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SUPREME COURT  
STATE OF WASHINGTON

2006 NOV -7 P 3:33 Court of Appeals No. 57117-6-I

BY C.J. HERRITT *kjh*

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**SUPREME COURT OF THE STATE OF WASHINGTON**

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In re the Dependency of H.S., a minor child

Department of Social and Health Services, State of Washington

Petitioner,

v.

H.S.,

Respondent.

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**MOTION FOR DISCRETIONARY REVIEW**

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### **I. IDENTITY OF PETITIONER**

The State of Washington, Department of Social and Health Services (“DSHS” or “Department”) asks this Court to accept review of the decision designated in Part II.

### **II. DECISION OF THE COURT OF APPEALS**

DSHS asks this Court to accept review of the published decision issued by the Court of Appeals, Division I on October 9, 2006. The decision concluded that the juvenile dependency statute in ch. 13.34 RCW, permits parents to petition for dependency of their child so as to transfer custody to the state, when no parenting deficiency exists and the only basis for dependency is financial hardship to the parents in providing for the child’s mental health care needs. The decision is attached as Appendix A.

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

Three issues are presented by this Motion for Discretionary Review:

1. State and federal law provides that the purpose of the dependency statute is to assist parents in correcting parental deficiencies, so that children can safely be returned to the parents’ care. Accordingly, appellate decisions of this state hold that proof of parental unfitness is required before dependency can be established. Should this Court accept

review where the court of appeals decision conflicts with decisions by this Court and the court of appeals, by allowing dependency to be established without any showing of parental unfitness?

2. Should Washington's dependency and termination statutes be construed as creating a privately enforceable right on the part of parents to transfer custody and financial responsibility of their child to the state solely because the child has medical needs that pose a financial hardship on the child's family?

3. Did the court of appeals apply an incorrect standard of review by conducting a de novo review of the evidence presented to the trial court?

#### **IV. SUMMARY OF ARGUMENT**

The court of appeals reached a result inconsistent with the last century of dependency law. The court concluded that fit parents may petition the court to have their child declared dependent and to transfer responsibility for their child to the state in order to access medical services which the parents claim would cause financial hardship for their family.

The superior court dismissed the parents' dependency petition pursuant to CR 41(b)(3) at the close of the parents case, concluding that the parents failed to sustain their burden of proving their child dependent because they had the present ability and capacity to care for the child; the

parents had resources to continue paying for the child's residential care; and the child's current placement in residential care did not present a danger of damage to his psychological or physical development. CP 6 – 12. (Attached as Appendix B) The court of appeals reversed, concluding that the parents' evidence established a prima facie case that their child was dependent because the parents could not afford to continue paying for the child's residential care; the father worked full time and so he was not available to care for the child in the home; and the child's imminent release from residential care presented a "clear and present danger" to his psychological and physical development. Appendix A

This decision by the court of appeals not only conflicts with decisions of this Court and the court of appeals, but presents substantial public policy questions as to whether the laws designed to protect children from parental abuse or neglect can be used affirmatively by fit parents to transfer responsibility for their children to the state.

#### **V. STATEMENT OF THE CASE<sup>1</sup>**

H.S. is a 15 year old boy who has struggled with mental health and behavioral problems for years. RP 14. In the three years preceding trial, his parents diligently arranged residential care for H.S. in a series of mental health and behavior modification facilities. At the time of trial,

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<sup>1</sup> In addition to specific cites to the record below, this Statement of Facts is supported by the unchallenged findings entered by the trial court. Appendix B.

H.S. was residing in the Bird's Eye Boy's Ranch in Utah where he had been for eight months. His care has been paid for by his family through a combination of private insurance and out-of-pocket expenses.

On June 30, 2005, H.S.'s parents filed a dependency petition alleging that H.S. was dependent as defined by RCW 13.34.030(5)(c). In substance, their petition alleged that his needs were too great to allow him to return home, and they could no longer afford to pay for his residential care. CP 27 – 30. At trial, the parents both testified, as did H.S., a DSHS social worker, and a family therapist. Neither parent believed that H.S. should return to the family home and they did not feel they could continue paying for his residential care in Utah. RP 39, 48.

Following presentation of the parents' evidence in support of their dependency petition, the court dismissed the action pursuant to CR 41(b)(3), finding no current parental unfitness or present inability on the part of the parents to exercise the duties of a parent. The court found that the parents had financial resources within the family to keep H.S. in his current placement for at least another six months, and that they had made decisions regarding H.S.'s needs and care that were appropriate under the circumstances and motivated by a desire to help him and address family stressors. Appendix B.

Although the parents did not pursue or otherwise participate in the appeal, H.S. appealed the dismissal of the dependency petition arguing that his parents' financial inability to continue paying for his care and their inability to have him return home qualified him as dependent within the meaning of the statute.

## VI. ARGUMENT

This case is appropriate for review by this Court under RAP 13.4(b)(1) and (2) because the ruling conflicts with decisions of this Court and the court of appeals. The issues presented are also appropriate for review under RAP 13.4(b)(4) because there is substantial public interest in the question of whether the dependency laws create privately enforceable rights for parents to transfer custody and financial responsibility for a child to the state in order to access medical or mental health services, where the parents are not abusive or neglectful of their children, and have no parental deficiencies but face financial hardship in paying for the child's ongoing treatment needs.

**A. The Juvenile Act Relating to Dependency of a Child and Termination of the Parent and Child relationship is Intended to Protect Children from Abusive, Neglectful or Harmful Parenting, Not Protect Families From Financial Hardship.**

RCW 13.04.030 grants Juvenile Court jurisdiction over proceedings in which children are alleged to be dependent as provided in

RCW 26.44 and RCW 13.34. et. seq. The statute also governs proceedings for the termination of a parent child relationship. See RCW 13.04.030(1)(b) and (c). The declaration of purpose articulated in RCW 26.44.010 makes it clear that these statutes are intended to facilitate intervention into a family when necessary to protect children from parental abuse, neglect, abandonment or some other deficient parenting, which places the child at risk of harm.

The Washington state legislature finds and declares: The bond between a child and his or her parent, custodian, or guardian is of paramount importance, and any intervention into the life of a child is also an intervention into the life of the parent, custodian, or guardian; however, instances of nonaccidental injury, neglect, death, sexual abuse and cruelty to children by their parents, custodians or guardians have occurred, and in the instance where a child is deprived of his or her right to conditions of minimal nurture, health, and safety, the state is justified in emergency intervention....

