

NO. 47987-7-II

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

BRANDON K. ROE and TERI L. ROE, Husband and Wife,

Appellants,

v.

STATE OF WASHINGTON and DEPARTMENT OF SOCIAL &
HEALTH SERVICES, ET AL,

Respondents.

**BRIEF OF RESPONDENTS STATE OF WASHINGTON, FROST,
TEETER, MARKER, AND PAYTON**

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I. INTRODUCTION

Brandon and Teri Roe appeal the dismissal on summary judgment of their claims of negligent investigation, outrage, and civil malicious prosecution against the Defendants State of Washington, Department of Social and Health Services, Stephanie Frost, Anita Teeter, Debbie Marker, and Vicky Payton (State Defendants). This case arises from a May 11, 2010, referral to the Department of Social and Health Services (DSHS), Child Protective Services (CPS), of the alleged child abuse of the Roes' 3-year old adopted daughter N.R. The referral came from a Roe family friend, Heather Bonnell. CP at 873-78. Ms. Bonnell brought N.R. into the Kelso, Washington, DSHS Office complaining of visible injuries to N.R. According to Ms. Bonnell, she was a long-time family friend of the Roes who enjoyed visits with N.R. CP at 865-71; 866:13-25; 873-78; 880. When first seen, N.R. had visible cuts, bruises, and contusions which caused CPS to refer the case to local law enforcement officials, the Cowlitz County Sheriff's Office (CCSO) pursuant to RCW 26.44.030(4). The CCSO placed N.R. into protective custody. CP at 902. State law mandates that CPS act in a child's best interests in order to protect them from any further harm or injury as mandated by RCW 26.44.010 and RCW 13.34.020.

Upon the initial placement of N.R. into protective custody the Roes voluntarily agreed to an out of home placement for N.R. with a couple of their choosing, Julie Hoffman and Eric Kindvall. Ms. Hoffman was a daycare provider who the Roes used to care for N.R. in the past. N.R.'s voluntary placement with Ms. Hoffman and Mr. Kindvall continued until a Dependency Petition was filed with the Cowlitz County Superior Court on July 22, 2010. The Dependency Petition was filed after Mrs. Roe had been charged by the Cowlitz County Prosecutor with the criminal assault of N.R. The juvenile court ordered N.R. placed with Ms. Hoffman and Mr. Kindvall at the initial Shelter Care Hearing on July 28, 2010, and subsequently throughout the dependency action. The course of N.R.'s dependency was longer than a typical dependency action because of the Roes' requests for continuances while Mrs. Roe's criminal case was pending. CP at 961-64; 963:6-24; 995-1003; 996, ¶ 2.4; 999, ¶ 3.1; 1005-13; 1006, ¶ 2.4; 1009, ¶ 3.1; 1015-23; 1016, ¶ 2.4; 1019, ¶ 3.1; 1025-27. After a February 28, 2012 hearing on the mother's Motion for Change of Placement, the juvenile court specifically noted the following finding: "It is a significant problem in this case that the Dependency Petition was filed more than a year and a half ago yet the case has not proceeded to fact finding, through no fault of any party." CP at 1025-27; CP at 1026: Findings of Fact (FOF) ¶ 1.

The Roes filed this lawsuit against the State Defendants seeking damages in tort. The superior court properly dismissed the Roes' claims because there was no genuine issue of material fact that exists regarding them. The Roes failed to raise an issue of fact regarding their negligent investigation claim, or in support of their claim that the conduct of social workers in this matter was outrageous, or that reasonable cause for the filing of the dependency petition did not exist. Thus, this Court should affirm the dismissal of the Roes' claims.

II. RESTATEMENT OF THE ISSUES ON APPEAL

1. Did the trial court err in granting the State Defendants' motion for summary judgment with respect to the Roes' claim of negligent investigation? [Assignment of Error 1. Short Answer: No].

2. Did the trial court err in granting the State Defendants' motion for summary judgment with respect to the Roes' claim of the tort of outrage? [Assignment of Error 1. Short Answer: No].

3. Did the trial court err in granting the State Defendants' motion for summary judgment with respect to the Roes' claim of malicious prosecution? [Assignment of Error 1. Short Answer: No].

III. RESTATEMENT OF THE CASE

A. After An Physical Abuse Referral, N.R. Was Evaluated And Taken Into Protective Custody

On May 11, 2010, Heather Bonnell brought N.R. to the DSHS Offices in Kelso, Washington to show social workers extensive contusions, small cuts, scrapes, and bruising on N.R. CPS social workers observed the bruising and contusions on N.R.'s body. In order to record the extent of the injuries then present CPS social workers photographed the injuries.¹ CP at 880; 882-900. After interviewing Ms. Bonnell, observing the visible injuries to N.R., and reviewing past CPS referrals concerning the Roes, the matter was referred to local law enforcement pursuant to RCW 26.44.030(4). CP at 867:9-17; 904.

N.R. was taken into protective custody on May 11, 2010 by the CCSO pursuant to RCW 26.44.050. CP at 902. CPS Social Worker (SW) Frost and Cowlitz County Sheriff Deputies R. Stumph and Sgt. Ryan Crusier met at the Roe residence to notify the parents that N.R. had been placed into protective custody and that CPS now had N.R. RCW 26.44.100(1); CP at 288-92; 906-08. The Roes gave conflicting explanations for the injuries on N.R. One explanation given was N.R. had been knocked down by or tripped over a young puppy. CP at 289; 291; 906-08.

¹ Respondent State Defendants are filing a contemporaneous motion with their brief to request permission to append color copy photographs to Respondents' Brief for the court's panel. Color copy photographs were originally filed with the trial court. The photographs are currently identified as CP at 882-900 which are Xerox, black and white copies as copied and transmitted to the COA by the superior court clerk's office.

With the Roes' agreement, N.R. was placed in the home of Julie Hoffman and Eric Kindvall on May 11, 2010. CP at 532-33. Ms. Hoffman was a daycare provider and friend of the Roes who knew N.R. and was recommended by the Roes as a suitable placement for their daughter until matters could be worked out. On May 13, 2010, the first of three Voluntary Placement Agreements (VPA) was executed between the Roes and CPS. CP at 869:11-21. By executing the VPA, the Roes agreed that N.R. could be placed in the care and temporary custody of the Children's Administration of DSHS. The VPA was extended twice with an end date of July 30, 2010, by which time CPS hoped to have a determination about whether N.R. should be returned home or a dependency action needed to be filed. CP at 869:11-21; 917; 919.

