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S. Ct. 102812-1

No. 84938-7-I

SUPREME COURT OF THE STATE OF WASHINGTON

IN THE INTEREST OF:

A.S.A.

ON APPEAL FROM THE JUVENILE COURT OF THE
STATE OF WASHINGTON FOR WHATCOM COUNTY

MOTION FOR DISCRETIONARY REVIEW
[Treated as a PETITION FOR REVIEW](#)

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I. INTRODUCTION

Andrew A. is the father of A.S.A., a 15 year-old girl, as well as three younger children. Mr. A. has been a single father for eight years, ever since A.S.A.'s mother left the family.

The family struggled to get by, and once A.S.A. was old enough, Mr. A. asked her to do chores and help with her younger siblings. When A.S.A. was 14, she filed a petition asking the court to declare her a Child in Need of Services (CHINS). She asked to live with her mentor through an after school program, Ms. Z. Mr. A. objected and asked the court to return his daughter home, or to place A.S.A. with her aunt, a court clerk in Benton County. The court instead granted the CHINS petition and placed A.S.A. at Ms. Z.'s home, where she remains.

The juvenile court dismissed the CHINS petition and the appeal after Ms. Z. filed for a guardianship. Mr. A. asked the Court of Appeals to decide his appeal as a matter of public interest, but the Court dismissed the appeal as moot.

II. IDENTITY OF PETITIONER AND RELIEF SOUGHT

Mr. A. seeks review of the Court of Appeals decision dismissing his appeal because this case involves an issue of substantial public interest.

III. ISSUES SUPPORTING DISCRETIONARY REVIEW

1. Due process requires that parents receive notice of the allegations supporting a CHINS action. A CHINS order placing a child away from their parent, premised on new allegations of which the parent received insufficient notice, violates due process. At the CHINS fact-finding, A.S.A. testified about several medical issues not alleged in the petition or the amended petition. Mr. A. was only informed of these allegations two hours before the fact-finding – months after A.S.A. was removed from the family home. Do removals under RCW 13.32 trigger due process protections for parents, and does the petition thus involve an issue of substantial public interest that should be decided by this Court? RAP 13.4(b)(4).

2. Due process requires that parents have notice and an opportunity to be heard when the custody and care of their children is at issue. The Family Reconciliation Act (FRA) specifically requires notice and the right to present evidence at a fact-finding hearing. Mr. A. contested the CHINS petition and requested a specific family placement with a paternal relative. Yet the court found Mr. A.'s demand was "not an out-of-home placement request" under the FRA. Did the court violate the process due a fit parent, whose preference for a family placement would be honored under Title 13.34? Where the court provided less process to this parent than in other cases where children are removed from their homes – simply because the proceeding is labeled a CHINS rather than a shelter care action – should this Court grant review as a matter of substantial public interest? RAP 13.4(b)(4).

IV. STATEMENT OF FACTS

When A.S.A. was 14 years old, she filed a CHINS petition with the assistance of the probation department and

Child Protective Services (CPS). CP 1-6. A.S.A. filed an amended petition on November 18, 2022. CP 12. After the court denied the father's motion to dismiss, as well as his specific and repeated request for A.S.A. to be placed with her paternal aunt, a fact-finding hearing took place. The court granted the CHINS petition on January 19, 2023. CP 23.

Mr. A. relies on the full statement of the case in the opening brief for the facts concerning A.S.A.'s removal. Brief of Appellant at 4-9. In short, when A.S.A. turned 14, she began to complain about caring for her younger siblings and doing chores around the house "all the time." RP 271. A.S.A. complained that her father drank in the evenings and that he was verbally abusive at home. CP 10-11. A.S.A. also stated that she suffered from mental health issues including self-harm ideation and that her father did not support her need for mental health services and treatment for her asthma. CP 11.

Upon his appearance to respond to the CHINS petition, Mr. A. immediately asked the juvenile court to return A.S.A.

home, or in the alternative, to send her to live with her paternal aunt, a court clerk, in Benton County. RP 13-14. Although Mr. A. repeatedly renewed his request for relative placement, the court denied it. The court first told Mr. A. he needed an attorney “to present this information with the appropriate evidence rules;” RP 13-14, 20.

Once represented by counsel, Mr. A. requested placement with the paternal aunt again during the CHINS trial, to no avail. RP 264, 279, 288-89. Yet confounding logic, the court found Mr. A.’s request did not signify a “request” under RCW 13.32A.160(1); RP 336. Mr. A. moved for reconsideration of this finding, which the court denied. RP 337-38.

