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Supreme Court No. 96277-4
Court of Appeals No. 35160-2-III
IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

IN RE THE CUSTODY OF
R.S. AND E.S.,
Minor children.

JAMES AND REBECCA BANGARD,
Appellants,
v.
BORIS AND OLGA SHVED,
Respondents.

Franklin County Superior Court Cause No. 16-3-50366-3
The Honorable Judge Jerri G. Potts

ANSWER TO PETITION FOR REVIEW

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STATEMENT OF THE CASE

Boris and Olga Shved are the parents of R.S. and E.S. CP 3.

Appellants James and Rebecca Bangard served as the children's foster parents during a dependency proceeding. CP 2, 33, 36.

The children were returned to their parents in November of 2016. CP 37. The dependency court specifically found the Shveds to be fit parents. CP 37. While the dependency was pending, the Bangards filed a petition for nonparental custody or de facto parentage.¹ CP 1-8, 33.

The Bangards did not seek concurrent jurisdiction with the dependency court, and no order of concurrent jurisdiction was ever entered. CP 35-37, 40. Appellants also failed to personally appear at a mandatory status hearing, failed to abide by the court's scheduling order, and failed to provide proof of attendance at mandatory parenting seminars. CP 14, 40.

The Shveds were forced to hire an attorney and moved to dismiss the Bangards' petition while the dependency was still pending. CP 32-37. Following a hearing on March 6, 2017, the trial court granted the Shveds' dismissal motion. RP 7-9; CP 40.

¹ The Bangards provided no facts to support their claim that the Shveds "consented to and fostered a parent like relationship between the Bangards [and the children]." CP 4. Instead, they asserted that the alleged consent was "[d]ue to the Shved's [sic] intentional and continuing conduct," which is apparently a reference to the facts underlying the dependency. CP 4.

In addition to noting Appellants' failures to comply with court rules and orders, the judge found that the Bangards had not established the court's authority to hear the petition. This was because the dependency case was still pending and there was no order for concurrent jurisdiction. RP 7-9; CP 40. The court struck all of Appellants' pleadings. RP 7-9; CP 40.

The Bangards appealed, and the Court of Appeals affirmed.

ARGUMENT

I. THE SUPREME COURT SHOULD DENY REVIEW BECAUSE THE CASE DOES NOT MEET ANY OF THE CRITERIA SET FORTH IN RAP 13.4(B).

A. Absent an order granting concurrent jurisdiction, the superior court lacked authority to hear the Bangards' petition.

1. The juvenile court has exclusive jurisdiction over all matters relating to dependent children.

Juvenile courts have "exclusive original jurisdiction over all proceedings... [r]elating to children alleged or found to be dependent." RCW 13.04.030(1)(b). The statute reflects the legislature's "choice to 'distribute and assign a phase of the business of the superior court'" to the juvenile court. *In re Dependency of E.H.*, 158 Wn. App. 757, 765, 243 P.3d 160 (2010) (quoting *State v. Werner*, 129 Wn.2d 485, 492-493, 918 P.2d 916 (1996) (internal quotation marks and citation omitted)).

Before another division of the superior court may hear a custody matter “[r]elating to children alleged or found to be dependent,” the juvenile court must enter an order granting concurrent jurisdiction. RCW 13.04.030(1)(b); *see also* RCW 13.34.155(2)(g); *E.H.*, 158 Wn. App. at 765.²

The rationale for assigning exclusive jurisdiction to the juvenile court and requiring an order for concurrent jurisdiction is “to prevent multiple courts from entering inconsistent orders.” *In re Custody of M.S.*, 194 Wn. App. 1033 (2016) (unpublished), *review dismissed sub nom. Criswell v. Div. of Children & Family Servs.*, 187 Wn.2d 1010, 388 P.3d 760 (2017). Thus, in *E.H.*, for example, the dependency court “ordered a permanency plan of nonparental custody for EH and granted concurrent jurisdiction to the family court to hear the nonparental custody action.” *E.H.*, 158 Wn. App. at 760.³ The Court of Appeals upheld the grant of concurrent jurisdiction. *Id.*, at 760, 765-767.⁴

² Furthermore, in any nonparental custody proceeding, the superior court has a duty to first “determine if the child is the subject of a pending dependency action.” RCW 26.10.030(1). The need for an order granting concurrent jurisdiction is also reflected in the local juvenile court rules. *See* Benton and Franklin County LJuCr 3.10. There is no local court rule granting the family court general concurrent jurisdiction over proceedings involving children alleged or found to be dependent.

