FILED
SUPREME COURT
STATE OF WASHINGTON
12/16/2022 4:27 PM
BY ERIN L. LENNON
CLERK

No. 101555-1

THE SUPREME COURT OF WASHINGTON

Court of Appeals No. 383849

Spokane Superior Court No. 21-3-00443-32

In re:

LEIGH BILTOFT,
DANEA BILTOFT,

Petitioners,

and

STACEY BILTE,

Respondent.

PETITION FOR DISCRETIONARY REVIEW

JULIE C. WATTS/WSBA #43729
Attorney for Petitioners
The Law Office of Julie C. Watts, PLLC
505 W. Riverside Ave., Suite 210
Spokane, WA 99201
(509) 207-7615

TABLE OF CONTENTS

I. IDENTITY OF PETITIONER	**1**
II. DECISION BELOW	**1**
III. ISSUE FOR REVIEW	**1**
IV. STATEMENT OF THE CASE	**2**
V. ARGUMENT	**7**
VI. CONCLUSION	**31**

The Law Office of Julie C. Watts, PLLC
505 W. Riverside Ave., Suite 210
Spokane, WA 99201
(509) 207-7615

TABLE OF AUTHORITIES

Cases

Blixt v. Blixt, 437 Mass. 749, 663-64, 774 N.E.2d 1052 (2002) ……………………………………………………………..…17

Custody of Smith, 137 Wn.2d 1, 20. 969 P.2d 21 (1998)……………………………………...…….9,.11, 14, 16

_In re C.S._ No. 37162-0-III (Div. III, 2021)………………..….26

_In re R.J._ No. 38131-2-III (Div. III, 2021)………………..….27

In re Visits with A.S.A., 21 Wn. App 2d 474, 485 (2022) (Pennell, J., concurring)………………….…..11,12, 13, 14, 15, 16

In re Visits with R.V., 14 Wn. App. 2d 211, 225 (2020)…………………………………………..13, 14, 17, 24

In re Marriage of Howard, 661 N.W. 2d at 191 ……………16

Moriarty v. Bradt, 177 N.J. 84, 118-19, 827 A.2d 203 (2003)…………………………………………………12, 17, 21

Naverene, 14 Wn.App. at 214…………..……………………8

Roth v. Weston, 259 Conn. 202, 225-26, 789 A.2d 431 (2002)……………………………………………………………16

The Law Office of Julie C. Watts, PLLC
505 W. Riverside Ave., Suite 210
Spokane, WA 99201
(509) 207-7615

Statutes

RCW 26.11…………………….…………………..………..8, 25, 30

RCW 26.11.020…………………………………………….......8

RCW 26.11.020(2)...…………………………..…………….……8

RCW 26.11.030(5)(b)………………………..…………….16

RCW 26.11.030(8) ………………………..…………...8, 24

RCW 26.11.040(1)(a)………………………..…………8, 16

RCW 26.11.040(2)………………………………………..…9

RCW 26.11.040(3)……………………………..……..9, 24

Rules

RAP 13.4(b)(1)………………….………………..……………9

RAP 13.4(b)(2)………………….………………..………..…11

RAP 13.4(b)(3)………………….……………………………21

RAP 13.4(b)(4)………………….……………………………25

The Law Office of Julie C. Watts, PLLC
505 W. Riverside Ave., Suite 210
Spokane, WA 99201
(509) 207-7615

I. IDENTITY OF PETITIONER

Petitioners, LEIGH and DANEA BILTOFT, are the moving parties.

II. DECISION BELOW

Petitioners seek review of the *Opinion,* entered by Division III on October 11, 2022,[1] and the *Order Denying Motion for Reconsideration* entered on November 17, 2022.[2]

III. ISSUES FOR REVIEW

A. Whether the *Opinion* conflicts with a decision of the Supreme Court per RAP 13.4(b)(1).

B. Whether the *Opinion* conflicts with a published decision of the Court of Appeals per RAP 13.4(b)(2).

C. Whether the *Opinion* involves a significant question of law under the Constitution of the State of Washington or of the United States per RAP 13.4(b)(3).

D. Whether the *Petition* involves an issue of substantial public interest that should be determined by the Supreme Court per RAP 13.4(b)(4).

---

[1] Appendix A.
[2] Appendix B.

The Law Office of Julie C. Watts, PLLC
505 W. Riverside Ave., Suite 210
Spokane, WA 99201
(509) 207-7615

IV. STATEMENT OF THE CASE

The Biltofts requested visitation with their 8-year-old grandson, Eric.[3]

The Parties

Leigh[4] is Eric's paternal grandfather.

Danea is Eric's paternal grandmother.

Jordan is Eric's father.

Stacey is Eric's mother.

Factual History

When Jordan was in high school, he was prescribed opioids; after that, he struggled with substance abuse.[5] After graduating from high school as valedictorian, Jordan went to college where he met Stacey and began a relationship.[6]

---

[3] The *Opinion* adopted "Eric" as a pseudonym; CP 80.
[4] Because three out of four parties share the same last name, first names are used for clarity; no disrespect is intended.
[5] CP 22.
[6] *Id.*

The Law Office of Julie C. Watts, PLLC
505 W. Riverside Ave., Suite 210
Spokane, WA 99201
(509) 207-7615

In 2012, Eric was born.[7] Four months later, Stacey sought mental health intervention and was hospitalized.[8]

Starting in 2013, the Biltofts spent time with Eric on a weekly basis.[9] In 2014, Stacey and Jordan broke up, and Jordan cared for Eric every other weekend and every Wednesday evening; Jordan and Eric lived with the Biltofts.[10]

In late summer of 2014 after Stacey inexplicably missed three court appearances, Jordan discovered that she had been hospitalized again and that Eric had been left in the care of her family without his knowledge.[11] In October, Jordan was granted placement of Eric for several months until Stacey was released.[12] Jordan and Eric lived with the Biltofts, who were very involved in Eric's care and strongly bonded with him.[13]

In 2015, the Biltofts divorced; while they kept separate

---

[7] CP 20.
[8] CP 58.
[9] CP 20-21, 91.
[10] CP 20-21, 105-06.
[11] *Id.*
[12] CP 8, 20-21, 106.
[13] *Id.*

The Law Office of Julie C. Watts, PLLC
505 W. Riverside Ave., Suite 210
Spokane, WA 99201
(509) 207-7615

households, both Leigh and Danea maintained a fully furnished bedroom with clothing, toys, and personal items exclusively for Eric in their homes and have for many years.[14]

In December, Jordan was incarcerated; he was released in March of 2017.[15] During that time, Danea and Leigh exercised Jordan's time with Eric.[16]

In March of 2017, Jordan was released, and supervised visitation was ordered; the Biltofts were named as court-appointed supervisors.[17]

In 2018, the Biltofts were highly engaged with Eric; they threw his birthday party in August, and they bought him his winter coat in September.[18] In December, Jordan was incarcerated again and sent to in-patient treatment.**[19]** While he