B. Teri Roe Was Charged With Assault Of A Child And DSHS Filed A Dependency Action On Behalf Of N.R.

On July, 14, 2010, Mrs. Roe was arrested by the CCSO and charged by the Cowlitz County Prosecutor with Assault of a Child in the Third Degree. CP at 398-402; 571-72. The alleged victim of the assault was N.R. The Cowlitz County Superior Court then issued a No Contact Order that prohibited contact by Mrs. Roe with N.R. CP at 573-76. The No Contact Order continued throughout the criminal proceedings. Mrs. Roe was ultimately acquitted of the assault charge after a jury trial held in

late September of 2011. However, on July 22, 2010, DSHS filed a dependency action on behalf of N.R. in the Cowlitz County Superior Court. CP at 921-25.

In order not to interfere with the CCSO criminal investigation that was conducted contemporaneously with the CPS investigation, SW Frost made collateral contacts as appropriate. The scope of SW Frost's CPS investigation is found in her Investigative Assessment. CP at 927-45. SW Frost's investigation included: her face to face contacts with N.R. and N.R.'s siblings, her contacts with Cowlitz County law enforcement officials [CP at 927], her consult with N.R.'s primary care physician Dr. Ayoub regarding N.R.'s physical and developmental status [CP at 927], interviews with both Teri and Brandon Roe, her consult with Dr. Deborah Hall (a child abuse medical expert who indicated N.R.'s bruise on the right ear was nearly diagnostic of abuse) [CP at 927; 915], her review of Cowlitz County Sheriff's Department reports and their collateral contact interviews [CP at 941; 943], her review of the Child Forensic Interview of N.R. conducted at the Children's Justice and Advocacy Center (CJAC) [CP at 941-42], review of Dr. Hall's report, review of N.R.'s medical records during contact with N.R.'s doctor [CP at 942], review of N.R.'s medical records from St. John Hospital for the emergency room visit on 5/11/10 for an initial medical examination upon being placed into

protective custody [CP at 943], reports from N.R.'s day care provider that refute on-going issues of bruising during the placement with Ms. Hoffman and Mr. Kindvall [CP at 944], and review of photographs of N.R. taken by CPS and law enforcement during their respective investigations [CP at 942], knowledge of Mrs. Roe's arrest by the Cowlitz County Sheriff's Department [CP at 944], knowledge that Mrs. Roe was charged with the assault of N.R. [CP at 944], and knowledge that the Cowlitz County Superior Court issued a No Contact Order prohibiting contact by Mrs. Roe with N.R. CP at 944. Many of these facts and more are included in the Dependency Petition filed on July 22, 2010 with the Cowlitz County Superior Court. CP at 921-25.

In early August of 2010, SW Frost's work on the CPS investigation concluded with a finding that Mrs. Roe had physically abused N.R. and that Mr. Roe had not. CP at 870:9-18; 927-45; 947. SW Frost's supervisor, Defendant Anita Teeter, prepared certified letters to Mrs. Roe and Mr. Roe respectively to notify them of the CPS findings as required by RCW 26.44.100(2). CP at 949-52; 954-55.

Generally, when a child is taken into protective custody a Shelter Care Hearing should be conducted within seventy-two hours, excluding Saturdays, Sundays, and holidays [RCW 13.34.065], and a fact-finding hearing in a dependency action should be held no later than seventy-five

days after the filing of the petition unless exceptional reasons for a continuance are found. RCW 13.34.070(1). In this case the VPAs between the Roes and Children's Administration negated the need for a shelter care hearing until a dependency action was commenced.

The initial shelter care hearing was held on July 28, 2010, but as the shelter care order indicates the hearing was waived by the Roes and a new hearing date was set. CP at 996, ¶ 2.4. The hearing dates were then subject to repeated requests for continuances because of the pending criminal case against Mrs. Roe. CP at 963:6-15. The hearing dates were continued and/or rescheduled in order to allow the criminal case against Mrs. Roe to run its course prior to her having to provide any testimony or evidence in response to the dependency action concurrently pending in the Cowlitz County Superior Court. CP at 638-39, FOF ¶¶ 1-16; 963:6-15; 963:18-24; 1025-27; 1026, FOF ¶¶ 1-3.

Throughout the course of the dependency action, Court Social Worker (CSW) Defendant Victoria Payton provided updates to the juvenile court regarding the status of N.R. and her parents. The court updates were in several forms. One form was in Individual Service and Safety Plan (ISSP) and the other form was Progress Reports, both types of reports were filed with the court. CP at 962:8-23; 965-993. The ISSP reports and Progress Reports outlined work done by DSHS over the course

of the dependency action and provided updated information and recommendations to the juvenile court concerning N.R. and the Roes. CP at 962:24-963:5; 963:16-17; 1217-19; 1357-58.

C. Once Teri Roe Was Acquitted The Dependency Action Moved Forward And Was Ultimately Dismissed

Mrs. Roe was acquitted of the assault charges on September 23, 2011, after a jury trial. CP at 1121:11. Once the criminal case had been resolved Mrs. Roe filed a motion with the juvenile court to dismiss the dependency action and she also provided additional information for the court's review. CP at 1342-44; 632-36; 1137-54; 1158-68. DSHS and the N.R.'s Guardian ad Litem filed separate responses to Mrs. Roe's motion. CP at 1346-47; 1349-54; 1356-58. After a hearing and review of the pleadings the juvenile court judge denied Mrs. Roe's motion to dismiss on November 19, 2011 through a letter the judge prepared and e-mailed to the respective parties. CP at 1125-27; 1126, Order ¶ 1. The November 19 letter indicated on page 2 that a contested shelter care hearing would be set within the next three weeks, dependent on the availability of the parties/counsel. CP at 1126, Order ¶ 2.

The judge's letter of November 19 also ordered one in-home visit with N.R. each week of not less than two hours. The Roes wanted the first two hour visit to occur on Thanksgiving Day. That did not happen, so

Mrs. Roe filed a motion for contempt of court. A hearing was held on December 9, 2011 to address Mrs. Roe's contempt motion. CP at 1077-78. The judge found DSHS in contempt for its failure to conduct an in-home visit with N.R. on Thanksgiving Day. CP at 1078:10-11. The judge, however, ordered that the contempt would be purged by one (1) make-up in home visit and no further violations of the order for the next 60 days. CP at 1078:12-13. There were no further violations brought before the court.

On February 28, 2012, the court heard argument on Mrs. Roe's motion for placement of N.R. in the Roe home. CP at 1214. The court ordered N.R. placed in the Roe home, which then occurred. CP at 1025-27; 963:18-24. In the same order, the court found it necessary to include a specific finding that stated as follows: "It is a significant problem in this case that the Dependency Petition was filed more than a year and a half ago yet the case has not proceeded to fact finding, through no fault of any party." CP at 1026, FOF ¶1.

