

NO. 63495-0-1

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

In Re M.S. (d.o.b. 10/29/2005),
A MINOR CHILD.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR SKAGIT COUNTY

The Honorable G. Brian Paxton, Commissioner

APPELLANT'S REPLY BRIEF

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A. ARGUMENT IN REPLY

1. THE TRIAL COURT ERRED IN DENYING THE MOTHER'S MOTION TO REVOKE HER RELINQUISHMENT OF PARENTAL RIGHTS.

Under RCW 26.33.160 sections (3) and (4)(g), a consent to relinquish parental rights may be revoked for fraud or duress practiced by the person, department, or agency requesting the consent.¹ Duress under this statute must be proven by clear, cogent and convincing evidence. *In re J.N.*, 123 Wn. App. 564, 573, 95 P.3d 414 (2004).

The trial court denied Ms. Sigurdson's motion to revoke her relinquishment of parental rights under RCW 26.33.160, finding that because the person who had inflicted the duress was not a party to the relinquishment agreement made with the State, the duress did not vitiate the agreement. CP 50-52. The trial court incorrectly interpreted and applied RCW 26.33.160, reasoning that because Ms. Sigurdson relinquished her parental rights to the

¹ RCW 26.33.160 sets forth the procedure for when consent for adoption may be revoked. RCW 26.33.160(3) provides as follows: "Within one year after approval, a consent may be revoked for fraud or duress practiced by the person, department or agency requesting the consent, or for lack of mental competency..." (Emphasis added). Similarly, RCW 26.33.160(4)(g) provides "... after it has been approved by the court, the consent is not revocable except for fraud or duress practiced by the person, department, or agency requesting the consent or for lack of mental competency. . ." (Emphasis added). RCW 26.33.160(3), (4)(g).

State, the State was the “department or agency requesting the consent.” The trial court erroneously concluded Ms. Willard’s wrongful acts could not constitute duress put upon Ms. Sigurdson because the State was requesting the consent. Yet, the statutory language in question is not limited to duress by a department or agency. The plain language of the statute recognizes that a “person” requesting consent may also exert duress.

a. Ms. Sigurdson presented unrebutted evidence of duress during the hearing on her motion to revoke her relinquishment of parental rights. The State attempts to argue that Ms. Sigurdson failed to present any evidence of the duress by Bari Willard, but later admits that the mother offered testimony regarding duress. Brief of Respondent at 10, 23. Clearly, Ms. Sigurdson’s unrebutted testimony presented during the hearing constituted evidence of duress. The State’s attempt to mischaracterize Ms. Sigurdson’s testimony as “self-serving” does not change the fact that this evidence was never rebutted. Because Ms. Sigurdson and Ms. Willard were the only persons present during the discussion when the wrongful threats were made, and Ms. Willard exercised her right not to testify, Ms. Sigurdson’s testimony was the only available evidence regarding

Ms. Willard's conduct during their conversation. Thus, Ms. Sigurdson presented un rebutted evidence of duress, and the State had the opportunity to challenge this evidence during the hearing. The State did not present evidence to challenge Ms. Sigurdson's testimony that her consent was obtained by duress. Therefore, by offering and presenting un rebutted evidence of duress, Ms. Sigurdson met her burden under the statute.

Moreover, the State's argument grossly misstates the facts of this case which, upon review, confirm the following: (1) Ms. Sigurdson filed a timely motion to revoke her relinquishment of parental rights and a hearing took place; (2) the Department was present at this hearing and had the opportunity to present evidence and cross-examine witnesses; (3) Ms. Sigurdson testified regarding her grounds for the motion, which was duress exerted upon her by her mother, Bari Willard; and (4) Ms. Willard was called to testify at the motion hearing to revoke Ms. Sigurdson's relinquishment but chose instead to invoke her right not to testify.²

² The State asserts that the trial court's findings are supported by substantial evidence, citing the testimony of the grandmother to help support its claim. Brief of Respondent at 21. However, the grandmother, Bari Willard, did not testify during the hearing and so this argument is not supported by the record.

Ms. Sigurdson presented un rebutted evidence of duress. In its ruling on the motion, the trial court stated,

For purposes of this ruling, the Court will accept as true all of the allegations raised by Ms. Sigurdson regarding actions by her mother, Ms. Willard. The Court will focus on whether, if those facts are believed, they establish a legal basis to revoke the relinquishment of parental rights signed by Ms. Sigurdson.

