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No. 51060-0-II

IN THE COURT OF APPEALS
FOR THE STATE OF WASHINGTON
DIVISION II

In re the Dependency of: J.W., A.W., and D.W.

APPEAL FROM THE LEWIS COUNTY SUPERIOR COURT
Honorable James W. Lawler, Judge

BRIEF OF APPELLANT

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1. Is the Order on CR 60 entered by Judge James W. Lawler void for lack of jurisdiction when Mr. D.W. timely filed and provided notice of an affidavit of prejudice against Judge Lawler, who declined to acknowledge the disqualification and continued to rule on Mr. D.W.'s dependency and termination matters, including Mr. D.W.'s motion to vacate the dependency orders and the Department's termination petition?

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justify vacating the dependency order in March 2016, asked multiple court-appointed attorneys to file the motion but each failed to do so, filed his own Declaration in December 2016, and was finally appointed an attorney who filed the motion in June 2017?

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C. STATEMENT OF THE CASE

These dependency proceedings began in October 2014. Clerk's Papers (CP) 1-4. Mr. D.W., who is indigent, received court-appointed counsel. *See, e.g.*, CP 27. At a shelter care hearing on October 9, 2014, without counsel being officially appointed to represent Mr. D.W.¹, Lewis County Superior Court Commissioner Tracy Mitchell informed Mr. D.W. that the Department had filed a Petition alleging that no parent, guardian, or custodian was capable or available to adequately care for his three children. Report of Proceedings (RP) (10/9/2014) 4-5. The Court also told Mr. D.W. that he had the right to an attorney, to a contested shelter care hearing, to cross-examine witnesses, to call witnesses on his own behalf, and to waive the contested hearing and agree to shelter care. RP (10/9/2014) 5.

¹ Attorney Brian Gerhart was not appointed to represent Mr. D.W. until October 14, 2014 - five days after the shelter care hearing. CP 27.

Mr. D.W. was unclear about the allegation that he was not able to care for his children and did not believe his kids had ever been at risk. RP (10/9/2014) 6-7. Attorney Gerhart told the court that his conference with Mr. D.W. had been cut short and that they were not ready to begin. *Id.* at 6. However, he did not ask for more time to speak to Mr. D.W. nor did the Court offer more time. *Id.* at 7-8.

Instead, Attorney Brian Gerhart waived Mr. D.W.'s right to a contested shelter care hearing and stipulated to shelter care without admitting the Department's allegations and asked that the kids be placed with a relative. RP (10/9/2014) 8. The Court accepted Mr. D.W.'s stipulation to a finding of shelter care. *Id.* It left the children in foster care and immediately suspended all contact between Mr. D.W. and his children for at least three weeks. RP (10/9/2014) 11.

At a shelter care review hearing on October 30, 2014 before Judge Nelson Hunt, the Department and GAL asked that contact between Mr. D.W. and his children remain suspended until "approved" by law enforcement. RP (10/30/2014) 14-15. The Department could not explain law enforcement's specific concerns: "[L]aw enforcement is not giving me a whole lot of information." RP (10/30/2014) 18. And it acknowledged

that supervised visits could be arranged but nevertheless deferred to law enforcement's position. RP (10/30/2014) 18.

Attorney Gerhart argued for contact, citing Mr. D.W.'s voluntary participation in treatment and the highly supervised setting in which a visit would occur. RP (10/30/2014) 17. He also asked that background checks on relatives be completed as quickly as possible so Mr. D.W.'s children could be with relatives rather than in foster care. *Id.* The Court continued the hearing two weeks to allow the Guardian ad Litem to get up to speed and argue its position but, in the meantime, permitted just one supervised visit. RP (10/30/2014) 19. That supervised visit occurred and caused the Department no concern for the children. *See* RP (11/20/2014) 23 (according to Department attorney, Lauren Roddy, after the visit, "they [,the children,] seemed to be within the normal limits of children in similar circumstances").

A Dependency fact finding hearing was called before Commissioner Mitchell on November 20, 2014. RP (11/20/2014) 22. The Department represented that the parties were prepared to present agreed orders that no parent or guardian was available to parent the children. RP (11/20/2014) 22.

In fact, Mr. D.W. had told Attorney Gerhart that he did not agree to dependency and that he had family members who could take custody of his children. CP 681-82, 937. However, Mr. D.W. was induced into capitulating to a stipulated dependency finding after Attorney Gerhart misrepresented to Mr. D.W. that it did not matter if relatives were available to take custody of his children (through guardianship) and that, at a contested dependency fact-finding hearing, Mr. D.W. could not invoke his Fifth Amendment right against self-incrimination if the Department forced him to testify and asked him about the facts underlying the criminal charges against him. CP 681-82, 937. Relying upon counsel's representations and at his direction, Mr. D.W. agreed to the dependency finding based upon the facts alleged in the Department's Petition instead of declining to admit the Department's allegations like he did at the shelter care hearing. CP 76.

Mr. D.W. was not notified of all of his rights even though a dependency finding carries far more serious consequences than a shelter care finding. CP 937. Despite a contrary written representation by Attorney Gerhart that he had read the parent's rights to Mr. D.W., who is visually impaired² and legally blind³, even Attorney Gerhart admitted in

² See, e.g., RP (12/17/2015) 179.

³ See Appendix A.

open court that he only “went through Mr. [D.W.]’s right to a contested hearing on the fact-finding and his right to have an attorney present at all stages.” RP (11/20/2014) 24. Prior to entry of the dependency order in this matter, Commissioner Mitchell did not confirm that Mr. D.W. knowingly and willingly stipulated and agreed to the dependency order, without duress and without misrepresentation. RP (11/20/2014) 22-29. Instead, the Commissioner accepted the stipulation without question and focused on ensuring that Mr. D.W. had no contact with his children. *Id.* at 27-29.

Around March 2016, Mr. D.W. discovered that Mr. Gerhart had incorrectly advised him about his rights. *See, e.g.*, CP 280, 313-19. On or about March 3, 2016, Mr. D.W. informed the Court that Attorney Gerhart had failed to obtain discovery from the Department, failed to answer the Department’s Petition, and failed to protect or address his rights. CP 313-319. Mr. Gerhart promptly withdrew as Mr. D.W.’s attorney on March 8, 2016. CP 213. Three additional attorneys, Matthew Kuehnel, Ronnie Soriano, Jr., and Pier Petersen were each appointed to represent Mr. D.W. between March 8, 2016 and March 1, 2017. CP 213, 255, 564, 567, 766. Mr. D.W. asked his attorneys to move to vacate the dependency order. CP 681-82, 687-88, 698, 707; *accord* CP 273. But none of these attorneys

moved to vacate the dependency order, although at least one court-appointed attorney (Pier Peterson) had promised to do so. CP 688.

