No. 89779-4

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

Court of Appeals No. 68744-1-I

KATHIE COSTANICH,

Appellant,

v.

STATE OF WASHINGTON, DEPARTMENT OF SOCIAL AND HEALTH SERVICES (DSHS), SANDRA DURON and JOHN DOE DURON, CAROL SCHMIDT and JOHN DOE SCHMIDT, BEVERLY PAYNE and JOHN DOE PAYNE, JAMES BULZOMI and JANE DOE BULZOMI, ROBERT STUTZ and JANE DOE STUTZ, INGRID McKENNY and JOHN DOE McKENNY,

Respondent

PETITION FOR REVIEW

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D. This Court should determine issues of substantial public interest presented in this matter, including: (1) whether Washington's foster families are remediless when DSHSs' negligence forces them to make harmful placement decisions; and (2) whether State actors may, without consequence, misrepresent and fabricate material evidence in civil investigations. RAP 13.4(b)(4). 17

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IDENTITY OF PETITIONER & CITATION TO DECISION

Petitioner Kathie Costanich asks this Court to accept review of the Court of Appeals decision, ***Costanich v. State***, Washington State Court of Appeals No. 68744-1-I (November 4, 2013); Motions to Publish denied, Dec. 16, 2013 (copies attached).

INTRODUCTION

The appellate court previously upheld that far from being abusive, Ken and Kathy Costanich provided unsurpassed foster care to some of the most difficult children in the system. These chidren were thriving until, as the Ninth Circuit held, DSHS misrepresented material evidence and perhaps outright lied, while investigating abuse claims. Yet in her second state court appeal, the appellate court held that Costanich has no remedy, either because she "voluntarily" removed her daughters after DSHS moved to terminate their dependency and remove them, or because a state actor fabricating evidence to falsely label an unsurpassed foster parent a child abuser and revoke her license is not sufficiently outrageous to warrant a jury trial. This Court should accept review and reverse.

ISSUES PRESENTED FOR REVIEW

1. Did the trial court erroneously dismiss Costanich's negligent-investigation claim on summary judgment, finding fact questions as to whether DSHS's investigation was negligent, but nonetheless ruling as a matter of law that DSHS did not make a harmful placement decision even though its negligent and outrageous conduct plainly coerced Costanich to give up her daughters temporarily, fearing that she would otherwise lose them forever?

2. Did the trial court erroneously dismiss Costanich's outrage claim on summary judgment, where the Ninth Circuit determined that in the course of this civil investigation, DSHS made material misrepresentations and may have intentionally fabricated evidence to label Costanich, an unsurpassed foster parent, a child abuser?

3. Should this Court reverse the statutory-cost award, if Costanich prevails on either or both summary-judgment arguments?

STATEMENT OF THE CASE

A. For 20 years, Costanich provided unsurpassed care to some of the neediest and most difficult children in the system.

Kathy and Ken Costanich ("Costanich") had been foster parents since 1983, caring for violent, sexually aggressive children, and medically fragile infants, "some of the neediest and most difficult

foster children in the system." ***Costanich v. Dep't of Soc. & Health Servs.***, 138 Wn. App. 547, 551, 156 P.3d 232 (2007), *rev'sd in part on other grounds*, ***Costanich v. DSHS,*** 164 Wn.2d 925, 927, 194 P.3d 988 (2008)[1]; Slip Op. at 1. In July 2001, Costanich was raising six children, three male foster children, K (age 15), J (age 12), and P (age 10); one male under a dependency guardianship, F (age 17); and two sisters also under dependency guardianships, E (age 8), and B (age 4).[2] Slip Op. at 1-2. "All of these children had been victims of abuse or neglect, and many had severe behavioral, developmental, and medical problems." ***Costanich***, 138 Wn. App. at 552; Slip Op. at 2. At the time, DSHS described the Costanich home as a "unique and valuable resource . . . unsurpassed by any foster home in the State." *Id.* Costanich was a DSHS trainer and the president of Foster Parents of Washington State ("FPAWS"), and has received the Foster Parent of the Year Award. *Id.*; CP 1511.

E and B had both lived with Costanich since infancy. Slip. Op. at 2. E was placed with Costanich when her drug-and-alcohol-

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[1] This Court reviewed only the trial court's attorney-fee award.

[2] A "Dependency guardian" is "appointed by the court . . . for the limited purpose of assisting the court in the supervision of the dependency," where a legal "Guardian . . . has the legal right to custody of the child pursuant to such appointment." RCW 13.34.030(5) & (10).

addicted mother abandoned her. CP 674-75, 819, 1512-13. At the mother's request, B was placed with Costanich when she was just four days old. CP 819, 1513.

E and B are both enrolled members of the Kalispel Indian Tribe. Slip. Op. at 2. With the Tribe's (and the mother's) permission, Costanich became their dependency guardian in 1996 and 1998. *Id.*; CP 1513. The guardianship orders required Costanich to provide the mother with visitation, consult the Tribe and the mother on cultural and religious issues, and maintain contact with the Tribe. *Id.* Though both girls were doing very well in Costanich's care, the Tribe would not allow her to adopt. *Id.*; CP 1460, 1464, 1467.

B. DSHS concluded that Costanich was emotionally abusive, failing to interview the children's therapists and doctors, and ignoring others emphatically reporting that Costanich was not abusive.

In summer 2001, DSHS's investigator, Sandra Duron, began investigating fourteen-year-old K's allegation to his therapist that Costanich abused some of the children in her care. Slip Op. at 2. These investigations are common in the foster-care community given many foster children's significant emotional and behavioral issues. CP 1515. K's allegations focused largely on Costanich's use of profanity, but Costanich openly acknowledged that she swore,

though never at the children. Slip Op. at 2-3; CP 1517. Costanich swore around the children to take the "power" out of profanity, which was effective with a "houseful of angry, sexually abused little boys, who when they first came into the house swore like little sailors." *Id.*

During its five-month investigation, DSHS removed P and J without notice. Slip Op. at 3; CP 1516. In November 2001, DSHS proposed that Costanich could keep E and B if she would accept DSHS's imminent abuse determination, waiving any administrative appeal. Slip Op. at 3; CP 1519. Costanich refused. *Id.*

In December, DSHS informed Costanich that DSHS found that physical-abuse allegations were "inconclusive," but that Costanich's use of profanity constituted emotional abuse. CP 117-19, 1516, 1518.[3] On March 14, DSHS told Costanich that it had upheld the emotional abuse finding after internal review. Slip Op. at 3. Costanich subsequently requested administrative review. *Id.*

This entire time, no one at DSHS ever interviewed the children's doctors or therapists. CP 1517-18. Talking to these providers, or reading their letters, would have revealed their agreement that removing the children would be harmful:

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[3] In a prior appeal discussed in full below, the Court of Appeals already held that Costanich's profanity was not directed at the children and was not abusive. ***Costanich***, 138 Wn. App. at 560-62.

