

NO. 57117-6-I

A

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

IN RE THE DEPENDENCY OF H.S. (DOB 2/7/90)

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR SNOHOMISH COUNTY
JUVENILE DIVISION

The Honorable Stephen Dwyer

APPELLANT'S OPENING BRIEF

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A. SUMMARY OF APPEAL.

H.S. (DOB 2/7/90) was placed in residential treatment facilities beginning in 2003 to help with his serious psychological problems. When his parents, Stephen and Margaret S. began having financial difficulties keeping H.S. in an appropriate residential treatment facility and were advised by his treatment providers that he was not safe to return to the family home, they filed a dependency petition. H.S. joined his parents' petition asking the court to find he had no parent capable of adequately caring for him. H.S. contends these circumstances present a danger of substantial damage to his psychological or physical development.

Upon a motion by the State, the juvenile court dismissed the petition, finding the evidence inadequate to show H.S. met the statutory definition of a dependent child in RCW 13.34.030(5). On appeal, H.S. asks this Court to find the juvenile court erred as the evidence demonstrated he met the statutory definition of a dependent child.

B. ASSIGNMENTS OF ERROR.

1. The juvenile court erred in finding,

There are resources within this family that would allow the parents to keep [H.S.] in his current placement for at least another six months. Sale of the family home

alone, which was last appraised as being worth approximately \$400,000, could free up equity that would provide for six more months of care at [H.S.'s] present placement. There are also shares of Microsoft stock that the family could sell. Furthermore, there is the ability to rely on extended family members for support as evidenced by the \$21,000 loan that the parents were recently granted by the mother's parents on July 20, 2005. As of the date of the hearing, the uncontested testimony was that the parents have sufficient funding resources to presently care for their child.

CP 9.

2. The juvenile court erred in finding "no current parental unfitness or present inability to exercise the duties of a parent exists." CP 10.

3. The juvenile court erred in finding H.S.'s parents did not have a present inability to exercise the duties of a parent. CP 10.

4. The juvenile court erred in concluding there was no basis for a rational trier of fact to conclude H.S. had no parent capable of adequately caring for him, such that he would be in circumstances which would present a danger of substantial damage to his psychological development. CP 11.

5. The juvenile court erred in concluding, "the evidence is that that father has the necessary ability and capacity and that [H.S.] is presently safe." CP 11.

6. The juvenile court erred in concluding H.S. is not a dependent child, pursuant to RCW 13.34.030(5)(c).

7. The juvenile court erred in dismissing the dependency petition.

C. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR.

1. A child may be found dependent if he, “[h]as no parent, guardian, or custodian capable of adequately caring for [him], such that [he] is in circumstances which constitute a danger of substantial damage to [his] psychological or physical development.” Here, the evidence showed H.S.’s mother and father (hereinafter “the S.’s”) were unable to adequately care for H.S. in their home if he was discharged from residential treatment. Did the court err in concluding Mr. S. had the ability to adequately care for H.S.?

(Assignments of Error 2-7)

2. In addition, the S.’s were financially unable to continue providing for the recommended inpatient treatment for H.S. Did the trial court err when it concluded Mr. S. had the “necessary ability and capacity” to adequately care for H.S.? (Assignments of Error

1-7)

D. STATEMENT OF THE CASE.

Appellant H.S. is the 6' 1", 240 pound, 15 year-old son of Stephen and Margaret S. RP 9, 145, 156.¹ The S.'s also have a daughter and a son, ages 9 and 5, respectively, at the time of the fact-finding hearing. RP 9.

In early 2003, H.S. began having physical and emotional problems, including night rages. RP 10. H.S. displayed significant signs of depression, including telling his parents that life was not worth living. RP 10, 13. It was later revealed that around this time, H.S. had engaged in self-mutilation, unbeknownst to his parents. RP 12. The S.'s sought psychiatric help and H.S. was put on medication, but his problems worsened. RP 11-12.

H.S. was hospitalized in May 2003, as he had suicidal thoughts and reported he heard voices. RP 12. H.S. was diagnosed with severe depression. RP 13. Upon his release, his parents were advised to lock up any dangerous items in their home, including medications and to reduce the stimuli around the house. RP 13. Nevertheless, H.S.'s mental health again deteriorated and he was rehospitalized in June 2003. RP 14.

¹ The verbatim report of proceedings consists of one consecutively paginated volume, cited herein as "RP," followed by page number.

