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STATE OF WASHINGTON
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CASE NO.: 342255

IN THE WASHINGTON STATE COURT OF APPEALS
DIVISION III

FOWLER

v.

KIM VANDOREN, ANGELA NEWPORT, D.S.H.S et al

ON APPEAL FROM PENDOREILLE COUNTY SUPERIOR COURT
THE HONORABLE JUDGE PATRICK A. MONASMITH

REPLY BRIEF OF APPELLANT

Suzie Leane Fowler
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November 03, 2016

Oral Argument Requested

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IN THE WASHINGTON STATE COURT OF APPEALS
DIVISION III

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v.

KIM VANDOREN, ANGELA NEWPORT, D.S.H.S et al

ON APPEAL FROM THE APPELLATE COURT FOR THE THIRD
CIRCUIT

REPLY BRIEF OF APPELLANT

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November 03, 2016

Oral Argument Requested

Introduction:

The trial court erred in granting the motion for summary judgment because there were genuine issues of material fact still in question. The misunderstanding/misapplication of state substantive law led the Judge to rule in favor of the defendant's motion for summary judgment. Both questions of fact and important questions of law were not acknowledged by the court. Dependency statutes that are vague and undefined in circumstances such as this case were perceived as mandate to the point that issues of material fact in question were ignored by the court. This harmful error caused me to lose my opportunity to a jury trial. One of the paramount material facts in question was not acknowledged in the ruling by the judge, despite extensive evidence, including C.P.S's own documents and a court order from the shelter care hearing. These documents are from the time of disclosure, and show that I was denying that Mr. Twitchell was the father in all communication between C.P.S and the court. Evidence clearly indicates that C.P.S got the information for Mr. Twitchell from, what was at the time, the most recent native-file entered in the D.S.H.S system under my name, E.S.I of a good cause claim which concerned knowledge of foreseeable harm. D.S.H.S records systems were searched and produced extensively for "any collateral information" before the shelter care hearing. D.S.H.S entered the good cause information on April 6, 2011; I was advised at the appointment that I needed to make sure to follow up before 6 months from then because, per process of procedure,

they have to review semiannually, as with most D.S.H.S contract/programs. I was told that the individual in question would not be contacted, and that there would be no attempt to establish paternity, The good cause was granted for 6 (six) months from that day; April 6-October 6, 2011(Notice of appeal, Exhibit A) This exhibit shows the duration that the initial good cause was active, but is not the notated native format of the good cause, DSHS 18-334(x) that was discoverable at the time of proceedings. D.S.H.S administrative procedure can be verified, establishing that good cause was active prior to disclosure, but unfortunately relevant E.S.I has not been produced for the good cause in its native form.

(I-II) The trial court's decision and respondent's brief seem to centralize the argument for defense around notice of dependency proceedings being mandated by RCW 13.34.062 and .070. (RB .P. 2, 3, 16, 17). This perceived "mandate" is one of the primary legal disputes in this case. Judge Monasmith himself said (R.P. P. 7. Ln.10-13)—"you would agree with the general proposition that—if she—if in fact she was married, as she suggests, to "misstated name" that that person would be the presumed father—Isn't he supposed to be notified also, even if there's another named father?"

Apparently, even the court seems unclear on this position. An argument was made by Mr. Cartwright that Kim Vandoren went past presumption based on who she was "told" the father was, then the conversation is

quickly diverted to a medical marijuana cause of action which I did not, and do not wish to be the focus of this case.

The facts in dispute related to the invasion of privacy cause of action are paramount. It is disputed whether personal information was disclosed. (R.P.22-23) (R.B. P. 11-21, CP at 58-59) Affirms Mr. Twitchell was approved for appointment of a public defender to assist in dependency proceedings. The dependency file contained personal and privileged information.

(P. 3, 1) Stating that notice of the dependency proceedings was “mandated by RCW 13.34.062 and .070 is a misstatement of the record.

Because Edwin Twitchell never had legal rights to the child, his parenting time thereby could not be limited by a dependency proceeding.

