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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

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In re Welfare of K.M.M., a Minor

STATE OF WASHINGTON, DSHS,  
K.M.M.,

Respondent,

v.

J.M.

Petitioner

**FILED**  
APR 22 2016  
WASHINGTON STATE  
SUPREME COURT

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**BRIEF OF AMICI CURIAE CENTER FOR CHILDREN & YOUTH  
JUSTICE, THE MOCKINGBIRD SOCIETY, AND CHILDREN  
AND YOUTH ADVOCACY CLINIC AT THE UNIVERSITY OF  
WASHINGTON SCHOOL OF LAW**

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## I. INTRODUCTION

K.M.M. was born August 9, 2002. She was removed from her parents' home and found to be a dependent when she was seven years old, and spent more than four years in foster care. She will be 14 years old this summer, and has been out of her parents' care now for over seven years, over one-half of her life. The record case demonstrates that K.M.M.'s childhood was characterized by significant social, emotional, and developmental delays and an inability to develop secure attachments, resulting first from a neglectful home environment, and second from a harmful first foster care placement.

Without questioning the well-established constitutional rights of parents, within the confines of the child welfare system, a system dominated and controlled by adults, whether they be the parents, foster parents, or guardians central to the case, or the social workers, lawyers, and judges making recommendations and decisions related to the rights of those adults, we must always be focused on the child. Our system must be child-centered--child-centered in recognizing a child's need and right to security in and nurture from his or her family unit, child-centered in consideration of the trauma experienced by children in the system both by the events that cause the dependency and by the system itself, child-centered in the need for attachment and security, child-centered in the

consideration of timelines and continuances (while a 60-day continuance for an attorney may be a short reprieve, the same continuance for a one or two-year-old child is a lifetime), child-centered in consideration of statutory framework as it has evolved and is intended, and child-centered in recognition of the right to and benefit of legal counsel. While this focus is well supported by our state's jurisprudence and statutes, it is too often lost in implementation and within the culture of our child welfare system.

This brief first examines Washington's evolving legislative and common law history of recognizing the paramount rights of children in dependency and parental rights cases. Second, applying this child-centered approach, *Amici* argue that this Court should apply chapter 13.34 RCW, examining the factors from the child's perspective, and in the context of the particular parent-child relationship before the court. Third, *Amici* assert that this case demonstrates the importance of appointment of counsel for children in dependency cases as early in the proceedings as possible. Finally, *Amici* discuss, generally, the attachment and relational issues presented here, and how those issues, and the services provided by the state in response to those issues, may be considered in the context of this child-centered paradigm.

## II. IDENTITY AND INTERESTS OF *AMICI CURIAE*

*Amici* incorporate by reference the statement of interest set forth in their corresponding Motion for Leave to File *Amici Curiae* Brief.

## III. STATEMENT OF THE CASE

*Amici* adopt and incorporate by reference the supplemental statement of the case set forth by respondent child K.M.M.

## IV. ARGUMENT

### A. **Courts Should Apply a Child-Centric Approach When Considering Rights of Children in Dependency and Termination of Parental Rights Proceedings**

Washington's legislative enactments and common law both recognize an evolving and centralized focus on the rights and perspectives of our state's children who find themselves at the center of these proceedings. A brief examination of Washington's dependency statute reveals an evolution over the past 30 years showing Washington's laws' increasing focus on the rights of the child. Indeed, that focus leads us to the conclusion that the child's interests are paramount in all decisions, and in all cases of conflicting rights. In order to properly consider the child's rights, it is imperative that adults empowered to handle and review these cases consider not only the child's legal rights, but the child's own special and unique circumstances, world view, and, ultimately, the child's perspective. Analyzing these cases both from a child-centered approach

and from the child's perspective provides crucial insight into these difficult proceedings.