At the trial in January 2022, the trial court admitted evidence of new allegations of apparent medical neglect that were not alleged or pled in the CHINS petition filed two months earlier. RP 23-24, 34-36. Mr. A. received no notice of these claims until just before the trial, yet the court permitted

these claims to proceed. RP 34-35. The court found A.S.A. a child in need of services, granting the CHINS petition. RP 306. The court denied Mr. A.'s requested placement with the paternal aunt, finding he had not made a "request" within the meaning of the FRA. RP 336.

Mr. A. appealed the January 18, 2023 order granting the CHINS petition. CP 23-26; CP 29. Mr. A. alleged a violation of due process, among other grounds. Review hearing orders filed by respondent show that A.S.A.'s placement was renewed at least once, since she was in the placement with Mrs. Z. for far longer than 90 days. RCW 13.32A.190(3)(court can extend placement for 180 days from the review hearing).

At the time the Court of Appeals asked the parties to file supplemental briefing to address mootness, the CHINS petition had not yet been dismissed. See Supplemental briefing. It is clear that A.S.A. had been removed from her father's home under the jurisdiction of RCW 13.32A since October 2022 – over a year – when the appellate court inquired. CP 9-12. The

reality is A.S.A. was removed for far longer than dependency actions where the court has jurisdiction under RCW 13.34.

The Court of Appeals dismissed Mr. A.'s appeal as moot. Slip op. at 3. A.S.A. has not been returned to her father's home.

V. ARGUMENT

This Court should grant review because parents in CHINS actions have the right to due process, like any other parent whose child is removed from the home. This is a matter of substantial public interest.

No court action is more destructive to the family unit than the removal of a child from their parent. When removal is necessary, the level of due process afforded such a parent is a matter of substantial public interest. This Court should grant the petition in order to rectify this wrong and to provide guidance to other judicial officers.

a. A parent is entitled to due process in a CHINS action because such an action involves the deprivation of the fundamental right to parent, including the right to visitation.

Parents have a fundamental due process right in the care and custody of their children. U.S. Const. amends. V, XIV; art. I, § 3; Santosky v. Kramer, 455 U.S. 745, 754, 102 S. Ct. 1388, 71 L. Ed. 2d 599 (1982); In re Key, 119 Wn.2d 600, 609, 836 P.2d 200 (1992) (citing Stanley v. Illinois, 405 U.S. 645, 651, 92 S. Ct. 1208, 31 L. Ed. 2d 551 (1972)); see also Dependency of A.M.M., 182 Wn. App. 776, 791, 332 P.3d 500 (2014)).

Yet the Court found that parents in CHINS proceedings are not entitled to the same due process rights as parents in dependency actions. Slip op. at 3 (citing In re Sumey, 94 Wn.2d 757, 762, 621 P.2d 108 (1980)). This conclusion is based on the flawed premise that in CHINS proceedings, the scope of the intrusion into the family is lower than in dependency cases, so the government interference can be justified. See Sumey, 94 Wn.2d at 764.

Yet this case was significantly different from Sumey, the single CHINS case relied upon by the Court of Appeals. Here, the level of government interference was significant and the “conflict” within the home was hardly “so extreme” or “severe” as to justify the “infringement upon parental rights” discussed by this Court in Sumey. 94 Wn.2d at 764.

A.S.A. filed a CHINS petition on November 7, 2022. CP 1-6. Mr. A. appeared repeatedly in the juvenile court, asking for A.S.A. to come home, or alternatively, for the court to place her with her aunt in Benton County. RP 13-14. The court denied Mr. A.’s motions at numerous hearings, including November 16th, November 23rd, and December 7th. On December 7th, Mr. A. again asked for A.S.A.’s return, specifically stating he was afraid for his daughter’s safety at the home of her placement. RP 37. Mr. A. complained A.S.A. was told she was not allowed to speak with him or with any of her younger siblings, and it felt like “they’re keeping my daughter

hostage.” RP 36. Mr. A.’s requests for a Thanksgiving visit and other visits with A.S.A. were denied. RP 23-24.

On December 7th, Mr. A. specifically asked to have visitation with A.S.A., saying her three younger siblings wanted to see her too. RP 45-46. Although the purpose of the FRA¹ is family reunification, the court denied Mr. A.’s request for a visit with A.S.A., along with his request for sibling visitation. RP 47-52.

