

NO. 63495-0-1

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

In re the Dependency of M.S., Minor

CARMEN SIGURDSON,

Appellant,

v.

STATE OF WASHINGTON,

Respondent.

BRIEF OF RESPONDENT

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I. INTRODUCTION

The birth mother of four-year-old M.S. asks this court to conclude that the Consent to Adoption that she signed and that was approved by the juvenile court in February 2008 should be annulled.

The child, a little girl, was the subject of a dependency action from the time she was nine months old. Her birth mother failed to participate in services offered to her by the Department of Social and Health Services to help her overcome her methamphetamine addiction and criminal activity. After the Department filed a petition for termination of her parental rights, the mother agreed to voluntarily relinquish the child.

The mother signed a Consent to Adoption in court, with her lawyer present. She signed a sworn statement and agreed in court that her Consent was voluntary and made without duress and with an understanding of its terms. Based on her testimony and sworn Consent, the juvenile court entered an order terminating her parental rights and granting the Department permanent custody of the child, with the right to place the child for adoption.

Almost one year later, the mother moved to revoke her Consent on the ground that she signed the Consent under duress. The alleged duress was an in-jail conversation she had with her own mother (the child's

grandmother) who reportedly advised the birth mother that if she did not relinquish M.S. to her – the grandmother – that she would inform the police of crimes committed by the mother.

The trial court denied the motion to revoke the consent, ruling that the mother had failed to demonstrate any duress and that, in any event, she did not meet the statutory requirement that the alleged duress be inflicted by the person or agency to whom the child is relinquished.

The trial court's ruling is consistent with the letter and spirit of the adoption statute.

II. COUNTER STATEMENT OF THE ISSUES

1. Did the trial court properly conclude that the birth mother failed to prove that her petition to relinquish her parental rights was obtained by duress?
2. Did the trial court properly conclude that the maternal grandmother was not an agent of the Department?
3. Does the mother's failure to identify and argue a valid constitutional claim preclude consideration of her assertion that the adoption statute is unconstitutional?

III. COUNTER STATEMENT OF THE CASE

This case concerns the welfare of M.S., a little girl born on October 29, 2005. CP 48. On July 12, 2006, when M.S. was nine months old, she was placed into protective custody. She was determined to be a dependent child, who was neglected and placed in extremely dangerous

circumstances because of the mother's methamphetamine addiction and propensity for violent criminal activity. Supp. CP ____, Sub. No. 1 (Petition for Termination of Parent-Child Relationship, Exhibit C). M.S. was placed in foster care with her maternal grandmother and step grandfather, who were licensed foster parents. CP 48-49. Over the next year, the mother was offered and provided court ordered services to address her severe drug addiction and other parental deficiencies. The mother failed to participate in the services and made little progress in remedying her parental deficiencies. Accordingly, the Department filed a petition to terminate her parental rights. CP 48.

A preliminary hearing on the termination petition was scheduled for January 29, 2008. Supp. CP ____, Sub. No. 2 (Notice & Summons/Order to Appear for Termination of Parent-Child Relationship). Because the mother had talked about the possibility of voluntarily terminating her parental rights, and of entering into an open adoption agreement with prospective adoptive parents, the Department's attorney emailed proposed relinquishment and open adoption documents to the mother's attorney, Lynn Miner, on December 14, 2007. *See* CP 7-10 and CP 1-6. The e-mail correspondence indicated that the documents had been approved by the Department, that the open adoption agreement was

approved by the potential adoptive parents, and it requested that attorney Miner review the terms with the mother. CP 57.

On December 26, 2007, Department Social Worker Monica Glauser met with the mother in the Skagit County Jail to discuss services, and also to serve her with a copy of the termination petition and the proposed relinquishment paperwork. CP 55; RP at 24. The mother told the social worker that she had been arrested for reckless endangerment and robbery, and that she was hoping to enter drug court in order to reduce her jail time. CP 55. They discussed the hearing regarding termination of her parental rights scheduled for January 29, 2008. The mother told the social worker that she did not want to relinquish her parental rights, but wanted to participate in drug treatment as soon as she was released from jail. CP 55.

The grandmother contacted the Department on January 17, 2008, and told the social worker that the mother was able to participate in drug court, and, additionally, that the mother had expressed a desire to relinquish her parental rights. CP 56. The following day, the social worker met a second time with the mother in the jail. During this meeting, the mother indicated that she had been accepted into drug court and would be released from jail on February 13, 2008. CP 56.

At the January 29 preliminary termination hearing, the court terminated the parental rights of anyone claiming to be the father of M.S.¹ The mother's attorney appeared and requested a trial setting, date, but an interim status hearing was also scheduled for February 5, 2008. Supp. CP _____, Sub. No. 13 (Order on Preliminary Termination Hearing).

By the time of the status hearing, the mother had been released from jail and appeared at the hearing with her attorney. In open court, the mother agreed to and signed her Consent to Adoption. CP 7-10. The mother's attorney went over the consent with her client and witnessed her signature. Attachment A at 6-7²; CP 10, 49; RP at 16.

The Consent was signed under penalty of perjury and contained the following specific assertions by the mother:

3. I realize that it is not in the best interest of the above-named child to reside with me, and I confirm that I desire to and hereby consent to relinquish custody of the child to the State of Washington Department of Social and Health Services, and hereby authorize the Department of Social and Health Services to have custody of the child and to have the power and authority to authorize and provide all necessary care for said child which shall include but not be limited to, foster care, medical care, dental care, evaluations of the child and placement of the child with prospective adoptive parents.

4. I hereby consent to termination of my parental rights and request the court to enter an order permanently

¹ An alleged father died prior to the dependency.

