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

In re the Welfare of

M.W.,

A Minor Child.

**BRIEF OF RESPONDENT,
DEPARTMENT OF CHILDREN, YOUTH, AND FAMILIES**

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I. INTRODUCTION

Following an approved home study by the State of California, the Department of Children, Youth, and Families (Department) asked the juvenile court to amend M.W.'s placement from her long-term foster family to relatives in California. After hearing evidence from all parties, M.W.'s foster family, and the proposed relative placement, the juvenile court determined that two-year-old M.W.'s best interests would not be met by amending her dependency placement from the only home she has known since she was 11 days old, her foster family, to the relatives whom she has never met. A.W., M.W.'s mother, appeals that determination, arguing that the juvenile court failed to give adequate weight to the relatives, who were her placement preference.

Each party presented the juvenile court with more than sufficient evidence for the juvenile court to decide the course of action that would best serve this child. The proposed relative placement, through A.W.'s counsel, submitted declarations describing their family's excitement for M.W. to live with them. The Court Appointed Special Advocate (CASA) represented her belief that M.W. would be best served by living with relatives who could provide for her cultural needs. The Department described the in-depth process it performed before moving the court to amend placement. The foster family submitted a report emphasizing M.W.'s bond to their family

members along with letters detailing the relationships M.W. built with her biological siblings in Washington and the siblings' family's representation that the relationship would not continue should M.W. move to the relative placement. The court allowed each legal party, the proposed relative placement, and the foster family to address the court at the motion hearing. The juvenile court denied the Department's motion, ruling that moving M.W. to the relatives would not be in her best interests due to the relationships she had formed with the foster family and the harm to her by breaking those relationships. The juvenile court reasoned that the statutory preference for relatives and the biological parent's preference did not overcome the court's best-interest analysis. Though the Department may not have agreed with this decision, the Department asks this Court to affirm because the juvenile court did not abuse its discretion in prioritizing M.W.'s best interest as the law requires.

II. RESTATEMENT OF THE ISSUE

M.W. has lived with the same foster placement since she was 11 days old, she has a minimal relationship with the proposed relative placement, who lives in California, and M.W. would no longer have a relationship with her biological siblings should she move to California. Did the juvenile court abuse its discretion by deciding that removing M.W. from her current home would not serve her best interest?

III. RESTATEMENT OF THE CASE

A.W. is the mother to M.W., who became a dependent child in October 2016 shortly after her birth. Clerk's Papers (CP) at 18. When A.W. demonstrated that she would not be able to address her parental deficiencies in the near future, the Department initiated the Interstate Compact for the Placement of Children (ICPC) process to determine whether identified relatives in California would be an appropriate placement for M.W. *Id.* The State of California approved the relatives' ICPC in April 2018. CP at 19.

While the Department pursued reunification and then an ICPC placement, M.W. resided with the same foster family from the time she was 11 days old. CP at 2; Report of Proceedings, June 19, 2018, (RP) at 15. This foster family is willing to adopt her, and M.W. has thrived in their care. CP at 2, 19; RP at 7. The Department located M.W.'s full biological siblings, who were adopted by another family prior to M.W.'s birth, and M.W.'s foster family began to facilitate a relationship between M.W. and her siblings. CP at 13-14. M.W.'s foster family and the siblings' adoptive family want to continue this relationship. CP at 13. However, if M.W. moves to California for placement with relatives, the siblings' adoptive family is unwilling to continue contact with M.W. because they are fearful that a specific member of the extended family, who abused M.W.'s siblings, will learn their location. CP at 14.

Following the approved California ICPC, the Department recommended that M.W. move to the relative placement, and the parties developed a transition plan for her. CP at 3. The foster family facilitated twice-monthly “FaceTime” visits between M.W. and the proposed relative placement since January 2018, but M.W. has not met the relatives in person. CP at 19, 25.

The Department asked the juvenile court to amend M.W.’s placement with her foster family to the relatives. CP at 1. The Department social worker, the CASA, and A.W. filed declarations supporting the motion. CP at 2-4, 17-20, 22-23. The foster family also submitted a caregivers’ report with letters from M.W.’s siblings and their adoptive family, and the prospective relative placement filed a declaration through A.W.’s counsel. CP at 5-16, 24-26.