---

[14] CP 9, 17, 22, 93.
[15] CP 22, 121.
[16] CP 121, 133.
[17] CP 8, 10, 22, 120-22.
[18] CP 106-07.
[19] *Id.*

The Law Office of Julie C. Watts, PLLC
505 W. Riverside Ave., Suite 210
Spokane, WA 99201
(509) 207-7615

was gone, the Biltofts exercised Jordan's time with Eric.[20]

In 2019, the court ordered that Jordan's residential time be supervised by Danea, Leigh, or Jordan's girlfriend, Michaela.[21]

In 2020, Jordan was arrested three times.[22] On January 11, 2021, Jordan pleaded guilty to domestic violence assault against Michaela; since then, his whereabouts are unknown.[23]

In Jordan's absence, Stacey has not allowed Eric to spend time with the Biltofts outside her presence and the presence of one of her family members.[24] Stacey only permitted Eric to have contact with his grandparents four times from October of 2020 to March of 2021.[25] During one of the "visitations," Stacey inexplicably would not allow Eric to speak to Leigh,[26] and Leigh observed that Eric became visibly uncomfortable as a

---

[20] CP 22-23.
[21] *Id.*
[22] CP 54.
[23] *Id.*
[24] CP 10.
[25] CP 104
[26] CP 94.

The Law Office of Julie C. Watts, PLLC
505 W. Riverside Ave., Suite 210
Spokane, WA 99201
(509) 207-7615

result.[27] Leigh testified: "as a family, we spent the holidays heartbroken," because "[w]e have not only lost Jordan but the vibrant relationship [we] had with [Eric.]"[28]

Procedural History

On March 2, 2021, the Biltofts filed their *Petition for Visits*.[29]

On July 23, 2021, the Superior Court entered its *Order After Review of Petition for Visits.*[30]

The court dismissed the Biltofts' request, concluding that:

> Petitioners have failed to establish that a denial of visitation will likely cause the child to suffer harm or substantial risk of harm. Petitioners seek consistent, unsupervised visitation with the child in longer duration than what [Stacey] is currently permitting. Petitioners wish to assume their son [Jordan's] visitation because he is not exercising visitation. [Stacey] has provided Petitioners visitation; though it is on a less frequent basis than what they would prefer. [Stacey] stated: "I have continued to organize and execute **appropriate** visitation between [K.B.] and his extended family." ([E]mphasis in original.) Additionally, the court is convinced that

[27] *Id.*
[28] CP 18.
[29] CP 4-13.
[30] CP 177-79.

The Law Office of Julie C. Watts, PLLC
505 W. Riverside Ave., Suite 210
Spokane, WA 99201
(509) 207-7615

> [Stacey] will allow additional contact between Petitioners and the child in the form of attendance at school activities and phone calls.

The Superior Court indicated that the Biltofts had "not rebutted with clear and convincing evidence that the child will likely suffer harm or substantial risk of harm if visitation is denied," noting that, "[t]his is especially true because both Petitioners and [Stacey] agree that while Petitioners have been restricted, they have not been prohibited from seeing the child."[31]

The Biltofts appealed.[32]

Decision on Review

On October 11, 2022, Division III affirmed the Superior Court's decision. The Biltofts moved for reconsideration, and their motion was denied on November 17, 2022.

V. ARGUMENT

GOVERNING LAW: In 2018, a new nonparental visitation

---

[31] *Id.*
[32] CP 175-79.

The Law Office of Julie C. Watts, PLLC
505 W. Riverside Ave., Suite 210
Spokane, WA 99201
(509) 207-7615

statute, RCW 26.11 became effective.[33] Pursuant to RCW 26.11.020:

(1) A person who is not the parent of the child may petition for visitation with the child if:

(a) The petitioner has an ongoing and substantial relationship[34] with the child;

(b) The petitioner is a relative of the child or a parent of the child; and

(c) The child is likely to suffer harm or a substantial risk of harm if visitation is denied.

Pursuant to RCW 26.11.040(1)(a):

> At a hearing pursuant to RCW 26.11.030(8), the court shall enter an order granting visitation if it finds that the child would likely suffer harm or the substantial risk of harm if visitation between the petitioner and the child is not granted and that granting visitation between the child and the petitioner is in the best interest of the child.

---

[33] *Navarane*, 14 Wn.App. at 214.

[34] Pursuant to RCW 26.11.020(2): "A person has established an ongoing and substantial relationship with a child if the person and the child have had a relationship formed and sustained through interaction, companionship, and mutuality of interest and affection, without expectation of financial compensation, with substantial continuity for at least two years unless the child is under the age of two years, in which case there must be substantial continuity for at least half of the child's life, and with a shared expectation of and desire for an ongoing relationship."

The Law Office of Julie C. Watts, PLLC
505 W. Riverside Ave., Suite 210
Spokane, WA 99201
(509) 207-7615

Pursuant to RCW 26.11.040(2):

> In making its determination, the court shall consider the respondent's reasons for denying visitation. It is presumed that a fit parent's decision to deny visitation is in the best interest of the child and does not create a likelihood of harm or a substantial risk of harm to the child.

Pursuant to RCW 26.11.040(3):

> To rebut the presumption in subsection (2) of this section, the petitioner must prove by clear and convincing evidence that the child would likely suffer harm or the substantial risk of harm if visitation between the petitioner and the child were not granted.

A. The Opinion conflicts with a decision of the Washington Supreme Court per RAP 13.4(b)(1).

The Opinion conflicts with this Court's decision in *Custody of Smith*, 137 Wn. 2d 1, 20, 969 P.2d 21 (1998), which states:

> [T]he Supreme Court has recognized that, when a child has enjoyed a substantial relationship with a third person, arbitrarily depriving the child of the relationship could cause severe psychological harm to the child.[35]

The Opinion quotes this language in *Smith* and confirms that "Leigh and Danea Biltoft further posit that Eric's losing half of

[35] *In re Custody of Smith*, 137 Wn.2d 1, 20, 969 P.2d 21 (1998).