When H.S. was in the family home between hospitalizations, the S.'s followed the treatment recommendations of those who had worked with him during his hospitalizations, as well as his therapist. RP 14, 109. This required they adjust their lives to revolve around H.S.'s needs, his medications, and his irregular sleep patterns. RP 15. The S.'s were forced to keep their younger children away from H.S. and sent them upstairs to shield them from H.S.'s rages. RP 15, 169. H.S. dictated the amount of light in the house, as well as the foods he and the family ate. RP 176. H.S. was verbally aggressive with his parents and the voices he heard worsened, more frequently telling him to kill himself. RP 15. H.S. also threatened his siblings. RP 171. This required the S.'s never leave H.S. alone. RP 16. Ms. S. essentially stopped sleeping, so she could watch him. RP 16, 171. Despite these efforts, medications, and therapy, H.S.'s condition continued to deteriorate, resulting in his admission for another psychiatric hospitalization in September 2003. RP 18-19.

After this hospitalization, H.S.'s parents again tried to attend to his needs, both medical and physical, but again H.S.'s condition neither stabilized nor improved at home. RP 24-25. In January

2004, the S.'s sent H.S. to a residential care facility in Idaho. RP 24.

In March 2004, the S.'s five year-old son revealed that H.S. had exposed himself to the child. RP 25. H.S.'s treatment providers confronted him with this information and he acknowledged his actions. RP 25.

In May 2004, H.S. was moved to a facility in Utah for behavioral therapy in order to stabilize H.S. before he returned home. RP 26. During the course of H.S.'s treatment, his parents actively participated in weekly family therapy sessions by telephone and visited him approximately every six weeks. RP 27.

In January 2005, H.S. was found in a sexual encounter with a peer at his treatment facility. RP 30. H.S. revealed he had had sexual relations with a number of his peers at the facility. RP 30. The treatment providers concluded H.S. exhibited sexually predatory behavior, including grooming. RP 31. Because the facility was not licensed to house sexually aggressive youth, H.S. was required to leave. RP 31. H.S. was moved to another facility in Utah, capable of treating sexually aggressive youths, where he remained at the time of the fact-finding hearing. RP 31, 145.

The professionals who worked with H.S. advised the S.'s it was not safe for H.S. to return home. RP 31-33. Moreover, Mr. S. believed he and his wife were unable to provide the constant monitoring by professionals to deal with his dangerous and destructive behavior if he returned home. RP 32. This view was reinforced by experience, as H.S.'s condition had repeatedly deteriorated at home. RP 33.

Ms. S. was the primary caretaker for the children and she was unable to attend to H.S.'s physical or emotional needs. RP 37, 77, 182. Mr. S., a professional musician, testified that he could not care for H.S. at home because he worked more than 40 hours per week outside the home. RP 33, 57-60, 84, 185; CP 8.

At one point during the course of his treatment, H.S. claimed that he had never heard voices and there had been no hallucinations. RP 65. These revelations did not comfort the S.'s, but made them more concerned about H.S. as he had fooled them and so many treatment providers about the voices and hallucinations. RP 67, 71, 181. If there had never been hallucinations or voices, the S.'s wanted to know why H.S. created them, and whether this new information could pose a danger to the family if he returned home. RP 67.

In January 2005, the S.'s contacted the Department of Social and Health Services (DSHS) for assistance. RP 35. DSHS offered only the possibility of a door alarm and respite care if H.S. returned to the S.'s home. RP 36, 73.

In June 2005, the S.'s filed a dependency petition under RCW 13.34.040(1), stating they could not provide for H.S.'s continuing residential treatment or his mental or physical safety if he was returned to their home. CP 27-29. A fact-finding hearing occurred in September 2005. RP 1-211. H.S. joined his parents in the dependency petition. RP 94-95. After the S.'s and H.S. presented their case, the State moved to dismiss the dependency petition. RP 193. The court granted the motion to dismiss, finding H.S. had not been abandoned, nor did the evidence show he had no parent capable of adequately caring for him so as to present a danger of substantial damage to his physical or psychological development. RP 202-04; CP 11.

H.S. timely appealed the court's order dismissing the dependency petition. CP 3-5.

E. ARGUMENT.

THE RECORD SHOWED H.S. WAS WITHOUT A PARENT CAPABLE OF ADEQUATELY CARING FOR HIM SO AS TO CONSTITUTE A DANGER TO HIS PSYCHOLOGICAL DEVELOPMENT.

When a parent's "actions or decisions seriously conflict with the physical or mental health of the child" the State has the right and responsibility as parens patriae to intervene and protect the child. In re Sumey, 94 Wn.2d 757, 762, 621 P.2d 108 (1980).