In addition to written declarations from all parties, the juvenile court allowed each party to address the court at the motion hearing. A.W. and her counsel, the Department social worker and her counsel, the CASA and her supervising Guardian ad Litem, the prospective relative placement, and M.W.’s foster family all presented further argument and evidence. RP at 3-14. The Department expressed that the motion represented a “difficult decision” that had traveled the supervisory chain because “both homes appear very good.” RP at 3. The foster family told the juvenile court

that they have maintained a bond with M.W.'s siblings that could not continue if she moved to California. RP at 7-8. Asking the court to consider M.W.'s health and development, they also informed the court that M.W. had formed strong attachments to their family members and that M.W. "is a very sensitive child." RP at 8.

The potential relative placement also addressed the juvenile court. RP at 9. Contrary to the foster family's representations, the potential relative placement told the court that M.W.'s placement with them would not disrupt her relationship with her siblings, as they would travel back to Washington with M.W. for visits. RP at 11.

The juvenile court denied the Department's motion to amend placement to relative care. CP at 80-81. The court explained that it was not in M.W.'s best interests to remove her "from the only home she's known" and this interest outweighed A.W.'s wishes and the statutory preference for relative placement. RP at 15. Further, the juvenile court cited M.W.'s ongoing relationship with her siblings in support of its decision. RP at 15-16. Though the juvenile court did not cite a specific study, the court reasoned that breaking A.W.'s relationship with her foster family would be harmful to her based upon review of studies on "long-term consequences" of "break[ing] relationship[s]." RP at 15.

A.W. sought discretionary review from this Court, and the Court Commissioner granted her request. Ruling Granting Review, No. 52255-1-II (Wash. Sept. 27, 2018).

IV. ARGUMENT

The juvenile court has broad discretion to determine the placement of a child in a dependency action according to the child's best interests. The juvenile court did not abuse its discretion when it denied the motion based upon its analysis of M.W.'s best interest to remain in the only home she has known. Thus, although the Department was the moving party below, the Department asks this Court to affirm.

A. Standard of Review

The standard of review for the juvenile court's dependency placement decisions is well-settled. A child's placement in a dependency action is discretionary and an appellate court will overturn the juvenile court's decision only if the court abused its discretion. *In re Dependency of J.S.*, 111 Wn. App. 796, 804, 46 P.3d 273 (2002) (quoting *In re Dependency of A.C.*, 74 Wn. App. 271, 275, 873 P.2d 535 (1994)). This standard of review is appropriate because the juvenile court holds discretion in child welfare matters. *See, e.g. In re Dependency of R.W.*, 143 Wn. App. 219, 223, 177 P.3d 186 (2008) (citing *In re Dependency of A.C.*, 74 Wn. App. at 275).

A juvenile court abuses its discretion when its decision is manifestly unreasonable, based on untenable grounds, or made for untenable reasons. *In re Dependency of D.C-M.*, 162 Wn. App. 149, 158, 253 P.3d 112 (2011) (citations omitted). “A decision is manifestly unreasonable if it is outside the range of acceptable choices, given the facts and the applicable legal standard[.]” *In re Dependency of T.L.G.*, 139 Wn. App. 1, 15-16, 156 P.3d 222 (2007). In dependency cases, an appellate court will decide the juvenile court has abused its discretion 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). In other words, as long as the record provides a legitimate basis for the juvenile court’s decision, then an abuse of discretion has not occurred.

A.W. incorrectly asserts that the juvenile court’s order should be reviewed de novo. Br. of Appellant at 6. A.W. cites several civil cases and *State v. Ramirez*, No. 95249-3, slip op. at 3-4, 426 P.3d 714 (Wash. Sept. 20, 2018), a criminal case involving the sentencing court’s inquiry before imposing legal financial obligations, to argue that de novo review is required. Br. of Appellant at 6-7. This argument is incorrect for three reasons.

