FILED
MAR 26 2018
WASHINGTON STATE
SUPREME COURT

NO. 95346-5 COA No. 73713-9-I

SUPREME COURT OF THE STATE OF WASHINGTON

DEOIDE LEA CUNNINGHAM, appellant,

V.

DEPARTMENT OF SOCIAL AND HEALTH SERVICES,

Respondent.

RESPONSE TO RESPONDENTS ANSWER ON EMERGENCY MOTIONS

Deoid'e Lea Cunningham, appellant

Karl Ivan Olson significant other 28 years

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I. INTRODUCTION

This is a response to answer from the Attorney general (AG) , Deoide's motions are appropriate under RAP 13.4, RAP 13.4(a) RAP 13.4(b)(1)-(4), RAP 9.10, RAP 9.11, RCW 34.05.562(1)-(d), RAP 17.4(b). RCW 34.05.570, RCW 34.05.526, U.S. CONST. amend XIV, we ask the court to approve Deoide's motions and strike the AG response.

II. IDENTITY OF THE MOVING PARTY

The petitioner is Ms. Deoid'e Lea Cunningham assisted by Karl Ivan Olson her significant other and personal caregiver of 28 years.

III. ARGUMENT WHY THE AG ANSWER SHOULD BE DENIED.

A. Did the AG honestly think that Dr Whitehead, after intimidation by the AG, by his own supervisors about pain management, neurological protocols would write Deoid'e a letter of credibility explaining that it was he who placed Deoid'e in withdrawals just before the hearing on 5/20/2014?

Deoid'e was suffering opioid, anti convulsant withdrawals, undetected and unaddressed issues while being neglected by supervisors at her former doctor's office on 5/20/2014 partially due to the aggrieving agencies actions against the doctor who was not following state laws on dangerous medication protocols. Deoide's right for due process then under the administrative procedure act (APA) was deprived to her, she was denied proper medical care under state protocols, time to establish with a new doctor who could provide her with a referral, provide her with timely medications and safely administer them, address her need for accommodations, her files, discovery , an attorney, impartial decision makers and proper notice of what the issue was, and resolution on 3/18/2013 when the original action was dismissed, U.S. CONST. amend. XIV The truth was

intentionally concealed from the beginning which allowed the agencies to engage in gross misconduct to deprive Deoid'e of life, liberty and property. RCW 34.05.562(1)-(d)

Deoid'e was even denied the right to proper medical services only her former primary care doctor could order before the 5/20/2014 hearing. The AG uses the APA, RCW 34.05.570 in response to again try and deny Deoid'e her right to correct the intentional errors so that she will continue to face grave irreparable harm.

The AG continues to reply upon Deoide's dangerous health situation intentionally created by her former doctor's supervisors, Health care authority (HCA) representative Kelly A. Clark attorney who placed Deoid'e in grave harm by intimidating the doctors who placed Deoid'e into withdrawals. Kelly then intentionally concealed evidence which caused appeals violations, due process violations against Deoid'e. The AG sees this situation as appropriate for a doctor to become intimidated and scared which did have him place his patient in eminent dangers of medication withdrawals but that it was harmless beyond a doubt having no effect on Deoid'e to appear on 5/20/2014. The AG would have this court believe that intentionally inflicted opioid, anti convulsant withdrawals, right before a hearing on eligibility or any hearing when one must appear, to have dozens of errors arise suddenly, is satisfactory and that evidence that will affect that action at the time it was taken is too late. U.S. CONST. amend XIV, RCW 34.05.562(1)-(d) RAP 13.4.(a), RAP 13.4(b)(1)-(4) RAP 17.4(b) RCW 34.05.526.

B. Does the AG really feel that all these issues could be properly assessed just 12 days before the hearing on 5/20/2014? Therapy initiated? New doctor's referred, time to establish, time for medications to titrate and help Deoid'e?

Deoid'e could not have known these issues until she had time to employ professionals who could properly discover and treat her with first of all to establish protocols that lead to discoveries as to why she had been so ill before the hearing and several years after continuing to this day. This discovery after those court opinions allows the court to accept this evidence because it had not been discovered until after we filed out petition for review in the Supreme Court and that The Court of appeals (COA) was denied an opportunity to consider it. RCW 34.05.562(1)-(d)

These are items related to the health of Deoid'e before the hearing which simply could not be and would not be known until it was too late to use in time to aid her. Emergency motions save time and correct wrongful decisions such as the one taken against Deoid'e in 2013 and 2014. Deoid'e was in a state so dangerous we had no idea to its true nature until she had an opportunity to find a doctor who would finally refer her to the specialty care that could begin to properly and safely through Washington State protocols, treat her conditions and attempt to stabilize her. RAP 13.4(a), RAP 13.4(b)(1)-(4)