On May 16, 2012, the juvenile court dismissed the dependency action upon DSHS' motion to dismiss. CP at 1029-31.

D. The Roes Brought This Lawsuit Against DSHS, Individual State Employees, And The Cowlitz County Defendants

The Roes filed their original complaint on July 12, 2013. The State Defendants had the case removed to United States District Court from Thurston County Superior Court based on the Roes' claims of alleged federal civil rights violations. The Roes were later granted leave to file an amended complaint which was then filed on June 26, 2014. CP at 776-92.

In November 2014, the State Defendants moved for summary judgment requesting dismissal of the Roes' federal and pendent state law claims. On January 7, 2015, the Honorable United States District Judge Benjamin H. Settle granted summary judgment for the State Defendants on the federal law claims but chose to dismiss without prejudice the pendent state law claims and remanded the state law claims to Thurston County Superior Court for further resolution. CP at 835-43.

Upon remand to Thurston County Superior Court, the case was assigned to the Honorable Judge Carol Murphy. The State Defendants renewed their motion for summary judgment on May 22, 2015 seeking dismissal of the Roes' state law claims. The Roes conceded that the trial court could grant summary judgment for the State Defendants on the state law claims of trespass, negligent training and negligent supervision. In addition, the Roes failed to oppose the State Defendants' request for

summary judgment dismissal of the individually named defendants Frost, Teeter, Marker, and Payton. CP at 1236-55. The Roes' opposed summary judgment on their remaining claims of negligent investigation, outrage, and civil malicious prosecution.

When the trial court heard argument during the summary judgment motion hearing on July 17, 2015, Judge Murphy had the benefit of voluminous records for review. RP at 36:12-37:7; 38:4-11; 39:16-24; CP at 1381-83; 1384-87. These records included not only the law enforcement investigation conducted by Defendant Cowlitz County, charging documents from the Cowlitz County Prosecutor's Office, Cowlitz County Superior Court records on the criminal charges against Mrs. Roe, but also DSHS and CPS case notes, intake referrals, CPS investigative records, assessments, and findings, along with copies of Cowlitz County Juvenile Court dependency action records and pleadings. See CP at 288-402; 407-523; 527-76; 638-40; 865-955; 961-1031; 1077-78; 1137-91; 1210-14; 1217-19; 1278-81; 1284-1303; 1342-58. Based upon her review of the record and argument of counsel, Judge Murphy granted summary judgment in favor of the State Defendants, dismissing the Roes' claims with prejudice. This appeal followed.

IV. ARGUMENT

A. The Trial Court Properly Dismissed The Roes' Claims Of Trespass, Negligent Training, Negligent Supervision, And The Individually Named State Defendants Frost, Teeter, Marker, And Payton.

The Roes have not raised any issues of error concerning the trial court's dismissal of the trespass, negligent training and supervision claims. CP at 1383:3-5. The Roes conceded in the trial court that Judge Murphy could enter summary judgment for the State Defendants on the trespass, negligent training and negligent supervision claims. CP at 845, n 1; 1236:15-18; 1255:10-11. Judge Murphy verified this fact when she inquired about the Roes' position on those claims. The Roes' attorney, Gary Preble, conceded that they did not intend to proceed forward with those claims. RP at 31:25-32:8; 37:8-19.

In addition, the Roes have failed to identify any error by the trial court granting the State Defendants' motion to dismiss the individually named defendants, Frost, Teeter, Marker, and Payton. CP at 1040:19-1042:25; 1236-55; 1383:6-9; RAP 10.3(a)(4) and (6). A party's failure to brief an assignment of error constitutes a waiver or abandonment of the issue. *State v. Goodman*, 150 Wn.2d 774, 782, 83 P.3d 410 (2004); *Valley View Induc. Park v. Redmond*, 107 Wn.2d 621, 630, 733 P.2d 182 (1987); RAP 10.3(a) (5).

Even if the Roes had contested the dismissal of the individually named defendants, these defendants would still be entitled to summary judgment because the Roes failed to raise any factual issues regarding the individual social workers, Frost, Teeter, Marker, or Payton. When a motion for summary judgment is made and supported as outlined in CR 56(c), an adverse party may not rest upon the mere allegations but must respond by setting forth specific facts that show there is a genuine issue for trial. CR 56(e).

Even after the Roes amended their complaint in June 2014, their allegations against the individually named defendants remained unclear, beyond their original civil rights claim asserted against SW Frost, which claim was dismissed by the federal court. CP at 835-43.

In the State Defendants' motion for summary judgement the defendants admitted that all acts done by the individual State Defendants were done within the scope of their employment as DSHS social workers. CP at 1034-58; 1040:19-1042:25. The Roes failed to oppose the individually named defendants' requests for dismissal. CP at 1236-55; 1359-69; 1359:17-20. Therefore, the Roes should not now be able to raise the dismissal of these individually named defendants as a basis for review.

For argument sake, generally, an employer is vicariously liable for the negligent acts of an employee conducted while within the scope of

employment. When an employee causes injury by acts beyond the scope of employment, an employer may be liable for negligently supervising the employee. Whether conduct is inside or outside the scope of employment is ordinarily a question for the jury. Here, DSHS acknowledged that its social workers were acting within the scope of their employment throughout the CPS investigation phase and also during the dependency phase, and that the State would be vicariously liable for their conduct. *See* RCW 4.92.070 and 075 (authorizing a defense and satisfaction of judgment for litigation filed against state employees acting within the scope of their employment.)

A cause of action for negligent supervision requires a plaintiff to show that an employee acted outside the scope of his or her employment. But when an employee commits negligence within the scope of employment, a different theory of liability—vicarious liability— applies. A claim for negligent hiring, training, and supervision is generally improper when the employer concedes the employee's actions occurred within the course and scope of employment. *LaPlant v. Snohomish County*, 162 Wn.App. 476, 479-480, 271 P.3d 254 (2011); *Gilliam v. Dep't of Soc. & Health Servs.*, 89 Wn. App. 569, 584-85, 950 P.2d 20, review denied, 135 Wn.2d 1015, 960 P.2d 937 (1998)

Thus, any causes of action for negligent supervision and training against DSHS and its social workers is redundant. Based upon the foregoing argument the Court should affirm the trial court's dismissal of the individually names defendants and those claims abandoned at the trial court level by the Roes.

B. The Trial Court Properly Dismissed The Roes' Negligent Investigation Claim Against The State Defendants On Summary Judgment Because No Genuine Issue Of Material Fact Exists.