First, this case does not involve an analogous “factual and legal component” as the Supreme Court’s inquiry in *Ramirez*. Br. of Appellant

at 6. In that case, the Supreme Court reviewed de novo whether the sentencing court erred in imposing legal financial obligations, a question of law. *Ramirez*, slip op. at 11 (holding that de novo review applied because the issue was whether the sentencing court made an adequate inquiry under the legal standard of *State v. Blazina*, 182 Wn.2d 827, 839, 344 P.3d 680 (2015)). In contrast, the issue in this case is a factual question—whether the evidence presented to the juvenile court justified its decision to deny the placement motion. The *Ramirez* Court, in fact, recognized that de novo review is *not* appropriate in such a scenario. *Ramirez*, slip op. at 9 (explaining that the appellate court resolves a “factual determination,” subject to abuse of discretion review, by examining the evidence that the court considered). In essence, A.W. argues that the record *creates* a legal error issue by asserting that “no evidence” supported the juvenile court’s decision. *See* Br. of Appellant at 7. This argument puts the cart before the horse.

Second, the juvenile court relied on more than merely the parties’ declarations. Each legal party addressed the court at the hearing. RP at 3-6. In addition, the court followed legislative direction to allow the foster family to address the court. RP at 6-9; RCW 13.34.096(2). Without objection from any party, the potential relative placement also addressed the court at the hearing. RP at 9-13. A.W. compares the parties’ filed

declarations to documentary evidence, such as “written and graphic material-documents, reports, maps, charts, official data and the like[.]” *Progressive Animal Welfare Soc’y v. Univ. of Washington*, 125 Wn.2d 243, 252, 884 P.2d 592 (1994) (quoting *Smith v. Skagit Cty.*, 75 Wn.2d 715, 718, 453 P.2d 832 (1969)); Br. of Appellant at 7. However, the parties’ declarations do not contain analogous objective evidence such as a map or chart. Rather, these declarations outline each party’s subjective beliefs, observations, and professional judgments that the juvenile court evaluated to analyze the child’s best interests. De novo review of such subjective evidence is not appropriate. *See In re Parental Rights to K.M.M.*, 186 Wn.2d 466, 477, 379 P.3d 75 (2016) (appellate court does not determine witness credibility or the persuasiveness of the evidence in a termination trial) *and In re Welfare of A.W.*, 182 Wn.2d 689, 711, 344 P.3d 1186 (2015) (court reviewing a guardianship order should not weigh evidence or judge witness credibility).

Third, A.W.’s case law citations do not provide authority for de novo review of a *juvenile court* decision nor any appealable issue subject to the same discretion as the law affords the juvenile court’s decisions (discussed further below). *See* Br. of Appellant at 7 *and, e.g., In re Dependency of T.L.G.*, 139 Wn. App. at 15. The Department is not aware of any authority directing de novo review of a juvenile court order not

raising constitutional or statutory interpretation questions. This court should not accept A.W.'s invitation to create new law by applying a novel standard of review to a juvenile court decision and should instead maintain clear case law authority to review this case for abuse of discretion.

B. The Juvenile Court Did Not Abuse Its Discretion Because M.W.'s Best Interests are the Juvenile Court's Primary Concern

The juvenile court's paramount duty is to evaluate evidence to determine the child's best interest. The juvenile court holds broad discretion to evaluate evidence in light of the child's best interests. *In re Welfare of Siegfried*, 42 Wn. App. 21, 27, 708 P.2d 402 (1985). “[A] juvenile court must evaluate a considerable amount of information and weigh the credibility of numerous witnesses in order to balance the best interests of a child against a parent’s rights[.]” *In re Dependency of T.L.G.*, 139 Wn. App. at 15. To properly exercise its discretion, the juvenile court is allowed considerable flexibility to receive and evaluate all relevant information to reach an appropriate decision that balances the child’s welfare against the parent’s rights. *In re Welfare of Becker*, 87 Wn.2d 470, 478, 553 P.2d 1339 (1976). Thus, this Court places “‘very strong reliance’ upon a [juvenile] court’s determination of what course of action will be for the best interest of the child and will not overturn a ruling . . . absent an

abuse of discretion.” *In re Dependency of T.L.G.*, 139 Wn. App. at 15. (citation omitted).

