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NO. 90467-7

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

In re the Adoption of M.S.M.-P., a Minor

A.K., and S.K.,

Respondent,

v.

N.P.,

Appellant.

ANSWER TO MOTION FOR DISCRETIONARY REVIEW

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 ORIGINAL

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I. STATEMENT OF THE CASE

A.K., with the consent of his wife, who is the mother of M.S.M.-P., sought to adopt M.S.M.-P. As a part of the proceeding under RCW 26.33.010 et seq, A.K. petitioned the court to terminate the parental rights of N.P., the biological father of the child. N.P. opposed the termination. There was a trial on June 19, 2012. N.P. was represented by counsel at the trial.

The trial court referred to RCW 26.33.060 which directed the courtroom be closed. The court asked if any party had an objection. N.P.'s counsel said "no objection". RP 5-6.

N.P. chose only to participate at the trial telephonically at the time he wished to testify. N.P. was incarcerated at Coyote Ridge Prison. RP 42. N.P. was not present because of choices he made resulting in his incarceration. He took steps to be able to testify by telephone, but there is no indication of any other steps to remain on the phone the entire proceeding which took only one half day.

The facts established at trial plainly demonstrated that N.P. failed to meet his parental obligations and that he was withholding his consent to the adoption contrary to the best interests of the

child. CP 399-406. N.P. presented no evidence to contradict or dispute any of the evidence presented by the Petitioner.

The court entered findings of fact, conclusions of law, and an order terminating the parental rights of N.P. CP 397-406. N.P. appealed to the Court of Appeals.

II. APPELLATE PROCEEDING

In its published decision at *In re the ADOPTION of M.S.M.-P.*, 325 P.3d 392 (2014), the Court of Appeals concluded that it was a constitutional error for the trial court to close the proceedings without first considering the factors set forth in *Seattle Times Co. v. Ishikawa*, 97 Wn.2d 30, 640 P.2d 716 (1982). The Court of Appeals also ruled that since N.P. failed to raise the objection at the trial level, and could not demonstrate any actual prejudice, he could not raise this claim at the appellate level. *M.S.M.-P.* at 399. The trial court was affirmed. A copy of the decision is attached as Appendix A.

N.P. filed a petition to the Supreme Court to review the decision of the Court of Appeals. That petition is now considered a motion for discretionary review.

III. LEGAL ARGUMENT

A. The Court of Appeals Applied the Well Established Standard Requiring a Showing of Actual Prejudice to Warrant a New Trial Where a Constitutional Error Occurred in a Civil Proceeding

The Court of Appeals correctly analyzed and applied the applicable precedents. Citing *In re Dependency of J.A.F.*, 168 Wn. App. 653, 278 P.3d 673 (2012), the Court said:

[W]e also conclude that N.P. waived the error by failing to object below. A party may raise for the first time on appeal a manifest error affecting a constitutional right. RAP 2.5(a)(3). A manifest error requires a showing of actual prejudice. *State v. O'Hara*, 167 Wash.2d 91, 99, 217 P.3d 756 (2009). To demonstrate actual prejudice, there must be a "plausible showing by the [appellant] that the asserted error had practical and identifiable consequences in the trial of the case." *Id.* (quoting *State v. Kirkman*, 159 Wash. 2d 918, 935, 155 P.3d 125 (2007)).

M.S.M.-P. at 398.

J.A.F. was a dependency proceeding in which some testimony was taken in a closed courtroom. Since the *Ishikawa* factors were not considered, the court held there was a violation of Article I, Section 10 of the Washington constitution. The court ruled:

Although neither party objected to the closure below, RAP 2.5(a)(3) allows a party to raise for the first time on appeal a manifest error affecting this constitutional right. To demonstrate that an asserted error is manifest, the appellant must show actual prejudice, — which means “the asserted error had practical and identifiable consequences in the trial of the case.”

....

Because Tucker and Fleming asserted this error for the first time on appeal, they must also demonstrate that the error had identifiable and practical consequences in their trial. Tucker and Fleming have not done so. Tucker asserts, “Public trial errors, by nature, resist that analysis.” And Fleming relies on the presumption of prejudice enjoyed by defendants asserting Article I, Section 22 violations. “This does not satisfy the rule.” *Ticeson* at 383. Additionally, the appellants conceded at oral argument that they cannot demonstrate prejudice.

J.A.F. at 661-662 (quoting *Det. of Ticeson*, 159 Wn. App. 374, 246 P.3d 550). The Court of Appeals decision in the instant case, requiring a showing of actual prejudice, is consistent with similar cases such as *Ticeson* and *Det. of Reyes*, 176 Wn. App. 821, 309 P.3d 745 (2013).

In *Ticeson*, a civil case, the appellant claimed error because of conferences which took place in chambers, which were closed to the public, but could not show any resulting actual prejudice.

The appellant urged the court to apply the structural error analysis used in Article I, Section 22 criminal cases which presume prejudice. The court refused. "We decline to extend Section 22 to civil cases" *Ticeson* at 381.

RAP 2.5(a)(3) allows a party to raise a manifest constitutional error for the first time on appeal. Improper courtroom closure is a constitutional error. Thus, *Ticeson* may raise the issue for the first time in this civil appeal. As required by RAP 2.5, however, he must demonstrate that the constitutional error had identifiable and practical consequences in this trial.²⁴ He has not done so. Rather he relies on the presumption of prejudice enjoyed by criminal defendants. This does not satisfy the rule. *Ticeson's* failure to object below therefore constitutes waiver of review.

FN 24 *State v. Holzknrecht*, 157 Wn. App. 754, 760, 238 P.3d 12333 (2010).

Ticeson at 383 & n.24.

Reyes involved an attempt to commit an allegedly sexually violent predator. He claimed there was a constitutional error based on the closure of the courtroom at a pre-trial hearing. The court, after a thorough review of §10 and § 22 cases in Washington, held that although the appellant could point to an error of constitutional magnitude,

That does not mean he has satisfied the "manifest" prong of the rule. *J.A.F.*, 168 Wash.App. at 662, 278 P.3d 673; *Ticeson*, 159 Wash.App. at 383, 246 P.3d 550. It is still his burden, since he did not object in the trial court, to establish either actual prejudice or a plausible theory of how he was harmed by the closure of the hearing on his motion to dismiss. *Ticeson*, 159 Wash.App. at 383, 246 P.3d 550. He has made no attempt to meet his burden on appeal and fails to articulate any theory of why his motion to dismiss would have been treated differently if argued in public.