The Court of Appeals held a parent has a lower expectation of due process in a CHINS case than in an action under RCW 13.34 because CHINS cases are less intrusive. Slip op. at 3 (citing Sumey, 94 Wn.2d at 762). But this finding belies the experience of most parents involved in CHINS proceedings, and certainly the experience of Mr. A. The record shows the CHINS petition kept Mr. A. from his child for over

¹ The FRA governs CHINS petitions. See Title 13.32A.

60 days before the fact-finding even commenced, followed by a 90-day placement.

Had this matter been filed as a dependency action, affording Mr. A. with what the Court of Appeals states are greater due process rights, Mr. A. would have been statutorily entitled to strict shelter care timelines and mandatory visitation with his daughter. RCW 13.34.060 (shelter care hearing within 72 hours); RCW 13.34.136(2)(a)(ii)(A) (visitation is the right of the family); Dep. of Tyler L., 150 Wn. App. 800, 804, 208 P.3d 1287 (2009).

A.S.A. was removed from her father's home with the assistance of the same juvenile court agencies as any other child being removed in a shelter care or dependency action.² The Court of Appeals dismissed Mr. A.'s appeal, relying on Sumey, a 1980 case – even though the legislature has amended

² A.S.A. was removed from and maintained outside of her home with the assistance of CPS, the Department of Children, Youth, and Families (DCYF), and the probation department.

the relevant statutes under RCW 13.34 multiple times since Sumey was decided, including critical amendments which expanded the right of visitation for parents and children. RCW 13.34.136(2)(a)(ii)(A).

This Court should grant review because parents like Mr. A. deserve the same level of process as other parents whose children are removed – not less. Under the FRA, Mr. A. could not even participate in remedial services in order to hasten reunification with his daughter, because services are not “envisioned by the statute.” RP 346 (court believed it had no authority to order remedial services for Mr. A.). The FRA creates a paradigm whereby the government can impose enormous “infringement[s] upon parental rights,” but cannot offer any remedy, such as services. See Sumey. 94 Wn.2d at 764. This Court should grant review to address these concerns that constitute a substantial public interest. RAP 13.4(b)(4).

b. This Court should grant review because of the violation of due process, including the lack of notice and the misinterpretation of the FRA.

Mr. A. received inadequate notice of a majority of the allegations at the trial, which constitutes a violation of due process.

A substantial portion of A.S.A.'s trial testimony consisted of new medical neglect allegations which were not included in the amended petition; Mr. A. learned of them just two hours before the trial. RP 23, 34, 54. Mr. A. objected to the admission of this testimony. RP 23. The court also disregarded Mr. A.'s request to have his daughter placed with her aunt – a parental preference that the court was statutorily obligated to follow under RCW 13.32A.010. RP 306-07, 335-36.

The trial court's findings and conclusions allowing testimony concerning these new allegations violated the principle of notice required by due process and RCW 13.32A.160(1); A.M.M., 182 Wn. App. at 791.

The trial court violated the language and purpose of the FRA when it ignored Mr. A.'s repeated request that the court place his daughter with her aunt. RP 306-07, 335-36. Mr. A. made this request early and often – at the first appearance on the CHINS petition on November 16th and on multiple occasions during the trial. RP 13-15, 264, 279, 288-89.

Yet the court disregarded Mr. A.'s requests for this family placement, finding his requests did not constitute a “request” under the FRA. RP 307-08. This misapplication of the statute called for a decision on the merits as a matter of substantial public interest, and the Court of Appeals should have reached the merits of the appeal. State v. Beaver, 184 Wn.2d 321, 330-31, 358 P.3d 385 (2015) (Court has discretion to decide appeal if the question concerns the validity of statutes, or “matters that are sufficiently important to the appellate court”).

The trial court erred when it found Mr. A. had failed to request an out-of-home placement. See RCW 13.32A.179(3)

(a)(ii); CP 31 (FF 2.6); RP 335-36. As discussed in the opening brief, the court misinterpreted the statute, favoring form over substance. See Brief of Appellant at 20 (citing dictionary definition of request). Mr. A. was plainly a parent who “requested” that his daughter be placed with her aunt, a family member, rather than with a non-family member.

