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**COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON**

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In re the Dependency of:

B.F.,

A Minor Child.

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**ANSWER TO MOTION FOR DISCRETIONARY REVIEW**

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## **I. IDENTITY OF RESPONDING PARTY**

The respondent, Department of Social and Health Services (Department), by and through its attorneys, Robert W. Ferguson, Attorney General, and Amy Harris, Assistant Attorney General, responds to the mother's<sup>1</sup> Motion for Discretionary Review (Motion).

## **II. DECISION**

Petitioner, the child's mother (M.F.), seeks discretionary review of the dependency court's decision to not order a psychosexual evaluation for the father.

The court declined to require this service because it was not convinced there was sufficient evidence of sexual deviancy to warrant the evaluation. Report of Proceedings (RP) at 30. While the Department asked the dependency court to order a psychosexual evaluation, it was not an abuse of discretion for the court to deny this request. As such, the requirements for discretionary review are not met, and the mother's motion should be denied.

## **III. ISSUES PRESENTED FOR REVIEW**

1. Whether discretionary review is warranted where the dependency court's discretionary ruling was a sound exercise of its discretion.

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<sup>1</sup> In order to protect the parents' privacy, their names will not be used, and they will instead be referred to as "mother" and "father", or by their initials. No disrespect is intended.

#### **IV. RESTATEMENT OF THE FACTS**

The father, P.A., agreed to a finding of dependency on June 3, 2015. Clerk's Papers (CP) at 228. The dependency court found the child dependent as to the mother, M.F., on June 19, 2015, following a contested fact-finding hearing. CP at 239. The court held a joint disposition hearing on June 24, 2015, and ordered both parents to complete remedial services. CP at 252-260, 261-69.

The Department requested that P.A. undergo a psychosexual evaluation based upon the allegations made by M.F. RP at 24-25. The Department provided the dependency court the police report that outlined M.F.'s allegations and the Sexual Assault Protection Order she obtained after the dependency was filed as the factual basis for this request. RP at 6-7; Ex. 1, Ex. 2. However, the court declined to order the father to complete this evaluation, CP at 257; RP at 30, and the mother seeks discretionary review of this decision.

#### **V. ARGUMENT**

The dependency court has broad discretion when ordering remedial services. While the Department initially requested the dependency court to order the father to complete a psychosexual evaluation, the dependency court did not abuse its discretion and commit probable error when it declined to so order. Moreover, the court's decision did not alter the

status quo, and did not substantially limit the freedom of the mother to act. As such, the mother's request for discretionary review should be denied.

"A party moving for discretionary review of an interlocutory trial court order bears a heavy burden." *In re Grove*, 127 Wn.2d 221, 235, 897 P.2d 1252 (1995). Under RAP 2.3(b)(2), the court may accept discretionary review only if, "[t]he superior court has committed probable error and the decision of the superior court substantially alters the status quo or substantially limits the freedom of a party to act." RAP 2.3(b)(2).

RAP 2.3(b)(2) also applies a two-part test to determine whether discretionary review should be granted. First, the court must have committed "probable" error. RAP 2.3(b)(2). If a court's decision is one that is reviewable only for abuse of discretion, it is difficult to find probable error within the meaning of the rule. *See Matter of Lewis' Welfare*, 89 Wn.2d 113, 569 P.2d 1158 (1977) (juvenile court order transferring jurisdiction did not meet standard of review because abuse of discretion not shown). Second, the court's decision must alter the status quo or substantially limit the freedom of a party to act. RAP 2.3(b)(2).

**A. The Dependency Court Did Not Commit Probable Error That Would Substantially Change the Status Quo or Substantially Limit the Freedom of the Mother to Act When It Declined to Order the Father to Obtain a Psychosexual Evaluation**

A trial court abuses its discretion only if its decision is manifestly unreasonable or based on untenable grounds. *Wash. State Physicians Ins. Exch. & Ass'n v. Fisons Corp.*, 122 Wn.2d 299, 339, 858 P.2d 1054 (1993). "A decision is manifestly unreasonable if it is outside the range of acceptable choices, given the facts and the applicable legal standard or if the facts do not meet the requirements of the correct standard." *In re Dependency of K.R.*, 128 Wn.2d 129, at 15-16, 904 P.2d 1132 (1995).