Starting in 1987, the legislature recognized that it is the "child's right to conditions of basic nurture, health and safety" which is the central component and foundational principal of dependency law. LAWS OF 1987, ch. 524, § 2, codified at RCW 13.34.020.<sup>1</sup> While the rights of a parent and child are often considered relational in nature, Washington's legislature also recognized the distinct rights of the parties. In this vein, the legislature went on to codify the *child's* "rights of basic nurture, physical and mental health, and safety," and provide that where those rights conflict with the rights of the parent, "the rights and safety of the child should prevail." *Id.*

In 1990, in response to criticism of the foster care system and in recognition of the potential harm caused by multiple placements and prolonged uncertainty surrounding the children's healthy development, the Washington legislature again amended the Act to enshrine in Washington law the notion that this right of all children to basic nurturing includes "the right to a safe, stable, and permanent home" and a "speedy resolution" of

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<sup>1</sup> The legislature thus amended the statement of intent to provide "that the family unit should remain intact unless a child's right to conditions of basic nurture, health, or safety is jeopardized." LAWS OF 1984, ch. 524, § 2.

dependency and termination proceedings<sup>2</sup> in Washington. LAWS OF 1990, ch. 284, § 31, codified at RCW 13.34.020.

Most recently, in 1998, the Washington legislature codified that the adults (primarily the state and the judicial system), in making “reasonable efforts” under chapter 13.34 RCW, ensure “the child’s health and safety shall be the paramount concern.” LAWS OF 1998, ch. 314, § 1, codified at RCW 13.34.020 (emphasis added).<sup>3</sup>

Additionally, there is near unanimous consensus nationally among the courts that a special relationship is created between children in foster care and the state that gives rise to a constitutionally based set of rights, including the right to state protection.<sup>4</sup> This Court has also held that, “foster children have a substantive due process right to be free from unreasonable risk of harm, including a risk flowing from the lack of basic services and a right to reasonable safety.” *Braam ex rel. Braam v. State*,

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<sup>2</sup> In addition to the general right of a “speedy resolution,” federal and Washington state law require the filing of a Termination of Parental Rights (TPR) Petition after a child has been placed in out-of-home care for 15 of the last 22 months, unless the case meets specified exceptions. 42 U.S.C. § 675(5)(E); RCW 13.34.154(5); RCW 13.34.020.

<sup>3</sup> This court has consistently affirmed this structure, placing the focus of the dependency and parental termination laws on the children they were designed to protect. *See, e.g., In re Dependency of J.B.S.*, 123 Wn.2d 1, 12, 863 P.2d 1344 (1993) (“The fact that the child’s interest should prevail does not mean the rights and interests of the natural parents have no weight, only that these rights are not paramount.”).

<sup>4</sup> *Tamas v. Dept. of Soc. & Health Serv.*, 630 F.3d 833, 846-74 (9th Cir. 2010) (citing Second, Third, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, and Eleventh Circuit jurisprudence). “Once the state assumes wardship of a child, the state owes the child, as part of that person’s protected liberty interest, reasonable safety and minimally adequate care . . .” *Id.* (citing *Lipscomb v. Simmons*, 962 F.2d 1374, 1379 (9th Cir. 1992)).

150 Wn. 2d 689, 698-700, 81 P.3d 851, 855 (2003). Further identifying the constitutional rights of children in foster care, our Supreme Court highlighted the fundamental liberty interests of foster children in “maintaining the integrity of the family relationships, including the child’s parents, siblings, and other familiar relationships.” *In re Dependency of M.S.R.*, 174 Wn.2d 1, 20, 271 P.3d 234 (2012).