Deoid'e had to start all over in double jeopardy after having been notified that the original issues were noncooperation Planned action notice (PAN) dated 6/27/2012 and a residency action PAN dated 3/4/2013 then and suddenly with no proper notification in May of 2014 , 14 months later, needing to prepare to address medical fraud accusations? Her request for more time to prepare was denied on 5/8/2014, the same time she asked to retain counsel (attorney) while she dealt with being dangerously cut off medications. There was absolutely no way Deoid'e could gain specialty care in 12 days before her hearing to get in to establish care, provide lab work and enable that doctor time to begin therapy or even address medications to help the deprivation of medications and certainly

not without specialty protocols that delay care months now. U.S. CONST. amend XIV and the AG knew it by email proof. RCW 34.05.562(1)-(d)

Not until 2016 was Deoid'e finally able to reestablish with a primary doctor who could refer her to a pain management doctor by Medicare required referral. Unfortunately Seattle pain centers placed Deoid'e on Methadone; he even prescribed it knowing Deoid'e was prescribed valium for epilepsy. Much later I discovered that methadone contradicted with Tegretol, valium and excessively metabolized upon the liver placing Deoid'e at risk again and because she was failing, we missed some other hearings due to that. Thankfully WA State shut him down and we found a new pain doctor who agreed with me that the doctor made a dangerous choice and that Deoid'e was getting sicker. He helped us change to safer, better medications which do benefit Deoid'e to this day and they do not conflict with her epilepsy medications. People do not understand why protocol is important and that some of these medications are and can be deadly. Not until 2017 were they even close to reaching a regimen to touch her illnesses, Neurology, care was also deprived until last year but is a great help now. RCW 34.05.562(1)-(d)

The AG was fully aware what had been done and the claims in the answer are shameful. The AG worked closely with Kelly Clark (who is the real person responsible for this situation) even advising the HCA as to how to proceed, these people knew that Deoid'e was cut off her medications; they had all ref files and records unfairly, they knew the doctor was in trouble for medication protocol violations giving them great influence upon him. The entire plan was a default on Deoid'e, for the AG to deny any involvement in this refuted by emails, U.S.CONST. amend XIV, RCW 34.05.562(1)-(d).

By email evidence, the AGs involvement stems well before the 5/20/2014 hearing. The AG is every bit responsible for Deoide's issues as is Kelly Clark, there is no way the AG can suddenly indicate in its answer that they were unaware that the issue of opioid/anticonvulsant withdrawals were an issue. The office of administrative hearings (OAH), its judges, HCA and the AG, with assistance from supervisors at peace health cordata colluded to set up a default situation. RCW 34.05.562(1)-(d)

The AG was involved and knew about the default set up, Cutting off Deoid'e who suffers Grand Mal Intractable epilepsy, terminal abdominal conditions, and numerous other chronic health issues was dangerous and it was impossible to attend a hearing while into a 3 day withdrawal from oxycodone, a complete cut off from 120 morphine equivalencies to 0, 3 days of dangerous withdrawals without anti withdrawal assistance.

Deoide's 75 micro gram patches (75 MCG) fentanyl patches were late, even denied a 30 day cycle in April, neither was filled until the day after the hearing on 5/21/2014 too late to give any hope of making the hearing. Deoid'e encountered a sudden fentanyl drop from 75 mcg to 50 mcg on the 5/21/2014 a 60 morphine equivalent drop on top of her drop of oxycodone to 0, which went 3 days unfilled placing Deoid'e in dangerous withdrawal (Fentanyl is100 times more potent than morphine). Deoid'e was suffering a 180 morphine equivalency drop just days prior to hearing while suffering at that time an undetected, terminal condition. People die from negligent fentanyl, anti convulsant management. RCW 34.05.562(1)-(d)

Who would not have trouble attending hearings or legal proceedings suffering a 180 morphine equivalency drop several days before? The AG and HCA had all Deoide's medical records and they knew she was cut off. There is malice here.

C. Does the AG think that Dr Whitehead would do anything to help Deoid'e before the 5/20/2014 hearing after placing her in danger?

Dangerous, intentional, unsupervised and unnecessary Medication withdrawals were wrongful and Deoid'e should never have been deprived medication or have been so grossly cut off the way she was as to trigger illness, seizures and withdrawals.

Deoid'e became so ill she suffered pneumonia, hyponatremia (low sodium acutely life threatening) seizures, withdrawals, gastrointestinal perforations and bleeding which all nearly ended her life. Deoid'e suffered before, during and after and the AG, OAH, HCA are directly related to these experiences by application of intimidation against her doctors. This was not the time to experience this just before a hearing.

