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NO. 102344-8

SUPREME COURT OF THE STATE OF WASHINGTON

In Re the Dependency of B.B.B., minor child,

**DCYF ANSWER IN OPPOSITION TO MOTION FOR
DISCRETIONARY REVIEW**

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I. INTRODUCTION

J.B., the mother of B.B.B., seeks discretionary review of a published opinion interpreting the plain language of dependency shelter care statute RCW 13.34.065(7)(a)(i), to require an order, signed by the judge, authorizing continued shelter care when shelter care lasts longer than 30 days. Contrary to the plain language of the statute, the mother claims shelter care orders are required every 30 days, even where the parties seek only to maintain the status quo and do not raise any issue requiring resolution by the court.

The Court of Appeals rejected the mother's argument, correctly concluding that "the statute's plain language does not require monthly review hearings for continuing shelter care." Opinion, 1. Contrary to the mother's argument, the statutory scheme provides robust judicial oversight of the shelter care process. Parties to shelter care, for example, have ample opportunity to seek to amend the shelter care order through a noticed motion "any time" a contested issue arises requiring

court resolution. RCW 13.34.065(7)(a)(i). In addition, the court's conditions of the child's placement may amended at "any time" with notice and hearing. RCW 13.34.065(7)(b)(i). But the plain language of RCW 13.34.065(7)(a)(i) does not require courts to hold a shelter care hearing every thirty days as a matter of course. To the extent there is a substantial public interest in understanding the statutory requirement for 30-shelter care hearings, the Court of Appeals has already correctly satisfied this interest.

The mother here does not raise an issue warranting review and review should be denied.

II. ISSUE PRESENTED FOR REVIEW

RCW 13.34.065(7)(a)(i) states that "[n]o child may be placed in shelter care for longer than thirty days without an order, signed by the judge, authorizing continued shelter care." Did the Court of Appeals correctly interpret the plain language in RCW 13.34.065(7)(a)(i) to determine the statute requires "an order" authorizing continued shelter care when shelter care lasts

longer than thirty days?

III. STATEMENT OF THE CASE

B.B.B. (born 2022) is the child who is the subject of the order and hearing at issue. CP 25. B.B.B.'s mother is the petitioner, J.B. CP 25. On February 17, 2022, the Department filed a dependency petition and a safety assessment for B.B.B. and the juvenile court signed an order to take child into custody and place him in shelter care. CP 25-35, 41-47. In the dependency petition, the Department alleged that B.B.B. was at risk of substantial harm in the care of his mother, who tested positive for methamphetamines when B.B.B. was born, and had received no prenatal care throughout her pregnancy. CP 27, 33. The mother said she had used methamphetamines to address her feelings of depression. CP 28. B.B.B.'s father, J.S., admitted he was actively using methamphetamine. CP 31.

Initially, the Department agreed that B.B.B. could be released from the hospital into the mother's care, provided the mother adhered to a plan designed to keep B.B.B. safe while the

mother engaged in certain agreed-upon services. CP 29-30. After the mother repeatedly violated B.B.B.'s safety plan, the Department filed a dependency petition. CP 30-32. In the dependency petition, the Department alleged B.B.B. was not safe in the mother's care and that the mother was unable to meet B.B.B.'s immediate basic needs due to her issues with substance use, her mental health and her unwillingness to fully engage in services recommended by the Department. CP 33-34.

On February 22, 2022, the court entered the initial shelter care hearing order as to the mother and father, to which both parents agreed, maintaining out of home placement with a relative. CP 50, 56. The court ordered that visits between the child and the mother be monitored due to the mother's recent substance use and positive urine test for methamphetamines following the birth of B.B.B. CP 55-56. The initial agreed shelter care hearing order set another shelter care hearing for approximately one month later. CP 50.

A few days before that scheduled hearing, the parties

agreed to a one-week continuance of the 30-day shelter care hearing, due to the mother and her counsel's unavailability. CP 61. Before the continued hearing, the Department filed a Notice for 30 Day Hearing Regarding Request to Maintain Previously Ordered Supervised Visitation as to Father. CP 64-65. In the pleadings, the Department stated, "the mother's visitation has already liberalized to be unsupervised pursuant to the visitation plan contained in the 72-hour shelter care order, and the Department is not requesting that the mother's visitation be monitored or supervised at this time." CP 64. The Department's Notice for 30 Day Hearing also included a declaration from social worker Kelsey Marsh, stating that the mother "has been receiving unsupervised visits as she completed monitored visitation. Visits will remain unsupervised at this time." CP 67.