In an effort to assist Ms. Peterson with the anticipated motion to vacate the shelter care order and the stipulated dependency and disposition orders, Mr. D.W. filed a declaration in support of the anticipated motion to vacate on December 1, 2016. CP 578-79. Mr. D.W. contended that the Court's October 8, 2014, Shelter Care Order should not have been entered because he was not represented by counsel and he did not agree to shelter care. CP 578. He further maintained that he did not knowingly or voluntarily agree to any finding of dependency because he was not advised of his legal rights and his legal counsel provided ineffective assistance by rendering incompetent legal advice regarding the invocation of his Fifth Amended right against self-incrimination at the dependency fact-finding hearing. CP 579.

It was not until Attorney Christopher Desmond was appointed to represent Mr. D.W. that *Father's Motion to Vacate the Dependency Order* was filed. CP 927-35. That motion urged the Court to vacate the dependency order because of prior counsel's ineffective assistance, including failure to interview witnesses and misrepresentation regarding Mr. D.W.'s Fifth Amendment right to remain silent. CP 927-35.

Accompanying the motion was Mr. D.W.'s declaration and a declaration by a dependency law attorney, Mackenzie Sorich. CP 936-39. Ms. Sorich's declaration stated that, when representing a parent facing criminal charges, the attorney must be careful not to waive the client's legal rights and protections, including helping the client invoke his Fifth Amendment right to remain silent, negotiate alternate bases for entering an agreed order of dependency, and/or seek to continue the dependency trial until the conclusion of the criminal proceedings. CP 938-39. The Department and GAL opposed but produced no evidence in response to Mr. D.W.'s motion. CP 813-14, 947-52.

Even though Mr. D.W. had filed an Affidavit of Prejudice against Judge James W. Lawler in the dependency and termination proceedings as early as December 1, 2015⁴, and again on October 27, 2016, and even though Mr. D.W. notified Judge Lawler of the Affidavit before he made any discretionary rulings at a hearing in which Mr. D.W. was unrepresented, Judge Lawler presided over the hearing on Mr. D.W.'s motion to vacate on June 15, 2017. CP 562-63; RP (10/21/2016) 12; RP (06/15/2017) 1.

⁴ See COA No. 50710-2-II (Clerk's Papers 36-38) attached as Appendix B. Mr. D.W. moves to supplement the record in this matter with these additional Clerk's Papers.

After the parties argued Mr. D.W.'s motion under CR 60(b)(11) under the *Strickland* standard for ineffective assistance of counsel, the trial court denied Mr. D.W.'s motion on the grounds that Mr. D.W. would not have prevailed on the merits if the order was vacated; (2) there is no evidence besides Mr. D.W.'s statement; and (3) the motion was untimely. CP 953; RP (06/15/2017) 159-67. Mr. D.W. timely appealed.⁵

D. ARGUMENT

- 1. The order denying Mr. D.W.'s motion to vacate the dependency orders is void. Judge Lawler lacked jurisdiction over the dependency and termination matters after Mr. D.W. timely disqualified him.**

The Order denying Mr. D.W.'s motion for CR 60 relief is void because Judge Lawler lacked jurisdiction over Mr. D.W.'s cases. Judge Lawler, against whom Mr. D.W. had filed a *Declaration of Prejudice re Judge Lawler*, should not have presided over the hearing on Mr. D.W.'s motion to vacate the dependency order.

⁵ Although requested in Mr. D.W.'s original Designation of Clerk's Papers, the Notice of Discretionary Review (and Order of Indigency) entered in the underlying juvenile court matters were not included in the Clerk's Papers filed in this Court. A conformed copy of the Notice of Discretionary Review is attached as Appendix C. Mr. D.W. respectfully moves the court to supplement the appellate record with the Notice of Discretionary Review and Order of Indigency or, alternatively, take judicial notice of the Notice of Discretionary Review and Order of Indigency filed in this matter on June 29, 2017.

Whether a court has subject matter jurisdiction is a question of law reviewed de novo. *Dougherty v. Dep't of Labor & Indus.*, 150 Wn.2d 310, 314, 76 P.3d 1183 (2003).

Under RCW 4.12.040 and .050, a judge against whom a valid affidavit of prejudice has been filed loses jurisdiction over the case. *Harbor Enters., Inc. v. Gudjonsson*, 116 Wn.2d 283, 285, 803 P.2d 798 (1991); *State v. Cockrell*, 102 Wn.2d 561, 565, 689 P.2d 32 (1984).

No judge of a superior court of the state of Washington **shall** sit to hear or try any action or proceeding if that judge has been disqualified pursuant to RCW 4.12.050. In such case the presiding judge in judicial districts where there is more than one judge **shall** forthwith transfer the action to another department of the same court, or call in a judge from some other court.

RCW 4.12.040(1) (emphasis added). When a judge acts without jurisdiction, his decisions are void. *State ex rel. Turner v. Briggs*, 94 Wn. App. 299, 302–03, 971 P.2d 581 (1999).

A party is entitled to one change of judge as a matter of right if an affidavit of prejudice is timely filed. *State v. Ryncarz*, 64 Wn. App. 902, 903, 826 P.2d 1101 (1992). Mr. D.W. acted on this right and moved to disqualify Judge Lawler from presiding over his dependency and termination cases.

Mr. D.W. first requested a change of judge and specifically named Judge Lawler on December 1, 2015. *See* COA No. 50710-2-II (CP 36-38) (attached hereto as Appendix B). He mailed a second declaration of prejudice and request for new judge on Judge Lawler to the Lewis County Clerk's Office on October 19, 2016. CP 562-63; RP (10/21/2016) 12.

At the first possible opportunity during a status hearing on October 21, 2016, in which Mr. D.W. was not represented by counsel, he notified Judge Lawler of his declaration and request. RP (10/21/2016) 12. Judge Lawler refused to allow Mr. D.W. to be heard before deciding to set a new trial date and schedule hearing dates, making it impossible for Mr. D.W. to notify Judge Lawler of his disqualification beforehand:

THE COURT: Here's what I want to do --

MR. WING: Judge, Your Honor, --

THE COURT: Just a second.

MR. WING: -- this is Mr. Wing. I'd --

THE COURT: Just a second.
MR. WING: -- like the opportunity --
THE COURT: Just a second.
MR. WING: -- to at least [inaudible] --
THE COURT: Mr. Wing.
MR. WING: -- as far as [inaudible] --
THE COURT: Mr. Wing.
MR. WING: -- before you go --
THE COURT: All right.
MR. WING: -- forward, if that's okay.
THE COURT: Well, I want you to wait --
MR. WING: First of all, --
THE COURT: Mr. Wing, stop.
MR. WING: Yes, sir.
THE COURT: Stop. I'll give you your opportunity.

All right?