In recognizing the sometimes incongruence and natural conflict between the rights of parents and the rights of children this Court commented that “[i]t would be ironic to find issues of parent-child ties are of constitutional dimension when the parents rights are involved but not when the child’s are at stake.” *State v. Santos*, 104 Wn.2d 142, 143-44, 702 P.2d 1179 (1985); *see also In re Welfare of Becker*, 87 Wn.2d 470, 475, 553 P.2d 1339 (1985) (“If the protection of a child’s interests is dependent upon the ‘legal rights’ of the persons opposing the petition, the ability of the court to discharge its responsibility to the child would be seriously impaired.”); *In re Custody of Shields*, 157 Wn.2d 126, 144, 136 P.3d 117 (2006) (noting state has a “compelling interest in protecting children’s welfare” and may interfere with an otherwise “fit” parent’s custody decision if actual detriment to the child’s growth and development is shown), and *id.* at 151-54 (Bridge, J., concurring) (“Consideration of the rights *the child* holds is of paramount importance

because, regardless of the family constellation from which the child comes, in any placement dispute it is *the child* who is the most vulnerable and the most voiceless.”).<sup>5</sup> These cases represent this Court’s past recognition of the rights of children in child welfare cases.

Together, Washington’s legislative scheme, common law jurisprudence, and strong public policy, all call for an increased child-centered approach to child welfare. While in the abstract, this counsels in favor of systematic and fundamental improvements, including increased collaboration and communication, early intervention and increased early and frequent visitation and family time, shorter time periods towards final disposition, and increased participation of younger voices and legal representation for all participants, in this case it can be best realized by examining the factors at issue from K.M.M.’s perspective when considering her “rights of basic nurture, physical and mental health, and safety,” “to a safe, stable, and permanent home,” and to a “speedy resolution.”

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<sup>5</sup> Joseph S. Jackson and Lauren G. Fasig, *The Parentless Child’s Right to a Permanent Family*, 46 WAKE FOREST L. REV. 1, 13 (2011) (“laws that unreasonably prevent a parentless child from attaining a permanent family relationship implicate constitutional concerns, both by prolonging the child’s confinement in state custody, and by exposing the child to serious harm from the repeated detachments that typify foster care throughout the United States”).

**B. In a Termination of Parental Rights Proceeding, Court Must Determine Fitness and Corresponding Statutory Factors in Context of Particular Parent-Child Relationship before the Court**

Given the trial court's findings that K.M.M.'s father corrected the identified parental deficiencies, a central issue is whether the trial court did or could properly determine that K.M.M.'s father was, at the time of the TPR trial, "unfit" to parent K.M.M. A parent has a "constitutional due process right not to have his or her relationship with a natural child terminated in the absence of a trial court finding of fact that he or she is currently unfit to parent the child." *In re Welfare of A.B.*, 168 Wn.2d 908, 920, 232 P.3d 1104 (2010). Here the trial court below determined that "the father has remedied his own parental deficiencies identified by the State in its petition," but nevertheless that there is "an absence of a parent-child relationship" which "cannot now be corrected without great harm" to K.M.M. Clerk's Papers (CP) at 107.

If this Court is to provide fidelity to the child-centered approach central to the public policy in this state, that approach must consider the fitness or unfitness of the parent to parent the particular child before the court, given the uniqueness and intricacies of the particular relationship between the parties, together with the child's own developmental needs. A parent's fitness to parent one child does not alone require a finding that

that same parent is fit to parent another child. Recall that it is *each child's* “rights of basic nurture, physical and mental health, and safety” that is protected under RCW 13.34.020, and hence, once in dependency, this Court must examine whether a parent is fit or unfit to meet that particular child’s rights, in light of the particular circumstances of each case.<sup>6</sup>

The trial court in this case focused on two principal contested factors in RCW 13.34.180: (1) whether “the services ordered . . . have been expressly and understandably offered or provided,” and (2) “all necessary services, reasonably available, capable of correcting the parental deficiencies within the foreseeable future have been expressly and understandably offered or provided.” RCW 13.34.180(1)(d).

