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Court of Appeals No. 72938-1-I

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IN THE SUPREME COURT  
OF THE STATE OF WASHINGTON

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In re the Custody of:

LMS,

FAUALUGA SIUFANUA and  
BILLIE SIUFANUA, Petitioners,

and

TONY SAMOA FUGA and  
LISA LYNNETT SIUFANUA, Respondents.

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PETITION FOR REVIEW

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## I. IDENTITY OF PETITIONERS

Faualuga Siufanua and Billie Siufanua, Appellants in the Court of Appeals, are the Petitioners before this Court. They ask this Court to accept review of the Court of Appeals decision terminating review designated in Part II of this Petition.

## II. DECISION BELOW

The Petitioners request review of the Court of Appeals Division I opinion in case number 72938-1-I filed on February 8, 2016. A copy of the decision is attached as Appendix A.

## III. ISSUES PRESENTED FOR REVIEW

This Court should accept review under Rule of Appellate Procedure 13.4(b)(1)-(2), as the Court of Appeals' decision is in conflict with both "a decision of the Supreme Court" and "another decision of the Court of Appeals." Specifically, the issues are:

- A. Whether the Court of Appeals' decision is in conflict with *In re Custody of B.M.H.*, 179 Wn.2d 224, 315 P.3d 470 (2013) and *In re Marriage of Allen*, 28 Wn. App. 637, 626 P.2d 16 (1981), by holding that the actual detriment standard in a nonparental custody case can *only* be met when a child has special needs;
- B. Whether the Court of Appeals' decision is in conflict with *In re Custody of E.A.T.W.*, 168 Wn.2d 335, 227 P.3d 1284 (2010) by not applying the adequate cause standard that only requires a nonparental custody petitioner to "set forth factual allegations that, if proved, would establish . . . actual detriment";

- C. Whether the Court of Appeals' decision is in conflict with RCW 13.34.030(1)'s definition of abandonment as well as RCW 26.10.160(2)(a), which specifically states that a parent's time in a nonparental custody matter shall be subject to limitations for "willful abandonment" or "substantial refusal to perform parenting functions."

#### IV. STATEMENT OF THE CASE

At issue in this case is the nonparental custody of LMS, a child who lived with her maternal grandparents in Washington for over 8 years while her father lived in Southern California without visiting her, contacting her, or otherwise acting as a parenting to her before appearing one day to take her away. The trial court denied adequate cause on the Grandparents' petition, which the Court of Appeals affirmed, and they now seek review of that decision in this Court.

#### Factual Background

In December of 2005, a daughter, LMS, was born to Lisa Siufanua (her mother) (hereinafter "Ms. Siufanua") and Tony Fuga (her father) (hereinafter "Mr. Fuga"), an unmarried couple then residing in Washington State. CP 2. After the birth, the parties resided with Ms. Siufanua's parents, Billie Siufanua and Faualuga Siufanua, the Petitioners in this matter (hereinafter "Grandparents"). CP 27. At that time, Mr. Fuga was facing charges of domestic violence/assault against Ms. Siufanua regarding an incident that occurred on April 27, 2005, at which time Ms. Siufanua was pregnant with the parties' child. CP 5, 27-37. This

was one of many such incidents where Mr. Fuga was violent, as the grandparents further described incidents where Faualuga Siufanua had to intervene to stop Mr. Fuga's abuse of Ms. Siufanua and to protect her, at which point Mr. Fuga even became violent with Mr. Siufanua. CP 6.

Mr. Fuga moved to California when LMS was about one year old, and he remained there ever since. CP 3, 27. Ms. Siufanua remained with her parents in their home, as did LMS, and although Ms. Siufanua moved in and out of her parents' home, LMS remained with her grandparents from 2005 through 2014 when this matter began. CP 5-6, 27.

During the nine years she resided with her grandparents, Mr. Fuga had, at best, minimal contact with LMS. CP 5, 27. He travelled to Washington at times, but did not attempt to see LMS or express an interest in doing so. CP 5. He made comments that "he wants nothing to do with the child and has voiced that he would do anything to be rid of the child and the child support that comes along with being a father." CP 6. Over the years, he did not attempt to learn information about her life, including her academics, extracurricular activities, or "any aspect of her life." CP 5. In 2008, he married his current wife in California, who was pregnant with their child, before LMS turned three years old. CP 27. On December 18, 2011, he posted a comment to LMS on Facebook acknowledging that he had not seen her since 2006 (when she was one year old), saying:

Im gonna write this 2night bcuz 2morrow is 'back 2 work i go' Its been 5 years since Ive seen you or heard your voice.Im not gonna lie I honestly forgot about your bday.how could I?? I failed u as a Dad n Im sorry, TRUST me when I say that I feel real bad. . . . IM SOO SORRY that you went through soo many years without a Daddy,and I know I cant give them back to you . . . But times do change and its gonna be hard for me to see you but thats okay.