The presumed father in the context of marriage is the legal father. This issue of law is supported by numerous statutes of the Uniform Parentage Act, affirming the fact that the legal father was my husband. There are immense supporting documents on the record discovered, and written/recorded *by* C.P.S to the knowledge thereof throughout discovery. The fact of my marriage has been uncontested, was addressed and questioned in the trial court, but not answered with any legally applicable authority. (R.P P. 7-8)

In reply to respondent’s statement of the issues, “whether summary judgment should be affirmed where the claimed invasion was issue of

notice of child dependency, etc., as required by RCW 13.34.062 and/or .070,” (R.B. P.3) Presenting the issuance of notice as “required by law” is a both a factual and legal misstatement that fails to take into consideration affirmative statutes that unambiguously define all aspects pertaining to legal paternity acknowledgment. The two statutes requiring notice in a dependency proceeding are confined to notice to legal parents, guardians/ custodians, and would therefore not apply to someone who had absolutely no legal interest in or legal rights to the child. RCW 13.34.062 should also be disregarded because subsection (b) specifically states that “in no event shall notice be provided more than 24 (twenty four) hours after the child had been taken into custody.” The statute was cited for defense outside the realm of its applicability before the trial court, and again in this de novo review. (R.B. P. 17(b), Appellant opening brief, P. 21) There is additionally no explanation offered or supporting authority for the statute being cited out of its context/ juncture.

“Respondent’s assumed legal points of defense regarding any “mandate” or “duty to disclose” are by law immaterial to this case and refuted by both the legally applicable facts on record, and the statutory laws of Washington; this includes statutes that clearly state the department is to only exchange information as authorized by statute, and provides no exceptions stating otherwise or provisions, besides that it is a misdemeanor to do so. (App. Opening Brief, P. 19)

Respondent uses various conclusory statements in conjunction with dependency statutes. For example, the term used multiple times, “actual father,” (R.B P.3,) is statutorily undefined in any 26.26 RCW, additionally undefined by statutes relating to dependency proceedings and should be disregarded as speculation. Additional terms used by respondent, “true father,” (P.18) and “biological father” should also be disregarded because they are conclusory statements, lacking factual basis; which can only amount to speculation. “Speculation, argumentative assertions and conclusory statements are not sufficient to meet the non-moving party’s burden. *White v. State*, 131 Wn.2d 1, 9, 929 P.2d 396 (1997).”

(R.B. P.3) States that “the suggestion that a presumed parent should be given notice instead of an actual parent is offensive to both the statute and the traditional notions of due process engrained in the United States Constitution.” This statement seems to fly in the face of the actual law, Washington’s “Uniform Parentage Act,” statutes which clearly provide that a presumed father is a legal father RCW26.26.116. Denying this legality requires a signed, notarized affidavit according to RCW 26.26.310.

RCW 26.26.315 (1) provides that that if acknowledgment and denial are both necessary, neither is valid until both are filed.

Respondent’s analysis, both in the trial court and reply brief, completely disregards or ignores important legal aspects, such as what

constitutes a legal paternity acknowledgment, and the legal requirement for the department to abide by law statutes. It seems the actual question regarding traditional notions of due process, is whether the department can make their own acknowledgement with complete disregard for the due process provided by the law in statutes, such as those in the Uniform Parentage Act. Additionally, whether dissemination of information against statute will be allowed though the department's own statute states that to do so is a misdemeanor. (App. O.B. P. 19)

(R.B P.2) The argument and appeal that respondent claims are "without merit," They are with merit if the Washington State statutes are with merit

"The criminal rules, like all court rules, are subject to the same rules of construction as statutes. *State v. McIntyre*, 92 Wn2d 620, 622, 600, p.2d 100- (1979); *State v. Berry*, 31 Wn. App. 408, 411, 641, P.2d 1213 (1982). The court will not read into a statute matters which are not there nor modify a statute by construction. *King Cy. v. Seattle*, 70 Wn.2d 988, 991, 425 P.2d 887 (1967)"

III. (P.4, A) Contrary to claims of no harmful placement decision, evidence was submitted to establish negligence involving a "harmful placement decision." I ask for the reasonable inference to interpret the "harmful placement of information," as a harmful placement decision.

(P.4 B) "Duly entered court orders constitute intervening, superseding cause." P.11 states that "on May 6, 2011, in accordance with the court's order and RCW 13.34.062, Social worker Vandoren mailed a letter with the dependency petition and notice, etc., to Edwin Twitchell."

