

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 Supplemental Brief

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ARGUMENT

THE MOTHER HAS STANDING TO CHALLENGE THE COURT’S DECISION NOT TO REQUIRE P.A. TO UNDERGO A PSYCHOSEXUAL EVALUATION BEFORE SPENDING TIME WITH THE CHILD.

1. RAP 2.2(a)(5) grants parents in dependency proceedings the power to appeal a dispositional order.

Any party to a dependency case may appeal “the disposition decision following a finding of dependency.” RAP 2.2(a)(5). The mother is a party to this dependency case. The court’s denial of the request for a psychosexual evaluation for the father appears as part of the dispositional order. CP 257.

The mother may appeal the court’s order under RAP 2.2(a)(5).

2. The mother has standing to challenge violations of her child’s due process right to safety and nurture.

Children in the child welfare system have a substantive due process right to “be free from unreasonable risks of harm.” *In re Dependency of MSR*, 174 Wn. 2d 1, 17, 271 P.3d 234 (2012), *as corrected* (May 8, 2012) (*citing Braam ex rel. Braam v. State*, 150 Wn.2d 689, 699, 81 P.3d 851 (2003)).

On appeal, parents may assert challenges to violations of their children’s rights. *See e.g. MSR*, 174 Wn.2d 1 (Supreme Court addresses

mother's claim that the court violated her children's due process rights by failing to appoint counsel for them).

Here, the child was born as the result of the father's alleged rape of the mother. CP 179-186. Still, the court has ordered that the father be permitted to visit with the child twice per week. CP 224.

If the rape allegation is true, the father could pose a significant risk of sexual violence toward the child during visits. The juvenile court placed the child at unreasonable risk of harm by refusing to require the father to undergo a psychosexual evaluation.

The mother may challenge this violation of her child's due process right to freedom from unreasonable risk of harm on appeal. *MSR*, 174 Wn. 2d at 17.

3. The mother is an aggrieved party to the trial court's dispositional order.

Any aggrieved party may seek appellate review of a trial court order. RAP 3.1. An aggrieved party is one whose proprietary, pecuniary, or personal rights are affected. *Ferguson Firm, PLLC v. Teller & Associates, PLLC*, 178 Wn. App. 622, 629, 316 P.3d 509 (2013).

As a party to this dependency case, the mother has a personal interest in the court's dispositional order.

The mother also has a personal right to protect her child from harm. This is inherent in her right to care and control her child.

As outlined above, the court's refusal to impose a psychosexual evaluation on the father before visitation with the child exposed the child to unreasonable risks of harm.

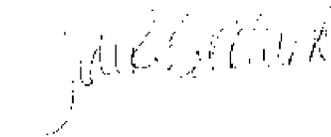
The mother may appeal this violation of her personal right to ensure her daughter's safety. RAP 3.1.

CONCLUSION

The Rules of Appellate Procedure grant the mother the authority to challenge the court's dispositional order on appeal. The mother also has standing to challenge the court's violation of her child's due process right to freedom from unreasonable risks of harm. The mother is an aggrieved party who may seek appellate review under the Rules of Appellate Procedure. The mother may challenge the court's denial of a psychosexual evaluation for the father on appeal.

Respectfully submitted on January 27, 2016.

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CERTIFICATE OF SERVICE

I certify that on today's date:

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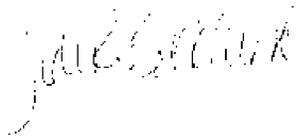
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I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed at Olympia, Washington on January 27, 2016.



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January 27, 2016 - 9:29 AM

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