CP 39. In this post, Mr. Fuga commented that he had forgotten LMS' birthday, but in reality his message was sent the day before her birthday, raising a question as to whether he knew the actual day of her birth. CP 2.

In 2012, Ms. Siufanua began receiving medical assistance from the state, at which point the Department of Social and Health Services pursued Mr. Fuga via a paternity action for child support. CP 27. Up until that point, he had not provided any financial assistance or child support. CP 27. As part of this paternity case, an order was entered that awarded Ms. Siufanua custody of LMS. CP 27.

Throughout the nine years that LMS resided with her grandparents, they provided all of her care. CP 28. They described their efforts to treat her as their own daughter and how they "provided stability and structure for" LMS by ensuring she attended school regularly, providing a stable and secure living environment, and making sure her medical and dental needs were met. CP 6. The grandparents also described how LMS referred to them as "mom" and "dad," and that she had no memory of her

father. CP 28. They cared for LMS as they did the other children in their home, whom LMS saw as siblings. CP 28.

On October 3, 2014, when LMS was nine years old, Mr. Fuga appeared at the grandparents' home without any warning, demanding to take the child back to California with him. CP 6. He made verbally abusive comments about Ms. Siufanua in front of LMS, who was terrified. CP 6. When the grandparents refused, he left, and two days later, he appeared at their home again with the police, once again demanding that LMS be given to him. CP 6. The police did not require the child to leave with him, and they asked him to leave. CP 6. The grandparents described how this traumatized LMS, as Mr. Fuga was a "stranger coming to take her away" from "everything and everyone she knows . . . ." CP 14, 28. Mr. Fuga then filed a Petition for Modification, alleging that Ms. Siufanua was incarcerated, so he should be LMS' primary parent and child support should be paid to him. CP 14.

### **Procedural Background**

The grandparents filed a Petition for Nonparental Custody on October 24, 2014, alleging that the child did not reside with either parent, both parents are unfit, neither parent is a suitable custodian for LMS, and that LMS would "suffer actual detriment (harm) to her growth and development if she lives with either of the respondents." CP 5. The

petition requested that Mr. Fuga's visitation be limited on the bases of willful abandonment/substantial refusal to perform parenting functions and domestic violence. CP 4.

Mr. Fuga accepted service of the Summons, Petition, Ex Parte Order, and other accompanying documents on October 29, 2014. CP 16. He also filed a Response to Petition, which admitted that he resided in San Diego County, California. CP 19. He asserted that he "has not engaged in willful abandonment of the child in any way at any time. There is no history of domestic violence or an assault or sexual assault which causes grievous bodily harm or the fear of such harm." CP 19. Regarding where the child has resided, he asserted that the child lived with her mother apart from the maternal grandparents and with the mother and father apart from the maternal grandparents. CP 20. He did not provide dates of these alleged periods of residence. CP 20.

Mr. Fuga thereafter filed a Motion to Deny Adequate Cause/Dismiss the case, as part of which he claimed that he left when the child was three, not one, and that the reason he was not with her until she was nine was because he did not know where she was and that the grandparents had hidden her whereabouts from him. CP 26. In response, the grandparents provided Mr. Fuga's Facebook comment, which was posted on December 18, 2011, and which stated "Its been 5 years since Ive

seen you or heard your voice.” CP 39. Five years from December 18, 2011, would be December 18, 2006, which was one year after LMS was born, not three. CP 2, 19. Further, the petitioners pointed out that when LMS did turn three years old in 2008, Mr. Fuga had already met and impregnated his current wife, whom he married in 2008. CP 27.

Regarding Mr. Fuga’s claim that he could not locate LMS during his absence, the grandparents declared that LMS resided in the same home in which she lived before Mr. Fuga left – the same home the grandparents had occupied for about 20 years and the same home in which Mr. Fuga resided as well before he left. CP 26, 28. This was the same home where Mr. Fuga arrived in October of 2014 with the police. CP 26, 28. LMS lived in that home during the entirety of Mr. Fuga’s eight-year absence from Washington. CP 26. It was also apparent that Mr. Fuga was able to locate the child at school after he went there to see her. CP 14. Further, the grandparents pointed to the Facebook message from 2011, noting that Mr. Fuga made no queries in it as to where LMS was located, and he made no comments in it about trying to find her. CP 39. They also noted that they had both held steady employment with King County, Billie Siufanua since 1989 and Faualuga Siufanua since 1987. CP 6.

