No. 936781

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, DEPARTMENT OF SOCIAL AND HEALTH SERVICES,

Respondent,

vs.

HOLLY R. SNYDER,

Appellant.

MEMORANDUM OF AMICUS CURIAE NORTHWEST JUSTICE PROJECT IN SUPPORT OF PETITION FOR REVIEW

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I. INTRODUCTION

The Department of Social and Health Services failed to provide due process when it knew that its method of service did not inform Holly Snyder of its action against her and then took no "additional reasonable steps" to provide her with notice, in violation of the United States Supreme Court's directive in *Jones v. Flowers.*[1] This Court should grant review because neither party nor the lower court cited this controlling precedent, and it is determinative of the outcome in this case. Review is also a matter of public interest since Ms. Snyder and many other people in her situation will suffer the permanent impacts of abuse and neglect findings, including being barred for life from many occupations, without notice or opportunity to be heard.

II. IDENTITY AND INTEREST OF AMICUS

The identity and interest of Amicus, Northwest Justice Project, is set forth in its Motion filed pursuant to RAP 13.4(h) and RAP 10.6.

III. STATEMENT OF CASE

Amicus relies on the Court of Appeals recitation of facts set out in its decision of June 2, 2016.

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[1] 547 U.S. 220, 126 S.Ct. 1708, 164 L.Ed.2d 415 (2006).

IV. ARGUMENT

Northwest Justice Project urges this Court to accept review because the published Court of Appeals decision: (1) involves a significant question of law under the United States and Washington Constitutions; and (2) is of substantial public interest because it unfairly affects low income individuals and misapplies the law. RAP 13.4(b)(3), (4).

A. THE COURT OF APPEALS DECISION ERODES DUE PROCESS PROTECTIONS

The Fourteenth Amendment of the United States Constitution and Article 1, Section 3 of the Washington Constitution, guarantee citizens will not be deprived of life, liberty, or property without due process of law.[2] Procedural due process imposes constraints on government decisions that deprive individuals of property interests within the meaning of the Due Process Clause of the Fourteenth Amendment.[3] An elementary and fundamental due process principle is notice and opportunity to be heard.[4]

1. Notice Must Be Reasonably Calculated Under All of the Circumstances to Apprise Interested Parties of the Pendency of Adverse Action.

The United States Supreme Court has often held that notice is inadequate when the state ignores unique information it has about the

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[2] Ms. Snyder has a liberty interest to work in her chosen field. *Ryan v. Dep't of Soc. & Health Servs.*, 171 Wn. App. 454, 471, 287 P.3d 629 (2012).
[3] *Mathews v. Eldridge*, 424 U.S. 319, 332, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976).
[4] *Robinson v. Hanrahan*, 409 U.S. 38, 39-40, 93 S. Ct. 30, 34 L. Ed. 2d 47 (1972).

recipient, even when the statutorily prescribed notice procedure meets constitutional muster.[5] Even where the notice is statutorily compliant, it may still be inadequate if the State has unique information indicating that the delivery method is not reasonably calculated to inform the recipient.[6] Notice is reasonably calculated if the means employed are "such as one desirous of actually informing the absentee might reasonably adopt to accomplish it."[7]

In *Jones v. Flowers*, the U.S. Supreme Court ruled that when a state's procedures for providing notice promptly informs the state that notice has not been successful, the state must take "additional reasonable steps" to inform the person of the action.[8] That case concerned, as in this case, certified mail returned unclaimed to the state. The Court held:

> We do not think that a person who actually desired to inform a real property owner of an impending tax sale of a house he owns would do nothing when a certified letter sent to the owner is returned unclaimed. ...
>
> In response to the returned form . . . the State did nothing. For those reasons, we conclude the State should have taken additional reasonable steps to notify Jones, if practicable to do so.[9]

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[5] *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314, 70 S. Ct. 652, 94 L.Ed. 865(1950); *Jones*, 547 U.S. at 220; *Robinson*, 409 U.S. at 38; *Covey v. Town of Somers*, 351 U.S. 141, 76 S. Ct. 724, 100 L. Ed. 1021 (1956).
[6] *Robinson*, 409 U.S. at 40; *see also Ryan*, 171 Wn. App. 454 (2012).
[7] *Mullane*, 339 U.S. at 315.
[8] *Jones*, 547 U.S. at 225.
[9] *Id.* at 229, 234.