- K's therapist opined that removing K from the Costanich home would harm his emotional and mental health and cause a "significant escalation of behavior problems." CP 255.
- J's doctors simply could not understand removing J from the Costanich home, and feared that it was due to DSHS "'politics.'" CP 251.
- E and B's doctor opined that taking the girls away from Costanich would "cause emotional post-traumatic stress disorder, and lead to irreparable, life-long emotional harm." CP 258.

"Other witnesses also pointed out that Duron's report contained evidence and statements they never made." Slip Op. at 7. For example, Duron quoted F's GAL as stating that Costanich threatened to "chain the little shit to the bed," but in a sworn statement, the GAL denied making the statement or even speaking to Duron about F. *Id.* Duron also quoted an aide saying that Costanich "always" called E profane names, but the aide swore that she had never seen Costanich direct profanity at one of the children. *Id.*

"Also contrary to Duron's report, witnesses' sworn letters expressed positive descriptions of the Costanich foster home." *Id.* Indeed, the three aids and a foster-parent Duron spoke to reported that Duron deliberately "twisted their words," wanting Costanich to be guilty, and refusing to believe any statement to the contrary. CP 260-61, 264-65, 1452-53, 1517-18. The children's doctors, therapists, aids, GALs and CASAs told DSHS stating that the

children were not abused, but were thriving in the Costanich home and should remain there. Slip Op. at 7-8; CP 250-66, 1418-21, 1452-58, 1516-17.

C. DSHS pushed the Kalispel Tribe to take jurisdiction and remove E and B from Costanich's home.

As this was going on, DSHS was urging the Tribe to take jurisdiction and remove E and B from Costanich's care. Slip Op. at 3-4. When the Tribe refused, DSHS filed a motion to terminate Costanich's guardianship of E and B just four days after Costanich requested administrative review. *Id.*; CP 658, 1400, 1521, 1629. DSHS's motion was supported by investigator Duron's declaration. Slip Op. at 3-4.

Upon receiving DSHS's report, the Tribe assumed jurisdiction on April 12, 2002, the same day as DSHS's contested removal and termination hearing. *Id.*; CP 683-86, 1521. DSHS agreed to the Tribe's jurisdiction, but per the Tribe's request, continued to exercise "courtesy supervision" of the girls, conducting in-home visits and reporting to the Tribe. CP 659, 684, 1618. Costanich also agreed to Tribal jurisdiction – she would have done anything the Tribe told her to do to keep her girls and saw no point in fighting the Kalispel Tribe's

jurisdiction over Kalispel Indian children. CP 1522, 1525. Seeing no "choice in the matter," she "just agreed and prayed." *Id.*

In June 2002, Costanich signed an "Agreed" Order, requiring the girls to live on the reservation with tribal elders – complete strangers – for one month. CP 679-82. The order refers to this as a "vacation" to soften the girls' removal from Costanich. CP 1524. The Tribe had never before ordered the girls to spend time on the reservation without Costanich. CP 1523-25.

Leading up to their separation, the girls had watched DSHS remove their brothers from the Costanich home. CP 1523. The girls had never before been separated from Costanich and their disabilities made the entire ordeal very difficult to understand. CP 819-20, 1523. The Tribe had to physically remove the screaming and crying girls from Costanich's arms while they begged her not to leave. CP 1525.

A few weeks later, Costanich was allowed to take the girls over the weekend while their caretaker was sick. *Id.* When returning to the reservation, five-year-old B began shaking, crying and vomiting, begging Costanich not to leave her again. CP 1526. Costanich again had no choice. *Id.* Her worst fears were coming true – removal was irreparably harming her children. *Id.*

D. The ALJ overturned DSHS's abuse findings and license revocation, finding that the children were not emotionally abused, but in fact were thriving in Costanich's care.

On August 16, 2002, DSHS revoked Costanich's foster care license. Slip Op. at 4. Costanich appealed both the license revocation and the abuse finding. *Id.* The administrative law judge ("ALJ") held 19 days of evidentiary hearings, taking testimony from 49 witnesses. *Id.* The ALJ overturned DSHS's license revocation and abuse finding, ruling that the children were not emotionally abused, but were thriving in Costanich's care. *Id.*

E. In a prior appeal, Division One affirmed the ALJ.

DSHS appealed, and the DSHS review board reversed the ALJ's decision. Slip Op. at 4. Costanich appealed, and the Superior Court reversed the review judge's final administrative decision, awarding Costanich fees. *Id.* at 5. In a prior appeal, Division One set aside the review judge's decision, reinstated the ALJs decision, affirmed the superior court's fee award, and awarded Costanich fees on appeal. *Id.* The appellate court held that "'although DSHS was justified initially in its concern about Costanich's use of profanity, the evidence before the ALJ shows that DSHS was not substantially justified in revoking her license once it became aware of the

problems with Duron's investigation.'" *Id.*, *quoting* ***Costanich***, 138 Wn. App. at 564.

F. The Ninth Circuit previously ruled that Duron made material misrepresentations and may have fabricated evidence while investigating Costanich.

While Costnich's administrative appeal was pending in the superior court, she filed a separate superior court action against DSHS and six DSHS agents, asserting, among other things, 42 U.S.C. §1983 claims and various torts including negligent investigation. Slip Op. at 5-6. DSHS removed the matter to federal court, where it was held pending the state court appeal. *Id.* at 6. On cross-motions for summary judgment, the District Court dismissed all federal claims and declined to exercise supplemental jurisdiction over the state tort claims. *Id.* Costanich and DSHS both appealed. *Id.*

The Ninth Circuit Court of Appeals held that "deliberately fabricating evidence in civil child abuse proceedings violates the Due Process clause of the Fourteenth Amendment when a liberty or property interest is at stake, and that genuine issues of material fact exist on the question of deliberate fabrication." ***Costanich v. Dep't of Soc. & Health Servs.***, 627 F.3d 1101, 1108 (9th Cir. 2009) (footnote omitted); Slip Op. at 6. The Court held that "[t]he errors in

Duron's report are not questions of tone or characterization but actual misrepresentations," raising genuine issues of material fact as to whether her statements violated Costanich's due process rights. ***Costanich***, 627 F.3d at 1113-14; Slip Op. at 8. As just a few examples, produced evidence:

- That Duron misquoted and misrepresented witness statements; Duron's report stated she interviewed 34 people, but she later admitted that she had only brief contact with 18 of the identified witnesses;
- That Duron's report stated that she spoke to three therapists and received a report from a fourth, but she later admitted that she spoke to no medical professionals; witnesses denied the statements Duron attributed to them in quotations; and
- That contrary to Duron's report, many witnesses, including doctors and therapists expressed positive descriptions of the Costanich home and opined that the children were thriving there.