RCW 26.44.010 (emphasis added)

RCW 13.34.020 reinforces this principle and declares that while the family unit should be nurtured, the paramount concern is the child's right to safety. The statute permits "any person" to petition the court to intervene in a family when the child meets the definition of "dependent child." RCW 13.34.040(1). A dependent child is one who:

(a) Has been abandoned;

(b) Is abused or neglected as defined in chapter 26.44 RCW by a person legally responsible for the care of the child; or

(c) Has no parent, guardian, or custodian capable of adequately caring for the child, such that the child is in circumstances which constitute a danger of substantial damage to the child's psychological or physical development.

RCW 13.34.030(5)(a),(b), and (c)

Thus, a dependent child is one who has suffered abuse, neglect, abandonment, or other parental dysfunction which places the child at risk of harm, and the purpose of the dependency proceeding is to protect the child and assist the parents in overcoming their parental deficiencies. The effect of establishing dependency is to transfer legal custody away from the parent and make the child a ward of the court. In re Henderson, 29 Wn. App. 748, 630 P.2d 944 (1981).

These statutes have been historically written, applied, and understood to allow state intervention into families' lives to protect children from unfit parents who place their children at risk. They have never been interpreted as a tool for functioning parents to obtain services or protect the family from financial hardship. This interpretation of the statutes is reinforced by case law dating back centuries which prohibit state intervention unless there is established proof of parental unfitness.

**B. The Decision Below Allows Dependency to be Established Without a Finding of Parental Unfitness, Which Conflicts with Decisions of This Court and the Court of Appeals.**

A parent's right to custody of their child has long been considered a fundamental right which cannot be interfered with unless the parent is proved unfit. In re Hudson, 13 Wn.2d 673, 684-85, 126 P.2d 765 (1942)(citing the common law of England, as adopted by the territorial law of 1863). Since the earliest of published cases, this has been the law of this state. Lovell v. House of the Good Shepherd, 9 Wn. 419, 37 P. 660, (1894); In re Neff, 20 Wn. 652, 56 P. 383 (1899); In re Mead, 113 Wn. 504, 194 P. 807 (1920); In re Walker, 43 Wn.2d 710, 263 P.2d 21 (1953); In re Welfare of Baby Boy May, 14 Wn. App. 765, 545 P.2d 25 (1976); In re Dependency of T.J.B., 115 Wn. App. 182, 62 P.3d 891 (2003).

Following this principle, the United States Supreme Court and this Court have invalidated statutes that interfere with custody when there is no showing of parental unfitness. In re Custody of Smith, 137 Wn.2d. 1, 969 P.2d 21 (1998), aff'd sub nom Troxel v. Granville, 530 U.S. 57, 120 S. Ct. 2054 147 L. Ed. 2d 49 (2000). This Court noted that interference is justified "only when 'parental actions or decisions seriously conflict with the physical or mental health of the child.'" Smith, 137 Wn.2d at 18, 969 P.2d 21 (citing In re Welfare of Sumey, 94 Wn.2d 757, 762, 621 P.2d 108 (1980)). These cases focus on the *parents'* behavior and the resulting effect of that behavior on the child. Id. Whether the parent is abusive,

neglectful, has abandoned the child or is otherwise deficient, the law requires a showing of *parental* deficits and dysfunction that harms the child or creates a risk of harm. *Id.*; See also, Santosky v. Kramer, 455 U.S. 745, 102 C. Ct. 1388, 71 L. Ed. 2d 599 (1982).

A parent is not unfit simply because he or she lacks financial resources to care for their children. In re Warren, 40 Wn.2d 342, 243 P.2d 632 (1952)(poverty of parent does not of itself make children dependent). In fact, the courts have long protected the rights of destitute parents as equally deserving of protection as rich parents:

“...the tendrils of parental affection entwine around the offspring of the poor with as much strength as they do around the children of the rich; if, indeed, with not greater strength by reason ordinarily of more intimate relationships and *sacrifices that have to be made* and which tend to strengthen mutual love and affection.”

In re Warren, 40 Wn.2d at 345, quoting In re Fields, 56 Wn. 259, 105 P. 466, 469 (1909)(emphasis added). The legislature recently reiterated this rule of law by amending RCW 26.44 to make it clear that neither poverty nor homelessness alone constitute negligence or maltreatment of a child. Wash. Laws of 2005, ch. 512 § 5(15).

The decision below cannot be reconciled with these foundational principles. Indeed, the opinion offers contradictory explanations on the significance of the parents' financial resources to the finding of

dependency. The court initially found that the parents' financial resources were irrelevant to the issue of dependency and rejected the trial court's findings that the parents had the resources to continue paying for H.S.'s residential care. The court then justified dependency based on its own finding that the parents could not continue paying for the residential care they had arranged for H.S. without selling their home, thus concluding his imminent release (based on the parents' inability to pay) constituted a "clear and present" danger. Slip Op. at 9.

The opinion also justifies dependency by pointing out H.S.'s serious mental health problems, and the inability of his parents to meet his needs in their home; noting the father's need to work outside the home. This conflicts with statutes and case law holding that dependency may not be established based solely on the fact that H.S. suffered from a serious mental illness. Parents are not considered abusive or neglectful simply because their child has special needs or is handicapped. RCW 26.44.015(3) ("No parent may be deemed abusive or neglectful solely by reason of the child's blindness, deafness, developmental disability, or other handicap."); See also, In re Frank, 41 Wn.2d 294, 248 P.2d 553 (1952) (father's failure to correct child's speech impediment not sufficient to establish dependency); In re Hudson, 13 Wn.2d 673, 126 P.2d

756 (1942)(parent's failure to obtain surgery for child's deformed arm is not sufficient for dependency).

There is only one published case finding dependency based solely on the child's disability where there was no showing of parental unfitness. In re Welfare of Key, 119 Wn.2d 600, 839 P.2d 200 (1992). However the decision in that case was based on a specific definition of "dependent child" that was subsequently repealed by the legislature in 1997.<sup>2</sup> Wash. Laws of 1997, ch. 386 § 7. For a relatively brief period of time prior to 1997, children who were developmentally disabled and who could not be maintained in the family home could be found dependent. See former RCW 13.34.030(4)(d). The legislature repealed this approach and adopted an entirely separate statutory scheme that permits voluntary placements of developmentally disabled children through the Division of Developmental Disabilities ("DDD"). RCW 74.13.350. The other definitions of dependent child existing before and after the 1997 amendment have always required and continue to require proof of parental unfitness.<sup>3</sup>

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<sup>2</sup> Additionally in Key the trial court rejected a finding of dependency based on the definition that the court of appeals in this case found applicable. In Key the trial court rejected the argument that the developmentally disabled child who required full time residential care was a child who had "no parent, guardian or custodian capable of adequately caring for the child such that the child is in circumstances which constitute a danger of substantial damage to the child's psychological or physical development." Former RCW 13.34.030(2)(c) now codified as 13.34.030(5)(c).