In response to Mr. Fuga’s claim that he had no history of domestic violence, the grandparents provided statements from neutral third-party

witnesses who described Mr. Fuga's assault against Ms. Siufanua as well as his attempt to cover it up. CP 27-37. One witness described seeing a "physical assault," wherein Mr. Fuga "gave a backhanded blow to the face of" the mother." CP 30. Another witness described seeing Mr. Fuga "put both hands around [the mother's] neck and was pushing her back into the wall," and then saw him take his arm back, "ready to punch the woman." CP 31. When the witnesses tried to intervene, Mr. Fuga told them to "mind our own business." CP 31. Other witnesses recounted seeing the same scene, after which Mr. Fuga was led away by police in handcuffs. CP 34. Mr. Fuga's account of the incident to police did not match any of the witness' statements, claiming the parties were just yelling at each other and he only "grabbed her backpack." CP 36. The grandparents provided evidence of the issuance of a bench warrant for Mr. Fuga's failure to comply with his domestic violence treatment requirements as well as the requirement to appear at a hearing. CP 5, 37.

On November 14, 2014, Pro Tem Commissioner Rhe Zinnecker issued an Order re Adequate Cause, denying the petition and dismissing the matter. CP 58-61. The Order stated that "More than 20 days have elapsed since the date of service," CP 59, although at that time only 16 days had passed since the date of service, CP 16. The court further determined that adequate cause had not been established. CP 61.

The grandparents filed a Motion for Revision on November 19, 2014, which was heard by Judge Suzanne R. Parisien on December 12, 2014, who denied the revision. CP 174-75, RP 12. On February 8, 2016, Division I of the Court of Appeals affirmed the trial court's decision, and the grandparents now ask this Court to accept review of that decision.

## V. ARGUMENT

### **A. The Court of Appeals' decision conflicts with *Custody of B.M.H.* and *Marriage of Allen* by holding that the actual detriment standard in a nonparental custody case can only be met when a child has special needs.**

As part of affirming the dismissal of the Grandparents' nonparental custody petition, the Court of Appeals relied on *In re Custody of B.M.H.* on the basis that actual detriment in a nonparental custody case can only be found when a child has special needs. However, analysis of this Court's decision in *Custody of B.M.H.* does not seem to indicate that such a broad interpretation and application of the decision is appropriate; rather, that special needs of a child may be an excellent example of when actual detriment is likely in a nonparental custody case, but is not the only way a finding of actual detriment can be made. To limit a finding of actual detriment only to cases where children have special needs conflicts not only with the express language of *In re Custody of B.M.H.*, but also

conflicts with previous holdings in *In re Custody of Anderson*, *In re Marriage of Allen*, and *In re Custody of E.A.T.W.* as set forth below.

RCW 26.10.032 requires a nonparental custody petitioner to submit “an affidavit declaring that the child is not in the physical custody of one of its parents or that neither parent is a suitable custodian.” The statute itself does not reference what makes a parent a “suitable custodian,” but case law has expanded on the definition. In *Custody of E.A.T.W.*, this Court focused on “factual allegations that if proved would establish that the parent is unfit or the child would suffer actual detriment if placed with the parent.” *In re Custody of E.A.T.W.*, 168 Wn.2d 168 Wn.2d 335, 342, 227 P.3d 1284 (2010). *Custody of Anderson* further defined “actual detriment” to be something “determined on a case-by-case basis.” *In re Custody of Anderson*, 77 Wn. App. 261, 264, 890 P.2d 525 (1995). Actual detriment is meant to be a middle ground, “requiring something more than a showing of best interests, but less than parental unfitness.” *In re Marriage of Allen*, 28 Wn. App. 637, 649, 626 P.2d 16 (1981). Ultimately, this Court held that the focus of actual detriment is on the impact to the “child’s growth and development.” *In re Custody of E.A.T.W.*, 168 Wn.2d at 339.

In *Custody of B.M.H.*, this Court was confronted with a man who sought both nonparental custody and *de facto* parentage of a child. *In re*

*Custody of B.M.H.*, 179 Wn.2d 224, 229, 315 P.3d 470 (2013). There, the putative *de facto* father/nonparental custodian, Mr. Holt, sought custody of a child that was not his biological child, but who was the child of his ex-wife and a half-sibling to their shared child. *Id.* at 230. Both parties were actively involved in the child's life, and no claims were made that the mother was an unfit parent. *Id.* at 230, 237.

