FILED

AUG 01 2016

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By_____

CASE NO.: 342255

IN THE WASHINGTON STATE COURT OF APPEALS
DIVISION III

FOWLER

v.

KIM VANDOREN, ANGELA NEWPORT, D.S.H.S et al

ON APPEAL FROM PENDOREILLE COUNTY SUPERIOR COURT
THE HONORABLE JUDGE PATRICK A. MONASMITH

BRIEF OF APPELLANT

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June 30, 2016

Oral Argument Requested

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B. The trial court erred in granting the defendants' motion for summary judgment despite evidence showing the knowledge of harm was foreseeable from illegal disclosures.

C. The trial court erred in determining that the illegal disclosures were within the scope of Child Protective Services, or Department of Children and Family Services duty as a matter of law.

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I. Introduction

This is an appeal of the decision made by Judge Monasmith of Pend Oreille County. On February 25, 2011, Judge Monasmith granted the motion for summary judgment for the defendants, D.C.F.S./D.S.H.S et al, despite there being genuine issues of material fact still in question. This appeal timely followed.

I feel that this case holds a strong potential presidential value for our state. It involves a fundamental and urgent issue of statewide importance which requires a prompt and presidential determination for child and family safety. The trial court's ruling suggests that Department of Children and Family Services (D.C.F.S.) in Washington owes no duty of care. D.C.F.S is able to break state laws and state constitution. D.C.F.S is not held accountable for violations of law and constitution because of liability immunity. If D.C.F.S puts a child or a family in danger, they are not held accountable because they can exercise their liability immunity. The only means of over ruling liability immunity of C.P.S/D.C.F.S is to prove gross negligence, which has not been statutorily defined in the state of Washington. (*WPI 10.07)*

This case has very important questions of law for the courts. I am appealing based on prejudicial errors, improper ruling by the judge, and evidence that was improperly denied and admitted.

II. Assignments of error:

No. 1 The trial court erred in granting the motion for summary judgment on February 25, 2016.The court's ruling was a violation of Federal Rules of Civil Procedure, CR56 (a) &(c).

No. 2 The trial court erred in affirming the standard of liability immunity with the standard for gross negligence being met. Violation of **RCW 4.24.595** § (1). A genuine issue of material fact in question is whether the agency was entitled to liability immunity in this case.

No. 3 The trial court erred in ruling that there was no breach of duty. A genuine issue of material fact in question is whether duty of care was owed by the agency. A statutory violation of **RCW26.44.030;** subsections 7 and 9 affirm there was specifically " a duty to not further disseminate or release information except as authorized by state or federal statute."

No. 4 The trial court erred in allowing acts that can be defined as criminal to be defined as "going beyond the presumption." "Violation **of RCW 26.26.116,** (1). **RCW 26.44.030** subsections 7& 9."

No. 5 The trial court erred in ruling that an order made by the parent agency, D.S.H.S, for the safety of a child would not apply to D.S.H.S's subsidiary agency D.C.F.S/ C.P.S. Defense counsel portrayed the good cause order as an order made by D.C.S, another

subsidiary agency of D.S.H.S. The information given by defense regarding the good cause order was not accurate.

No. 6 The trial court erred in improperly admitting irrelevant information by making reference to material included in the dependency file from 2011. Much information that the Judge seemed to weigh was hearsay, the result of a social worker putting false accusations into records. I feel that much of the information brought up in the R.P. was not relevant to the current case, regardless of its accuracy or inaccuracy.

No. 7. The trial court erred in insinuating that primary authorities, such as Washington state statutes, are not binding to the department/agency.

No. 8 The trial court erred in not taking into consideration the petitioner exhibits that affirmed inconsistent testimony on behalf of the department..

No. 9 The trial court erred in suggesting that there was no duty owed, thereby no breach of duty.

No. 10 The trial court erred in believing that the case was down to two causes of action on February 25, 2016.

No. 11 The trial court erred in not taking into consideration documented evidentiary objections and defendant testimony that was

improperly sworn to as material fact in question. Credibility issues that existed concerning material fact were ignored by the trial court.

No. 12 The trial court erred in ruling that none of the elements in this case were actionable.

III. Issues Pertaining to Assignments of Error:

1. Can Summary Judgment be granted when there is a genuine issue of material fact still in question? (Assignment of error 1)
2. Can liability immunity still apply if the standard of gross negligence is met? (Assignment of error 2)
3. Is the fact that gross negligence has not been statutorily defined damaging for cases in which it is necessary to meet the gross negligence standard? (Assignment of error 2)
4. Can an agency/department have a duty or authority to make illegal disclosures? (Assignment of Error 3)
5. Does a statutory violation on behalf of an agency that can be defined as criminal constitute a breach of duty? (Assignment of error 3)
6. Can conduct that can be defined as criminal on the behalf of an agency meet the standard for gross negligence? (Assignment of error 4)
7. Can a subsidiary agency nullify an official order made by the parent agency over them without written consent as defined by law? (Assignment of error 4)

8. Can statutory laws legally be broken because of liability immunity? (Assignment of error 4)
9. Whether going past a legal presumption and thereby breaking the law is initiated by oral or written information, would it have a bearing on the law? (Assignment of error 4)
10. Does a social worker or an attorney have a right to access and file confidential sealed reports there should not be reference to without consent or a court order, (6) six days before court? (Assignment of error 6)
11. If confidential sealed reports were accessed by a social worker, and there was an attempt to file these sealed reports without consent, court order, or a claim of privilege on the record, would that constitute a violation of the Privacy Act of 1974? (Assignment of error 6)
12. If reports were submitted by a defendant (6) six days before bench trial, and it was done without the other parties having knowledge, or a claim of privilege by the defendant, would that be a violation of CR26(b)(5)? (Assignment of error 6)
13. Do acts that can be defined as criminal committed on the behalf of an agency meet the standard for gross negligence? (Assignment of error 7)

14. Can acts that could be defined as criminal acts committed on behalf of an agency qualify as a cause of action? (Assignment of error 7)
15. Can acts that could be defined as criminal, committed on behalf of an agency, qualify as a breach of duty? (Assignment of error 7)
16. Are primary authorities binding for agencies that exercise liability immunity? (Assignment of error 7)
17. Is the general duty of care for torts imposed on all persons to not place others at risk of foreseeable harm through conduct?
18. Can social workers break laws in the performance of their jobs, and be protected by liability immunity? (Assignment of error 7)
19. Is it proper judicial conduct for a judge to mock a party's position as "not making sense," when the judge fails to acknowledge exhibits that would clarify? (Assignment of error 8)
20. Is it accurate that a known risk of harm raises a duty of commensurate care? (Assignment of error 9)
21. Is standard of care not met when defendant's fail to exercise that degree of skill, care, and learning possessed by persons in the same profession? (Assignment of error 9)
22. Can a social worker send notice regarding a minor child's information to someone other than a legally presumed parent or legal guardian, and/or advertise that any man interested in

parentage of a child may attend a court date without the legally presumed father first resending rights? (Assignment of error 10)

23. Is negligence actionable if it involves the invasion of a legally protected interest, the violation of a right? (Assignment of error 12)
24. Does intrusion upon the seclusion of another depend on publicity? (Assignment of error 3)

IV. Statement of the case:

On April 6, 2011, I did an interview with a Department of Social and Health services (D.S.H.S.) social worker at the Newport Washington offices; the interview collected information to establish a good cause claim. (C.P. 15, Ex A)

