

No. 47829-3-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

In Re the Welfare of

B.F.,

Minor Child,

M.F. (mother),

Appellant.

Thurston County Cause No. 15-7-00129-4

The Honorable Judge Christopher Wickham

**Appellant's Motion for Accelerated
Review and Opening Brief**

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ISSUES AND ASSIGNMENTS OF ERROR

1. The court erred by failing to require the father to undergo a psychosexual evaluation.
2. The court violated its duty to order all services necessary to protect a dependent child.

ISSUE 1: A dependency court has a duty to order a parent to undergo a psychosexual evaluation whenever it is necessary to protect the child or to enable reunification. Did the court err by denying the request for a psychosexual evaluation of P.A. (father) when there was evidence that the child had been conceived when P.A. raped the mother?

3. The court abused its discretion by failing to inquire into whether a psychosexual evaluation was necessary to protect the child.

ISSUE 2: When the record is unclear as to whether a psychosexual evaluation is necessary to protect a child or facilitate reunification, the court must conduct the inquiry necessary to determine whether it has a duty to order the service. Did the court abuse its discretion by failing to adequately inquire into whether a psychosexual evaluation was required upon determining that the police report was ambiguous as to whether the investigating officer believed that rape had occurred?

STATEMENT OF FACTS AND PRIOR PROCEEDINGS

Eighteen-year-old M.F. was homeless. Ex 2, p. 3. An acquaintance from Alcoholics Anonymous – P.A. -- invited her to stay in his home one night so she would not have to sleep in the cold. Ex. 2, p. 3.

During the night, P.A. raped M.F. Ex. 2, p. 3. M.F. went to the hospital, reported the rape, underwent an examination, and cooperated with the police. Ex. 2, p. 3. She later secured a Sexual Assault Protection Order barring P.A. from contacting her or coming near her home, work, or school. Ex. 1.

As a result of the rape, M.F. became pregnant. CP 179-186. She gave birth to a son, B.F., who was removed from her custody by the Department of Social and Health Services (DSHS) when he was six months old. CP 15.

A DNA test confirmed that P.A. was the child's biological father. CP 179-186. The court later found the child dependent as to both parents. CP 217-249.

The court ordered that P.A. be permitted to visit with the baby twice a week. CP 224.

The state recommended that the court order P.A. to undergo a psychosexual evaluation to ensure the child's safety. RP 24-25; CP 257. The mother also argued in favor of the evaluation for the P.A. RP 28.

Even so, the court declined to order P.A. to undergo a psychosexual evaluation before visiting– and perhaps eventually reunifying – with the child. RP 30; CP 257. The court reasoned that there was not enough evidence to order a psychosexual evaluation because “one interpretation of the investigating officer’s report is that it was consensual sex, and another interpretation could be that it was not.” RP 30.

The mother timely appealed the dispositional order. CP 308.

ARGUMENT

THE TRIAL COURT ERRED BY REFUSING TO ORDER THE BIOLOGICAL FATHER TO UNDERGO A PSYCHOSEXUAL EVALUATION BEFORE PURSUING REUNIFICATION WITH THE BABY, WHO WAS BORN AS THE RESULT OF THE FATHER’S RAPE OF THE EIGHTEEN-YEAR-OLD MOTHER.

The mother presented significant evidence that P.A. had raped her. Ex. 1, 2. The department believed the evidence was strong enough to require the father to undergo a psychosexual evaluation in order to ensure the child's safety and to enable reunification. RP 24-25; CP 257. Still, the trial court denied the department's request for an evaluation. RP 30; CP 257.

The court erred by refusing to order the father to undergo a psychosexual evaluation. *See In re Dependency of D.C-M.*, 162 Wn. App. 149, 160, 253 P.3d 112, 117 (2011). The court had a duty, at the least, to ascertain whether the service was appropriate for this family. *Id.*

The court and department have an obligation in a dependency case to provide a family with all services necessary to “ensure the safety of the child and reunification with the parent.” *In re Mahaney*, 146 Wn. 2d 878, 891, 51 P.3d 776, 783 (2002).¹

That duty can include a requirement for a psychosexual evaluation “attuned to the needs of an individual case.” *D.C-M.*, 162 Wn. App. at 160.

Here, the mother reported that P.A. had raped her, and she underwent a sexual assault examination. Ex 2. A court later granted her request for a sexual assault protection order. Ex 1. The evidence was sufficient to require further examination into P.A.’s psychosexual status for the child’s safety. *Id.*

¹ This duty begins at the disposition hearing. The department must complete a social study before disposition, which includes an evaluation of necessary services. RCW 13.34.120; RCW 13.34.030(20). The court must consider that study at the disposition. RCW 13.34.130.

If it is unclear whether a psychosexual evaluation is necessary in a case, the trial court must determine whether it could protect the child's safety and facilitate reunification under the specific facts. *Id.*

Here, if the court did not err by refusing to order the psychosexual evaluation, it nonetheless abused its discretion by failing to conduct the necessary inquiry. *Id.* Upon denying the psychosexual evaluation, the court opined that the police report was ambiguous as to whether the investigating officer believed that a rape had occurred. RP 30.

If the court found the evidence unclear, it had a duty to explore further, rather than simply dismissing the issue. *Id.* The court erred by failing to adequately look into whether a psychosexual evaluation was necessary to protect the child before refusing to order it. *Id.*

The court erred by failing to order P.A. to undergo a psychosexual evaluation. *D.C-M.*, 162 Wn. App. at 160. In the alternative, the court abused its discretion by neglecting to conduct the inquiry necessary to determine whether a psychosexual evaluation as necessary to protect the child and make reunification possible. *Id.* The court's order denying the evaluation should be reversed. *Id.*

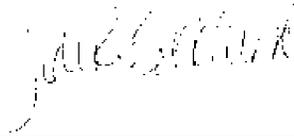
CONCLUSION

The court abused its discretion by failing to order P.A. to undergo a psychosexual evaluation. This case must be remanded with instructions

for the court to either order the evaluation or to conduct the necessary inquiry to determine whether the service was necessary to protect the child and facilitate reunification.

Respectfully submitted on October 19, 2015.

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CERTIFICATE OF SERVICE

I certify that on today's date:

I mailed a copy of Appellant's Motion for Accelerated Review/Opening Brief, postage prepaid, to:

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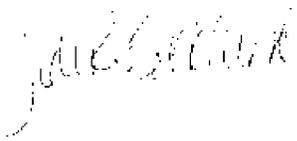
I delivered an electronic version of the brief, using the Court's filing portal, to:

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I filed the Appellant's Motion for Accelerated Review/Opening Brief electronically with the Court of Appeals, Division II, through the Court's online filing system.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed at Olympia, Washington on October 19, 2015.



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October 19, 2015 - 9:02 AM

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