At the hearing on March 30, 2022, the juvenile court signed the second agreed order, once again continuing the 30-day shelter care hearing, due to a lack of a Tagalog

interpreter, which the mother required. CP 72-75. The hearing was continued to April 7, 2022. CP 72.

On April 7, 2022, the court held the first interim (“30-day”) shelter care hearing. CP 78. The clerk’s minutes reflect that a hearing was held on the record and that it was “a status quo hearing.” CP 76. The court made findings that “[n]o contested issues were noted for the 30 Day Shelter Care hearing.” CP 79. The court entered a 30-day interim shelter care hearing order in which the court found that the mother’s visits had been monitored under the prior shelter care order. CP 79. The court further noted that since then, her visits had transitioned to unsupervised and no one had asked the court to increase the supervision level. CP 79 After entry of this first 30-day interim order, the mother’s counsel requested another interim shelter care hearing and the court set another hearing for May 4, 2022. CP 79-80.

At that second interim shelter care hearing, the court again found that no contested issues were noted for the hearing and the

mother's visitation remained unsupervised. CP 82-83. The mother requested another interim shelter care hearing and the court set another interim hearing for June 1, 2022. CP 83.

At the third interim shelter care hearing, the clerk's minutes reflect that the "[p]arties agree to a Status Quo agreement, setting an additional shelter care hearing." CP 86, 88. The court inquired why a fourth interim hearing was necessary when the parties continued to enter orders that maintained the status quo. CP 86. The mother's counsel indicated a continued need for shelter care hearings. The juvenile court disagreed with the mother's arguments that more interim shelter care hearings were needed and requested the parties file briefing regarding the need for further shelter care hearings. CP 87, 90.

On June 29, 2022, the court held a fourth interim shelter care hearing. CP 21. The parties again agreed to maintain the status quo for the case. CP 22. The mother requested that the court schedule yet another interim shelter care hearing and the court denied this request, ordering, "if [the] mother would like

additional hearings, they should follow local court rules.” CP 95. Following the hearing, the court entered the fourth interim shelter care order, which authorized continued shelter care for the child, stated no contested issues had been noted for the hearing, and declined the mother’s request to set another interim shelter care hearing. CP 22-23. Visitation with the mother continued to be unsupervised, as previously ordered by the court and as agreed upon by the parties. CP 23.

The mother initially appealed the fourth interim shelter care order entered on July 1, 2022. On August 14, 2023, the Court of Appeals issued a published opinion holding RCW 13.34.065(7)(a)(i) requires “an order” authorizing continued shelter care when shelter care lasts longer than thirty days, but does not require the court to holding a hearing and issue an order every thirty days, even when the parties do not raise any contested issues for the court to address. The mother now seeks review in this Court.

IV. REASONS WHY REVIEW SHOULD BE DENIED

A. Children in Shelter Care Receive Regular, Ongoing Oversight from the Juvenile Court

The mother's argument that, without monthly shelter care hearings and orders entered continuing shelter care, children in out-of-home placement will languish for months or years without court oversight is entirely inaccurate. Motion at 1. The dependency statutes afford parties ample opportunities for court oversight during shelter care, including by providing an opportunity to note a hearing and seek a change of placement upon a change of circumstances. The Court of Appeals correctly identified the oversight conducted by juvenile courts.

At the initial stage of a dependency proceeding, RCW 13.34.050 gives the court authority to order a law enforcement officer, a probation counselor, or a child protective services official to take a child into custody where "removal is necessary to prevent imminent physical harm to the child due to child abuse or neglect." RCW 13.34.060 requires that any child taken into custody must have an initial shelter care hearing within

72 hours—i.e., the 72-hour hearing.