<sup>3</sup> In re Dependency of K.R., 128 Wn.2d 129, 904 P.2d 1132 (1995); In re Dependency of J.C., 130 Wn.2d 418, 924 P.2d 21 (1996); In re Dependency of E.L.F.,

This Court should address the conflict now created by this case because without a ruling from this Court, future cases may seek dependency simply because a parent needs to work full time or needs assistance to care for a child with special needs. The fact that the parents petitioned for dependency does not support a different reading of the statutory definition of “dependent child.” Indeed, a parent’s subjective desire, or “willingness” to maintain custody of his/her child is not a relevant factor in determining whether the child meets the definition of “dependent child.”<sup>4</sup> This interpretation of the dependency statute is consistent with the public policy articulated in ch. 26.33 RCW, which prohibits parents from relinquishing their parental rights and obligations to their child unless there is an agency or person willing to accept that responsibility on their behalf. See RCW 26.33.010(legislature declares its intent that parents not use relinquishment as a means to avoid responsibility for their children, thus prohibits relinquishment unless a person or agency is willing to assume custody of the child).

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117 Wn. App. 241, 70 P.3d 163 (2003); In re Dependency of T.J.B., 115 Wn. App. 182, 62 P.3d 891 (2003).

<sup>4</sup> Prior to 1987, the same definition of dependent child, which the court of appeals found applicable in this case, also permitted the establishment of dependency when the parent was not willing or capable of parenting the child. The term “willing” was deleted from the statute in 1987. See Former RCW 13.34.030(c); Wash. Laws of 1987, ch. 524 § 3.

The decision below effectively makes the state foster care program into a type of insurer for all families who face financial hardship and have difficulty paying for medical care for their special needs children. While the need for affordable health care is clear, the decision to provide that care at taxpayer expense belongs to the legislature. Courts are not equipped, nor authorized to make such broad policy decisions – especially through interpretation of statutes that were never intended to provide unlimited access to health care. This was never the intent of the dependency laws and runs contrary to the public policy of this state.

**C. The Laws Governing Dependency Proceedings Are Not Intended to Create Privately Enforceable Rights to Services for Parents Who Assert They Cannot Continue Paying for Their Child's On-going Mental Health Treatment.**

The decision in this case is appropriate for review under RAP 13.4(b)(4) because it raises the question of whether the dependency statutes should be used as a form of insurance for families facing financial hardship caused by medical needs of a child. In light of the sometimes extraordinary costs of health care, it is a small step from the decision in this case to parents ceding custody of their child based on inadequate health insurance, with no inquiry into the parents' ability to continue assuming responsibility for the care of the child. This result is indeed possible because the decision in this case sanctioned the parents' use of a

dependency proceeding to secure residential care and medical services for their child using one dominant fact – the parents’ financial circumstances.

For a dependency to be used to provide such a result, there must be a constitutional or statutory entitlement to such services. Cort v. Ash, 422 U.S. 66, 95 S. Ct. 2080, 45 L. Ed. 2d 26 (1975); Camer v. Seattle School Dist. No. 1, 52 Wn. App. 531, 762 P.2d 356 (1988). A court cannot order the provision of services by state agencies beyond the legislature’s provisions, unless services are mandated by a constitutional provision. City of Ellensburg v State of Washington, 118 Wn.2d 709, 715, 826 P.2d 1081 (1991), quoting Pannell v. Thompson, 91 Wn.2d 591, 599, 589 P.2d 1235 (1979).

The Court of Appeals, Division 1 has already held that the child welfare statutes do not provide privately enforceable rights to services in a dependency proceeding. In re Welfare of J.H., 75 Wn. App. 887, 880 P.2d 1030 (1994)(constitution does not compel and the child welfare statutes do not provide a privately enforceable right to housing assistance in a dependency proceeding). The legislature has also made it clear that the dependency statutes are not intended as a vehicle by which parents can affirmatively assert an entitlement to services by the state. RCW 13.34.110(2)(where the Department is not the petitioner, it must agree to any order requiring it to supervise placement or provide services to a

dependent child.). RCW 13.34.350 reinforces that concept by providing “Nothing in this act shall be construed to create a private right of action against the Department on the part of any individual or organization.”

The child welfare statutes evidence the same legislative intent. RCW 74.13.045 provides “Nothing in this section shall be construed to create substantive or procedural rights in any person.” Finally, in 2005 the legislature amended RCW 26.44 to make it abundantly clear that the child protective statutes do not confer an entitlement to services or financial assistance in paying for services, and the court does not have the authority to order such services. Wash. Laws of 2005, ch. 512 § 6(6).

The court of appeals decision in this case is inconsistent with these principles. The opinion described the parents’ situation as a “train headed towards the end of the track” suggesting that the parents had no option except to file a dependency action to obtain placement for H.S. However, the record reflects the parents had other options. These parents could have pursued publicly assisted inpatient treatment for H.S. through the community mental health system, but they chose not to. State law provides a comprehensive system for providing mental health services to minors. RCW 71.24 et. seq. and RCW 71.34 et. seq. Under this statutory scheme, parents can access long term inpatient treatment for their severely mentally ill youth through Washington’s Children’s Long Term Inpatient

Program (“CLIP”) <http://www.clipadministration.org/cliphome.html> (viewed October 25, 2006). Parents can apply for inpatient treatment, and if they are denied services for their child, the parent can challenge that determination by requesting an administrative hearing, and even appeal to Superior Court if they are dissatisfied with the result. WAC 388-865-0255; WAC 388-02-0640; RCW 34.05.510.

The mother acknowledged that she and her husband sent H.S. out of state for treatment instead of accessing the state’s mental health system because they were “terrified” of Washington’s system. RP 218. When specifically asked about pursuing a CLIP placement, the Nurse Practitioner who testified on behalf of the parents explained that they chose not to pursue a CLIP placement for H.S. in part because the parents felt the waiting list was too long. RP 143.

Even if Washington’s public funding of mental health services for children is insufficient and even if there is a lack of affordable mental health care for children, the remedy for correcting these problems must come from the legislature. Using the dependency statute to accomplish this purpose merely shifts the problem based on a creative legal argument. Pannell v. Thompson, 91 Wn.2d 591, 589 P.2d 1235 (1979) (the decision to create a program is strictly a legislative prerogative); Hillis v Department of Ecology, 131 Wn.2d 373, 932 P.2d 139 (1997) (court

might find intolerable the waiting period for processing water rights applications, but it is more intolerable for the judicial branch to invade the power of the legislative branch).

The decision to channel those children who have severe mental illness but adequate parents through the mental health system instead of a dependency proceeding is a function of legislative design, which must be respected.