The statutory scheme shows the legislative preference “to keep families together.” RCW 13.32A.010. In fact, the legislature found that “many parents do not know their rights regarding their adolescent children and law enforcement.” Id. This appears to be one reason that a court may not order a Department- or child-requested placement where a parent has requested a different placement. RCW 13.32A.179(3)(a)(ii).

The court may only enter an order under subsection (2)(d) of this section if it finds by clear, cogent, and convincing evidence that: (a)(i) The order is in the best interest of the family; (ii) the parents have not requested an out-of-home placement; (iii) the parents have not exercised any other right listed in RCW 13.32A.160(1)(e)...

RCW 13.32A.179(3) (emphasis added).

The juvenile court’s finding that Mr. A.’s request did not signal an actual “request” elevates form over function and misapplies the legislative intent, to keep families together.

RCW 13.32A.010.

This Court should grant discretionary review because the court misapplied the statute, and the petition presents an issue of substantial public interest. RAP 13.4(b)(4).

c. This Court should grant review in order to provide guidance to other judicial officers in an area of law without adequate binding legal authority.

The Court of Appeals erroneously dismissed Mr. A.’s appeal as moot, after asking the parties to file supplemental briefing based upon unpublished Court of Appeals cases from two decades ago – from 2007 and 2000. Notation Ruling by Court Administrator/Clerk (Dec. 18, 2023) (citing J.P. v. Pollack, noted at 99 Wn. App. 1062 (2000) and In re G.A.L., 139 Wn. App. 1020 (2007)).

It is revealing that the Court needed to reach back to unpublished cases that are so old that the parties are forbidden to cite them as precedential authority under GR 14.1(a).³ These two cases, where the Court dismissed CHINS appeals as moot, have not been overruled; however, this is simply because there appears to be no case law on CHINS actions in the State of Washington, published or not, since 1980 (see Sumey, supra). The lack of any binding legal authority in the past 44 years demonstrates the importance of the Court reaching the merits of this appeal.

It is clear that by granting discretionary review, this Court could issue a decision in order to provide much-needed guidance to judicial officers. The parties below discussed the lack of case law to guide the trial court on critical issues. Even on basic pretrial issues, such as jurisdiction, the parties located no case law on which to rely. RP 10, 15. The attorney for the

³ Under GR 14.1(a), only “unpublished opinions of the Court of Appeals filed on or after March 1, 2013” may be cited.

mother admitted that despite her years of experience representing parents and children, “I will say there isn’t any sort of statute or case law…” RP 10 (referring to father’s motion to dismiss). The father’s attorney similarly bemoaned the trial court’s failure to follow the statutory timelines under RCW 13.32A. RP 12-15. Ultimately, the trial court acknowledged the statutory timeframes required by the FRA “were not followed,” but the court simply could not comprehend the correct remedy, as the parties could not provide any case law regarding CHINS actions. RP 15.⁴

Finally, even if this Court finds its 1980 decision in Sumey provides sufficient guidance, the FRA has been amended multiple times in the past four decades. To list just a few examples, RCW 13.32A.010 was amended twice, in 1995

⁴ Counsel for the child stated that the trial court could “dismiss this case all it wants” under speedy trial, but she would file another case tomorrow and start the process over again. RP 14. The same counsel also suggested the court could refer the matter to the Department to file a dependency. Id.

and 2000 (becoming the “Becca Bill”); RCW 13.32A.030 has been amended 10 times (1985, 1990, 1995, 1996, 1997, 2000, 2010, 2013, 2017, and 2020); RCW 13.32A.150 was amended twice, in 2019 and in 2020); RCW 13.32A.152 was amended in 2011 (CHINS and ICWA cases). This is an incomplete list of the amendments of RCW 13.32A since this Court’s decision in Sumey.

This case presents an opportunity for this Court to clarify the law regarding CHINS cases and to establish the rights of parents and children in this grey area of the law. Without adequate legal authority to guide the juvenile courts and parents’ own lawyers, Washington parents are being deprived of their most fundamental rights. Likewise, judicial officers are without guidance as to their authority and the appropriate interpretation of RCW 13.32A.

This Court should grant review in this matter of substantial public interest. RAP 13.4(b)(4).

VI. CONCLUSION

Mr. A. respectfully requests this Court grant discretionary review for the reasons above.

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DATED this 20th day of February, 2024.