However, when the mother started to decrease Mr. Holt's visits with the child before deciding also to move about 50 miles away, Mr. Holt petitioned the court for nonparental custody and *de facto* parentage. *Id.* at 230-31. He also alleged that she had been in multiple short-term relationships with men since the parties' divorce several years prior. *Id.*

Both a guardian ad litem and an expert were appointed at the father's request, and adequate cause was granted so the case could proceed to trial. *Id.* at 233. The mother appealed the adequate cause decision, the Court of Appeals affirmed, and this Court reversed, holding that "Mr. Holt's allegations about Ms. Holt's behavior, if proved, would not meet the high burden of showing that Ms. Holt is unfit or that her continued custody of B.M.H. would result in actual detriment to his growth and development." *Id.* at 234.

Since Mr. Holt never alleged that the mother was an unfit parent, the focus of this Court's analysis was on whether Mr. Holt's allegations,

even if proved true, would support a finding of actual detriment to the child. *Id.* at 237. After discussing Mr. Holt’s allegations about the limited contact with the child due to the relocation (and some potential that the mother might further limit contact) and the mother’s multiple relationships, this Court determined the allegations were insufficient to support the petition because there were no “additional circumstances” alleged. *Id.* at 239. Specifically, this Court referenced as examples the “extreme and unusual circumstances” that were present in *Allen* and *Stell*, holding that “dating patterns and her decision to move . . . are not the kind of substantial and extraordinary circumstances that justify state intervention with parental rights.” *Id.* As a result, Mr. Holt’s nonparental custody petition was denied. *Id.*

It does not appear from the this decision that a finding of actual detriment can be made only in cases where a child has special needs. Rather, it appears instead to use those cases as extreme examples of when the actual detriment standard was satisfied. In contrast with the facts of *B.M.H.*, it is easy to see that a child, who had already shared custody with both Mr. Holt and his mother for his entire life, would not be subject to actual detriment simply because the mother moved a little bit farther away.

Nevertheless, in the instant case, the Court of Appeals relied on this Court’s discussion in what appears to be a holding that unless a child

has special needs, the actual detriment requirement cannot be fulfilled. *In re L.M.S.*, pages 4-5 (stating “[T]he Washington State Supreme Court recently reversed a finding of actual detriment where the child had no special needs.”). Based upon that interpretation of *B.M.H.*, which the Court of Appeals stated was analogous to the instant case, the Court denied adequate cause due to the child’s apparent lack of special needs in this case.

Further, the instant case is distinguishable from *B.M.H.* In *B.M.H.*, Mr. Holt and the child’s mother were both regularly present in the child’s life, as he followed the same visitation schedule as they had for the other child they shared. In contrast, Mr. Fuga was not present in any capacity for over 9 years of LMS’ life. Further, in *B.M.H.*, the mother only sought to take the child about 50 miles away, which still allowed for regular contact with Mr. Holt. In contrast, Mr. Fuga sought to take LMS to Southern California in the middle of a school semester, which made regular contact with the Grandparents financially difficult if not extremely limited.

Additionally, in *B.M.H.*, there were no allegations that the mother was unfit or otherwise a danger to the child. In contrast, the Grandparents in this case alleged specifically that Mr. Fuga was abusive to LMS’ mother, that he was charged with domestic violence after a particularly

public assault he inflicted on LMS' mother while she was pregnant with LMS, that he left the state after he was charged with domestic violence, and that the minimal interactions they had with him after he left were also similarly physically violent (including a physical attack on Mr. Siufanua). Not only was this not an issue in *B.M.H.*, but also in *B.M.H.*, whether or not the mother would limit contact with Mr. Holt was mostly speculative and not very certain. However, in the instant case, the level of hostility demonstrated by Mr. Fuga to the Grandparents combined with the distance made it much, much more likely that contact would be significantly if not entirely limited between LMS and the Grandparents as well as her mother if she were placed in Mr. Fuga's care.

Ultimately, this Court should clarify whether *B.M.H.* was intended to hold that actual detriment only applies in cases where children have special needs. Children who have special needs certainly need to be protected and certainly would likely have a more difficult time with changed custody, but children may have undiagnosed special needs not apparent at an adequate cause hearing or children who do not have special needs may still experience actual detriment to their growth and development by the changed custody. This Court should hold that actual detriment does not require a child to have special needs, but is still rather something subject to a case-by-case analysis. Further, this Court should

hold that *B.M.H.* is not analogous to the instant case, as the facts are quite different, and LMS' situation is much more extreme and difficult.