Instead, as in *J.A.F.* and *Ticeson*, Mr. Reyes argues that the presumption of prejudice applied in § 22 criminal cases should apply to his case. We agree with those courts that it does not. *J.A.F.*, 168 Wash.App. at 662, 278 P.3d 673; *Ticeson*, 159 Wash.App. at 383, 246 P.3d 550. Washington typically treats the erroneous closure of a criminal case as a form of structural error. E.g., *Wise*, 176 Wash.2d at 14-15, 18-19, 288 P.3d 1113; but see *Momah*, 167 Wash.2d 140, 217 P.3d 321 (not structural error where defense participated in closing courtroom). The doctrine of structural error has never yet been applied to a civil case. That is unsurprising since the doctrine was designed to address errors that "deprive defendants of 'basic protections' without which 'a criminal trial cannot reliably serve its function as a vehicle for determination of guilt or innocence.'" *Neder v. United States*, 527 U.S. 1, 8-9, 119 S.Ct. 1827, 144 L.Ed.2d 35 (1999) (citation omitted). A majority of the Washington Supreme Court rejected the argument that structural error applied to a civil proceeding in *D.F.F.*, 172 Wash.2d at 48, 256 P.3d 357 (J.M. Johnson, J. concurring); 52-57 (Madsen, C.J., dissenting).

Following *J.A.F.* and *Ticeson*, as well as the majority of the court in *D.F.F.*, we conclude that structural error does not apply to a violation of § 10 in a civil case.

Reyes at 843.

The Court of Appeals concluded that N.P. "fails to demonstrate actual prejudice". *M.S.M.-P.* at 399. The Court of Appeals noted that "N.P. contends that the record here 'suffers no absence of prejudice' because, unlike in *J.A.F.*, he wasn't personally present when the courtroom was closed and the trial took place when the courtroom was closed." *M.S.M.-P.* at 398. "Suffers no absence of prejudice" is an interesting remark to use when N.P. completely fails to establish any practical or identifiable consequence regarding the outcome of the trial. It is his burden to demonstrate such prejudice in order to be able to raise a constitutional error to which he did not object at the time of trial.

See Reyes supra.

N.P. offers no argument or evidence showing actual prejudice resulting from the closure of the courtroom door. There is no indication that anyone even tried to get into the courtroom. There is no effort on the part of N.P. to demonstrate how the result

of the trial would have been any different had the courtroom not been closed. Essentially, N.P.'s only argument on this point is the bootstrap effort to say that since the courtroom was closed, the courtroom was not open, and claims that this constitutes actual prejudice. This is nonsensical. This is simply stating something that you believe was wrong and then repeating the mirror image of it as a futile effort to demonstrate actual prejudice. "It was very warm in the room and therefore it was not cold." N.P.'s argument does not identify any facts that demonstrate any actual prejudice.

The Court of Appeals clearly followed the well established law of this state requiring a demonstration of actual prejudice before a constitutional error may be raised for the first time at the appellate level.

**B. The Requirement of A Showing of Actual Prejudice
In Non Criminal Cases is Well Settled and is Not a Subject of
Confusion or Differences of Opinion in the Appellate Courts.**

The rule that in a civil proceeding in order to raise a constitutional error for the first time on appeal, appellant must show actual prejudice, is consistent through all majority decisions of the

appellate courts of Washington.

N.P. is essentially arguing that the "structural error analysis" used in criminal cases be applied to this civil case. N.P. looks to the lead opinion in *Det. of D.F.F.*, 172 Wn.2d 37, 256 P.3d 357 (2011) for support. There, with no explanation or justification, four justices applied the structural analysis rule to a civil case. They did not require the appellant to show actual prejudice, a new hearing was ordered "...regardless of whether the complaining party can show prejudice" *D.F.F.* at 42.

Three dissenting justices and two concurring justices specifically rejected the extension of the structural analysis approach to civil cases. In her dissent, Justice Madsen noted that "First, structural error analysis has no place in a civil arena. In fact, structural error is defined with reference to criminal trials." *D.F.F.* at 53.

Not surprisingly, in *M.L. v. Federal Way School District*, 394 F.3d 634 (9th Cir. 2004), a majority of the three-judge panel held that structural error analysis was inapplicable in the civil context. In particular, Judge Gould, who was joined by Judge Clifton in rejecting the use of structural error analysis, criticized Judge Alarcon for "extrapolat[ing] from the criminal context" in applying structural error analysis. *Id.* at

653 (Gould, J., concurring); see *id.* at 658 (Clifton, J., dissenting). He went on to "find this structural error analysis strikingly inapplicable in our civil case context" and noted that Judge Alarcon "cite[d] no precedent applying structural error in civil cases in our circuit. *Id.* at 653-54 (Gould, J., concurring).

D.F.F. at 53. In his concurring opinion, Justice J. M. Johnson wrote "I agree with the dissent that "structural error" analysis does not apply in the civil context." *D.F.F.* at 42.

As noted earlier, the Courts of Appeals in *J.A.F.* and *Reyes* followed the clear statement of the majority of justices in *D.F.F.* that structural error does not extend to civil cases. In *Saleemi v. Doctor's Associates Inc.*, 176 Wn.2d 368, 385-386, 292 P.3d 108 (2013), the WASHINGTON SUPREME Court again noted the inappropriateness of structural error analysis in a civil proceeding when it said:

Finally, DAI contends that this approach is inappropriate because the trial court's error was structural. Pet'r's Suppl. Br. at 13. Five justices of this court explicitly rejected the proposition that the concept of "structural error" had a place outside of criminal law. *In re Det. of D.F.F.*, 172 Wash.2d 37, 48, 256 P.3d 357 (2011) (J.M. Johnson, J., concurring, joined by Chambers, J.), 53 (Madsen, C.J., dissenting, joined by C. Johnson and Fairhurst, JJ.). We find no place for a structural error analysis in this case.

D.F.F. has also been appropriately cited by a Texas court for the proposition that there is no place for a structural error analysis in civil cases. *In the Interest of S.A.G.*, 403 S.W.3d 907 (Tex. App. - Texarkana 2013).