The Law Office of Julie C. Watts, PLLC
505 W. Riverside Ave., Suite 210
Spokane, WA 99201
(509) 207-7615

his family will wreak unquantifiable loss," after which the Opinion asserts, without citation to authority: "[n]evertheless, a loss does not necessarily equate to harm," and goes on to conclude (without analysis or citation to authority) that "Eric losing contact from his father's extended family does not suffice for a finding of harm."[36] The Opinion simply dismisses the idea that *any* magnitude of loss can *ever* equate to harm simply because *every* loss does not *necessarily* equate to a harm, which is not a reasonable conclusion and stands in direct contradiction to this Court's decision in *Smith.*

The lack of serious consideration only becomes more troubling when the Opinion characterizes the Biltofts' argument as a contention that "their presence would add love and affection afforded Eric and thereby advantage him," and concludes without analysis or citation that "advantages do not equate to the presence of harm without those advantages."[37]

---

[36] Opinion, pg. 11.
[37] *Id.*

The Law Office of Julie C. Watts, PLLC
505 W. Riverside Ave., Suite 210
Spokane, WA 99201
(509) 207-7615

The argument being made here is not that the Biltofts are in a good position to provide material or social benefits to Eric. The Opinion's suggestion that the most intimate, deep, formative familial relationships are mere "advantages" is much the same as saying food, water, and sleep are "advantages." Surely, they *are* advantages, as any starving person would say, but that is not *all* they are. They are also necessities. As *Smith* confirms, the deep psychological and emotional damage that results when children are ripped away from their formative familial attachments goes beyond a mere "benefit." The Opinion's failure to properly distinguish between the acquisition of a benefit versus the loss of a profound family relationship that already exists undermines the credibility of its analysis and conflicts with this Court's decision in *Smith.*

B. The Opinion conflicts with a decision of the Court of Appeals per RAP 13.4(b)(2).

Prior to *In re A.S.A*,[38] no Washington case interpreted the

---

[38] *In re Visits with A.S.A.*, 21 Wn. App. 2d 474, 507 P.3d 28, 33

The Law Office of Julie C. Watts, PLLC
505 W. Riverside Ave., Suite 210
Spokane, WA 99201
(509) 207-7615

statutory requirement that a petitioner demonstrate that denial of visitation will result in harm[39]. The *A.S.A* opinion begins by quoting this Court's ruling from *Smith* confirming that the arbitrary deprivation of a child's substantial relationship with a third party could cause severe psychological harm to the child.[40] The *A.S.A.* decision goes on to state:

> Demonstrating harm from the denial of visitation should focus on the relationship between the petitioner and the child and the harm that will come to the child if they are denied contact with the petitioner. In other words, the petitioner must bring something unique to the child without which the child would suffer harm. *See e.g., Moriarty v. Bradt,* 177 N.J. 84, 118-19, 827 A.2d 203 (2003) **(after children's mother died, maternal grandparents demonstrated that children would suffer harm if they were alienated from their mother's side of the family).**[41]

On page 9, the Opinion quotes this passage *verbatim* with the one exception of the final parenthetical, which it conspicuously removes. This is curious, because this example,

---

(2022) (Pennell, J., concurring).

[39] *Id.*

[40] *Id.*

[41] *Id;* emphasis added.

The Law Office of Julie C. Watts, PLLC
505 W. Riverside Ave., Suite 210
Spokane, WA 99201
(509) 207-7615

which was cited with approval by the *A.S.A* court, is precisely what the Biltofts were arguing, the only difference being that Eric's father has not died, but is rather wholly absent and unlocatable after having descended into heavy drug use for many years at this point. Eric's loss, however, is just as complete, and perhaps worse; he is left to grapple with an explanation for his father's absence, which is a far more complex situation than the one that is presented by death. Eric is left to wonder why his father does not appear to love him or care to see him anymore, which is arguably far more damaging and difficult to navigate psychologically than an absence resulting from death. Eric's loss is all the more because it is exacerbated by the accompanying perception that his grandparents and extended family on his father's side do not appear to love him or care to see him, either.

On pages 9-10, the Opinion cites to *In re R.V.:*

> The petitioner must show more than a child being severed from half of his or her familial heritage. *In re Visits with R.V.*, 14 Wn. App. 2d 211, 225

The Law Office of Julie C. Watts, PLLC
505 W. Riverside Ave., Suite 210
Spokane, WA 99201
(509) 207-7615

> (2020). While a child may benefit from a continuing relationship with his or her extended family members, a petitioner does not demonstrate harm merely by claiming that the child will lose such benefit. *In re Visits with A.S.A.*, 21 Wn. App. 2d 474, 485 (2022) (Pennell, J., concurring).

Eric's situation, however, is distinguishable from the situation discussed in *R.V.* The Biltofts did not argue that the potential harm was that Eric would lose access to the *familial heritage* of half his family; rather, they argued that he would lose his *current substantial relationships that actually existed with half of his existing family.* If the arbitrary deprivation of any significant relationship can cause severe psychological harm to the child, as this Court noted in *Smith,* it stands to reason that the simultaneous arbitrary deprivation of *multiple* significant relationships would be even more harmful. Eric has lost not only his relationships with the Biltofts themselves but *also* his relationships with all of the extended family that the Biltofts facilitated, including aunts, uncles, cousins, etc. Eric's aunt described the relationship between Eric and his cousin as

The Law Office of Julie C. Watts, PLLC
505 W. Riverside Ave., Suite 210
Spokane, WA 99201
(509) 207-7615

"close like brothers since they were toddlers."[42] The Opinion dismisses this argument with explanation, simply saying "Eric losing contact from his father's extended family does not suffice for a finding of harm." The Opinion does not explain why this would be so. The Opinion does not cite to authority for that conclusion or explain why the simultaneous loss of multiple substantial familial relationships "does not suffice for a finding of harm." In making such a statement, the Opinion knowingly contradicts *A.S.A* which specifically cited to a case from another jurisdiction as an example of what would be "something unique to the child without which the child would suffer harm," which was preventing alienation from one parent's side of the family. The Opinion quoted the exact passage of *A.S.A.* that contained this information and conspicuously left that example out.

Even if the Opinion were correct in its assertion that the complete alienation from one half of Eric's substantial family

---

[42] CP 135.

The Law Office of Julie C. Watts, PLLC
505 W. Riverside Ave., Suite 210
Spokane, WA 99201
(509) 207-7615

relationships is not sufficient to show harm *by itself*, that is not the only harm to Eric that is argued in this matter, and all of the harms must be considered collectively because they all collectively and simultaneously impact Eric. The Opinion, without basis in the law, repeatedly refused to holistically assess the *total* potential harm to Eric.

Judge Pennell's concurrence in *A.S.A.* provides more guidance about how to properly conduct such an analysis:

> Rather than the absence of a benefit, or the presence of physical harm, it is apparent that **the type of harm contemplated by statute is emotional or psychological harm.** Arbitrarily depriving a child of a relationship with a close family member can cause "severe psychological harm." *Custody of Smith,* 137 Wash.2d at 20, 969 P.2d 21. To qualify for relief under the child visitation statute, a relative petitioning for visitation must therefore allege and ultimately prove that denying visitation will cause a substantial risk of psychological or emotional harm to a child. RCW 26.11.030(5)(b), .040(1)(a).
>
> Cases from other jurisdictions suggest **the denial of visitation can cause psychological harm when a child and nonparent relative have developed a long-term emotional bond that would be emotionally traumatic to sever.** *See Marriage of Howard,* 661 N.W.2d at 191; *Roth v. Weston*, 259

The Law Office of Julie C. Watts, PLLC
505 W. Riverside Ave., Suite 210
Spokane, WA 99201
(509) 207-7615

Conn. 202, 225-26, 789 A.2d 431 (2002); *Blixt v. Blixt* , 437 Mass. 649, 663-64, 774 N.E.2d 1052 (2002). **Trauma might be especially likely when a child has experienced the death of a parent and continued contact with the deceased parent's family is necessary for grief and healing.** *See Moriarty v. Bradt*, 177 N.J. 84, 117, 827 A.2d 203 (2003). This court has held that deprivation of heritage, alone, is insufficient to show harm under the child visitation statute. *In re Visits with R.V.,* 14 Wash. App. 2d 211, 225, 470 P.3d 531 (2020). **But it is nevertheless a relevant consideration.** Ensuring a child's connection to familial culture and heritage can sometimes be essential to reducing harm, such as when **a child is navigating grief** or a mental illness and the lack of visitation risks stripping the child of critical cultural connections and practices.