Now, first I want to talk about the trial that's scheduled for next week. The problem that we've got with the trial for next week is we've got criminal cases, we've got three criminal cases that have already confirmed. That's why I was asking how long this case is going to take because I just don't have enough judicial time in the week to get this thing out, even if it just takes three days. We just can't fit it in. So, by necessity, I'm going to have to reschedule this trial.

RP (10/21/2016) 9-10. Mr. D.W. did, however, use the first opportunity he had to speak to notify Judge Lawler of his affidavit of prejudice and request for change of judge in the dependency and termination proceedings:

MR. WING: Your Honor?

THE COURT: Yes.

MR. WING: I just make the Court aware for the record that on 10-19, per Criminal Civil 3.1 I filed an affidavit of prejudice against yourself.

THE COURT: In what case?

MR. WING: In the ones we're hearing currently today.

THE COURT: On all three of them?

MR. WING: Yeah. And it also references the 14. It

RP (10/21/2016) 12.

Judge Lawler considered his action of setting hearing and trial dates to be discretionary rulings and, accordingly, was "not inclined to honor any affidavit of prejudice that might come in after the fact." RP (10/21/2016) 13. No further hearing was held until after Mr. D.W.'s affidavits of prejudice were stamped received and filed by Lewis County Superior Court on October 27, 2016. CP 562-63.

According to RCW 4.12.050(2), by setting hearing and trial dates, Judge Lawler did not cause Mr. D.W. to lose his right to a change in judge:

(2) Even though they may involve discretion, **the following actions by a judge do not cause the loss of the right to file a notice of disqualification against that judge: Arranging the calendar, setting a date for a hearing or trial,** ruling on an agreed continuance, issuing an arrest warrant, presiding over criminal preliminary proceedings under CrR 3.2.1, arraigning the accused, fixing bail, and presiding over juvenile detention and release hearings

under JuCR 7.3 and 7.4.

RCW 4.12.050(2) (emphasis added); *In re Dependency of Hiebert*, 28 Wn. App. 905, 910, 911, 627 P.2d 551 (1981) (holding that making of routine appointments and setting case for trial did not involve discretion in permanent deprivation proceeding so as to make subsequent affidavit of prejudice untimely). Because proper notice and affidavits of prejudice were provided before Judge Lawler made a discretionary ruling that constitutes an “action” under RCW 4.12.050(2), Mr. D.W.’s request for a new judge was timely, entitling him to a new judge.

Mr. D.W.’s proper and timely disqualification of Judge Lawler automatically and immediately divested Judge Lawler of jurisdiction over Mr. D.W.’s cases. *Harbor Enters., Inc.*, 116 Wn.2d at 291 (“Timely exercised, the statutory right [to a change of judge] deprives that particular judge of jurisdiction”).

RCW 4.12.040(1)’s plain language, quoted above, does not afford a judge to refuse to acknowledge his proper disqualification. All subsequent orders entered by Judge Lawler in Mr. D.W.’s dependency and termination cases, including his ruling upon Mr. D.W.’s motion for CR 60 relief (as well as the termination orders ultimately entered by Judge Lawler against Mr. D.W.) are void for lack of jurisdiction. CR 12(h)(3) (lack of

jurisdiction may be raised at any time); *Harbor Enters., Inc.*, 116 Wn.2d at 291; *Dike v. Dike*, 75 Wn.2d 1, 7, 448 P.2d 490 (1968) (an order entered by a court that lacks subject matter jurisdiction or the power to make or enter an order is void); *Allstate Ins. Co. v. Khani*, 75 Wn. App. 317, 323–24, 877 P.2d 724 (1994) (there is no time limit for attacking a void judgment). The order denying Mr. D.W.’s CR 60 Motion to vacate the dependency order (and all subsequent order, including the termination orders, entered by Judge Lawler) should be vacated as void for lack of jurisdiction.

2. The trial court abused its discretion by denying Mr. D.W.’s motion to vacate the dependency orders, which complied with CR 60(e), was timely under the circumstances, and may have resulted in a different outcome absent egregious ineffective assistance of counsel if granted.

Mr. D.W.’s CR 60 motion was brought within a reasonable time under the circumstances, might have resulted in a different outcome, and was supported by uncontested evidence in the record. The trial court abused its discretion by finding or concluding to the contrary and by denying Mr. D.W.’s motion to vacate the dependency orders concerning Mr. D.W.’s three children.

This court reviews the denial of a CR 60(b) motion for abuse of discretion. *Haley v. Highland*, 142 Wn.2d 135, 156, 12 P.3d 119 (2000).

A trial court abuses its discretion when its decision is manifestly unreasonable or made on untenable grounds or for untenable reasons. *Mayer v. Sto Indus., Inc.*, 156 Wn.2d 677, 684, 132 P.3d 115 (2006). This standard is also violated when a trial court bases its decision on an erroneous view of the law. *Id.* at 684. A discretionary decision rests on “untenable grounds” or is based on “untenable reasons” if the trial court relies on unsupported facts or applies the wrong legal standard; the court’s decision is “manifestly unreasonable” if “the court, despite applying the correct legal standard to the supported facts, adopts a view ‘that no reasonable person would take.’” *Id.*

Here, the trial court denied Mr. D.W.’s CR 60 motion the grounds that (1) Mr. D.W. would not prevail on the merits if the order was vacated; (2) there is “no other finding besides Mr. D.W.’s statement”; and (3) the motion was untimely. The Court’s denial of Mr. D.W.’s motion is based on untenable grounds and reasons and is manifestly unreasonable.

- a. Absent his attorney’s ineffective assistance at the time of the dependency fact-finding hearing, it is reasonably possible the outcome of that hearing would have been different.

A parent has a fundamental constitutional right to the care, custody, and control of his child. *In re the Matter of K.J.B.*, 187 Wn.2d 592, 597, 387 P.3d 1072 (2017). That right cannot be abridged without

due process of law. *In re the Welfare of Key*, 119 Wn.2d 600, 609, 836 P.2d 200 (1992). “When the state moves to destroy weakened familial bonds, it must provide the parents with fundamentally fair procedures.” *Santosky v. Kramer*, 455 U.S. 745, 754, 71 L. Ed. 599, 102 S. Ct. 1388 (1982).