² The trial court reviewed the record of the February 5, 2008 hearing. A transcript of the proceedings is attached hereto as Attachment A.

terminating all of my parental rights to the child. I further consent to the child's adoption and also authorize the Department of Social and Health Services to consent, on my behalf, to the child's adoption.

CP 7-8.

The consent also contained the mother's verification that:

I have read or have had read to me the foregoing and I hereby understand the same. The foregoing consent has been given freely, voluntarily and with full knowledge of the consequences, and the consent is not the result of fraud or duress nor am I acting under the influence of anyone.

CP 9-10.

The mother then signed the open adoption agreement. CP 1-6. The agreement states that it is an "agreement regarding communication and/or contact between the birth mother and the child adoptee after the adoption of the child." CP 1. As the legal custodian of the child, the Department was a signatory to the agreement. The other parties to the Open Adoption Agreement, in addition to the mother, were the maternal grandmother and step-grandfather and the child's guardian ad litem.³ Because the grandparents had not yet filed an adoption petition, the agreement was made in anticipation of an adoption, but was subject to the condition of a

³ Once the adoption was finalized, DSHS and the guardian ad litem would automatically be dismissed as parties. CP 3.

final adoption occurring with them.⁴ The agreement specifically stated that it would not be binding on future adoptive parents should there be a change in who adopted the child. CP 3.

Similar to the consent, the open adoption agreement was signed by the mother under penalty of perjury and contained her stipulation that it was entered into “willingly and without force, duress or coercion; . . .” CP 2, 4. She has not challenged the voluntariness of this agreement.

After waiting 48 hours, to give the mother the statutory time to consider the relinquishment after signing her consent, the juvenile court entered an order titled “Findings of Fact, Conclusions of Law and Order Approving Relinquishment of Custody and Terminating Parent-Child Relationship regarding Parents. Supp. CP ____, Sub. No. 17 (Findings of Fact, Conclusions of Law and Order Approving Relinquishment of Custody and Terminating Parent-Child Relationship Regarding Parents). This order approved the mother’s relinquishment and consent to adoption, terminated her parental rights and placed M.S. in the permanent legal custody of the Department and granted the Department the right to place M.S. in an adoptive home and consent to her adoption. *Id.*

⁴ Although the Department had hoped to proceed with an adoption by the grandparents, the child had to be removed from their care when they lost their foster care license due to licensing violations.

Nearly one year later, the mother filed a motion to revoke her Consent. CP 49. A one-page document, this motion failed to state any legal basis to justify revocation. Supp. CP ____, Sub. No. 25 (Motion to Revoke Mother's Relinquishment of Her Parental Rights, Appoint an Attorney to Represent Mother, and Set an Evidentiary Hearing). Not until a newly appointed attorney filed a Motion and Memorandum to Withdraw Mother's Relinquishment of Parental Rights on March 9, 2009, did the mother allege that she had signed the relinquishment under duress. The basis for the duress was a purported threat by the grandmother to go to the authorities with additional criminal charges if the mother did not relinquish her parental rights. CP 12-17. The mother claimed that had she been found guilty of these additional charges, she would face a longer prison sentence as well as high restitution that might make her unable to qualify for entry into adult drug court. CP 12-13.

At the hearing on the Motion to Revoke, the mother testified that at the time the petition for termination was pending, she was involved in conversations with the Department about the termination. RP at 10, 23, 24. She also testified that she discussed the matter with her own mother, including relinquishing her parental rights directly to the grandmother, and possible terms for an open adoption agreement. RP at 11.

She further testified that while in jail, she initially told both the social worker and the grandmother that she did not want to relinquish her parental rights. RP 11, CP 55. When asked about the conversation with the grandmother, she testified:

I talked to my mother and I did not want to relinquish my rights, I wanted to raise my daughter. But at that point I was looking at several, several years in prison and did not think I would be getting into drug court. And at that point in time my mother brought up the fact that I had done a lot of criminal activities and was never turned in for them, they were against her, and that I could possibly [sic] facing more time had she turned me in for them. And she wanted me to relinquish my rights to her so that [M.S.] would have a stable place to be, and that she wouldn't be just up in the air.

RP at 11.

The mother admitted that the grandmother had legitimate information about the mother's criminal activities. RP at 14, 27. She also testified that she did not tell her dependency attorney, her criminal attorney, or the Department about the conversation with the grandmother. RP at 15, 26. The mother expressed ambivalence about the relinquishment to her attorney, but eventually agreed that she wanted to sign the consent. RP at 12, 15. She indicated that "Both the social worker and Lynn Miner knew, . . . that I wanted to still be the parent but I had let them know that I was going to prison and I didn't know what I was going to do." RP at 12.

The mother admitted that her dependency attorney went over the consequences of the Consent with her at the time she signed it in court. RP at 16. She was aware that she had a time period (48 hours) in which to change her mind from the time she signed the document until it was presented to the court. *Id.*

The trial court denied the mother's motion, ruling that even assuming the conduct of the grandmother could form a basis to establish duress, the mother failed to meet her burden of proof by clear, cogent and convincing evidence that her consent was signed under duress. CP 50-53, 54. In its letter ruling, the court made 14 separate procedural and factual findings, none of which have been challenged on appeal. CP 48-53.

Included in these were the following:

13) No evidence has been presented that the State had any knowledge of the alleged threats at any time before the date that [the mother] filed her Motion to Revoke the Relinquishment or at any time prior to the date [the mother] filed her Motion to Revoke.

14) The mother has not testified or filed documents indicating that she believed her mother was acting as an agent or was speaking on behalf of the state of Washington when she made the threats alleged or at any other time.

CP 50.

