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SUPREME COURT
STATE OF WASHINGTON

Supreme Court No.84132-2
C/A Nos. 27394-6-III
(consolidated with 27395-4-III)

**SUPREME COURT
OF THE STATE OF WASHINGTON**

In Re the Termination of D.R. and A.R.

**BRIEF AMICUS CURIAE THE FOSTER CARE JUSTICE ALLIANCE IN
SUPPORT OF THE CHILDREN**

Susan Alexander, WSBA 21350 on behalf of:
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SNOHOMISH SUPERIOR COURT # 03-07-00661-75

I. IDENTITY AND INTEREST OF THE AMICUS CURIAE

The Foster Care Justice Alliance (FCJA) is a charitable, non-profit, volunteer organization, as defined by the Code of the Internal Revenue Service, 26 U.S.C. § 501(c)(3), dedicated to defend the rights of children in out-of-home care. We are an alliance of foster parents, relative caregivers, guardians ad litem, foster care alumni, and other interested persons who have been touched by foster care.

FCJA was formed from the conviction that children have constitutional rights, and the collective experience of its members has been that those rights are routinely ignored in out of home care, in particular, their rights to safety, well-being, and due process. Its motto since inception has been “Defending the Rights of the Child.” Its mission is to raise awareness of foster care issues, advocate for change, and assist those that contact us for help.

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II. STATEMENT OF THE CASE

We rely on the statement of the case provided by the CHILDREN’S JOINT OPENING BRIEF.

III. ARGUMENT

This case regards the rights of children who were opposed to the termination of parental rights and who were denied the appointment of counsel. However the issue itself is broader. A child’s attorney is just as likely in many cases to argue for expedited termination of parental rights, and as a party could file the termination petition itself.

In this case, the lack of an attorney to assert A.R.’s need for mental health services may well have caused irreparable harm. While a court may order compensatory damages, it cannot order psychological damage be undone. We also assert that the constitutional issue is broader than termination of parental rights proceedings. Delaying constitutional protection to a child until that point is a denial of justice. We believe that recognition of a child’s right to an attorney during dependency is likely to result in better outcomes, more timely permanency, and remedies that are less extreme than termination of parental rights.

Children enter foster care because of alleged abuse or neglect by a parent or guardian. In some cases, this may be characterized as a lack of judgment, but in others, the abuse may

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3 be brutal. Expecting, therefore, that the parents' own counsel be adequate to represent
4 both the accused and the alleged victim makes little sense.

5
6 While the appointment of a guardian ad litem is required by RCW 13.24.100, due to a
7 heavy reliance on volunteers they are often not appointed at all, and as the facts of this
8 case demonstrate, some never meet with the children they are supposed to protect.
9 While we applaud volunteerism at all levels, the state's duty to protect children's rights
10 is not voluntary, and reliance on volunteerism is not a serious response to the state's
11 responsibilities.

12
13 The state, represented by the Department of Social and Health Services social worker
14 and an Assistant Attorney General, is also supposed to protect the interests of the child.
15 However, the state is also subject to political considerations and the desire to contain
16 costs. These are interests which are not always in harmony with the child's.

17
18 It is also our experience that transitory relationships and constant change mark many if
19 not most cases. Children change placements and schools, social workers are reassigned,
20 and judges rotate off the bench. While the law mandates the appointment of a guardian
21 ad litem, RCW 13.24.100, many cases have never had one appointed. For example,
22 Snohomish Superior Court Case 03-07-00661-7 experienced by one of our members as a
23 foster parent, involved two siblings, ages 1 and 2, who were found wearing diapers
24 "ballooned up to the size of basketballs" with feces, with their mother absent and their

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maternal grandmother passed out on the couch. The social worker changed on average of every six months, no guardian ad litem was appointed for three years (until the foster parent made the request at court) and at three dependency hearings in a row for the same foster child, all the people in the room were different than at the previous hearing with the exception of the foster parent and the parent’s attorney. This experience is not unique among our members.

State and Federal law create expectations for a dependency case that are time bound. The Adoption Safe Families Act 1997 requires the state to initiate or join in the petition to terminate parental rights for a “child who has been in foster care under the responsibility of the State for 15 of the most recent 22 months” 42 U.S.C. 675(5)(E). Likewise the requirements of a termination petition set out in RCW 13.34.180(1)(e) create 12 month clock for the natural parents to correct deficiencies subsequent to the entering of a dispositional order. Yet more than half of the more than 10,000 children in foster care in Washington State on any given day have been there for nearly three years. Some enter at birth and never get out. Ignoring timelines given in state and federal statute is a violation of these children’s due process rights and demonstrates that this problem is systemic, not unique to this case. This is why Children’s Administration is unsuited to safeguarding these children’s rights. Social workers change so frequently and the information about each case so voluminous they often don’t know the case or the children.

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IV. CONCLUSION

The very basis for dependency is the notion that children have a right to be safe, and that right supersedes all other interests in a case. Many of us are parents of children that we love, and strive to protect. Most of us would mortgage our homes or go into debt before we would allow our own children to walk into a court room without an attorney. Why should the state treat foster children any differently?

It is a macabre joke that the primary distinction between the legal rights of an alleged child abuser and an abused child is that the alleged abuser will get legal representation. This is a fundamental injustice.

Respectfully submitted this 28th day of December, 2010.

LAW OFFICES OF SUSAN ALEXANDER, P.S.

Pursuant to GR30(D)(2)(A)
s/ Susan Alexander

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