**B. The Court of Appeals' decision conflicts with *Custody of E.A.T.W.* by not applying the adequate cause standard, which only requires a nonparental custody petitioner to “set forth factual allegations that, if proved, would establish . . . actual detriment.”**

RCW 26.10.032 requires a nonparental custody petitioner to submit, along with the motion for adequate cause, “an affidavit declaring that the child is not in the physical custody of one of its parents or that neither parent is a suitable custodian . . . .” Adequate cause for hearing the petition is to prevent petitioners from harassing other parties via useless hearings. *In re Custody of E.A.T.W.*, 168 Wn.2d at 347. To bypass this harassment-preventing threshold, petitioners must “set forth factual allegations that if proved would establish that the parent is unfit or the child would suffer actual detriment if placed with the parent.” *Id.* at 339.

Adequate cause is a threshold determination to prevent a useless hearing; it is not trial itself. In *B.M.H.*, even though this Court found that Mr. Holt's allegations were insufficient to support his petition for nonparental custody, this Court nevertheless focused on his allegations “if proved” – not “as proved.” *In re Custody of B.M.H.*, 179 Wn.2d at 234, 236. *See also In re Custody of E.A.T.W.*, 168 Wn.2d at 342. In sum, this Court accorded deference to the fact that Mr. Holt had not yet been able to

present his full case at trial, and so the analysis focused on whether his allegations, even if he did prove them to be true at trial, would support nonparental custody. However, it does not appear this same standard was applied in the review of the instant case. It should also be noted that in almost all of the appellate cases referenced in the Court of Appeals' decision, the parties had the benefit of a guardian ad litem, expert testimony, and trial.

Here, the Grandparents alleged that LMS resided with them from birth until the first court order in these proceedings about 9 years later. They alleged that Mr. Fuga was a domestic violence abuser who abused their daughter while she was pregnant and thereafter. They alleged that when they did see him over the years, he showed little interest in his daughter, did not ask after her welfare, and did not contribute to her life in any meaningful way. They further alleged that when they did see him years later, he was still physically violent. They also alleged that Mr. Fuga knew where LMS resided, as it was in the same home where he resided prior to his departure for California and the same home where he appeared when he decided LMS needed to return to him. They alleged that it was only after child support was initiated by the State of Washington that Mr. Fuga had any interest in the child returning to him as he did not want to pay child support. They also alleged that when he did

come to their home to see LMS at the beginning of these proceedings, he still exhibited the same angry and abusive behavior they knew from 9 years prior, and he exhibited this behavior without regard for the fact that LMS was right there, watching and terrified.

These allegations, combined with the fact that the adequate cause hearing was held less than 20 days after the Summons and Petition were served (which also means that the parties had minimal time, at best, for an investigation, to conduct discovery, or to consult experts) should support a finding of parental unfitness or actual detriment to LMS. This is all notwithstanding the fact that the order dismissing the nonparental custody petition transferred custody of LMS to Mr. Fuga in California immediately during the school semester, without any involvement of reunification experts, a Guardian ad Litem, or a transition of the child from one home to another. The adequate cause hearing was not a trial, and even though the Grandparents made allegations with what evidence was available, all of which proved their claims were more than just bald assertions, their petition was dismissed for lack of evidence without giving them any opportunity to gather that evidence in the first place. The adequate cause standard should have been factored in to the analysis of their petition, and they should have been accorded the “if proven” deference given to petitioners in other cases like *B.M.H.*

**C. The Court of Appeals' decision conflicts with RCW 13.34.030(1) and RCW 26.10.160(2)(a).**

As part of finding that Mr. Fuga is not an unfit parent, the Court of Appeals held that his 9-year absence from LMS' life did not constitute abandonment per RCW 13.34.030(1). However, RCW 26.10.160(2)(a) specifically makes a parent's time subject to limitations for "willful abandonment" or "substantial refusal to perform parenting functions." Whether or not Mr. Fuga's absence from LMS' life constitutes abandonment sufficient to terminate his parental rights per the dependency statutes does not mean that he is a suitable custodian as is required by the nonparental custody statutes. Nevertheless, it should be determined that Mr. Fuga did abandon LMS per the terms of both statutes such that he should be found to be an unfit parent.

RCW 13.34.030(1) defines "abandoned" as when a parent "has expressed, either by statement or conduct, an intent to forego, for an extended period, parental rights or responsibilities despite an ability to exercise such rights and responsibilities." It is undisputed that Mr. Fuga was absent from LMS' life for many years, and the evidence shows that he was absent from her life for 9 years. He claims that he did not know LMS was staying with the Grandparents and that he did not know where LMS was located. However, these claims are not supported by the facts. The

parties resided with LMS in the Grandparents' home, which is the same home where the Grandparents have resided ever since. LMS did not leave that home. They are further refuted by the following: 1) when Mr. Fuga did decide to be with LMS, he went directly to the Grandparents' home and located her there (indicating it was relatively simple for him to find her at any given time); 2) the Grandparents provided the communication via Facebook that Mr. Fuga sent to LMS in 2011, and nowhere in it did he mention that he could not locate her or was even attempting to locate her; and 3) when child support was established by the state in 2012, he had every opportunity to seek custody or information about LMS at that time, but he did not do so. In sum, Mr. Fuga expressed by his conduct an intent to forego his parental rights and responsibilities, and his conduct should be considered abandonment per RCW 13.34.030(1).