Accordingly, a parent has a due process right to be represented by an attorney in “**all** proceedings.” RCW 13.34.090(2) (emphasis added). That parent also enjoys a due process right to the effective assistance of counsel. *In re Moseley*, 34 Wn. App. 179, 184, 660 P.2d 315 (1983); *In re Houts*, 7 Wn. App. 476, 481, 499 P.2d 1276 (1972); RCW 13.34.090(2) (“Any party has a right to be represented by an attorney in all proceedings under this chapter, to introduce evidence, to be hearing in his or her own behalf, to examine witnesses, to receive a decision based solely on the evidence adduced at the hearing, and to an unbiased fact finder”); *In re Dependency of V.R.R.*, 134 Wn. App. 573, 580, 581 (2006) (“Recognizing the significant interests involved in the termination of parental rights, state law guarantees a parent the right to counsel,” which includes the right to effective assistance of counsel); *Wilbur v. City of Mount Vernon*, 989 F. Supp. 2d 1122, 1126 n.5 (W.D. Wash. 2013) (“A warm body with a law degree, able to affix his or her name to a plea agreement is not an

acceptable substitute for the effective advocate envisioned when the Supreme Court extended the right to counsel to all persons facing incarceration”); *In re Welfare of J.M.*, 130 Wn. App. 912, 922, 125 P.3d 245 (2005) (“By statute also - not just in criminal proceedings but in every case in which the right to counsel attaches - legal representation means effective representation by definition”); *Strickland v. Washington*, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984) (setting forth test for ineffective assistance of counsel); *In re S.M.H.*, 128 Wn. App. 45, 61, 115 P.3d 990 (2005) (applying *Strickland* test to ineffective assistance of counsel issue).

Under the *Moseley* standard of review for claims of ineffective assistance of counsel, the record must show that an attorney provided a meaningful hearing in order to be effective. *In the Matter of the Dependency of Moseley*, 34 Wn. App. 179, 184, 660 P.2d 315 (1983). Under the *Strickland* standard, the party alleging ineffective assistance must show not only that counsel’s representation was deficient, but also that the ineffective representation prejudiced the party. *In the Matter of the Dependency of S.M.H.*, 128 Wn.App. 45, 61, 115 P.3d 990 (2005) (citing *Strickland*, 466 U.S. 668). “Counsel’s performance is deficient if it falls ‘below an objective standard of reasonableness based on

consideration of all of the circumstances.”” *Id.* (quoting *State v. Thomas*, 109 Wn.2d 222, 226, 743 P.2d 816 (1987)). A party is prejudiced when there is a reasonable possibility that the outcome of the case would have been different if not for the deficient representation. *S.M.H.*, 128 Wn. App. at 61.

Although the parties argued only the *Strickland* standard in the underlying proceedings, Mr. D.W. received ineffective assistance of counsel under either standard when his attorney induced Mr. D.W. to waive his right to a contested dependency fact-finding hearing and to stipulate to a dependency finding for each of Mr. D.W.’s three children as a result of incorrect legal advice.

Under the *Moseley* standard, counsel’s deficient performance in failing to seek a continuance of the dependency fact-finding hearing, to investigate Mr. D.W.’s case, and to interview witnesses, and mis-advising Mr. D.W. about his Fifth Amendment right against self-incrimination induced Mr. D.W. to stipulate to a dependency and *deprived* Mr. D.W. of a contested dependency fact-finding hearing altogether. In addition, his attorney’s incorrect advice went undetected by the court because counsel caused Mr. D.W., who is legally blind, to waive the court’s duty under RCW 13.34.110(3)(c) to inquire into whether Mr. D.W.’s stipulation was

willing and voluntary. Mr. D.W. was induced by his attorney's inaccurate legal advice to give up his rights to be heard in his own behalf (with Fifth Amendment protection against compulsory self-incrimination), to examine witnesses, to receive a decision based solely on facts adduced at the hearing, to an unbiased fact finder, and to make a record establishing that Mr. D.W. willingly and voluntarily stipulated to a dependency finding and that he understood the consequences of such a stipulation.

Despite having taken the time at shelter care to engage in such a substantive dialogue on the record with the court about Mr. D.W.'s rights and the voluntariness and willingness, the actions of Mr. D.W.'s counsel ensured no such meaningful hearing would occur for the dependency fact-finding even though Mr. D.W. expressly stated at the shelter care hearing that he did not believe his children were at risk and despite Mr. D.W. telling his attorney that he had family who could take custody of his children to avoid a dependency altogether.

Had Mr. D.W.'s counsel properly advised Mr. D.W. of his Fifth Amendment rights, Mr. D.W. would have pursued a contested dependency fact-finding hearing. Had Mr. D.W.'s counsel sought a continuance of the dependency fact-finding hearing to investigate and prepare Mr. D.W.'s guardianship defense to the Department's Dependency Petition (which Mr.

D.W. tried to pursue multiple times), Mr. D.W. might have prevailed at a dependency fact-finding hearing. Mr. D.W.'s counsel did not properly advise Mr. D.W. regarding his right against self-incrimination, and he did not investigate or pursue Mr. D.W.'s guardianship defense. This ineffective assistance patently deprived Mr. D.W. of a meaningful hearing.

Under the *Strickland* standard, D.W.'s counsel's actions were deficient. Effective representation entails counsel's overarching duty to advocate for his client's cause. *In re Yung-Cheng Tsai*, 183 Wn.2d 91, 100, 351 P.3d 138 (2015). Counsel also has a duty to provide that skill and knowledge as will render the proceedings a reliable adversarial testing process. *Id.* Reasonable conduct for an attorney includes researching relevant law. *Id.* at 102. Failing to research a point of law fundamental to the case and about which counsel is ignorant is constitutionally deficient:

Where an attorney unreasonably fails to research or apply relevant statutes without any tactical purpose, that attorney's performance is constitutionally deficient. *See, e.g., id.* at 865–69, 215 P.3d 177 (deficient performance where reasonably adequate research would have shown that a former pattern jury instruction misstated the law on self-defense); *State v. Aho*, 137 Wash.2d 736, 745–46, 975 P.2d 512 (1999) (deficient performance where reasonably adequate research would have prevented the possibility of conviction based on acts predating the relevant statute's effective date). *Cf. State v. Paredez*, 2004–NMSC–036, 136 N.M. 533, 101 P.3d 799, 805 (holding that the failure to advise a noncitizen defendant about immigration consequences as required by N.M. Code R. 5–303(E)(5)

could be ineffective assistance); RPC 1.1 cmt. 2 (“Perhaps the most fundamental legal skill consists of determining what kind of legal problems a situation may involve, a skill that necessarily transcends any particular specialized knowledge.”). Indeed, “**[a]n attorney's ignorance of a point of law that is fundamental to his case combined with his failure to perform basic research on that point is a quintessential example of unreasonable performance** under *Strickland*.” *Hinton v. Alabama*, 571 U.S. —, 134 S.Ct. 1081, 1089, 188 L.Ed.2d 1 (2014).

Id. Similarly, counsel who fails to investigate the material facts of a case to determine how to proceed is deficient. *State v. A.N.J.*, 168 Wn.2d 91, 111, 225 P.3d 956 (2010). Defense counsel should promptly investigate the circumstances and explore all avenues leading to relevant facts. *Id.* at 111, n. 13.