After focusing on her life which took time she was eventually reevaluated, re started on better more effective regimens of medications supervised by The AG boasted protocols. Deoid'e started new medications while undergoing restrictions and discoveries that numerous medications were exacerbating her other conditions and actually worsening some issues. Deoid'e was in no condition to attend any hearing on 5/20/2014 and in fact she still is working with professionals who are trying to address her illnesses the best they can be. Deoid'e has terminal issues that were undetected in 2014.

The discovery reveals that Deoid'e was in grave danger; she was 3 days into acute opioid withdrawals after being deprived fentanyl for 30 days. Deoide's prescriptions were out 3 days on top of a taper that was not Washington State protocol for opioid management safety approved. Deoid'e was deprived her medications with malice to prevent her from appearing at her hearing, but has since reestablished and is on better more effective medications requiring exact protocols and specialists.

The hearing was forced due to the truth that it would take too long for Deoid'e to recover and that she would default. Dr Whitehead would not be allowed to provide a letter by his supervisors and he certainly would not indicate that he placed Deoid'e in a 3 day state of withdrawals right before a hearing. It has taken years and years before these protocols could identify the issues and provide us with information needed to discover the truth. Dr Whitehead would certainly not acknowledge placing Deoid'e in withdrawals.

D. Did Mary Stone licensed mental health counselor (LMHC) write letters indicating that Deoid'e, Karl had good cause for failing to appear on 5/20/2014? Did Dr Whitehead stress telephone hearings before intimidation?

Mary wrote numerous letters well before this issue and also one dated 5/16/2014 informing the OAH and HCA to the issues she witnessed; she provided these letters to Seth Cowan who based his letters on information with the 7 year information from Mary Stone. However, Seth was intimidated by the HCA attorney Kelly Clark who needed to intimidate Seth so he would not help Deoid'e in order to maintain the HCA cover up, concealment to perjury on 3/18/2013, false statements by Kelly Clark and ALJ Wagner.

Mary was not intimidated because she did not have a contract with HCA which rendered her indestructible against any threats created by HCA or the AG. Mary's Letter from dated 12/14/2015 (RCW 34.05.562(1)-(d) is the truth and one will always ask if Dr Whitehead had not been intimidated by the AG investigators and MS Clark, his supervisors would he have abandoned Deoid'e? Dr Whitehead stressed and maintained telephonic appearances in his confrontations with Ms Clark on 3/15/2013, he defended his position that HCA was being excessive in their demands but he had not been

intimidated by the AG on opioid protocols at that time. Mary professionally cited my correct action on 5/20/2014, RCW 34.05.562(1)-(d) in her letter dated 12/14/2015.

To any doctor, the Drug enforcement agency (DEA) is very influential in their prescribing actions. Mary's letter, Seth's medical record and the pharmacy documents with email from Kelly Clark submitted previously are all discovery that fall under RCW 34.05.562(1)-(d) and will likely change the course of this matter. Dr Whitehead stressed telephonic hearings, there was absolutely no reason why a telephone hearing could not be provided or a continuance for Deoid'e until a transfer could be completed so a new doctor could clean up Dr Whiteheads mess forced by his supervisors and the agencies including HCA and the AG. The AG sent an investigator to interview Dr Whitehead in 2013 before the hearing on 5/20/2014. Dr Whitehead abandoned Deoid'e before hearing.

Deoid'e is now under the care of medical professionals who have special training in the areas that Dr Whitehead was not qualified in. Deoid'e has a pain management doctor, primary care, nephrology, neurology, and endocrinology and soon to be urology and a certified nutritionist, all needed to attempt proper management of her multiple, complex, chronic and time consuming health issues and disabilities. For the first time in many years Deoid'e has the qualified team she would have benefitted from decades ago and that she would have a fair opportunity to attend her hearing even as it is not advised due to her health. U.S.CONST. amend XIV. RCW 34.05.562(1)-(d) RAP 13.4(a) and 13.4(b)(1)-(4)

On 3/16/2018, Deoid'e was ruled by Skagit County superior court judge to be medically incapacitated due to her epilepsy, disabilities that were obvious during review processes in 2017, 2018. As pre warned again by numerous doctors, Deoid'e became dangerously ill due to direct stress from the Department of social & health services

(DSHS) hearings, that she is incapacitated therefore medically unable to represent herself in these matters. The AG contested this before that hearing but the Judge based her ruling on medical letters from doctors, the AG did not object. RCW 34.05.562(1)-(d)

Deoid'e was already incapacitated by disability in 1992, she has always been disabled and incapacitated by disability , always will be and certainly was on 5/20/2014 but she was also dangerously incapacitated by opioid and seizure medication withdrawals, her health then was even worse with unknown , depths of incapacitations. It is a medical fact that DSHS or HCA hearings, any hearings are stressors for Deoid'e and those they may exacerbate her health conditions notably her epilepsy, seizures. The case on 5/20/2014 was and is not different but at that time Deoid'e was facing dangerous illness due to malice by withholding her medications on top of a dangerous situation of incapacitation.