On April 17, 2011, I was arrested for an alleged altercation with my partner at the time. (C.P 1, 2-3.1). My child was placed into custody by Child Protective Services, (C.P.S); I spent a night in jail, April 17, 2011, and was released the next morning. (C.P. 15, 1) While I was in custody at the Pend Oreille County Jail, social worker KIM VANDOREN interviewed me. (R.P. 6, 2-7) Some of the statements she claims I made to her during this interview are not true, for example, who she claims I told her was the father of my child. (R.P. 6, 6-8) I asked her during the jail interview if my husband could pick up the child, (C.P.15, 2, 8) additionally, D.S.H.S records attached to the declarations of KIM

VANDOREN show documentation on file with D.S.F.S that I was married; this fact was documented by the department before the illegal disclosure of my child's information to someone other than my husband, the presumed father by law. (C.P. Confidential sealed reports 1, DPP, 1.2) (C.P. Confidential sealed reports 2, 2, 14-18) With full knowledge of my marriage during the time of my child's birth, social worker KIM VANDOREN illegally disclosed my child's information to the individual that was named on the Good Cause instead of my legal husband. (C.P.15, Ex A) & (R.P 7, 20-22)

The records clearly show, KIM VANDOREN, under the supervision of supervisor ANGELA NEWPORT, social workers for D.C.F.S/C.P.S broke Washington state law and illegally disclosed my child's information to a man other than the legally presumed father. (CP 15, Ex B) The child's identifying information, and the local jurisdiction my family resided in were disclosed to a man with a manslaughter charge on a previous child of his, and a history of pedophilia. (CP 15, Ex B) I had been in active hiding for over a year; until the illegal information disclosure by the 'Child Protective Service' workers, this individual was unaware of the child and unaware of my whereabouts. (CP 15, Ex B). Chronologically, on April 6, 2011, the Good Cause claim was entered into the D.S.H.S. record, (CP 15, Ex A) On April 17, I was arrested for domestic violence (which was later dropped), and my child was temporarily (for (3) days), placed by Child Protective Services. (C..P. 1, 2,

3.1) On April 28, my child's information was illegally disclosed to the individual the good cause information was taken for. (C.P.15, Ex B) The statutory basis establishing that this disclosure was made illegally is that I was married to another man at the time of the child's birth and at the time of the illegal information disclosure; the presumed father by law would have been my husband until he rescinded his rights under (RCW 26.26.116). The department and defendants had full knowledge of my marriage; the man that was my legal husband during the time of the child's birth and the illegal information disclosure had not rescinded his rights through signing a denial of paternity. (C.P. Confidential sealed reports 2, 2, 14-22) (CP Confidential Sealed Reports 1, 'DPP') & (R.P 7, 20-22)

KIM VANDOREN and ANGELA NEWPORT had knowledge of, or should have had knowledge of the good cause. (C.P. 15, Ex B) KIM VANDOREN claims in her declarations that I told her Edwin Twitchell was the child's father in the jail interview with me. (R.P. 6, 3-8) This is contradictory to the narrative written that states "Christian's father, Jason Centorbi, lives in Idaho." (C.P. 15, NARRATIVE)

The department's attorney, Mr. Cartwright, suggests that KIM VANDOREN went past presumption based on who she was told the actual father was. (R.P. 8, 10-13) This 'presumption' referred to is a statutory law in the state of Washington on presumed parentage. (R.P.7, 9-13) It is suggested that in a typical situation there is a presumption; (R.P. 8, 10-13)

Defense counsel disregards Washington state law based on defining situations that are stipulated by statute as apparently 'typical or not typical.' (R.P 8, 10-13) The trial court ruled that there is no proximate cause for damages; there is allegedly no cause of action in this case (R.P. 25, 11-12)

KIM VANDOREN's declarations contradict the evidence in exhibits, a genuine issue of material fact in question. A presumed father by law, and another alleged father (besides the man named on the good cause), arise from, and are acknowledged by the department's documentations; these are not "lies and fallacies," as stated by defense; (C.P. 17, 4 25- 26, 4). Additionally, KIM VANDOREN's illegal disclosures to the man on the good cause order were not timely made; KIM VANDOREN's first letter of disclosure was dated more than a week and a half after the child was placed, and more than a week after I had had the child back in my care. (C.P. 15, EXHIBIT B) The disclosure was made a week and a half later then the time specified by RCW 13.34.062(b). RCW 13.34.062 was erroneously sited multiple times by the defense; (C.P. 17, 15-16); (C.P. 17, 8, 14); (R.P.6, 8-14). Et seq.

Argument:

A. STANDARD OF REVIEW

The standard of review on an order for summary judgment is de novo, the Appellate court performing the same inquiry as the trial court,

Smith v. Safeco Ins. Co., 150 Wn2d 478, 483, 78 P.3d 1274, 1276, (2003); *Young v Key Pharmaceuticals Inc.*, 112 Wn2d 216, 226, 770 P.2d 182 (1989) A court must deny summary judgment when a party raises a material factual dispute. *Smith, surpa* at 485-486. The legal inquiry shapes what is a material fact. *Smith,* at 486. A genuine issue is one upon which reasonable people could disagree; a material fact is one controlling the litigation's outcome. *Keek v. Collins,* 181 Wn. App. 67, 90, 325 P.3d 306, 317 (WA Ct. App. Div. 3). If reasonable persons might reach a different conclusion, the motion should be denied. *Klinke v. Famous Recipe Fried Chicken Inc.*, 94 Wn.2d 255, 256-57, 616 P.2d 644 (1980).

Duty and Breach of Duty;

I submitted evidence that established the existence of genuine issues of material fact as to the Department of Children and Family Services disclosures being illegal because they were not made to the presumed parent by law; whether the department had a duty to abide by state law; whether the department breached that duty, and whether the department took any reasonable precautions to protect my child and family from foreseeable harm that was a direct result of the illegal disclosures. Reasonable minds can disagree because the laws, such as state statutes, specifically confirm that the conduct of the D.C.F.S workers was unlawful in a way that could be defined as criminal, yet the defense says that there was a duty to perform the acts that can be defined under statute as criminal. *Northwest Mfrs. v. Dep't of Labor,* 899 P. 2d 6, 78 Wash. App.

707 - Wash: Court of Appeals, 2nd Div., (1995); Assuming that is correct, a violation of statute is actionable only if the statute imposes a duty, the duty is breached, and the breach was a proximate cause of damage to the claimant.

Regardless of the knowledge of foreseeable harm established through the information taken in the Good cause claim on April 6, 2011; the department acted outside of its statutory duty by disclosing the child's information to a man other than the presumed parent by law. Statutory duty is pursuant to (**RCW 26.26.116 & RCW 26.44.030** Sections 7 & 9).

The department and defense erroneously interpreted and applied RCWs that pertain to shelter care/ dependency proceedings that would not apply to any individual other than legal parents/guardians of a child. The department additionally applied statute out of the time frame specified by the statute. (C.P 17, 8,12-14)

Considering the illegal and reckless nature of the disclosures of my child's information, the defendant's liability immunity is a genuine issue of material fact in question; pending a legal determination of gross negligence, of which the plain English definition has been met.