Where parents are unable or refuse to permit their minor child to live with them, and are unable to continue providing the residential treatment the child requires, such issues obviously conflict with the well-being of the child, requiring intervention.

A dependent child is defined in RCW 13.34.030(5) as any child who:

- (a) Has been abandoned;
- (b) Is abused or neglected as defined in chapter 26.44 RCW by a person legally responsible for the care of the child; or
- (c) Has no parent, guardian, or custodian capable of adequately caring for the child, such that the child is in circumstances which constitute a danger of substantial damage to the child's psychological or physical development.

Here, the dependency petition claimed H.S. was a dependent child under RCW 13.34.030(5)(c). CP 28. H.S. asks

this Court to recognize that the evidence presented at the fact-finding hearing demonstrated he had no parent currently capable of adequately caring for him, thus placing him in danger of damage to his psychological development. Reversal of the juvenile court's order dismissing the dependency petition is thus required.

Here, the evidence established the S.'s were incapable of providing H.S. with the care he demanded. The evidence also demonstrated that, if H.S. was forced to return to the family home, he would be placed in circumstances which would "constitute a danger of substantial damage" to his "psychological or physical development." As such, the court abused its discretion in denying the dependency petition in this case.

1. The juvenile court abused its discretion in failing to find the S.'s lacked the financial resources to provide for H.S.'s treatment needs, thus jeopardizing his psychological development.

In pertinent part, the court concluded Mr. S. had the "necessary ability and capacity" to care for H.S. CP 11. This conclusion was based primarily on the court's finding that the S.'s had the financial resources to keep H.S. in an inpatient residential care facility for another six months by selling the family home. Mr. S. testified the home was worth approximately \$380,000 to \$390,000, but it could

probably be sold for a profit of \$70,000 to \$80,000. CP 9; RP 54. The court noted the family's 50 shares of Microsoft stock, valued at \$3,000 to \$4,000, could be sold to this end as well. CP 9; RP 44; Ex. 1. The court additionally found that "extended family members" could assist the S.'s in paying for H.S.'s treatment needs. CP 9. Finally, the court said the "uncontroverted" testimony showed the family had sufficient financial resources to presently care for H.S. CP 9. The court's findings and conclusions are without support in the record.

Mr. S. was the sole financial provider for the family, working 40 to 50 hours per week outside the home. RP 33, 37, 55, 57-60. The family was already on the verge of bankruptcy due to the extraordinary expenses of H.S.'s care. RP 40. Mr. S. explained that if they were to sell the family home, the sale proceeds could only keep H.S. in treatment for six months. RP 40-41. Since H.S.'s treatment providers believed he needed two to three more years of inpatient care, such a short-term fix would not resolve the long-term problem H.S. faced. RP 41-42, 86. Ms. S. had not worked outside the home since H.S. was in the third grade. RP 55, 184. Their family therapist testified that Ms. S. was incapable of

obtaining work outside of the home due to her on-going anxiety issues surrounding H.S. RP 111, 113, 131.

In contrast to the court's finding that the S.'s could seek financial assistance from extended family members, the evidence showed only that his extended family, including grandparents, aunts, and uncles, were concerned for H.S.'s future. CP 9, 11; RP 69-70. There was no indication that these family members could provide financial assistance, aside from Ms. S.'s parents, who had already made a \$20,000 loan to the S.'s to pay some of H.S.'s expenses which the S.'s had yet to repay. RP 55, 69-70; Ex. 1. Furthermore, Mr. S. indicated the stocks owned by the family were valued at around \$3,000 to \$4,000, possibly enough to extend H.S.'s residential treatment for one month. RP 44; Ex. 1 (monthly invoice for treatment facility billing the S.'s \$4,500).

Finally, the court's findings insinuate that Mr. S., the only parent the court identified as having the "necessary ability and capacity" to care for H.S., should stop working, thus eliminating the family's income, to become H.S.'s primary caretaker. CP 11. Forcing Mr. S. to stay at home to care for H.S.'s significant needs and eliminating the family income would only serve to further destabilize the family and compromise their safety.

Because Mr. S. was not in a position to quit working to care, full-time, for his troubled son, the court erred in concluding H.S. had a parent, Mr. S., capable of meeting the financial requirements of his care. CP 11.