(R.B. P. 16) again states that a notice of summons/ order was issued by Judge Nielsen on April 20, 2011, cited CP at 42. Though, in fact my case was heard by Judge Van De Veer, not Judge Nielsen. I was unaware until after the summary judgment hearing, in obtaining confidential sealed reports for appeal, that Judge Nielsen made any orders involving my case. Documented at (R.P 3) Mr. Cartwright stated that there should not have been reference to the confidential sealed reports on the record. The confidential sealed reports were attached to the declaration of Kim Vandoren, and submitted by her counsel less than a week before the summary judgment hearing. (R.P. P.3)

(IV) It is important to note that the record reflects, as noted in (App. Opening brief, P. 21 at Confidential Sealed Reports 8) that the shelter care hearing court order was issued and physically signed by Judge Van De Veer. Judge Van De Veer had knowledge of the elements of my case, including my marriage which was brought up orally in court and written in the dependency petition. The paternity section of the court order was left blank. The application-level attempts of social worker Vandoren trying to consolidate removal of my child were allowed to be stricken from the document, and Mr. Twitchell's name was allowed stricken from the document. Applicable provisions were entered. These revisions can still be viewed on the record (Conf C.P. 8) All parties then agreed to all stipulations of and signed the court order issued by Judge Van De Veer, which did not provide for any disclosure or paternity provisions. The

department provided Edwin Twitchell's contact information to the court and a different Judge that had not heard, and did not hear my case, issued a process service ex parte. There's clearly conflicting factors between the hearing order physically signed by a Judge with full knowledge of the case, (Sealed Reports 8), and the rubber-stamped process, an ex parte issued summons of a Judge that had not heard the case. (Conf. C.P 6) The department showed disregard for established law and disregard for the safety of the child, when an active DSHS 18-334(x), "Good Cause" was discoverable, but withheld, while inaccurate, incomplete information was provided by C.P.S to the court, initiating disclosure of the child's information to Mr. Twitchell. The department's incomplete information acknowledging a pseudo-legal father led the judge to issue a summons. In fact, the summons was issued without legal applicability or relation to provisions of the mutually acknowledged court order. Respondent's reference to the information disclosure to Twitchell as "in accordance with the court's order," I feel is a leading misrepresentation of the context and provisions of the actual court order acknowledged by all parties, and entered by Judge Van De Veer. (Conf. C.P. 8).

(IV, B) The court could not have received information regarding Mr. Twitchell from anyone other than Kim Vandoren, who provided the information for Twitchell with full knowledge of my marriage and the discoverability of the good cause case information, recorded in the D.S.H.S system on April 6, 2011. Application level metadata from

D.S.H.S/D.C.F.S would show who accessed what files and when. I was not afforded ex-parte communication with any judge, so I couldn't have provided the court with Mr. Twitchell's information. There is materiality to the evidence and it's defensively debated by defendant Kim Vandoren if document information was gathered out of the good cause claim file, whereof the contents constitute foreseeable harm and were referenced as reported, therefore discoverable, before any dependency proceedings.. Vandoren claims that I told her in a jail interview that Twitchell was the father. This is not true, and the information in the dependency petition mirrors the information that I only provided to D.S.H.S during the good cause claim. Additionally, the evidence documented by the department and the court at the time of disclosure is inconsistent with Vandoren's claim that I "told her" Twitchell was the father. The records reflect that it was disputed that he was the actual father, (App. Opening brief, P. 9-10, Conf C.P. 8). I had heard terrible things about the local C.P.S, I did not provide them with the information concerning Twitchell, a dangerous individual. When confronted with C.P.S's discovered information on Twitchell, I adamantly denied that he was the father in an attempt to protect my child, which is disputed by the defendants. When informed that they were going to disclose my child's information to him, I asserted that they could not because of the good cause. Kim Vandoren said that "good cause doesn't apply to a dependency;" there is apparently no administrative procedure able to substantiate this assumption. In a review

of administrative procedures, the only basis provided for terminating a good cause is when by request of the claimant.

(15, B.-R.B P. 26) Reiteration of the foregoing dependency RCWs which should be disregarded as inapplicable by provided context, including by legal definition, and undisputed facts of the case which render these defense statutes legally inapplicable under state substantive law; additionally are inapplicable per the specified juncture provided by statute for information disclosure, indicating that statutes were erroneously applied on multiple levels of law and fact.