<u>The disclosure can be defined as unlawful and criminal conduct:</u>

D.C.F.S broke state laws regarding presumed paternity in my case to disclose my child's information to a dangerous offender that I had a good cause order for. This fact is easy to establish because I was married at the

time of the child's birth and at the time of the illegal information disclosure. (CP Sealed Reports 1, 'DPP') stating, "Mother, Married." (CP Sealed Reports 1, 'DPP') also states Edwin Twitchell is an alleged father, which should not have been legal based on the known fact that I was legally married, also documented on (C.P. Sealed Reports 1). Statute **RCW 26.26.116** infers that acknowledgment of an 'alleged' father would not be legal until the time the presumed father by law signed a 'denial of paternity,' thereby rescinding his rights. Information disclosure to a man other than the legally presumed father is not legal, but the department fails to recognize Washington State law regarding presumption of parentage. (RCW 26.26.116). The presumed parent by law would have been my legal husband until the time that he rescinded his parental rights, through signing a denial of paternity.

The child's information was not disclosed by D.C.F.S to my husband. D.C.F.S broke the law and fully disclosed my child's information to the individual that the Good Cause order was in the D.S.H.S system for instead of my legal husband. (C.P. 15, EXHIBIT B) My fear is also for the men and women that may have Good Cause and are not legally married to anyone else. Since Good Cause can typically only be considered or approved if there are safety issues, such as mine, "parent/child may be seriously harmed," why would social workers for a sub-agency under D.S.H.S over-ride an order of this nature put into place by D.S.H.S? It is concerning that this is Child Protective Services that we

are talking about, nullifying an order put in place by their parent agency for child safety. There seem to be some questions in my case about the origin, nature, and reason for "Good Cause." I hope that these questions can be clarified and that the department will recognize these types of disclosures as highly dangerous, damaging, and hopefully illegal in the future.

Good Cause Order, is Good Cause a D.S.H.S. order?

The Department of Social and Health Services, (D.S.H.S.), is responsible for conducting the good cause interview and approving the Good Cause order. Good cause is not a decision by DCS, as suggested by Mr. Cartwright, (RP 19, 13-21) It is also not solely for the purposes of not wanting contact, or not collecting child support as Mr. Jerald Cartwright, the state's attorney, suggests, (R.P. 5, 11-13) Good cause is contingent on the situation of the child's best interest. Good cause takes into consideration the child, and families' safety. As per D.S.H.S's decision, The Good Cause Order, if approved, is forwarded to Division of Child support, (D.C.S). Based on Washington State Department of Social and Health Service's decision about the best interest of the family and child's safety, DCS closes the case and neither agency tries to establish paternity *or* collect support. Facts supporting that Good Cause is a D.S.H.S order are:

1. The workers whose conducted, reviewed, and approved the Good Cause Order were a D.S.H.S worker and a D.S.H.S supervisor, not employees of the Division of Child Support.
2. The Washington State Department of Social and Health Serviced header is on the top of the page on the Good Cause Order; along with the Case name Newport CSO. There are no D.C.S offices located in Newport Washington. The closest D.C.S is in Spokane WA.
3. Mr. Bob Pound was the D.S.H.S worker who conducted the good cause interview. He recorded the Good Cause claim information via a D.S.H.S computer on April 6, 2011. Social Worker Bob Pound worked at the local D.S.H.S office in Newport Washington. Bob Pound's digital signature, also the digital signature of a D.S.H.S supervisor's, Judy Bircher, are visible on the Good Cause order. Nowhere on this order are there any signatures of employees or representatives of D.C.S. (C.P. 15, EXHIBIT A)

I would think that the preponderance of evidence would prove that this is definitely an order made by D.S.H.S. It is kept in the D.S.H.S. system; D.S.H.S is also responsible for granting, maintaining, and renewing it. It is made in the best interest of the child, and made with regards to extreme safety issues for the child/children and parent by multiple levels of D.S.H.S employees. It is a dangerous precedent being

set to have double standards concerning orders in place by the agency involving child safety. If workers such as KIM VANDOREN are willing to break the laws regarding presumed paternity in order to illegally disclose information about a child to an individual reported or known to be a child killer and a pedophile, is something convoluted in the system? I think that since the agency doesn't see anything wrong with this process that the law needs to be able to determine matters like this for them specifically.

D.S.H.S is known as an "umbrella agency." Under the umbrella of D.S.H.S are CPS/ D.C.F.S and D.C.S. If these agencies all are subsidiaries of the same parent/umbrella agency of D.S.H.S, what gives any agency under D.S.H.S authority to pre determine, nullify and/or over ride an official safety related determination or order of the agency over them, whether pending or approved? These departments under D.S.H.S, such as C.P.S/D.C.F.S are contracted under D.S.H.S. Upon information and belief, C.P.S is a sub agency of a larger parent agency, D.S.H.S. The sub agency is contracted through the parent agency. D.S.H.S frequently sub-contracts, such as with caregivers providing in-home health care. Many of these caregivers receive paychecks from D.S.H.S; such as C.P.S employees receive paychecks from D.S.H.S. If we can define C.P.S/ D.C.F.S as a subsidiary of a contractor, moreover a subcontracted agency; *Evelyn N. Kelley v. Howard S. Wright Construction Co.* 90 Wn. 2d 323

(1978) 582 p2d 500; (holding that gross negligence can be established when subcontractors do not comply with regulation).

CPS/D.C.F.S has expressed in my case that they have a right and a duty to over ride and nullify safety orders made by their "parent agency." Mr. Cartwright, the state's attorney explains this presumed duty; a duty to notify someone other than the presumed parent by law (R.P. 5, 1-3) and (R.P.8, 23-25).

(R.P. 5, 7-15), Mr. Cartwright explains his opinion of what a good cause order is for. (R.P. 5, 25) Mr. Cartwright suggests there is no breach of duty. Thus far, the agency has been allowed to break laws that are clearly established primary authorities. Upon information and belief, their crimes are unaccounted for because of presumed liability immunity, and a presumed duty to make illegal disclosures. Law breaking acts that can be defined as criminal are not recognized by the trail court as a proximate cause or breach of duty; wherefore the trial court does not acknowledge that any duty of care exists. The trial court recognizes that all acts leading up to and during a dependency investigation are immune to liability. The trial court failed to take into account evidence of gross negligence.

The trial court's ruling suggests that acts within a dependency investigation that can be defined as criminal are also immune to liability. I do not believe that it is ordinary care that any reasonable person would engage in to knowingly and willfully break the laws, or knowingly and

willfully place a child into danger when the risk of harm is foreseeable. If it is acceptable to commit any acts that can be defined as criminal under liability immunity, this most certainly could be a highly dangerous and problematic precedent. Where will criminal acts stop, and a line be drawn if the agency is subject to liability immunity when engaging in illegal acts that can be defined as criminal?

There are well established issues showing that the decisions D.C.F.S made were foreseeably dangerous, in addition to showing disregard for the law. I am able to find plenty of primary authorities to cite, such as Washington state statutes, which provide that the acts of D.C.F.S were not legal, regarding the disclosure of the child's information to an individual other than the presumed father by law.

Evidence in my exhibits and supporting documents show the element of foreseeable harm, such as the Good Cause D.C.F.S chose to nullify and say did not apply to them. I find it outrageous that an agency that is supposed to be protecting children would ever go above the law in order to provide a child's information to such a dangerous offender; especially when there were so many alternatives that are stipulated by law, such as my husband had not signed a denial of paternity rescinding his rights. Furthermore, a paternity acknowledgment of Edwin Twitchell would have required an affidavit; GR 13(b) provides that even sworn statements do not apply to writings requiring an acknowledgment. A legal paternity acknowledgment would have required an affidavit.

