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APR 17 2017

**WASHINGTON STATE
SUPREME COURT**

No. 94275-7

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

NASRI ABUBAKAR
Petitioner,

v.

ABDIMALIK HASSAN,
Respondent.

ANSWER TO PETITION FOR REVIEW

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ARGUMENT

A. The Petition does not meet any of the criteria for acceptance.

A petition for review can be granted only if it meets any of the following criteria:

A petition for review will be accepted by the Supreme Court only:

- (1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or
- (2) If the decision of the Court of Appeals is in conflict with a published decision of the Court of Appeals; or
- (3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or
- (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

RAP 13.4(b). The Petitioner requests review under (4), arguing that the case presents an issue of substantial public interest. But this Petition meets none of these criteria.

1. The Petition does not involve an issue of substantial public interest that this Court should decide.

The Petition seeks review under RAP 13.4(b)(4), arguing that it involves an issue of substantial public interest that this Court should decide. The right to counsel is indeed a matter of substantial public interest, but this case is not the right vehicle to decide it.

Any right to counsel must be a matter of substantial public interest, given the importance of counsel in ensuring Due Process and given the prevalence of *pro se* litigants in family-law cases. The question in this case is not the right to counsel *per se*—no one doubts that the Petitioner had the right to hire counsel at any time. The question here is whether Petitioner had a right to *publicly funded* counsel. If Petitioner were to prevail on the merits, the case would likely have a substantial effect on the public fisc, and it would likely invite other appeals seeking counsel in other types of family-law cases or civil cases generally. These are matters of substantial public interest.

But the rule for granting review requires more. It also requires that the issue be one “that should be determined by the Supreme Court.” RAP 13.4(b)(4). And this is where the Petition falls short. The Petition relies heavily on an order—the “concurrent jurisdiction” order—that is not in the record. The Petitioner has never explained the absence of this crucial document from the record. Without it, this Court cannot analyze the language in the order, cannot compare its language to that in other cases, and cannot adequately review the issues raised. If this Court is to undertake so important an issue as whether some family-law litigants are entitled to publicly funded counsel, it should wait for a case in which the record is complete. This is not that case.

2. **The decision of the Court of Appeals does not conflict with a decision of this Court or of the Court of Appeals.**

In addition, the Petition does not cite to any decision of this Court, and no decision of this Court is on point. Therefore, RAP 13.4(b)(1) and (2) do not apply, nor does Petitioner claim that they apply. The Petition does cite to two Court of Appeals cases, although it does not argue that either case is in conflict with the instant case.

The first is *In re Dependency of E.H.*, 158 Wn. App. 757, 243 P.3d 160 (2010), which the Petitioner relied on heavily in the Court of Appeals. There, the dependency court granted “concurrent jurisdiction” to the family court, and it modified a standard order to expressly give the family court authority over a portion of the dependency:

The juvenile court judge revised the concurrent jurisdiction order, specifying that the family court would also decide the dependency-related permanency planning issue of whether to return EH to one of the parents' homes.

Dependency of E.H., 158 Wn. App. at 760. The dependency court here did not modify the concurrent jurisdiction order or grant express authority over any part of the dependency to the family court. Therefore, because *E.H.* rests on different facts, it is not on point and not in conflict with the Court of Appeals decision here.

The Petition also cites to *Perry v. Perry*, 31 Wn. App. 604, 644 P.2d 142 (1982). There, the juvenile court found the child dependent as to the mother, and then it transferred the case to family court to determine the father's motion to modify the divorce decree. After the family court decided that motion in the father's favor, the dependency was terminated. The case has nothing to say about appointed counsel, and its holding as to the respective jurisdiction of the dependency and family courts says that the family court should normally defer its decision until the dependency matter is determined:

[W]e think the legislature adopted the view in *Walker* [*v. Superior Court*, 43 Wn.2d 710, 263 P.2d 956 (1953)] and intended to provide that matters of dependency should be handled exclusively and originally by the juvenile court and that the superior court defer determination of custody as between the parents in a dissolution proceeding until the juvenile court has made a determination of the dependency matter.

Perry, 31 Wn. App. at 608. In the instant case, there is no assertion that the family court usurped the role of the dependency court, therefore the instant case has different facts and is not in conflict with *Perry*.

3. **The Petition does not involve a significant question of law under either the federal or state constitutions.**

Finally, RAP 13.4(b)(3) does not apply because the Petition does not involve a significant question of law under the federal or state

constitutions. The Court of Appeals did not find the issue sufficiently significant to justify publishing its opinion. In addition, in that court, the Petitioner argued primarily on statutory grounds, under RCW 13.34.090. She also raised an issue under Const., article I, section 3. But she presented no analysis under *State v. Gunwall*, 106 Wn.2d 54, 720 P.2d 808 (1986), to support that argument. A *Gunwall* analysis is required whenever a party argues for an interpretation of the state constitution that is different from the federal constitution. *State v. Wheeler*, 145 Wn.2d 116, 124, 34 P.3d 799 (2001). It is “a necessary starting point for a discussion between bench and bar about the meaning of a state constitutional provision.” Utter, *The Practice of Principled Decision-Making in State Constitutionalism: Washington's Experience*, 65 Temp. L. Rev. 1153, 1160-63 (1992). Because the Petitioner did not properly brief the constitutional argument, and has not briefed it or relied on it here, this Court should not take review under RAP 13.4(b)(3).

4. **If this Court does accept review, it should limit review to the issue regarding counsel.**

If this Court does accept review, it should limit its review to the question of whether the Petitioner was entitled to publicly funded counsel. It should not accept review on the question of whether the trial

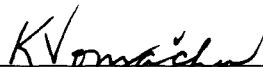
court correctly decided the factual issues, as those issues do not meet any of the criteria in RAP 13.4(b).

CONCLUSION

The Petition raises an issue of substantial public interest, but because the record is missing a crucial document, it is not an issue that this Court should decide with this case. Additionally, the Court of Appeals decision does not conflict with any decision of this Court or of the Court of Appeals, and the case does not raise a significant question of law under the federal or state constitutions. For all of these reasons, the Respondent respectfully asks this Court deny review.

If the Court does accept review, it should limit review to the issue regarding counsel.

DATED this 14 day of Apr, 2017



Kelly Vomacka, WSBA #20090
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CERTIFICATE OF SERVICE

CERTIFICATE

I certify that on April 14, 2017, I mailed, postage prepaid, a copy of the following documents:

1. Answer to Petition for Review
2. Certificate of Mailing

to:

James A. Jackson
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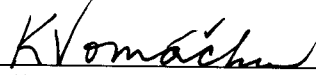
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DATED: April 14, 2017

Respectfully submitted,



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