

No. 84916-1

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

In re the Dependency of J.H., A Minor.

FROM THE COURT OF APPEALS, DIVISION III-No. 281272-III
SPOKANE COUNTY SUPERIOR COURT, JUVENILE DIVISION
No. 08-72026798

MOTION FOR DISCRETIONARY REVIEW

PETITIONER/APPELLANT

GREGORY L. HYDE, # 777665
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CLERK

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STATE OF WASHINGTON

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1. Appendix A

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A. IDENTITY OF PETITIONER

GREGORY L. HYDE is the petitioner and the natural father of the subject child in this petition for review and asks this court to accept review of the decision or part of the decision designated in section B of this motion and grant the requested relief thereto.

B. COURT OF APPEALS DECISION

The petitioner, GREGORY L. HYDE, requests review under RAP 13.5 of the Court of Appeals, Division III, Order of July 7, 2010, denying petitioner's Motion to Modify the Commissioner's Ruling entered October 23, 2009. A copy of the order and ruling is attached in Appendix A.

C. ISSUES PRESENTED FOR REVIEW

In this dependency, the question is whether the petitioner's capacity as a parent gives him standing to challenge by right or discretion the Juvenile Court's premature dismissal order where the court failed to make a reasonable determination of the child's best interest by establishing permanency with an unfit parent and placing the child in the very same circumstances that prompted the states initial involvement.

D. STATEMENT OF THE CASE

Petitioner, GREGORY L. HYDE, relies on section D of his Motion for Discretionary Review filed in the Court of Appeals and Section III of his Motion to Modify the Commissioner's Ruling. Supplement to the record will be provided in section E of this Motion.

E. ARGUMENT

1. THE PETITIONER HAS STANDING TO APPEAL BY RIGHT AND/OR DISCRETION THE JUVENILE COURT ORDER DISMISSING THE DEPENDENCY.

It is submitted that the issues raised by this motion should be addressed by this court because the Court of Appeals committed obvious error and probable error, in which alters the status quo of a party and substantially limits the freedom of the petitioner to act warranting review under RAP 13.5(b)(1) and (2). The petitioner also believes that the decision of the court "has so far departed from the accepted course of judicial proceeding... as to call for the exercise of the revisory jurisdiction of the Supreme Court," as set forth in RAP 13.5(b)(3).

a. Summary Argument.

"Parents have a fundamental liberty and private interest in the care and custody of their minor child." In re Welfare of A.J.R., 78 Wn.App. 222, 229, 896 P.2d 1298, review denied, 127 Wn.2d 1025, (1995); citing In Re J.B.S., 123 Wn.2d 1, 12, 863 P.2d1344, (1993); see also, Troxel V. Gransville, 530 U.S. 57, 147 L.Ed.2d 49, 120 S.ct. 2054, (2004). This fundamental right, however, is not absolute when the parent's actions or inactions endanger the child's well being. In re Sumey, 99 WN.2d 757, 762, 621 P.2d 108, (1983). That is because the child has a right to a safe, stable, nurturing and healthy home. In re Dependency of R.H., 129 Wn.App. 83, 88, 117 P.3d 1179, (2005).

In dependency matters the state's ostensible goal is to nurture the family unit and to keep the family intact "unless the child's

right to conditions of basic nurture...health and safety is jeopardized." RCW 13.34.020; In re J.B.S., 124 Wn.2d at 8-9. Any dismissal of a dependency must be based on the child's best interest. In re Dependency of R.H., 129 Wn.App. at 88.

In its brief the Respondent states that " The trial court's decision to dismiss the dependency does not substantially affect a legally protected interest of Mr. Hyde. Dismissal of the case removed any restrictions imposed on Mr. Hyde's parental rights by the court in the dependency proceedings. Respondent's Memorandum Re: aggrieved Party at 2. The Court of Appeals agreed.

It is important to remember that dependency is a status that goes with the child not a particular parent. In re Welfare of Fisher, 31 Wn.App. 550, 643 P.2d 887, (1982). The Respondent's position misses the intent and purpose of RCW 13.34 et. seq. and fails to take into consideration, but rather ignoring the child's right to a safe, nurturing and healthy home. In Re R.H., supra. Further, the state ignores the petitioner's constitutional interest in the welfare of his minor child. In re Welfare of A.J.R. and Troxel v. Gransville, supra.

