

FILED
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BY SUSAN L. CARLSON
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S. Ct. No.96277-4
COA No. 35160-2-III

SUPREME COURT OF THE STATE OF WASHINGTON

In re the Custody of:

R.S. and E.S.,

Children.

JAMES BANGARD and REBECCA BANGARD,

Petitioners,

and

BORIS SHVED and OLGA SHVED,

Respondents.

PETITION FOR REVIEW

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A. IDENTITY OF PETITIONERS

Rebecca and James Bangard ask this Court to accept review of the Court of Appeals opinion designated in Part B.

B. COURT OF APPEALS DECISION

The unpublished Court of Appeals opinion which the Bangards want reviewed was filed on August 9, 2018. A copy of the opinion is in the Appendix.

C. ISSUES PRESENTED FOR REVIEW

A. Did the trial court abuse its discretion by dismissing the non-parental custody and de facto parentage petition and striking pleadings for failure of petitioners Bangard to establish jurisdiction?

B. Did the trial court err by dismissing the petition and striking the Bangards' pleadings?

D. STATEMENT OF THE CASE

James and Rebecca Bangard filed a nonparental custody and de facto parentage petition on October 24, 2016. (CP 2). The Bangards' relationship to the children, R.S. and E.S., was as foster parents. (*Id.*). Boris and Olga Shved are the birth parents of the children. (CP 3). When the petition was filed, R.S. and E.S. were not living with either birth parent and had been living with the Bangards in Minnesota since February 17, 2007. (*Id.*). The

children were subsequently returned to the Shveds' care after the dependency court ordered the foster placement terminated and returned R.S. and E.S. to their birth parents. (CP 37).

The petition recited the history of the children following concerns of physical harm to them:

ERS and RBS were taken into protective custody and ultimately found to be dependent pursuant to RCW 13.34. *et seq.* After a complex factual and legal history, including an order terminating the Shveds' parental rights that was vacated. The children remain subject to an existing finding and order of dependency. (CP 4).

The court entered a domestic case scheduling order on October 16, 2014, pursuant to LCR 94.04W(c)(4). (CP 14). Among other things, it required a mandatory status conference/parenting seminars/order re: adequate cause on January 9, 2017. (*Id.*). The Bangards filed a motion for adequate decision on October 24, 2016. (CP 12) An additional status hearing was scheduled for March 6, 2017, with trial on August 2, 2017. (CP 14).

On March 6, 2017, the Shveds filed a motion and declaration for dismissal and for sanctions. (CP 32). Although untimely notice was given, no objection was lodged. The basis for the motion was that with the pending dependency action on the children, "there had been no grant of concurrent jurisdiction by the juvenile court" so the

family court lacked jurisdiction to hear the Bangards' petition. (CP 35; RP 6). The Franklin County Court Commissioner dismissed the petition and struck the Bangards' pleadings. (CP 40).

The Bangards appealed. (CP 43). The Court of Appeals affirmed in an unpublished opinion filed August 9, 2018. (App.).

E. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

Review is proper because the Court of Appeals decision conflicts with other decisions of the Court of Appeals and this petition involves an issue of substantial public interest that should be determined by the Supreme Court. RAP 13.4(b)(2), (4).

The Bangards acknowledge the Court of Appeals' summary of applicable law. Child custody proceedings are typically adjudicated outside of a superior court's juvenile jurisdiction, but there is an exception for petitions filed during the pendency of a dependency. RCW 26.10.030(1); RCW 13.34.155(1). If the children are involved in a dependency, the superior court must either dismiss or stay the petition unless grantee concurrent jurisdiction by the juvenile court. *See In re Dependency of E.H.*, 158 Wn. App. 757, 765-66, 243 P.3d 160 (2010).

Here, a dependency action involving the children was pending when the Bangards filed their third party custody petition.

(CP 4). They argued concurrent jurisdiction was conferred by the juvenile court under the Benton/Franklin Counties Superior Court

Local Civil Rules (LCR):

Jurisdiction. All cases filed under Title 26 RCW shall be transferred to the Family Court for adjudication. LCR 94.04W(a)(1).