(IV, C-1. P.18) Any non-hearsay evidence from the time of disclosure exhibits factual documentation, that the only report concerning identifying information for the individual C.P.S directly initiated discloser to was information contained in good cause made for the safety of myself and my child. It was necessary for me to meet with social workers when scheduled under an (I.R.P) contract in order to provide necessary information to receive benefits in a time of financial hardship. The good cause intake was necessary to prevent D.S.H.S from publicly advertizing/soliciting for claimed parental interest in my child. The good cause, DSHS 18-334(x) was active in the DSHS system as of April 6, 2011, per administrative procedure, good for 6 months, until review, October 6, 2011. Respondent refers to what, upon information and belief is administratively known as DSHS 18-444(x) when referring to the letter issued concerning the D.C.S's affirmation of process concerning the good

cause. (R.B. P. 19) This part of D.S.H.S's production to D.C.S was indeed on a different time-contingency, and does not contain broad case-specific notation, or specific identifying information such as address. This specific information would have been located in the native DSHS 18-334(x) good cause.

(P 19, C) references when D.S.H.S provided D.C.S with verification that the good cause was established; Mr. Cartwright refers to the D.C.S confirmations letter issued after D.S.H.S had entered me under the initial good cause contract, an 18-444(x). The initial good cause with D.S.H.S established the procedural review date within 6 (six) months. (Notice of appeal, exhibit A_) In the summary judgment hearing, (R.P. P-22, 20) Judge Monasmith stated; "It's not clear to me how there is a connection between the good cause order and the communication to an alleged parent." Mr. Cartwright has relentlessly referred to the D.C.S verification of the good cause throughout litigation, and the D.S.H.S establishment of the initial good cause has gone unrecognized in procedural/ legal argument.

(R.B. P.19) Mr. Cartwright states that the "good cause decision was not an order." In the trial court, Mr. Cartwright refers to "good cause order," (R.P. P.5 ln.7). The Judge refers to the "good cause order," (R.P. P. 5, ln.14-15) Since reference to the good cause as being an order is now refuted despite reference to it as an order by all parties, this has created an additional genuine issues of material fact in question. I ask for the

reasonable inference to refer to the good cause as a contract because of its nature as an agreement of specified terms/conditions between parties, which, were initiated in order to receive public assistance. An offer of not attempting to establish paternity was made, and I accepted. It included administratively entered provisions /extensions in accordance with the I.R.P contract that I was already under. These provisions were acknowledged by D.S.H.S and the good cause contract between me and D.S.H.S commenced April 6, 2011. It's alleged that Judge Nielsen's order requiring notice to Mr. Twitchell was an "intervening superseding cause precluding liability for negligence" (R.B. P.21). The department claimed to not have sufficient knowledge of the good cause in response to the complaint, but references the date the good cause was established with D.S.H.S referring to it as "an application for public assistance." (R.P. P. 18). The department has used to very appointment in which the good cause was established to argue that I identified Twitchell as the father. (R.B.18-19) It is disputed whether the good cause was solely a claim to not assist DCS in child support. The provision of not establishing paternity in the initial good cause has gone unrecognized, and is a genuine issue of material fact in question.

In the context of a negligent investigation claim the State's conduct may be the proximate cause of injury where the State has failed to supply sufficient material information. *Bishop*, 137 Wash.2d at 532, 973 P.2d 465. In such a case, a court order will not break the causal chain.

[t]he pivotal consideration is not the involvement of the court per se, but whether the State has placed before the court all the information material to the decision the court must make. Concealment of information or negligent failure to discover material information may subject the State to liability even after adversarial proceedings have begun. *Tyner*, 92 Wash.App. at 518, 963 P.2d 215.

Whether the department placed before the court all the information material to the decision to issue the summons is disputed. There is no evidence or indication that C.P.S provided any relevant case information, such as the knowledge of my marriage or the active DSHS 18-334(x) status of Mr. Twitchell at the time Judge Nielsen issued a summons when presented with information by C.P.S. (R.B P.11, 16, , 17,) There should be no question of law because statutory laws cited RCW 13.34.062; 070 contain no general exceptions. RCW13.34.062 also cited in (Appellant brief P. 21) unambiguously states that in no event shall the notice required by the section be provided more than 24 hours after the child has been taken into custody.