E. Does the AG think that it would allow HCA, OAH to release files exposing the truth before remand could be ordered in review? COA?

The COA already decided this issue when it administered its authority to consider evidence before this review. COA had the discretion to do so under RCW 34.05.562(1) – (d) which makes these issues already part of the merits on appeal per RAP 9.10 and 9.11, However the issue is that discovery was not made, nonexistent at the time, could not be made. RAP 13.4(a), RAP (b)(1)(2)(3)(4), RAP 17.4(b)

When COA gave its opinion on the appeal, on these related issues they became part of the merits of this case therefore it should be used as part of review determination on 4/3/2018. U.S.CONST. amend XIV, RCW 34.05.562(1)-(d)

The AG has attempted to deprive the facts of truth, IE OSO Landslide Email destruction, *and it is not OK to cheat until you get caught.* Regardless of the AG position

Deoid'e should have a review per RCW 34.05.526 which provides review in COA and the Supreme Court. U.S.CONST. amend XIV, RCW 34.05.562(1)-(d)

The COA accepted discovery, it took upon its authority to do so making these items part of the merits but it was not able to decide the issues in the light of the whole record because additional discovery was not made and could not be made until after its final opinions, medical therapy and establishment with new providers takes months under new healthcare reforms. RCW 34.05.562(1)-(d), RAP 13.4(a), RAP 13.4(b) (1)-(4)

Medication withdrawals are serious; Deoid'e should never have been deprived medications or have been so grossly cut off the way she was right before that hearing triggering severe withdrawal. Deoid'e became so ill after she suffered hyponatremia, seizures, gastrointestinal perforations and bleeding which all could have ended her life. Deoid'e suffered before, during and after these actions against her and the AG was fully informed and directly involved in this issue by application of intimidation against her doctors. Deoid'e already had more than enough good cause on 5/20/2014 to fail to appear by original disability incapacitations now ordered by the courts , even on top of disability, dangerous medication withdrawals the AG still refuses to accept his errors.

IV. CONCLUSION

Deoid'e has followed the rules of RAP 17.4(b) and all the challenged rules under RCW, RAP listed above and is in compliance for all requirements contrary to the AG which is why we ask that the AG answer be denied and that Deoide's motion be accepted.

Respectfully submitted on March 26, 2018

Deoid'e Lea Cunningham

Karl Ivan Olson significant other 28 years

Karl Ivan Olson
Deoid'e L Cunningham

OFFICE RECEPTIONIST, CLERK

From: OFFICE RECEPTIONIST, CLERK
Sent: Monday, March 26, 2018 11:50 AM
To: 'i o'
Subject: RE: 95346-5 CUNNINGHAM RESPONSE DUE TODAY

Thank you.

Supreme Court Clerk's Office

From: i o [mailto:Karl69Olson@hotmail.com]
Sent: Monday, March 26, 2018 11:48 AM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Re: 95346-5 CUNNINGHAM RESPONSE DUE TODAY

yes, I am sorry , I really am this is confusing. It is the same I just emailed twice.

I will eventually get the hand of this so please hang in there with us while we become " tech undated" I guess.

Very thankfully.

Karl and deoide.

From: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Sent: Monday, March 26, 2018 11:32 AM
To: i o
Subject: RE: 95346-5 CUNNINGHAM RESPONSE DUE TODAY

Mr. Olson:

We will accept your filing. There were two e-mail filings with attachments. Are these the same document? Please advise.

Supreme Court Clerk's Office

From: i o [mailto:Karl69Olson@hotmail.com]
Sent: Monday, March 26, 2018 11:14 AM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: 95346-5 CUNNINGHAM RESPONSE DUE TODAY

hello. may we file this here please? this is new to me.

I hope this is ok, its due today.

thank you,

Karl Olson and Deoide Cunningham

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THE SUPREME COURT

OF THE STATE OF WASHINGTON

SUPREME COURT NO. 95346-5 - DEOIDE LEA CUNNINGHAM v. STATE OF WASHINGTON, DSHS

COA NO. 73713-9-I DEPT. OF SOCIAL & HEALTH SERVICES

Declaration of service on 3/26/2018 – response to answer on emergency motion 2 due on 3/26/2018

Date March 26th , 2018

I Karl Ivan Olson, certify that on March 26, 2018, I mailed true copies of the enclosed documents to all the parties listed below by USPS First Class mail.

Karl Ivan Olson

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Soc & Hlth Svc AG office 7141 cleanwater DR SW PO BOX 40124 Olympia WA 98504

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ATTACHMENT TO EMAIL