The Bangards' petition was filed under RCW 26.16.030 and the local rule expressly provided jurisdiction to the family court.

The Court of Appeals disagreed with the plain and unambiguous language of the local rule, noting it did not expressly mention concurrent jurisdiction for dependency proceedings and, if the rule had been intended to address that issue, it could have been written more clearly. (Op. at 3-4). But "all" means all and "shall" means mandatory. *Parkridge Assocs., Ltd. v. Ledcor Indus., Inc.*, 113 Wn. App. 592, 602, 54 P.3d 225 (2002); *In re Parental Rights to K.J.B.*, 187 Wn.2d 592, 601, 387 P.3d 1072 (2017). LCR 94.04W thus expressly granted concurrent jurisdiction in the Bangards' case filed under RCW 26.10.030 to the superior court's family court to hear the nonparental custody petition. Indeed, the grant of concurrent jurisdiction is mandatory under the rule. See *In re Dependency of E.H.*, 158 Wn. App. at 765-66.

The Court of Appeals further stated "other portions of

those local rules recognize that a specific order of concurrent jurisdiction is required despite the existence of LCR 94.04W, citing Benton/Franklin Counties Superior Court Local Juvenile Court Rule 3.10.” (Op. at 4). To the contrary, that rule addresses agreed final parenting plan in dependency court and is inapplicable to the issue presented here. The Court of Appeals decision conflicts with *E.H.* so review is warranted under RAP 13.4(b)(2).

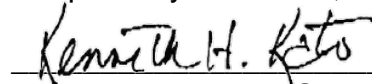
Moreover, the scope of local rules conferring jurisdiction to adjudicate all cases filed under Title RCW 26 to the family court and their applicability to the concurrent jurisdiction requirement is an issue of substantial public interest that should be determined by the Supreme Court. RAP 13.4(b)(4).

F. CONCLUSION

Based on the foregoing, petitioners Bangard respectfully urge this Court to grant their petition for review.

DATED this 10th day of August, 2018.

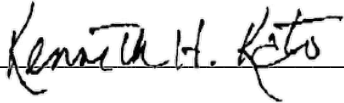
Respectfully submitted,



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CERTIFICATE OF SERVICE

I certify that on August 10, 2018, I served a copy of the petition for review through the eFiling portal on Jodi Backlund at her email address.



APPENDIX

FILED
AUGUST 9, 2018
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 Custody of)	No. 35160-2-III
)	
R.S. and E.S., [†])	
)	
Children.)	
_____)	
)	
REBECCA BANGARD and JAMES)	
BANGARD,)	UNPUBLISHED OPINION
)	
Appellants,)	
)	
and)	
)	
BORIS SHVED and OLGA SHVED,)	
)	
Respondents.)	

PENNELL, J. — Rebecca and James Bangard appeal the dismissal of their nonparental custody petition. We affirm.

[†] To protect the privacy interests of R.S. and E.S., minors, we identify them only through the use of initials. General Order of Division III, *In Re the Use of Initials or Pseudonyms for Child Victims or Child Witnesses* (Wash. Ct. App. June 18, 2012), http://www.courts.wa.gov/appellate_trial_courts/?fa=atc.genorders_orddisp&ordnumber=2012_001&div=III.

FACTS

R.S. and E.S. lived with foster parents James and Rebecca Bangard beginning in 2007 after a dependency action was initiated against the children's parents, Olga and Boris Shved. In November 2016, the dependency court found the Shveds were fit parents, terminated the foster placement, and ordered the children returned home. Prior to issuance of the dependency court's order, the Bangards filed a nonparental custody petition in Franklin County Superior Court. The Shveds successfully moved to dismiss. Among other things, the superior court found that the Bangards had failed to establish jurisdiction. The Bangards appeal.