To prevail on a negligent investigation claim, a plaintiff must show that (1) DSHS employees conducted an incomplete or biased investigation, and (2) that the flawed investigation resulted in a harmful placement decision by DSHS of either removing a child from a non-abusive home, placing a child in an abusive home, or leaving a child in an abusive home. *See M.W. v. Dep't Soc. & Health Servs.*, 149 Wn.2d 589, 70 P.3d 954 (2003) (Washington courts "have not recognized a general tort claim for negligent investigation" outside the confines of RCW 26.44.050, and rejected the argument that "DSHS has a general duty of care to act reasonably when investigating child abuse, which includes following correct procedures"); *Tyner v. State*, 141 Wn.2d 68, 77-82, 1 P.3d 1148 (2000); *Miles v. Child Prot. Servs.*, 102 Wn. App. 142,154-55, 6 P.3d 112, *review denied*, 142 Wn.2d 1021 (2001); *Albertson v. State*, 191 Wn. App.

284, 299-300, 361 P.3d 808 (2015).² Washington’s Supreme Court has specifically rejected calls to widen the scope of negligent investigation claims: “We decline to expand this cause of action beyond these bounds because the statute from which the tort of negligent investigation is implied does not contemplate other types of harm.” *M.W.*, 149 Wn.2d at 601.

The Roes’ negligent investigation claim fails on three independent bases. First, DSHS did not conduct an incomplete or biased investigation. Second, DSHS investigation did not result in a harmful placement decision for N.R. And third, the placement decisions of which the Roes’ complain were the result of orders of the juvenile court, which orders are intervening, superseding acts that defeat proximate cause regarding the State Defendants’ liability. Based upon the trial court’s review of the extensive record before it and the argument of the parties at summary judgment, the court ruled that the Roes lacked sufficient evidence to support these essential elements of their negligent investigation claim. RP at 36:12-39:24. As the trial court found, the Roes’ negligent investigation claim fails because they cannot establish the essential elements of their

² With the exception of claims for negligent investigation under RCW 26.44.050, Washington courts have repeatedly held that Washington’s child welfare statutes do not generally create private causes of action. *See, e.g., Braam v. State*, 150 Wn.2d 689, 711-12, 81 P.3d 851 (2003); *Aba Sheikh v. Choe*, 156 Wn.2d 441, 457-58, 128 P.3d 574 (2006).

claims. *Young v. Key Pharmaceuticals, Inc.*, 112 Wn.2d 216, 225, 770 P.2d 182 (1989).

C. The State Defendants Did Not Conduct An Incomplete Or Biased Investigation

The Roes fail to raise any genuine issue of material fact concerning their allegation that the State Defendants' investigation was either incomplete or biased. The Roes only make repeated conclusory statements that "[I]n their investigation [DSHS], Defendants willfully, negligently, and nearly exclusively relied on the statements of Ms. Bonnell." *See, e.g.*, Amended Br. of Appellants at 19. Such statements totally ignore the record in this case concerning the thorough abuse investigation performed by SW Frost.

As outlined above in Section III B, the scope of SW Frost's CPS investigation was outlined in her Investigative Assessment for CPS Intake Referral No. 2245181. CP at 927-45. SW Frost's investigation included her face to face contacts with N.R. and N.R.'s siblings, her contacts with Heather Bonnell, her contacts with Cowlitz County law enforcement officials [CP at 927], her consult with N.R.'s primary care physician Dr. Ayoub regarding that status of N.R.'s physical and developmental conditions [CP at 927], interviews with both Teri and Brandon Roe, consultation with Dr. Deborah Hall (a child abuse medical expert who

indicated N.R.'s bruise on the right ear was nearly diagnostic of abuse) [CP at 927; 915], review of the Cowlitz County Sheriff's Department reports and their collateral contact interviews [CP at 941; 943], review of the Child Forensic Interview of N.R. conducted at the Children's Justice and Advocacy Center ("CJAC") [CP at 941-42], her review of Dr. Hall's report, review of N.R.'s medical records during contact with N.R.'s doctor [CP at 942], review of N.R.'s medical records from St. John Hospital for her emergency room visit on 5/11/10 [CP at 943], reports from N.R.'s day care that N.R. had not been sustaining bruising while placed with Ms. Hoffman and Mr. Kindvall [CP at 944], and review of photographs of N.R. taken by CPS and law enforcement during their respective investigations [CP at 942], knowledge of Teri Roe's arrest by the Cowlitz County Sheriff's Department [CP at 944], knowledge that Teri Roe was charged with the assault of N.R. [CP at 944], and knowledge that the Cowlitz County Superior Court issued a No Contact Order prohibiting Mrs. Roe to have contact with N.R. CP at 944. These facts and more are included in the Dependency Petition filed in this matter. CP at 921-25.

The Roes' argument that Teri Roe's acquittal of the criminal charges and the subsequent dismissal of the dependency action establishes a biased/faulty investigation is without merit. Amended Br. of Appellant at 21-22. Once the Cowlitz County Prosecutor independently determined in

July 2010 that probable cause existed to charge Mrs. Roe with a crime for allegedly assaulting N.R., DSHS was forced to act for the welfare of N.R. Beyond the Roes' pure conclusory statements that DSHS conducted a biased/faulty investigation, they produced no facts or evidence that the CPS investigation fell below any standard of care, or that the investigation even violated any agency policy or procedure. The Roes only make broad statements that the social workers were grossly negligent in their conduct and actions but fail to support this claim in any manner beyond mere words.

Recognizing the extremely narrow scope of the negligent investigation cause of action, Washington courts have repeatedly "rejected the proposition that an actionable breach of duty occurs every time the state conducts an investigation that falls below a reasonable standard of care by, for example, failing to follow proper investigative procedures." *Petcu v. State*, 121 Wn. App. 36, 59, 86 P.3d 1234 (2004); *M.W.*, 149 Wn.2d at 601-02. The Roes have failed to produce any evidence in support any their accusation that DSHS fell below a reasonable standard of care in conducting its investigation of the abuse allegations regarding N.R. The trial court's dismissal of the Roes' negligent investigation claim should be affirmed.

D. The State Defendants' Investigation Did Not Result In A Harmful Placement Decision

RCW 26.44.050 requires DSHS to conduct a reasonable investigation once it receives a report of abuse. *Blackwell v. Dep't Soc. & Health Servs.*, 131 Wn. App. 372, 127 P.3d 752 (2006). However, Washington Courts have repeatedly held that RCW 26.44 is not intended to protect from all harm that may arise during an investigation or to create a generalized duty of care. *M.W.*, 149 Wn.2d. at 598-99. The harm for the negligent investigation cause of action is limited to harm actually contemplated by the statute: a harmful placement decision. *M.W.*, 149 Wn.2d. at 602.