(R.B P. 17,) RCW 13,34,070 Requiring issue of notice/summons and service of the summons in a dependency petition on parents, guardian, or custodian, (and such other persons as appear to the court to be proper and necessary parties to the proceedings). Stating that there was any requirement to notify Mr. Twitchell is pure conjecture; Mr. Twitchell could not be legally defined as a parent, guardian, or custodian; he furthermore could not have been deemed a necessary party to the proceedings without the information provided by the department,

concealing and misrepresenting the source they obtained the information from while withholding legally applicable material information. Whether important material information concerning my marriage and the good cause was withheld to initiate the ex parte issued summons is a material fact in dispute. Negligent failure to discover contradicts evidence that the department had to have based their acknowledgment on the good cause information.

All documentations made by the department from the time frame of the initial disclosure, including Judge Van De Veers order, clearly reflect that I was denying that Twitchell was father, and that my marriage had been acknowledged. In lieu of relevant E.S.I containing application level metadata from DSHS 18-334(x), native good cause, I feel that there should still logically be adverse inference made that the information about Twitchell as an “alleged father” could have only come from the information contained in the good cause, a file which D.S.H.S was the custodian of. I believe that the good cause was an express contract, I had verbally been told that good cause was in effect long before the letter to D.C.S was sent, as referenced (R.B. P.19) I was not informed by any means that an involvement with C.P.S/D.C.F.S could or would negate applicability, change any of the terms, or change any provision of the good cause, including not attempting to establish paternity. Agency policy/administrative procedures do not address termination of good cause, except when requested by the claimant. The very origin, nature, and

applicability of the good cause provisions made by initially by D.S.H.S are genuine issues of material fact in dispute.

In the shelter care hearing on April 21st I realized that Kim Vandoren had made the acknowledgment that Mr. Twitchell was the father. I said that he was not the father. Despite the disputed information, Kim Vandoren's personal acknowledgment initiated Judge Nielsen's "order" amounting to an exp-parte process of service that was stamped, not signed, by Judge Nielsen according to the confidential sealed record. The court order was entered on April 20th or 21st by Judge Van De Veer, and did not include any provisions for paternity or disclosure. In fact, Judge Van De Veer allowed for Mr. Twitchell's name to be crossed off of the shelter care hearing order, (C.S.R 8). This order contains record of Kim Vandoren's recommendations based on her findings, and she had included Mr. Twitchell's name on the order. Upon receiving case information at the hearing, Judge Van De Veer allowed for Kim Vandoren's attempted order stipulations under findings, placement, etc. to be crossed off, and for Mr. Twitchell's name to be crossed off of the order. The order provided no provisions for paternity, as the record clearly reflects, which upon information and belief would have been because my marriage was addressed in court, as well as included in the Kim Vandoren's dependency petition. All parties physically signed the Shelter Care Hearing Order after the proper provisions were made; this included Opposing counsel, Kim Vandoern's supervisor Angela Newport, Tobin

Carelson the Asst. Attorney General, the Guardian Ad Litem, Myself and my attorney, and Judge Van De Veer. This order was consented and agreed to between myself, opposing counsel, the department, and the court. Any ex parte "orders" for disclosure of information to Mr. Twitchell were initiated by electronically discoverable information provided to a third party judge by D.C.F.S workers, without providing pertinent, relevant information about the case, or disclosing their source of obtaining the contact information for the judge to be able to make a legally informed decision on whether to issue the "order." Whether the department provided substantial information to the Judge who issued the summons/order is a material fact in dispute.

According to confidential sealed reports, in 2011, Judge Nielsen provided ex parte process service of notice and summons for Mr. Twitchell on April 20th which summoned him to the Fact Finding Hearing that was scheduled on April 20*21, It seems unclear in the record whether the shelter care hearing was held on April 20, or 21 of 2011. If it was held on April 21, as reported in (R.B. P. 10-) and the provisions are correct, (R.B. P 10-11) which the provisions of the court order by the presiding Judge, Judge Van De Veer, remain undisputed, R.B at 11 "The court scheduled a fact finding hearing to consider evidence relating to the dependency petition for June 2, 2011. Etc." If the court scheduled a fact finding hearing on April 21, how was ex-parte notice of the hearing provided by Judge Nielsen the day before it was scheduled by the court?