**D. The Court of Appeals Applied an In-Correct Standard of Review in Conducting a De Novo Review of the Evidence.**

The Court of Appeals conducted a de novo review of the evidence presented to the trial court because the trial court dismissed the petition pursuant to CR 41(b)(3). The lower court however weighed the evidence and credibility of witnesses and made factual findings based on that evidence. Therefore the Court of Appeals should have accepted the findings of the trial court so long as they were supported by substantial evidence. Nelson Construction Company of Ferndale, Inc. v. Port of Bremerton, 20 Wn. App. 321, 582 P.2d 511 (1978)(where court makes findings in its CR 41(b)(3) dismissal order, the appellate court should defer to those findings). Although there was some confusion as to whether the court below was in fact weighing the evidence or resolving all doubts in favor of the parents in this case, the order entered indicates that

the trial court did in fact weigh the evidence because it made numerous findings, in some instances against the parents. Seattle-First National Bank v. Hawk, 17 Wn. App. 251, 562 P.2d 260 (1977)(where trial court enters findings and conclusions it is presumed that the court weighed of the evidence); and see, Appendix B.

Applying the “substantial evidence” standard of review leads also to a different conclusion in this case. For example, whereas the Court of Appeals accepted the worst of the parents evidence concerning H.S.’s level of dysfunction, the trial court weighed that against other evidence also presented by the parents which showed the parents’ worst fears may not have been current or realistic. See Appendix B for trial court’s rejected findings ¶1.4, 1.5, 1.14, 1.15. In his testimony, the father admitted that H.S. never opposed or refused to go to treatment and that he did make progress at his residential facilities in both Idaho and Utah. RP 27, 34, 36. He admitted that H.S. has not had behavioral problems during treatment, and both the father and H.S. testified that H.S. lied about having hallucinations. RP 35, 76, 172. The father acknowledged that the family therapist believed H.S. could come home with the respite care and alarm system offered by the Department. RP 85-86. The DSHS social worker whose testimony the parents offered in support of their petition, testified that while H.S. has mental health issues, the problem of sexual deviancy is

less clear because the parents provided conflicting and selective information, and H.S. did not meet the definition of a sexually aggressive youth. RP 164.

The mother acknowledged that one therapist told the family that H.S. was just bored and spoiled, and she admitted that she had not had any contact with H.S.'s therapists in Utah. RP 187, 194, 205. The Nurse Practitioner who was the mother's therapist and who had provided family counseling a year and a half earlier testified that the mother's perceptions of H.S. are not realistic and that the mother blows things out of proportion when it comes to H.S. RP 132, 135, 150. She testified that she does not know what H.S. is like now, and that his current therapists do not believe he is psychotic. RP 132 – 135, 142. She also testified that the parents had a big family support system to help with the children. RP 129. The attorney for the parents admitted that no one really knows what H.S.'s needs are. RP 224.

Whereas the Court of Appeals described the family home as the sole remaining financial resource, which the parents would be forced to sell, the trial court also considered the assistance from the extended family, and the parents' Microsoft stock. Appendix B, ¶1.11.

Applying the correct standard of review, the trial court's findings were supported by substantial evidence and should have been affirmed. In

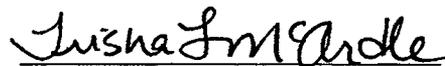
re Dependency of M.P., 76 Wn. App. 87, 90-91, 882 P.2d 1180 (1994)(substantial evidence is the correct standard of review for dependency orders).

## VII. CONCLUSION

The court of appeals decision in this case conflicts with decisions by this Court and the court of appeals by allowing dependency to be established based solely on the special needs of the child and no showing of parental unfitness. The decision also presents substantial public policy questions as to whether the laws designed to protect children from parental abuse or neglect can be used affirmatively by fit parents to force the state to assume the care and custody of their special needs children. This Court should accept review and reverse the court of appeals decision in this case.

RESPECTFULLY SUBMITTED this 7<sup>th</sup> day of November, 2006.

ROB MCKENNA,  
Attorney General

  
TRISHA L. McARDLE  
Senior Counsel  
Attorney for DSHS  
WSBN 16371

FILED AS ATTACHMENT  
TO E-MAIL

# **Appendix A**

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

In re the Dependency of:

H.S.,  
D.O.B.: 02/07/1990,

A minor child.

-----  
STEPHEN SCHERMER, MARGARET  
SCHERMER,

Petitioners,

and

STATE OF WASHINGTON,  
DEPARTMENT OF SOCIAL AND  
HEALTH SERVICES,

Respondent,

v.

H.S.,

Appellant.

No. 57117-6-I

DIVISION ONE

PUBLISHED OPINION

FILED: October 9, 2006

**GROSSE, J.** – For a child to be found dependent under RCW 13.34.030(5)(c) the petitioner must show the child “[h]as no parent, guardian, or custodian capable of adequately caring for the child, such that the child is in circumstances which constitute a danger of substantial damage to the child’s psychological or physical development.” Here, the petitioners’ evidence established a prima facie case that H.S.’s parents were incapable of adequately caring for H.S. in their home. Furthermore, the evidence established a prima facie case that H.S. was in circumstances that constituted a clear and present danger of substantial damage to his psychological or physical development due to his imminent release from an institution that could adequately meet his acute

psychological needs, and his delivery into the care of his parents, who were unable to adequately care for H.S. in their home. Therefore, the trial court erred in granting the State's motion to dismiss. We reverse and remand for a full hearing.

### **FACTS**

H.S. was born February 7, 1990, and has two younger siblings. Beginning in 2003, H.S. began experiencing night rages which progressively worsened to the point where his parents sought professional help. H.S. was treated by a psychologist who prescribed anti-depressants. H.S.'s symptoms continued to worsen. He became severely depressed and aggressive, began having suicidal thoughts, hearing voices, and engaged in acts of self-mutilation. His parents had him hospitalized in May 2003.

H.S. was diagnosed with severe depression and medications were prescribed. The doctors advised the parents that they lock potentially harmful things up in the house. They also advised that they keep stimuli such as light and noise at low levels.

Despite these measures the voices in H.S.'s head grew louder and his suicidal tendencies increased. H.S. was readmitted to the hospital in June 2003. The doctors attempted to treat H.S.'s symptoms by altering his medication. The family also participated in family treatment sessions. But H.S.'s symptoms continued to worsen. He was admitted to the hospital three more times in the summer and fall of 2003 after the voices in his head began telling him to kill his entire family.

In January 2004, H.S.'s parents sent him to Intermountain Hospital, a residential care facility in Idaho where he remained until May 2004. In March 2004, the Schermers' 5-year-old son revealed that H.S. had exposed himself to the child. H.S.'s treatment providers confronted him with this information and he acknowledged his actions.