The mother, who had the burden of proof, did not provide any proof regarding the alleged statements by the grandmother. When the

grandmother was called as a witness by the state, she “took the Fifth.” CP 50; RP at 29.

IV. ARGUMENT

The purpose of the adoption statute is to provide stable homes for children. RCW 26.33.010. The guiding principal of adoptions is to ascertain and provide for the best interests of the child. *See In re B.T.*, 150 Wn.2d 409, 417, 78 P.3d 634, 637 (2003). Adoption proceedings are purely statutory in nature and the statute must be strictly construed. *In re B.T.*, 150 Wn. 2d at 416; *In re Marriage of Furrow*, 115 Wn. App. 661, 671, 63 P.3d 821 (2003); *In re Infant Child J., New Hope Child and Family Agency v. Campbell*, 99 Wn. App. 473, 994 P.2d 279 (2000). Where the language of a statute is clear and unambiguous, its meaning must be derived from the statutory language itself. *In re Furrow*, 115 Wn. App. at 671, *citing In re M.D.*, 110 Wn. App. 524, 534, 42 P.3d 424 (2002).

The declaration of legislative intent found in RCW 26.33.010 describes the purpose and policy of the statute as follows:

The legislature finds that the purpose of adoption is to provide stable homes for children. Adoptions should be handled efficiently, but the rights of all parties must be protected. The guiding principle must be determining what is in the best interest of the child. It is the intent of the legislature that this chapter be used only as a means for placing children in adoptive homes and not as a means for parents to avoid responsibility for their

children unless the department, an agency, or a prospective adoptive parent is willing to assume responsibility for the child.

RCW 26.33.010.

Under the Washington statutory scheme, adoption is a two-step process. The first step is the termination of the parent-child relationship between the birth parents and the child. The termination of that relationship can occur involuntarily or, as occurred here, voluntarily. *See* RCW 13.34.180 (involuntary termination under the juvenile dependency and termination statute); RCW 26.33.160 (voluntary termination); RCW 26.33.100 (involuntary termination under the adoption statute).

The requirements for a voluntary termination of parental rights or “relinquishment” are governed by RCW 26.33.160. A “relinquishment” is defined as “the voluntary surrender of custody of a child *to the department, an agency, or prospective adoptive parents.* RCW 26.33.020(11) (emphasis added).

Children who are “dependent children” pursuant to RCW 13.34 and are court ordered into out of home care are typically placed in the temporary legal custody of the department. RCW 13.34.130. A parent who desires to voluntarily surrender custody of a child to the Department must sign a consent to adoption. RCW 26.33.160(1)(b). When such a consent is signed by a birth mother, she is given a period of time to change

her mind for any reason. The legislature determined that an adequate amount of time is a minimum of 48 hours. *See* RCW 26.33.160(4). After the 48 hours elapses, the parent's consent to adoption may be presented to the court and the court may enter an order approving the consent, terminating parental rights, appointing the Department as the permanent legal custodian of the child and authorizing it to place a child for adoption and consent to his or her adoption. RCW 26.33.090, RCW 26.33.160. Until the adoption is finalized, the child remains a "dependent" child. Once the adoption decree is entered, the dependency is dismissed. *See* RCW 13.34.145(13).

Because stability of children is the goal, the legislature has made it difficult to revoke a consent to adoption after it has been approved by the court. Once the court approves a parent's consent, it can be revoked only upon a showing of "fraud or duress practiced by the person, department, or agency requesting the consent to adoption" or lack of mental competency on the part of the consenting person. *See* RCW 26.33.160(3) and RCW 26.33.160(4)(g).⁵ A parent must make this showing by clear, cogent, and convincing evidence. *Beckendorf v. Beckendorf*, 76 Wn.2d 457, 462, 457 P.2d 603 (1969); *In re Adoption of Hernandez*, 25 Wn. App. 447, 454, 607 P.2d 879 (1980); *In re A.S.*, 65 Wn. App. 631, 829 P.2d 791 (1992).

⁵ "Department" is defined by RCW 26.33.020(6) as the Department of Social and Health Services.

The high burden of proof is supported by strong public policy favoring the finality of adoptions.

A child is not chattel to transfer and retransfer where there has been a misunderstanding of the consequence. Absent proof that the best interests of the child is to the contrary, society is entitled to rely on the finality of adoption procedures without reason to fear the effect of unexpressed misunderstandings by the natural parent.

In re Adoption of Baby Girl K, 26 Wn. App. 897, 906, 615 P.2d 1310 (1980).

A. The Birth Mother Did Not Relinquish Her Parental Rights Out of Duress

The basis for the mother's motion was that her Consent was obtained under duress or extreme pressure exerted by the child's grandmother. Neither the law nor the evidence supports her claim.

In *In re J.N.*, 123 Wn. App. 564, 95 P.3d 414 (2004), this court first interpreted the meaning of "duress" as it used in the adoption statute. The court held that "a showing of duress requires proof of a wrongful act that either compels or induces a person to enter a transaction involuntarily." *In re J.N.*, 123 Wn. App. at 576, citing *Pluess v. City of Seattle*, 8 Wn. App. 133, 137, 504 P.2d 1191 (1972) (quoting Restatement (First) of Contracts § 492 (1932)). The court also cited to 2 Am. Jur.2d *Adoption* §101 (2004), which defines "duress" as

a condition that exists when a natural parent is induced by some unlawful or unconscionable act of another to consent to adoption of his or her child, and mere “duress of circumstances” does not constitute duress under such statute.