In order to properly exercise its discretion in dependency cases, the dependency court is allowed considerable flexibility to receive and evaluate all relevant information in order to reach an appropriate decision that balances the child's welfare against the parent's rights. *Matter of Becker's Welfare*, 87 Wn.2d 470, 478, 553 P.2d 1339 (1976). Because the dependency court has such broad discretion, its decision is entitled to substantial deference upon review. Thus, the appellate court shall place a "very strong reliance upon the trial court's determination of what course of action will be for the best interest of the child." *In re Gregoire*, 71 Wn.2d 745, 746, 430 P.2d 983 (1967). An appellate

court will find an abuse of discretion in dependency cases only when no reasonable person would take the position adopted by the juvenile court. *In re Dependency of J.H.*, 117 Wn.2d 460, 472, 815 P.2d 1380 (1991).

A dependency court may require a parent to undergo a psychosexual evaluation. *In re Dependency of D.C-M.*, 162 Wn. App. 149, 160, 253 P.3d 112 (2011). The dependency court's decision to either order or decline to order the evaluation is reviewed for an abuse of discretion. *Id.* at 158.

The decision of the court was not an abuse of discretion. The police report served as the factual basis for the Department's request for a psychosexual evaluation. RP at 6-7; Ex. 2. This report contained M.F.'s report of events, alleging non-consensual sexual contact and P.A.'s report of events, describing sexual contact that was consensual and initiated by M.F. Ex. 2. The court ultimately decided that there was not sufficient evidence of sexual deviancy to support ordering the father to complete a psychosexual evaluation. RP at 30.

M.F.'s assertion that the court believed that the police report was ambiguous as to whether the investigating officer believed that a sexual assault had occurred is not supported by the record. Brief of Appellant (Br. Appellant) at 4. The police report clearly states that the investigating

officer concluded there was not probable cause to believe a sexual assault occurred. Ex 2.

This is similar to the facts in *D.C-M*, where the court held it was an abuse of discretion for the dependency court to order a psychosexual evaluation when criminal charges were not filed and the Department concluded the allegations were unfounded. *In re Dependency of D.C-M*, 162 Wn. App.at 162 (2011).

M.F. criticizes the court for not inquiring further, but does not acknowledge that M.F. had a full opportunity at the hearing to present evidence and argument. Br. Appellant at 1, 4. Further, M.F. does not indicate what other information could have been produced to assist the dependency court in making its decision. RP at 1-36.

Finally, and importantly, M.F. has not articulated how the court's ruling substantially limited her freedom to act or changed the status quo. The court's order with regard to the services the father must complete does not affect her ability to successfully reunify with her young child.

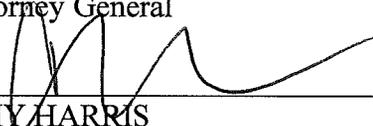
The dependency court did not abuse its discretion when it declined to order the father to complete a service, and the mother does not meet the standard for review under RAP 2.3(b)(2). Accordingly, the mother's motion should be denied.

## VI. CONCLUSION

Discretionary review is not warranted under RAP 2.3(b). The dependency court did not abuse its discretion in denying the Department's and the mother's request to order the father to obtain a psychosexual evaluation. There is no probable error, the status quo has not been altered, and the mother's freedom to act is in no way limited by the court's ruling. Accordingly, the Department respectfully requests that this court deny the mother's Motion for Discretionary Review.

RESPECTFULLY SUBMITTED this 17 day of December, 2015.

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I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 17<sup>th</sup> day of June, 2015, at Tumwater, Washington.

  
\_\_\_\_\_  
Ursula Konschak-Grover, Legal Assistant

**WASHINGTON STATE ATTORNEY GENERAL**

**December 17, 2015 - 12:02 PM**

**Transmittal Letter**

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