

FILED
Court of Appeals
Division III
State of Washington
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No. 354156

COURT OF APPEALS DIVISION III
OF THE STATE OF WASHINGTON

Jonathan D. Durant
Appellant

v.

State of Washington Department of Social and Health Services,
Respondent.

Appeal from the Superior Court of Spokane County

APPELLANT'S REPLY BRIEF

Attorney for Appellant Jonathan Durant:
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TABLE OF CONTENTS

	Page No.
Table of Authorities.....	2
I. Argument in Reply.....	3
II. Conclusion.....	5

TABLE OF AUTHORITIES

<u>State Cases</u>	<u>Page Nos.</u>
<i>State v. Schlichtmann</i> , 114 Wn. App. 162, 58 P. 3d 901, (Div. 1 2002)	3-4

<u>Other Authorities</u>	<u>Page Nos.</u>
RCW 9A-16.100	3-4
WAC 388-15-009	3-4

I. ARGUMENT IN REPLY

Mr. Durant contends the decisions of the DSHS Board of Appeals and Office of Administrative Hearings do not comport with WAC 388-15-009 and RCW 9A-16.100. The Board of Appeals, in its decision, upheld Mr. Durant's right to discipline his fiancée's child "through the use of reasonable and moderate force." CP 122-123. The question here is whether or not the decisions being appealed showed substantial evidence from which a reasonable person could make the same finding as the Department, and whether the Department properly and reasonably applied the law as it relates to the facts of this case. Mr. Durant believes the decisions did not and the errors are of sufficient nature for this Court to overturn the decisions.

The Department would have this Court believe their cited cases relating to the evidence supports the Department's conclusions that A.F. was physically abused; however, the cases are factually distinguishable from the instant case and in fact support Mr. Durant's position that a reasonable person would conclude his discipline of A.F. was proper. In *State v. Schlichtmann*, 114 Wn.App. 162, 58 P.3d 901, (Div. 1 2002), the defendant was a drunk, abusive boyfriend who used incredibly excessive force by means of an overhand swing several times with a belt against two children aged six and

seven years old and on several occasions, with witnesses who observed the abuse and who believed it to go beyond reasonable or moderated discipline of the children. In fact, in *Schlictmann*, the police charged the defendant with assault and the courts upheld the conviction whereas here, the facts show a deputy sheriff responded to the hospital and interviewed A.F. and the deputy did not feel the discipline amounted to anything beyond reasonable discipline of a child and referred no charges to the county or city prosecutors. In *Schlictmann*, the abused child showed intense fear cried hysterically when the defendant would come near him; here, the child showed absolutely no discomfort during medical exams and appeared to be in no physical or emotional distress, according to the factual record.

Here, Mr. Durant and his fiancé who is the mother of A.F., disciplined A.F. after the child engaged in a pattern of lying and stealing at school and home. The discipline occurred when the couple sat the child down, explained why he was being disciplined and they metted out the punishment, setting forth specific punishment for each bad act, agreed to by Mr. Durant, the mother and A.F. The fact that A.F. was in discomfort is expected, that is the point of the punishment; however, at no time was the child in danger, nor was his health, safety or welfare in harm's way. A fair minded person could conclude Mr. Durant's discipline of A.F. was in line with the parameters of the law, WAC 388-15-009 and RCW 9A.16.100, and in fact a fair minded

deputy sheriff who was the first responder in this case did conclude the discipline did not rise to the level of a law violation.

II. CONCLUSION

Substantial evidence did not support the Department's conclusions that A.F. was physically abused when he was punished for stealing gum from his teacher at school and continually lying to his teacher, mother and her fiancé, Mr. Durant, about the bad behavior. A.F.'s parents/guardian's have a legal right to discipline him within the parameters of the law and that is exactly what happened in this case. While there are situations of overzealous and in fact criminal abuse against children disguised in the form of discipline, this is not that kind of case. Here, Mr. Durant believes a reasonable person could conclude the evidence shows he disciplined A.F. in a thoughtful and legal manner. He requests this Court overturn the rulings of the Department and Appeals' Board and vacate the finding of abuse.

Respectfully submitted this 19 day of April, 2018.

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