In no uncertain terms, the Court ruled that a state's knowledge of an unclaimed certified letter, promptly returned, compelled it to take further reasonable actions to satisfy due process.[10] The Court specifically rejected the argument that the failure of a person to keep the government apprised of their address or general knowledge of an impending deprivation does not forfeit that person's right to procedural due process or relieve the state of its constitutional duty to provide adequate notice.[11]

As in *Jones*, the Department in this case knew Ms. Snyder did not receive notice of the internal review decision because its certified notice letter was returned "unclaimed".[12] The Department knew how to reach her by phone and at her mother's house.[13] Despite this, the Department made no further attempt to contact Ms. Snyder by phone, personal service, or at her mother's house after receiving the unclaimed letter.[14] Ms. Snyder's inactions did not relieve the Department of its constitutional duty to provide her with adequate notice. Given the permanent impact of the finding, attempting to reach Ms. Snyder by phone or even to resend the letter were both reasonable and practicable under the circumstances.[15]

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[10] *Jones*, 547 U.S at 229, 234
[11] *Id.* at 232.
[12] AR 49.
[13] CP 30.
[14] AR 3.
[15] Ms. Snyder changed her address two weeks after she moved. AR 36.

Since the Department had actual knowledge that the notice of its internal review decision had not been received, it had a duty to determine whether reasonable additional steps to notify Ms. Snyder of the outcome would have been successful.[16] However, the Department did nothing.

2. Allowing Constructive Notice in Administrative Finding Cases Violates Due Process

"Constructive notice" is not adequate notice in this case. The Court of Appeals relied on two assumptions when holding that Ms. Snyder had constructive notice of the internal review decision. First, the Court relied on a strict application of the notice provisions in RCW 26.44.125 and WAC 388-15-097. Second, the Court assumed that notice that is due to a person involved in a temporary driver license suspension is the same as the notice due to a person permanently deprived of their liberty interest to work in their chosen field. These assumptions violate due process.

a. The statutory notice provisions only set a basic minimum for due process, but do not relieve the State of its duty to provide constitutionally adequate notice

The notice provisions of RCW 26.44.125 and WAC 388-15-097 establish the minimum statutory requirements for how notice of internal review decisions are to be given. They are not the constitutional limit of what is required when the State has *actual knowledge* that the statutory

[16] *Ryan*, 171 Wn. App. at 475.

notice process failed.[17] The legislative means of providing notice must give way to constitutionally required efforts that are "reasonably calculated" to provide notice. "Constructive Notice" is simply not an allowable standard in this instance.

b. Application of constructive notice violates due process when the deprivation is permanent

The Court of Appeals relied on *State v. Vahl* [18] to find that Ms. Snyder had constructive notice of the outcome of the internal review. However, applying a constructive notice standard violates due process where the deprivation affected by a finding of abuse or neglect is permanent and severe. In this case, the State was required to do more when it knew the notice was not received.

Vahl addressed whether a criminal conviction is valid if the defendant lacked actual notice of the illegality of the alleged conduct: driving when her license had been revoked. The case did not concern whether Ms. Vahl had a due process right to a hearing to challenge the accusation in the first place. The holding in *Vahl* is roughly equivalent to the accepted axiom that "ignorance of the law is no excuse."[19] This case is

[17] The Department itself sets stricter standards in other situations such as when it is working with a parent. *See* WAC 388-15-069. RCW 26.44.100(1) also requires that "parents . . . be advised in writing *and orally*, if feasible, of basic rights and other specific information. . . ."

[18] *State v. Vahl*, 56 Wn. App. 603, 604, 784 P.2d 1280 (1990).

[19] *State v. Soper*, 135 Wn. App. 89, 101, 143 P.3d 335, 341 (2006).

fundamentally different. While ignorance of the law does not excuse criminal conduct, ignorance of a fact that the State has an affirmative duty to notify, does deny due process.[20] Given the permanent deprivation in this case, Ms. Snyder is entitled to more effective efforts to provide notice than was found sufficient in *Vahl.*

B. THE MISAPPLICATION OF CONSTRUCTIVE NOTICE INVOLVES AN ISSUE OF SUBSTANTIAL PUBLIC INTEREST IN THIS CASE.

Even if constructive notice applies to administrative actions, the Court of Appeals misapplied the test in this case. In order for a court to find constructive notice, it must meet two elements: (1) "...there exists actual notice of matter, to which equity has added constructive notice of facts which an inquiry after such matter would have elicited; and (2) "where there has been a designed abstinence from inquiry for the very purposes of escaping notice."[21] The facts in this case fail both elements.