With regard to .180(1)(d), the court made what initially may appear to be conflicting findings that, as a general matter, the father had remedied his own parental deficiencies, but that at the same time, continuation of his parental rights and reunification would not only not be in K.M.M.’s best interests, but in fact would be uncontrovertibly detrimental to K.M.M., causing her “great harm.” *See* CP 107 (FOF IX) *and id.* (FOF X). Applying the child-centric approach discussed above,

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<sup>6</sup> Dependency decisions also must be applied based on the *present* circumstances and the *present* ability of the parent in regard to the particular child and parent-child relationship at issue. *Cf. In re Dependency of J.B.S.*, 123 Wn.2d at 11.

where continuation of a parent-child relationship would be significantly detrimental to the social, emotional, and development of the child, that fact is and should be deemed a parental deficiency under the statute at the time of trial. Here, the trial court determined, based on the expert testimony, that the absence of a relationship between the father and K.M.M. “cannot be corrected without great harm being caused to [K.M.M.]” CP at 107. The court went on to find that reunification services, even if provided, would “no longer [be] capable of providing a solution.” *Id.* This finding distinguishes K.M.M. from *In re Welfare of A.B.*, 168 Wn.2d 908, where, based on the evidence in that case, the trial court found “some likelihood that conditions can be remedied, so that this father can continue to be involved in the child’s life.” *Id.* at 916.

The Court’s ultimate determination as to what parental deficiencies may exist is greatly benefited by considering the child’s own opinion.<sup>7</sup> There is evidence to suggest that a child’s chances of success in a placement are improved when a youth feels comfortable and safe in their

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<sup>7</sup> OFFICE OF THE FAMILY & CHILDREN’S OMBUDSMAN, *Foster Care, What Young People Say is Working*, 16 (January 2001) (Through an appreciative inquiry approach to analyzing foster care, the study found that “(y)oung people said that success in foster care occurs when they feel like adults listen to and respect their opinions. They describe success primarily in terms of feeling that they are able to influence what is happening to them.”)

placement.<sup>8</sup> Studies have also found that the risk of running away is higher for youth age 14 and older and higher for females.<sup>9</sup> Youth who run away are then at high risk, and are common targets, for commercial sexual exploitation.<sup>10</sup> Additionally, it is widely understood that children themselves benefit from having their perspectives heard and respected by the court.<sup>11</sup>

By the time of trial, K.M.M.'s therapist noted that even continued delay in permanency was causing additional anxiety, a condition that was

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<sup>8</sup> See, e.g., Sanna J. Thompson & Viayan K. Pillai, *Determinants of Runaway Episodes Among Adolescents Using Crisis Shelter Services*, 15 INT'L J. SOCIAL WELFARE 142, 142-49 (2006) ("In this study, the strongest predictors of multiple runaway episodes were associated with young people's feelings of neglect by and mistrust of their parents."); Pergamit, M. & Ernst, M. *Running Away from Foster Care: Youths' Knowledge and Access of Services*, CHICAGO, IL: CHAPIN HALL CENTER FOR CHILDREN (2011) ("One in six [runaway] youth specifically said they did not feel safe in their placement.").

<sup>9</sup> See e.g., Courtney et. al., *Youth Who Run Away from Substitute Care*, CHICAGO, IL: CHAPIN HALL CENTER FOR CHILDREN 7 (2005).

<sup>10</sup> Kate Walker, *Ending The Commercial Sexual Exploitation of Children: A Call For Multi-System Collaboration in California*, CALIFORNIA CHILD WELFARE COUNSEL 18 (2013).