2 Am. Jur.2d *Adoption* §101 (2004).

An example of the extremely difficult burden birth parents face when attempting to revoke a consent to adoption is seen in the case of *In re Adoption of Baby Girl K.*, 26 Wn. App. 897, 615 P.2d 1310 (1980). In *Baby Girl K.*, a private adoption agency filed a petition for relinquishment and the mother’s consent and obtained an order terminating the mother’s parental rights on the same day. *In re Adoption of Baby Girl K.*, 26 Wn. App. at 899. The court found that the agency did not overreach in obtaining the mother’s relinquishment and that, “[a]bsent fraud, deceit, coercion, or mental incompetency at the time of the execution of an instrument, one is deemed by law to understand its contents if one has signed of one’s own free will (voluntarily), knowing that one is signing an agreement.” *Id.* at 905. The court specifically held that the relinquishment and adoption statutes do not permit a revocation based merely on proof of inexperience, indecisiveness, uncertainty, emotional stress and a failure to fully comprehend the effect of the surrender.” *In re Adoption of Baby Girl K.*, 26 Wn. App. at 906.

In *In re J.N.*, the birth mother testified that her social worker had told her that she “she could not ‘offer the baby everything that somebody else could,’ and that she was ‘too young’ and that she ‘should just give him away for adoption because he could have a better life.’” *In re J.N.*, 123 Wn. App. at 564, 575. Additionally, the birth mother asserted that the adoptive parents had made her feel guilty. *Id.* The Court of Appeals ruled that these statements were not sufficient to prove fraud or duress. “No fraud exists when an agency accurately tells the mother of alternatives to caring for her child or renders advice on adoption.” *Id.*

1. Duress sufficient to justify revocation of a consent to adoption must be by the person or agency obtaining the consent and custody of the child, not by a third party.

In the present case, the mother claims that her consent to adoption should be declared void due to duress inflicted on her by a third party, the maternal grandmother. The plain language of the adoption statute, however, indicates that in order to revoke a consent to relinquish a child to the Department under RCW 26.33.160, the mother must prove that the Department, not an independent third party, obtained her consent through duress.

In strictly construing the adoption statute as a whole and in light of its' purpose, it is clear that only the Department, an agency⁶ or a prospective adoptive parent⁷ may accept direct custody of a child through relinquishment. In order to voluntarily surrender her parental rights, a parent must also grant her consent to adoption to the party accepting custody. *See* RCW 26.33.160. This procedure was followed in this case as evidenced by the following language in the mother's consent.

3. . . . I hereby consent to relinquish custody to the State of Washington Department of Social and Health Services and hereby authorize the Department of Social and Health Services to have custody of the child. . .

4. I hereby consent to termination of my parental rights and request the court to enter an order permanently terminating all of my parental rights to the child. I further consent to the child's adoption and also authorize the Department of Social and Health Services to consent, on my behalf, to the child's adoption.

CP 7-8.

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 is only one logical interpretation of the

⁶ Agency is defined as "any public or private association, corporation or individual licensed or certified by the department as a child placing agency under chapter 74.15 RCW or as an adoption agency." RCW 26.33.020(7).

⁷ Prospective adoptive parent" is not defined by statute; but "adoptive parent" means the person or persons who seek to adopt or have adopted an adoptee". . RCW 26.33.020(4).

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. Any other reading would lead to “absurd or strained consequences” which are to be avoided. *See In re Eaton*, 110 Wn. 2d 892, 889, 757 P.2d 961 (1988).

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. The fact that the grandmother was seeking an adoptive placement *from the Department* does not change the legal relationship that existed between the birth mother and the Department in the relinquishment process.

Birth parents contemplating the heart-wrenching decision of placing their child for adoption do and should consult with parents, other relatives, friends, therapists, and legal counsel, many of whom will offer strong opinions and advice. The support and counsel of family in making an adoption decision is often viewed as a factor negating duress. *See 74 ALR 3d, 527 at §2[a]*. If this court were to follow the logical consequences of the mother’s argument, any person who listens, counsels, supports or advises a parent who is contemplating signing a consent to adopt under RCW 26.33.160 could be subject to accusations of duress.

Any consent that is signed after talking to family and friends would be vulnerable to a motion for revocation. This result is contrary to the stated purpose of RCW 26.33 to promote stability and permanence for children. Further, it also squarely opposes the presumption that adults understand the consequences of documents they sign. See *In re Adoption of Baby Girl K*, 26 Wn. App. 897, 905. As the court noted in *In re Adoption of Jackson*, 89 Wn.2d 945, 578 P.2d 33 (1978),

[T]here are reasons to require an early termination of the ability of a parent to revoke consent to adoption. Infants are not held in hospitals for lengthy periods of time, prospective adoptive families are often found with rapidity and strong emotional ties are formed which should not be subject to being severed unless the prospective adoptive parents are unfit to so serve. The early confirmation of the consent and relinquishment removes a major uncertainty.

In re Adoption of Jackson, 89 Wn.2d at 949-950.

The testimony of the mother demonstrates that M.S.'s grandmother had opinions about what was best for M.S. and she shared those opinions with her daughter. However, she did not convince the mother to relinquish M.S. directly to her and was not a person obtaining a consent for purposes of accepting custody of the child.

Additionally, contrary to the mother's argument, *In re J.N.* does not stand for the proposition that third parties who do not have the ability to obtain a consent to adopt can cause duress under RCW 26.33.160. In

addressing the fraud and duress arguments in its decision, the *J.N.* court stated “T.N. asserts that her relinquishment should be revoked due to fraud and duress by DSHS or its agents, or her mental incapacity at the time she executed the relinquishment documents.” *In re J.N.*, 123 Wn. App at 574. The court’s clear focus was on the actions of the Department or its agents, not third parties.

The trial court properly interpreted RCW 26.33.160 when it determined the mother failed to establish a legal basis to revoke her relinquishment to the Department, when the statements were made by the maternal grandmother, a third party who did not accept custody of the child under the relinquishment order and who was not the person named in the Consent to receive that custody.