Slip Op. 7-8; 627 F.3d at 1111-13. But the Ninth Circuit affirmed summary judgment that DSHS was immune as a matter of law, holding that the due process right to be free from the deliberate fabrication of evidence during a civil investigation was not clearly established when DSHS negligently investigated Costanich. Slip Op. at 8; 627 F.3d at 1116.

G. The appellate court affirmed the trial court's rulings dismissing Costanich's outrage and negligent investigation claims on summary judgment.

Following these two appeals, Costanich pursued her remaining tort claims in state court, including her negligent-investigation and outrage claims. Slip Op. at 8. The negligent investigation claim pertained only to DSHS's actions surrounding E and B's guardianship. *Id.* Granting in part DSHS's motion for summary judgment, the court dismissed Costanich's claims for outrage, malicious prosecution, and abuse of process, but denied DSHS's motion to dismiss Costanich's negligent-investigation claim, finding genuine issues of material fact as to whether Costanich has standing to sue as a *de facto* parent or guardian. *Id.* at 8-9; CP 1089.

On the eve of trial, the court revisited DSHS's summary judgment motion on negligent investigation, requesting additional briefing from the parties on the application of this Court's decision, ***Roberson v. Perez***, 156 Wn.2d 33, 123 P.3d 844 (2005). Slip Op. at 9. The trial court presumed that DSHS's investigation was "biased or faulty," but dismissed Costanich's negligent-investigation claim, ruling as a matter of law that DSHS made no harmful placement decision, where Costanich "voluntarily" consented to the Tribe's jurisdiction after DSHS moved to terminate her dependency

guardianship and remove E and B. *Id.* The appellate court affirmed on appeal. Slip Op. at 18. Both parties moved to publish, but the court refused.

REASONS THIS COURT SHOULD ACCEPT REVIEW

A. The Appellate Court's decision is in conflict with this Court's decisions in *Roberson v. Perez* and *Tyner v. DSHS*. RAP 13.4(b)(1).

There are two elements to an actionable negligent-investigation claim: (1) whether DSHS's investigation falls below the standard of care; and (2) whether DSHS made a harmful placement, such as removing a child from a nonabusive home, or placing a child in an abusive home. ***Roberson***, 156 Wn.2d at 45-46. In ***Roberson***, this Court held that DSHS did not make a harmful placement decision, where Honnah Sims "voluntarily" sent her son to live with grandparents after learning that police reports identified her as among those abusing children as part of the "Wenatchee sex ring." 156 Wn.2d at 36, 46. It appears that Sims was not even under investigation at the time. *Id.* at 36. Crucial to this Court's holding is that Sims sent her son to his grandparents' weeks before DSHS took any action to remove the child. *Id.* at 36, 51.

The trial court misapplied ***Roberson*** in dismissing Costanich's negligent-investigation claim. Before Costanich

reluctantly agreed to Tribal jurisdiction, DSHS completed its shoddy investigation and labeled Costanich an abuser, while pressing the Tribe to remove E and B. CP 1400, 1521. When the Tribe did not act fast enough to take Costanich's girls, DSHS moved to terminate Costanich's dependency, giving its biased and faulty report to the dependency court and to the Tribe. *Id.* Costanich "agreed" to Tribal jurisdiction on the same day as the termination hearing, making the horrific Sophie's Choice that it was better to capitulate to the Tribe's wishes than to risk losing her children entirely. CP 1521-22.

Costanich's decision was not remotely "voluntary" as compared to the placement decision Sims made in ***Roberson***. This Court should accept review.

The appellate court's treatment of ***Tyner v. Dep't of Soc. & Health Servs.***, 141 Wn.2d 68, 1 P.3d 1148 (2000) conflicts with its own holding in that matter, as well as this Court's opinion adopting the appellate court's analysis, but reversing its ultimate conclusion. In ***Tyner***, this Court adopted the appellate court's holding that a trial court order will act as a superseding, intervening cause precluding State liability for negligent investigation, only if the State presents all material information to the trial court. ***Tyner***, 141 Wn. 2d at 88. But this Court reversed the appellate court's holding that "legal causation

[was] lacking as a matter of law because in its view all material information was presented to the court," holding that DSHS failed to give the trial court information the jury could have found material. 141 Wn.2d at 86. The same is plainly true here – DSHS gave the dependency court and the Tribe a biased and faulty report that omitted myriad witness statements praising the Costanich home and opining that removal would harm the children irreparably.

The appellate and trial courts ignored that DSHS forced Cosanich's hand by prejudicing the dependency court and the Tribe. DSHS should not escape liability as a matter of law simply because Costanich took a chance to save her daughters before DSHS could take them away. This Court should accept review.

B. The decision conflicts with the appellate court decision *Corey v. Pierce County*. RAP 13.4(b)(2).

In ***Corey v. Pierce County***, Barbara Corey presented evidence that her superior in the Pierce County Prosecuting Attorney's Office publically accused her of criminal conduct despite knowing that an internal investigation revealed little substance. 154 Wn. App. 762-63, 225 P.3d 367, *rev. denied*, 170 Wn.2d 1016 (2010). The appellate court affirmed the trial court's decision to send Corey's outrage claim to the jury, where the false accusation was

"particularly loathsome" to Corey, a longtime public servant. ***Corey***, 154 Wn. App. at 764-65. (distinguishing ***Dicomes v. State***, 113 Wn.2d 612, 630-31, 782 P.2d 1002 (1989), holding that "mere insults and indignities" are not actionable). Under ***Corey***, an outrage claim must go to the jury if "reasonable minds could differ on whether the conduct was sufficiently extreme to result in liability." ***Corey***, 154 Wn. App. at 763.

The Ninth Circuit previously held that there are issues of material fact as to whether Duron fabricated evidence impugning Costanich. ***Costanich***, 627 F.3d at 1108. It should go without saying that reasonable minds could find that outrageous. And calling Costanich – a longtime, unsurpassed foster-parent – a child abuser is equally "loathsome," if not more so, as calling Corey – a longtime prosecuting attorney – a criminal. This Court should accept review.