<sup>11</sup> See, e.g., Jaclyn Jean Jenkins, *Listen to Me! Empowering Youth and Courts Through Increased Youth Participation in Dependency Hearings*, 46 FAM. CT. REV. 163, 168 (2008) ("These are children whose lives change at the whim of a parent, whose experience is shaped by impermanence. [...] the courts, perhaps unthinkingly, perpetuate this mindset by excluding the youth from the process" ); Miriam Aroni Krinsky, Jennifer Rodriguez, *Giving A Voice to the Voiceless: Enhancing Youth Participation in Court Proceedings*, 6 NEV. L.J. 1302, 1302-03 (2006) ("It is often the process and the integrity of the path followed, and not the ultimate result, that determine our perceptions of the legal system and our willingness to have faith in judicial decision-making."); Carolyn S. Salisbury, *From Violence and Victimization to Voice and Validation: Incorporating Therapeutic Jurisprudence in A Children's Law Clinic*, 17 ST. THOMAS L. REV. 623, 657 (2005) ("Some girls in the Voice Project noted that their abusive parents, and even criminals, were heard by the court. They perceived themselves as being less worthy than their abusive parents or criminals, since they were not accorded the same respect by the legal system.").

in fact delaying her from making additional progress and entering a new age-appropriate developmental stage in a healthy way. Verbatim Report of Proceedings (VRP) at 92-93.

Here the trial court determined that, given the unique circumstances of K.M.M., no services were “reasonably available” to address the parental deficiencies “within the foreseeable future.” RCW 13.34.180(1)(d).<sup>12</sup> For K.M.M., a 12-year old who had been in dependent care for over four years, desperate for permanency and security of a family unit, the “foreseeable future” could not include indeterminate delays, which experts opined had little probability of success, and the capacity to delay her own development and cause harm.

This case also reflects a flaw in the system, where K.M.M. was only given a voice in these proceedings after three years in state care. The inclusion of K.M.M.’s voice earlier in the proceedings may have led to a different result or the same result more quickly,<sup>13</sup> but what is certain now

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<sup>12</sup> The “foreseeable future” “depends on the age of the child.” *In re Dependency of T.R.*, 108 Wn. App. 149, 164-65, 29 P.3d 1275 (2001); *see also In re Welfare of Hall*, 99 Wn.2d 842, 851, 664 P.2d 1245 (1983) (*citing* J. Goldstein, A. Freud, & A. Solnit, *BEYOND THE BEST INTERESTS OF THE CHILD* 43 (1973) (“Three months may not be a long time for an adult decisionmaker. For a young child it may be forever.”))

<sup>13</sup> In a study conducted in Palm Beach County, Florida, children represented by attorneys experienced exits to permanent homes roughly 1.5 times more frequently than children who were not afforded counsel. Additionally, children with their own lawyers moved from case plan approval to permanency at approximately twice the rate of those not represented by counsel. The children’s attorneys represented in this study often filed TPR Petitions themselves in order to protect the child client’s right to permanence. However, this practice and the resulting increased rates of permanency and adoption were

is that the voice of a 14-year old teenager should carry great weight in these proceedings. K.M.M.'s interest in not being forced to reunify with her father after this now seven-year period of estrangement and her desire to be adopted must be respected by this Court in order to ensure that her safety and physical and mental health are protected.

**C. Vulnerability and Rights of Children in Dependency and TPR Proceedings Support Appointment of Legal Counsel**

Applying the child-centric approach, Washington courts should continue to move towards appointment of counsel for children in dependency action and TPR proceedings.<sup>14</sup>

In dependency proceedings, by statute, the juvenile court may, but is not required to, appoint counsel for children. RCW 13.34.100(7). An attorney appointed to represent a child is governed by the RPCs and is tasked with providing client-directed representation.<sup>15</sup> Under statute, if the child is not appointed an attorney, the juvenile court must appoint a guardian ad litem (typically a CASA) for children subject to dependency

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not offset by significantly lower rates of reunification. Zinn, A. E. & Slowriver, J., *Expediting Permanency: Legal Representation for Foster Children in Palm Beach County*, CHICAGO, IL: CHAPIN HALL CENTER FOR CHILDREN (2008).