Respectfully submitted,

s/ Jan Trasen

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The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the below date, the original document **Motion for Discretionary Review to the Supreme Court** to which this declaration is affixed/attached, was filed in the **Washington State Supreme Court** under **COA Case No. 84938-7-I**, and a true copy was mailed with first-class postage prepaid or otherwise caused to be delivered to the following attorney(s) or party/parties of record at their regular office or residence address as listed on ACORDS:

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petitioner

Attorney for other party



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Washington Appellate Project

Date: February 20, 2024

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In the Matter of the Interest of:

A.S.A.

DIVISION ONE

No. 84938-7-I

UNPUBLISHED OPINION

DWYER, J. — A.A. appeals a juvenile court decision granting his daughter’s child in need of services (CHINS) petition for out-of-home placement. He contends the order violated due process, the court failed to address his placement request, and the court failed to file a written statement of reasons for granting the petition. Because the challenged order has expired, we dismiss the appeal as moot.

I

A.A. is the father of 15-year-old A.S.A. On November 7, 2022, A.S.A. filed a CHINS petition requesting placement outside his home. A.S.A. asked to be placed with Linda Zemler, who had previously served as A.S.A.’s mentor through an after-school program. A.S.A. lived with Zemler while the petition was pending. A.A. objected to the petition in its entirety and stated that he wanted A.S.A. returned to his home. A.A. also opposed A.S.A.’s request for placement with Zemler and requested that A.S.A. be placed with her paternal aunt.

On January 19, 2023, following a fact-finding hearing, the juvenile court granted A.S.A.'s request for a 90-day out-of-home placement with Zemler. The order specified that a review hearing "shall be held" on March 30, 2023. A.A. appealed the CHINS order. On August 3, 2023, the juvenile court entered an order continuing out-of-home placement "until 9-26-23, at which time it will expire and the minor shall be returned home absent other court order to the contrary."

II

RCW 13.32A.190(3) states that "[o]ut-of-home placement may not be continued past one hundred eighty days from the day the review hearing commenced." Here, the juvenile court's statutory authority over the CHINS matter ended on September 26, 2023, 180 days after the scheduled review hearing on March 30, 2023. Accordingly, this appeal is moot. See In re Dependency of L.C.S., 200 Wn.2d 91, 98, 514 P.3d 644 (2022) (a case is moot when the appellate court can no longer provide effective relief).

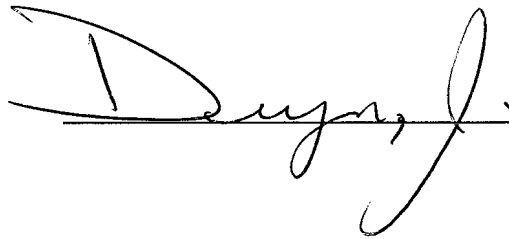
We do not typically review moot cases. Orwick v. City of Seattle, 103 Wn.2d 249, 253, 692 P.2d 793 (1984). However, we may review an otherwise moot case if it presents an issue of "continuing and substantial public importance." In re Dependency of T.P., 12 Wn. App. 2d 538, 545, 458 P.3d 825 (2020). "To determine whether the contested issue is of substantial and continuing public importance, we consider whether '(1) the issue is of a public or private nature; (2) whether an authoritative determination is desirable to provide future guidance to public officers; and (3) whether the issue is likely to recur.'"

T.P., 12 Wn. App. 2d at 545 (internal quotation marks omitted) (quoting In re Marriage of Horner, 151 Wn.2d 884, 892, 93 P.3d 124 (2004)).

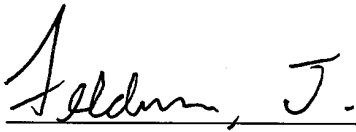
The father acknowledges that the CHINS order has expired, but argues that we should consider his appeal as a matter of continuing and substantial public interest. We disagree. The appeal is more private than public, dealing with fact-specific matters in this case. And although it is possible that the challenged issues may recur, the current statutes and applicable case law give sufficient guidance to public officers. Notably, it is well settled that a CHINS petition does not implicate the same due process rights furnished in shelter care and dependency hearings. In re Sumey, 94 Wn.2d 757, 762, 621 P.2d 108 (1980).

We therefore dismiss the appeal as moot.

Dismissed.

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WE CONCUR:

A handwritten signature in cursive script, appearing to read "J. Seldman", written over a horizontal line.A handwritten signature in cursive script, appearing to read "J. Birk", written over a horizontal line.