Shelter care is defined as the temporary placement of the child outside the parent’s care. RCW 13.34.030(24). Whether or not the child is in shelter care status, the court must hold a fact-finding hearing on the dependency petition no later than 75 days after the petition is filed, absent exceptional circumstances. RCW 13.34.070(1). After the fact-finding hearing, the court must either dismiss the petition or enter a dependency order. RCW 13.34.110.

The shelter care statute, RCW 13.34.065, provides robust opportunities for any party to address issues in the dependency proceeding before the dependency fact-finding hearing.¹ The statute provides instruction on obtaining a hearing upon a noticed motion, and setting case conferences to address any new issues or changes in circumstances before the dependency fact-finding

¹ *See also*, JuCR 2.5, stating the “court may amend a shelter care order as provided in RCW 13.34.060(10) at a hearing held after notice to the parties given in accordance with rule 11.2.”

hearing. For example, following a 72-hour initial shelter care hearing or entry of an agreed shelter care order, RCW 13.34.065(6)(a) provides “a shelter care order issued pursuant to this section shall include the requirement for a case conference as provided in RCW 13.34.067” during which time, voluntary services to support reunification of the parent and child with the Department and all legal parties present. Further, “the court may order another conference, case staffing, or hearing as an alternative to the case conference as required under RCW 13.34.067 so long as the conference, case staffing, or hearing ordered by the court meets the requirements under RCW 13.34.067, including the requirement of a written agreement specifying the services to be provided to the parent.” RCW 13.34.065(6)(c).

If any party wishes to amend the shelter care order before the dependency fact-finding hearing, or any time after the initial shelter care hearing, RCW 13.34.065(7)(a)(i) states “a shelter care order issue pursuant to this section may be amended at any

time with notice and hearing thereon. The juvenile court may modify the shelter care placement decision when there is a change in circumstances.” RCW 13.34.065(7)(a)(i). At that time, contested issues may be brought before the court for resolution and the court would have another opportunity to check in on the status of the case. Additionally, following a 72-hour initial shelter care hearing where visitation is either ordered to be monitored or supervised, RCW 13.34.065(7)(a)(ii) states “there shall be a presumption that such supervision or monitoring will no longer be necessary following a continued shelter care order...to overcome this presumption, a party must provide a report to the court including evidence establishing that removing visit supervision or monitoring would create a risk to the child’s safety, and the court shall make a determination as to whether visit supervision or monitoring should continue.” RCW 13.34.065(7)(a)(ii). At such a hearing, the court would again have an opportunity to check on the case to determine whether the safety concerns that necessitated supervision or

monitoring are still present.

Finally, if a child is placed either in home, with a relative, or a suitable other with conditions of placement RCW 13.34.065(7)(b)(i) states “an order releasing the child on any conditions specified in this section may at any time be amended, with notice and hearing thereon.” RCW 13.34.065(7)(b)(i). If there were any issues with placement at any point in the case, those concerns or issues could be brought to the court’s attention for resolution.

Given the opportunities to bring issues to the court’s attention before dependency is established, the mother’s argument that ongoing shelter care hearings is the only way for the court to monitor changes or issues requiring attention is inaccurate.

As demonstrated in the court record and reiterated above, the juvenile court provided ongoing court oversight throughout the life of this case. On February 22, 2022, the court held the 72-hour shelter care hearing and conducted a colloquy with the

mother, informed her of her rights, and reviewed the agreed provisions of the shelter care order with the mother. See, CP 48-49. Upon agreement of the parties, the court entered two continuance orders of the 30-day hearing. CP 61, 72-75. On April 8, 2022, May 4, 2022, June 1, 2022, and July 1, 2022, the court entered interim shelter care orders, each stating that no contested issues were noted and that the 72-hour shelter care order remains in full force and effect. CP 38, 79, 89. The court stated that, “if mother would like additional hearings, they should follow local court rules” to set such a hearing. CP 95. On August 15, 2022, the court signed an Agreed Order of Dependency as to the Mother. CP 104. There was a disposition hearing and an initial progress review set for September 28, 2022. CP 96. There has been and continues to be ongoing court oversight as demonstrated by the procedural history in this matter and the upcoming hearings.

Nothing in the court’s July 1, 2022, order or in the opinion issued by the Court of Appeals prevents any party from filing a

contested motion for the court to make a determination on an issue identified by the party. The mother—along with any other party—is free to move the court for relief and request a hearing on their motion in another interim shelter care hearing, and they did not do so here.