<sup>14</sup> Studies have suggested that age-appropriate involvement of children in permanency planning can be more effectively handled. See NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES, SEEN, HEARD, AND ENGAGED: CHILDREN IN DEPENDENCY COURT HEARINGS 4-9 (Aug. 2012). In 2012, the National Council of Juvenile and Family Court Judges declared a presumption of inclusion of children in child welfare cases to be a best practice. *Id.* at 5-6.

and TPR proceedings, unless it finds good cause that such appointment is unnecessary. RCW 13.34.100(1), JuCR9.2(1). However, Guardians Ad Litem (GAL) are not always provided because of a lack of resources and volunteers.<sup>16</sup> A CASA or GAL is not a child's legal representative and cannot protect the legal rights of the child:

We recognize that GALs and CASAs are not trained to, nor is it their role to, protect the legal rights of the child. Unlike GALs or CASAs, lawyers maintain confidential communications, which are privileged in court, may provide legal advice on potentially complex and vital issues to the child, and are bound by ethical duties. Lawyers can assist the child and the court by explaining to the child the proceedings and the child's rights. Lawyers can facilitate and expedite the resolution of disputes, minimize contentiousness, and effectuate court orders.

*In re Dependency of M.S.R.*, 174 Wn.2d at 21.

Currently, the Children's Representation Project, within the Office of Civil Legal Aid, contracts with attorneys for children in foster care six months after TPR. RCW 13.34.100(6). Where an attorney is appointed prior to TPR, the county pays for the attorney. Some counties, including

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<sup>15</sup> RPC 1.2; RPC 1.14; STATEWIDE CHILDREN'S REPRESENTATION WORKGROUP, MEANINGFUL LEGAL REPRESENTATION FOR CHILDREN AND YOUTH STANDARDS at 1.1(6) (2010).

<sup>16</sup> *In re Dependency of A.G.*, 93 Wn. App. 268, 968 P.2d 424 (1998), *as amended on reconsideration* (1999) (holding failure to appoint guardian ad litem did not require reversal, but a hearing was required to determine whether children were prejudiced by absence of guardian ad litem); *In re Dependency of R.H.*, 129 Wn. App. 83, 89, 117 P.3d 1179 (2005) (holding dismissal at shelter care hearing improper where no notice had been provided to the state and no guardian ad litem had been appointed for child because the child was "entitled to appointment of a guardian ad litem to protect his interests").

King, appoint attorneys for children starting at age 12. KING CO. LJUCR 2.4(a). Benton/Franklin County appoints attorneys for children starting at age eight. BENTON CO. LJUCR 9.2(A)(1). This system allows for a child in one county to enjoy the benefit of an attorney at public expense, while an identically situated youth in a neighboring county does not.

The case-by-case approach to determine which children in TPRs will have an attorney is unworkable in dependencies.<sup>17</sup> As Justice Blackmun explained in his dissent in *Lassiter v. Dep't of Soc. Servs. of Durham Cnty., N.C.*, “the case-by-case approach entails serious dangers for the interests at stake and the general administration of justice.” 452 U.S. 18, 50, 101 S. Ct. 2153, 68 L. Ed. 2d 640 (1981).<sup>18</sup> Even if it were fair, the case-by-case approach is “both cumbersome and costly.” *Lassiter*, at 51 (Blackmun, J., dissenting). This Court flat out refused to order a case-by-case approach in family law actions, observing that “[the] approach would be unwieldy, time-consuming, and costly. The proceeding itself might require the appointment of counsel . . .” *King v. King*, 162 Wn.2d 378, 390 n.11, 174 P.3d 659 (2007).

This case provides a perfect example of the cumbersome and

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<sup>17</sup> A dependency proceeding runs coextensively with a TPR proceeding--the child in foster care faces placement and custody decisions within the dependency proceeding during and after the TPR trial.

costly nature of the case-by-case approach. Before an attorney was appointed to represent K.M.M, she had spent three years in foster care and experienced abuse in her first foster home. During these years, K.M.M. was at the mercy of the other parties to (a) recognize her substantive constitutional and legal rights, (b) find an attorney would not hinder their own client's goals and interests within the dependency, and (c) make an affirmative motion to appoint an attorney on her behalf. Worse, K.M.M. could not ask the other parties questions about her case or her right to legal counsel without those attorneys violating the Rules of Professional Conduct. RPC 4.3. Under this structure, K.M.M. was left without an attorney until a significant conflict emerged and the child's position had the potential to further the state's own goals. VRP 30-31.