N.P. points to no actual prejudice. Instead, N.P. disagrees with the Court of Appeals and cites various criminal cases (*State v. Sublett*, 176 Wn.2d 58, 292 P.3d 715 (2012); *State v. Brightman*, 155 Wn.2d 506, 122 P.3d 150 (2005); *State v. Wise*, 176 Wn.2d 1, 288 P.3d 1113 (2012); and *State v. Jones*, 175 Wn. App. 87, 303 P.3d 1084 (2013)) in an effort to extend the structural error analysis to a civil step-parent adoption proceeding. However, there is no authority or justification for such an extension to civil proceedings.

The Court of Appeals decision was well reasoned, the appellate courts in this state are not divided on this issue, and the motion for discretionary review should be denied.

**C. This Case Is An Example of Why Prejudice Must be Shown
in Order to Grant a New Trial in a Civil Proceeding**

Allowing a party to raise a constitutional error in a civil proceeding at the appellate level, without showing any actual

prejudice, produces this unacceptable result. The party in a civil proceeding who notices a constitutional error can remain quiet and then if not satisfied with the result, obtain a new hearing and thus have a second bite at the apple. This deprives the trial court of the opportunity to correct the error which would result in justice being dispensed in a more economical manner. In the instant case, the appellate court noted:

Furthermore, if we put ourselves in the shoes of the trial court, as we must, it is evident that under *J.A.F.*, which we decided one week before the trial of this case, had N.P. raised the objection below, the trial court would have had the opportunity to correct the error.

M.S.M.-P. at 398. N.P. could show no practical prejudicial consequences of the courtroom door being closed. The Court of Appeals noted the probable consequences of the new trial sought by N.P.:

Moreover, other than the closure, N.P. does not dispute the trial court's findings of fact or claim that the trial court's conclusions of law are erroneous. Thus, there is little, if any, likelihood that a new termination trial would yield a different outcome. Yet, reversing the termination order would have the additional consequence of setting aside M.S.M.-P.'s adoption. The trial court found that N.P.'s withholding of his consent to the adoption was not in the best

interests of M.S.M.-P. We see nothing in the record to dispute this finding. In light of that, we see no reason, and N.P. offers none, to disturb the finality of M.S.M.-P.'s adoption by the only father he has known.

FN 15 The trial court found, among other things, that: N.P. displayed a "serious pattern of criminal conduct," including his incarceration at the time of the hearing for drug and firearms violations; N.P. had never expressed "personal concern for the health, education and general well being of [M.S.M.-P.]."; N.P. had never spent time with M.S.M.-P., whether incarcerated or free; N.P. had never expressed love or affection for M.S.M.-P.; N.P. was an unfit parent and his withholding of consent to the adoption was contrary to M.S.M.-P.'s best interests; and that, until the adoption proceedings began, M.S.M.-P. had no memory of N.P. CP 250-53.

M.S.M.-P. at 399 & n.15.

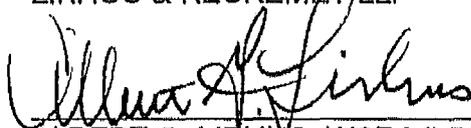
N.P. fails to demonstrate how having the courtroom door open would have affected the outcome of the case. Granting the relief N.P. seeks would justify and sanction the failure to give the trial court an opportunity to correct what N.P. now claims was a constitutional error. The cases are clear that in order to raise an Article 1, §10 error for the first time on appeal, N.P. must demonstrate actual prejudice, which he did not.

IV. CONCLUSION

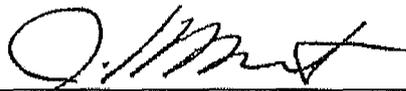
The Court of Appeals properly applied the existing precedents regarding the requirement that appellant must show actual prejudice in order to justify a new hearing when raising a constitutional error for the first time at the appellate level. The appellate courts of this state are not in dispute on this point. This case classically presents an example of where a party, claiming constitutional error at the appellate level for the first time, denied the trial court the opportunity to correct an alleged error and where the transcript indicates the hearing would result in exactly the same outcome. For these reasons, Petitioner's motion for discretionary review should be denied.

DATED this 7th day of August, 2014.

Respectfully submitted by:
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VI. APPENDIX

- A. *In re the Adoption of M.S.M.-P.*, 325 P.3d 392 (2014)

325 P.3d 392

(Cite as: 325 P.3d 392)

Court of Appeals of Washington,
 Division 1.
 In re ADOPTION of M.S.M.-P., a Minor, State of
 Washington,
 A.K. and S.K., Respondents,
 v.
 N.P., Appellant.

No. 6922-4-1.

May 19, 2014.

Background: Mother's husband filed petition for termination of incarcerated biological father's parental rights and for adoption. The Superior Court, King County, Michael J. Trickey, J., granted petition. Biological father appealed.

Holdings: The Court of Appeals, Spearman, C.J., held that:

- (1) closure of courtroom during termination of parental rights proceeding violated biological father's constitutional right to public trial;
- (2) biological father waived appellate review of his claim of constitutional error; and
- (3) violation of biological father's constitutional right to public trial did not warrant reversal of termination.

Affirmed.

West Headnotes

[1] Appeal and Error 30  893(1)

30 Appeal and Error

30XVI Review

30XVI(F) Trial De Novo

30k892 Trial De Novo

30k893 Cases Triable in Appellate

Court

30k893(1) k. In general. Most Cited
 Cases

Appellate court reviews claims of denial of the state constitutional right to public trial de novo. West's RCWA Const. Art. 1, § 10.

[2] Appeal and Error 30  893(1)

30 Appeal and Error

30XVI Review

30XVI(F) Trial De Novo

30k892 Trial De Novo

30k893 Cases Triable in Appellate

Court

30k893(1) k. In general. Most Cited
 Cases

Whether a statute is constitutional is a question of law reviewed de novo.

[3] Constitutional Law 92  2311

92 Constitutional Law

92XIX Rights to Open Courts, Remedies, and Justice

92k2311 k. Right of access to the courts and a remedy for injuries in general. Most Cited Cases

State constitution guarantees the public open access to judicial proceedings and court documents in civil and criminal cases. West's RCWA Const. Art. 1, § 10.

[4] Constitutional Law 92  1204

92 Constitutional Law

92X First Amendment in General

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92X(B) Particular Issues and Applications
 92k1203 Access to Courts in General
 92k1204 k. In general. Most Cited Cases

First Amendment preserves a right of access to court proceedings and records. U.S.C.A. Const.Amend. 1.