2. The juvenile court abused its discretion when it failed to recognize the S.'s inability to care for H.S. constituted a danger of substantial damage to the child's psychological or physical development. As set forth above, the undisputed testimony showed that H.S.'s treatment providers believed he needed significantly more inpatient treatment before returning to the family home. RP 32-33, 41. As professionals, one must assume they understood H.S.'s true psychological needs. Although H.S. had been engaged in therapy for some time, it was evident that outpatient care while living at the family home would be insufficient to meet his on-going psychological needs. RP 32-33, 41. His parents and former therapist testified that H.S.'s condition only worsened when he lived with his family. RP 11, 14, 18-19, 108, 173-74. This past experience demonstrated a real danger of psychological damage to H.S. if he returned to the family home, away from constant professional supervision.

Mr. S. explained that if H.S. were discharged from his current treatment facility, the S.'s were unable and unwilling to provide him shelter. RP 100-01. He explained they simply did not have the ability to parent H.S. in their home. RP 100. This was supported by the treatment providers' assessment that H.S. was not safe to return to the S.'s home. RP 32, 41. Furthermore, Ms. S. was unable to physically contend with H.S. when he became aggressive, as H.S. was already over six feet tall and weighed well over 200 pounds. RP 9, 77. Like her husband, Ms. S. was therefore unable and unwilling to care for H.S. in the family home in the foreseeable future. RP 183.

Moreover, H.S.'s demands when he was living in the family home – for less noise, less light, particular foods, and his general need for regular observation – compromised the well-being of other family members. RP 169, 171, 176. Thus, to thrust H.S. back into the family home, a possibility that his parents were neither prepared, nor willing to contemplate, was likely to result in substantial damage to H.S.'s psychological development, as there was no assurance the S.'s could meet the demands of his psychological needs.

At the time of the hearing, the evidence showed H.S.'s psychological and psychosexual issues had not been sufficiently addressed to the point of returning him to the family home. RP 32, 33, 41. Further, forcing a child to live with parents unprepared to care for him would do nothing positive for his psychological development, and would likely only damage his fragile psyche, as it had done in the past. Even if Mr. S. were to stay home to care for H.S. full-time as one conclusion of law suggests, Mr. S., as a professional musician, is unable to competently address H.S.'s ongoing psychological needs, and/or to properly respond to any instances of acting out by H.S., whether physically or sexually. Such circumstances again would plainly damage H.S.'s psychological progress. The court erred when it found no danger of substantial damage to H.S.'s psychological development if returned to his parents. CP 11.

3. Reversal is required. The court's findings and conclusions ignored the reality of H.S.'s situation. At the time of the hearing, the S.'s faced bringing their troubled son home, against the advice of his treatment care providers. They had been advised by professionals that H.S. needed two to three years of additional inpatient treatment before he could safely return to the

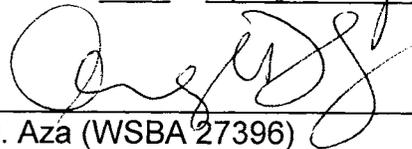
family home. The court also disregarded the S.'s simultaneous obligation to provide their two younger children with a safe and stable home and the real dangers H.S. posed to his siblings. Instead, the court's findings forced the S.'s to decide whether to sell the family home and go further into debt, reducing the stability of the family, or to bring H.S. into the home, against the advice of his treatment providers and potentially imperiling H.S., themselves, and their small children.

Because H.S. faced a danger of substantial damage to his psychological development if returned to his parents who were, by their own admission, incapable of caring for his myriad needs, he properly fit the statutory definition of a dependent child under RCW 13.34.030(5)(c), requiring reversal of the juvenile court order entered to the contrary.

F. CONCLUSION.

For the reasons set forth above, H.S. respectfully asks this Court to reverse the superior court order dismissing his parents' petition to have him declared a dependent child, as the evidence showed he met the statutory definition as set forth in RCW 13.34.030(5)(c).

Respectfully submitted this 16th of February, 2006.



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**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE**

IN RE H.S.)	
STEPHEN SCHERMER,)	
MARGARET SCHERMER AND)	
DSHS - STATE OF WASHINGTON,)	
)	COA NO. 57117-6-1
RESPONDENTS,)	
)	
v.)	
)	
H.S. (DOB 2/07/1990),)	
)	
APPELLANT.)	

CERTIFICATION OF SERVICE

I, MARIA RILEY, CERTIFY THAT ON THE 16TH DAY OF FEBRUARY, 2006, I CAUSED A TRUE AND CORRECT COPY OF THIS **APPELLANT'S OPENING BRIEF** TO BE SERVED ON THE FOLLOWING AND IN THE MANNER INDICATED BELOW:.

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SIGNED IN SEATTLE, WASHINGTON THIS 16TH DAY OF FEBRUARY, 2006.

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