Had counsel offered effective assistance, the outcome of the dependency hearing might have been different. The Department had alleged that Mr. D.W.’s children were dependent under RCW 13.34.030(6)(c). Under that statutory subsection, a “ ‘Dependent child’ means any child who: . . . Has no parent, **guardian, or custodian** capable of adequately caring for the child, such that the child is in circumstances which constitute a danger of substantial damage to the child’s psychological or physical development[.]” RCW 13.34.030(6)(c)(emphasis added). Had Mr. D.W.’s counsel advocated for Mr. D.W.’s wishes and pursued relative custody by interviewing relatives

and establishing a third-party custody decree or guardianship for Mr. D.W.'s children, then there reasonably could have been a guardian or custodian capable of caring for Mr. D.W.'s children by the time a contested fact-finding was called for hearing. If the children had an appointed guardian or a third-party custodian, then, by definition, none of them would be a "Dependent child." See RCW 13.34.030(6)(c). The Department's Dependency Petition would have been dismissed because a court does not obtain jurisdiction over a minor until he or she is found to be a dependent child as defined by statute. *In re Key*, 119 Wn.2d 600, 608, 836 P.2d 200 (1992).

Moreover, had Mr. D.W.'s attorney simply researched the Fifth Amendment question at issue in Mr. D.W.'s dependency case, he would have discovered that the Fifth Amendment can be asserted in any civil proceeding:

[T]he power to compel testimony is not absolute. There are a number of exemptions from the testimonial duty, the most important of which is the Fifth Amendment privilege against compulsory self-incrimination. The privilege reflects a complex of our fundamental values and aspirations, and marks an important advance in the development of our liberty. It can be asserted in any proceeding, civil or criminal, administrative or judicial, investigatory or adjudicatory; and it protects against any disclosures which the witness reasonably believes could be used in a criminal prosecution or could lead to other evidence that might be so used. This Court has been

zealous to safeguard the values which underlie the privilege.

Kastigar v. United States, 406 U.S. 441, 444–45, 92 S. Ct. 1653, 1656, 32 L. Ed. 2d 212 (1972) (internal citations omitted). Had Mr. D.W. been properly advised that he could testify while enjoying his right against compulsory self-incrimination, then he would not have waived his right to a dependency fact-finding hearing and the attendant rights that accompany such a hearing.

Our Supreme Court has acknowledged how important effective legal counsel is to an indigent parent faced with the superior power of State resources in dependency proceedings:

In dependency and child neglect proceedings—even if only preliminary to later and more final pronouncements—the indigent parent has to face the superior power of State resources. The full panoply of the traditional weapons of the State are trained on the defendant-parent, who often lacks formal education, and with difficulty must present his or her version of disputed facts; match wits with social workers, counselors, psychologists, and physicians and often an adverse attorney; cross-examine witnesses (often expert) under rules of evidence and procedure of which he or she usually knows nothing; deal with documentary evidence he or she may not understand, and all to be done in the strange and awesome setting of the juvenile court. The right to one's child is too basic to expose to the State's forces without the benefit of an advocate.

In re Myricks' Welfare, 85 Wn.2d 252, 254, 533 P.2d 841 (1975), overruled on other grounds by *Lassiter v. Department of Social Services of*

Durham County, N.C., 452 U.S. 18, 101 S. Ct. 2153, 68 L.Ed. 2d 640 (1981).

There is no tactical reason for Mr. D.W.'s counsel's failure to investigate the facts, research the fundamental law at issue in his client's case, and advocate for his client's position. His performance was deficient and egregious, leaving Mr. D.W. with no advocate to support him in the face of losing his rights to his children. Mr. D.W.'s counsel's ineffective assistance deprived Mr. D.W. of a dependency fact-finding hearing and substantially prejudiced Mr. D.W.'s rights, defense, and the trajectory of the dependency proceedings. Had counsel been effective and established, or at least investigated, a guardianship or third-party custodian for Mr. D.W.'s children, it is reasonably possible that the Department would not have established that the children were dependent under the statute. However, Mr. D.W.'s counsel was ineffective. It was, therefore, untenable and manifestly unreasonable for the trial court to find that Mr. D.W. would not have prevailed at the dependency fact-finding hearing if the agreed dependency order had been vacated.

- b. Mr. D.W.'s uncontested evidence satisfied his burden to support his motion.

The juvenile court applied the wrong legal standard by denying Mr. D.W.'s motion on the ground that Mr. D.W. did not produce "other

evidence” of the factual basis for his motion besides his own declaration. CR 60 does not require an applicant to produce evidence corroborating his affidavit to prevail on a motion to vacate an order. It requires only an affidavit of the applicant or the applicant’s attorney (not both) setting forth the facts or errors upon which the motion is based:

Application shall be made by motion filed in the cause stating the grounds upon which relief is asked, and supported by the affidavit of the applicant or the applicant’s attorney setting forth a concise statement of the facts or errors upon which the motion is based, and if the moving party be a defendant, the facts constituting a defense to the action or proceeding.

CR 60(e)(1).

Consistent with CR 60(e)(1), Mr. D.W.’s declaration sets forth the facts and errors upon which his request was based. His declaration asks that the dependency order be vacated because he received erroneous legal advice from his attorney about his right against self-incrimination which induced him to give up his right to a contested fact-finding hearing.

In addition to Mr. D.W.’s declaration, his motion to vacate was supported by the declaration of a dependency law attorney, Ms. Sorich, who stated that, when representing a parent facing criminal charges (like Mr. D.W.), an attorney must be careful not to waive the client’s legal rights and protections, including helping the client invoke his Fifth

Amendment right to remain silent, negotiate alternate bases for entering an agreed order of dependency, and/or seek to continue the dependency trial until the conclusion of the criminal proceedings. CP 938-39.

Moreover, Mr. D.W.'s motion was not before the court in a vacuum. The record in this case is voluminous, and the court was aware of its large size. Mr. D.W. filed numerous documents over the course of the dependency proceedings, creating a substantial record of his concerns with his counsel's performance. His court filings include correspondence to Mr. Gerhart, the attorney appointed to represent him at the dependency fact-finding hearing. That correspondence documented Mr. D.W.'s concerns about his counsel's failure to prepare his defense and properly advise on and protect his rights. Mr. Gerhart's correspondence in response does not dispute Mr. D.W.'s concerns about his rights and indicates that, approximately 16 months after the proceedings began, Mr. Gerhart was passively waiting for the Department's evidence. CP 291. The record also includes correspondence to and from Mr. D.W.'s counsel, Pier Peterson, which tends to confirm Mr. D.W.'s allegations that he was not properly advised at the dependency fact-finding stage of the proceedings and that he had family who could have taken custody of his children in his absence to avoid the need for a dependency. CP 595-97.

Moreover, the juvenile court did not operate in a vacuum without knowledge of Mr. D.W.'s alleged defense to dependency – guardianship. The case had been pending since October 2014. Mr. D.W. repeatedly sought guardianship for his children. Indeed, even the court found guardianship to be its primary plan for permanency of Mr. D.W.'s children until April 2016. *See, e.g.*, CP 197, RP (11/12/2015) 72. Court filings plainly revealed the facts and theory of Mr. D.W.'s defense.