In May 2004, H.S. was moved to a facility in Utah for behavioral therapy in order to stabilize H.S. before he returned home. During the course of H.S.'s treatment, his parents actively participated in weekly family therapy sessions by telephone and visited him approximately every six weeks.

In January 2005, H.S. was found in a sexual encounter with a peer at his treatment facility. H.S. revealed that he had sexual relations with a number of peers at the facility and his treatment providers concluded that H.S. exhibited sexually predatory behavior, including grooming. Because the facility was not licensed to house sexually aggressive youth, H.S. was transferred to another facility in Utah capable of treating such youth. The professionals who worked with H.S. advised the Schermers it was not safe for H.S. to return home. They estimated H.S. needed another two to three years of treatment.

In January 2005, the Schermers contacted the Department of Social and Health Services (DSHS) for assistance. According to the Schermers, DSHS offered only the possibility of a door alarm and respite care if H.S. returned home.

In June 2005, the Schermers filed a dependency petition under RCW 13.34.040(1), stating they could not provide for H.S.'s continuing residential

treatment or his mental or physical safety if he returned to their home. A hearing was held in September 2005. H.S. joined his parents in the dependency petition.

At the hearing, the Schermers testified as to H.S.'s psychological problems and their efforts to treat his conditions. Both parents testified that if H.S. was forced to leave the residential treatment facility due to their failure to pay overdue bills, they would be unable to provide the level of care necessary in their home to keep him safe.

As for the Schermers ability to pay the bills necessary to keep H.S. in the residential treatment facility in Utah, Mr. Schermer testified that he was the sole financial provider for the family, working an average of 40 to 50 hours per week outside the home. Mr. Schermer is a professional classical musician who earns his living playing for various area symphony, opera, and ballet groups. He also earns income teaching music at the University of Puget Sound and through private lessons. Mr. Schermer earned between \$36,000 and \$50,000 over the years preceding the petition hearing. He testified that he was unable to significantly increase his wages.

Ms. Schermer had not worked outside the home since H.S. was in the third grade and the Schermers' family therapist testified that Ms. Schermer was incapable of obtaining work outside of the home due to her anxiety problems.

Mr. Schermer estimated that the family had spent about \$130,000 out of pocket to care for H.S. since the onset of his problems. They paid these bills through refinancing their home, taking out a home equity loan to the maximum amount the bank allowed, and borrowing \$21,000 from Ms. Schermer's father.

Mr. Schermer testified that the family was on the verge of bankruptcy. As of the date of the hearing, Mr. Schermer testified that they were two months behind in their bills to the residential treatment facility in Utah and that if the bills were not paid H.S. would be released from the facility within a couple of weeks.

After the Schermers and H.S. presented their case, the State moved to dismiss the dependency petition. The court granted the motion to dismiss, finding H.S. had not been abandoned, nor did the evidence show he had no parent capable of adequately caring for him so as to present a danger of substantial damage to his physical or psychological development. The court based its ruling on a finding that the Schermers had the financial ability to keep H.S. in treatment for another six months if they sold their house. The court stated in its oral ruling:

The Court does not believe that the appropriate question is, can the child safely be in the home. The appropriate question is the question posed by the statute, which is, does [H.S.] have no parent capable of adequately caring for him.

And the answer to that question from the evidence here today is in the negative. The father testified, the father testified today, September 8th, 2005, there are resources in the family that could keep [H.S.] where he is for another six months. . . . That the father may choose not to devote the resources there or deem it unwise is not relevant under the statutory criteria.

Similarly, upon questioning of [H.S.], it is also clear that the evidence is that he is not presently in a place, presently, today, September 8th, 2005, in circumstances which constitute a danger of substantial damage to his psychological or physical development.

And in its written ruling the trial court stated:

There are resources within this family that would allow the parents to keep [H.S.] in his current placement for at least another

six months. Sale of the family home alone, which was last appraised as being worth approximately \$400,000, could free up equity that would provide for six more months of care at [H.S.'s] present placement. There are also shares of Microsoft stock<sup>1</sup> that the family could sell. Furthermore, there is the ability to rely on extended family members for support as evidenced by the \$21,000 loan that the parents were recently granted by the mother's parents on July 20, 2005. As of the date of the hearing, the uncontested testimony was that the parents have sufficient financial resources to care for the child.

H.S. appeals.<sup>2</sup>

### ANALYSIS

The issue before this court is whether the trial court erred in determining as a matter of law that H.S. was not a dependant child under RCW 13.34.030(5)(c). RCW 13.34.030(5)(c) defines a "Dependent child" as "any child who . . . [h]as no parent, guardian, or custodian capable of adequately caring for the child, such that the child is in circumstances which constitute a danger of substantial damage to the child's psychological or physical development."<sup>3</sup> Because the determination was made pursuant to a CR 41(b)(3) motion, and was made as a matter of law, our review is de novo viewing the evidence in the light most favorable to the nonmoving party, in this case, H.S.<sup>4</sup>

Viewing the evidence in the light most favorable to H.S., his parents were unable to adequately care for H.S. in their home. The Schermers testified extensively about H.S.'s psychological problems and their inability to care for

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<sup>1</sup> Mr. Schermer testified that the family owned 50 shares of Microsoft stock, worth a total of \$3,000-\$4,000.

<sup>2</sup> During the hearing H.S.'s attorney moved to have H.S. made a party to the petition. The trial court granted the motion without objection from the State.

<sup>3</sup> RCW 13.34.030(5)(c).

<sup>4</sup> See N. Fiorito Co. v. State, 69 Wn.2d 616, 619-620, 419 P.2d 586 (1966).

H.S.'s needs in their home. They testified about H.S.'s night rages, his chronic depression, his acts of self-mutilation, and the fact that he was hearing voices that were telling him to kill himself and others. This testimony was corroborated by a mental health nurse practitioner who worked with the Schermers. There also was testimony indicating that H.S. was exhibiting sexual predatory behavior towards other boys, engaging in sexual contact with other boys, and that he had exposed himself to his younger brother. Mr. Schermer also testified that his current treatment providers had conducted an assessment of H.S. which concluded that at the time of the hearing it was not safe for H.S. to return home.

Reading the evidence in the light most favorable to H.S., H.S.'s psychological problems were so acute that he had to be placed in a residential treatment facility in order to keep him out of danger from harming himself and others. H.S. thus had no parent capable of adequately caring for him, because the only place where H.S. could receive adequate care was in an institutional setting.