In this instance, the Biltofts have demonstrated all of these.

1. A Long-Term Emotional Bond That Would Be Emotionally Traumatic to Sever.

The Biltofts provided extensive evidence detailing how they have been intimately involved with Eric since his birth. They have provided care and stability for him during the recurring absences of both of his biological parents. During several periods when Eric's father was incarcerated, the Biltofts regularly exercised his father's residential time, and the Biltofts

The Law Office of Julie C. Watts, PLLC
505 W. Riverside Ave., Suite 210
Spokane, WA 99201
(509) 207-7615

subsequently supervised Eric's visits with his father by court order. The Biltofts extensively described their deep emotional bonds with Eric throughout his life, and the ways they believed it would be emotionally traumatic to him to sever those bonds. Danea testified that:

> [Eric] is used to and accustomed to time with us on a regular basis. He has lost his father, abruptly. I cannot imagine how confused he is that he is also cut off from Yaya, Papa, Uncle Sean, [cousin], and [cousin] as well.[43]

The Biltofts noted that children who feel rejected or abandoned by family have higher incidents of substance use/abuse and are more likely to be involved in risky behavior and have more mental health issues, such as depression and anxiety.[44] This is the specific assertion that it would be emotionally traumatic to sever their long-term emotional bond with Eric. The Biltofts argued this on appeal in section 3(ii) on page 40, entitled "The Biltofts' relationship with [Eric] was sufficiently substantial that the absence of meaningful contact

---

[43] *Opening Brief,* pg. 20, citing CP 26.
[44] *Id*, citing CP 8.

The Law Office of Julie C. Watts, PLLC
505 W. Riverside Ave., Suite 210
Spokane, WA 99201
(509) 207-7615

would likely cause a psychological or emotional injury," and in a section entitled "Harm to [Eric]" on pages 45-47.

In addition to the long-term emotional bond, the Biltofts also asserted that they had provided rare stability throughout Eric's life. This is unusually important for Eric because both of his biological parents had engaged in significant absences during Eric's young life. The Biltofts had always been consistently present and available to provide Eric with a sense of stability since the time of his birth. Preventing the Biltofts from regular contact not only robs Eric of the long-term emotional connection with them but it also undermines the only continuing stability of support that Eric has experienced throughout his entire life. The Biltofts have always been involved and available. Neither of Eric's biological parents can say the same. The loss of this stability was not addressed in the *Opinion.* If Eric's relationship with the Biltofts is severed, he will have no relationship in his life that has consistently provided him with care and support, and he will lose the

The Law Office of Julie C. Watts, PLLC
505 W. Riverside Ave., Suite 210
Spokane, WA 99201
(509) 207-7615

relationship that has repeatedly been the safety net when his parents have been unable to provide him with care.

2. *Total Loss of a Parent*

As discussed above, Eric's father has not died (to anyone's knowledge), but he has completely and wholly disappeared after descending into serious drug abuse. Eric's loss is no less all-encompassing than if his father had died, while also being significantly more confusing. His unceremonious expulsion from his father's half of the family is no doubt just as confusing. Children frequently conclude that rejection by family members is a reflection of their own deficiencies, lack of value, or unlovable natures, and it is very likely that Eric struggles to understand what occurred that caused his father and his father's family to stop loving him, which is no doubt deeply traumatic.

3. *Half the Family*

The Law Office of Julie C. Watts, PLLC
505 W. Riverside Ave., Suite 210
Spokane, WA 99201
(509) 207-7615

This point has been discussed above. If the loss of heritage is not definitive but a "relevant consideration," surely the loss of many *substantial existing relationships* is entitled to the same level of consideration, particularly given Division III's approving citation to Moriarty v. Bradt, 177 N.J. 84, 118-19, 827 A.2d 203 (2003), which determined that alienation from one side of the family after the loss of a parent was sufficient to demonstrate harm.

The Opinion conflicts with other appellate decision in numerous ways.

C. The *Opinion* involves a significant question of law under the Constitution of the State of Washington or of the United States per RAP 13.4(b)(3).

The question of court-ordered visitation for relatives has always been complex because of the necessary constitutional protections for parents.

On appeal, the Biltofts argued that the trial court applied the wrong standard when it failed to consider whether the Biltofts had asserted facts that they *would, more likely than not*, be able

The Law Office of Julie C. Watts, PLLC
505 W. Riverside Ave., Suite 210
Spokane, WA 99201
(509) 207-7615

to prove by clear and convincing evidence at a *future evidentiary hearing* as required by the statute, and instead considered whether the Biltofts *had already, as a matter of fact,* provided clear and convincing evidence in their *existing affidavits*.[45] The Biltofts noted that the statute makes clear distinctions between (1) the future vs. the present, (2) the "likely" vs. the actual, (3) an affidavit vs. an evidentiary hearing, (4) procedural vs. substantive, and (5) preponderance of the evidence vs. clear and convincing.[46] The Biltofts argued that the trial court had abused its discretion by requiring the Biltofts to meet the clear and convincing standard in their affidavits at the threshold determination when the statute contains no such requirement.[47]

The *Opinion* fails to analyze the question raised by the Biltofts' argument, and instead confuses the statutory framework by referencing the superior court's review of the

---

[45] Opening Brief, pgs. 30-34.
[46] *Id.*
[47] *Id.*

The Law Office of Julie C. Watts, PLLC
505 W. Riverside Ave., Suite 210
Spokane, WA 99201
(509) 207-7615

parties' affidavits as "a threshold determination" but then also referring to the subsequent evidentiary hearing as a "threshold *hearing*."[48] There is no "threshold hearing" in the visitation statute.[49] There is a "threshold review" of the parties' affidavits, which determines whether the matter then proceeds to a later evidentiary hearing, which is the only hearing identified in the statute.[50] The *Opinion* does not actually address the Biltofts' objection regarding the appropriate evidentiary standard to be applied to the evaluation of affidavits, and instead, it creates even more confusion by blurring the lines between two very different stages of the analysis (the threshold determination and the subsequent evidentiary hearing).[51]