Whether the juvenile court properly ruled on a placement decision depends on the facts and circumstances of each case. The juvenile court’s best interest determination is highly fact-specific and cannot be reduced to a mathematical equation. *In re Dependency of J.B.S.*, 123 Wn.2d 1, 11, 863 P.2d 1344 (1993). However, factors relevant to a juvenile court’s placement decision are the psychological and emotional bonds between the child, the biological parent, the foster family, any siblings, and the prospective placement, as well as potential harm to the child by severing these relationships as a result of placement change. *Id.* at 11; *see also In re Dependency of J.S.*, 111 Wn. App. at 805. The juvenile court should maintain a child’s placement, avoiding custody changes where possible, because the objective in placement decisions is to “maintain continuity in the child’s relationship with a parental figure.” *In re Dependency of J.S.*, 111 Wn. App. at 805.

The legislature has directed that a dependent child’s placement with a relative is preferred, but this preference is not absolute. The juvenile court may place a dependent child in the care of a relative, other suitable person, the Department, or a supervising agency. RCW 13.34.130(1)(b)(i). Absent good cause, the Department shall follow the parent’s wishes of placement

with a relative. RCW 13.34.260(1). However, foster care placement is appropriate where the juvenile court finds reasonable cause to believe that relative placement would jeopardize the child's welfare or hinder reunification efforts. RCW 13.34.130(3),(5). Furthermore, "[t]he [juvenile] court shall consider the child's existing relationships and attachments when determining placement." RCW 13.34.130(3). When the juvenile court orders placement with a person over the objection of the parent, the juvenile court must articulate its reasons, on the record, for ordering the placement. RCW 13.34.130(1)(b)(i).

The juvenile court must balance both the parents' rights and the child's rights in placement decisions but the child's best interests trump the parents' rights in placement decisions. "[T]he child's best interest is the paramount concern" in placement decisions. *In re Dependency of A.C.*, 74 Wn. App. at 275, 277. Stability and permanency in the child's placement are the primary goals during the dependency process. RCW 74.13.290. Although parents have a fundamental liberty interest in the care and custody of their child, these rights are subservient to the juvenile court's analysis of the child's best interest. *See In re Dependency of J.B.S.*, 123 Wn.2d at 8 (reversing the lower court's order amending the child's placement because that court assumed that "the dependency statute constrained it from giving effect to J.B.S.'s best interests.'). In a placement decision, the juvenile

court should not allow the parents' wishes to overcome the child's best interests. *In re Dependency of J.S.*, 111 Wn. App. at 804. "The ultimate determination of placement is by the [juvenile] court, not by the [D]epartment or by the parents." *Id.*

Furthermore, a child's stability in a long-term placement is a crucial factor in the juvenile court's evaluation of the child's best interests in a placement decision. When a child is psychologically bonded to a family due to living her entire life within that family unit, the juvenile court must respect that bond. *In re Dependency of J.S.*, 111 Wn. App. at 805. A child's "family unit" may be a long-term foster family, and the legislature has declared that the juvenile court nurture that family unit. *In re Dependency of Ramquist*, 52 Wn. App. 854, 862, 765 P.2d 30 (1988) (citing RCW 13.34.020). Even where the biological parents express a placement preference, the juvenile court's best interest determination may overcome that preference. *In re Dependency of J.S.*, 111 Wn. App. at 806 ("[I]f the Legislature had intended automatic approval for voluntary adoption plans offered by parents, it would not have given the [juvenile] court the role of determining the best interest of the child."). Where the child's best interests and the parent's placement preference conflict, the child's best interests prevail. *In re Dependency of J.B.S.*, 123 Wn.2d at 8-9.

The facts of this case are similar to the facts of *In re Dependency of J.S.*, 111 Wn. App. at 796. There, the biological parents proposed an adoptive family who had adopted J.S.'s sibling but the juvenile court declined to move the child from a long-term home with relatives because J.S. was bonded to his current placement. *In re Dependency of J.S.*, 111 Wn. App. at 801. The juvenile court determined that the advantages of a *potential* relationship with the sibling did not outweigh the attachment he formed to his current family. *Id.* On appeal, Division One of the Court of Appeals held that the juvenile court did not abuse its discretion "by concluding that the [current placement] were the family to whom J.S. had bonded, and that he should remain in their care." *Id.* at 806. Though *J.S.* involved a proposed relative placement from another relative placement, the court's emphasis on the child's current bond applies in this case.