Recently, in the case In the Matter of the Dependency of C.M.,<sup>5</sup> we held that a trial court's dependency finding was proper where the father's mental health issues and deficient parenting skills prevented him from fully addressing the needs of his special needs child, thus placing his child in danger of substantial damage to his psychological development. We held:

While the record shows that McCracken loves C.M. and does his best to care for him, there remains substantial evidence that C.M. has developmental delays that could result in significant

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<sup>5</sup> In the Matter of the Dependency of C.M., 118 Wn. App. 643, 78 P.3d 191 (2003).

psychological damage if they remain unaddressed. And there is substantial evidence that McCracken's own mental illness and poor judgment have affected his ability to address these delays, despite his best intentions and his best efforts.

McCracken argues that [DSHS] did not prove that C.M. was dependent because it failed to prove that he was "currently unavailable to parent C.M.," relying on In re Welfare of Walker, 43 Wn.2d 710, 715, 263 P.2d 956 (1953). Walker is inapposite.

The definition of dependent child at issue in this case was not discussed in Walker. McCracken relies only on that court's general comment "that an existing ability or capacity of parents adequately and properly to care for their children is inconsistent with a status of dependency."<sup>6</sup> This principle does not conflict with the trial court's ruling here. While the evidence shows that McCracken can adequately care for C.M.'s basic needs, the trial court's finding that C.M.'s developmental needs have not been met is supported by substantial evidence, and meets both the definition of dependent child in RCW 13.34.030(5)(c) and the general principle stated in Walker.<sup>7</sup>

Likewise, in the case at bar, there was testimony that Ms. Schermer's own mental health issues prevented her from adequately meeting H.S.'s developmental needs. Mr. Schermer also was unable to do so because, as the sole provider for the family, he could not be present often enough to meet H.S.'s substantial needs.

The trial court saw the issue not simply as whether the Schermers had the ability to care for H.S., but as whether H.S. had any parent capable of causing him to be cared for.<sup>8</sup> Thus, the trial court's reasoning goes, even if the

---

<sup>6</sup> In the case at bar, the trial court relied on Dependency of T.J.B., 115 Wn. App. 182, 62 P.3d 891 (2002) for the same proposition as the basis of its ruling. For the same reasons set forth in Dependency of C.M. and explained below, this proposition does not conflict with our ruling here.

<sup>7</sup> Dependency of C.M., 118 Wn. App. at 654 (citations omitted).

<sup>8</sup> As the trial court stated, "No, the . . . issue is whether [H.S.] has a parent who can, who can cause him to be cared for."

Schermers could not adequately care for H.S., they had the financial resources to pay someone else to adequately care for H.S., in this case at the residential treatment facility where he was residing at the time of the hearing. Their remaining financial resources consisted primarily of the Schermers' house that they would be forced to sell in order to keep H.S. in treatment another six months, far less time than what would be necessary for him to complete his treatment.

Complete parental financial destitution is not a prerequisite to a dependency determination under RCW 13.34.030(5)(c). Even the State concedes in its brief that the Schermers' financial resources are not relevant to the issue of whether H.S. is a dependent child.<sup>9</sup> The statutes provide for child support from parents after their children have been determined to be dependent.<sup>10</sup> Thus, the Schermers' financial resources would be considered in determining their obligations to support H.S. during his dependency. To say the Schermers are required to sell their house before their child may be declared dependent is inconsistent with public policy as embodied in the Homestead laws<sup>11</sup> and in the Washington Administrative Code (WAC), which in an analogous situation explicitly exempts the residences of involuntarily committed mental

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<sup>9</sup> As the State says in its brief, "The Schermers' Financial Resources are Not Relevant to the Issue of Whether H.S. was a Dependent Child."

<sup>10</sup> See RCW 13.34.160(1) ("In an action brought under this chapter, the court may inquire into the ability of the parent or parents of the child to pay child support and may enter an order of child support as set forth in chapter 26.19 RCW.").

<sup>11</sup> See chapter 6.13 RCW.

health patients from the assets available to the State as payment for the costs of their hospitalization.<sup>12</sup>

While it is true that at the time of the hearing H.S. was still residing in a private treatment facility where his needs were being met, the Schermers testified that H.S. was in danger of being released from the facility within a couple of weeks due to the Schermers' failure to pay his bills for the past two months. Thus, reading the evidence in the light most favorable to H.S., within two weeks of the hearing he was to be released from the residential care facility to be delivered into the care of parents who were unable to adequately meet his acute psychological needs.

Counsel for H.S. stated during the hearing that H.S.'s situation was "a train headed towards the end of the track" and cautioned against waiting until there was a crisis before a dependency could be established. We have previously held that "RCW 13.34.030(5) does not require evidence of actual harm, only 'clear and present danger to the child's health, welfare and safety[.]'"<sup>13</sup> Reading the evidence in the light most favorable to H.S., H.S. was in

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<sup>12</sup> See WAC 388-855-0035(2):

Real property shall also be an available asset to the estate: Provided, That the patient's home shall not be considered an available asset if that property is owned by the estate and serves as the principal dwelling and actual residence of the patient, the patient's spouse, and/or minor children and disabled sons or daughters: Provided further, That if the home is not being used for residential purposes by the patient, the patient's spouse, and/or minor children and disabled sons or daughters, and in the opinion of two physicians, there is no reasonable expectancy that the patient will be able to return to the home during the remainder of his life, the home shall be considered an asset available to the estate.

<sup>13</sup> In re Interest of J.F., 109 Wn. App. 718, 731, 37 P.3d 1227 (2001) (quoting In re Welfare of Fredricksen, 25 Wn. App. 726, 733, 610 P.2d 371 (1979)).

circumstances which constituted a clear and present danger of substantial damage to his psychological or physical development due to his imminent release from an institution that could adequately meet his acute psychological needs, and his delivery into the care of his parents, who were unable to adequately meet his acute psychological needs.<sup>14</sup>

For the above reasons, we reverse and remand for a full hearing.

Grosse, J

WE CONCUR:

Schindler, ACT Everington, J

---

<sup>14</sup> Our decision in this case does not implicate the issues addressed in our recent decision in State v. G.A.H., 133 Wn. App. 567, \_\_ P.3d \_\_ (2006), and is not inconsistent with that decision. In G.A.H., we held that the juvenile court did not have the authority to determine a child was dependent in a juvenile offender proceeding to which DSHS was not a party, or to order DSHS to place the adjudicated offender in foster care at such a proceeding.