Mr. D.W.'s filings were mentioned to the court at the hearing on Mr. D.W.'s motion to vacate, but Judge Lawler, acknowledging their existence, refused to consider them. RP (6/15/2017) 165. And, despite the opportunity to do so, no other party produced opposing declarations.

In summary, the juvenile court applied the wrong legal standard by requiring Mr. D.W. to produce “other evidence” of his allegations, contrary to CR 60(e)(1). And the record does not support the juvenile court's finding that no other evidence supported Mr. D.W.'s motion because the motion was supported by not only Mr. D.W.'s declaration but also Ms. Sorich's declaration and multiple pieces of correspondence between Mr. D.W. and his counsel. The court abused its discretion by applying the wrong legal standard and ignoring additional evidence in the record in support of Mr. D.W.'s motion to vacate. As analyzed in more

detail elsewhere in this brief, Mr. D.W. would have had at least a prima facie defense to the Department's Dependency Petition if his attorney had investigated the facts of his case, researched the fundamental laws at issue in the matter, requested a continuance of the dependency fact-finding hearing, and pursued guardianship (or third-party custody) for Mr. D.W.'s children to ensure that they had a custodian or guardian capable of caring for them. Accordingly, the order denying Mr. D.W.'s motion should be reversed.

c. Mr. D.W.'s motion was timely under the unique circumstances of this case.

The trial court abused its discretion by denying Mr. D.W.'s motion as untimely. Mr. D.W.'s motion was based on CR 60(b)(11), which authorizes a trial court to vacate a judgment for "[a]ny other reason justifying relief from the operation of the judgment." A party seeking relief under CR 60(b)(11) must make the motion within a reasonable time. CR 60(b).

What constitutes a reasonable time depends on the facts and circumstances of each case. *In re Marriage of Thurston*, 92 Wn. App. 494, 500, 963 P.2d 947 (1998), *review denied*, 137 Wn.2d 1023, 980 P.2d 1282 (1999). As the *Thurston* court stated, "[T]he mere passage of time between the entry of judgment and the motion to set it aside is not

controlling. Rather, a triggering event for the motion may arise well after entry of the judgment that the moving party seeks to vacate.” *Id.* A major consideration relevant to determining timeliness is whether the moving party had good reason for failing to take action sooner. *Id.*

The triggering event for Mr. D.W.’s motion was his discovery around March 2016 that his attorney had misinformed him about his Fifth Amendment right against self-incrimination, that he could have invoked this right at a contested dependency fact-finding hearing, and that it made a difference that he had family ready to take custody of his children at the time of the dependency fact-finding hearing. Mr. D.W. did not take action sooner because, for one year after Mr. D.W. discovered the incorrect legal advice that induced him to give up his right to a contested dependency fact-finding hearing, Mr. D.W. had three attorneys, and each one failed to file a motion to vacate the dependency orders despite his request that each do so.

Mr. D.W. tried to bring the matter to the court’s attention on his own by filing a *pro se* declaration and request for relief in December 2016 - only nine months after the triggering event for filing a motion to vacate occurred. CP 936-37. However, the trial court did not issue an order

fixing the time and place for a hearing on his declaration as required by CR 60(e)(2). *See* RP (06/15/2017) 165 (related argument by trial counsel).

Mr. D.W.'s last trial counsel was appointed on March 2, 2017, and promptly filed Mr. D.W.'s motion to vacate the dependency order on June 6, 2017. CP 766, 927-35. Based on the facts and circumstances of this case, Mr. D.W.'s actions taken within nine months of the triggering event giving rise to his motion, the inaction of Mr. D.W.'s previous attorneys despite his request that they move to vacate the dependency order and requests to the court for help, there was good reason that Mr. D.W. did not take action before Mr. Desmond filed his motion to vacate. The trial court abused its discretion by concluding that Mr. D.W.'s motion was untimely.

- d. The trial court abused its discretion by refusing to conclude that extraordinary circumstances justified vacating the dependency orders in light of ineffective assistance of counsel that egregiously deprived Mr. D.W. of substantial rights.

The parties argued Mr. D.W. motion to vacate under CR 60(b)(11). Relief under CR 60(b)(11) is afforded where there exist "extraordinary circumstances" relating to "irregularities extraneous to the action of the court or questions concerning the regularity of the court's proceedings." *In re Marriage of Yearout*, 41 Wn. App. 897, 902, 707 P.2d 1367 (1985).

A person may challenge an order under CR 60(b)(11) based on his attorney's unauthorized surrender of substantial rights; such a violation creates the kind of extraordinary circumstance that warrants vacation of the order. *See Graves v. P.J. Taggares Co.*, 25 Wn. App. 118, 126, 605 P.2d 348 (1980); *see also Lane v. Brown & Haley*, 81 Wn. App. 102, 107, 912 P.2d 1040 (1996). Similarly, original counsel for Mr. D.W.'s egregiously ineffective representation deprived Mr. D.W. of substantial rights, justifying a finding of extraordinary circumstances and vacation of the dependency orders.

In *Graves v. P.J. Taggares Co.*, the defendant's attorney filed nothing in opposition to a summary judgment motion, failed to appear at argument, failed to inform his client of the partial summary judgment establishing liability, failed to present any evidence at trial, and failed to advise his client of the decision awarding plaintiffs \$131,200 in damages. 94 Wn.2d at 300–04. Under the circumstances, the court found the attorney's unauthorized surrender of his client's substantial rights constituted extraordinary circumstances warranting vacation of the judgment under CR 60(b)(11). *Id.* at 301. Mr. D.W. has identified comparable egregious conduct here.

Mr. D.W.'s appointed attorney failed to accurately advise him on his Fifth Amendment right against self-incrimination and suggested he had no defense against dependency without investigating the facts of the case, interviewing witnesses, or researching the fundamental law at issue. Mr. D.W. relied on his attorney's deficient advice, inducing him to give up his rights to a contested dependency fact-finding hearing, to present evidence, to be heard, to examine witnesses, and to have a determination concerning his fundamental constitutional right to the care, custody, and control of his children made by an unbiased factfinder based solely on the evidence presented.

His attorney also filed nothing in response to the Department's dependency petition, conducted no investigation into Mr. D.W.'s case or prima facie defense, interviewed no witnesses, and agreed to the allegations against Mr. D.W. in the Department's Dependency Petition, despite Mr. D.W.'s pending criminal case which concerned the same underlying facts. In addition, counsel told Mr. D.W. that it did not matter that he had family who could take custody of his children immediately even though the Department alleged and would have had to prove that no custodian or guardian was capable of caring for the children.