2. The mother cannot establish duress by clear, cogent and convincing evidence.

Even if the court accepts the mother’s argument that the grandmother was a person whose duress could invalidate a Consent to Adoption, her argument nonetheless fails. She did not established duress by clear, cogent and convincing evidence. The sufficiency of the evidence standard applies when examining whether the evidence before the trial court supports a finding of fraud or duress. *In re J.N.*, 123 Wn. App. 564, 576.

As previously noted, the mother has failed to challenge any of the trial court's 14 findings of fact. These unchallenged findings are verities on appeal. *In re T.C.C.B.*, 138 Wn. App. 800, 803, 158 P.3d 1251 (2007), citing *In re Mahaney*, 146 Wn.2d 878, 895, 51 P.3d 776 (2002). In addition, these findings are supported by substantial evidence in the record.

Findings of fact are reviewed under a substantial evidence standard, defined as a quantum of evidence sufficient to persuade a rational fair-minded person the premise is true. If the standard is satisfied, a reviewing court will not substitute its judgment for that of the trial court even though it may have resolved a factual dispute differently.

Sunnyside Valley Irrigation District v. Dickie, 149 Wn.2d 873, 879-80, 73 P.3d 369 (2003). The trial court's findings should be upheld if they are "supported by substantial evidence such that a reasonable trier of fact could find the necessary facts by clear, cogent and convincing evidence." *In re T.C.C.B.*, 138 Wn. App. at 803. Clear cogent and convincing evidence is that which shows the ultimate fact at issue to be highly probable. *Id.* Based upon the testimony of the mother and grandmother, the declarations of the social worker, and the other documentary evidence before the court, the findings are supported by substantial evidence.

The mother argues that one of the reasons she felt under duress was that the grandmother presented the relinquishment to her for signature

while she was in jail, threatening to go to “the authorities” with information regarding additional crimes if the mother did not sign. Br. Appellant at 2.

The trial court’s unchallenged findings severely undercut the mother’s argument on this subject. First, the findings establish that it was the Department’s counsel, not the grandmother, who prepared the consent documents and presented them to the mother for her signature.⁸ FF 4, CP 48. Second, the evidence established that the mother signed the consent in court, in the presence of the judge, and with the in-person assistance of her attorney; she acknowledged to the court in that hearing that she signed it freely and voluntarily and without duress. FF 5, 6, 10, CP 49. Third, the court found that the mother admitted that the charges the grandmother threatened to pursue were all true and could have resulted in additional criminal convictions. FF 10(B), CP 49. Fourth, the findings establish that the mother admitted that she never told her attorney, the Department social worker, the judge entering the order of relinquishment, or anyone else about the purported pressure being put on her by the grandmother. FF 10(C), CP 49. Further, no evidence was presented at the hearing that the Department had any knowledge of the alleged threats at any time before the date the mother filed her Motion to Revoke. FF 12, CP 50. Finally, the findings also

⁸ There is absolutely *no* evidence to suggest that the Department’s counsel coerced the mother in *any* way.

establish that although the mother had a full year to file to revoke her relinquishment, she waited until the very end of that year to claim that her Consent was not valid. FF 9, CP 49.

The conversation at issue between the mother and grandmother can best be described as “motherly advice”. At the time the grandmother conversed with her daughter regarding future planning for M.S., she was not a prospective adoptive parent. She had not filed an adoption petition; she was not an employee of the Department or an adoption agency. She was the mother’s mother and the child’s grandmother. The grandmother reminded her daughter that she was potentially facing a long time in prison, and had already committed other crimes that could result in an even longer sentence. The grandmother reminded the mother that M.S. needed stability and a future that was not “up in the air.” RP at 11. Although the grandmother’s desire to adopt was evidenced in the Open Adoption Agreement, because an adoption petition had not been filed and the Department had not granted its consent to adopt, the Open Adoption Agreement was, at most, the promise of a future agreement between the mother, grandmother and step-grandfather, should they be allowed to adopt.

In essence, the mother’s challenge of duress consists of her self-serving testimony that the grandmother spoke to her in jail and told her that,

in light of the mother's expected long incarceration, it would be best for M.S. if the mother relinquished her parental rights; if she did not sign the consent, the grandmother had information she could provide to the "authorities" that might lead to additional criminal charges. The high standard of proof that applies to revocations of consents merits proof consisting of more than just a parent's self-serving, uncorroborated statements. *See eg., In re Detention of Scott*, 150 Wn. App 414, 427, 208 P.3d 1211 (2009); *State v. Osborne*, 102 Wn.2d 87, 97, 684 P.2d 683 (1992).

Even assuming, solely for the sake of argument, that the grandmother told the mother that she might turn information over to the authorities, under established Washington case law, such action does not amount to duress. The mother argues that this court should look to the Restatement (Second) of Contracts §§ 175 and 176 because the court in *In re J.N.* applied a definition of duress from the Restatement of Contracts. This argument mischaracterizes and misinterprets the *J.N.* decision. *J.N.* did not cite to either §§ 175 or 176 of the Restatement (Second) of Contracts. Rather, as previously quoted, it cited to the case of *Pleuss v. City of Seattle*, 8 Wn. App. at 133, 137 which quoted the Restatement (*First*) of Contracts. (Emphasis added.)

Pleuss involved claims of a City of Seattle fireman that his resignation was obtained by duress and undue influence. His resignation

came after being advised by the assistant chief that the city had sufficient grounds to terminate his employment because he had falsified medical records and ridden his motorcycle while out on disability. *Pleuss v. City of Seattle*, 8 Wn. App. at 133. The *Pleuss* court looked to the Restatement (First) of Contracts § 492 for the commonly understood definitions of duress and undue influence. The court determined that under the Restatement (First) definitions, “a mere threat to exercise a legal right made in good faith is neither duress or nor coercion by 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 v. City of Seattle*, 8 Wn. App. at 137-138.