Here, the juvenile court did not abuse its discretion by deciding that M.W.'s bond to her foster family outweighed A.W.'s placement preference. M.W. has lived with her current foster family since she was 11 days old, and she is bonded to this family. CP at 2. Since meeting her biological siblings and their adoptive family, M.W. has also formed a strong bond to her brother and sister, which the CASA recognized as important as well. CP at 13, 20. However, according to the siblings' adoptive family, this relationship could not continue if M.W. lives with the potential relative

placement. CP at 14. Although the foster family has facilitated “FaceTime” communication between the potential relative placement and M.W., these contacts had only occurred twice monthly since January 2018 and M.W. has never met them in person. CP at 19, 25. No evidence suggested to the juvenile court that M.W. has a meaningful relationship with these relatives. M.W.’s *potential* bond with her relatives in California should not overcome the juvenile court’s consideration of her *current* bond to her foster family. See *In re Dependency of J.S.*, 111 Wn. App. at 801.

The juvenile court relied on this evidence in its ruling. The juvenile court denied the Department’s motion based upon M.W.’s “existing relationships,” as the legislature has directed the court to do. RCW 13.34.130(3). In its oral ruling, the court cited the impact moving M.W. would have on her well-being, explicitly stating that this harm outweighed the preferences for relative placement. RP at 15; RCW 13.34.260(1); RCW 13.34.130(3), (5). The court also relied upon M.W.’s relationship with her siblings, which would not continue if she moved to California. RP at 15-16. The juvenile court articulated all of these factors on the record. RCW 13.34.130(1)(b)(i).

Even though A.W. preferred placement with her relatives, where the child’s best interests and the parent’s preference conflict, the child’s best interests must prevail. *In re Dependency of J.B.S.*, 123 Wn.2d at 8-9.

On appeal, A.W. characterizes the record as not containing *any* evidence to support the juvenile court's decision, but that assertion is plainly untrue and amounts to asking this Court to reweigh the evidence presented to the juvenile court. A.W. is correct that the studies the juvenile court referenced are not part of the record. However, the evidence of M.W.'s existing bonds to her foster family and biological siblings were unchallenged by any party. Thus, the juvenile court did not abuse its discretion by focusing on M.W.'s bond and prioritizing her best interests over A.W.'s placement preference.

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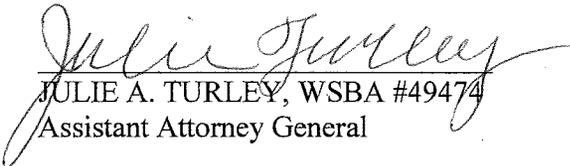
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V. CONCLUSION

The Department respectfully requests that this Court affirm the juvenile court's order denying the Department's motion to amend placement. Where the child's best interests and a parent's placement preference conflict, the child's best interest must prevail. *In re Dependency of J.B.S.*, 123 Wn.2d at 8-9. Here, the juvenile court considered all of the evidence before it and concluded that M.W.'s best interest would not be served by moving her to a relative placement that she did not know and away from her foster family and biological siblings to whom she was bonded. Thus, the juvenile court did not abuse its discretion and this court should affirm.

RESPECTFULLY SUBMITTED this 5th day of November, 2018.

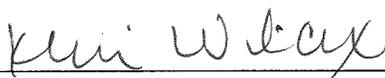

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DECLARATION OF SERVICE

I, Kim Wilcox, declare under penalty of perjury under the laws of the state of Washington that the following is true and correct:

On November 5, 2018, I caused a true and correct copy of the Brief of Respondent, Department of Children, Youth, and Families, to be filed electronically with the Washington State Court of Appeals, Division II, and to be served on the parties via email through the Court's electronic filing system.

SIGNED in Tacoma, Washington, this 5th day of November, 2018.



Kim Wilcox
Legal Assistant

ATTORNEY GENERAL OF WASHINGTON - TACOMA SHS

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