RCW 26.26.116

Presumption of parentage in context of marriage or domestic partnership.

(1) In the context of a marriage or a domestic partnership, a person is presumed to be the parent of a child if:

(a) The person and the mother or father of the child are married to each other or in a domestic partnership with each other and the child is born during the marriage or domestic partnership;

Issue: Unlawful release of information to individual other than presumed parent under section (a) of Washington state law, **RCW 26.26.116**.

Rule: 2005 Washington Revised Code RCW 26.44.030:

Subsection

(7) The department may conduct ongoing case planning and consultation with those persons or agencies required to report under this section, with consultants designated by the department, and with designated representatives of Washington Indian tribes if the client information exchanged is pertinent to cases currently receiving child protective services. Upon request, the department shall conduct such planning and consultation with those persons required to report under this section if the department determines it is in the best interests of the child. Information considered privileged by statute and not directly related to reports required by this section must not be divulged without a valid written waiver of the privilege.

Subsection

(9) Persons or agencies exchanging information under subsection (7) of this section shall not further disseminate or release the information except as authorized by state or federal statute. Violation of this subsection is a misdemeanor.

Application: D.C.F.S thinks that these laws included in state statute, such as **RCW 26.26.116**, and subsequently the law referencing the department/agency, **RCW 26.44.030** subsections 7 & 9, do not apply to

them. How can the agency or any legal counsel even suggest that the laws wouldn't apply? I think the statute's language is very clear and specific. 'Information exchange by the agency must be authorized by state or federal statute.' However, when D.C.F.S finds a report in D.S.H.S's system, or from another alleged source of an alleged parent that could harm the parent or child, the agency and its legal representatives feel that they have a duty to disclose a minor child's information in full to the person whom it has been reported and determined may harm the child and/or parent for the mere allegation of parentage. This had also been done with the knowledge of a different presumed father by law, and documented reports made initially by a social worker that there was a different father besides the one named on the good cause. The father reported (C.P. 15, NARRATIVE) was Jason Centorbi. This was documented around the same time KIM VANDOREN interviewed me in jail. KIM VANDOREN claims that I told her Edwin Twitchell was the father. I did not tell KIM VANDOREN that Edwin Twitchell was the father as she claims in her declaration. D.C.F.S documents are inconsistent with social worker declarations to the court. The inconsistent documentations and testimony should have been noted by the trial court and raised questions about VANDOREN's witness credibility. Therefore, KIM VANDOREN's witness credibility is a genuine issue of material fact in question.

Logically speaking in terms of circumstantial evidence, if I had told KIM VANDOREN that the man named on the good cause claim, Edwin Twitchell, was the child's father in the jail interview as she claims, and she felt that she had a statutory duty to notify him, wouldn't she have made a reasonable effort to notify him that the child had been placed in care within 24 hours like statute **RCW13.34.062(b)** specifies?

> RCW 13.34.062(b) states, "(b) In no event shall the notice required by this section be provided to the parent, guardian, or legal custodian more than twenty-four hours after the child has been taken into custody or twenty-four hours after child protective services has been notified that the child has been taken into custody.

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This would have had to be done by no later than April 18, 2016 according to statute, which would have been (24) twenty-four hours later. Instead, KIM VANDOREN's disclosure was approximately (240) two-hundred and forty hours after the child had been taken into custody. What doesn't make sense is that KIM VANDOREN did not disclose the child's information to Edwin Twitchell until after she had accessed and printed all of my D.S.H.S records for discovery in the 'dependency hearing.' April 21, 2011. (C.P. Confidential sealed reports 8, 8) This hearing was when I first realized that KIM VANDOREN was acknowledging Twitchell as a father. I said he was not the father, and my attorney crossed his name off of the document. (C.P. Confidential sealed reports, 8, 8) The date of disclosure to Twitchell by KIM VANDOREN was April 28, 2011, (C.P.15, Exhibit B), (Confidential Sealed Reports 13,

2) disclosure was made a week and a half after VANDOREN's "jailhouse interview" with me, and a week and a half more than the time stipulated by statute, so statute **RCW 13.34.062** was improperly cited for defense, (C.P. 17, 6, 15-19) (C.P. 17, 5, 16-17) (R.P 6, 2-14) et seq.

This fact should be further evidence that the D.S.H.S files were where KIM VANDOREN got the information about Edwin Twitchell, from the record on the good cause claim, commenced on April 6, 2011. (C.P. 15, EXHIBIT A). In *Louie v. Hagstrom's Food Stores*, 81 Cal. App. (2d) 601, 184 P. (2d) 708, the court said:"... The true rule is that, while plaintiff must prove that the defective condition existed long enough so that by the use of reasonable care it should have been discovered and remedied, that fact, like other facts, may be proved by circumstantial as well as by direct evidence."

While the presumption of parentage law in the context of marriage would not be defined as a 'defective condition,' the unsound circumstances of the good cause claim in the D.S.H.S system would be in the context of being "unreasonably dangerous;"or, "a defective condition." Additionally, documentation of the fact that I was married to another man was discovered and should have been remedied before information was illegally exchanged to the individual named in the good cause. (Direct evidence). The untimely disclosure of the information to the man on the good cause order, more than a week and a half after it was alleged I "told

KIM VANDOREN the man on the good cause was the father;" seems preposterous, and was ultimately done outside the *obligation* or *duty* of statutory authority. (Circumstantial evidence, inconsistent with the defendant's declarations).

Judge Monasmith said "It is not clear how there is a connection between the Good Cause order and the communication to an alleged parent," (R.P. 22, 20-22).

I believe that it is very clear. Upon accessing my D.S.H.S files, that is obviously where KIM VANDOREN learned through the Good Cause document, that Edwin Twitchell was named an alleged father. I politely raised my hand in court right after this statement was made to try to clarify this for the judge. Judge Monasmith would not allow me to speak. (R.P. 22, 20-24)

In the jailhouse interview, I asked KIM VANDOREN to contact my husband so that he could pick up my child. (C.P. 15, 2, 8) KIM VANDOREN told me that my son had been placed in foster care, and that my husband picking up the child was not an option. Soon after, D.C.F.S accessed my D.S.H.S files. The D.S.H.S files are where I assume the information about Twitchell being an alleged father came from. Instead of following the law and involving my husband, or taking interest in the child's safety, CPS worker KIM VANDOREN and her supervisor ANGELA NEWPORT decided to disclose my child's confidential

information to Edwin Twitchell, the individual named on the good cause order. The good cause order was approved by D.S.H.S because Mr. Twitchell is a dangerous criminal with a manslaughter charge on a previous child of his; he's additionally a registered sex offender with a history of pedophilia on his own family. Edwin Twitchell was convicted of manslaughter for killing his baby boy when the baby boy was between 3-4 months old. This the same age my son was when KIM VANDOREN and ANGELA NEWPORT illegally disclosed my son's information to Twitchell.

There is no valid written waver of privileged information disclosure, or disclosure of the minor child's identifying information, to Edwin Twitchell as defined in **RCW 26.44.030** subsection (7). Also, since statutory law **RCW 26.26.116** was broken in the disclosure, this is a violation of the department's rule under **RCW 26.44.030** subsection (9).