Although K.M.M. was found to be dependent in April of 2009, there was no TPR Petition filed until June of 2011, 26 months later. CP at 2, 58-62. However, the Department eventually took a voluntary nonsuit of that petition in February of 2012. *Id.* It wasn't until March of 2012, three years after removal from her biological parents and one month after the Department abandoned the TPR Petition, that K.M.M. began expressing reluctance about visitation with her parents. VRP 30-31. Had

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<sup>18</sup> See also *In re K.L.J.*, 813 P.2d 276, 282 n. 6 (Alaska 1991) (rejecting case-by-case approach in parental terminations); *Corra v. Coll*, 451 A.2d 480, 482-83 (Pa. Super. Ct.

the court appointed K.M.M. an attorney earlier, in keeping with her due process rights, K.M.M.'s position in the case may have been different and another outcome may have transpired. Early in K.M.M.'s dependency she had enough of a relationship with her father that she was comfortable telling him about the abuse she received at the hands of her first foster placement. VRP 477. Instead of conducting a thorough investigation and advocating for the position of her child client, as an attorney would have,<sup>19</sup> K.M.M.'s CASA did not believe the allegations and counseled<sup>20</sup> K.M.M.'s father that he could be prosecuted for filing a false CPS claim. VRP 478-480.

If K.M.M. had been appointed an attorney at her entry into foster care, it is possible her health and safety could have been protected and the relationship between K.M.M. and her father could have been mended. The appointment of an attorney earlier on in the case may also have

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1982) (accord).

<sup>19</sup> RPC 1.2; STATEWIDE CHILDREN'S REPRESENTATION WORKGROUP OF THE WASHINGTON SUPREME COURT COMMISSION ON CHILDREN IN FOSTER CARE, MEANINGFUL LEGAL REPRESENTATION FOR CHILDREN AND YOUTH STANDARDS, 1.1(6), 4.2 (2010).

<sup>20</sup> Although some CASA programs in the state employ staff attorneys to represent the CASA program and provide legal advice for the CASA volunteers, this does not appear to be the case in Kitsap County. *See, e.g.,* Brittany Patterson, *Volunteers ensure kids' voices are heard in Kitsap juvenile court proceedings*, KITSAP SUN, July 25, 2013 ("The advantage to us is that I don't work for any of the attorneys. I don't work for CPS. I do my work to be the eyes and ears of the court").

protected K.M.M.'s legal right to timely permanence.<sup>21</sup> K.M.M.'s case demonstrates the potential impact of an attorney and the need for the protection of a child's due process right to counsel at the beginning of the dependency case.

**D. Mental Health and Attachment Services Provided to K.M.M.**

As commentators have summarized:

This child development research overwhelmingly shows that children form strong bonds of attachment to their parents early in life, which strengthen and develop as children grow older. These attachment relationships do not depend on biological connection, but form with any adult who "on a continuing, day-to-day basis, through interaction, companionship, interplay, and mutuality, fulfills the child's psychological needs, as well as the child's physical needs."<sup>22</sup>

Attachment theory can assist the state and courts in considering the impacts, and often traumatic impacts, of removal, separation, dependency, and sometimes reunification on the child. This should include using attachment theory to focus on the prevention of developing an attachment disorder, by minimizing lengthy separations and multiple moves in care, maintaining regular and frequent contact with primary attachment figures, adequately training foster parents, and mandating mental health

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<sup>21</sup> See, e.g., Zinn, A. E. & Slowriver, J., *Expediting Permanency: Legal Representation for Foster Children in Palm Beach County*, CHICAGO, IL: CHAPIN HALL CENTER FOR CHILDREN (2008). An attorney for the child can also pursue other permanency options that do not require TPR, such as guardianship, in order to protect a child's right to permanence. RCW 13.36.010.