C. This matter presents the significant constitutional question of whether there is a due process right to be free from material misrepresentations and intentional fabrications in a civil investigation conducted by a State actor. RAP 13.4(b)(3).

As discussed above, The Ninth Circuit held that there are genuine issues of material fact as to whether Duron fabricated evidence in her civil abuse investigation, and held that such fabrications violate the Fourteenth Amendment Due Process Clause

when, as here, a liberty or property interest is at stake. ***Costanich***, 627 F.3d at 1108. But the Ninth Circuit nonetheless affirmed the summary dismissal of Costanich's claims, holding that the due process right to be free from the deliberate fabrication of evidence during a civil investigation was not clearly established when DSHS negligently investigated Costanich. 627 F.3d at 1116. This Court should accept review to determine whether Washington citizens have a constitutional due process right to be free from deliberate fabrications in a civil investigation implicating a liberty or property interests.

D. This Court should determine issues of substantial public interest presented in this matter, including: (1) whether Washington's foster families are remediless when DSHSs' negligence forces them to make harmful placement decisions; and (2) whether State actors may, without consequence, misrepresent and fabricate material evidence in civil investigations. RAP 13.4(b)(4).

Washington's foster families and dependency guardians have a substantial interest in knowing that DSHS can avoid a jury trial and escape liability if instead of removing a child from a non-abusive home, DSHS coerces foster parents into making supposedly "voluntary" placement decisions for the children in their care. Foster families and dependency guardians provide a vitally important service in our State, spending considerable time, energy, and

resources to care for children who often present severe behavioral and emotional difficulties. Indeed, in light of these children's difficulties, it is not uncommon for foster parents to come under DSHS investigation. CP 1515. But they should be able to expect that DSHS will act reasonably or be held accountable. These families have a significant interest in knowing that DSHS can lie about them, damaging their liberty or property, without being held accountable.

The importance of this matter is not limited to foster families, dependency guardians, or DSHS investigations. Every Washington citizen has an interest in knowing the permissible scope and breadth of civil investigations conducted by state actors. Indeed, our citizens would likely be shocked to learn that they have no recourse if a State actor investigating them misrepresents or even fabricates material evidence. This Court should accept review.

E. If this Court accepts review, then it should reverse the statutory-cost award.

The appellate court affirmed the trial court's award of costs to DSHS undue RCW 4.84.080, and DSHS sought costs on appeal. Slip Op. at 18. If this Court accepts review, the Court should review and reverse this cost award.

CONCLUSION

Although the Court previously held that Costanich is not abusive, it held that she has no remedies for DSHS's misrepresentations and possible fabrications. This Court should accept review.

RESPECTFULLY SUBMITTED this 13th day of January, 2014.

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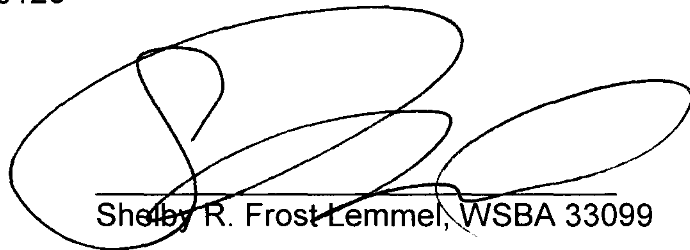

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

KATHIE COSTANICH,

Appellant,

v.

STATE OF WASHINGTON, DEPARTMENT OF SOCIAL AND HEALTH SERVICES (DSHS); SANDRA DURON and JOHN DOE DURON; CAROL SCHMIDT and JOHN DOE SCHMIDT; BEVERLY PAYNE, and JOHN DOE PAYNE; JAMES BULZOMI and JANE DOE BULZOMI; ROBERT STUTZ and JANE DOE STUTZ; INGRID McKENNY and JOHN DOE McKENNY,

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No. 68744-1-I

DIVISION ONE

UNPUBLISHED OPINION

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APPELWICK, J. — In 2001, the Department of Social and Health Services investigated allegations that Costanich physically and emotionally abused foster children in her care. DSHS made a formal emotional abuse finding, because Costanich swore around the children. Her foster care license was eventually revoked. Costanich sued DSHS on several theories. The trial court eventually dismissed Costanich's negligent investigation and outrage claims on summary judgment. We affirm.

FACTS

Kathie Costanich has been a licensed foster parent in Washington since 1983. Costanich v. Dep't of Soc. & Health Servs., 627 F.3d 1101, 1103 (2010); Costanich v. Dep't of Soc. & Health Servs., 138 Wn. App. 547, 552, 156 P.3d 232 (2007), reversed in part by, 164 Wn.2d 925, 194 P.3d 988 (2008). She specializes in caring for sexually aggressive youth and medically fragile infants. Costanich, 138 Wn. App. at 552. In July

2001, Costanich had six children living in her home: three male foster children, K. (15), J. (12), and P. (10); one male under dependency guardianship, F. (17); and two sisters also under dependency guardianship, E. (8) and B. (4).[1] Costanich, 627 F.3d at 1103-04. All of her foster children were victims of abuse or neglect, and many had behavioral, developmental, and medical problems. Costanich, 138 Wn. App. at 552. At the time, the Department of Social and Health Services (DSHS) described the Costanich foster home as a "'unique and valuable resource . . . unsurpassed by any foster home in the State.'" Id. (alteration in original). Costanich was also president of the Foster Parents of Washington State and a trainer for DSHS. Id.

E. and B. lived with Costanich since infancy. They are both enrolled members of the Kalispel Tribe (Tribe). With the Tribe's permission, Costanich became their dependency guardian pursuant to court orders entered in 1996 and 1998. The orders required Costanich to provide E.'s and B.'s birth mother with visitation, consult the Tribe and the mother on cultural and religious issues, and maintain contact with the Tribe. The Tribe would not allow Costanich to adopt the girls.

Child Abuse Investigation

In summer 2001, Sandra Duron, a social worker for Child Protective Services (CPS),[2] began investigating K'.s statements to his therapist that Costanich physically and emotionally abused the children in her care. Costanich, 627 F.3d at 1104. K. claimed that Costanich put her hands around F.'s neck and said, "'I'll kill you bastard'" after seeing an altercation between F. and one of her aides. Id. F.'s account of the

[1] We refer to the children only by their first initials to protect their privacy.
[2] CPS is a branch of DSHS.

incident was basically the same. Id. K. also said Costanich told P. to move his "'black ass'" and clean his room. Id. And, K. claimed that Costanich called E. a "'cunt'" and saw her grab E.'s hair. Id. Duron reported that J. told her he saw Costanich rub urine-soaked sheets in P.'s face. Id. Costanich acknowledged that she openly swore around the children, but did so to take the "power" out of profanity.