The *Opinion* asserts that "[o]ur ruling with regard to the burden of proof at the threshold stage comports with our

---

[48] *Opinion,* pg. 8.
[49] *Id.*
[50] *Id.*
[51] *Id.*

The Law Office of Julie C. Watts, PLLC
505 W. Riverside Ave., Suite 210
Spokane, WA 99201
(509) 207-7615

decision in *In re Visits with R.V.*, 14 Wn. App. 2d 211, 470 P.3d 531 (2020)."[52] A review of *R.V.*, however, only creates further confusion. The *R.V.* court indicates that "the petitioning relative will not receive an evidentiary hearing without first showing, by clear and convincing evidence, that the court will more likely than not order visitation."[53] This is not what the statute requires. A petitioner is absolutely *not* required by statute to present clear and convincing evidence to show that the court will likely order visitation. Clear and convincing evidence is to be submitted to show that the child will be subject to risk of harm if visitation is not ordered.[54] The standard that applies to the likelihood of success at the evidentiary hearing is "more likely than not" or preponderance of the evidence.[55]

---

[52] *Id.*
[53] *In re R.V.*, 14 Wn.App. 2d 211, 222-23, 470 P.3d 531 (2020).
[54] RCW 26.11.040(3).
[55] RCW 26.11.030(8).

The Law Office of Julie C. Watts, PLLC
505 W. Riverside Ave., Suite 210
Spokane, WA 99201
(509) 207-7615

The procedural analysis contained in RCW 26.11 is unusually complex and is not being consistently applied by courts of appeal; guidance by this Court is necessary to ensure that the constitutional rights of parents are protected *and* petitioners seeking visitation rights are treated fairly and consistently by courts.

D. The *Petition* involves an issue of substantial public interest that should be determined by the Supreme Court per RAP 13.4(b)(4).

In the last four years since it became effective in 2018, there have been eight decisions referencing RCW 26.11. Of those eight cases, *seven* were decided by Division III, and one by Division II. Every opinion affirmed the trial court's decision to deny the petition prior to hearing. Only two were published. A review of the unpublished cases conveys the strong impression that there are no circumstances that the Court of Appeals would find sufficient to show a likely risk of harm, despite the plain language of the statute.

The most compelling examples are the following cases from

The Law Office of Julie C. Watts, PLLC
505 W. Riverside Ave., Suite 210
Spokane, WA 99201
(509) 207-7615

Division III:

In re C.S., No. 37162-0-III (Div. III, 2021). C.S. was born in 2006, and his parents placed him with Juan and Dena, his paternal grandparents, so they could "get their lives together."[56] From then on, C.S. lived with Juan and Dena until he was 12.[57] Juan and Dena fulfilled all the caretaking requirements of parents for C.S., and Dena sometimes referred to herself as C.S.'s mother.[58] For some time, C.S. called Dena and Juan "mom and dad" and believed his father, Joseph, was his brother.[59] In 2018, Joseph had gotten married and was assisting his new wife with her two children and wanted to strength his relationship with C.S., so over Juan and Dena's objections, he transitioned C.S. to his care.[60] Juan and Dena filed for visitation in 2019.[61] They argued that they had raised C.S. for

---

[56] *In re C.S., No. 37162-0-III (Div. III, 2021), pg. 1.*
[57] *Id.*
[58] *Id.*
[59] *Id.*
[60] *Id.*
[61] *Id.*

The Law Office of Julie C. Watts, PLLC
505 W. Riverside Ave., Suite 210
Spokane, WA 99201
(509) 207-7615

all his life in their home and that C.S. was bonded to them and to a young cousin.[62] Division III found that the trial court was justified in denying Juan and Dena's petition because Joseph presented evidence that C.S. was currently thriving under his and his wife's care which "suggested that C.S. was doing very well despite the lack of visitation with his paternal grandparents."[63]

***In re R.J.*, No. 38131-2-III (Div. III, 2022).**

Randy and Diana Jones were the paternal grandparents of RJ, who has significant medical needs.[64] Division III agreed that the Jones' petition "alleged facts that showed a very strong bond between R.J. and them."[65] R.J. was born in January of 2019 with several birth defects resulting from his mother's drug use, and when he was two months old, a dependency court placed RJ with the Jones after he was removed from his

---

[62] *Id, pg. 6.*
[63] *Id.,* pg. 6.
[64] *In re R.J.*, No. 38131-2-III (Div. III, 2022), pg. 1.
[65] *Id.*

The Law Office of Julie C. Watts, PLLC
505 W. Riverside Ave., Suite 210
Spokane, WA 99201
(509) 207-7615

mother's care.[66]

R.J. was returned to his mother's care in July of 2019, but the Jones continued to assist with childcare for R.J., seeing him twice a day, frequently caring for him overnight, and staying in the hospital with him during and after his August surgery.[67]

In September of 2019, R.J.'s mother was arrested for DUI, and R.J. was placed with the Jones where he remained until March of 2020.[68] Because of R.J.'s medical issues, the parties stipulated that when R.J.'s mom needed childcare, the Jones would provide it, and the Jones cared for R.J. for three or four days each week during this period, including overnights.[69] The dependency ended in September of 2020; however, the Jones continued to provide substantial care for R.J. after the dependency, including multiple overnight visits per week. In mid-November of 2020, R.J.'s mom got a new boyfriend and

---

[66] *Id., pgs. 1-2.*
[67] *Id.*
[68] *Id., pg. 3.*
[69] *Id.*

The Law Office of Julie C. Watts, PLLC
505 W. Riverside Ave., Suite 210
Spokane, WA 99201
(509) 207-7615

no longer wanted the Jones involved with R.J.

Division III dismissed evidence of R.J.'s distress and ignored the Jones' argument that given the likelihood of a relapse by R.J.'s mom, it would be important that R.J. have a strong relationship with other caregivers who could step in and provide for his significant medical needs.[70] Division III concluded that "[o]ne simply does not know, by clear and convincing evidence, whether a child less than two years of age is at substantial risk of emotional or psychological harm by the denial of nonparental visitation with a close caregiver."[71]

The number of ongoing appeals related to this statute confirms that judges and litigants are battling significant confusion as to what the law actually intends, both procedurally and substantively. These questions can only be appropriate resolved by the Washington Supreme Court and ought to be addressed as a matter of substantial public interest.

---

[70] *Id.,* pgs. 10-14.
[71] *Id.*

The Law Office of Julie C. Watts, PLLC
505 W. Riverside Ave., Suite 210
Spokane, WA 99201
(509) 207-7615

VI. CONCLUSION

The trial court erred when it dismissed the Biltofts' petition without conducting an evidentiary hearing. This Court should reverse the trial court's decision and remand it for an evidentiary hearing pursuant to RCW 26.11.

The undersigned certifies that the foregoing brief contains 4,764 words not including the appendices, title sheet, table of contents, table of authorities, certificate of service, signature blocks, and this certification of compliance.