The mother misleadingly argues that, absent a requirement for shelter care hearings every 30 days, the juvenile court “would not conduct any further monthly review hearings.” Motion at 3. What the juvenile court actually said was “the court is happy to hear any motions that need to be set under Local Juvenile Court Rule 2.5 if there’s an issue that needs to be addressed.” RP 11.

The mother seeks review based largely upon on a comment made by the juvenile court regarding “a waste of judicial resources.” Motion at 3. While the court’s comments could have been phrased differently, the juvenile court was not abdicating its responsibility for oversight, but was instead expressing justifiable frustration about using valuable court time to hold hearings where there were no contested issues and

nothing to address. Requiring courts to hold hearings that are not required by statute, where there are no contested issues for the court to resolve, takes away time and attention that the court could devote to other cases requiring judicial resolution of contested issues. The juvenile court's comment was not that all additional shelter care hearings are a waste of time, as demonstrated by its clarifying comment that it was "happy" to preside over shelter care hearings involving issues requiring judicial resolution. RP 11.

The mother's attempt to add statutory language requiring hearings "every 30 days" is not consistent with rules of statutory interpretation. Courts will not rewrite unambiguous statutes or add words to a statute to achieve a desired outcome. *See, State v. James-Buhl*, 190 Wn.2d 470, 478, 415 P.3d 234 (2018) ("[e]ven though the protection of children is of the utmost importance, we resist the temptation to rewrite an unambiguous statute to suit our notions of what is or may be good for public policy"); *State v. Reis*, 183 Wn.2d 197, 215, 351 P.3d 127 (2015)

("[i]t is not this court's job to remove words from statutes or to create judicial fixes, even if we think the legislature would approve.").

The Court of Appeals appropriately held that "[t]he phrase "continued shelter care" must be read in the context of the statutory scheme. As the court noted, when a child is first taken into custody under RCW 13.34.050, the child "shall be immediately placed in shelter care." RCW 13.34.060(1). "No child may be held longer than [72] hours...unless a court order has been entered for *continued shelter care*." RCW 13.34.060 (emphasis added). Thus, as recognized by the Court of Appeals, that "initial period of custody, even prior to the 72-hour hearing, is the *initial* period of shelter care." Opinion, 10 (emphasis added). The term "continued shelter care" applies to "shelter care beyond this initial 72-hour period." Opinion, 10. The statute's requirement that "no child may be placed in shelter care for longer than thirty days without an order, signed by the judge, authorizing continued shelter care" simply means that there must

be a hearing and order within 30 days of that initial 72-hour hearing to keep a child in “continued shelter care.” Opinion, 11. After that 30-day hearing, however, “if there are no requested amendments [of the initial shelter care order], the statute does not require a hearing, nor subsequent hearings every thirty days.” *Id.* The statute permits a change in the child’s placement only “upon a showing of a change in circumstances.” RCW 13.34.065(7)(a)(i). This language would make little sense if the trial court were required to reconsider the child’s placement every 30 days regardless of any change in circumstances. The court’s analysis of what is required by statute is consistent with the plain language of the statute and does not require further review or analysis.

The opinion does not frustrate or prevent any county across the State from continuing to hold additional shelter care hearings past the 30-day hearing. The opinion states, “while we hold that RCW 13.34.065(7)(a)(i) does not require such hearings, it also does not prohibit courts from holding such hearings.”

Opinion at 14. The *B.B.B.* decision did not take away the opportunities for counties around the State to continue holding additional shelter care hearings as they have done, rather, it identifies the minimum requirement based on the plain language of the statute as drafted by the legislature.

B. The Court of Appeals Published Opinion Does Not Fundamentally Undermine Established Practice and Is Not Contrary to Statute or Prior Opinions

The mother also fails to identify any conflict with decisions of other courts warranting review by this Court. The mother cites two cases, neither of which addressed the requirements of the shelter care statute at issue here.