## **Appendix B**

**FILED**

SEP 12 2005

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**SUPERIOR COURT OF WASHINGTON FOR SNOHOMISH COUNTY  
JUVENILE DIVISION**

IN RE THE DEPENDENCY OF:

SCHERMER, Henry  
D.O.B.: 02/07/1990

No. 05-7-00744-0

**~~FINDINGS OF FACT, CONCLUSIONS  
OF LAW, AND ORDER OF DISMISSAL  
ON PETITION FOR DEPENDENCY~~**

THIS MATTER came before the Honorable Stephen J. Dwyer on September 8, 2005, for a trial on the Petition for Dependency filed on June 30, 2005. The Department of Social and Health Services (the Department) appeared through James Kairoff and Sarah Sheppard, Social Workers; and Chris Williams, Assistant Attorney General. The child's parents, Margaret and Stephen Schermer, appeared and were represented by Rachel Levy. The child, Henry Schermer, appeared by telephone and was represented by Jennifer Coombs. The parents filed the petition for dependency. However after the father had testified, the child, through counsel, moved to join as a petitioner and was allowed by order of the court to amend the pleadings to include the allegation that he is dependent under RCW 13.34.030(5)(a) in addition to RCW 13.34.030(5)(c).

The court heard testimony from Stephen Schermer, Margaret Schermer, Vicki Britt, Henry Schermer, and James Kairoff, as well as argument from all parties. The court also

CP6

1 reviewed documentary evidence, consisting of one exhibit admitted at the time of trial from these  
2 and other witnesses, and considered authorities provided.

3 After the petitioners presented their case and rested, the Department moved for dismissal  
4 of the action pursuant to CR 41(b)(3). The court issued an oral decision on September 8, 2005.

5 ~~The court being fully advised makes the following:~~ Viewed pursuant to the applicable  
6 legal standard, relevant facts, and evidence is:

7 1. Findings of Fact

8 1.1 Henry Schermer was born February 7, 1990 and is the child of Margaret and  
9 Stephen Schermer. The child has two younger siblings who are not the subject of this action.

10 1.2 There is no evidence indicating that the child is an Indian Child as defined in 25  
11 U.S.C. 1903.

12 1.3 The Servicemembers Civil Relief Act does not apply.

13 ~~1.4 The parents testified that they experienced great fear of Henry, starting primarily  
14 after the age of 12, because of escalating problems with his behavior. They described him as  
15 having problems relating to other children at school, having fits of rage, and being influenced by  
16 auditory and visual hallucinations which told him to harm himself and others. Henry did not  
17 testify to having actually had such hallucinations or any of the behaviors described by his parents,  
18 but it is clear that the parents were highly concerned for the safety of their other children and  
19 themselves at this time.~~

20 1.5 In response to their concerns about Henry's behaviors and mental health, the  
21 parents consulted multiple professionals in order to assist Henry and the family. The parents  
22 testified that they contacted pediatricians, therapists, and psychiatrists in an effort to stabilize  
23 Henry. Based on assessments by many of the professionals who had worked with Henry, the  
24 parents believed at this time that Henry suffered from a disorder resembling schizophrenia.

25 Henry repeatedly told his family and counselors that he heard voices that told him to harm

1 himself. The parents believed that Henry was being told to harm them and their other children  
2 as well. (initials)

3  
4 1.6 The parents have made arrangements for Henry's placement over the past 3 years  
5 in a series of mental health and behavior modification facilities. Such placements included Fairfax  
6 Hospital in Washington State, followed by Intermountain Hospital in Idaho, then Red Rock  
7 Canyon School in Utah. Henry has currently been residing in Bird's Eye Boys Ranch in Utah for  
8 the past 8 months.

9 1.7 The parents facilitated placement of Henry at Intermountain Hospital in Idaho in  
10 January of 2004. Henry has not returned to the family home since that time.

11 1.8 Henry's care has been paid for through a combination of private insurance and  
12 out-of-pocket expenses to the family. ~~Until the insurance began to "run out" in July of 2005, the~~  
13 ~~month in which the parents filed this dependency petition, the direct expenses to the family~~  
14 ~~consisted primarily of travel expenses to visit with Henry in his out-of-state placements and co-~~  
15 ~~payments required by their insurance coverage.~~

16 1.9 The father is a professional musician who works with the Pacific Northwest Ballet  
17 Orchestra, the Seattle Symphony, and the Seattle Opera. He holds a tenured position as an affiliate  
18 faculty member at the University of Puget Sound School of Music. He also earns money through  
19 self-employment providing private music lessons. The father had a hard time testifying to the  
20 amount of money that the family has earned over the past five years, however he is capable of  
21 increasing his earnings through his own efforts. Despite being capable, the father has chosen not  
22 to work more to increase his earnings in order to continue providing the level of care Henry has  
23 been receiving over the past two years, (initials)

1 1.10 The family believes that they cannot continue to pay for Henry's treatment at the  
2 level of care he is in based on the fact that they believe their insurance policy is reaching its  
3 coverage limit.

4 1.11 There are resources within this family that would allow the parents to keep Henry  
5 in his current placement for at least another six months. Sale of the family home alone, which was  
6 last appraised as being worth approximately \$400,000, could free up equity that would provide for  
7 six more months of care at Henry's present placement. There are also shares of Microsoft stock  
8 that the family could sell. Furthermore, there is the ability to rely on extended family members for  
9 support as evidenced by the \$21,000 loan that the parents were recently granted by the mother's  
10 parents on July 20, 2005. *As of the date of the hearing, the uncontroverted*

11 1.12 The mother does not work outside of the home, however she has held jobs of a  
12 secretarial type nature and as a child care provider in the past.

13 1.13 There are a variety of extended family members who are concerned about what  
14 happens to Henry.

15 1.14 While in his placement at Intermountain Hospital in Idaho, Henry suffered from  
16 severe anxiety throughout the course of his treatment, however he had not presented a behavior  
17 management problem for that facility to deal with. His therapists told the family that he was not  
18 aggressive towards others while in care.

19 1.15 In March of 2004, during his placement at Intermountain Hospital in Idaho, Henry  
20 recanted his story that he had been having hallucinations and was hearing voices which told him  
21 to harm himself and others. As his treatment progressed, allegations were revealed that Henry had  
22 been sexually inappropriate with a number of other children over the course of his lifetime and  
23 was having significant problems coping with his sexual identity and boundaries. There were  
24 allegations that Henry had had sexual contact with a 4 year old child when Henry was 12, a child  
25 who was 7 or 8 when Henry was 13, and a child who was 11 when Henry was 13. Referrals were

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*pro security*

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1 | made to the Brier Police Department once these allegations were revealed, but none of the alleged  
2 | victims, which included Henry's younger brother, were brought to the police for questioning by  
3 | their parents and no further action was taken by law enforcement.

4 |       1.16 The parents had been engaged in family therapy with Henry extensively, although  
5 | not in the last 8 months. They have maintained regular contact with him, outside of family therapy  
6 | sessions, up to the date of trial, however.