CP 50. The trial court goes on to find that, because Ms. Willard was not a party to the relinquishment under its interpretation of RCW 26.33.160, her actions, however improper, could not constitute duress. CP 50-53. The trial court did not find that Ms. Sigurdson's testimony was not credible or that the evidence she presented failed to meet the clear, cogent and convincing standard required under RCW 26.33.160. Instead, the trial court found that Ms. Willard was not a person who could exert duress under the statute. Thus, the court did not reach the question of whether Ms. Sigurdson's un rebutted evidence of duress was sufficient to establish duress.

Accordingly, the trial court never evaluated whether Ms. Willard's statements constituted duress because, under its reading of the statute, it did not have to reach that question. If the trial court had properly found that Ms. Willard was a "person" capable of

exerting duress under the statute, it is clear that Ms. Sigurdson's un rebutted evidence met the clear, cogent and convincing standard for establishing duress.

b. *In re J.N.* supports Ms. Sigurdson's plain language reading of the revocation statute. Under the plain language of RCW 26.33.160, the court's inquiry focuses on the acts of the person who is requesting that the parent consent to relinquish. In *J.N.*, the court reasoned that the social worker, the potential adoptive parents, or the biological mother's foster mother could have perpetrated fraud or duress upon the mother. *In re J.N.*, 123 Wn. App. 564. In that case, the court examined whether the conduct of any of the parties who had requested that the mother relinquish, or had made statements to the mother suggesting they requested the relinquishment, constituted fraud or duress under the statute. The State argues that *J.N.* does not stand for the idea that third parties who do not have the ability to accept consent can cause duress under RCW 26.33.160. Brief of Respondent at 19. However, the court's analysis in *J.N.* supports an interpretation of RCW 26.33.160 that considers the conduct of all persons who requested the parent's consent to relinquish. Thus, under the plain language of the statute, and the holding of *J.N.*, the proper focus is

not on who accepts the parent's consent to relinquish, but on who requests the parent's consent to relinquish. RCW 26.33.160; *In re J.N.*, 123 Wn. App. 564.

Further, the mother in *J.N.*, like Ms. Sigurdson, also relinquished to the Department. The mother in *J.N.* and her child were both dependent, and the Department is entrusted with caring for dependent children. Moreover, the mother in *J.N.* contested her relinquishment on grounds that the Department failed to provide her a copy of the relinquishment documents. Thus, even though the mother in *J.N.* relinquished her parental rights to the Department, the appellate court nevertheless reviewed the conduct of persons who sought the mother's consent for relinquishment. The court examined whether the conduct of persons requesting consent amounted to a fraud or exertion of duress upon the mother, and found that none of the persons requesting consent had engaged in conduct amounting to fraud or duress.

Further, the State misunderstands Ms. Sigurdson's argument regarding the application of the Restatement (Second) of Contracts sections 175, 176. Brief of Respondent at 24. The State alleges, "The mother argues that this court should look to the Restatement . . . because the court in *In re J.N.* applied a definition

of duress from the Restatement of Contracts.” *Id.* The State notes *J.N.* does not cite to sections 175 or 176 of the Restatement (Second) of Contracts and argues there is no authority to apply sections 175 and 176 of the Restatement (Second) of Contracts. Brief of Respondent at 25.

Ms. Sigurdson made no such argument. Notably, it was the trial court in this case that applied the Restatement (Second) of Contracts, not Ms. Sigurdson. Ms. Sigurdson argued that it was error for the trial court to apply contract law analysis, including using sections 175 and 176 from the Restatement (Second) of Contracts in its discussion of Ms. Sigurdson’s claim. CP 50-52. The trial court found the *J.N.* court had applied a contract law analysis to the motion to revoke relinquishment of parental rights under RCW 26.33.160. CP 50. The trial court’s decision states that in its analysis of duress, “In re J.N adopted the definitions and provisions of the Restatement of Contracts.” CP 50-51. The trial court goes on to quote from Section 175 of the Restatement (Second) of Contracts (“When Duress By Threat Makes A Contract Voidable”) and then proceeds to analyze Ms. Sigurdson’s case based on the principles of the Restatement (Second) of Contracts. CP 51-52.