Since this was clearly outlined as statutory policy, and KIM VANDOREN broke this policy, the acts could therefore possibly be considered as not within the scope of her employment. "Restatement (second) of agency §230, 1958. *Greene v St. Paul-Mercury Idem, Co,* 5 Wn2d 569, 573, 320, P2d. 311 (1958) and *Elder v Cisco Constr.* Co. 52. Wn.2d 241, 245, 324, P2d 1082 (1958)" This would additionally negate her liability immunity on behalf of the agency.

However, employers are liable for the negligent acts of their employee/employees. An act, although forbidden, or done in a forbidden manner, may be within the scope of employment. "Restatement, Agency (2d) § 219 *Westerland v. Argonaut Grill,* 55 P. 2d 819 – 1936."

An issue of material fact in question on the merits surrounding the case law on agency, was KIM VANDOREN therefore acting within the scope of her employment when she committed the illegal acts? Upon information and belief, D.S.H.S would be the agency ultimately responsible for illegal acts of employees under the doctrine of 'respondent superior.' If illegal acts on behalf of the social workers for the agency can meet the standard of gross negligence, then the agency's liability immunity is no longer merely a question of law, but a question controlling the outcome of the case; additionally a material fact in question.

In the factual theory of this case, it has been my belief that the proximate cause for damages is based on the evidence of gross negligence, duty, breach of duty, and foreseeable harm resulting. These facts should be apparent based on the 'relevant' record. I did not think that there was any way a summary judgment could be entered with so many material facts still in question. In the legal theory of this case, it is my belief that the elements of negligence meet criterion on res ipsa loquitur which upon information and belief are;

> "(1)When the act causing the injury is so palpably negligent that it may be inferred as a matter of law; (2) when the general experience and observation of mankind teaches that the result would not be expected without negligence; and (3) when proof by experts in an esoteric field creates an inference that negligence caused the injuries. *Miller v. Kennedy*522 P. 2d 852, 11 Wash. App. 272, 11, Wash. Court of Appeals (1974)."

> "(1) the accident or occurrence producing the injury is of a kind which ordinarily does not happen in the absence of someone's negligence, (2) the injuries are caused by an agency or instrumentality within the exclusive control of the defendant, and (3) the injury-causing accident or occurrence is not due to any voluntary action or contribution on the part of the plantiff." "Prosser on Torts (2d ed.), chapter 7, § 42, pp. 199, 201; *Chase v. Beard,* 55 Wn. (2d) 58, 346 P. (2d) 315."

The record in this case permits inferences of the existence of all elements for the application of re was operated under the exclusive control and dominion of the defendants ipsa loquitur, including that of experts in an esoteric field; the field of social work. It was recorded and affirmed by other social workers that a disclosure of this nature could cause parent/child to be seriously harmed. Social workers documented this, made the determination regarding foreseeable harm, and entered the good cause order. These social workers were working for the parent agency above the subsidiary agency that nullified the good cause order, and made the illegal disclosure.

Once I, *the appellant*, had passed under the combined dominion of C.P.S/D.C.F.S/D.S.H.S records release and the control of the C.P.S. social workers who operated within the files, I had lost virtually all power over my own destiny. There was nothing that could be done by '*the appellant*'

to prevent or otherwise deter the dangerous, illegal disclosures and acts of the C.P.S social workers, which resulted in severe emotional harm, fear of physical harm or death to self and child, et seq. Also relevant under res ipsa loquitur, a child's information doesn't disclose itself to a child murderer, pedophile, while breaking state law to do so.

Outrage

I think that the department's knowledge of the reason for the good cause, and then disclosing my child's information both with this knowledge, also disclosing illegally according to statute with full knowledge of my marriage, would entitle me to invoke the tort of outrage. Though my medical records from the time of the emotional distress in this case would clearly show objective symptomatology, no Washington case has incorporated [the objective symptomatology requirement] into the tort of outrage . *Robel v. Roundup Corp., 148 Wash.2d 35, 51, 59, P.3d 611 (2002).*

The following will exhibit further evidence that is far beyond the plain English definition of gross negligence, which should strike the department's liability immunity. I will further explain various laws that were broken, and why specific social workers actions were criminal as defined by the law.

It is well established, Washington state law is that during a marriage, the husband is the presumed father of the child until he rescinds

his rights through signing a denial of paternity. My husband had not signed or even been offered a denial of paternity at the time of this disclosure. Wouldn't the exchange of information to Edwin Twitchell be a misdemeanor, even if it were not for the good cause order for the protection of the child and parent? Persons or agencies exchanging information shall not release information except as authorized by state or federal statute. The exchange of information by D.C.F.S to Edwin Twitchell was a violation of **RCW 26.26.116** based on the presumption of parentage alone. This unlawful information exchange was a misdemeanor, as stipulated by **RCW 26.44.030** subsection 9. These agency workers went far beyond the misdemeanor and decided to release the information with the knowledge that it could cause foreseeable harm; this should be considered gross negligence by the standards of plain English, and strike their liability immunity. These acts can also be defined as criminal.

The defendant's willful and reckless conduct entitles the plaintiff to punitive damages. The trial court erred in ruling that this case was not actionable. "Negligence is not actionable unless it involves the invasion of a legally protected interest, the violation of a right." *248 N.Y at 339, quoting Pollock on Torts.* My legally protected interests and rights, also, those of my husband and child were invaded and violated. This is well established in the foregoing that multiple statutory laws were broken in connection with the illegal disclosure of the child's information. It is

suggested that there was no duty of care owed (R.P. 4, 21-22). "*Mickle v Blackmon*, 252 S.C 202, 230, 166, S.E 2d 173 (1969)," determining that known risk of harm raises a duty of commensurate care.

> **Rule: RCW 4.24.595**
>
> **Liability immunity—Emergent placement investigations of child abuse or neglect—Shelter care and other dependency orders.**
>
> (1) Governmental entities, and their officers, agents, employees, and volunteers, are not liable in tort for any of their acts or omissions in emergent placement investigations of child abuse or neglect under chapter 26.44 RCW including, but not limited to, any determination to leave a child with a parent, custodian, or guardian, or to return a child to a parent, custodian, or guardian, **unless the act or omission constitutes gross negligence**. Emergent placement investigations are those conducted prior to a shelter care hearing under RCW 13.34.065.

"Culpa Lata, Gross negligence; it is more than just simple negligence and includes any action or an omission in reckless disregard for the consequences to the safety or property of another." Ironically, both the acts, and omissions on behalf of D.C.F.S are consistent with the definition of Culpa Lata, "gross negligence." The civil law doctrine of 'culpa lata dolo asquiparatur' has been met by the defendants on multiple levels, and was outlined in the foregoing. "Gross negligence is equal to an intentional act."

I feel that the first impression given when reading the opening pages of the verbatim reports of the Superior Court hearing from February 25, 2016, (R.P. 3, 1-25) is that of the burden of proof being met, that my rights under the Privacy Act of 1974 were violated. I believe there are

multiple elements indicating invasion of privacy in this case as to date. There is further evidence of social worker misconduct, for a social worker accessing these files, including confidential sealed reports without an open case, court order, or consent; attorney malpractice, for the attorney negligently filing these confidential sealed reports; and judicial misconduct for the judge having knowledge of information I believe was in the confidential sealed reports. I believe that Judge Monasmith used sealed reports information as weight in his decision. Also, I don't believe there are any legal grounds for "saving one's bacon," as Judge Monasmith suggested that the clerks had done for Jarold Cartwright (R.P. 3, 24-25)

The confidential sealed reports being disclosed in the declarations of KIM VANDOREN in this civil case are a continuation of the damage caused by the compilation of false accusations and hearsay that she inserted into the D.C.F.S file in the dependency case in 2011. These declarations continue to exhibit the preponderance of evidence shown when a social worker makes multiple false allegations, perpetuates hearsay, and commits perjury. The dependency file's "sea of paperwork" from 2011 is only one example of what can happen when hearsay is fully admissible in family court.