In her report, Duron indicated that all the children claimed Costanich used profanity regularly, and all but one claimed she directed profanity at them and used physical violence. Id. All the adults Duron interviewed also admitted Costanich used profanity, but they differed on whether it was directed at the children and whether Costanich used physical violence. Id. A clinical psychologist who reviewed Duron's records but did not interview the children opined that swearing at children may lead to or exacerbate behavioral problems. Id. Duron concluded that the emotional abuse allegation was "'founded,'" but the physical abuse allegation was "'inconclusive.'" Id.

In November 2001, DSHS told Costanich that if she did not appeal its emotional abuse finding and agreed to participate in a corrective management plan, it would not seek termination of her guardianship of E. and B. Id. at 1105. By that time, DSHS had removed P. and J. from the Costanich home. In December 2001, DSHS made a formal finding of emotional abuse. Id. On March 14, 2002, DSHS informed Costanich that it upheld the finding of emotional abuse after internal review. Id. Costanich requested an administrative hearing on March 24, 2002. Id.

Meanwhile, DSHS urged the Kalispel Tribe to take jurisdiction and remove E. and B. from Costanich's care. The Tribe initially refused. On March 28, 2002, four days after Costanich requested the administrative hearing, DSHS filed a motion to terminate

her guardianship of E. and B. The petition was supported by Duron's declaration that Costanich "'uses profanity, name-calling, and derogatory racial terms as means to discipline and intimidate the children.'" Id.

On April 12, 2002, the day the contested termination hearing was scheduled, Costanich and the Tribe entered an agreed motion and order transferring jurisdiction to tribal court. The guardianship termination motion was never heard by the juvenile court. Per the Tribe's request, however, DSHS continued to exercise "courtesy supervision" of the girls, conducting home visits and reporting to the Tribe. Costanich subsequently entered a visitation order with the Tribe, agreeing that E. and B. would live with the Tribe for 30 days in the summer of 2002. The Tribe returned E. and B. to Costanich after the 30 days.

Administrative Appeal of Emotional Abuse Finding and License Revocation

On August 16, 2002, DSHS revoked Costanich's foster care license. Costanich, 138 Wn. App. at 553. Costanich appealed both the finding of abuse and the revocation of her license. Id. In late 2002 and early 2003, an administrative law judge (ALJ) held 19 days of evidentiary hearings and heard testimony from 49 witnesses. Costanich, 627 F.3d at 1106. The ALJ overturned the DSHS decision, finding that the children were not emotionally abused, but in fact were thriving based on their therapists' and social workers' testimony. Costanich, 138 Wn. App. at 553. The ALJ found that K.'s hearsay statements lacked credibility and Costanich's swearing was never directed at the children. Id. at 556-57, 558-59.

DSHS appealed and the DSHS Board of Appeals review judge reversed the ALJ's decision. Id. at 553. He found there was substantial evidence that Costanich

threatened to kill F., told P. to move his "'black ass,'" called E. names, and swore at the children. Id. He concluded that this constituted emotional abuse and justified revoking Costanich's license. Id. Costanich appealed and the superior court reversed the review judge's final administrative decision. Id. The superior court awarded Costanich attorney fees under the equal access to justice act, RCW 4.84.350. Id.

DSHS appealed from the superior court's reversal. Id. The primary issue on appeal was the level of deference the review judge owed the ALJ. Id. at 554. We held that the review judge acted outside the scope of his authority in making additional, contradictory findings based solely on hearsay evidence. Id. at 559. We set aside the review judge's decision, reinstated the ALJ's decision, affirmed the superior court's decision to award Costanich attorney fees, and awarded Costanich attorney fees on appeal.[3] Id. at 564. We concluded that "although DSHS was justified initially in its concerns about Costanich's use of profanity, the evidence before the ALJ shows that DSHS was not substantially justified in revoking her license once it became aware of the problems with Duron's investigation." Id.

Federal Appeal of § 1983 Claims

While Costanich's administrative appeal was pending in superior court, she filed another action in state court against DSHS and six DSHS agents, asserting 42 U.S.C. § 1983 claims, as well as negligent infliction of emotional distress, outrage, negligent

[3] DSHS filed a motion to modify the Commissioner's award of $46,239 in attorney fees. Costanich, 164 Wn.2d 928. We granted the motion and denied Costanich attorney fees but sanctioned DSHS for not raising its arguments earlier. Id. Costanich then filed a petition for review. Id. The Washington Supreme Court held that the equal access to justice act provides a statutory cap of $25,000 for each level of judicial review. Id. at 934-35.

investigation, malicious prosecution, and abuse of process. Costanich, 627 F.3d at 1106 & n.9. DSHS removed the action to federal court, where it was held pending the state court appeal. Id. at 1106. The individual defendants then moved for summary judgment, asserting absolute and qualified immunity. Id. at 1106-07. Costanich also moved for partial summary judgment on her § 1983 claims, arguing that Duron's fabrication of evidence deprived her of her right to due process. Id. at 1107. The district court granted the defendants' cross motion for summary judgment on all federal claims and declined to exercise supplemental jurisdiction over the state tort claims. Id. Both Costanich and DSHS cross appealed to the Ninth Circuit. Id.

The Ninth Circuit held that deliberately fabricating evidence in civil child abuse proceedings violates due process when a liberty or property interest is at stake. Id. at 1108. The court held that genuine issues of material fact existed as to whether Duron deliberately fabricated evidence during her investigation, which led to termination proceedings and license revocation.[4] Id. The Ninth Circuit recognized that Costanich produced evidence of Duron misquoting and misrepresenting witness statements. Id. at 1111. For instance, Duron's report indicated she interviewed 34 people. Id. at 1112. She later admitted that she had only brief contact with 18 of the identified witnesses. Id. The Ninth Circuit explained that Duron's "misrepresentations about interviewing the children's doctors were especially significant." Id. Duron stated that she interviewed

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[4] To sustain a deliberate fabrication of evidence claim, the plaintiff must, at a minimum, point to evidence that supports at least one of two propositions: (1) defendants continued their investigation despite the fact that they knew or should have known that the plaintiff was innocent, or (2) defendants used investigative techniques that were so coercive and abusive that they knew or should have known that those techniques would yield false information. Costanich, 627 F.3d at 1111.

three therapists and received reports from a fourth, which lent credibility to her report. Id. But, she testified before the ALJ that she did not actually speak to any medical professionals. Id. Duron also admitted that she never interviewed K.'s therapist, despite suggesting in her report that she had a conversation with him. Id. She further conceded that in her meeting with K., "'K. wouldn't say much,'" so she "'just kind of summarized what he was saying.'" Id.