Recognizing the extremely narrow scope of this cause of action, Washington courts have repeatedly “rejected the proposition that an actionable breach of duty occurs every time the state conducts an investigation that falls below a reasonable standard of care by, for example, failing to follow proper investigative procedures.” *Petcu v. State*, 121 Wn. App. 36, 59, 86 P.3d 1234 (2004); *see also M.W.*, 149 Wn.2d at 601-02. Instead, the narrow claim for negligent investigation is limited to remedying the specific harm contemplated by RCW 26.44.050—the harmful placement of a child. *M.W.*, 149 Wn.2d. at 595.

It is undisputed that once DSHS learned of the alleged physical abuse of N.R. on May 11, 2010, it referred the matter to law enforcement which then placed N.R. into protective custody pursuant to RCW 26.44.050. CP at 902. DSHS/CPS then consulted with the Roes to make a decision concerning the initial placement of N.R. while in protective custody. CP at 532-33. Then, within 2 days of the CPS referral, the Roes voluntarily consented to the out-of-home placement of N.R. by executing a series of VPAs.³

N.R.'s removal from the Roes' home occurred upon the CCSO's placement of N.R. into protective custody pursuant to RCW 26.44.050. The Roes then voluntarily placed N.R. into the custody of the DSHS Children's Administration. Then upon Mrs. Roe's arrest and her being charged with assault of her daughter, the Cowlitz County Superior Court, Juvenile Division, ordered the placement of N.R. with Julie Hoffman and Neil Hardvall.

Thus, the Roes are not able to allege a harmful placement decision committed by DSHS because they themselves made the initial placement decision and thereafter the juvenile court controlled the placement of N.R. *Roberson v. Perez*, 156 Wn.2d 33, 47-48, 123 P.3d 844 (2005) (a voluntary relinquishment of the plaintiffs' son to his grandmother after

³ See CP at 865-871, 869 ¶ 14, 917, 919.

learning that the mother was among those accused of abusing children failed to support a cause of action under RCW 26.44 for a “harmful placement decision”).

The Roes fail to produce any evidence that the DSHS acted negligently by conducting an incomplete or bias CPS investigation that led to a harmful removal of N.R. from a non-abusive home. CP at 927-45; 949-52. The Roes provide this Court with nothing more than their purely conclusory statements that the CPS investigation was limited to total reliance upon Ms. Bonnell’s accusations. The record before the trial court did not support a claim of negligent investigation. This Court should rule likewise and affirm the trial court’s grant of summary judgment on this claim.

E. The Juvenile Court Was Fully Informed Of All Material Facts During N.R.’S Dependency Action, Its Orders Controlled N.R.’S Placement, And Those Orders Are An Intervening Superseding Act That Defeats Causation

The third, independent basis on which to affirm dismissal of the Roes’ negligent investigation claim is that the juvenile court’s orders placing N.R. in an out-of-home dependency operate as a superseding, intervening act that severs any liability of the State Defendants for the alleged injuries the Roes assert concerning their claim of a negligent investigation. *See Tyner v. DSHS*, 141 Wn.2d 68, 88, 1 P.3d 1148 (2000); *Petcu*, 121 Wn. App. at 56.

A caseworker may be legally responsible for a parent's separation from a child, even when the separation is imposed by court order, but only if the court has been deprived of a material fact due to the caseworker's faulty investigation. *Tyner*, 141 Wn.2d at 86. Otherwise, court intervention operates as a superseding intervening cause that cuts off the caseworker's liability. *Tyner*, 141 Wn.2d at 88.

A material fact is one that would have changed the outcome of the court's decision. *Tyner v. Dep't Soc. & Health Servs.*, 92 Wn. App. 504, 518, 963 P.2d 215 (1998), *rev'd on other grounds*, *Tyner*, 141 Wn.2d 68, 88, 1 P.3d 1148 (2000). The question of materiality goes to the issue of cause in fact and is therefore a question for the jury unless reasonable minds could reach but one conclusion. *Estate of Jones v. State*, 107 Wn. App. 510, 517-18, 15 P.3d 180 (2000), *review denied*, 145 Wn.2d 1025, 41 P.3d 484 (2002).

In evaluating whether an alleged breach of duty was a cause in fact of Mrs. Roe's court-ordered separation from N.R., this Court examines all of the information before the juvenile court to determine whether, but for the faulty investigation, the court would not have decided as it did. *Petcu*, 121 Wn. App. at 59; *Tyner*, 141 Wn.2d at 88 (if a judge is given all material information and reasonable minds could not differ, the court order will be a superseding intervening cause of the complaint of action).

Although the Roes claim that material information was not before the dependency court, the record clearly establishes otherwise. Because the Roes did not show that the dependency court lacked material information when entering orders in the dependency action, the trial court could properly rule that the dependency court's findings and orders operate as a superseding intervening cause as recognized in *Tyner and Petcu*. *Tyner*, 141 Wn.2d at 88; *Petcu*, 121 Wn. App. at 59.

The Roes allege that material information was withheld from the juvenile court while placement orders were being issued. Amended Br. of Appellant at 19-20. The Roes point to the following, “. . . several statements made by the child during her interview at CJAC that exonerated Mr. and Mrs. Roe; statements by N.R. to Julie Hoffman regarding injuries she sustained when her dog jumped on her; and the concerns expressed by six people involved with the dependency proceedings, including Ms. Bonnell herself, Ms. Bonnell's aunt, and social worker Stephanie Frost, regarding Ms. Bonnell's improper motives and obsession with N.R.” Amended Br. of Appellant at 20.

As a preliminary matter, the Roes fail to cite to the record regarding these alleged statements as required by RAP 10.4(f), nor do they produce the statements so that the State Defendants may respond appropriately. Regardless and contrary to the Roes claim, the dependency petition filed with the juvenile court clearly informed the court about N.R.'s statements

that mommy hurt her nose and then she also said that the puppy did it, along with the various and different explanations provided by both Brandon and Teri Roe about how N.R. sustained her injuries. CP at 922-23.