The first element is met when the person challenging due process should have known of the state action.[22] In *Vahl*, the appellant knew she had been convicted of driving offenses that led to a mandatory license suspension.[23] The state had no option but to suspend her license.

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[20] *State v. Leavitt*, 107 Wn. App. 361, 369, 27 P.3d 622 (2001).
[21] *Vahl*, 56 Wn. App. at 609, *citing* BLACK'S LAW DICTIONARY, 957 (5th ed. 1979).
[22] *Id.*
[23] *Id.*

Unlike *Vahl*, Ms. Snyder's request for internal review did not result in a mandatory finding of abuse or neglect. Rather, the Department could have just as easily overturned the finding in this stage of review. There was no way for Ms. Snyder to know, as Ms. Vahl knew, that the review would result in any deprivation.

Further, it was not unreasonable for Ms. Snyder to not know when the internal review decision would have been made based on the Department's inaccurate notice, as well as its violation of its own timelines. Although the Department only has 30 days to make an internal review decision, its notice stated it had 60 days.[24] Ms. Snyder had also personally experienced the Department failing to meet its own deadlines. By law, the Department has 90 days to complete an investigation of alleged abuse and neglect.[25] Despite this mandate, the Department exceeded the deadline by 278 days. It is, therefore, not unreasonable for Ms. Snyder to assume that the Department had once again ignored its own deadline in responding to her request for internal review.

Second, Ms. Vahl actively and intentionally refused to claim her certified mail.[26] Ms. Vahl continued to live at the address where she was

[24] RCW 26.44.125(4); WAC 388-15-093(3)
[25] RCW 26.44.030(12)(a); WAC 388-15-021(7). There are exceptions to the 90-day time limit – none of which appear to apply to Ms. Snyder's case.
[26] *Vahl*, 56 Wn. App. at 607.

provided notice but refused to claim the certified mail.[27] Moreover, a valid driver's license is required to reflect the current address on record with the Department of Licensing.[28] Here, the ALJ found that Ms. Snyder moved from the Longfellow residence shortly after she requested the internal review, and that there is no evidence that Ms. Snyder was intentionally or actively attempting to evade service.[29] The accurate application of the law is a matter of substantial public interest.

C. A DECISION THAT WILL UNFAIRLY IMPACT THE POOR IS OF SUBSTANTIAL PUBLIC INTEREST.

The Court should grant review of this petition as a matter of public interest. Low-income persons will be disproportionately impacted by the State's ability to rely on a principle of "constructive notice" and thereby circumvent constitutional notice requirements in all manner of cases involving significant deprivations of liberty and property in programs administered by the Department. In this case, the deprivation is permanent. There is no method to expunge an abuse finding. If a person is denied the ability to challenge an erroneous finding, they are permanently barred from large sectors of employment.[30]

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[27] *Vahl*, 56 Wn. App. at 607.
[28] RCW 46.20.205 (DOL must be notified of changes of address within 10 days).
[29] AR 2. The Department did not challenge this finding of fact so it is a verity on appeal.
[30] See, e.g., RCW 74.39A.056 (barring employment in home health).

Unfortunately, low-income people are transient. Studies have found that families who are poor move 50 to 100 percent more frequently than families who are not poor.[31] If review is not granted, the Court of Appeals decision results in a miscarriage of justice to Ms. Snyder and potentially to thousands of low-income persons throughout the state.

IV. CONCLUSION

Jones held that notice by certified mail returned unclaimed was insufficient, even though the statute authorized notice in this manner.[32] Despite knowing Ms. Snyder did not get notice, and despite having Ms. Snyder's and her parent's phone numbers, the Department did nothing else to notify her of the internal review decision. This Court should grant review to address these important due process issues.

Respectfully submitted this 15 day of November, 2016.

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[31] *See* http://www.shelterforce.com/online/issues/128/leftbehind.html. *See also* Desmond, Matthew. EVICTED: POVERTY AND PROFIT IN THE AMERICAN CITY. (AMANDA COOK ed.) 2016 Crown 1st ed. (chronicling the difficulties low-income families have in finding and keeping a roof over their heads).

[32] *Jones*, 547 U.S. at 229.

CERTIFICATE OF SERVICE

I certify that on this date, I caused to be served by electronic email and hand delivery a true and correct copy of the foregoing Memorandum of Amicus Curiae Northwest Justice Project in support of Petition for Review to:

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Dated this 15th day of November, 2016.

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