Other witnesses also pointed out that Duron's report contained evidence and statements they never made. Id. For example, according to Duron's report of her interview with Diane Isley, F.'s guardian ad litem, Isley stated that Costanich, in reference to a child that might try to run away, said she would "'chain the little shit to the bed.'" Id. Isley declared in a sworn letter, however, that she never made this statement and never talked to Duron about such a child. Id. Duron also reported that another aide, Crystal Hill, said that Costanich was "'always calling E. a fucking cunt, and bitch.'" Id. (internal quotation marks omitted). But, in a sworn letter, Hill stated, "'I have never seen her directly swear face to face at one of the children.'" Id. The Ninth circuit concluded that Duron's purposeful use of quotation marks around many of the purported witness statements—including Isley's and Hill's statements—could support a trier of fact's conclusion that she deliberately fabricated evidence. Id.

Also contrary to Duron's report, witnesses' sworn letters expressed positive descriptions of the Costanich foster home. Id. In fall 2001 and spring 2002, J.'s, K.'s, E.'s, and B.'s therapists wrote to DSHS reporting that the children were doing well in Costanich's home and strongly recommended against their removal. Id. at 1104. Specifically, J's therapists noted his substantial improvements in Costanich's home and

expressed their belief that DSHS "'did not, in a reasonable manner, consult with [J.'s] providers on how his removal from the foster home was to be conducted.'" Id. at 1105. E.'s and B.'s therapist also prepared a sworn letter describing the loving, nurturing relationship between Costanich and the girls, and warned DSHS of the "'emotional damage that removing them will cause.'" Id. Likewise, K.'s therapist wrote of the stability in Costanich's home and the progress K. made there, and emphasized that moving K. "'would be detrimental to K.'s emotional and mental health.'" Id.

The Ninth Circuit concluded that Duron's errors were not a question of tone or characterization, but rather actual misrepresentations. Id. at 1113. The court acknowledged that Duron could have believed Costanich was guilty of emotional abuse. Id. However, that belief did not permit or excuse deliberate falsification of evidence. Id. Nevertheless, the Ninth Circuit held that Duron was entitled to qualified immunity, because the right to due process in proceedings adjudicating a foster care license and terminating guardianship was not clearly established at the time of the investigation. Id. at 1108.

State Court Negligent Investigation and Outrage Claims

Following the two appeals, Costanich pursed her remaining tort claims in state court, including negligent investigation and outrage. Costanich's negligent investigation claim related only to events surrounding E.'s and B.'s guardianship. Costanich and DSHS made cross motions for summary judgment. The trial court denied Costanich's motion for partial summary judgment. The court granted DSHS's motion in part, dismissing Costanich's outrage claim. However, the court refused to dismiss Costanich's negligent investigation claim, finding genuine issues of material fact as to

whether Costanich was a de facto parent or guardian with standing to sue under RCW 26.44.010.

The trial court subsequently requested additional briefing from the parties regarding the application of Roberson v. Perez, 156 Wn.2d 33, 123 P.3d 844 (2005), to Costanich's negligent investigation claim. The court presumed for the purposes of summary judgment that DSHS made a biased or faulty investigation. However, the court concluded that DSHS made no harmful placement decision as a matter of law, because Costanich voluntarily removed E. and B. from the jurisdiction of the dependency court. The trial court therefore held that Roberson controlled and dismissed Costanich's negligent investigation claim. Costanich appeals.

DISCUSSION

Costanich argues that the trial court erred in dismissing her negligent investigation claim when it found that DSHS did not make a harmful placement decision. She also argues that the trial court erred in dismissing her outrage claim, because the Ninth Circuit already held that genuine issues of material fact exist as to whether Duron deliberately fabricated evidence. Lastly, she asks that we vacate the trial court's award of costs to DSHS.

We review an order granting summary judgment de novo. Hadley v. Maxwell, 144 Wn.2d 306, 310-11, 27 P.3d 600 (2001). We review all facts and reasonable inferences drawn from the facts in the light most favorable to the nonmoving party. CTVC of Haw. Co. v. Shinawatra, 82 Wn. App. 699, 708, 919 P.2d 1243, 932 P.2d 664 (1996). Summary judgment is proper only when there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. CR 56(c); Peterson

v. Groves, 111 Wn. App. 306, 310, 44 P.3d 894 (2002). Unsupported, conclusory allegations or argumentative assertions are not sufficient to defeat summary judgment. Vacova Co. v. Farrell, 62 Wn. App. 386, 395, 814 P.2d 255 (1991). Instead, the plaintiff must put forth evidence showing a triable issue exists. Seven Gables Corp. v. MGM/UA Entm't Co., 106 Wn.2d 1, 12-13, 721 P.2d 1 (1986).

I. Negligent Investigation Claim

Costanich argues that the trial court erroneously dismissed her negligent investigation claim on summary judgment. She points out that the trial court agreed there were fact questions as to whether DSHS's investigation was biased or faulty. However, the court ruled that DSHS did not make a harmful placement decision as a matter of law under Roberson. Costanich contends this was error, because there are genuine issues of material fact as to whether she voluntarily sent E. and B. to live with the Tribe. She argues that DSHS's "negligent and outrageous conduct plainly coerced [her] to give up her daughters temporarily, fearing that she would otherwise lose them forever."

Washington courts recognize an implied cause of action against DSHS for negligent investigation of child abuse allegations under chapter 26.44 RCW. Roberson, 156 Wn.2d at 44-45. However, negligent investigation claims are cognizable only when DSHS conducts a biased or faulty investigation that leads to a harmful placement decision, such as placing a child in an abusive home, removing the child from a nonabusive home, or failing to remove the child from an abusive home. Id. at 45.

In Roberson, the city of Wenatchee and Douglas County investigated child abuse allegations in the publicized "Wenatchee sex ring." Id. at 36. Honnah Sims learned that

police reports identified her as among those accused of abusing children. Id. Fearing imminent arrest, she sent her 13 year old son to live with a grandparent in Kansas, relinquishing guardianship to that grandparent. Id. Sims was eventually acquitted of all charges, and her son returned to the family after living with his grandparent for seven months. Id. Sims later sued DSHS for negligent investigation, arguing that sending her son away was a preemptive move tantamount to constructive removal. Id. at 37, 46.