The mother argues that the opinion is in conflict with *In re Dependency of H.W.*, which states in a footnote that “a shelter care decision is subject to review every 30 days.” *In re Dependency of H.W.*, 70 Wn. App. 552, 556 n.2, 854 P.2d 1100, 1102 (1993). Motion at 9. As the Court of Appeals appropriately noted, however, *H.W.* did not involve the interpretation of RCW 13.34.065(7)(a), and never held that the statute *requires* a

hearing every thirty days. Opinion, 11. Instead, it addressed due process protections in the context of shelter care hearings. *Id.* at 11-12.

It is well established that “in cases where a legal theory is not discussed in the opinion, that case is not controlling on a future case where the legal theory is properly raised.” *See Berschauer/Phillips Const. Co. v. Seattle Sch. Dist. No. 1*, 124 Wn. 2d 816, 824–25, 881 P.2d 986, 991 (1994). The meaning of the shelter care statute was not at issue in *H.W.*, and the Court of Appeals correctly found that this footnote does not control the interpretation of the statute’s plain language. Opinion, 12. It likewise does not create a “conflict” warranting resolution by this Court.

The mother also reads too much into the word “further” in *In re Welfare of B.D.F.*, 126 Wn. App. 562, 109 P.3d 464 (2005), to wrongly suggest a conflict with that decision. In *In re Welfare of B.D.F.*, the opinion states that “RCW 13.34.065 emphasizes the court’s essential role in determining the need for further

shelter care” following the initial 72-hour shelter care hearing. *B.D.F.*, 126 Wn. App at 574. The mother incorrectly interprets the phrase “further shelter care” to amount to monthly shelter care hearings. Instead, in *B.D.F.*, the Court of Appeals addressed the issue of a child’s guardian ad litem standing to request a shelter care hearing under a statutory provision governing the *initial* 72-hour shelter care hearing, not the 30-day shelter care order required by RCW 13.34.065(7)(a)(i). *B.D.F.*, 126 Wn. App. at 562. As the Court of Appeals points out, “the *B.D.F.* court did not address the statutory provision at issue here, RCW 13.34.065(7), which concerns the amendment of an existing shelter care order for *continued* shelter care beyond thirty days.” Opinion 13. The requirement of the parents being present at the initial shelter care hearing does not automatically apply to the 30-day shelter care hearing and is not mentioned in RCW 13.34.065(7)(a)(i), the statute that governs 30-day shelter care hearing. The Court of Appeals correctly concluded the *B.D.F.* court’s holding regarding a different statute did not

control the interpretation of the plain language of RCW 13.34.065(7). Opinion, 13. The Court of Appeals appropriately rejected the mother's request to read into the statute a requirement for monthly shelter care review hearings.

C. The Court of Appeals Correctly Interpreted RCW 13.34.065(7) and Resolved Any Matter of Substantial Public Interest

Under RAP 13.4(b)(3), one of the considerations governing acceptance of review in this Court is whether “the petition involves an issue of substantial public interest that should be determined by the Supreme Court.” As addressed previously, monthly shelter care hearings and orders are not required by statute, nor by preexisting case law. And parties to a shelter care have ample opportunity to seek a hearing any time a contested issue arises requiring court resolution. The Court of Appeals decision provides sufficient clarification regarding the plain meaning of RCW 13.34.065(7)(a)(i). No further review is warranted of this well-reasoned decision by the Court of Appeals.

V. CONCLUSION

The Department respectfully requests that the Court deny J.B.'s Motion for Discretionary Review.

This document contains 3,727 words, excluding the parts of the document exempted from the word count by RAP 18.17.

RESPECTFULLY SUBMITTED this 2nd day of October, 2023.

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/s/ Catherine Carrico _____
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CERTIFICATE OF SERVICE

The undersigned certifies under the penalty of perjury under the laws of the State of Washington that on the below date, the original documents to which this Declaration is affixed/attached, was filed in the Supreme Court of the State of Washington, under Case No. 102344-8, and a true copy was e-mailed or otherwise caused to be delivered to the following attorneys or party/parties of record at the e-mail addresses as listed below:

1. Gregory C. Link, Washington Appellate Project, wapofficemail@washapp.org; and greg@washapp.org; and

2. Kathleen Martin, King County Dependency CASA Program, casa.group@kingcounty.gov; and kathleen.martin@kingcounty.gov.

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 2nd day of October, 2023.

/s/ Patricia A. Prosser _____

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