By adopting such an unbalanced view the petitioner believes that the Court of Appeals committed obvious error and probable error, the decision alters the status quo of a party and substantially limits the freedom of the petitioner to act. The petitioner also believes that the decision of the court has "so far departed from the accepted and usual course of judicial

proceeding...as to call for the exercise of the revisory jurisdiction of the Supreme Court." As such, review is warranted under RAP 13.5(b)(1),(2) and (3).

- b. The petitioner is sufficiently aggrieved withing meaning of RAP 3.1 by the Juvenile Court's order dismissing the dependency.

RCW 13.04.033 provides, "Any person aggrieved by a final order of the court may appeal said order as provided by this section." Likewise, RAP 3.1 states "any aggrieved party may seek review by the appellate court." An aggrieved party is one whose proprietary, pecuniary, or personal rights are substantially affected.

The Court of Appeals is of the opinion that the petitioner is not an aggrieved party within the meaning of RAP 3.1.

The court in State ex. rel. Race v. Cranney, stated:

"Where a one had a sufficient interest to be made a party to the action, he could not be denied appealable interest in cause, should judgment be made against him."

30 Wash. 594, 595, 71 P. 50, (1902).

Here, The Department of Social Health and Services (herein after "The Department") filed a dependency petition, pursuant to RCW 13.34.030, regarding Jayden Hyde. The petitioner is the natural father of Jayden Hyde. The Petitioner did appear in these proceedings and is clearly a party to this action.

The fact that the petitioner had an interest sufficient to be made an active party to the action is at least some indication that he also has a sufficient interest to appeal an adverse judgment. cf. Temple v. Feeney, 7 Wn.App. 345, 347, 499 P.2d 1272, (1972). Moreover, the

petitioner's capacity as a parent gives him a personal stake and interest in the welfare of his minor child.

Therefore, the question turns on whether the petitioner is sufficiently aggrieved within the meaning of RAP 3.1 by the Juvenile Court Order at issues.

The Juvenile Court obtains jurisdiction over a minor child when he or she is found to be a dependent child, as defined by RCW 13.34.030. In re Mcdaniel, 64 Wn.2d 273, 276-277, 391 P.2d 191, (1964). The Court must find by a preponderance of the evidence that the child meets one of the statutory definitions of dependency in order to find a child dependent. In re Key, 119 Wn.2d 600, 612, 836 P.2d 200, (1992). A finding of dependency requires proof of present parental deficiencies. In re Matter of Walker, 43 Wn.2d 710, 715, 263 P.2d 956, (1983). In Walker, the court noted "an existing ability or capacity of a parent to adequately and properly care for their children is inconsistent with the status of dependency." Id.; see also In re Welfare of Watson, 25 Wn.App. 508, 512-513, 610 P.2d 367, (1979).

In the present case, the court approved and entered an agreed order of dependency as to the mother on December 17, 2008 and as to the father on January 21, 2009. The dependency was based on the no parent guardian section of RCW 13.34.030(5)(c). The grounds for the Dependency was specifically based on the mother's drug use and involvement with drugs, firearms and other criminal activities. Thus, the agreed order established that the mother could not adequately care for the child due to her drug use and the lifestyle she maintained. RCW 13.34.030(5)(c); Walker, 43 Wn.2d at 715

Of note, the dependency as it relates to the father was strictly limited to his inability to provide shelter.

At the fact finding hearing it was established that quantities of multiple narcotics and firearms were found in the family home and vehicles. Therefor, the agreed order also established that the child's living arrangement affected the child's circumstances constituting a danger to the child.

The parties and court are bound by that proposition that established that there was a present harm to the care of Jayden Hyde. Specifically, that the mother did have a drug problem and lacked judgment in selecting and providing a health living environment and exposed the child to an insecure and unsafe home.

In dependency matter's, the state's ostensible goal is to nurture the family unit and to keep the family intact "unless the child's right to conditions of basic nurture...health and safety is jeopardized." RCW 13.34.020; In re J.B.S., 124 Wn.App. at 8-9.

On March 18, 2009, The Department attempted to have the child removed from the mother's care due to various violations of the December 17, 2008, agreement. A hearing was held to address The Department's request on March 25, 2009. At the hearing The Department presented evidence of multiple urinalysis (UA) failures for multiple substances. The Department also presented evidence of the mother's non-compliance with the court ordered treatment and that the mother had moved without notice to The Department.