The Washington Supreme Court rejected this argument and held there was no harmful placement as a matter of law, because Sims sent her son away through voluntary acts. Id. at 46-47. The court recognized three reasons why extending the cause of action for negligent investigation to include such "constructive placement" would be problematic and beyond the statute. Id. at 46. First, any harm resulting from the investigation would be purely speculative in nature. Id. It would be difficult to determine what placement action, if any, that DSHS might have taken. Id. Second, claimants asserting constructive placement could largely control the extent of their damages. Id. Because damages reflect disruption to the family unit, the length of such a disruption is proportionate to the damage. Id. Sims, for example, determined the length of time that her son was away from home. Id. Third, extending harmful placement to include constructive placement could encourage individuals to frustrate investigations. Id. at 47. Thus, constructive placement is insufficient to meet the legal standard for a harmful placement decision. Id.

Costanich argues that her case is comparable to Tyner v. Dep't of Soc. & Health Servs., 141 Wn.2d 68, 1 P.3d 1148 (2000), rather than Roberson. In Tyner, a DSHS caseworker filed a dependency petition alleging that Tyner sexually abused his children.

Id. at 73-74. As a result, the court prohibited all contact and separated Tyner from his children for several months. Id. at 73, 75. The caseworker subsequently completed an investigation and concluded that the abuse allegations were unfounded. Id. at 74. However, he failed to inform the court of his finding and the court continued to restrict Tyner's contact with his children. Id. at 74-75. The Supreme Court held that the judge's no-contact order will act as a superseding cause, "precluding liability of the State for negligent investigation, only if all material information has been presented to the court and reasonable minds could not differ as to this question." Id. at 88. Costanich argues that like in Tyner, DSHS failed to provide the Tribe with all relevant information, such as statements from E.'s and B.'s therapists that they would suffer emotional harm if they were removed from Costanich's care.

However, Tyner is distinguishable. In that case, the children were actually removed from Tyner's care, because DSHS neglected to turn over relevant information to the court. Id. at 73-74. In contrast, DSHS made no placement decision here. Costanich voluntarily transferred jurisdiction to the Tribe. Once the Tribe had jurisdiction, DSHS had no input or control over any subsequent placement decision. Costanich nevertheless attempts to distinguish Roberson, because here DSHS filed a motion to terminate her guardianship of E. and B. However, in Roberson, on the day of Sims's arrest, CPS filed a dependency petition for her son and obtained a court order to take him into shelter care.[5] 156 Wn.2d at 51 (Sanders, J., dissenting). We can infer, then, that an unexecuted placement decision does not constitute harmful placement

[5] The dissent argued that this "unexecuted" placement decision "was a placement decision nonetheless," with "harmful consequences." Roberson, 156 Wn.2d at 52.

when the guardian preempts the State's removal of the child. By signing the agreed order with the Tribe, Costanich controlled the extent of her damages by determining the length of time that E. and B. were away from her home. DSHS did not make that decision. Costanich did. Like Roberson, we cannot say for sure that the juvenile court would have terminated Costanich's guardianship.

The record also shows that Costanich never actually transferred guardianship of E. and B. to the Tribe. Rather, she signed a visitation order agreeing that E. and B. would live on the reservation with tribal elders for 30 days. This was consistent with the terms Costanich agreed to in becoming E.'s and B.'s guardian. The order specified that the visit was "intended to be a summer vacation for the children," so they could participate in tribal events and visit extended family. The order also noted that Costanich and her husband "will visit the children" on the reservation during their summer vacation. The Tribe acknowledged that the "children have a parent/child relationship" with Costanich. And, a handwritten note on the order stated that the Costaniches "fully support the girls' close and continuing relationship with their Tribe [and] are pleased that the girls have this opportunity to know their relatives [and] other members [and] to learn more about their culture [and] customs." At the end of the 30 day summer vacation, the Tribe returned E. and B. to Costanich. E. lived with Costanich until June 2010 and B. still lives with her.

Costanich nevertheless contends that she did not voluntarily enter the agreed orders transferring jurisdiction and granting visitation, because DSHS's conduct was so egregious that she felt forced to relinquish guardianship of E. and B. to the Tribe. Even if true, this is the type of constructive placement argument the Supreme Court expressly

rejected in Roberson.[6] In Roberson, Sims felt forced to send her son away, fearing the State would take him from her. 156 Wn2d at 36, 46. Here, Costanich alleges that she felt forced to transfer jurisdiction and agree to summer visitation with the Tribe, because DSHS would otherwise take E. and B. away from her. We hold that Roberson controls and Costanich's agreement to transfer jurisdiction to the Tribe and allow summer visitation was at most constructive placement. This preempted any harmful placement decision by DSHS, so Costanich's negligent investigation claim fails as a matter of law.[7]

II. Outrage Claim

Costanich argues that the trial court erred in dismissing her outrage claim on summary judgment. She contends that the Ninth Circuit already held that Duron made material misrepresentations in her report, which is sufficient to support her outrage claim. Even if Duron's misrepresentations are not sufficiently outrageous, Costanich argues, the Ninth Circuit also held that there are genuine issues of material fact as to whether Duron deliberately fabricated evidence. She contends that it is "outrageous and utterly intolerable for a government employee to lie under oath and to fabricate

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[6] Constructive placement is comparable to constructive discharge in the employment context. DAVID K. DEWOLF & KELLER W. ALLEN, 16 WASHINGTON PRACTICE: TORT LAW AND PRACTICE § 1.27, at 50 (3d ed. 2006). Constructive discharge occurs when an employer engages in a deliberate act or pattern of conduct that makes working conditions so intolerable that a reasonable person would feel compelled to resign. Washington v. Boeing Co., 105 Wn. App. 1, 15, 19 P.3d 1041 (2000). In essence, constructive discharge occurs when an employee feels forced to resign because of intolerable conditions, as opposed to voluntarily resigning. Id. at 15-16. This comparison makes it clear that Costanich is asserting constructive placement.

[7] The State argues that we can affirm on the alternative ground that Costanich lacked standing to bring a negligent investigation claim. Because there was no harmful placement decision, however, we need not reach the issue of standing.

grossly inflammatory evidence during a civil investigation," especially when the children's therapists said they were thriving in Costanich's home.