³ The order in that case was later revised to grant the family court jurisdiction to hear and resolve “the dependency-related permanency planning issue of whether to return EH to one of the parents’ homes.” *Id.*

⁴ Curiously, Petitioners argue that a grant of concurrent jurisdiction, once requested, is mandatory, citing *E.H.* *See* Petition, p. 4. This is incorrect: nothing in *E.H.* suggests that a dependency court must grant concurrent jurisdiction. *E.H.*, 158 Wn. App. at 760.

In the absence of an order granting concurrent jurisdiction, the family court may not hear a nonparental custody petition relating to dependent children. *See M.S.*, 194 Wn. App. 1033 at *3 (2016) (unpublished). In *M.S.*, the Court of Appeals found that the superior court “did not have authority to hear [a] nonparental custody petition” because the record contained no evidence “that the dependency court ever granted the superior court concurrent jurisdiction.” *Id.* The court affirmed dismissal of the petition. *Id.*, at 1, 3.

This case presents the circumstances at issue in *M.S.* The trial court lacked authority to hear the Bangards’ petition, because they failed to obtain an order from the dependency court granting concurrent jurisdiction. *Id.* The Court of Appeals recognized this and properly affirmed the lower court’s order.

2. The Bangards did not seek permission from the juvenile court to pursue custody of these children, who were “alleged or found to be dependent.”

Here, as in *M.S.*, the record does not contain an order granting concurrent jurisdiction. CP 40. Given the pending dependency proceeding and the lack of such an order, the Bangards failed to establish the trial court’s authority to hear their petition. CP 40. The trial court correctly dismissed the petition. CP 40; *Id.*

Petitioner's citation to Benton and Franklin County Local Court Rule 94.04W does not support their argument. See Petition, p. 4. That rule is captioned "Domestic Relations," and provides "[a]ll cases filed under Title 26 RCW shall be transferred to the Family Court for adjudication." LCR 94.04W(a)(1).

The rule does no more than assign Title 26 matters (including divorces, nonparental custody cases, and paternity issues) to family court. It does not purport to authorize concurrent jurisdiction over cases "[r]elating to children alleged or found to be dependent." RCW 13.04.030(1)(b).

The absence of an order granting concurrent jurisdiction is fatal to the Bangards' petition. *Id.* The trial court properly exercised its discretion in dismissing their petition for nonparental custody or de facto parentage. *Id.* The Court of Appeals properly affirmed the trial court's orders.

II. THE COURT OF APPEALS' DECISION DOES NOT CONFLICT WITH *E.H.*

Petitioners contend that "[t]he Court of Appeals decision conflicts with *E.H.*," justifying review under RAP 13.4(b)(2). Petitioners do not explain this alleged conflict.

In *E.H.*, the dependency court granted concurrent jurisdiction, so the family court could hear a non-parental custody petition.⁵ *E.H.*, 158 Wn. App. at 760. The Court of Appeals upheld the grant of concurrent jurisdiction. *Id.*, at 765, 768.

In this case, the Bangards did not seek concurrent jurisdiction, and no grant of concurrent jurisdiction was made. CP 35-37, 40. The two decisions are not in conflict.

Nor does this case present an issue of substantial public interest. *See* Petition, p. 5 (citing RAP 13.4(b)(4)). The local court rule cited by Petitioners is easily harmonized with RCW 13.04.030(1)(b) and RCW 13.34.155(2)(g), as outlined above.

The Supreme Court should deny review.

⁵ The court also permitted the family court to hear a permanency planning issue. *E.H.*, 158 Wn. App. at 760.

CONCLUSION

There is no basis for the Supreme Court to grant review of this case. The court should deny the petition.

Respectfully submitted October 29, 2018.

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CERTIFICATE OF SERVICE

I certify that I mailed a copy of the Answer to Petition for Review, postage pre-paid, to:

Boris and Olga Shved (address confidential)

I further send an electronic copy to

Attorney Ken Kato
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through the Court's online filing system, with the permission of the recipient(s).

In addition, I electronically filed the original with the Court of Appeals.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed at Olympia, Washington on October 29, 2018.



Jodi R. Backlund, WSBA No. 22917
Attorney for the Appellant

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