The record reflects that C.P.S had already made a personal acknowledgment that Mr. Twitchell was the father. Mr. Twitchell's address was on the ex parte summons issued by Judge Nielsen on April 20, the day before the Shelter Care Hearing according to Defense Counsel, (R.B. P.16). Though Mr. Twitchell's address was on the process/summons, issued ex parte via Judge Nielsen April 20, respondent fails to provide any supporting authority for why the notice was provided so far beyond the juncture applicable under RCW13.34.062(b), additionally no legally applicable supporting authority for a paternity acknowledgment being legally made by the department.

Section 242 is a Reconstruction Era civil rights statute making it criminal to act (1) "willfully" and (2) under color of law (3) to deprive a person of rights protected by the Constitution or laws of the United States.^[1] 18 U. S. C. § 242; *Screws v. United States*, *supra*.

"It has long been recognized that a legislative enactment may be the foundation of a right of action." *Bennett v. Hardy*, 113 Wash.2d 912, 919, 784 P.2d 1258 (1990)(quoting *McNeal v. Allen*, 95 Wash.2d 265, 274, 621 P.2d 1285 (1980) (Brachtenbach, J., dissenting)). In *Bennett*, we outlined when a cause of action will be implied from a statute. The following questions must be asked:

[F]irst, whether the plaintiff is within the class for whose "especial" benefit the statute was enacted; second, whether legislative intent, explicitly or implicitly supports creating or denying a remedy; and third, whether implying a remedy is consistent with the underlying purpose of the legislation.

Bennett, 113 Wash.2d at 920-21, 784 P.2d 1258.

As to the first prong of the *Bennett* test, the parties disagree as to whether a parent falls within the class for whose "especial" benefit the statute was enacted. The state contends that the statute is solely for the benefit of children, whereas Tyner and 1154*1154 w assert that the statute contemplates a benefit to the family unit as a whole.

In a case utilizing a test similar to *Bennett's*, this court announced that "[w]e look to the language of the statute to ascertain whether the plaintiff is a member of the protected class." *Schooley v. Pinch's Deli Market, Inc.*, 134 Wash.2d 468, 475, 951 P.2d 749 (1998). RCW 26.44.050 is nonspecific, in that it fails to do more than announce a general duty of investigation on the part of the State. But RCW 26.44.010, the declaration of purpose section, makes it clear that a parent's interests were contemplated by the Legislature. That provision reads:

The Washington State legislature finds and declares: The bond between a child and his or her parent, custodian, or guardian is of paramount importance, and any intervention into the life of a child is also an intervention into the life of the parent, custodian, or guardian....

RCW 26.44.010.

The second prong of the test asks this court to determine if legislative intent, explicitly 1155*1155 or implicitly, supports creation of a remedy. In this case, the statute itself is silent as to this point, but this court "can assume that the legislature is aware of the doctrine of implied statutory causes of action..." *Bennett*, 113 Wash.2d at 919, 784 P.2d 1258 (quoting *McNeal*, 95 Wash.2d at 274, 621 P.2d 1285).

The State does not dispute that the governing statutes imply a cause of action, but argues against extending the duty only to parents and others persons suspected of abuse. RCW 26.44.050 places an affirmative duty of investigation on the State. At the same time, the Legislature has emphasized that the interests of a child and parent are closely linked. RCW 26.44.010. Thus, by recognizing the deep importance of the parent/child relationship, the Legislature intends a remedy for both the parent and the child if that interest is invaded.

An implied tort remedy in favor of a parent is also consistent with the underlying purposes of RCW 26.44.050, thereby satisfying the third prong of the *Bennett* test. RCW 26.44.050 has two purposes: to protect children and preserve the integrity of the family.

The *Babcock* court noted that "the existence of some tort liability will encourage DSHS to avoid negligent conduct and leave open the possibility that those injured by DSHS's negligence can recover." *Babcock*, 116 Wash.2d at 622, 809 P.2d 143.