Additionally, the mother herself presented evidence at this hearing of domestic violence and testified that she didn't take drugs and that

she didn't have a drug problem despite the evidence to the contrary.

In spite of all this, the Juvenile Court denied the Department's request to have the child removed from the mother's care.

Shortly thereafter, the mother moved to have the dependency dismissed. On July 31, 2009 the Juvenile Court granted the mother's motion for dismissal and entered an order dismissing dependency. Despite the fact that the mother continued to test positive for multiple substances multiple times throughout the durations of these proceedings in addition to other various violations of the December 17, 2008 agreed order of dependency.

The facts of this case make clear the the mother continued to engage in activities and maintain a lifestyle previously agreed to be detrimental to the child. The Juvenile Court order establishing permanency with the mother under these circumstances and conditions does not alleviate the problems that prompted the state's initial involvement. Neither does it relieve the state of its duties. Rather, it places the child in the very same circumstances that prompted the states initial involvement.

The Juvenile Court Order is "arbitrary, tyrannical," and "predicated upon a fundamentally wrong basis," Coalition For the Homeless v. DSHS, 133 Wn.2d. 894, 914, 949 P.2d 1219, (1997), as it is completely inconsistent with the intent and purpose of RCW 13.34 et. seq.

The record makes clear that the petitioner received no benefit from and is sufficiently aggrieved within the meaning of RAP 3.1 by the trial court's premature order dismissing dependency and establishing permanency with an unfit parent that continues to engage in activities

that all parties agree are detrimental to the child and inconsistent with his well being. The order substantially affects the petitioner's legally protected interest in the welfare of his minor child.

- c. The father has a right to appeal the order dismissing dependency and, in effect, has challenged the new disposition and has sufficiently established that the appeal satisfies the criteria for discretionary review.

The rules on appeal allow an appeal of the order of dependency as a matter of right. In re Lewis, 89 Wn.2d 113, 118, 520 P.2d 135, (1977) ("determination of dependency may be appealable as a matter of right under RAP 2.2(a)). Alternatively, for the court to accept review it must be satisfied that it meets the criteria for discretionary review. In re Chubb, 112 Wn.2d 719; 721, 773 P.2d 851, (1989) (a decision resulting from a proceeding not mentioned specifically in RAP 2.2(a) is reviewable only under the discretionary review proceedings in RAP 2.3).

- i. The order dismissing dependency is independently appealable as a matter of right as it is a final order ending the overall litigation.

The statute that gives the right to appeal an order of disposition provides "any person aggrieved by a final order of the court may appeal the order." RCW 13.04.033(1); State v. A.M., 109 Wn.App. 325, 327, 36 P.3d 552, (2001). A final judgment is a judgment that ends litigation leaving nothing for the court to do but execute judgment. Anderson v. Quinault Indian Reservation, 79 Wn.App. 221, 225, 901 P.2d 1065, (1995); CR 54(a)(1) and (2).

This court has held only that an order of "continued" dependency following a dependency review hearing is not appealable as a matter of right. In re Chubb, 112 Wn.2d at 722. That is, the order is not final

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as it maintains the status quo wherein the supervision and review process continues. Id. at 724. This court considered only the initial determination of dependency. Id. at 723. However, this court did state:

"The language of RAP 2.2(a) and RCW 13.34.130 indicates that appeal by right applies only to dispositions following the finding of dependency or a **marked change in the status quo**, which in effect, amounts to a **new disposition**."

112 WN.2d at 725 (emphasis added).

In the present case, the Juvenile Court order dismissing dependency changes the status quo which, in effect, amounts to a new disposition ending the overall litigation leaving nothing for the court to do but to execute judgment.

Because the Juvenile Court found Jayden Hyde no longer dependent and established permanency with an unfit parent, the petitioner submits that the dismissal order is a new disposition concerning placement of a minor child stemming from a determination of dependency and that it is a final order affecting substantial right, (i.e. the welfare of his minor child).

The rules interpreted in their only logical way support the petitioner's position that the dismissal order is independently appealable as a matter of right. RAP 2.2(a)(1),(3),(5) and (13).

ii. The petitioner can challenge the order of dismissal under a motion for discretionary review.