To establish the tort of outrage, or intentional infliction of emotional distress, a plaintiff must show (1) extreme and outrageous conduct; (2) intentional or reckless infliction of emotional distress; and (3) severe emotional distress as a result. Reid v. Pierce County, 136 Wn.2d 195, 202, 961 P.2d 333 (1998). To prove extreme and outrageous conduct, it is not enough to show that the defendant acted with tortious or criminal intent, intended to inflict emotional distress, or even acted with malice. Grimsby v. Samson, 85 Wn.2d 52, 59, 530 P.2d 291 (1975). Rather, the conduct must be "'so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community.'" Id. (emphasis omitted) (quoting RESTATEMENT (SECOND) OF TORTS § 46 cmt. d (1965)). The question of whether certain conduct is sufficiently outrageous is ordinarily for the jury, but the court must initially determine if reasonable minds could differ on whether the conduct was sufficiently extreme to result in liability. Dicomes v. State, 113 Wn.2d 612, 630, 782 P.2d 1002 (1989).

The second two elements of outrage are satisfied here. The Ninth Circuit held that genuine issues of material fact exist as to whether Duron deliberately fabricated evidence during her investigation. Costanich, 627 F.3d at 1108. This satisfies the intentional or reckless infliction of distress prong for the purposes of surviving summary judgment. Likewise, Costanich alleged that she suffered from anxiety, depression, nausea, humiliation, and sleeplessness as a result of the investigation and abuse finding. Outrage does not require a showing of objective symptoms that constitute a

diagnosable disorder. Kloepfel v. Bokor, 149 Wn.2d 192, 197-98, 66 P.3d 630 (2003). Rather, emotional distress includes "'all highly unpleasant mental reactions, such as fright, horror, grief, shame, humiliation, embarrassment, anger, chagrin, disappointment, worry, and nausea.'" Id. (quoting RESTATEMENT (SECOND) OF TORTS § 46 cmt. j, at 77 (1965)). Costanich's alleged symptoms clearly meet this standard.

The question is then whether DSHS's conduct was sufficiently extreme and outrageous to become a question for the jury. Costanich relies on Corey v. Pierce County, 154 Wn. App. 752, 764, 225 P.3d 367 (2010), to argue that it was.[8] Barbara Corey worked as a prosecutor for 20 years. Id. at 757. After she resigned, Pierce County Prosecuting Attorney Gerry Horne publically accused her of criminal behavior despite knowing that an internal investigation revealed little substance. Id. at 764. Horne also implied that Corey mishandled public funds. Id. These comments devastated Corey, both emotionally and professionally. Id. at 759. As a prosecutor and public servant, such allegations were "particularly loathsome" to Corey and went beyond the mere insults and indignities. Id. at 764. Thus, Horne's behavior was sufficiently outrageous to warrant liability. Id.

In Corey, we distinguished Horne's outrageous actions from those in Dicomes. Id. In that case, Deanna Dicomes worked as an executive secretary for the Department of Licensing (DOL). 113 Wn.2d at 614-15. After she exposed budget data that created a public uproar, DOL initiated a "'management study'" as an allegedly pretextual way to

[8] In contrast, DSHS relies on Waller v. State, 64 Wn. App. 318, 824 P.2d 1225 (1992), to argue that the conduct here was not outrageous. Waller is distinguishable, though, because the DSHS caseworkers there were at most grossly negligent. Id. at 337. While negligence is insufficient to establish outrageous conduct, here we have a question of fact as to whether Duron's conduct was deliberate.

fire Dicomes. Id. at 616. The court found no atrocious, intolerable conduct where DOL terminated Dicomes by privately delivering a termination letter and briefly responding to media inquiries about the dismissal. Id. at 630. The fact of pretextual discharge was not sufficient to support her outrage claim. Id. At worst, Dicomes's allegations amounted to bad faith, but not outrage. Id. at 631. Likewise, in Lawson v. Boeing Co., several female employees complained that Charles Lawson sexually harassed them. 58 Wn. App. 261, 263, 792 P.2d 545 (1990). Lawson alleged that these employees "deliberately, maliciously and outrageously lied about him," which resulted in his demotion. Id. at 263, 270. We held that Lawson's contentions were not so outrageous in character and so extreme in degree as to warrant liability for outrage. Id. at 270.

Even if true, DSHS's conduct here was not so outrageous in character and so extreme in degree as to be regarded as atrocious and utterly intolerable in civilized society.[9] The record shows that Duron recorded and considered both favorable and unfavorable accounts of Costanich's behavior. Duron's finding of inconclusive physical abuse also indicates that she did not give complete credence to unsubstantiated allegations against Costanich. In contrast to Corey, where Horne falsely accused her of criminal behavior, all the children in the Costanich home reported that Costanich used

[9] Costanich argues that her expert, Darlene Flowers, testified that DSHS has a history of making adverse findings, revoking licenses, and taking other retaliatory measures against vocal foster parents like Costanich. On appeal, DSHS moved to strike Costanich's reference to "testimony" by expert Flowers. Flowers's curriculum vitae (CV) and proposed testimony is included in the record as an attachment to DSHS's motion in limine to exclude her testimony. In response to DSHS's motion in limine, Costanich claimed that DSHS mistakenly assumed the Flowers's CV was an expert report. It does not appear from the trial record before us that Flowers testified or was qualified as an expert. No expert opinion is properly before us, so we grant DSHS's motion to strike.

profanity regularly, and all but one claimed she directed profanity at them. At worst, DSHS's conduct was reprehensible and Duron conducted her investigation in bad faith. However, as Dicomes and Lawson hold, such conduct is not sufficiently extreme to result in liability. We hold that the trial court properly dismissed Costanich's outrage claim on summary judgment.

Because we affirm on all assignments of error, there is no basis for us to reverse the trial court's award of costs to DSHS.

We affirm.

Appelwick, J.

WE CONCUR:

Spearman, A.C.J.

Becker, J.

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

KATHIE COSTANICH, Appellant, v. STATE OF WASHINGTON, DEPARTMENT OF SOCIAL AND HEALTH SERVICES (DSHS); SANDRA DURON and JOHN DOE DURON; CAROL SCHMIDT and JOHN DOE SCHMIDT; BEVERLY PAYNE, and JOHN DOE PAYNE; JAMES BULZOMI and JANE DOE BULZOMI; ROBERT STUTZ and JANE DOE STUTZ; INGRID McKENNY and JOHN DOE McKENNY, Respondents.	No. 68744-1-I ORDER DENYING MOTIONS TO PUBLISH

The respondents, Washington State Department of Social and Health Services, Sandra Duron, Carol Schmidt, Beberly Payne, James Bulzomi, Robert Stutz, and Ingrid McKinney, having filed their motion to publish, and a panel of the court having considered its prior determination and finding that the opinion will not be of precedential value; now, therefore it is hereby

ORDERED, that the unpublished opinion filed November 4, 2013 shall remain unpublished.

DATED this 16th day of December, 2013.

Judge

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