As clearly argued in Ms. Sigurdson's opening brief, the trial court's conclusion that *J.N.* compelled a contract law analysis was erroneous because the *J.N.* court did not apply contract law analysis to the motion to revoke relinquishment in that case. *J.N.*, 123 Wn. App. 564. See Appellant's Brief at 18-20. The *J.N.* court applied a standard definition of duress. *J.N.*, 123 Wn. App. at 577. (a "showing of duress requires proof of a wrongful act that either compels or induces a person to enter a transaction involuntarily"), citing *Pleuss v. City of Seattle*, 8 Wn. App. 133, 137, 504 P.2d 1191 (1972) (quoting RESTATEMENT (FIRST) OF CONTRACTS § 497 (1932)). See also 2 AM.JUR.2D Adoption § 101 (2004). Thus, the only portion of the Restatement (First) the court in *J.N.* cited was the definition of duress. Contrary to the State's argument, the court in *J.N.* did not rely on contract law when analyzing the mother's statutory claims.

c. The relinquishment of parental rights to a dependent child must be made to a department or agency. In an attempt to bolster its argument that the actions of Ms. Willard have no effect on Ms. Sigurdson's relinquishment of her parental rights, the State mistakenly suggests that Ms. Sigurdson could have relinquished directly to Ms. Willard. Brief of Respondent at 12, 17.

The State argues, "It is clear that only the Department, an agency or a prospective adoptive parent may accept direct custody of a child through relinquishment." Brief of Respondent at 17 (citing RCW 26.33.020 § (4), (7)). To further support this argument the State asserts,

When evaluated in light of the statutory requirement that a relinquishing parent must grant his or her consent to adopt to the Department, agency or prospective adoptive parent who is accepting custody of the child, there in (sic) only one logical interpretation of the revocation provision in RCW 26.33.160(3). This interpretation is that the only entities capable of exercising duress upon a parent are those to whom the child is relinquished under the consent to adoption: the Department, an agency or a prospective adoptive parent.

Brief of Respondent at 17-18. Finally, the State argues, "Here the mother did not relinquish to the child's grandmother. Instead she relinquished to the Department, knowing that the Department would have authority to place the child for adoption." Brief of Respondent at 18.

The State's argument confuses the issue by creating the impression that Ms. Sigurdson had the choice to relinquish her child directly to Ms. Willard. However, Ms. Sigurdson had no such choice, as her child was a dependent child in the temporary custody of DSHS. See RCW 13.34.130 (dependent child are in the

temporary legal custody of DSHS). Further, once a termination petition has been filed, as it had been in this case, a parent's wish as to the child's placement is only entitled to consideration by the Department. RCW 13.34.125; *In re the Dependency of J.S.*, 111 Wn. App. 796, 46 P.3d 273 (2002).

RCW 26.33.020 provides that a relinquishment is the voluntary surrender of the custody of a child to the department, an agency or prospective adoptive parents. However, as discussed below, the applicable statutes and case law clarify that the process for a dependent child is somewhat different. The parent of a dependent child may only relinquish to the department or agency.³ The case of *In re the Dependency of J.S.* is instructive on this issue. *J.S.*, 111 Wn. App. 796. The parents in *J.S.* had two children, the older child was a dependent child. *J.S.*, 111 Wn. App. at 799-800. The parents planned to relinquish their parental rights as to the younger child to identified adoptive parents and wanted to

³ This is because the parent of a dependent child no longer has custody of the child; the Department is entrusted with caring for dependent children. Therefore, relinquishments of dependent children must first be made to the Department. As the State mentioned, after the waiting period, the parent's consent to relinquish is presented to the court and the court may approve the consent, terminate parental rights, and appoint the Department as the permanent legal custodian of the child with authority to consent to the child's adoption. RCW 26.33.090; RCW 26.33.160. Further, until the adoption is finalized, the child remains dependent. RCW 13.34.145(13).

relinquish their older, dependent, child to these same adoptive parents. *J.S.*, 111 Wn. App at 799-800. However, the Department opposed the parents because it wanted the older child to remain with the foster family. *J.S.*, 111 Wn. App at 801. However, because the older child was dependent, the parents could not simply relinquish to their chosen adoptive parents. Instead the Department, with its temporary custody, retained control of the child's placement.⁴

