

**COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON**

In re the Dependency of:

B.F.,

A Minor Child.

SUPPLEMENTAL BRIEF

**I. IDENTITY OF RESPONDING PARTY**

The respondent, Department of Social and Health Services (Department), by and through its attorneys, Robert W. Ferguson, Attorney General, and Amy Harris, Assistant Attorney General, responds to the mother's<sup>1</sup> Motion for Discretionary Review (Motion).

**II. DECISION**

Petitioner, the child's mother (M.F.), seeks discretionary review of the dependency court's decision to not order a psychosexual evaluation for the father.

The court declined to require this service because it was not convinced there was sufficient evidence of sexual deviancy to warrant the evaluation. Report of Proceedings (RP) at 30. While the Department

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<sup>1</sup>In order to protect the parents' privacy, their names will not be used, and they will instead be referred to as "mother" and "father", or by their initials. No disrespect is intended.

asked the dependency court to order a psychosexual evaluation, it was not an abuse of discretion for the court to deny this request. As such, the requirements for discretionary review are not met, and the mother's motion should be denied.

### **III. ISSUES PRESENTED FOR REVIEW**

1. Whether discretionary review is warranted when the mother is not an aggrieved party pursuant to RAP 3.1 and RCW 13.04.033.

### **IV. RESTATEMENT OF THE FACTS**

The father, P.A., agreed to a finding of dependency on June 3, 2015. Clerk's Papers (CP) at 228. The dependency court found the child dependent as to the mother, M.F., on June 19, 2015, following a contested fact-finding hearing. CP at 239. The court held a joint disposition hearing on June 24, 2015, and ordered both parents to complete remedial services. CP at 252-260, 261-69.

The Department requested that P.A. undergo a psychosexual evaluation based upon the allegations made by M.F. RP at 24-25. The Department provided the dependency court the police report that outlined M.F.'s allegations and the Sexual Assault Protection Order she obtained after the dependency was filed as the factual basis for this request. RP at 6-7; Ex. 1, Ex. 2. However, the court declined to order the father to

complete this evaluation, CP at 257; RP at 30, and the mother seeks discretionary review of this decision.

## V. ARGUMENT

### A. The Mother is Not an “Aggrieved Party” under RAP 3.1 and RCW 13.04.033

“Only an aggrieved party may seek review by the appellate court.”

RAP 3.1. RCW 13.04.033 has the same requirement: “Any person aggrieved by a final order of the court may appeal the order as provided by this section.” RCW 13.04.033(1). The definition of “aggrieved” in this statute and RAP 3.1 is similarly construed. *In In re Welfare of Hansen*, 24 Wn. App. 27, 35, 36, 599 P.2d 1304, 1309 (1979).

The mother is not an aggrieved party. For a party to be aggrieved, the decision must adversely affect that party’s property or pecuniary rights, or a personal right, or impose on the party a burden or obligation. *Sheets v. Benevolent and Protective Order of Keglers*, 34 Wn.2d 851, 210 P.2d 690 (1949) (review denied); *State ex rel. Simeon v. Superior Court for King County*, 20 Wn.2d 88, 145 P.2d 1017 (1944) (review denied).

“The mere fact that one may be hurt in his feelings, or be disappointed over a certain result does not entitle him to appeal; he must be aggrieved in a legal sense.” *State v. Taylor*, 114 Wn. App. 124, 56 P.3d 600 (2002), *aff’d*, 150 Wn.2d 599, 80 P.3d 605 (2003).

The Court has consistently rejected appeals by persons not aggrieved by a court's order. In *Breda v. B.P.O.*, clients in a personal injury lawsuit attempted to appeal sanctions imposed against their attorney by the trial court. *Breda v. B.P.O. Elks Lake City 1800 So-620*, 120 Wn. App. 351, 352, 90 P.3d 1079, 1080 (2004).

At trial, the attorney committed misconduct, resulting in sanctions. *Id.* The court ultimately found that "The Bredas' proprietary, pecuniary, or personal rights were not substantially affected and they were not damaged by the attorney fees imposed as sanctions against counsel for his discovery violations. Thus, they were not aggrieved parties under RAP 3.1." *Breda v. B.P.O. Elks Lake City 1800 So-620*, 120 Wn. App. 351, 353, 90 P.3d 1079, 1081 (2004).

In *In re Guardianship of Lasky*, 54 Wn. App. 841, 850, 776 P.2d 695 (1989), an attorney who had been ordered removed as a guardian had no standing to appeal an order removing him as guardian. The court found that the only party whose rights may have been affected was the person to whom the guardianship was imposed and that the removal as guardian did not affect any right of the guardian and he was therefore not an aggrieved party. *Id.*

The court's order with regard to the services the father must complete does not directly or substantially impact the mother's proprietary, pecuniary, or personal rights. The mother may be disappointed by the dependency court's decision, but she is not "aggrieved" by its decision. Accordingly, the mother's motion should be denied.

## VI. CONCLUSION

The mother is not an aggrieved party and cannot appeal the father's disposition under RAP 3.1 and RCW 13.04.033. Accordingly, the Department respectfully requests that this court deny the mother's Motion for Discretionary Review.

RESPECTFULLY SUBMITTED this 26 day of January, 2016.

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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.

DATED this 26 day of January, 2016, at Olympia, WA.

  
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Ursula Kanschak-Grover, Legal Assistant

# WASHINGTON STATE ATTORNEY GENERAL

**January 26, 2016 - 2:51 PM**

## Transmittal Letter

Document Uploaded: 5-478293-Supplemental Brief.pdf

Case Name: In re the Dependency of B.F.

Court of Appeals Case Number: 47829-3

**Is this a Personal Restraint Petition?** Yes  No

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### Comments:

Supplemental Brief as ordered by the court

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