054, 147 L.Ed.2d 49 (2000). RCW 26.11.040 protects a parent's constitutional right to parent their child by addressing the issue raised by the *Troxel* court. The Appellant is requesting that this court now remove those protections. The Supreme Court has consistently held that right to rear one's child and right to family privacy can only be interfered with, "if it appears that parental decisions will jeopardize the health or safety of the child, or have a potential for significant social burdens." *Wisconsin v. Yoder*, 406 U.S. 205, 234, 92 S.Ct. 1526, 32 L.Ed.2d 15 (1972). "Short of preventing harm to the child, the standard of 'best interest of the child' is insufficient to serve as a compelling state interest overruling a parent's fundamental rights. State intervention to better a child's quality of life through third party visitation is not justified

where the child's circumstances are otherwise satisfactory." *In re Custody of Smith*, 969 P.2d 21, 137 Wn.2d 1 (1998). "It is not within the province of the state to make significant decisions concerning the custody of children merely because it could make a 'better' decision." *Id.* The current law in Washington complies with longstanding constitutional protections for a biological parent. The Appellant does not argue that these protections infringe on her constitutional rights in any manner but rather that she simply does not agree with the current law.

B. THE APPELLANT'S PETITION FOR REVIEW DOES NOT RAISE AN ISSUE OF SUBSTANTIAL PUBLIC INTEREST.

RAP 13.4(b) states in part:

> A petition for review will be accepted by the Supreme Court 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. RAP 13.4(b).

The Appellant appears to concede through their briefing that the decision of the Court of Appeals is not in conflict with any decision of the Supreme Court or a published decision from the

Court of Appeals. Furthermore, the Appellant has raised no constitutional questions for this Court to address. The only basis for review that the Appellant alleges is that the petition involves an issue of substantial public interest.

This matter does not involve an issue of substantial public interest. The Appellant's only assignment of error in this matter is that the trial court abused its discretion by dismissing her petition for visitation. See Brief of Appellant (12/30/21) pg. 4. The Appellant does not raise any allegations as to fundamental problems with the statute itself but rather that the court abused its discretion in applying the statute. This is a question specific to the facts of this matter and has no great impact on public interest outside of the parties involved in this case. The Appellant's recent broad claims that the statute itself is "unreasonable" should be barred as there has been no assignment of error to any of these issues and they have not been briefed. This case presents no issues of substantial public interest and as such the Petition should be denied.

C. MR. WEHNERT SHOULD BE AWARDED HIS ATTORNEY FEES FOR RESPONDING TO THIS PETITION.

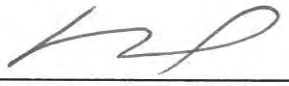
The Respondent should be awarded their fees and costs responding to this petition pursuant to RAP 18.1(j). The Respondent was previously awarded fees and costs by the Court of Appeals based upon RC 26.11.050. The Respondent continues to incur fees responding to this action and respectfully requests an award of all fees incurred.

III. CONCLUSION

The Respondent respectfully requests that this court deny the Petition for Review and award the Respondent their reasonable fees and costs incurred.

DATED this 7th day of October, 2022.

RESPECTFULLY SUBMITTED,



Andrew Helland, WSBA #43181
Attorney for Mr. Wehnert

Certification of Length

I hereby certify that this document contains 1523 words.

Signed at Tacoma, Washington on this 7th day of October, 2022.

Andrew Helland

Declaration of Transmittal

Under penalty of perjury under the laws of the State of Washington I affirm the following to be true:

On this date I transmitted the original document to the Washington State Court of Appeals, Division II by the e–filing portal, and delivered a copy of this document via e–mail to:

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Signed at Tacoma, Washington on this 7th day of October, 2022.

Andrew Helland

HELLAND LAW GROUP

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Transmittal Information

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