As outlined in the Dependency Petition [CP at 921-25], SW Frost included the following details for the juvenile court's information and review:

1. N.R., a 3 year old girl, was placed into police protective custody on May 11, 2010 for alleged physical abuse by her adopted parents Brandon and Teri Roe, CP at 922-23;
2. Visible signs of multiple bruising on N.R.'s face, right ear, nose, arm, and back which appeared to be in different stages of healing, photographs taken, CP at 922; 882-900; 1162;
3. N.R. provided conflicting statements for cause of bruising from her mommy gave her the bruise on her nose to the puppy did it, CP at 923; 1163-1166;
4. Brandon and Teri Roe give conflicting statements of cause for bruising on N.R. and claim lack of knowledge regarding extent of bruises found on May 11, 2010, CP at 923;
5. N.R. examined by the emergency department at St. John Hospital in Longview, Washington, skeletal survey indicate no evidence of fractures, but medical staff noted lots of soft tissue damage (bruising) and multiple contusions on N.R.'s back and face, suspected injuries appeared abusive, CP at 915; 923;
6. Roes provided photos to law enforcement to discount that N.R. always had bruises on her face, but the referent also provided photos to law enforcement to show that N.R. had been seen with bruises that were not typical of child-like bruises, CP at 924;
7. Teri Roe interviewed on May 13, 2010 by Cowlitz County Sheriff's detectives and blamed N.R.'s bruises on a medical condition/equilibrium problem, CP at 923;
8. N.R.'s primary care physician Dr. Ayoub reported N.R.'s blood work was done in regards to bruising and blood clotting which returned normal and equilibrium tests were

developmentally appropriate, CP at 924; 915; 1167-68; 1233-35; 1291-92;

9. Deborah Hall, M.D., child physical abuse medical expert, found N.R.'s case very concerning for physical abuse and the bruising to N.R.'s ear to be nearly diagnostic of abuse, CP at 924; 869:1-10; 915;
10. On July 14, 2010 Teri Roe was arrested by the Cowlitz County Sheriff's Department for assault of a child in the third degree, CP at 922; 398-402;
11. The Cowlitz County Superior Court issued a No Contact Order upon Teri Roe being charged with the assault of N.R., CP at 922; 571-76;
12. 12/22/2008 CPS Intake Referral 1967047 of alleged physical abuse of N.R. by Teri Roe made by Teri's daughter Nikole, CP at 924; 1294-99;
13. 4/27/2010 CPS Intake Referral 2237628 of alleged physical abuse of N.R. by the Roes, CP at 922; 311; and
14. Due to conflicting explanations that Brandon and Teri Roe gave for N.R.'s injuries, the statements made by the referent and other witnesses, Teri Roe's arrest, and N.R. being very young and vulnerable, court intervention was deemed necessary to protect this child and facilitate planning for her future. CP at 924-25; 1279-81 ¶¶ 7-12.

The Roes' claim that information concerning the alleged motives of the complaining CPS referent, Heather Bonnell, were suppressed and not provided to the juvenile court is contrary to the record both before the juvenile court, and then also before the trial court at the time summary judgment was granted. The very first ISSP prepared by Defendant CSW Vicky Payton on August 23, 2010, and filed with the juvenile court on September 1, 2010, made reference to the Roes belief that the referent, Ms.

Bonnell, was setting them up. CP at 966-78. The ISSP also indicates in the third paragraph of CP at 968, the following, “. . . Mr. and Mrs. Roe have also stated to Mrs. Frost and the detectives that they believe the referent in this case is setting them up or framing them and that maybe the referent caused the bruises. . . .” This same sentence and information is also contained in CSW Payton’s ISSP filed with the juvenile court on September 9, 2011. CP at 980-93. The fifth paragraph in CP at 982 is where the sentence appears.

In addition, the Roes themselves provided the exact information they now claim had been omitted from the juvenile court concerning N.R.’s statements about the eight week old puppy and Ms. Bonnell’s motives for making the CPS complaint. CP at 1119-23. The juvenile court was fully informed of all material facts when that court continued the dependency action beyond November 19, 2011. CP at 1158-68; 1342-44; 1125-27; 1126, FOF ¶ 9.

Through the reports DSHS provided and documents submitted by all of the parties, the juvenile court was fully informed of all material facts. When the court is aware of all material information and reasonable minds could not differ on the issue, the actions of the court preclude the existence of proximate cause as a matter of law. *Tyner*, 141 Wn.2d at 86, 88. Thus, the orders placing N.R. in the out-of-home care are superseding,

intervening causes which sever any alleged liability of the State Defendants.

As the State Defendants' argued to the trial court in their summary judgment brief, a similar factual scenario to our instant case was addressed *In re Scott County Master Docket*, 672 F.Supp. 1152 (D. Minn. 1987), *aff'd sub nom., Myers v. Scott County*, 868 F.2d 1017 (8th Cir. 1989). CP at 1052:18-53:19. In *Scott County*, parents brought Title 42 U.S.C. §1983 claims against county social workers, county deputy sheriffs, and other county officials involved in the investigation of sexual abuse claims. *Scott County*, 672 F.Supp. at 1165. The parents alleged that the actions of the social workers caused or contributed to the initial and continued separation of children from parents and led to the parents' arrest. *Scott County*, 672 F.Supp. at 1165. The court found that the final decision to arrest the parents and the final decision to remove the children from their homes were made not by the social workers but by others. *Scott County*, 672 F.Supp. at 1165. The court further stated that the minimal action from the social workers did not satisfy the 'but for' condition necessary to prove causation. *Scott County*, 672 F.Supp. at 1166.

Likewise, the trial court in *Cunningham v. City of Wenatchee*, 214 F.Supp.2d 1103, 1113 (E.D. Wash. 2002), found that the plaintiff failed to show the causation element of proximate cause. The court found that

Cunningham had to show that the defendant social worker's actions were a cause that produced Cunningham's harm. *Cunningham* , 214 F.Supp.2d at 1112. The court held that Cunningham produced no evidence to show that the defendant influenced the decisions to arrest and prosecute him. *Cunningham* , 214 F.Supp.2d at 1113.

Both the *Scott County* and *Cunningham* cases are discussed by the Court in *Gausvik v. Abbey*, 126 Wn. App. 868, 885-87, 107 P.3d 98 (2005), where the Court determined that proximate cause did not exist when the plaintiff was arrested for child abuse and thus failed to make a causal connection to removal of their child from the home by state social workers.

This Court should find upon its examination of the facts of this case that even in the light most favorable to the Roes, the facts do not support a claim of negligent investigation because they do not give rise to a finding that DSHS conducted an incomplete or biased child abuse investigation that resulted in a harmful placement. Thus, this Court should affirm the trial court's grant of summary judgment.

F. The Trial Court Did Not Err In Granting The State Defendants' Motion For Summary Judgment With Respect To The Roes' Claim Of The Tort Of Outrage.

The Roes fail to raise an issue of material fact regarding their claim of outrage. Any claim of outrage must be predicated on behavior "so

outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community.” *Kloepfel v. Bokor*, 149 Wn.2d 192, 196, 66 P.3d 630 (2003) (emphasis omitted) (quoting *Grimsby v. Samson*, 85 Wn.2d 52, 59, 530 P.2d 291 (1975)).