Even if this court finds that the order dismissing dependency is not appealable as a matter of right. The Court of Appeals should have permitted discretionary review because of the fundamental rights at

issues, i.e. the child's fundamental right to a safe, stable and nurturing home and the father's constitutional interest in the welfare of his minor child. Under RAP 2.3(b) the Court of Appeals may grant review if:

- (1) The superior court has committed obvious error which would render further proceedings useless;
- (2) The superior court has committed probable error the decision alters the status quo or substantially limits the freedom of a party to act;
- (3) The superior court has so far departed from the accepted course of judicial proceedings, or so far sanctioned such a departure by an inferior court or administration, as to call for review by the Appellate Court.

In the best interest of the child the Court of Appeals should have determined whether the trial court prematurely dismissed the dependency. cf. In re Watson, 23 Wn. App. 21, 594 P.2d 947, (1947). The Court of appeals erred in not permitting discretionary review because the petitioner believes, as previously argues, that the Spokane County Court, acting pursuant to RCW 13.34 et. Seq. ignored the child's right to a safe, stable and nurturing environment, by establishing permanency with an unfit parent and placing the child in the very same circumstance which prompted the states initial involvement.

It remains clear that the petitioner's capacity as a parent gives him a fundamental and private interest in the welfare of his minor child. The Petitioner is sufficiently aggrieved within the meaning of RAP 3.1 and has standing to challenge the Juvenile Court order establishing permanency with an unfit parent who continues to maintain a life style inconsistent with the child's right to conditions consistent with his needs. RCW 13.34.020; see also Walker, J.B.S., and Watson, supra.

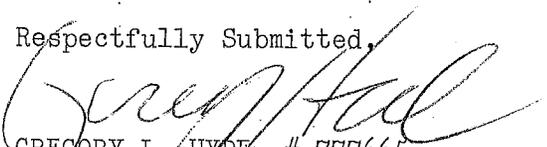
The Court of Appeals committed obvious error and probable error, the decision alters the status quo of a party and substantially limits the freedom of the petitioner to act. The petitioner also believes that the decision of the court has " so far departed from the accepted and usual course of judicial proceeding...as to call for the exercise of the revisory jurisdiction of the Supreme Court." Review is warranted under RAP 13.5(1),(2) and (3).

F. CONCLUSION

In light of the foregoing facts and circumstances the petitioner respectfully asks this court to grant review of the decision of the Court of Appeals and reverse the Court of Appeals decision and reinstate the petitioner's appeal.

DATED this 4 day of August, 2010.

Respectfully Submitted,


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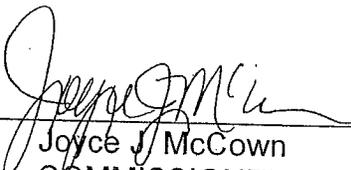
APPENDIX A

No. 28127-2-III

affected a legally protected interest of his, *Polygon Northwest Co. v American National Fire Insurance Co.*, 143 Wn. App. 753, 768, 189 P.3d 777(2008); now, therefore,

IT IS ORDERED, since Mr. Hyde is not an aggrieved party these matters are dismissed. Additionally, Mr. Hyde's other appeals, 28313-5-III, 28314-3-III, 28315-1-III, and 28416-6-III, which all originate from Spokane County Superior Court Cause No. 08-7-02679-8, are hereby consolidated with Appeals No. 28127-2-III and 28226-1-III and dismissed for the same reason.

October 23 , 2009.



Joyce J. McCown
COMMISSIONER

A-2

FILED

JUL - 7 2010

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON

**COURT OF APPEALS, DIVISION III, STATE OF
WASHINGTON**

In re the Dependency of:

J.H.

) No. 28127-2-III
) (consolidated with
) 28226-1-III, 28313-5-III
) 28314-3-III, 28315-1-III,
) 28416-6-III
)
) ORDER DENYING
) MOTION TO MODIFY
) COMMISSIONER'S RULING
)

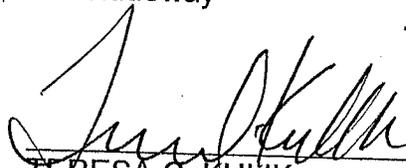
Having considered Gregory Hyde's pro se motion to modify the commissioner's ruling of October 23, 2009, the response thereto, and the record and file herein;

IT IS ORDERED the motion to modify the commissioner's ruling is denied.

DATED: July 7, 2010

PANEL: Judges Brown, Sweeney, and Siddoway

FOR THE COURT:



TERESA C. KULIK
CHIEF JUDGE