Causes of Action

I believe the state's attorney erred in believing that the case was down to only two causes of action at the Motion for Summary Judgment

hearing on February 25, 2016. Mr. Cartwright, the department's attorney did mention that he addressed probably half a dozen causes of action, (R,P. 4, 7-8) Half a dozen causes are much closer to accurate than two causes.

There are multiple crimes I believe are relevant to the causes of action associated with the social worker's negligent misrepresentation, and negligent training, et seq., asserted (C.P 1, P. 3-4).

> **RCW 77.15.098**
> Willful misconduct/gross negligence—Civil liability.
> (1) An authorized state, county, or municipal officer may be subject to civil liability under RCW 77.15.070 for willful misconduct or gross negligence in the performance of his or her duties.

> **WPI 10.07** Gross Negligence—Definition
> Gross negligence is the failure to exercise slight care. It is negligence that is substantially greater than ordinary negligence. Failure to exercise slight care does not mean the total absence of care but care substantially less than ordinary care. Et seq. COMMENT
> The term "gross negligence," although found in many statutes, has not been statutorily defined. See, e.g., RCW 4.24.264, 4.24.268, and 7.70.090. The instruction is based upon the meaning of gross negligence as it was developed under the former host-guest statute, RCW 46.08.080, which was repealed in 1974. "In determining the degree of negligence, the law must necessarily look to the hazards of the situation confronting the actor." See *Nist v. Tudor,* 67 Wn.2d 322, 331, 407 P.2d 798 (1965); Note, 41 Wash.L.Rev. 591 (1966).

I believe that the act in this case has been clearly established as the plain English definition of gross negligence. The minor child's information being disclosed by D.C.F.S.to Edwin Twitchell instead of my husband, with the knowledge of my marriage, breaking **RCW 26.26.116** I

believe would be considered negligent. This can be defined as a criminal act. Criminal acts meet the standard for gross negligence. An additional factor, the element of foreseeable harm was established; the department and D.C.F.S. workers apparently had knowledge of on the Good Cause order, had the discoverability to access its information, and the reasons for the order. The reason for the order was parent/child may be seriously harmed. I believe, brings this act beyond ordinary negligence.

It is up to the court to define "gross negligence" since it has not been statutorily defined. *§ 8 of the Washington State Constitution*, irrevocable privilege, franchise or immunity prohibited. No law granting irrevocably any privilege, franchise or immunity, shall be passed by the legislature.

By the legislatures not providing a statutory definition of "gross negligence," the liability immunity granted on the behalf of statute RCW **4.24.595** is irrevocable by statute. This seems due to a statutorily undefined term that is used in a statute as an exception to the department's immunity, but ultimately fails to provide statutory remedy.

Without a statutory definition, the court may look into related statutes when interpreting a regulation. "*Mader v. Health Care Auth.*, 149 Wn.2d 458, 473, 70 P.3d 931 (2003). *Mader,* 149 Wn.2d at 473." There is evidence on record that the following crimes were committed, that have been statutorily defined.

RCW 50.04.294

Misconduct—Gross misconduct.

With respect to claims that have an effective date on or after January 4, 2004:

(1) "Misconduct" includes, but is not limited to, the following conduct by a claimant:

(a) Willful or wanton disregard of the rights, title, and interests of the employer or a fellow employee;

(b) Deliberate violations or disregard of standards of behavior which the employer has the right to expect of an employee;

(c) Carelessness or negligence that causes or would likely cause serious bodily harm to the employer or a fellow employee; or

(d) Carelessness or negligence of such degree or recurrence to show an intentional or substantial disregard of the employer's interest.

(2) The following acts are considered misconduct because the acts signify a willful or wanton disregard of the rights, title, and interests of the employer or a fellow employee. These acts include, but are not limited to:

(a) Insubordination showing a deliberate, willful, or purposeful refusal to follow the reasonable directions or instructions of the employer;

(b) Repeated inexcusable tardiness following warnings by the employer;

(c) Dishonesty related to employment, including but not limited to deliberate falsification of company records, theft, deliberate deception, or lying;

(d) Repeated and inexcusable absences, including absences for which the employee was able to give advance notice and failed to do so;

(e) Deliberate acts that are illegal, provoke violence or violation of laws, or violate the collective bargaining agreement. However, an employee who engages in lawful union activity may not be disqualified due to misconduct;

(f) Violation of a company rule if the rule is reasonable and if the claimant knew or should have known of the existence of the rule; or

(g) Violations of law by the claimant while acting within the scope of employment that substantially affect the claimant's job performance or that substantially harm the employer's ability to do business.

Subsections (a) (c) (e) and (f) of **RCW 50.04.294** are the particular violations I believe there is documented proof that KIM VANDOREN engaged in when disclosing the child's information.

(a) The minor child's information was disclosed to the individual a good cause order information had been entered into the D.S.H.S system for. This is the same D.S.H.S system that Vandoren used to compile reports about me, the plaintiff, regarding my whole social service, residential, and counseling history. It was an order that was made by the same agency D.C.F.S/C.P.S employees work under and receive pay from, by another employee and another supervisor for the agency. The disclosure showed willful and wanton disregard for the order entered by the employer and fellow employees, one a D.S.H.S supervisor. Since an electronic signature on the good cause order was that of a supervisor's, and KIM VANDOREN was the employee who ultimately made the disclosure, and continued to make disclosures, without the signature of a supervisor, I would think that the order made by the supervisor would be of greater authority. This showed disregard for the judgment of her superior. A superior in the agency had previously recorded, then determined and verified that a disclosure to Edwin Twitchell may cause the parent/child to be seriously harmed. D.S.H.S is the agency over C.P.S/D.C.F.S. KIM VANDOREN fully disclosed my child's information anyway to the man the good cause order was for instead of my husband with knowledge of the Good Cause order.

(c) The disclosure of the child's information was careless negligence that could cause serious harm to an individual that other employees, one a supervisor for the agency, had entered information regarding, and a determining order to protect from such harm. The foreseeability that the disclosure of the child's information to Edwin Twitchell could cause serious harm to parent and child can be referenced as the reason for the good cause order being entered, and granted by D.S.H.S on the Good Cause document. (C.P. 15, EXHIBIT A)

(e) This deliberate act was illegal under **RCW 26.26.116**, presumption of parentage, for the fact I was legally married to another man at the time of the disclosure. It was unlawful release of information under **RCW 26.44.030**, subsections 7 and 9. **RCW 26.44.030** also stipulates that this illegal disclosure was a misdemeanor.

(f) Violation of a company rule. The Good Cause order was made by D.S.H.S. social worker and supervisor. KIM VANDOREN knew of, or should have known of, upon both written and verbal information, of the existence of this order. The question of law here is can "order" also be defined as "rule?" Order synonyms in the verb tense for give an authoritative direction or instruction to do something include; instruct, command, direct, enjoin, tell, require, charge; *formal* adjure, bid, decree, ordain, **rule,** legislate, dictate, and prescribe. If we are defining this matter of law in plain English, I am led to determine that 'order' and 'rule'

are one in the same meaning and that KIM VANDOREN did indeed also violate section (f) of **RCW 50.04.294.**

> **RCW 9a.36.050** reckless endangerment.
> (1) A person is guilty of reckless endangerment when he or she recklessly engages in conduct not amounting to drive-by shooting but that creates a substantial risk of death or serious physical injury to another person.
> (2) Reckless endangerment is a gross misdemeanor.
> [1997 c 338 § 45; 1989 c 271 § 110; 1975 1st ex.s. c 260 § 9A.36.050.]