As the State Defendants argued in their summary judgment brief, no reasonable person could conclude that DSHS' conduct in this matter was “so outrageous in character, and so extreme in degree, as to go beyond all bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community.” See *Strong v. Terrell*, 147 Wn.App. 376, 385, 195 P.3d 977 (2008) (internal quotation marks omitted) (quoting *Kloepfel*, 149 Wn.2d at 196); CP at 1053:20-55:3; 1367:17-25. The Roes have no right to live with their children without government interference where the government suspects child abuse. *Gausvik v. Abbey*, 126 Wn. App. 868, 889, 107 P.3d 98 (2005) (children told Abbey and others that parents had sexually abused them); *Miles*, 102 Wn. App. at 158 (there is no well-established constitutional right to the companionship of children whom one has abused or neglected).

The mere fact that Mrs. Roe was ultimately acquitted of the criminal child abuse charge and the dependency was dismissed does not establish that the earlier actions taken by the DSHS were “outrageous.”

At the time SW Frost investigated the Roes, reasonable cause existed to believe that one or both parents had neglected and/or physically abused N.R. as outlined in the Dependency Petition. CP at 921-25. Support for this position came not only from medical professionals who examined N.R. but also from Dr. Deborah Hall, a child abuse medical expert, where she indicated that N.R.'s bruises were “. . . all very concerning for physical abuse. The bruising of the ears in this pattern is nearly diagnostic of abuse.” CP at 915.

In Mrs. Roe's case the charges of child assault were dismissed upon acquittal after a jury trial. The disposition in the criminal case against Mrs. Roe had a definite bearing on the final disposition in the dependency action, but only after a fully informed juvenile court weighed independently all material facts before it. CP at 632-36; 1025-27; 1125-27; 1137-54; 1158-68; 1214; 1217-19; 1342-44; 1346-47; 1349-54; 1356-58.

The Roes have contended throughout their amended brief that the Defendants' disregard explanations and statements that exonerated Mrs. Roe from any belief that she abused N.R. and thus this disregard by the Defendants was outrageous. Amended Br. Of Appellant at 23. Contrary to the Roes' contention the facts and evidence as argued above by the

State Defendants show that these details and information were conveyed to the juvenile court for review throughout the dependency action.

Then the Roes argument that the State Defendants were aware of the susceptibility of Mr. and Mrs. Roe to emotional distress in order to raise an issue of fact is without merit. The State Defendants have a statutory duty to protect N.R. from harm and abuse being committed by her parents. The Roes have no right to live with their children without government interference where the government suspects child abuse. *Gausvik*, 126 Wn. App. at 889.

As for Mrs. Roe's claims that she received medical treatment for depression and anxiety that began during the dependency (Amended Br. of Appellant at 25), the medical records indicate otherwise and her records contain no reference whatsoever to the removal of N.R. by CPS or any reference to the dependency action. CP at 1304-05; 1310-40. The medical records do however indicate that Mrs. Roe had a history of depression totally unrelated to anything involving DSHS. Mrs. Roe's office visit to Dr. Gonavaram on May 27, 2010 indicates, under the "SUBJECTIVE" portion of the chart note the following, "Teri Roe is an 38 year old female who presents for evaluation and treatment of depressive symptoms. Onset approximately 6 years ago. STARTED DURING HER HEP C TREATMENT. Current symptoms include see

PHQ.” CP at 1336; *see also* CP at 1339-40 (regarding Mrs. Roe’s history of depression/anxiety).

The Roes cite to *Keates v. Vancouver*, 73 Wn. App. 257, 264, 869 P.2d 88 (1994), for the proposition that this case should go to a jury on their outrage claims. Amended Br. of Appellant at 24. Whether conduct is sufficiently outrageous is ordinarily a question for a jury, but initially it is the responsibility of the court to determine if reasonable minds could differ on whether the conduct was so extreme as to result in liability. *Keates*, 73 Wn. App. at 263.

The *Keates* case concerned a police investigation where the plaintiff had been interrogated about his wife’s murder and then the plaintiff sought damages alleging that he was harmed from the police interrogation. *Id.* at 259-62. The *Keates* Court held that the defendants’ conduct did not constitute the tort of outrage and that the police did not owe a duty to the plaintiff to avoid inadvertent infliction of emotional distress. *Id.* at 264-69.

Here, the trial court analyzed each element of the Roes’ claims in order to determine whether the record in this case met the standard to preclude summary judgment. Based upon the trial court’s thorough review, Judge Murphy found that it was appropriate to grant the motions for summary judgment on behalf of all of the defendants in this case. RP

at 37:20-24; 39:16-20. As the trial court indicated during its ruling, the court considered the voluminous record which record includes Mrs. Roe's medical records. CP at 1308-40.

In fact, the trial court asked if any of the parties required clarification of the court's grant of summary judgment. RP 39:25-40:1. The Roes' attorney, Gary Preble, spoke up and indicated that he had a question. RP at 40:3-4. Mr. Preble's question however did not seek any clarification whatsoever of the court's ruling regarding the outrage claims, nor did the trial court volunteer any further details concerning the outrage claims. RP at 40:9-41:3. Mr. Preble made no further inquiries of the trial court once the judge addressed his question.

The trial court's dismissal of the outrage claims should be affirmed.

G. The Trial Court Did Not Err In Granting The State Defendants' Motion For Summary Judgment With Respect To The Roes' Claim Of Malicious Prosecution.

The Roes fail to raise a genuine issue of material fact regarding their claim of malicious prosecution. Reasonable cause existed for the filing of the Dependency Petition. *See supra* at B, 3, and CP at 921-25 for the facts and information detailed in the petition filed with the juvenile court. Proof of probable cause is an absolute defense to a malicious

prosecution claim. *Clark v. Baines*, 150 Wn.2d 905, 912, 84 P.3d 245 (2004); *Brin v. Stutzman*, 89 Wn.App. 809, 819, 951 P.2d 291 (1998).

While actions for malicious prosecution began as a remedy for unjustifiable criminal proceedings, Washington does recognize this remedy where a civil suit has been wrongfully initiated. *See, e.g., Hanson v. Estell*, 100 Wn.App. 281, 286-87, 997 P.2d 426 (2000); *Gem Trading Co. v. Cudahy Corp.*, 92 Wn.2d 956, 603 P.2d 828 (1979); *accord W. Page Keeton et al.*, PROSSER AND KEETON ON THE LAW OF TORTS § 120, at 889 (5th ed. 1984) (“The action of malicious prosecution, which began as a remedy for unjustifiable criminal proceedings, has been undergoing a slow process of extension into the field of the wrongful initiation of civil suits.”)