The *Pleuss* and Restatement (First) definition of duress still stands as evidenced by its adoption by the *J.N.* court. Apart from her misplaced analysis of *J.N.*, the mother fails to cite any authority for the application of the Restatement (Second) of Contracts §§175 and 176 to this case. This is because none exists. As noted in the Washington Practice Series Contract Law and Practice §§18-301.1, *WPI committee comments*, when defining improper threats in the context of duress. No Washington court has adopted the policy approach advocated by the authors of the Restatement (Second).

Finally, Washington courts have previously held that even threats of criminal prosecution do not make a contract voidable for duress if they

consist of a threat to exercise a legal right in good faith. *Quadra Enterprises Inc. v. R.A. Hanson Co.*, 35 Wn. App. 523, 529, 667 P.2d 1120 (1983); *Englebright v. Seattle Taxi Co.*, 78 Wn. 433, 139 P. 188 (1914). In testimony, the mother claimed that she signed the consent because the grandmother stated she would go the authorities with information she had regarding additional charges. CP 49, RP at 11-12. This does not constitute duress under Washington law. Further, Finding of Fact 10(B) states “[The mother] admitted that the charges her mother threatened to pursue were all true and could have resulted in additional convictions.” CP 49.

Assuming the grandmother actually made the alleged threats to the mother, they are not a basis for finding duress. Instead, they are a threat to exercise a legal right made in good faith. The grandmother’s statements do not constitute duress under any definition recognized by Washington courts.

The mother has failed to prove duress by clear, cogent and convincing evidence in the record. The trial court’s denial of the mother’s Motion to Revoke her Relinquishment should be upheld.

B. The Maternal Grandmother Is Not An Agent Of The State.

The mother next argues that the maternal grandmother was acting as an “apparent agent” of the state when they discussed relinquishment and open adoption. M.S.’s grandmother was a licensed foster parent whose authority to act on behalf of the child was limited by statute and

licensing regulations. She had no authority to act for and was not an actual or apparent agent of the Department. With the exception of licensing regulations, the Department had no right or ability to control her day to day actions or conversations, in particular, the conversations she had with her own daughter. Nor did the grandmother have any authority, apparent or actual, to speak for or represent the Department on any adoption matter. Further, as both a foster parent and a relative placement the Department had statutory obligations to work with the grandmother as part of the foster care team in areas such as development of the child's service plan, visitation, and modeling effective parenting behavior for the natural family. RCW 74.13.330; RCW 13.34.260. The grandmother was likewise under an obligation to communicate with the Department and the court regarding how the child was doing, the nature and quality of visits she supervised and to cooperate with the Department's reunification efforts for the mother. RCW 13.34.130; RCW 13.34.136; RCW 13.34.138.

As the mother correctly points out, "A person asserting the doctrine of apparent agency must have a subjective belief that the agent is acting for the principal." Br. Appellant at 21, citing *D.L.S. v. Maybin*, 130 Wn. App. 94, 99, 121 P.3d 2120 (2005). However, the mother has failed to challenge a key finding relating to the alleged "agency".

14) The mother has not testified or filed documents indicating that she believed her mother was acting as an agent or was speaking on behalf of the state of Washington when she made the threats alleged or at any other time.

CP 50. In the absence of any evidence in the record showing that the mother had a subjective belief that the grandmother was acting as an agent of the Department, this argument fails. The mother, if anything, believed that the grandmother wanted her to relinquish M.S. directly to her. RP at 11, 20. This is evidence of the grandmother acting on her own behalf, not that of the Department.

The mother further speaks of “ratification”. In this case, the Department had no knowledge of the grandmother’s alleged actions. The grandmother – a family member – told the Department that she had talked with the mother and that the mother had decided to relinquish. In light of the mother’s ambivalence, this was not unexpected. The Department did not ask the grandmother to talk to the mother about the consent. The grandmother received a copy of the final proposed open adoption agreement because she was a party to the agreement, not because she was an agent of the Department.

Not until a year after filing her consent did the mother claim that the grandmother pressured her to relinquish. Even then the mother claimed the grandmother pressured her to relinquish M.S. directly to the

grandmother. RP at 11. However, when she actually signed the consent, it was not to the grandmother, but to the Department. The pressure, if any, from the grandmother, was for the mother to consent directly to her. This did not happen and the Department had no prior knowledge of the other actions of the grandmother. The Department cannot be said to ratify an action of the grandmother when there was no action to ratify.

The trial court properly denied the mother's motion to revoke under the agency theory. The record is devoid of evidence the mother believed the grandmother was acting on the Department's behalf – this alone is fatal to the mother's claim of agency. Further, the grandmother was not acting as an actual or apparent agent of the Department. The Department social worker had her own independent conversations with the mother regarding relinquishment and open adoption. The Department's attorney communicated directly with the mother's attorney regarding terms and conditions of the proposed adoption paperwork. The trial court's order should be upheld.

C. The Trial Court's Interpretation Of The Statute Does Not Raise The Doctrine Of "Constitutional Doubt".

The courts have long recognized that a biological parent has a fundamental liberty interest in the care, custody and control of his or her child. *Santosky v. Kramer*, 455 U.S. 745, 752, 102 S. Ct. 1388, 71 L. Ed.