"Accountability through tort liability ... may be the only way of assuring a certain standard of performance from governmental

entities." *Bender v. City of Seattle*, 99 Wash.2d 582, 590, 664 P.2d 492 (1983)

(IV, C-2, P.22) "On its face, RCW 26.26.116 is limited to "the context of marriage or domestic partnership" and is therefore not relevant in dependency proceedings." Defense fails to provide any supporting authority or dependency related statutes that provide for the nullification of any other statute. To have been not "in the context of a marriage or a domestic partnership" I believe I would have had to of been a divorcee at the time of the dependency proceedings. The dependency proceedings did not change my marital status, and dependency proceedings should not change applicability of other substantive statutory law. (P. 24) Defense's portrayal of me, having previously told D.S.H.S that Mr. Twitchell was the father so that no reasonable juror would believe otherwise or being "blatantly contradicted by the record," fails to account for the fact that the only record they have to reference is the safety-related good cause information from the native file that would have been discoverable any time after April 6, 2011. The information identifying Mr. Twitchell was only disclosed to D.S.H.S for the purpose of initiating what appeared to be an express contract that established agreed upon terms for the safety of me and my child, including that paternity would not be established. This was done by meeting with a social worker, whom I trusted, in good faith to establish good cause based on circumstances in order to protect my family and get the counseling I needed. I only disclosed Mr. Twitchell's name on one occasion to D.S.H.S, and only after being assured that the good cause

would be approved based on the circumstantial information I had provided, which, should not make it unreasonable for a jury to believe I would tell C.P.S otherwise. The record reflects that I did tell C.P.S and the court otherwise before the disclosure. It was disputed that Mr. Twitchell was the father as soon as I found out that C.P.S was acknowledging him as the father, as reflected by the shelter care hearing order, (Conf. CP. 8).

(IV-D, P. 25) In the trial court, it was argued that precluding liability immunity, none of the causes were actionable. The statutory causes were established because of statute's failure to define "gross negligence," and case law supporting that other authority/statutory causes of action can be asserted. (App. Opening Brief P.) The invasion of privacy was argued in the trial court, and my opening brief attempts to clarify that authority involving acts involving wrongful disclosure amounting to invasion of privacy do not have to be to the public at large, as stated by the trial court. (R.P. P. 22, 1-15). It is disputed whether wrongful disclosure of information by C.P.S resulted in the wrongful access of personal information. The invasion of privacy resulted in irreconcilable harm that I defined using various tort labels to establish actionable causes, refuting the trial court's ruling that the causes were not actionable.

(P.. 25, E,) The assignments of error in appellant opening brief were supported by citation to statutes that could relate to gross negligence since a statutory definition of gross negligence is not provided.

V. (P. 27,) This appeal is not frivolous if the context of our statutory laws is not frivolous. There are debatable issues upon which reasonable minds may differ; that is, if it is reasonable to expect that the state laws, including laws of the agency, would be followed to the extent that they are stated. Agencies given this amount of power should recognize the legal requirements of the situations they are given authority over, to thus acknowledge affirmed legal limits and what is provided by their own legislation and policies. The evidence pertaining to the documented facts in Appellant opening brief are referenced by the record, (Notice of Appeal, App. O.B. P.12-13) that Jason Centorbi was named as father on the initial C.P.S. intake form, and Opening brief, that Mr. Twitchell's name was allowed to be stricken from the shelter care hearing order before all parties signed. (Conf. C.P. 8) I am appealing because genuine issues of material fact are in question and disputed regarding the wrongful disclosure of personal information. Whether or not my personal information was disclosed is disputed, (R.P P. 22-23). I have this immediately relevant evidence on record that was overlooked due to the misapplication of state substantive law, the legal merits are based on statutory law which is supported by authority, and there is no defined exception to the legal requirements of following these statutes. Clearly, abiding by statute is required of the department, including all agency social workers, without exception, including to the extent they claim liability immunity.

Conclusion

D.S.H.S had no requirement under any law cited to provide Mr. Twitchell with notice of the dependency proceeding, as he had no legal rights to the child. "Alleged father," remains a statutorily undefined term, which leaves the dependency statutes vague. I did not get a chance to present evidence in my case because the trial court would not allow me to speak in representation of myself before awarding summary judgment.(R.P P. 22, ln. 23) With permission, I would like to be able to refer to the affidavits provided to the department of health that established a legal father; these included my husband's denial of paternity, and an affidavit of paternity establishing Jason Centorbi as the legal father.