evaluations and treatments when necessary.<sup>23</sup> Attachment theory and therapy does not dictate an outcome. As analyzed in the context of the child welfare system:

Attachment relationships “shape the development of self-awareness, social competence, conscience, emotional growth and emotion regulation, learning and cognitive growth.” They “engage children in the human community in ways that help them define who they are, what they can become, and how and why they are important to other people.” In short, children need the attachments that form in a secure and stable family relationship in order to develop into autonomous, socially responsible, psychologically well-adjusted adults.<sup>24</sup>

As with all child welfare issues, these considerations will necessarily be highly fact specific, depending, among other things, on the age of the child, their own mental health and trauma history, as appropriate, and other factors.<sup>25</sup> All of these factors are most insightful when viewed from the perspective of the child facing these issues.

At the time of the termination trial, K.M.M. had been in an out-of-home placement for over four years, and had been with her current foster care placement for four years. K.M.M.’s individual child and family

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<sup>22</sup> Joseph S. Jackson and Lauren G. Fasig, *supra* note 5, at 18.

<sup>23</sup> See Douglas Goldsmith, Ph.D., et al., *Separation and Reunification: Using Attachment Theory and Research to Inform Decisions Affecting the Placements of Children in Foster Care*, JUVENILE AND FAMILY COURT JOURNAL (Spring 2004).

<sup>24</sup> Joseph S. Jackson and Lauren G. Fasig, *The Parentless Child’s Right to a Permanent Family*, 46 WAKE FOREST L. REV. 1, 18-19 (2011) (citations omitted).

<sup>25</sup> JoAnne Solchany and Lisa Pilnik, *Health Attachment for Very Young Children in Foster Care*, A.B.A. CHILD LAW PRACTICE, vol. 27, no. 6 (Aug. 2008).

therapist, Ms. Staton testified that, in light of K.M.M.'s history and current development, it would in fact be "really damaging to lose a really secure attachment at this age that she is at," and that K.M.M. identified herself with her current placement. VRP at 140-41. This testimony confirms what K.M.M. herself expressed below, and in fact has consistently expressed since at least early 2012.

## V. CONCLUSION

While recognizing the "unique and tragic circumstances" of this case, VRP at 705, a description that can be all too commonly applied to the majority of child welfare cases, the trial court in this case did earnestly seek to apply the "child-centric" focus advocated in this brief. Recognizing that the rights of the parent, and the rights and welfare of the child, after four years in dependency, had come in conflict, the court's reasoning and rationale mirrored and applied Washington law that, in such cases, the child's best interests should be paramount. *E.g., In re Dependency of J.B.S.*, 123 Wn.2d at 12; RCW 13.34.020. In so doing, the court gave recognition and voice to K.M.M., the then ten-and-a-half-year-old child at the center of this case, considering the import of that child's own consistent assertions and her mental and emotional health. VRP at 705.

Respectfully submitted this 20th day of April 2016.

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**CERTIFICATE OF SERVICE**

I hereby certify that I have on this 20th day of April 2016, served a copy of the foregoing **Brief of *Amici Curiae* Center for Children & Youth Justice, The Mockingbird Society, and Children and Youth Advocacy Clinic at the University of Washington School of Law**, on the following parties, by email and by U.S Mail, postage prepaid:

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Re: *In re the Welfare of K.M.M., a Minor Child*, Supreme Court No. 91757-4

Please find attached for filing in the case referenced above the following documents:

1. Motion to File Brief of Amici Curiae
2. Brief of Amici Curiae Center for Children & Youth Justice, the Mockingbird Society, and Children and Youth Advocacy Clinic at the University of Washington School of Law.

Our service certificates are included at the end of each document. Thank you for your assistance with this request.

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