2d 599 (1982). However, that fundamental right is not absolute. *In re Young*, 24 Wn. App. 392, 395, 600 P.2d 1312 (1979). The state has both a right and an obligation to intervene to protect the child when a parent's action or inaction endangers a child's physical or emotional welfare. RCW 13.34.020; *In re Sumey*, 94 Wn.2d 757, 762, 621 P.2d 108 (1980). In any conflict between a parent's rights and a child's welfare, the best interest of the child must prevail. *In the Matter of Sego*, 82 Wn.2d 736, 738, 513 P.2d 831 (1973).

The mother claims that the trial court's ruling that RCW 26.33.160 required her to establish duress by the Department, rather than by the grandmother, invokes the doctrine of "constitutional doubt" as outlined by *U.S. v. Almendarez-Torres*, 523 U.S. 224, 118 S.Ct 1219 (1998). The mother fails, however to develop this argument or specify any constitutional claims.

When an appellant only mentions constitutional provisions and provides no analysis, an appellate court will not engage in further review of the issue. *Meyer v. University*, 105 Wn.2d 847, 855, 719 P.2d 98 (1986), (citing *United States v. Phillips*, 433 F.2d 1364, 1366 (8th Cir. 1970) ("naked castings into the constitutional sea are not sufficient to command judicial consideration and discussion.")). Likewise, this court need not review the mother's undeveloped claim.

The mother also fails to recognize to acknowledge that RCW 26.33 has previously withstood constitutional scrutiny. In the case of *In re Crews*, 118 Wn.2d 561, 825 P.2d 305 (1992), the Supreme Court determined that the current statutory scheme for voluntary relinquishment under RCW 26.33 comports with due process. *Crews* specifically relates to a biological mother's attempt to vacate the relinquishment of her parental rights, allegedly obtained in violation of the Indian Child Welfare Act. *Id.* The Supreme Court found that the Indian Child Welfare Act did not apply, and therefore the mother's relinquishment was validly obtained and entered following the same procedures followed in this case. *In re Crews*, 118 Wn. 2d. at 571. The court held that as long as the statutory procedures for voluntary relinquishments were followed and the parent herself consented to the termination of her parental rights, due process was not implicated. *In re Crews*, 118 Wn.2d at 574.

Similarly, in this case, the statutory procedures for voluntary relinquishment were properly followed, the mother herself consented to the termination. The essential due process protections afforded parents in a proceeding to terminate parental rights are notice and an opportunity for a hearing appropriate to the nature of the case. *In re M.S.*, 98 Wn. App.91, 94, 988 P.2d 488 (1999); *In re C.R.B.*, 62 Wn. App. 608, 614; 814 P.2d 1197 (1991), *In re Myricks*, 85 Wn.2d 252, 254, 533 P.2d 841 (1975).

The mother had counsel, a hearing on the Consent, and an opportunity to revoke her consent before the court terminated her parental rights. The mother's due process rights were not implicated.

V. CONCLUSION

The mother failed to meet her burden of proof that her Consent to Adoption was obtained under duress. The trial court's ruling did not raise constitutional issues, was supported by substantial evidence in the record, and should be affirmed.

RESPECTFULLY SUBMITTED this 15th day of January, 2010.

ROBERT M. MCKENNA
Attorney General

A handwritten signature in black ink, appearing to read 'Melissa L. Nelson', with the date '1/13/2010' written below it.

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ATTACHMENT A

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SKAGIT
JUVENILE DEPARTMENT

IN RE THE WELFARE OF:

MADISON SIGURDSON

NO. 07-7-00658-4

DOB 10/29/05

ORIGINAL

VERBATIM REPORT OF PROCEEDINGS
FEBRUARY 5, 2008
HONORABLE G. BRIAN PAXTON, COMMISSIONER

TRANSCRIBED FROM CD BY:

PATTIE LONG

CORPOLONGO & ASSOCIATES, INC
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BELLINGHAM, WA 98225
360-671-6298

1 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
2 IN AND FOR THE COUNTY OF SKAGIT
3 JUVENILE DEPARTMENT
4

5 IN RE THE WELFARE OF:
6 MADISON SIGURDSON NO. 07-7-00658-4
7 DOB 10/29/05
8

9 Be it remembered that on the 5th day of February,
10 2008, the above entitled and numbered cause came
11 regularly on for hearing before the Honorable G.
12 Brian Paxton, Commissioner for the County of Skagit,
13 State of Washington.

14
15 APPEARANCES

16 Sarah Reyes, AAG #31623
17 103 E Holly Street Suite 310
18 Bellingham, WA 98225
For the State

19 Lynn J. Miner, Attorney at Law #16384
20 417 W Gates Street Suite 3
Mount Vernon, WA 98273
For the Carmen Sigurdson

21
22 ALSO PRESENT

23 Carmen Sigurdson, Mother
24 Marianne Yamashita, Guardian ad litem
25 Monica Glauser, Case Worker

1 (Beginning of requested transcript)

2

3 THE COURT: Cause Number 07-7-00658-4 we're
4 trying to figure out whether we have an Open Adoption
5 ready.

6 MS. REYES: Correct that's (inaudible) Miner.

7 UNKNOWN: She's out in the hall.

8 THE COURT: Ms. Miner who has the keys to the
9 knowledge, Ms. Miner.

10 MS. MINER: Yes.

11 THE COURT: What do we know about the Open
12 Adoption agreement in this Sigurdson case?

13 MS. MINER: You know, unfortunately we haven't
14 made much progress because my client unexpectedly--
15 unexpectedly for me was released from-- my
16 understanding was she was going to be over across the
17 street until the middle of February and we had some
18 time to work this out. When I called there yesterday
19 to try to finalize everything she-- they told me she
20 wasn't there anymore. So now I need to locate her
21 again which in the past has been difficult but maybe
22 now won't be because she's entering into Drug Court.