RESPECTFULLY submitted this 16th day of December, 2022:

s/Julie C. Watts
WSBA #43729
The Law Office of Julie C. Watts, PLLC
505 W. Riverside Ave., Suite 210
Spokane, WA 99201
Telephone: (509) 207-7615
Fax: (509) 352-1929
E-mail: julie@watts-at-law.com

CERTIFICATE OF ATTORNEY

I certify that on December 16, 2022, I arranged for delivery of a copy of the foregoing PETITION FOR REVIEW to the following:

Attorney for Stacey Bilte	__X__ Via Email
Mason Maxey	
Maxey Law Office	__X__ U.S. Mail
1835 W. Broadway Ave.	
Spokane, WA 99201	
masonm@maxeylaw.com	

s/Julie C. Watts
WSBA #43729
The Law Office of Julie C. Watts, PLLC
505 W. Riverside Ave., Suite 210
Spokane, WA 99201
Telephone: (509) 207-7615
Fax: (509) 352-1929
E-mail: julie@watts-at-law.com

THE LAW OFFICE OF JULIE C. WATTS, PLLC

December 16, 2022 - 4:27 PM

Filing Petition for Review

Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	Case Initiation
Appellate Court Case Title:	In re: Leigh Biltoft and Danea Biltoft v. Jordan Biltoft and Stacey Bilte (383849)

The following documents have been uploaded:

- PRV_Petition_for_Review_20221216162203SC923936_4829.pdf
  This File Contains:
  Petition for Review
  The Original File Name was BILTOFT Petition for Review.pdf

A copy of the uploaded files will be sent to:

- christy@maxeylaw.com
- masonm@maxeylaw.com

Comments:

Sender Name: Elena Manley - Email: elena@watts-at-law.com
Filing on Behalf of: Julie Christine Watts - Email: julie@watts-at-law.com (Alternate Email:)

Address:
505 W. Riverside Ave.,
Suite 210
Spokane, WA, 99201
Phone: (509) 207-7615

Note: The Filing Id is 20221216162203SC923936

FILED
OCTOBER 11, 2022
In the Office of the Clerk of Court
WA State Court of Appeals Division III

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

In the Matter of the Visits with: K.B., LEIGH BILTOFT, DANEA BILTOFT, Appellants. v. JORDAN BILTOFT, STACEY BILTE, Respondents.	No. 38384-9-III UNPUBLISHED OPINION

FEARING, J. — Leigh and Danea Biltoft appeal from the superior court's summary dismissal of their petition for court-mandated visitation with their grandson. The Biltofts argue that the trial court erred in dismissing the petition without holding an evidentiary hearing. Because the Biltofts' petition failed to allege that the child would likely suffer harm or risk substantial harm due to a lack of grandparent visitation, we affirm the dismissal.

FACTS

The facts reach us by way of conflicting affidavit testimony. We narrate some of the facts presented by both parties.

Jordan Biltoft (Jordan) and Stacey Bilte (Bilte) begot "Eric," a pseudonym. The two parents entered a parenting plan, which granted Jordan residential time with Eric during every other weekend and every Wednesday overnight.

During an unidentified period of time, Jordan Biltoft lived with his parents, Leigh and Danea Biltoft. Therefore, when Jordan exercised residential time with Eric, Eric lived with his grandparents.

Jordan Biltoft struggled with drug use and a mental health illness. In late September 2020, Jordan encountered Stacey Bilte, Eric, and Bilte's brother in a parking lot. Jordan drove his car aggressively toward the trio, screamed, and threatened Stacey's brother. Law enforcement arrested Jordan following the confrontation.

No one currently knows Jordan Biltoft's location. In December 2020, Leigh and Danea Biltoft spotted Jordan living homeless in downtown Spokane, but he fled before they could approach him.

After Jordan Biltoft scarpered, Stacey Bilte continued to permit Eric limited visitation with Leigh and Danea Biltoft. Bilte remained present during the visits and sometimes brought a relative with her. The parties diverge in their retellings of these visits. The Biltofts characterize the visits as affable and claim they are supportive of Bilte as a parent. Bilte and her relatives characterize the grandparents as rude, aggressive, and controlling. Neither party divulges what, if any, visitation the Biltofts now enjoy.

PROCEDURE

Leigh and Danea Biltoft filed a petition for visitation with Eric. In addressing how Eric would likely suffer harm or a substantial risk of harm without visitation, the Biltofts wrote:

> There is no question that [Eric] loves his father and has suffered a substantial loss with his absence, through no fault of his own. The loss was abrupt and confusing for him. There is no question [Eric] is grieving that loss. It would be tragic for [Eric] to also lose half of his family, his grandparents, uncle, aunt, and cousins. [Eric] spent every other weekend with this family for many years. It is difficult to quantify the loss that he will suffer if those relationships are not allowed to continue. [Eric] deserves to have love of his whole family. . . . [Eric] would suffer a loss of half of his family if we are not granted some visitation with him to ensure that he continues to have a relationship with us and can assure him that he is loved by everyone, and his father's illness is not his fault and does not mean that he does not love [Eric]. . . .
>
> We only want what is best for [Eric], to help him, by supporting his mother. Children that feel rejected or who feel that they have been abandoned by family have higher incidents of substance use/abuse as they grow and mature. They are involved in risky behaviors and have more mental health issues such as depression and anxiety. Now more than ever, it is important for [Eric] to experience the love and affection of his family. As his grandparents, we can provide him some important advantages to his life.

Clerk's Papers (CP) at 8.

After reviewing affidavits from the parties and their witnesses, the superior court denied the petition for visitation. The court concluded that Leigh and Danea Biltoft had "not rebutted [supported] with clear and convincing evidence that the child will likely suffer harm or substantial risk of harm if visitation is denied." CP at 174. According to

the superior court, a "history of distrust" between Stacey Bilte and the Biltofts legitimized Bilte's concerns about additional visitation. CP at 173. The court predicted that Bilte will continue to afford some visitation.

LAW AND ANALYSIS

On appeal, Leigh and Danea Biltoft argue that the superior court committed both procedural error and substantive error. According to the Biltofts, the court employed a mistaken burden of proof at the threshold hearing, failed to consider possible future testimony, ignored their evidence, and reached the wrong decision as to whether Eric will suffer harm without visitation with his grandparents. We reject all arguments.

Chapter 26.11 RCW, adopted in 2018, controls visitation between a relative and a child against a parent's wishes. The substantive statute, RCW 26.11.020, declares:

> (1) A person who is not the parent of the child may petition for visitation with the child if:
> (a) The petitioner has an ongoing and substantial relationship with the child;
> (b) The petitioner is a relative of the child or a parent of the child; and
> *(c) The child is likely to suffer harm or a substantial risk of harm if visitation is denied.*
> (2) A person has established an ongoing and substantial relationship with a child if the person and the child have had a relationship formed and sustained through interaction, companionship, and mutuality of interest and affection, without expectation of financial compensation, with substantial continuity for at least two years unless the child is under the age of two years, in which case there must be substantial continuity for at least half of the child's life, and with a shared expectation of and desire for an ongoing relationship.