[5] Criminal Law 110 ⚡635.5(1)

110 Criminal Law
 110XX Trial
 110XX(B) Course and Conduct of Trial in General
 110k635 Public Trial
 110k635.5 Limitations on Power to Close Proceedings
 110k635.5(1) k. In general. Most Cited Cases

Criminal Law 110 ⚡635.6(3)

110 Criminal Law
 110XX Trial
 110XX(B) Course and Conduct of Trial in General
 110k635 Public Trial
 110k635.6 Considerations Affecting Propriety of Closure
 110k635.6(3) k. Overriding interest; necessity. Most Cited Cases

Criminal Law 110 ⚡635.12

110 Criminal Law
 110XX Trial
 110XX(B) Course and Conduct of Trial in General
 110k635 Public Trial
 110k635.12 k. Objections to closure and proceedings thereon. Most Cited Cases

Before courts order restrictions on access to criminal hearings or records from criminal hearings: (1) proponent of closure must make a showing of need for closure and, when closure is sought based on an interest other than right to a fair trial, serious and imminent threat to that interest must be shown; (2) anyone present when closure motion is made must be given opportunity to object to closure; (3) court, proponents of, and objectors to closure should analyze whether proposed method for curtailing open access would be least restrictive means available and effective in protecting the threatened interests; (4) court must weigh competing interests of defendant and public; and (5) order must be no broader in its application or duration than necessary to serve its purpose. U.S.C.A. Const.Amend. 1; West's RCWA Const. Art. 1, § 10.

[6] Criminal Law 110 ⚡635.11(5)

110 Criminal Law
 110XX Trial
 110XX(B) Course and Conduct of Trial in General
 110k635 Public Trial
 110k635.11 Proceedings on Request for Closure
 110k635.11(5) k. Findings. Most Cited Cases

Trial court must enter specific findings justifying a closure order in a criminal case.

[7] Trial 388 ⚡20

388 Trial
 388III Course and Conduct of Trial in General
 388k20 k. Publicity of proceedings. Most Cited Cases

Procedure required for closure of the courtroom in a criminal proceeding applies to civil proceedings.

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[8] Infants 211 ↪ 2098

211 Infants
211XIV Dependency, Permanent Custody, and
Termination of Rights; Children in Need
211XIV(E) Proceedings
211k2093 Hearing
211k2098 k. Public access; closure.
Most Cited Cases

Closure of courtroom during termination of parental rights proceeding incident to step-parent adoption violated biological father's constitutional right to public trial, where court closed courtroom with parties' consent but without weighing factors relevant to need for and scope of closure and potential outcome of termination of parental rights implicated concerns underlying constitutional public trial rights. West's RCWA Const. Art. I, § 10.

[9] Infants 211 ↪ 2381

211 Infants
211XIV Dependency, Permanent Custody, and
Termination of Rights; Children in Need
211XIV(K) Appeal and Review
211k2378 Preservation of Grounds for Review
211k2381 k. Objections and motions
and rulings thereon. Most Cited Cases

Biological father waived appellate review of his claim that closure of courtroom during hearing on termination of his parental rights incident to step-parent adoption violated his constitutional right to public trial, where father failed to object to closure before trial court and failed to carry his burden of demonstrating prejudice arising out of closure. U.S.C.A. Const. Amend. I; West's RCWA Const. Art. I, § 10.

[10] Appeal and Error 30 ↪ 181

30 Appeal and Error
30V Presentation and Reservation in Lower Court
of Grounds of Review
30V(B) Objections and Motions, and Rulings
Thereon
30k181 k. Necessity of objections in general. Most Cited Cases

Manifest error, as an exception to the preservation rule, requires a showing of actual prejudice.

[11] Appeal and Error 30 ↪ 181

30 Appeal and Error
30V Presentation and Reservation in Lower Court
of Grounds of Review
30V(B) Objections and Motions, and Rulings
Thereon
30k181 k. Necessity of objections in general. Most Cited Cases

To demonstrate actual prejudice required for a finding of manifest error as an exception to the preservation rule, there must be a plausible showing by the appellant that the asserted error had practical and identifiable consequences in the trial of the case.

[12] Appeal and Error 30 ↪ 181

30 Appeal and Error
30V Presentation and Reservation in Lower Court
of Grounds of Review
30V(B) Objections and Motions, and Rulings
Thereon
30k181 k. Necessity of objections in general. Most Cited Cases

For purposes of manifest error analysis in connection with an unpreserved claim of error, to deter-

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mine whether an error is practical and identifiable, the appellate court must put itself in the shoes of the trial court to ascertain whether, given what the trial court knew at the time, the court could have corrected the error.

[13] Infants 211  2427

211 Infants

211XIV Dependency, Permanent Custody, and Termination of Rights; Children in Need

211XIV(K) Appeal and Review

211k2419 Harmless or Prejudicial Error

211k2427 k. Hearing, instructions, and issues relating to jury. Most Cited Cases

Violation of biological father's constitutional right to public trial in closure of courtroom during termination of parental rights proceeding incident to step-parent adoption did not warrant reversal of termination, where father did not dispute trial court's findings of fact, claim error in its conclusions of law, or contest its finding that termination of his parental rights was in child's best interest, and reversal of termination order would have additional effect of setting aside child's adoption. U.S.C.A. Const.Amend. 1; West's RCWA Const. Art. 1, § 10.

*393 Eric Broman, Nielsen Broman & Koch PLLC, Seattle, WA, for Appellant.

Albert George Lirhus, John Keckemet, Lirhus & Keckemet LLP, Seattle, WA, for Respondent.

SPEARMAN, C.J.

¶ 1 A.K. petitioned the court for an order terminating N.P.'s parental rights to N.P.'s son, M.S.M.-P. and granting A.K. permanent legal custody with the right to adopt M.S.M.-P. as his own child. In a hearing on the petition the court heard testimony and took evidence regarding the termination and the prospective adoption. Pursuant to RCW 26.33.060, the trial

court closed the hearing to the public, but did not follow the procedure under *Seattle Times Co. v. Ishikawa*, 97 Wash.2d 30, 640 P.2d 716 (1982). The court granted the petition and N.P. appeals, claiming the closure violated his right to a public trial under article I, section 10 of the Washington State Constitution and the First Amendment to the United States Constitution. We hold that, while N.P. raises a constitutional claim of error, because he does not demonstrate actual prejudice, he may not raise this claim for the first time on appeal.