Further, the idea that parents cannot relinquish dependent children to anyone besides the Department or agency (i.e., cannot relinquish directly to the prospective adoptive parent) is supported by public policy. If this were allowed, there would be nothing to prevent a parent in a dependency proceeding from seeking to avoid the Department's involvement by relinquishing to a prospective adoptive parent as provided in RCW 26.33.020. This would be an end-run around the dependency system and the Department's involvement, allowing a parent to circumvent the

⁴ "A parent whose child is the subject of a dependency action may propose a properly qualified adoptive placement for the child. A statute requires the Department of Social and Health Services to follow that preference if the parent agrees to a termination of parental rights and a court finds the placement to be in the best interest of the child." *J.S.*, 111 Wn. App. at 799.

dependency process by relinquishing to a suitable friend or family member instead.

As the statutes, case law, and policy considerations show, a parent of a dependent child may not relinquish directly to the prospective adoptive parent. Thus, the State's attempt to argue that Ms. Sigurdson could have relinquished directly to her mother, but instead chose to relinquish to the Department, is without merit.

In any event, this issue is simply a distraction from the central issue in this case, which is whether the trial court properly applied the statute in ruling that Ms. Willard was not a party who could exert duress. The State simply ignores Ms. Sigurdson's arguments that the trial court improperly applied the statute. As explained above, Ms. Willard was not a party to the relinquishment agreement, and indeed she could not have been because a dependent child is first relinquished to the State. However, the fact that Ms. Willard was not party to the relinquishment agreement is

not determinative of the result in this case.⁵ As Ms. Sigurdson argued in her opening brief, the plain language of RCW 26.33.160 makes clear that the actions of the person, department or agency requesting the consent will be reviewed with claims of fraud or duress. Appellant's Brief at 10-15. Therefore, because Ms. Willard is a person requesting that the parent consent, the fact that she was not and could not have been a party to the relinquishment agreement is irrelevant.

d. Ms. Willard's threats cannot be characterized as "motherly advice." In a disturbing line of reasoning, the State argues that the conversation in which Ms. Sigurdson's mother threatened her "can best be described as 'motherly advice.'" Brief of Respondent at 23. The State asserts that Ms. Willard was not a prospective adoptive parent. *Id.* While Ms. Willard had not filed an adoption petition, she was obviously the child's prospective adoptive parent. The child had been placed with Ms. Willard at the

⁵ The State attempts to minimize the role Ms. Willard played in this case by referring to her as a "third party" or "independent third party." Brief of Respondent at 16, 20. While Ms. Willard was not a party to the relinquishment document, she was present when it was signed. Supp. CP 55-56. Ms. Willard was a party to the open adoption agreement that executed at the same time as the relinquishment. CP 1-6, 48. Ms. Willard was copied on all correspondence between the Department and Ms. Sigurdson. Supp. CP 57; RP 41-42. Ms. Willard informed the Department that Ms. Sigurdson was willing to relinquish. Supp. CP 55-57.

outset of the dependency, and Ms. Willard had entered into an open adoption agreement at the same time Ms. Sigurdson signed the relinquishment agreement. CP 1-6, 48; RP 9.

Thus, Ms. Willard's statements to Ms. Sigurdson should be evaluated in light of her role as a prospective adoptive parent. Ms. Willard was the child's caretaker from the beginning of the dependency and she had a strong desire to adopt the child, as shown by her execution of the open adoption agreement. The conversation recounted by Ms. Sigurdson cannot fairly be characterized as "motherly advice." The State argues that Ms. Sigurdson's testimony established that Ms. Willard shared her opinions about what was in the child's best interests. Brief of Respondent at 19. The State then asserts that Ms. Willard did not convince the mother to relinquish and in any case was not a person requesting consent for purposes of accepting custody of the child. *Id.* This interpretation simply does not make sense in light of Ms. Sigurdson's testimony and the fact that Ms. Willard was a prospective adoptive parent who signed an open adoption agreement at the same time Ms. Sigurdson relinquished.

Ms. Sigurdson's testimony established that her mother exerted duress upon her in order to obtain her relinquishment.

Indeed, the testimony shows that Ms. Willard did have opinions about what was best for the child, and did share those opinions, but went far beyond "motherly advice" when she threatened to go to authorities with information that would result in significant additional jail time for Ms. Sigurdson.