(Emphasis added.) This appeal focuses on whether Leigh and Danea Biltoft presented sufficient facts to satisfy the element of harm or substantial risk of harm under subsection (1)(c).

A rare procedure that includes a sufficient evidence determination by the superior court applies to a petition for nonparental visitation. We label this hearing a threshold hearing. RCW 26.11.030 reads, in pertinent part:

> (5) The petitioner must file with the petition an affidavit alleging that:
> (a) A relationship with the child that satisfies the requirements of RCW 26.11.020 exists or existed before action by the respondent; and
> (b) The child would likely suffer harm or the substantial risk of harm if visitation between the petitioner and child was not granted.
> (6) The petitioner shall set forth facts in the affidavit supporting the petitioner's requested order for visitation.
> (7) The petitioner shall serve notice of the filing to each person having legal custody of, or court-ordered residential time with, the child. A person having legal custody or residential time with the child may file an opposing affidavit.
> *(8) If, based on the petition and affidavits, the court finds that it is more likely than not that visitation will be granted, the court shall hold a hearing.*

(Emphasis added.)

RCW 26.11.030(8) implies that, if the superior court finds, during the threshold hearing, the petitioner will not likely succeed at an evidentiary hearing, the court must dismiss the petition. In *Davis v. Cox*, 183 Wn.2d 269, 351 P.3d 862 (2015), *abrogated on other grounds by Maytown Sand & Gravel, LLC v. Thurston County*, 191 Wn.2d 392, 423 P.3d 223 (2018), the Washington Supreme Court declared unconstitutional, based on

the right to a jury trial, a similar threshold summary procedure adopted by one of the state's Strategic Lawsuit Against Public Participation statutes. Nevertheless, a party lacks any right to a jury trial on a nonparental visitation petition. Leigh and Danea Biltoft do not seek to invalidate chapter 26.11 RCW.

A third statute, within chapter 26.11 RCW, RCW 26.11.040 presents rules for the a later evidentiary hearing, assuming the court grants the hearing:

> (1)(a) At a hearing pursuant to RCW 26.11.030(8), the court shall enter an order granting visitation if it finds that the child would likely suffer harm or the substantial risk of harm if visitation between the petitioner and the child is not granted and that granting visitation between the child and the petitioner is in the best interest of the child.
>
> (b) An order granting visitation does not confer upon the petitioner the rights and duties of a parent.
>
> (2) In making its determination, the court shall consider the respondent's reasons for denying visitation. *It is presumed that a fit parent's decision to deny visitation is in the best interest of the child and does not create a likelihood of harm or a substantial risk of harm to the child.*
>
> *(3) To rebut the presumption in subsection (2) of this section, the petitioner must prove by clear and convincing evidence that the child would likely suffer harm or the substantial risk of harm if visitation between the petitioner and the child were not granted.*
>
> (4) If the court finds that the petitioner has met the standard for rebutting the presumption in subsection (2) of this section, or if there is no presumption because no parent has custody of the child, the court shall consider whether it is in the best interest of the child to enter an order granting visitation. The petitioner must prove by clear and convincing evidence that visitation is in the child's best interest. In determining whether it is in the best interest of the child, the court shall consider the following, nonexclusive factors:
>
> (a) The love, affection, and strength of the current relationship between the child and the petitioner and how the relationship is beneficial to the child;

> (b) The length and quality of the prior relationship between the child and the petitioner before the respondent denied visitation, including the role performed by the petitioner and the emotional ties that existed between the child and the petitioner;
> (c) The relationship between the petitioner and the respondent;
> (d) The love, affection, and strength of the current relationship between the child and the respondent;
> (e) The nature and reason for the respondent's objection to granting the petitioner visitation;
> (f) The effect that granting visitation will have on the relationship between the child and the respondent;
> (g) The residential time-sharing arrangements between the parties having residential time with the child;
> (h) The good faith of the petitioner and respondent;
> (i) Any history of physical, emotional, or sexual abuse or neglect by the petitioner, or any history of physical, emotional, or sexual abuse or neglect by a person residing with the petitioner if visitation would involve contact between the child and the person with such history;
> (j) The child's reasonable preference, if the court considers the child to be of sufficient age to express a preference;
> (k) Any other factor relevant to the child's best interest; and
> (l) The fact that the respondent has not lost his or her parental rights by being adjudicated as an unfit parent.

(Emphasis added.)

RCW 26.11.040 imposes on the petitioner a clear, cogent, and convincing burden of proof for the evidentiary hearing. RCW 26.11.030(8) imposes no intermediate evidentiary burden for the threshold hearing. For this reason, Leigh and Danea Biltoft challenge the superior court's decision as misapplying their burden of proof when writing that they did not rebut Stacey Bilte's evidence with clear, cogent, and convincing proof. We disagree. We conclude that the superior court, when conducting the threshold hearing, must reflect on this higher burden of proof in order to discern whether the court

would later more likely than not grant visitation. Such a threshold determination demands that the superior court assess whether the petitioners, through their affidavits, rebutted opposing affidavits with regard to potential harm to the child.

The requirement of a threshold hearing and a clear, cogent, and convincing evidence burden of proof fulfill the principle that parents have a fundamental liberty right to autonomy in child rearing decisions. *In re Custody of Smith*, 137 Wn.2d 1, 13, 969 P.2d 21 (1998), *aff'd sub nom. Troxel v. Granville*, 530 U.S. 57, 120 S. Ct. 2054, 147 L. Ed. 2d 49 (2000) (plurality opinion). Also, a full hearing on a deficient petition needlessly subjects all parties to increased litigation costs. Our ruling with regard to the burden of proof at the threshold stage comports with our decision in *In re Visits with R.V.*, 14 Wn. App. 2d 211, 470 P.3d 531 (2020).

Leigh and Danea Biltoft also contend that the trial court should have considered that they would have introduced additional evidence at a later evidentiary hearing. We again disagree. We do not expect the court at the threshold hearing to consider the various hypothetical developments that may unfold at a hearing. The visitation statute provides a procedure, during which the court makes an initial determination at a threshold hearing based solely on the parties' pleadings. The parties bear responsibility at the threshold stage to advance all relevant supporting evidence.

Leigh and Danea Biltoft next argue that the trial court did not weigh the evidence presented by both parties. We differ. The superior court's order disclosed that the court

reviewed the Biltofts' petition and all declarations, documents, and affidavits submitted by the parties. In any event, the court's ultimate conclusion rested on the Biltofts' failure to allege harm. This finding did not require the court to undertake an extensive analysis of the parties' conflicting testimony because it followed from the inadequacy of the Biltofts' petition. We proceed to analyze this failure and the Biltofts' contention that they presented sufficient facts of harm.