FACTS

¶ 2 M.S.M.-P., a minor, was born in April 2000 and is the biological child of S.K. and N.P., who were never married.^{FN1} The relationship between S.K. and N.P. was a violent one. On multiple occasions S.K. sought and obtained no-contact orders against N.P. At least two incidents of domestic violence by *394 N.P. against S.K. occurred while S.K. was pregnant with M.S.M.-P. On one of these occasions, N.P. kicked and hit S.K. in the stomach, knocked her to the ground and then threw her on a bed. Within two weeks of M.S.M.-P's birth, his parents' relationship ended. One month later, N.P. was jailed for violating the no-contact order. On one occasion, N.P. assaulted S.K., breaking a wooden spoon over her thigh in front of M.S.M.-P. Although M.S.M.-P. was only two years old at the time, he cried for several hours after witnessing the assault. N.P. has also been convicted of felony harassment for threatening to kill S.K. During the first three years of M.S.M.-P.'s life N.P. visited him less than ten times. He has not seen M.S.M.-P. since then. He has not acknowledged M.S.M.-P.'s birthdays, other holidays, or had any other contact with him. Until this litigation commenced, M.S.M.-P. had no recollection of N.P.

FN1. The entire file in this case is sealed. Initials will be used as necessary to identify parties and other individuals.

¶ 3 In 2002, when M.S.M.-P. was two years old,

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S.K. began a relationship with A.K. S.K. and A.K. began living together in 2003 and married in 2008. Since he began living with S.K., A.K. has cared for M.S.M.-P. and has been the only father M.S.M.-P. has known. In early 2010, A.K. decided to adopt M.S.M.-P. Even though N.P. had had no contact with M.S.M.-P. for nearly seven years, he refused S.K.'s request for his consent to the adoption.

¶ 4 On March 18, 2010, A.K. filed a petition to terminate N.P.'s parental rights and to obtain permanent custody with the right to adopt.^{FN2} A hearing on the petition was held on June 18, 2012. All parties were represented by counsel, but because N.P. was incarcerated, he participated by phone. At the beginning of the hearing, the trial court cited RCW 26.33.060 and engaged in the following exchange with the parties' attorneys:

FN2. Under RCW 26.33.100, a prospective adoptive parent seeking to adopt the child of a spouse may file a petition for termination of the parent-child relationship of a parent. The parent-child relationship

may be terminated upon a showing by clear, cogent, and convincing evidence that it is in the best interest of the child to terminate the relationship and that the parent has failed to perform parental duties under circumstances showing a substantial lack of regard for his or her parental obligations and is withholding consent to adoption contrary to the best interest of the child.

RCW 26.33.120(1).

THE COURT: I read the materials which were submitted, including the various trial briefs. I looked at the statute on proceedings, [RCW] 26.33.060. It does say, in part: "The general public shall be excluded and only those persons shall be

admitted whose presence is requested by any person entitled to notice under this chapter, or whom the judge finds to have a direct interest in the case or in the work of the Court."

So I was proposing to put a sign on the courtroom door, indicating that the hearing was closed by law. And is there—anybody have any input or any thoughts about that at all?

[Counsel for A.K.]: I think that would be fine. What we generally do in these proceedings is when someone walks in, we all look and see who it is.

THE COURT: Okay. All right.

[Counsel for N.P.]: No objection.

THE COURT: Okay. All right.

Verbatim Report Proceedings (VRP) at 5–6. Argument was heard and evidence was taken while the courtroom was closed, N.P. testified by telephone from Coyote Ridge Prison but did not otherwise listen in on the proceedings. At no time did N.P. or his attorney object to the fact that the courtroom was closed, nor did either of them request anyone's presence at the hearing.

¶ 5 The trial court made an oral ruling on June 20, 2012, granting the petition to terminate N.P.'s parental rights and indicating the adoption would move forward. A.K. thereafter filed a petition for adoption, which was granted. On July 27, 2012, the trial court entered written findings of fact and conclusions of law terminating N.P.'s parental rights, an order terminating N.P.'s parental rights, findings of fact and conclusions of law as to the adoption petition, and a decree of adoption.^{FN3} N.P. appeals, claiming only that *395 the trial court violated his constitutional public trial rights. His challenge to the trial court's findings of fact and conclusions of law is based solely on his constitutional

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claim.

FN3. At the time the petition for termination was filed, M.S.M.-P. was nine years old. At the time of trial, he was 12 years old.

DISCUSSION

[1][2] ¶ 6 This court reviews claims based on article I, section 10 of the Washington constitution de novo. *In re Dependency of J.A.F., E.M.F., V.R.F.*, 168 Wash.App. 653, 661, 278 P.3d 673 (2012). Whether a statute is constitutional is a question of law reviewed de novo. *In re Dependency of M.S.R. and T.S.R.*, 174 Wash.2d 1, 13, 271 P.3d 234 (2012). Statutes are presumed constitutional. *State v. McCristion*, 174 Wash.2d 369, 387, 275 P.3d 1092 (2012) cert. denied, — U.S. —, 133 S.Ct. 1460, 185 L.Ed.2d 368 (2013). The party challenging the constitutionality of a statute bears the burden to prove that it is unconstitutional beyond a reasonable doubt. *In re Dependency of L.J.S.*, 128 Wash.App. 108, 115, 114 P.3d 1215 (2005).

¶ 7 The statute at issue in this case is RCW 26.33.060, which provides that, in all hearings under chapter 26.33 RCW,^{FN1} “[t]he general public shall be excluded and only those persons shall be admitted whose presence is requested by any person entitled to notice under this chapter or whom the judge finds to have a direct interest in the case or in the work of the court.”

FN4. Chapter 26.33 RCW governs adoptions.

¶ 8 For the first time on appeal, N.P. contends that his rights to a public hearing under the First Amendment to the United States Constitution (“Congress shall make no law ... abridging the freedom ... of the press....”) ^{FN5} and article I, section 10 of the Washington Constitution (“Justice in all cases shall be administered openly....”) ^{FN6} were violated when the trial

court followed the procedure under RCW 26.33.060 without applying the *Ishikawa* requirements before it closed the courtroom.^{FN7} A.K. argues that N.P.’s appeal should be rejected because (1) adoption records and hearings are an exception to the right to a public hearing and RCW 26.33.060 properly balances various parties’ interests while acting in the best interest of the child; (2) RCW 26.33.060 closes the courtroom only where no party asks that it be opened;^{FN8} and (3) N.P. fails to show *396 actual prejudice resulting from the courtroom being closed. We conclude that N.P. raises a constitutional claim of error but agree with A.K. that N.P. does not demonstrate actual prejudice and therefore may not raise this claim for the first time on appeal.