However, even if the Court does not believe Mr. Fuga abandoned LMS to the extent required by RCW 13.34.030(1) for dependency proceedings, RCW 26.10.160(2)(a) requires a limitation of a parent's residential time if the parent has engaged in "willful abandonment" or "substantial refusal to perform parenting functions." (Emphasis added). The fact that the Legislature included both abandonment and a substantial refusal to perform parenting functions as a basis to limit a parent's time indicates that a parent who has that history should not have full custody of

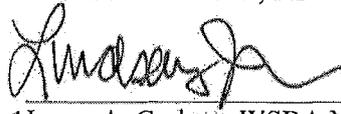
a child. The statute references past behavior, which, like all similar restrictions, indicates that a parent has done something so severe, it raises concern about the parent's abilities even if the parent is no longer doing that behavior. Whether it constitutes technical abandonment or simply a substantial refusal to perform parenting functions, Mr. Fuga was not there for LMS for 9 years and did not perform parenting functions during that time. Therefore, he should be determined to be an unfit parent at least sufficient to pass adequate cause, as that raises serious questions about his parenting abilities.

#### VI. CONCLUSION

For the reasons set forth above, the Petitioners respectfully request that this Court grant their Petition for Review of the Court of Appeals' decision.

RESPECTFULLY SUBMITTED this 9th day of March, 2016.

McKINLEY IRVIN, PLLC

 #43002  
A Laura A. Carlsen, WSBA No. 41000

**PROOF OF SERVICE**

Michelle Donaldson certifies as follows:

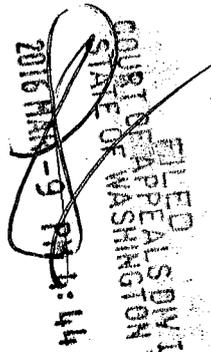
On March 9, 2016, I served upon the following a true and correct copy of this Petition for Review via legal messenger:

Philip C. Tsai, Esq.  
Tsai Law Company, PLLC  
2101 4th Avenue, Suite 2200  
Seattle, WA 98121

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

SIGNED AND DATED this 9<sup>th</sup> day of March, 2016, at Tacoma, WA.

  
Michelle Donaldson, Paralegal





McKINLEY IRVIN  
FAMILY LAW

***APPENDIX - A***

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In the Matter of the Custody of LMS,

Minor Child,

FAUALUGA and BILLIE SIUFANUA,

Appellants,

v.

TONY SAMOA FUGA,

Respondent,

and

LISA LYNNETT SIUFANUA,

Respondent.†

No. 72938-1-I

DIVISION ONE

UNPUBLISHED OPINION

FILED: February 8, 2016

2016 FEB -8 AM 9:40  
CLERK OF COURT  
STATE OF WASHINGTON

BECKER, J. — Billie and Fauluga Siufanua appeal the trial court's dismissal of their nonparental custody petition for failure to show adequate cause. Their petition and affidavits do not show that the child has special needs that her father cannot meet. The fact that the father remained apart from the child for many years does not, by itself, mean that the father is unfit or unable to meet the child's basic needs. The trial court correctly dismissed the petition.

† Although the case caption designates Lisa Siufanua as respondent, Lisa is not a party to the appeal. However, the case caption will retain Lisa's trial court designation as "respondent."

## FACTS

LMS was born in Washington in December 2005 to Tony Fuga, then 20 years old, and Lisa Siufanua, then 18 years old. After her birth, LMS lived in Washington with both of her parents at the home of the Siufanuas, her maternal grandparents. LMS's parents later ended their relationship.

Fuga moved to California when LMS was less than three years old. He has resided there ever since. From the time he moved to California until LMS was eight years old, Fuga saw LMS only once. This visit took place in 2012 or 2013 for one afternoon in California when LMS was vacationing with her mother. Fuga married in 2008. He and his wife now have two sons, approximately five and six years old.

LMS remained in Washington. It is unclear whether LMS ever lived with her mother independently from the Siufanuas. At some point, LMS's mother began to struggle with substance abuse and the Siufanuas took over the care of LMS.