A malicious prosecution claim arising from a civil action requires the plaintiff to prove seven elements: (1) that the prosecution claimed to have been malicious was instituted or continued by the defendant; (2) that there was want of probable cause for the institution or continuation of the prosecution; (3) that the proceedings were instituted or continued through malice; (4) that the proceedings terminated on the merits in favor of the plaintiff, or were abandoned; (5) that the plaintiff suffered injury or damage as a result of the prosecution; (6) arrest or seizure of property; and (7) special injury (meaning injury which would not necessarily result from

similar causes of action). *Gem Trading*, 92 Wn.2d at 962-63; *see also* *Petrich v. McDonald*, 44 Wn.2d 211, 216-22, 266 P.2d 1047 (1954). Although plaintiffs must prove all required elements, malice and want of probable cause constitute the gist of a malicious prosecution action, *Clark*, 150 Wn.2d at 912, citing *Hanson v. City of Snohomish*, 121 Wn.2d 552, 558, 852 P.2d 295 (1993). Proof of probable cause is an absolute defense. *Clark*, 150 Wn.2d at 912; *Brin v. Stutzman*, 89 Wn.App. 809, 819, 951 P.2d 291 (1998).

Also, “[m]alicious prosecution actions are not favored in law.” *Rodriguez v. City of Moses Lake*, 158 Wn. App. 724, 729, 243 P.3d 552 (2010), citing *Hanson*, 121 Wn.2d at 557. This is because an individual ““who acts in good faith shall not be subjected to damages merely because the accused is not convicted.”” *Id.*, citing *Hanson*, 121 Wn.2d at 557 (quoting *Peasley v. Puget Sound Tug & Barge Co.*, 13 Wn.2d 485, 497, 125 P.2d 681 (1942)).

The Roes argue that because the jury trial acquitted Mrs. Roe of the criminal assault charge, the State Defendants must now establish probable cause as a matter of law. Amended Br. of Appellant at 26. The Roes argue that the State Defendants have not established that “unrefuted evidence show that before instituting criminal proceedings, a full and fair disclosure was made of all known material facts, and the prosecutor

thereupon filed a charge.” *Bender v. City of Seattle*, 99 Wn.2d 582, 593, 664 P.2d 492 (1983). The Roes continue further by claiming that the State Defendants failed to provide, in good faith, a full and fair disclosure of all the material facts known to them, including the statements of N.R. exonerating Mr. and Mrs. Roe of any wrongdoing. Amended Br. of Appellants pp 26-27.

In fact, the State Defendants supported their motion for summary judgement with not only the factual details outlined in the initial Dependency Petition but also the follow-up Progress Reports and ISSPs filed with the juvenile court by the CSW. In addition, the trial court had the benefit of reviewing all of the materials filed by Defendant Cowlitz County and the individually named Sheriff’s deputies regarding the criminal investigation that lead not only to Mrs. Roe’s arrest for assault but also the charging information filed by the Cowlitz County Prosecutor’s Office. CP at 283-86; 286:1-6; 398-402.

Here, given the facts supporting the arrest of Mrs. Roe, probable cause existed as a matter of law to support the charge of assault of a child. Probable cause may be established as a matter of law where “. . . unrefuted evidence shows that before instituting criminal proceedings, a full and fair disclosure was made of all known material facts, and the prosecutor thereupon file a charge.” *Rodriguez*, 158 Wn. App. at 730, citing *Bender*,

99 Wn.2d at 593. Here, there is no allegation or evidence that a full and fair disclosure of all known material facts was not made to the Cowlitz County Prosecutor. In fact, the unrefuted evidence establishes that the complete CCSO case investigation file was provided to the Prosecutor's Office. CP at 283-86; 286:1-6; 398-402.

Moreover, it is important to note, the Roes have failed to assign any error to the trial court's dismissal of the malicious prosecution claim against the Cowlitz County defendants. The Roes should not now be allowed to argue that while the Cowlitz County defendants had probable cause to proceed with the criminal action against Mrs. Roe that somehow the State Defendants lacked reasonable cause to proceed forward with a dependency action based upon similar facts and information. Reasonable cause is the standard to be applied in a dependency action. RCW 13.34.060(2).

Materials the Roes filed in opposition to the respective defendant's motions for summary judgment, included were additional records from SW Frost in the form of case notes that further outlined her CPS investigation. Not only do these materials support that reasonable cause existed to file the dependency action, but none of these materials indicate any form of "malice" or bad faith to either withhold material information

from the juvenile court, or some torrid over-zealous vendetta against the Roes. Quite the opposite is evident in the records.

While the Roes claim that DSHS acted in bad faith throughout the dependency action, the juvenile court record does not support that claim. While the Roes contend that the Court's Order of December 9, 2011 [CP at 1077-78] supports their argument of bad faith, the order did not find DSHS to have acted in "bad faith" and then the court purged the contempt finding with one (1) make-up child visit and no further violations in the next 60 days. CP at 1078:9-13. The juvenile court found no further violations.

Thus, the issue is not whether Mrs. Roe was found guilty or innocent; it is whether reasonable cause to file the dependency petition existed. The juvenile court's acceptance of the dependency action and allowing it to proceed is evidence that reasonable cause existed to proceed. The Roes were each independently represented by competent legal counsel throughout the dependency action. The Roes have failed produce any evidence that the institution of the dependency was done without reasonable cause or that malice existed beyond their own self-serving, conclusory statements.

As the trial court so appropriately stated, "Once the Department says here is what we have and then a court decides whether it's appropriate

to go forward or not, even though there is an acquittal -- I mean, every time criminal charges go forward, that is one of the potential outcomes is acquittal, and that doesn't necessarily make bringing the charges inappropriate". RP at 33:17-24.

Based upon the foregoing, the Court should affirm the trial court's granting of summary judgment on this claim.

V. CONCLUSION

The State Defendants request that the Court affirm the summary dismissal of all claims filed against the State Defendants.

RESPECTFULLY SUBMITTED this 9th day of March, 2016.

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PROOF OF SERVICE

I hereby certify that I had served the foregoing BRIEF OF RESPONDENTS STATE OF WASHINGTON, FROST, TEETER, MARKER, AND PAYTON, TO THE WASHINGTON STATE COURT OF APPEALS, DIVISION II, and on the following parties:

By hand delivery to the address below:

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Dated this 9th day of March, 2016.

s/ Tina M. Sroor

TINA M. SROOR,
LEGAL ASSISTANT

WASHINGTON STATE ATTORNEY GENERAL

March 09, 2016 - 2:59 PM

Transmittal Letter

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Case Name: Brandon & Teri Roe v. State of Washington, et al

Court of Appeals Case Number: 47987-7

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