FN5. A.K. contends that N.P. does not have standing to claim a violation of the First Amendment freedom of the press protection by invoking the rights of a third party (i.e., the press), citing *Bender v. Williamsport Area School District*, 475 U.S. 534, 106 S.Ct. 1326, 89 L.Ed.2d 501 (1986) and *Lopez v. Candaele*, 630 F.3d 775 (9th Cir.2010). N.P. does not respond to this argument. We nonetheless disagree with A.K. *Bender* and *Lopez* referred to the standing requirements needed to invoke the jurisdiction of federal courts. *Bender*, 475 U.S. at 541–42, 106 S.Ct. 1326; *Lopez*, 630 F.3d at 785. N.P. does not, however, contend that the First Amendment provides greater or different protection here than article I, section 10 and does not analyze the First Amendment separately. Thus, we do not consider the First Amendment separately.

FN6. A.K. does not contend that N.P. lacks standing to raise an article I, section 10 violation. Furthermore, N.P. does not appear to be asserting a violation of article I, section 10 on behalf of the public at large. Therefore, it is unnecessary to determine whether N.P. has third-party standing, an issue addressed in

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some of the cases cited by N.P. *See State v. Wise*, 176 Wash.2d 1, 16 n. 9, 288 P.3d 1113 (2012) (noting the Washington Supreme Court has not yet decided whether a criminal defendant has standing to raise an article I, section 10 challenge when the public is excluded from court proceedings); *In re Detention of Reyes*, 176 Wash.App. 821, 309 P.3d 745, 757–58 (2013) (civilly committed sex offender lacked standing to assert that public's rights under article I, section 10 were violated when it was excluded from a pretrial motion hearing); *In re Detention of Ticeson*, 159 Wash.App. 374, 381–82, 246 P.3d 550 (2011) (appellant, as a member of public, was protected by article I, section 10 and thus there was no reason to apply third-party standing rule to rights granted to public at large), abrogated on other grounds by *State v. Sublett*, 176 Wash.2d 58, 72, 292 P.3d 715 (2012).

FN7. At oral argument before this court, N.P. clarified that his position is that only the termination portions of the proceedings below, not the entire adoption proceedings, were subject to *Ishikawa* closure requirements.

FN8. We reject this argument. A.K. contends that, under RCW 26.33.060, any party can open the courtroom at will by requesting that anyone and everyone be let into the courtroom. Thus, he contends, the statute barely closes the courtroom at all. This is not what the statute says. Under the statute, the general public “shall be excluded” and only those persons whose presence is requested by a person entitled to notice or found by the judge to have a direct interest in the case or work of the court may be admitted. The statute does not permit a party to demand that the courtroom doors be opened to anyone and

everyone who wishes to enter.

[3][4] ¶ 9 Article I, section 10 guarantees the public open access to judicial proceedings and court documents in civil and criminal cases. *In re Dependency of J.A.F.*, 168 Wash.App. at 660, 278 P.3d 673 (citing *Drelling v. Jain*, 151 Wash.2d 900, 908, 93 P.3d 861 (2004)). Similarly, the First Amendment “preserves a right of access to court proceedings and records.” *Tacoma News, Inc. v. Cayce*, 172 Wash.2d 58, 65, 256 P.3d 1179 (2011). “This court has clearly and consistently held that the open administration of justice is a vital constitutional safeguard and, although not without exception, such an exception is appropriate only under the most unusual circumstances and must satisfy the five requirements as set forth in [*Ishikawa*].” *In re Detention of D.F.F.*, 172 Wash.2d 37, 41, 256 P.3d 357 (2011).

[5][6][7] ¶ 10 Under *Ishikawa*, before courts order restrictions on access to criminal hearings or the records from criminal hearings, five requirements must be met: (1) the proponent of closure must make a showing of the need for a closure and, when closure is sought based on an interest other than the right to a fair trial, a serious and imminent threat to that interest must be shown; (2) anyone present when the closure motion is made must be given an opportunity to object to the closure; (3) the court, the proponents of, and the objectors to the closure should analyze whether the proposed method for curtailing open access would be the least restrictive means available and effective in protecting the threatened interests; (4) the court must weigh the competing interests of the defendant and the public; (5) the order must be no broader in its application or duration than necessary to serve its purpose. *Ishikawa*, 97 Wash.2d at 37–39, 640 P.2d 716. In addition, the trial court must enter specific findings justifying its closure order. *State v. Bone-Club*, 128 Wash.2d 254, 260, 906 P.2d 325 (1995); *J.A.F.*, 168 Wash.App. at 661, 278 P.3d 673. Courts have held that the *Ishikawa* procedure applies to civil proceedings. *See D.F.F.*, 172 Wash.2d at 41–42, 256 P.3d 357

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(applying *Ishikawa* to civil involuntary commitment proceeding).

¶ 11 A.K. contends adoption hearings are nonetheless an exception to the right to a public hearing. He contends that cases cited by N.P. in which courts have held that *Ishikawa* applies are distinguishable, pointing out that they consist of criminal cases;^{FN9} a case involving civil commitment (effectively incarceration against one's will, *D.F.F.*, 172 Wash.2d at 40 n. 2, 256 P.3d 357);^{FN10} and cases in which the issue of closing the hearing or sealing records was raised at the trial court level, where courts on appeal appropriately determined what standards apply to closure.^{FN11}

FN9. See *Bone-Club*, 128 Wash.2d at 256-62, 906 P.2d 325 (criminal defendant's right to public trial under article 1, section 22 of Washington Constitution requires that the trial court, before closing a pretrial suppression hearing, follow five criteria under *Ishikawa* and its progeny; failure to do so in case of record lacking any consideration of defendant's public trial rights, results in presumption of prejudice and remand for new trial), *State v. Brightman*, 155 Wash.2d 506, 514-18, 122 P.3d 150 (2005) (criminal defendant's public trial rights under article 1, section 22 of Washington Constitution and sixth amendment to United States Constitution were violated where trial court fails to engage in *Bone-Club* analysis before closing courtroom during jury selection; failure to apply *Bone-Club* results in remand for new trial).

FN10. See *D.F.F.*, 172 Wash.2d at 38-49, 256 P.3d 357 (court rule providing that involuntary commitment proceedings be closed to the public unless the person who was the subject of the proceedings or his attorney filed with the court a written request that the proceedings be public violated right

to open administration of justice under article 1, section 10; remedy was new commitment trial).