Smith v. Skagit Cy., 75 Wn.2d 715, 718, 453 P.2d 832 (1969), cited in *Spokane Police Guild*, at 36; see also *Brouillet v. Cowles Pub'g Co.*, 114 Wn.2d 788, 791 P.2d 526 (1990); *Dawson v. Daly*, 120 Wn.2d 782, 788, 845 P.2d 995 (1993); 253*253 RCW 42.17.340(3) ("The court may conduct a hearing based solely on affidavits."). Under such circumstances, the reviewing court is not bound by the trial court's findings on disputed factual issues. *Smith*, at 718-19.

Since the factual issue of disclosure being required by statutes, such as RCW13.34.062 remains disputed, the reviewing court should not be bound by the trial court's findings. A hearing based solely on affidavits can confirm that Mr. Twitchell had no legal interest of any kind in the child at any time.

If Mr. Twitchell had any legal right related to the child at any time, he would have had to rescind them by affidavit, or have his parental rights

terminated, neither of which happened because at no time was he legally considered the father. Just as the paternity acknowledgment by the department of health required my husband to first rescind his legal rights, the process of my husband legally rescinding his rights should have been remedied before the department attempted paternity acknowledgment outside the course of law. It is undisputed that the department acknowledged my marriage ad hoc. My marital status was on the C.P.S intake form that named Jason Centorbi as father. (App. Opening brief, P. 10-13). The wrongful disclosure of information caused invasion of privacy. A material fact in dispute is whether or not my personal information was exchanged. Mr. Twitchell was given access to my personal information because the department acknowledged him as my child's father, which gave him access to personal information in the dependency file. The record establishes that Mr. Twitchell was appointed representation for the dependency proceedings. (R.B. P. 11-12 CP at 58-59). This court has seen evidence of how easily even confidential and sealed records can be disseminated by parties, even without an open dependency case. (R.P. P. 3-4).

There are numerous inaccuracies by the virtue of the fact that Twitchell had no legal rights. The vague dependency statutes are undefined when it comes to providing notice to an "alleged parent." The uniform parentage act statutes are clear and unambiguous in defining paternity acknowledgment. There fail to be legal rights reflected by the

record then, and D.O.H. records of affidavit today timelessly reflect the permanence of any legally provided right being ever non-existent. Defenses' mirage of dependency RCWs would not legally apply in this case and a summons/order is not an intervening/ superseding cause when it does not break the causal chain. Being required to abide state substantive law, including contexts of their own written regulations and provisions of authority should be an important step in providing a balance for the department's lack of legal accountability and oversight.

I ask that the court take into account state substantive laws that are clearly defined to be legally applicable, disregarding authorities cited for defense that were erroneously applied have vague no legally defined grounds in this case.

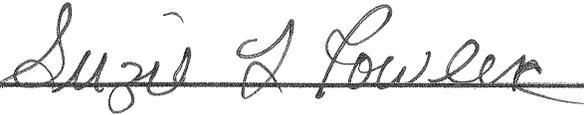
I request for the court to reverse the order granting summary judgment so that the genuine issues of material fact concerning wrongful disclosure of information can be addressed with defined application of substantive law.

Safety within a clearly defined administration of family law is worth striving for.

D.S.H.S should be required to inform people before the process of establishing good cause that involvement with C.P.S/D.C.F.S will terminate that good cause, including the agreement not to establish paternity even if it is stated that parent/child may be seriously harmed.

Vague dependency statutes superseding safety should at the very least be noted in administrative procedure.

Respectfully submitted this 3rd day of November, 2016.

A handwritten signature in cursive script, reading "Suzie L. Fowler", is written over a solid horizontal line.

Suzie L. Fowler

FILED

NOV 03 2016

CERTIFICATE OF SERVICE

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

I certify that I mailed a copy of the foregoing Reply Brief of Appellant
to Jarold Cartwright, Attorney for D.S. H.S. et al,
at 1116 W. Riverside Ave. Spokane WA, postage prepaid, on
[date] 11-03-2016.

99201

(Signature)



I certify (or declare) under penalty of perjury under the laws of the State of Washington
that the foregoing is true and correct:

11-03-2016
(Date and Place)

A.C.P. WA

(Signature)