ANALYSIS

Juvenile courts have “exclusive original jurisdiction over *all* proceedings . . . [r]elating to children alleged or found to be dependent.” RCW 13.04.030(1) (emphasis added). Although child custody proceedings are typically adjudicated outside of a superior court's juvenile division, there is an exception for petitions filed during the pendency of a dependency. RCW 26.10.030(1); RCW 13.34.155(1). Accordingly, a superior court judge faced with a third party custody petition is obliged to determine whether the subject children are involved in a dependency action. *See* RCW 26.10.030(1). If they are, the superior court must either dismiss or stay the petition unless

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granted concurrent jurisdiction by the juvenile court. *See In re Dependency of E.H.*, 158 Wn. App. 757, 765-66, 243 P.3d 160 (2010); *In re Dependency of J.W.H.*, 106 Wn. App. 714, 726-27, 24 P.3d 1105 (2001), *rev'd on other grounds*, 147 Wn.2d 687, 57 P.3d 266 (2002); *In re Marriage of Rich*, 80 Wn. App. 252, 256, 907 P.2d 1234 (1996); *In re Marriage of Perry*, 31 Wn. App. 604, 608, 644 P.2d 142 (1982).

Because a dependency petition was pending at the time the Bangards' filed their third party custody petition, the ability of the family court to hear the case turned on whether the juvenile court had authorized concurrent jurisdiction. The Bangards acknowledge that the juvenile court never issued a specific order granting concurrent jurisdiction. Nevertheless, the Bangards contend jurisdiction was conferred by operation of local rule. Specifically, the Benton/Franklin Counties Superior Court Local Civil Rules (LCR) state, "*Jurisdiction*. All cases filed under Title 26 RCW shall be transferred to the Family Court for adjudication." LCR 94.04W(a)(1). The Bangards argue this rule expressly provided concurrent jurisdiction to the family court to hear the petition because it was filed under RCW 26.10.030.

We disagree with the Bangards' reading of the local rule. LCR 94.04W does not expressly mention concurrent jurisdiction or dependency proceedings. Had the local rule been intended to address the statutory requirement of concurrent jurisdiction and the

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complexities that can arise therefrom, it could have been written more clearly. *See, e.g.*, Thurston County Superior Court Local Special Proceedings Rule (LSPR) 94.01(b) (“The Family and Juvenile Court shall have concurrent jurisdiction over any contemporaneous action under chapters 13.32A or 13.34 RCW or title 26 RCW, except chapter 26.33 RCW and 26.40 RCW.”); LSPR 94.02(b) (addressing the “Scope of Concurrent Jurisdiction”).

Nothing about LCR 94.04W in Benton and Franklin counties indicates an intent to alter the scope of a juvenile court’s statutory jurisdiction or the complex circumstances of concurrent jurisdiction. Indeed, other portions of those local rules recognize that a specific order of concurrent jurisdiction is required despite the existence of LCR 94.04W. *See, e.g.*, Benton/Franklin Counties Superior Court Local Juvenile Court Rule 3.10 (“Upon the Court granting *concurrent jurisdiction* from the dependency court, a party to a dependency action may file the necessary pleadings for entry of an agreed final parenting plan in the dependency court, pursuant to RCW 13.34.155 and RCW 26.”) (emphasis added).

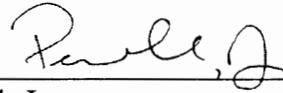
Because the juvenile court never conferred concurrent jurisdiction on any other division of the superior court to consider the Bangards’ petition either by way of court order or local rule, the family court judge assigned to the Bangards’ third party custody petition lacked statutory authority over the case. Dismissal was therefore warranted.

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CONCLUSION

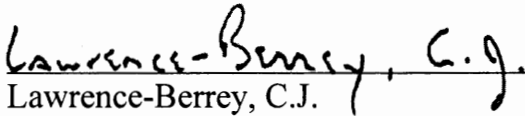
The superior court's order of dismissal is affirmed.

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.

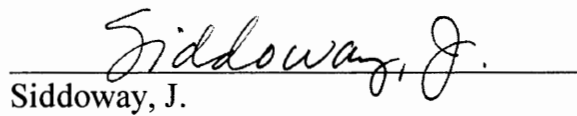


Pennell, J.

WE CONCUR:



Lawrence-Berrey, C.J.



Siddoway, J.

September 10, 2018 - 10:50 AM

Filing Petition for Review

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