23 THE COURT: She is.

24 MS. MINER: But anyway we can't do it today
25 because-- I was hoping maybe she would be here but I

1 haven't--

2 THE COURT: Is tomorrow Drug Court? Do we
3 have Drug Court tomorrow?

4 UNKNOWN: (Inaudible).

5 THE COURT: Alright, I think you're right too.

6 MS. MINER: Okay well apparently the case
7 worker was expecting them here today but hasn't seen
8 them so--

9 THE COURT: Well if somebody sees them come in
10 let me know we'll call this again otherwise we'll--

11 MS. MINER: Okay otherwise should we just
12 strike it or shall we-- let's see where are we in
13 this case--

14 THE COURT: Where are we in this case?

15 MS. MINER: Have we done a preliminary
16 termination?

17 MS. REYES: Yes we have.

18 THE COURT: And have we-- is it heading
19 towards a trial setting?

20 MS. MINER: Oh I think it's heading for a
21 trial setting on the 25th of February.

22 MS. REYES: I think so.

23 MS. MINER: It's coming back to me.

24 MS. REYES: Yeah.

25 MS. MINER: So I guess we could just leave

1 it--

2 THE COURT: Right.

3 MS. MINER: Unless we-- we can note it up for
4 acceptance of relinquishment if-- if we can work that
5 out within the next couple of weeks. I just need to
6 locate her. It sounds like she's living with her
7 sister, so.

8 THE COURT: Well Wednesday at noon or
9 Wednesday at 1:30--

10 MS. MINER: Is that when it is?

11 THE COURT: Wednesday at 1:30, every other
12 Wednesday. Not this Wednesday but the following
13 Wednesday is Drug Court.

14 MS. MINER: Okay okay.

15 THE COURT: My guess is you can find her there
16 if she's actually going to be there.

17 MS. MINER: Okay.

18 THE COURT: Okay so--

19 MS. MINER: That will work.

20 THE COURT: Alright fair enough. Alright
21 Skeer's.

22 (Adjourn to another case)

23 (Beginning of transcription)

24 MS. REYES: This is In Re Madison Sigurdson,
25 Cause No 07-7-658-4, Sarah Reyes on behalf of the

1 Attorney General's Office, Monica Glauser is present
2 she is the assigned case worker. Lynn Miner is
3 present she represents the Mother, the Mother is
4 present and Ms. Yamashita is present she is GAL and
5 the Father's right have been terminated at this time.

6 THE COURT: Alright where are we on this
7 case.

8 MS. MINER: Well, Your Honor, I think we've
9 come to an agreement in terms of the Open Adoption
10 agreement. My client is finishing reviewing it right
11 now and signing it. She has signed the relinquish--

12 THE COURT: Is this the client you couldn't
13 find?

14 MS. MINER: Yes.

15 THE COURT: Alright you found her.

16 MS. MINER: Not that I couldn't find her. I
17 was going to find her and I knew I could because you
18 told me about when Drug Court met. So anyway do you
19 want to-- have you seen this? You don't need to go
20 over that again do you?

21 THE COURT: So you're saying an Open Adoption
22 agreement?

23 MS. MINER: Yes she's doing that right now,
24 Your Honor.

25 THE COURT: Alright and you're about to join

1 Drug Court?

2 MS. MINER: And that's--

3 THE COURT: A good program. If you follow
4 the program your life can be a lot different. But I
5 appreciate your signing these if you believe that's
6 the best thing for your daughter.

7 MS. SIGURDSON: Yes it is.

8 COURT: Alright.

9 MS. MINER: Yes she needs to sign it too.
10 Okay.

11 MS REYES: Your Honor this child is now
12 placed with Carmen's mother.

13 THE COURT: Um huh.

14 MS. REYES: Who is here as well and we have
15 been working back and forth, Ms. Miner and I and the
16 adoptive placement to come up with language that will
17 work for the mother I mean it's mother/daughter so we
18 want to--

19 THE COURT: Right.

20 MS. REYES: Be able to (inaudible) work it.
21 (Inaudible) come up with that language today.

22 THE COURT: So the Grandmother is going to
23 adopt the child is that right?

24 MS. MINER: Yes that's correct.

25 THE COURT: Alright and you've got language

1 that works.

2 MS. REYES: We've got language that works.
3 It provides a minimum number of visits. I think
4 we're covered even if they move out of state which we
5 don't anticipate at all but just in case we're
6 covered.

7 THE COURT: Alright well good it's nice for
8 you to have your mother as a placement and resource
9 and I know the Court appreciates you being there to
10 take over the care of this child, thank you. Getting
11 a child in a permanent place is what we try to get
12 done one way or another every day. Alright good luck
13 to you especially in Drug Court and unless I'm
14 mistaken we're done.

15 MS. REYES: I think so.

16 (End of requested transcription)

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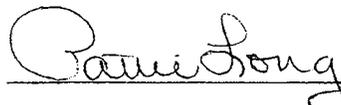
1 STATE OF WASHINGTON)
2)
3 COUNTY OF WHATCOM)
4)

5 I PATTIE A. LONG Notary Public in
6 and for the State of Washington do hereby certify;

7 That the foregoing is a
8 transcription to the best of our ability from the
9 audio of the above entitled proceedings;

10 That I am not related to any of the
11 parties to this litigation and have no interest in
12 the outcome of said litigation;

13 Witness my hand and seal this 7th
14 day of January, 2010.

15 
16 _____

17 PATTIE A. LONG, NOTARY

18 IN AND FOR THE STATE OF
19 WASHINGTON, RESIDING AT
20 BELLINGHAM. NOTARY EXPIRES
21 OCTOBER 01, 2011