In a parentage action in 2012, the King County Superior Court legally established Fuga as LMS's father, ordered him to pay child support, including back support, and gave custody of LMS to her mother. Fuga did not seek custody of LMS at this time.

On October 3, 2014, Fuga unexpectedly appeared at the Siufanuas' home and discovered that LMS was living there. Fuga claims that this is the first time he learned that LMS was not living with her mother, but instead with the Siufanuas.

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On October 8, 2014, just five days after his visit to the Siufanuas' home, Fuga petitioned to modify the 2012 judgment and order establishing parentage to become the custodial parent for LMS. On October 14, 2014, the Siufanuas filed a nonparental custody petition seeking custody of LMS. The two proceedings were consolidated. A superior court commissioner dismissed the Siufanuas' nonparental custody petition for lack of adequate cause. The Siufanuas moved for revision, and the superior court denied their motion. The Siufanuas appeal.

#### NONPARENTAL CUSTODY PETITION

The due process clause of the Fourteenth Amendment protects the fundamental right of parents to make decisions regarding the care, custody, and control of their children. Troxel v. Granville, 530 U.S. 57, 66, 120 S. Ct 2054, 147 L. Ed. 29 49 (2000). This protected interest is "perhaps the oldest of the fundamental liberty interests" recognized by the United States Supreme Court. Troxel, 530 U.S. at 65-66 (collecting cases). In deference to this fundamental parental right, a nonparent seeking custody of a child in Washington State must meet a higher burden than the "best interests of the child" standard that governs when the dispute is between parents. In re Marriage of Allen, 28 Wn. App. 637, 649, 626 P.2d 16 (1981).

The nonparent who has filed a custody petition under RCW 26.10 must demonstrate adequate cause for a hearing. This is done by submitting an affidavit alleging facts that, if proved, would establish that (a) placing the child with the parent would result in actual detriment to the child's growth and development or (b) that the parent is unfit. RCW 26.10.032; In re Custody of

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E.A.T.W., 168 Wn.2d 335, 348, 227 P.3d 1284 (2010) (emphasis added). The court shall deny the petition for nonparental custody unless it finds that adequate cause for hearing on the motion is established by the affidavits. RCW 26.10.032(2).

The Slufanuas contend that the trial court erred in dismissing their nonparental custody petition for lack of adequate cause. Our review is for abuse of discretion. In re Marriage of Maughan, 113 Wn. App. 301, 306, 53 P.3d 535 (2002).

#### Actual detriment

Whether placement with a parent will result in actual detriment to a child's growth and development is a highly fact-specific inquiry that must be determined on a case-by-case basis. In re Custody of B.M.H., 179 Wn.2d 224, 236, 315 P.3d 470 (2013). The requisite showing required of the nonparent is substantial, and a nonparent will generally be able to meet this test only in extraordinary circumstances. In re Custody of Shields, 157 Wn.2d 126, 145, 136 P.3d 117 (2006). Actual detriment has been defined as a middle ground, "something greater than the comparative and balancing analyses of the 'best interests of the child' test" but "less than a showing of unfitness." Allen, 28 Wn. App. at 649.

The actual detriment standard can be satisfied where the child has significant special needs that the parents cannot meet. For example, the actual detriment standard was satisfied where the child was deaf and the petitioner stepmother and her three children had learned fluent sign language to communicate with the child and integrate him into their family unit. Allen, 28 Wn.

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App. at 641. The child's father knew only minimal sign language. Allen, 28 Wn. App. at 641. Additionally, the stepmother had undertaken extraordinary efforts to obtain special training for the deaf child. Allen, 28 Wn. App. at 641. On these facts, the grant of custody to the stepmother was upheld. In another case, this court reversed the trial court and found that the petitioner aunt met her burden to prove actual detriment where the child had been physically and sexually abused and needed extensive therapy and stability at a level that the parents had not been able to provide. In re Custody of Stell, 56 Wn. App. 356, 783 P.2d 615 (1989).

In contrast, the Washington State Supreme Court recently reversed a finding of actual detriment where the child had no special needs. B.M.H., 179 Wn.2d at 224. In B.M.H., the stepfather alleged detriment to the child on the basis that the mother was moving with the child 50 miles away and that she would interfere with his relationship with the child. B.M.H., 179 Wn.2d at 237. It was not alleged that B.M.H. had any special needs. Our Supreme Court distinguished the case of B.M.H. from Allen and Stell on the basis that in each of those cases, the child had significant special needs that would not be met if the child were in the custody of the parent. B.M.H., 179 Wn.2d at 239. The court reasoned that continuity of psychological relationships and family units was particularly important where a child has special needs. B.M.H., 179 Wn.2d at 239. Absent such extraordinary circumstances, the court held that the custody petition should be dismissed because the stepfather had not met his burden to show actual detriment to the child. B.M.H., 179 Wn.2d at 239.