FN11. See *Tacoma News*, 172 Wash.2d at 60-61, 256 P.3d 1179 (media challenged closure of courtroom during deposition of witness in criminal trial; court held that neither article 1, section 10 nor the First Amendment was violated by trial court's ruling that deposition proceeding was not open to public); *Drelling*, 151 Wash.2d at 905-07, 915, 93 P.3d 861 (media sought to intervene and unseal records related to a motion to terminate a shareholder's derivative suit; Washington Supreme Court granted review on limited question of whether trial court applied correct legal standard in sealing material and briefing, held that under article 1, section 10 and state common law, *Ishikawa* must be applied to documents filed in support of dispositive motions, including motions to terminate); *Ishikawa*, 97 Wash.2d at 32-33, 640 P.2d 716 (media challenged closure of pretrial hearing involving motion to dismiss in a criminal case).

*397 ¶ 12 A.K. contends that this case presents a different scenario because it involves an adoption proceeding. He cites the following statement by the Washington Supreme Court in *Cohen v. Everett City Council*, 85 Wash.2d 385, 535 P.2d 801 (1975): "There are exceptional circumstances and conditions which justify some limitations on open judicial proceedings. For obvious reasons adoption matters are usually heard privately as authorized by statute." *Id.* at 388, 535 P.2d 801 (citing RCW 26.32.100, repealed by Laws 1984, ch. 155, § 38, eff. Jan. 1, 1985).^{FN12} The specific issue in *Cohen* was whether the trial court properly entered an order sealing a written transcript of the proceedings of a city council license revocation action, after the trial court has considered the transcript on an appeal of that proceeding. *Id.* at 386, 535

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P.2d 801. The court held that the Washington constitution "mandates an open public trial in a civil case, absent any of the statutory exceptions or compelling reasons calling for exercise of the court's inherent power to control its proceedings...." *Id.* at 388–89, 535 P.2d 801. It held that, in that case, because the trial court's review of the city council's action was of a transcript of proceedings before the city council, the record was the equivalent of testimony and became public property, *id.* at 389, 535 P.2d 801. The statement cited by A.K. was made in the context of the court's general discussion of public trial rights.

FN12. RCW 26.32.100 read, in part, "all such hearings, as well as any hearing incidental to an adoption, shall not be public unless specially ordered by the court." RCW 26.32.100.

¶ 13 A.K. also cites *In re the Application of William Sage*. 21 Wash.App. 803, 586 P.2d 1201 (1978). There, the appellant, Sage, was an adopted child who, as an adult, was denied access to inspect adoption records that were sealed pursuant to a Washington statute. *id.* at 804, 586 P.2d 1201. This court affirmed the superior court's denial of access, holding that access was not required under the statute and that the trial court did not err in ruling that Sage did not establish good cause to inspect the records. *Id.* at 807–11, 586 P.2d 1201. In describing the justifications for confidentiality and privacy in the area of adoption law, this court noted,

In the adoption context, our courts are directed to make decisions consistent with "the best interests of the child." ¹¹ The sealed records statutes are a codification of that directive. Confidentiality encourages and facilitates preadoption investigation and helps to strengthen the adoptive family as a social unit.

Id. at 805–06, 586 P.2d 1201 (footnote omitted). We also held that full disclosure was not mandated by

the public disclosure act, chapter 42.17 RCW, and that the sealed records statute did not violate Sage's equal protection rights. *Id.* at 811–13, 586 P.2d 1201.

¶ 14 *Cohen* and *Sage* support the general proposition that heightened privacy in adoption matters has been approved by the courts. Likewise, our legislature has enacted laws that provide greater privacy and confidentiality in adoption matters and recognize that the best interests of the children involved in these matters are paramount. *See, e.g.*, RCW 26.33.330 (adoption records are sealed and not open to inspection except upon order of the court for good cause shown or by using procedure under RCW 26.33.343); RCW 26.33.010 ("The guiding principle [in adoptions] must be determining what is in the best interest of the child."). But neither *Cohen* nor *Sage* addressed constitutional public trial rights as they relate to termination proceedings arising in the context of adoption matters. Furthermore, both cases predated *Ishikawa*.

¶ 15 We find *J.A.F.*, a recent decision of this court, to be more on point, as it addressed closure in the context of termination proceedings. In *J.A.F.*, all parties agreed in open court that a federal statute required the court to close the courtroom before a particular witness, Harris, could testify about the *398 drug treatment of the children's father, Fleming. 168 Wash.App. at 659, 278 P.3d 673. Trial counsel for the mother, Tucker, even stated a preference for closing the entire trial. *Id.* at 660, 278 P.3d 673. The parents appealed the trial court's order terminating their parental rights. They argued, among other things, that the partial closure violated article I, section 10 of the Washington State Constitution. *Id.* at 656, 278 P.3d 673. We explained that the appellants demonstrated a violation of article I, section 10 because the trial court closed part of the proceedings without applying the *Ishikawa* factors and did not articulate findings justifying the closure. *Id.* at 662, 278 P.3d 673. We nonetheless refused to review the claim of error because the appellants did not demonstrate actual prejudice. *Id.* at

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663–64, 278 P.3d 673.

[8] ¶ 16 Here, similar to *J.A.F.*, the termination hearing was closed without applying *Ishikawa*. Although, the termination petition in this case arises in the context of an adoption matter brought by a prospective adoptive parent, insofar as N.P.'s interests and rights are concerned, the distinction is immaterial. Whether the termination petition was brought by the State or by a prospective adoptive parent, the same potential outcome is at stake: termination of the parent-child relationship. In a case where a party faces such a potential consequence, the concerns underlying constitutional public trial rights are undoubtedly present. We conclude that N.P. raises a constitutional error.

[9][10][11][12] ¶ 17 However, as in *J.A.F.*, we also conclude that N.P. waived the error by failing to object below. A party may raise for the first time on appeal a manifest error affecting a constitutional right. RAP 2.5(a)(3). A manifest error requires a showing of actual prejudice. *State v. O'Hara*, 167 Wash.2d 91, 99, 217 P.3d 756 (2009). To demonstrate actual prejudice, there must be a “plausible showing by the [appellant] that the asserted error had practical and identifiable consequences in the trial of the case.” *Id.* (quoting *State v. Kirkman*, 159 Wash.2d 918, 935, 155 P.3d 125 (2007)). To determine whether an error is practical and identifiable, the appellate court must put itself in the shoes of the trial court to ascertain whether, given what the trial court knew at the time, the court could have corrected the error. *O'Hara*, 167 Wash.2d at 100, 217 P.3d 756.