Social worker KIM VANDOREN and her supervisor ANGELA NEWPORT were well aware of the Good Cause order by the time they made the illegal disclosure. The Good Cause order stated that parent/child may be seriously harmed. Seriously harmed is broad language that could mean substantial risk of serious injury. Ultimately, serious harm could result in death. D.C.F.S created a substantial risk of death or serious physical injury through their illegal disclosure, with the knowledge of the Good Cause in place, and the reason for the decision to put it into place. KIM VANDOREN and ANGELA NEWPORT were also aware of Edwin Twitchell's sex offender status, and had verbally received information that he had a manslaughter charge for killing a previous child of his. I told both social workers before they officially made the illegal disclosure that the child Edwin Twitchell killed was a baby boy was the same age as my son, 3-4 months old. This is the same information that I divulged to D.S.H.S that they took into consideration when approving the Good Cause order. I reiterated this information to KIM VANDOREN and her supervisor ANGELA NEWPORT when KIM VANDOREN told me she

would be notifying "Christian's father Edwin Twitchell," of the "fact" that he had a child, also the dependency proceedings. I told KIM VANDOREN and her supervisor ANGELA NEWPORT that they couldn't disclose my child's information because of the Good Cause in place. KIM VANDOREN and ANGELA NEWPORT also knew that I was legally married.

I begged the social workers not to make the disclosure, while in tears, suffering from extreme anxiety from the threat imposed on my family's safety and she laughed at me, shaking her head. She said "A Good Cause Order doesn't apply to a dependency." I demanded to meet with the supervisor, ANGELA NEWPORT. I made sure ANGELA NEWPORT was aware of the circumstances; she made no attempt to stop KIM VANDOREN from making this dangerous, illegal disclosure. KIM VANDOREN was very well aware of my marriage; she documented speaking with my husband before she made the illegal disclosure. (C.P. Confidential sealed reports 2, 2, 14-15)

The only contact with my legal husband I am aware of was in an attempt to gather information in order to support the department's dependency. Since KIM VANDOREN engaged in this illegal disclosure with knowledge of my marriage, also potential harm that could be created by such a disclosure, and Supervisor ANGELA NEWPORT allowed this illegal disclosure, I believe this act could be considered a misdemeanor as defined under **RCW 9a.36.050** for their deliberate and illegal reckless

endangerment. I reported the threat of these illegal disclosures to the regional supervisor for C.P.S as well as the ombudsman in Olympia. It was too late before I got a response. My child's information had already been illegally sent to Edwin Twitchell by KIM VANDOREN. (CP. 15 EXHIBIT B)

> **RCW 9A.72.020**
> Perjury in the first degree.
> (1) A person is guilty of perjury in the first degree if in any official proceeding he or she makes a materially false statement which he or she knows to be false under an oath required or authorized by law.
> (2) Knowledge of the materiality of the statement is not an element of this crime, and the actor's mistaken belief that his or her statement was not material is not a defense to a prosecution under this section.
> (3) Perjury in the first degree is a class B felony.
> [2011 c 336 § 391; 1975 1st ex.s. c 260 § 9A.72.020.]

Kim Vandoren made multiple material false statements in her official proceedings that were submitted to the court. This was during part of an investigation that she was required by law to perform. Instead of much factual investigating, Vandoren seemed to make up as many highly concerning and problematic elements for parenting that she could think to insert into the dependency file. For example, one of the worst of these was in the dependency petition, where she stated that I had mental health issues and was placed on medication for mental health issues that I was refusing to take. (C.P. Confidential sealed reports 1, 2) That was a lie. The person KIM VANDOREN claimed reported that information signed a notarized statement saying that that was not said; additionally my medical records and doctor's office I had seen my whole adult life wrote

supporting letters disproving those claims in the family law case. None of the falsities have been corrected in the record. (C.P. Confidential sealed reports 1, 1-3)

Violations of the Privacy Act: Privacy Act of 1974, (5 U.S.C § 552a) Specifically defined by "Restatement of the Law, Second, Torts § 652;" **Unreasonable intrusion upon the seclusion of another**; ***Restatement (second) of Torts § 652 b.*** There is evidence consistent with intrusion upon seclusion; the defendants, without authorization, intentionally invaded my private affairs that were protected by law. The invasion was highly offensive, and I believe it would be offensive to any reasonable person. It was a private matter that was intruded upon, including sensitive identifying information about myself and my child. The intrusion caused me mental anguish and suffering.

Additionally, I think it would be considered offensive to any reasonable person to have confidential sealed reports accessed without consent and without a court order. The accessing and disclosure of confidential sealed information there should not have been reference to can be referenced, (R.P. 3) I believe the same D.S.H.S records system that reports were accessed and illegally disclosed in 2011 was used by a department social worker to illegally access and illegally disclose information again. It is admitted by Jarold Cartwright that confidential sealed reports there should not have been reference to were attached to the declaration of KIM VANDOREN, (R.P. 3, 15-16). The final time

confidential sealed reports were disseminated was on April 19, 2016, (R.P. 3) Upon information and belief, was a violation of CR 26,(b)(5) and moreover, The Privacy Act of 1974, (5 U.S.C § 552a) et seq.

Upon information and belief, sanctions on the defendants under CR 37(b)(2) would have been appropriate for the violation of CR 26(b)(5).

More importantly, the reason for my original civil suit, I find it highly offensive that my child's information was disclosed to Edwin Twitchell, someone extremely dangerous who would have never known about my child or our general location, had it not been for the illegal acts and disclosures of workers for D.S.H.S Division of Children and Family services, D.C.F.S/C.P.S. The information was disclosed illegally and with disregard to extreme safety issues previously established, recorded, and approved by the parent agency D.S.H.S. I believe this falls within the definition of unreasonable intrusion upon the seclusion of another. § 652(b), intrusion upon seclusion does not depend on publicity.

Appropriation of another's name or likeness, *Restatement (second) of Torts* § 652(c); This accessing of confidential and sealed reports there should not have been reference to, need not be highly offensive to constitute invasion of privacy; though in this case it is highly offensive to me to have my name and likeness exploited in an inaccurate manner. The meaningful and purposeful use of my name was within false allegations and heresy in confidential reports. Evidence of this would be that the

Judge Monasmith, claims he "certainly did not view those files, or the dependency file or anything." (R.P. 6, 20-22) Later in the hearing, he is weighing the case based on information I believe he could have only gotten out of the dependency file, as he specifically referenced information which was inaccurate hearsay that the social worker had fabricated to try to establish a dependency. I had previously responded with supporting documentation to the courts that the information written by the social worker was inaccurate. I provided the courts with proof that the information reported by the social worker was not accurate in the family court case, but none of this was corrected in the dependency file. The inaccurate information was brought up against me again in the civil suit hearing on February 25, 2016, despite my having provided documentation proving it false in a prior family law case in 2011.