A parent in a dependency proceeding has constitutional and statutory rights to be represented by counsel. RCW 13.34.090; *In re Key*, 119 Wn.2d 600, 611, 836 P.2d 200 (1992). The right to counsel means the right to effective legal representation. *In re Welfare of J.M.*, 130 Wn. App. 912, 922, 125 P.3d 245 (2005).

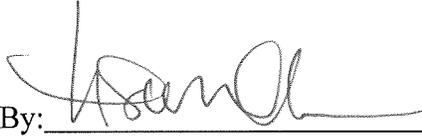
Here, Mr. D.W.'s attorney failed to accurately notify Mr. D.W. of his Fifth Amendment right against self-incrimination and promptly discarded Mr. D.W.'s prima facie defense to the Department's petition. The State produced no evidence to dispute these facts. Because of egregious nature and consequences of the ineffective assistance rendered by Mr. D.W.'s attorney, Mr. D.W. did not knowingly or voluntarily stipulate and agree to or sign the order free of misrepresentation. Any waiver of his right to appear before the court and engage in a dialogue about the validity of the stipulation was also not knowing or voluntary under the circumstances. Mr. D.W.'s motion to vacate should have been granted, and the trial court abused its discretion by denying it.

E. CONCLUSION

For the reasons stated above, Mr. D.W. respectfully requests that this Court reverse the order denying Mr. D.W.'s motion to vacate the dependency orders as void, or alternatively, for abuse of discretion.

Respectfully submitted this 8th day of July, 2018.

STAMPER RUBENS, P.S.

By: 

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hlandrus@stamperlaw.com

APPENDIX

Appendix A. Mr. D.W.'s eye records diagnosing him as legally blind.

Appendix B. Motion/Declaration re Affidavit of Prejudice from COA 50710-2-II Clerk's Papers 36-38.

Appendix C. Notice of Discretionary Review to the Court of Appeals and Request for Appellate Counsel dated June 29, 2017.

Appendix A

PROGRESS NOTES

NAME W. D. BIRTHDATE _____ SEX M PAGE _____

INSURANCE STAFFORD CREEK OCCUPATION _____ REFERRED BY _____

DATE 222, 10. 29. 15 CC. NOTES Age 29

MAR 08 2018

CC: Ref'd by Stafford Creek *alleged: NCAV, med list - seeds, for eval of VA *ocular meds: (all) - none -
 VASOSAD / Auto
 P. Haysan This has always been what I draw. Audephad aide in school to help reading + writing.
 "Can't say anything Mrs Red"

HUMPHREY INSTRUMENTS
 Name D. J. W. J.
 8 Mar 2018 10:44 AM
 HARK SEQ 8
 Sph Cyl Axis VA
 RIGHT EYE

con w AC / d
 Fluor
 19
 17
 1140
 MIA a

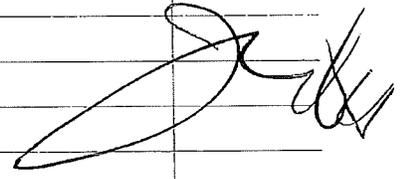
FAA full
 sl LET
 constant rapid horizontal nystagmus worse in lateral gaze

dent PC opening on

fronds
 1/2 0.2 pink on
 MV 1 PP on

SLA CAT/100 on
 for surgical certainty
 looks like
 (2) Nystagmus on
 central posterior
 rhexis on

Nothing to offer
in terms of improving his
usual prognosis
For all intents and
purposes he is
legally blind



Appendix

CR₁ - 150 + 125 x 060 20/200
 - 125 + 150 x 150 20/200

3/8/18



OFFENDER I.D. DATA: W , D A.

(Name, DOC#, DOB)

ProviderOne ID: 200374221WA

CONSULTATION REQUEST / REPORT

FACILITY/UNIT SCCC H4	ERD/PRD 1/18/2046	REQUEST DATE 1/30/2018
--------------------------	----------------------	---------------------------

Interpreter needed - Language: XXXXXXXXXX Consult ID: 74727
 SCHEDULE TYPE: Emergent Urgent Routine within 1 Month(s)

Proposed Intervention: Ophthalmology evaluation

NAME OF PROVIDER/SPECIALTY TO BE SEEN OR PROCEDURE TO BE DONE

Data to be sent with the patient: Lab X-ray H&P MAR progress note/PER/physician order
 Other: 2016 optometry write up None

Transportation needs: Car Wheel chair van Ambulance None

Diagnosis and Reason for consultation, summary of present findings and date of onset (for CRC review, include subjective, co-morbidities, previous interventions, medications, examination and diagnostics, ability to perform ADLs, if working, any pain, if applicable):

29 year old with lifelong visual issues. Some hereditary issues that are similar with male relatives. He states that he had congenital cataracts removed at age 7. He has an issue of constant nystagmus type movement of the eyes. He states that he can read if things are blown up exceedingly large, but otherwise he cannot read. Near vision seems more affected than far vision, but if he does try to read he will hold the printed word closer (not further away) to his eyes to try to see. He was seen by optometry in 2015 and was told that he had VA of 20/30 OD, and OS, but the optometrist did note that the posterior exam was "impossible" due to the nystagmus. On my exam he was PEARL. No scleral injection or icterus. He demonstrated a complete inability to perform any EOMs, and the fast horizontal nystagmus seemed worse with these efforts. Mr. Wing will be with us until 2046, and he is requesting a variety of ADA accommodations relating to his visual issues. I think a more definitive understanding of his problem would be beneficial going forward.

→ s/p CAT/IOU on for congenital cataracts
 onset of nystagmus pre-dates surgery
 VISUAL PROGNOSIS POOR GOING FORWARD
 HE IS LEGALLY BLIND

Allergies: NKDA, NOTHING TO OFFER

Series of appointments needed - Number of appointments:

L&I Work injury - Claim # and Description: -

SIGNATURE AND TITLE OF REQUESTING PRACTITIONER DATE
 Light, Scott M.

Provider One patient #: 200374221WA

Provider One authorization #: XXXXXXXXXX

CRC TYPE: Medical Dental Hep C MH Psychiatry

Level I by CRC Level I by authorizing practitioner/designee

Level III by CRC Level III by authorizing practitioner/designee

Out of state approval: SIGNATURE AND TITLE OF APPROVING AUTHORITY DATE
 Herrington, Ryan D. 1/31/2018

CONSULTANT: Please complete reverse

State law (RCW 70.02; RCW 70.24.105; RCW 71.05.390) and/or federal regulations (42 CFR Part 2; 45 CFR Part 164) prohibit disclosure of this information without the specific written consent of the person to whom it pertains, or as otherwise permitted by law.

Distribution: Original-Health Record upon completion Copies-as needed

Appendix B



Received & Filed
LEWIS COUNTY, WASH
Superior Court

DEC 01 2015

Kathy A. Brack, Clerk
By Deputy

1 SUPERIOR COURT OF WASHINGTON
2 IN AND FOR Lewis COUNTY

3 State of Washington Plaintiff,

4 vs.