In re J.N. provides a helpful comparison to the facts of this case. *J.N.*, 123 Wn. App. 564. In *J.N.*, the biological mother, who was also a dependent child, moved to revoke her relinquishment of parental rights, alleging that her foster mother and the Department advised her to relinquish the child and she felt she had no choice. *J.N.*, 123 Wn. App. at 568. The mother in *J.N.* testified that the social worker told her that she was too young, could not offer the child everything, and that relinquishing would result in a better life for the child. 123 Wn. App. at 575. The mother also testified that her foster mother said that someone else could do a better job of raising the child and if it was too hard she should relinquish. *Id.* The court found that the mother's testimony only established that the adults in question were giving the mother advice, and it was not improper for them to give advice or present alternatives. 123 Wn. App. at 576-77.

Unlike the foster mother in *J.N.*, Ms. Willard was not simply presenting alternatives or providing reasons why the child would be better off out of Ms. Sigurdson's care. Rather, the unrebutted evidence established that Ms. Willard threatened Ms. Sigurdson with criminal prosecution unless she relinquished her parental rights. This threat of criminal prosecution clearly distinguishes this case from *J.N.*, where no such threats were made by either the foster mother or prospective adoptive parents. A threat of criminal prosecution to get a parent to relinquish her rights cannot be considered "motherly advice."

e. The threat of criminal prosecution is an improper threat. The State argues that because Ms. Sigurdson admitted that the factual basis behind her mother's threat of criminal prosecution was true, then Ms. Willard's actions did not amount to duress, but instead were simply a threat to exercise a legal right made in good faith. Brief of Respondent at 25. As established above, the trial court below relied on the *J.N.* case in applying a contract law analysis, even though the *J.N.* court did not undertake a contract law analysis. The trial court then applied sections 175 and 176 of the Restatement (Second) of Contracts. However, for its definition of duress, the *J.N.* court cited to the Restatement (First) of

Contracts. Regardless of which definition is applied, Ms. Willard's threat was an improper threat amounting to duress.

Under the Restatement (First) of Contracts, duress requires proof of a wrongful act that either compels or induces a person to enter a transaction involuntarily. *J.N.*, 123 Wn. App. at 577. *J.N.* cites to *Pleuss v. City of Seattle* (citing the Restatement (First) of Contracts) for the definition of duress. *Pleuss v. City of Seattle*, 8 Wn. App. 133, 137, 504 P.2d 1191 (1972). *Pleuss* was decided before the Restatement (Second) of Contracts came out in January 1981. The *Pleuss* court held that under the Restatement (First) definition of duress, "a mere threat to exercise a legal right made in good faith is neither duress nor coercion in law. A threat may be said to be made in good faith if made in the honest belief that valid grounds exist to justify the action threatened." *Pleuss*, 8 Wn. App. at 137-38. The standard definition of "good faith" is a state of mind indicating honesty and lawfulness of purpose. *Whaley v. State, Dept. of Social and Health Services*, 90 Wn. App. 658, 669, 956 P.2d 1100 (1998) (citing *Tank v. State Farm*, 105 Wn.2d 381, 385, 715 P.2d 1133 (1986)).

It is clear in this case that Ms. Willard's threat of criminal prosecution was not made in good faith. When Ms. Willard made

the threat of criminal prosecution, and at the time Ms. Sigurdson signed the relinquishment and open adoption agreement, Ms. Sigurdson was in jail following an incident where she had attempted to recover a check in her mother's possession made out to her. CP 12, 20, 49. As a result of this incident and Ms. Willard's subsequent report to the police, Ms. Sigurdson was charged with robbery and reckless endangerment. CP 12, 20. According to Ms. Sigurdson's unrebutted testimony, Ms. Willard came to the jail and informed Ms. Sigurdson that because similar incidents had occurred in the past, she would go to police with additional information that would lead to further criminal charges, including identity theft and forgery, if she did not relinquish her parental rights. CP 12, 19, 49. Ms. Willard had chosen not to report these past incidents at the time of their commission; instead, she was only interested in exercising her right to report in order to coerce her daughter to relinquish her grandchild. Ms. Willard's acts constitute duress under the Restatement (First) of Contracts because she did not act in good faith. While she may have been honest, she did not have a lawful purpose.