Examples of the Judge claiming to have not accessed the dependency file information (R.P. 26, 20-24). Where did the Judge access information to make references to other children outside my home, alleged substance abuse issues, alleged mental health issues, (R.P. 23, 24- R.P 24, 9) if he did not get this information from the dependency file? Even if these alleged elements were true, would that give D.C.F.S the right to break the law or the authority to put my family in danger? I didn't understand the relevance of such information being brought up, seemingly contributing to some sort of causation factor or affirmative defense for the illegal and dangerous acts of D.C.F.S.

I did not feel that it was proper judicial conduct to bring up personal information that was not relevant to any causes of action for the civil case at hand. These elements that were brought up against me in the motion for summary judgment hearing are completely false allegations in the form of hearsay, which is allowed in family court, however, is not supposed to be allowed in tort cases. Now that there is reference to these elements on the record, I have more relevant issues and violations to address. I believe that additional punitive damages would be appropriate in order to punish all the parties who have been involved in this case to date, for engaging in and allowing illegal acts, additionally aiding in unlawful conduct. (R.P. 3, 11-25)

Unreasonable publicity given to another's private life, *Restatement (second) of Torts* § 652(d): The nature of the disclosure of my child's information to Edwin Twitchell, while I was married to another man, had a good cause claim on record for Edwin Twitchell, there was no denial of paternity from my legal husband entered at the time of disclosure, consequently no DNA paternity testing or affidavit of paternity for Twitchell,; I would think this would be considered unreasonable publicity in my private life; both legally and personally. The Judge referenced a list of false allegations from the dependency (R.P, 24, 1-8), and then references on line (7) seven as to my judgment of being involved with a sex offender as a problematic/concerning element, which I also find highly offensive. I left Edwin Twitchell the very day I found out that he was a sex

offender. I was less than 2 months pregnant at that time I found out the truth. I told Edwin Twitchell that I was having an abortion, and then moving to Montana. I then went the opposite way and went into hiding throughout my pregnancy in the mountains of Washington.

The Judge stated that it's not like D.C.F.S said here's where she lives, here's where you can find Ms. Fowler, (R.P .23 ,1-2), but that is exactly what D.C.F.S did. D.C.F.S might as well have put up a big red flag, and made a map out for Mr. Twitchell, X marks the spot for Ms. Fowler. This directed Mr. Twitchell to the town of Newport, size 1.07 square miles; you can see how a disclosure to a murderer/pedophile would extremely affect my family's safety and give me a great deal of anxiety; especially when social workers were aware my only form of transportation was walking or bicycling. Edwin Twitchell was also illegally appointed representation regarding my child, which gave him access to the dependency file that contained privileged information. The file also contained my personal information, such as home address. All the while, my legal husband *still* had not rescinded his rights to the child.

Findings: Judge Monasmith granted the state's motion for summary judgment on February 25, 2016. The ruling seems to be based primarily on his determination that there was no proximate cause of action that would entitle the plaintiff to damages, and the assertion that the department is protected by liability immunity. (R.P. 21, 13-18) Judge Monasmith did not acknowledge that there was gross negligence involved.

The court's determination implies that D.C.F.S had a duty to disclose the child's information to someone other than the legally presumed father; additionally, that the Good Cause and the foreseeable danger it made apparent was not relevant. The judge did not recognize the inconsistent statements stated and documented by D.C.F.S. about who the father of the child was as genuine issues of material fact still in question. Though a legally presumed father, other than the man the child's information was disclosed to was acknowledged in the court proceedings, the court apparently did not recognize it as a genuine issue of material fact despite its specific legal authority and relevance to the case. (R.P 7, 9-22)

Jurisprudential principle:

My favor: Sets a precedential value for C.P.S and D.C.F.S that their agency can not break laws. There is a precedent set that the agency should not be able to knowingly endanger children and families through disclosures of information previously determined unlawful or dangerous, by law or by order, through the agency Department of Social and Health Services or Department of Children and Family Services. It would set the principle that there cannot be double standards involving orders in place to protect the welfare and safety of children and/or their care providers. C.P.S. should be recognized as under the umbrella agency of D.S.H.S. To say that orders made in the interest of child safety by D.S.H.S do not apply to C.P.S proceedings would be with disregard to clearly established statutes and laws, as well as with disregard to the safety of children.

This case could help define gross negligence in the context of over ruling liability immunity. Such as many states recognize negligence per se when statutory laws are broken, simple language could help to alleviate this burden on the Washington courts when deciding on negligence and gross negligence cases. Sound precedence could potentially outline grounds to protect children and families in the future.

Their favor: Sets a precedential value that the agency has full liability immunity, including for acts that can be defined as criminal that meet the standard of gross negligence, also involving foreseeable child endangerment.

A ruling in the defendant's favor suggests that even if the only knowledge that the Department of Children and Family Services has is that the alleged parent has a manslaughter charge on a previous child, as well as a history of sexual abuse of children, D.C.F.S has all rights and an obligation to disclose children's information to such offenders. This would suggest an obligation to disclose children's information even with orders of protection and laws under state statute to protect from such disclosures. This also indicates that the agency does not need any proof of these dangerous offenders being the biological parent. D.C.F.S feels that they have an obligation to disclose to any individual if there is merely allegation of parentage, even if the mother is married to another man at the time of the child's birth. This agency has proven that they will go as far

as breaking state statutory laws in order to make such disclosures because of this presumed 'obligation.'

I think that this is very important for the courts to determine and distinguish the rules and guidelines of law for the agency. Is liability immunity supposed to be a defense for breaking the law? Is it acceptable that the agency uses their grounds of liability immunity as protection in matters of breaking the law, constitution, state constitution, and/or instigating child endangerment? Does the agency get to over ride and nullify primary authorities such as state statutes? Can the agency legally make their *own* rules with no real legal oversight as to matters of law?

V. **Conclusion:**

The foregoing has shown several Washington State statutes that explain with very specific language that the department is not to release information unless it is permitted by statute. Statute also affirmed in very specific language that paternity acknowledgement of anyone besides the husband at the time of the child's birth is not legal until a denial of paternity has been signed.

"42 U.S.C. § 1983 provides parties shall be liable for the deprivation of any right secured by law, including any statute or ordinance of any state. This section provides for tort liability, and provides a civil remedy against abuses."

"Restatement (Second) of Torts, § 652(B) provides that intrusion upon seclusion of another does not depend on publicity. § 652(c) publicity given to ones private life.

I respectfully ask the court to reverse the order for summary judgment, finding that the department acted outside of its statutory authority; additionally defense erroneously interpreted and applied the law. Summary judgment is not supported by evidence, amounting to genuine unresolved issues of material fact in question, when viewed in light of the whole record.

"Courts must in the end say what is required; there are precautions so imperative that even their universal disregard will not excuse their omission." ". *The* ***T.J. Hooper***, 60 F.2d 737 (2d Cir.1932)

Respectfully submitted this 1st day of August, 2016

X Suzie Leane Fowler

8/01/2016

Suzie Leane Fowler

FILED

AUG 01 2016

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By_____

CERTIFICATE OF SERVICE

I certify that I mailed a copy of the foregoing Opening brief of Appellant to Jerold P. Cartwright, Attorney for Defendants, at 1116 W. Riverside Ave. Spokane, WA. 99201-9106, postage prepaid, on [date] 8/01/2016.

Lysie Jean Bulen
(Signature)

I certify (or declare) under penalty of perjury under the laws of the State of Washington that the forgoing is true and correct:

8/01/2016 A.C.P. WA.
(Date and Place)

Lysie Jean Bulen
(Signature)