5 Danny Allen Wing Sr
6 (Insert Defendant's Name Above) Defendant

11
Cause No. 15-7-00409-21
Cause No. 15-7-00410-21
Cause No. 15-7-00411-21
Cause No. 14-7-00377-0
Cause No. 14-7-00378-8
Cause No. 14-7-00379-6
MOTION

7 COMES NOW the below named party and moves as is set for herein:

8 1. Moving Party: Danny Allen Wing Sr
9 (Insert Your Name(s))

10 2. Relief Requested: Extension of fact finding hearing/Change
11 of venue/To accept all filed motion and declaration previous to this
12 Affidavit-motion.

13 3. Basis: This motion is based upon:

14 The attached declaration. The records and files herein.

15 The following: Didn't receive paperwork til 11-13-15 at hearing
Lack of time to prepare cause of mailing process.

16 Dated: 11-24-2015

17 Signed: [Signature]

18 Name(Print): Danny Allen Wing Sr (326805)

19 Address: R5/E-3-U
Washington Correction Center
PO Box 900 Shelton WA 98584

20 Phone: (360) 426-4433
21 Washington State Penitentiary
22 1313 N 13th Avenue
23 Walla Walla WA 99362-1065
Area - 515-2111 Page 36

1 SUPERIOR COURT OF WASHINGTON
2 IN AND FOR Lewis COUNTY

3 State of Washington Plaintiff,

4 vs.

5
6 Danny Allen Wing Sr
(Insert Defendant's Name Above)
7 Defendant

Cause No. 15-7-00409-21
~~NO. 15-7-00410-21~~
~~NO. 15-7-00411-21~~
~~NO. 14-7-00377-0~~
~~NO. 14-7-00378-8~~
~~NO. 14-7-00379-6~~

DECLARATION

8 I Danny Allen Wing Sr do here by motion this court to move
9 all court date related to pro say motion and declaration to
10 be here by this court, before the 17th of December 2015. I
11 would like this court to recognize that a Superior
12 Court Judge will have to take part in the fact finding
13 hearing on December 17th 2015. To with Judges,
14 Nelson E Hunt, Richard Brousy and Judge Lawler, all
15 have presided in my hearing in my criminal case, so
16 it would be in the courts finding that it would be
17 a conflict of interest to have any of the above name
18 judges preside in any hearing related to the Dependence
19 case. I am through this Declaration and motion filing
20 my protest against these judges, and asking for
21 change of venue. Because of said facts I'm also motioning
22 said court to except all previous motion, Declaration
23 and affidavits, (PPP), despite said cause number
errors, do to lack of information to my dispossession.
I motion this court to notify any parties involved
that I've over look do to lack of said knowledge of
parties involved and whereabouts.

1 In October 2015, I received one set of case # from my Attorney
2 Brian Guchart Bar # 44283 shortly after receiving this information
3 I was transferred from Washington Correction Center to
4 Kowlite County Jail which left me no time to investigate
5 these allegations upon my return to WCC I received
6 another set of case #s from Lewis County Guardian of
7 liden which was faxed to WCC on 10-29-15 at 12:00 pm.
8 and I didnt receive this til 11-13-15. I need an
9 extension of time before this termination hearing, so I
10 can talk with an attorney and have the allegation investigated
11 as I feel they are unjustified and fake, the termination
12 hearing is set for 12-17-15 1:30pm. I wasnt aware of
13 these allegations til 11-13-15. Im asking for a 90 day
14 extension on this hearing to gather information and ~~interview~~ interview
15 witness through my attorney.

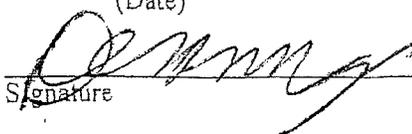
16 I motion to the court I throw this declaration
17 for the said court to recognize on the
18 allegation of non-compliance of a Drug and alcohol
19 Mental health and Angry management assment, there
20 where no referral to outside agentance's for these
21 service.

22 I am seeking out these service threw
23 Department of Correction and Faculty Counselor.

24 Verification

25 I certify under penalty of perjury under the Laws of the State of Washington, that I have
read the above statements, know their contents and believe them to be true and correct.

Signed in Shelton, Wa on November 24 2015
(City) (State) (Date)


Signature

Appendix C

Rec'd & Filed
Lewis County Superior Court

JUN 29 2017

**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR
LEWIS COUNTY
JUVENILE DIVISION**

IN RE DEPENDENCY OF:

J.W.
DOB 08/09/2008
A.W.
DOB 12//28/2011
D.W.
DOB 04/30/2014

Minor Children

NO. 14-7-00377-0 ✓
14-7-00378-8
14-7-00379-6

NOTICE OF DISCRETIONARY
REVIEW TO THE COURT OF
APPEALS AND REQUEST FOR
APPEALLE COUNSEL

CLERK'S ACTION REQUIRED

TO: KAREN SMALL, Assistant Attorney General
ERIN LECOCQ, Attorney for the Mother
CHRISTOPHER BAUM, Attorney for GAL/CASA

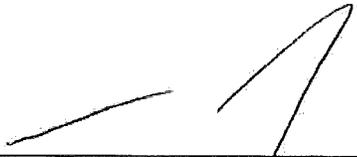
PLEASE TAKE NOTICE that Danny Wing, respondent father of the above named minor children, the appellant herein, seeks review by Division two of the Court of the order denial of CR 60 motion.

COPY

~~ORIGINAL~~

NOTICE OF DISCRETIONARY REVIEW
TO THE COURT OF APPEALS

DATED this 29th day of June, 2017.



Christopher Desmond, WSBA # 35011
Attorney for Respondent Danny Wing

CERTIFICATE OF SERVICE

I certify that I served a copy of his document on the following parties of record on the date below as follows. Each copy was sent via U.S. Mail, to:

AAG Karen Small, PO Box 40124, Olympia, WA 98504 (360) 586-6516 WSBA # 32546
Erin Lecocq, PO Box 112350 Tacoma, WA 98411 (253) 248-6248 WSBA # 50692
Christopher Baum, PO Box 1292 Chehalis, WA 98532 (360) 644-5145 WSBA # 32279

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

DATED this 29th of June 2017, at Olympia, Washington.



Jameson Acoba
Legal Intern
Desmond Law Group

NOTICE OF DISCRETIONARY REVIEW
TO THE COURT OF APPEALS

STAMPER RUBENS, P.S.

July 08, 2018 - 6:24 PM

Transmittal Information

Filed with Court: Court of Appeals Division II
Appellate Court Case Number: 51060-0
Appellate Court Case Title: In re the Dependency of: J.W., A.W. & D.W.
Superior Court Case Number: 14-7-00377-0

The following documents have been uploaded:

- 510600_Briefs_20180708182017D2399776_1803.pdf
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Briefs - Appellants
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