Alternatively, under the Restatement (Second) of Contracts, which was applied by the trial court, Ms. Willard's actions also

constitute duress. The Restatement (Second) of Contracts § 175 discusses when duress by threat makes a contract voidable:

- (1) If a party's manifestation of assent is induced by an improper threat by the other party that leaves the victim no reasonable alternative, the contract is voidable by the victim.

(Emphasis added). Restatement (Second) of Contracts § 175.

Thus, for a duress defense to succeed, the manifestation of assent must be induced by an improper threat. The Restatement (Second) § 176 discusses when a threat is improper. The Restatement (Second) § 176 provides:

- (1) A threat is improper if
 - (a) what is threatened is a crime or a tort, or the threat itself would be a crime or a tort if it resulted in obtaining property,
 - (b) what is threatened is a criminal prosecution . . .
- (2) A threat is improper if the resulting exchange is not on fair terms, and
 - (a) the threatened act would harm the recipient and would not significantly benefit the party making the threat, or . . .
 - (c) what is threatened is otherwise a use of power for illegitimate ends.

Like the Restatement (Second) of Contracts, Farnsworth on Contracts also states that the threat of a criminal prosecution is an

improper threat.⁶ Ms. Willard's threat of criminal prosecution is improper under either version of the Restatement of Contracts.

2. THE TRIAL COURT'S NARROW INTERPRETATION AND APPLICATION OF RCW 26.33.160 FAILS UNDER THE DOCTRINE OF "CONSTITUTIONAL DOUBT."

The State alleges: (1) the appellant's opening brief argued that RCW 26.33.160 is unconstitutional; and (2) the section of the appellant's opening brief pertaining to the doctrine of constitutional doubt was undeveloped to the point where this Court need not review the claim. Brief of Respondent at 2, 31. However, the State's entire argument on this subject fails, because it clearly misapprehends Ms. Sigurdson's argument on the doctrine of constitutional doubt. She does not argue that RCW 26.33.160 is unconstitutional. Instead, as a reading of the appellant's brief confirms, Ms. Sigurdson argued that the trial court's narrow

⁶ A threat to instigate criminal prosecution has generally been regarded as an improper means of inducing the victim of the threat to make a contract. The question ordinarily arises in the context of a threat to instigate prosecution for embezzlement unless the victim of the threat repays or promises to repay the sum allegedly embezzled. The victim of the threat may not be the alleged embezzler but his relative or friend. The impropriety lies in the use for 'private benefit ... of the criminal process of the court provided for the prosecution of the crime and the protection of the public.' On this ground, the threat is improper even if the person who makes it honestly believes that the one whose prosecution is threatened is guilty and even if in fact that person is guilty. E.A. Farnsworth, Contracts, § 260 (1982).

interpretation and application of RCW 26.33.160 fails under the doctrine of constitutional doubt. As is clear from the appellant's brief, had the trial court followed the plain language of the statute its in application, there would be no invocation of the doctrine of constitutional doubt.

Ms. Sigurdson first argued that the trial court erred in its application of RCW 26.33.160 because it failed to follow the plain language of the statute and chose to narrowly interpret statutory language. See Appellant's brief at 10-15. Next, Ms. Sigurdson argued that the doctrine of constitutional doubt would apply here, if this Court finds the trial court's narrow interpretation of the statute to be a legitimate statutory interpretation, because a broader interpretation of the statute would avoid the constitutional question. Appellant's brief at 16-17. Ms. Sigurdson then argued that the trial court's interpretation fails under the doctrine of constitutional doubt because of the risk that such a narrow reading of the statute, which implicates the fundamental right to parent, would provide insufficient constitutional protections. *Id.*

Ms. Sigurdson specifically argued that if the trial court's interpretation is upheld, that in cases involving the revocation of parental rights to a dependent child, nothing would prevent a

person unaffiliated with the department or agency to whom the relinquishment is being made from exerting duress upon the parent in order to obtain their consent to relinquish. If this interpretation prevails, nothing would prevent members of the relinquishing parent's family, spouse, or some other agent of the parent from acting to fraudulently deceive or exert duress upon the parent with impunity. Thus, the trial court's interpretation is overly restrictive as to who may exert duress upon the parent, as this interpretation leaves ample ambiguity involving other persons who may request that the parent consent, and would not allow a parent a statutory remedy if forced to relinquish by such a person outside of the Department or agency. This would result in some waivers of the fundamental right to parent not being made voluntarily, in violation of a parent's procedural due process rights.