¶ 18 N.P. contends that the record here “suffers no absence of prejudice” because, unlike in *J.A.F.*, he was not personally present when the courtroom was ordered closed and the entire trial took place when the courtroom was closed. But it is N.P.'s burden to affirmatively show prejudice and he points to no practical or identifiable consequence that the closure had on the trial of the case. *See In re Reyes*, 176

Wash.App. 821, 309 P.3d 745 (appellant who was civilly committed as sexually violent predator could not raise claimed violation of article I, section 10 for first time on appeal where he did not show actual prejudice or provide a plausible theory of how he was harmed by closure of hearing on his motion to dismiss). Furthermore, if we put ourselves in the shoes of the trial court, as we must, it is evident that under *J.A.F.*, which we decided one week before the trial of this case, had N.P. raised the objection below the trial court would have had an opportunity to correct the error.

¶ 19 N.P. also relies on *D.F.F.*, 172 Wash.2d 37, 256 P.3d 357, to argue that his claim is properly before us. In that case, D.F.F. was involuntarily committed for psychiatric treatment under chapter 71.05 RCW. She did not object to the trial judge's closure of the proceedings pursuant to former Mental Proceeding Rules (MPR) 1.3.^{FN13} On appeal, D.F.F. argued that the closure violated her rights under article 1, section 10. The Supreme Court was unanimous that former MPR 1.3 violated article 1, section 10, but divided on whether D.F.F. made a sufficient showing of prejudice to warrant reversal of the commitment order and a new hearing.

FN13. Former MPR 1.3, which was rescinded effective April 30, 2013, read in relevant part:

Proceedings had pursuant to RCW 71.05 shall not be open to the public, unless the person who is the subject of the proceedings or his attorney files with the court a written request that the proceedings be public.

¶ 20 Four justices joined in the lead opinion, which concluded that the closure was *399 sufficient, by itself, to warrant a new trial. The lead opinion relied primarily on criminal cases involving public

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trial rights under article 1, section 22, which guarantees a criminal defendant a “speedy public trial.” Those cases hold that the failure to raise a public trial objection in the trial court does not waive the right because, in the criminal context, the closure results in “structural error”^{FN14} and prejudice is presumed. *State v. Wise*, 176 Wash.2d 1, 16, 288 P.3d 1113 (2012); *Bone-Club*, 128 Wash.2d at 257, 261–62, 906 P.2d 325. The lead opinion justified its reliance on criminal cases, noting that “commitment is a deprivation of liberty. It is incarceration against one’s will, whether it is called ‘criminal’ or ‘civil.’” *D.F.F.*, 172 Wash.2d at 40, n. 2, 256 P.3d 357, quoting *In re Application of Gault*, 387 U.S. 1, 50, 87 S.Ct. 1428, 18 L.Ed.2d 527 (1967).

FN14. “An error is structural when it ‘necessarily render[s] a criminal trial fundamentally unfair or an unreliable vehicle for determining guilt or innocence.’” *State v. Momah*, 167 Wash.2d 140, 149, 217 P.3d 321 (2009) (quoting *Washington v. Recuenco*, 548 U.S. 212, 218–19, 126 S.Ct. 2546, 165 L.Ed.2d 466 (2006)) (alteration in original) (quoting *Neder v. United States*, 527 U.S. 1, 9, 119 S.Ct. 1827, 144 L.Ed.2d 35 (1999)).

¶ 21 Two justices rejected the lead opinion’s reliance on criminal precedent and agreed with the three dissenting justices that “the ‘structural error’ analysis does not apply to the civil context.” *Id.* at 48, 256 P.3d 357. Nonetheless, they concurred in the result because since *D.F.F.* was “committed after a closed hearing, [she] demonstrate[d] sufficient prejudice to warrant relief.” *Id.*

¶ 22 *D.F.F.* is of no help to *N.P.* The case makes clear that the “structural error” analysis is inapplicable in a civil case, such as a termination proceeding. Thus, here, there is no presumption that *N.P.* was prejudiced by the closure. Furthermore, the majority in *D.F.F.* appears to have concluded that because *D.F.F.* was

confined as a result of a closed hearing, no showing of actual prejudice was necessary to entitle her to a new trial. *N.P.* cannot claim he was subject to the same risk. Unlike a criminal or involuntary commitment trial, the proceeding in this case could not result in *N.P.*’s confinement. Thus, *D.F.F.* is inapposite.

[13] ¶ 23 Moreover, other than the closure, *N.P.* does not dispute the trial court’s findings of fact or claim that the trial court’s conclusions of law are erroneous.^{FN15} Thus, there is little, if any, likelihood that a new termination trial would yield a different outcome. Yet, reversing the termination order would have the additional consequence of setting aside *M.S.M.-P.*’s adoption. The trial court found that *N.P.*’s withholding of his consent to the adoption was not in the best interests of *M.S.M.-P.* We see nothing in the record to dispute this finding. In light of that, we see no reason, and *N.P.* offers none, to disturb the finality of *M.S.M.-P.*’s adoption by the only father he has known.

FN15. The trial court found, among other things, that: *N.P.* displayed a “serious pattern of criminal conduct,” including his incarceration at the time of the hearing for drug and firearms violations; *N.P.* had never expressed “personal concern for the health, education and general wellbeing of [*M.S.M.-P.*]”; *N.P.* had never spent time with *M.S.M.-P.*, whether incarcerated or free; *N.P.* had never expressed love or affection for *M.S.M.-P.*; *N.P.* was an unfit parent and his withholding of consent to the adoption was contrary to *M.S.M.-P.*’s best interests; and that, until the adoption proceedings began, *M.S.M.-P.* had no memory of *N.P.* CP 250–53.

¶ 24 We conclude the closure of that portion of the proceedings below relating to the termination of *N.P.*’s parental rights violated article 1, section 10 and was thus, error of constitutional magnitude.^{FN16} But because *N.P.* failed to object and fails to demonstrate

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actual prejudice, he waived the error and may not assert it for the first time on appeal.

FN16. In light of our disposition of this case, it is unnecessary to, and we do not, decide the constitutionality of RCW 26.33.060 in an adoption context.

¶ 25 Affirmed.

WE CONCUR: DWYER and BECKER, JJ.

Wash.App. Div. 1, 2014.
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Case No.: 90467-7

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