7 |       1.17 The father believes he is doing everything he can to provide for Henry but that he  
8 | is not capable of caring for Henry in the family home. He does not intend to end contact with  
9 | Henry, sever the relationship, or otherwise abandon him. He does plan on supporting Henry in the  
10 | future in any way he can except for caring for Henry in the family home.

11 |       1.18 The mother suffers from severe anxiety as a result of Henry's needs, but does not  
12 | intend to end contact with Henry, sever the relationship, or otherwise abandon him. She feels that  
13 | there is no way to safely return Henry to the family home, however, it is unclear how realistic her  
14 | view of Henry is according to her therapist, Vicki Britt.

15 |       1.19 Henry feels safe in his current placement at Bird's Eye Boys Ranch in Utah and  
16 | does not believe that he is a danger to anyone there. He is engaged in therapy to address issues of  
17 | sexuality and appropriate sexual boundaries and is progressing academically and doing the  
18 | equivalent of 9<sup>th</sup> grade work in school.

19 |       1.20 The parents other children, Henry's younger siblings, appear to be well taken care  
20 | of by the parents.

21 |       1.21 No current parental unfitness or present inability to exercise the duties of a parent  
22 | exists. The parents have made decisions regarding Henry's needs and care that were appropriate  
23 | under the circumstances and motivated by a desire to help him and address family stressors.

24 |  
25 |

Conclusions of Law

AM

1 ~~122~~ Even when viewing all of the evidence in a light most favorable to the parents and  
2 considering it as being true, there is no basis for a rational trier of fact to conclude that Henry

AM

3 Schermer has been abandoned under RCW 13.34.030(5)(a). *The evidence is that he has not  
4 been abandoned. The parent testimony was inconsistent with a fair inference to abandon.*

AM

5 ~~123~~ Even when viewing all of the evidence in a light most favorable to the parents and  
6 considering it as being true, there is no basis for a rational trier of fact to conclude that Henry

7 Schermer has no parent capable of adequately caring for him, such that he is in circumstances  
8 which constitute a danger of substantial damage to his psychological or physical development

9 under RCW 13.34.030(5)(c). *The evidence is that the father has the <sup>necessary</sup> ability and  
capacity necessary and that Henry is presently safe.*

AM

Conclusions of Law

10 ~~124~~ <sup>3</sup> The court has jurisdiction over the subject matter, the parents, the child, and the  
11 Department.

AM

12 ~~125~~ <sup>4</sup> The child is not dependent under RCW 13.34.030(5)(a).

13 ~~126~~ <sup>5</sup> The child is not dependent under RCW 13.34.030(5)(c).

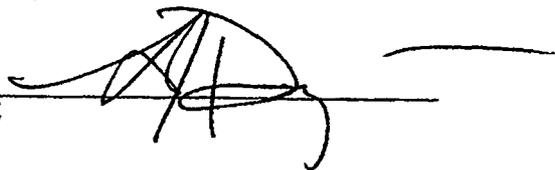
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Order

14  
15 IT IS HEREBY ORDERED that the petition for dependency is hereby DISMISSED,  
16 pursuant to CR 41(b)(3) as the petitioners have shown no right to relief.

17  
18 DATED THIS 9<sup>th</sup> day of September, 2005.

JUDGE



Presented by:



**CHRIS WILLIAMS, WSBA #34521**  
Assistant Attorney General

1 Approved for Entry <sup>as to Form!</sup>

2

3

4 **MARGARET SCHERMER**  
Mother

*Rachel Levy*  
RACHEL LEVY, WSBA #11100  
Attorney for Mother

5

6 **STEPHEN SCHERMER**  
Father

*Rachel Levy*  
RACHEL LEVY, WSBA #11100  
Attorney for Father

7

8 **HENRY SCHERMER**  
9 Child

*Jennifer Coombs*  
JENNIFER COOMBS, WSBA #  
Attorney for child

10

11 **SARAH SHEPPARD**  
DSHS Social Worker

Other

12

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CP12

SUPREME COURT OF THE STATE OF WASHINGTON

IN RE THE DEPENDENCY OF  
H.S., a minor child,

STATE OF WASHINGTON,  
DEPARTMENT OF SOCIAL  
AND HEALTH SERVICES

Petitioner,

v.

H.S.,

Respondent.

DECLARATION OF  
SERVICE

I, Patricia A. Prosser, declare as follows:

I am a Legal Secretary employed by the Washington State Attorney  
General's Office. On November 7, 2006, I sent a copy of: **Motion for**

**Discretionary Review; and Declaration of Service** to:

1. Gregory C. Link, Washington Appellate Project, 1511 - 3<sup>rd</sup> Ave., #701, Seattle, Washington, 98101-3635;
2. Rachel Levy, 520 Pike St., #1350, Seattle, Washington, 98101-4023; and
3. Christian Williams, Attorney General's Office, 3501 Colby Ave., #200, Everett, Washington, 98201-4795.

Said copies were sent, via ABC Legal Messengers, Inc.; and/or First Class US Mail.

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STATE OF WASHINGTON  
2006 NOV -7 P 3:34  
BY C.J. MERRITT  
CLERK

I declare under penalty of perjury, under the law of the State of Washington that the foregoing is true and correct.

DATED this 7<sup>th</sup> day of November, 2006 at Seattle, Washington.

  
PATRICIA A. PROSSER  
Legal Secretary

FILED AS ATTACHMENT  
TO E-MAIL

Rec. 11-7-06

-----Original Message-----

**From:** Prosser, Pat (ATG) [mailto:PatP@ATG.WA.GOV]

**Sent:** Tuesday, November 07, 2006 3:28 PM

**To:** OFFICE RECEPTIONIST, CLERK

**Cc:** McArdle, Trisha (ATG)

**Subject:** Dependency of H.S.

**Importance:** High

Attached please find a copy of a Motion for Discretionary Review; and Declaration of Service. This is in reference to the following Case:

Case Name: In Re the Dependency of H.S., a minor child, State of Washington, Department of Social & Health Services, Petitioner, vs. H.S., Respondent.

Case No.: Supreme Court No.: None assigned yet

Court of Appeals No.: 57117-6-I

Contact Name: Patricia Prosser

Contact #: (206) 389-3915

Attorney Name: Trisha McArdle

If you have any questions or trouble opening the attachments, please contact me as soon as possible. Thank you.

<<Motion for Discretionary Review + Appendix A & B.pdf>> <<11-7-06 Dec of Serv.pdf>>

Patricia A. Prosser, LS 3

Attorney General's Office

Seattle Social & Health Services Division

(206) 389-3915

PatP@atg.wa.gov