The State's argument fails to differentiate between the argument that a statute is unconstitutional with the argument that, as applied in this case, the narrow statutory interpretation invokes the doctrine of constitutional doubt. Only the latter argument was made in this case and, as established above, this argument was sufficiently developed. Thus, as the appellant's brief confirms, RCW 26.33.160, as applied by the trial court, implicated Ms.

Sigurdson's procedural due process rights but failed to provide adequate protection for those rights, and so the trial court's unconstitutional reading should fail on appeal.

3. THE APPELLANT'S OPENING BRIEF CONFORMS TO THE REQUIREMENTS OF THE RULES OF APPELLATE PROCEDURE.

Contrary to the State's arguments, the appellant's brief complies with the Rules of Appellate Procedure ("RAP"). RAP 10.3 governs the content of an appellate brief, including assignments of error, and in this case the appellant's brief met all requirements. RAP 10.3(a)(1)-(8). Page one of the appellant's brief provides a separate concise statement of the error made by the trial court together with the issue pertaining to the assignment of error. Appellant's Brief at 1. RAP 1.2(a) also provides that the RAP will be liberally interpreted to promote justice and facilitate decisions on the merits.

In her opening brief, Ms. Sigurdson clearly and undeniably challenged the legal and factual findings the trial court made to support its decision to deny Ms. Sigurdson's motion to revoke her relinquishment. The basis for the trial court's denial of the motion is contained in the "Discussion" section of the trial court's order. See CP 50-53. The appellant's opening brief sufficiently

challenges the bases for the trial court's denial of Ms. Sigurdson's motion. See Brief of Appellant at 1, 9, 10, 13, 14, 15, 16, 17, 18, 20, 24, 26 (appellant's arguments challenging the basis of the trial court's findings from "Discussion" section). As the brief confirms, the trial court's erroneous findings were argued in substance and thus the brief did conform to RAP 10.3.

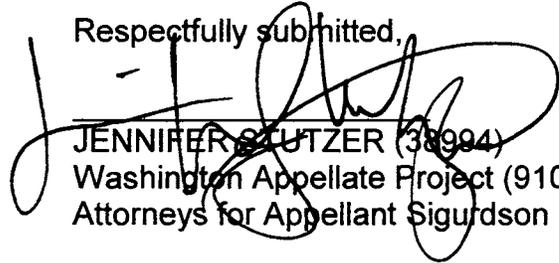
The State's argument that the findings made by the trial court undercut Ms. Sigurdson's argument is similarly meritless, in addition to being misleading. Brief of Respondent at 22. The trial court's findings are all procedural in nature. See "Procedural and Factual Findings," CP 48-50. As is clear from the appellant's opening brief, the lack of a challenge to these findings has no effect on Ms. Sigurdson's claim because her argument challenges the legal and factual conclusions that were made in the "Discussion" section, found in the second part of the trial court's order. See "Discussion" CP 50-53. Ms. Sigurdson addressed the trial court's findings in substance, as the findings in the "Discussion" section were not numbered. Thus, because the appellant's opening brief meets the requirements of the RAP, this Court should disregard the State's argument on this issue as without merit.

B. CONCLUSION

Ms. Sigurdson respectfully asks this Court to reverse the order of relinquishment.

DATED this 16th day of February, 2010.

Respectfully submitted,



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Attorneys for Appellant Sigurdson

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

IN RE M.S. MINOR CHILD)	
)	
)	
CARMEN SIGURDSON,)	NO. 63495-0-I
)	
)	
APPELLANT.)	
)	

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ARRANZA RILEY, STATE THAT ON THE 16TH DAY OF FEBRUARY, 2010, I CAUSED THE ORIGINAL **REPLY BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS - DIVISION ONE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

[X] MELISSA NELSON, AAG	(X)	U.S. MAIL
SARAH REYES, AAG	()	HAND DELIVERY
OFFICE OF THE ATTORNEY GENERAL	()	_____
103 EAST HOLLY ST, DEPT 310		
BELLINGHAM, WA 98225		

SIGNED IN SEATTLE, WASHINGTON THIS 16TH DAY OF FEBRUARY, 2010.

X _____ *gruel*

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STATE OF WASHINGTON
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