Demonstrating harm from the denial of visitation should focus on the relationship between the petitioner and the child and the harm that will come to the child if they are denied contact with the petitioner. *In re Visits with A.S.A.*, 21 Wn. App. 2d 474, 482, 507 P.3d 28 (2022). In other words, the petitioner must bring something unique to the child without which the child would suffer harm. *In re Visits with A.S.A.*, 21 Wn. App. 2d 474, 482 (2022). Continued contact with the nonparent must be necessary to prevent the harm alleged. *In re Visits with A.S.A.*, 21 Wn. App. 2d at 482. This test differs from whether the custodial parent causes harm. *In re Visits with A.S.A.*, 21 Wn. App. 2d at 482.

Belief that visitation might better a child's quality of life is insufficient to justify state intervention. *In re Custody of Smith*, 137 Wn.2d 1, 20 (1998). The petitioner must show more than a child being severed from half of his or her familial heritage. *In re Visits with R.V.*, 14 Wn. App. 2d 211, 225 (2020). While a child may benefit from a continuing relationship with his or her extended family members, a petitioner does not demonstrate harm merely by claiming that the child will lose such benefit. *In re Visits*

with A.S.A., 21 Wn. App. 2d 474, 485 (2022) (Pennell, J., concurring). Nevertheless, the Supreme Court has recognized that, when a child has enjoyed a substantial relationship with a third person, arbitrarily depriving the child of the relationship could cause severe psychological harm to the child. *In re Custody of Smith*, 137 Wn.2d 1, 20 (1998).

The statutory requirement that a visitation petitioner show harm or likelihood of harm to a child, in addition to the intermediate burden of proof, has its roots in constitutional principles. In order to overcome the presumption that a parent acts in his or her child's best interests, a nonparental relative is constitutionally required to show that a lack of visitation will harm the child. *In re Parentage of C.A.M.A.*, 154 Wn.2d 52, 64, 109 P.3d 405 (2005).

In *In re Custody of Smith*, 137 Wn.2d 1 (1998), the Washington Supreme Court held that a nonparental visitation statute may override a decision of a parent when the decision would harm the child. The Supreme Court invalidated the nonparental visitation statute in force at the time because it required only a showing that visitation would be in the best interest of the child. The petitioner did not have to prove harm as a result of the discontinuation of visitation. Our high court reaffirmed the requirement that a petitioner prove harm in *Parentage of C.A.M.A.*, 154 Wn.2d 52, 64 (2005). The Washington Supreme Court struck down a revived nonparental visitation statute, in part, because the statute again failed to require any showing of harm to the child. When, thirteen years after *Parentage of C.A.M.A.*'s publication, the legislature reinstituted a procedure by

which a nonparent may petition for visitation with a child, the new law included a requirement that petitioners demonstrate harm or likelihood of harm to a child should visitation be denied. RCW 26.11.040(3).

Leigh and Danea Biltoft's petition highlighted potential harms Eric faces from an absent father. The Biltofts claimed a missing father places Eric at greater risk of substance abuse, mental illness, and risky behavior. Leigh and Danea Biltoft further posit that Eric's losing half of his family will wreak unquantifiable loss. Nevertheless, a loss does not necessarily equate to harm. More importantly, the law cannot remedy harm to Eric following his father's abandonment. Such harm would not result from Eric's inability to visit his grandparents. Eric losing contact from his father's extended family does not suffice for a finding of harm.

Leigh and Danea Biltoft also contend their presence would add to the love and affection afforded Eric and thereby advantage him. Nevertheless, advantages do not equate to the presence of harm without those advantages.

Leigh and Danea Biltoft challenge the superior court's finding that Stacey Bilte will allow some visitation for the grandparents with Eric. We need not resolve this contention since the superior court possessed sufficient cause to dismiss the petition when concluding that the Biltofts had failed to allege harm.

This court reviews a trial court's determination at the threshold stage for abuse of discretion. The superior court abuses discretion if a decision is manifestly unreasonable

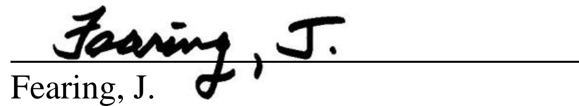
or based on untenable grounds or untenable reasons. *In re Visits with R.V.*, 14 Wn. App. 2d 211, 219-21 (2020). We find no abuse of discretion.

Stacey Bilte requests attorney fees on appeal. RAP 18.1(a) grants a party the right to recover reasonable attorney fees if provided by applicable law. Bilte fails to cite any applicable law in her briefing. Therefore, we deny the request.

CONCLUSION

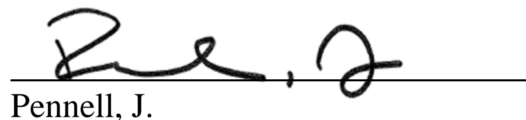
We affirm the dismissal of Leigh and Danea Biltoft's petition for visitation with their grandson. We deny Stacey Bilte's requests for attorney fees.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.



Fearing, J.

WE CONCUR:



Pennell, J.

Staab, J.

Tristen L. Worthen
Clerk/Administrator

(509) 456-3082
TDD #1-800-833-6388

The Court of Appeals of the State of Washington
Division III

500 N Cedar ST
Spokane, WA 99201-1905

Fax (509) 456-4288
http://www.courts.wa.gov/courts

October 11, 2022

Mason Jerome Maxey
Maxey Law Office, PLLC
1835 W Broadway Ave
Spokane, WA 99201-1819
masonm@maxeylaw.com

Julie Christine Watts
The Law Office of Julie C. Watts, PLLC
505 W Riverside Ave Ste 210
Spokane, WA 99201-0518
julie@watts-at-law.com

CASE # 383849
In re: Leigh Biltoft and Danea Biltoft v. Jordan Biltoft and Stacey Bilte
SPOKANE COUNTY SUPERIOR COURT No. 2130044332

Counsel:

Enclosed please find a copy of the opinion filed by the court today. A party need not file a motion for reconsideration as a prerequisite to discretionary review by the Supreme Court. RAP 13.3(b); 13.4(a).
If a motion for reconsideration is filed, it should state with particularity the points of law or fact which the moving party contends the court has overlooked or misapprehended, together with a brief argument on the points raised. RAP 12.4(c). Motions for reconsideration which merely reargue the case should not be filed.

Motions for reconsideration, if any, must be filed within twenty (20) days after the filing of the opinion. Please file the motion electronically through the court's e-filing portal or, if in paper format, only the original motion need be filed. If no motion for reconsideration is filed, any petition for review to the Supreme Court must be filed in this court within thirty (30) days after the filing of this opinion. The motion for reconsideration and petition for review must be received (not mailed) on or before the dates they are due. RAP 18.5(c).

Sincerely,

Tristen Worthen
Clerk/Administrator

TW/sh
Enc.

c: **E-mail** Hon. Charnelle M. Bjelkengren