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This case is analogous to B.M.H. There is no allegation that LMS has a special need. Nor is there evidence in the record that Fuga is currently unable to meet LMS's needs. To the contrary, unrebutted written declarations from both Fuga and his wife establish that they are currently parenting two young sons successfully.

The Siufanuas allege that they have acted as LMS's parents "for all of her life" and that she would suffer actual detriment if she were ripped away from "the only home she has ever known and the only family she has ever known." They allege that Fuga is a "stranger" to LMS because "he has lived in another state for the better part of a decade with only minimal contact with the child." But moving a child away from a nonparent to whom the child is bonded is not, by itself, actual detriment. Our Supreme Court rejected that argument in B.M.H.

The Siufanuas lean heavily on the fact that Fuga was almost entirely absent from his daughter's life for many years while the Siufanuas were raising her. But even such a long absence does not establish actual detriment as the cases have illuminated the meaning of that term. Fuga's fundamental right to custody of his daughter is protected by the Fourteenth Amendment despite his long absence from her life. Weighed against the fundamental protected right of the biological parent, even the fact that the Siufanuas have been raising LMS for most of her remembered life is not enough to prove that placing LMS with Fuga will be an actual detriment to her further growth and development.

The Siufanuas analogize to Stell, 56 Wn. App. 356, arguing that we should look to whether the nonparent has become a "psychological parent." In Stell,

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uncontroverted expert testimony indicated that the child's aunt had become his psychological parent. Stell, 56 Wn. App. at 359. There is no comparable evidence in this case. To the contrary, the superior court commissioner found that LMS "has a relationship with the father and thinks of the father as her father." The Siufanuas do not dispute that LMS knows Fuga is her father and recognizes him as such. Their allegation that LMS refers to them as "mom and dad" does not establish that they have become LMS's psychological parents as that term is used in Stell.

The Siufanuas also analogize to In re Interest of Mahaney, 146 Wn.2d 878, 51 P.3d 776 (2002), arguing that we can take into account the continuing detrimental effects of a parent's past unfitness. In Mahaney, the children lived with their grandmother for approximately a decade after their parents essentially abandoned them. Mahaney, 146 Wn.2d at 884. The mother's petition to have the children returned to her was denied. Mahaney, 146 Wn.2d at 884-85. However, the children in Mahaney had special needs in the form of severe mental and behavioral illnesses. Mahaney, 146 Wn.2d at 885. These children's special needs were causally connected to their parents' past behavior, including domestic violence, substance abuse, and allegations of sexual abuse at the hands of their mother and her family. Mahaney, 146 Wn.2d at 884, 894-95. The problems caused by the parents' abuse and neglect of the children were documented by expert witnesses. Mahaney, 146 Wn.2d at 885, 892. The Siufanuas do not offer factual support for the argument that Fuga's absence caused similar damage to LMS. They merely allege that "there is no doubt that

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she has suffered and will suffer from his absence in her life, and that is not something that is simply undone by his return." The conclusory nature of the analogy to Mahaney makes it unpersuasive.

The Siufanuas also allege actual detriment to LMS based on the fact that Fuga has a history of domestic violence. The record contains evidence of one domestic violence charge filed against Fuga. He was charged with assaulting LMS's mother in April 2005, when she was pregnant with LMS. Fuga completed court-ordered domestic violence treatment, and the charge was dismissed. Domestic violence is never to be condoned, but the weight to be given to this incident is limited because it happened over a decade ago and we have no evidence that Fuga has any other criminal history.

We conclude that the trial court did not abuse its discretion in finding that placing LMS with her father would not result in actual detriment to her growth or development.

#### Unfitness

A parent is unfit if he cannot meet the child's basic needs. B.M.H., 179 Wn.2d at 236. The Washington State Supreme Court has looked to Washington's dependency statutes and statutes relating to child abuse and neglect for guidance in determining whether a parent is unfit. See, e.g., B.M.H., 179 Wn.2d at 236 (citing RCW 26.44); Shields, 157 Wn.2d at n.6 (citing chapter 13.34 RCW and chapter 26.44 RCW). In this case, where the only alleged ground of parental unfitness is the parent's absence from the child's life for many years, the analogous ground of dependency is abandonment. Abandonment is

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defined as "when the child's parent, guardian, or other custodian has expressed, either by statement or conduct, an intent to forego, for an extended period, parental rights or responsibilities despite an ability to exercise such rights and responsibilities." RCW 13.34.030(1).

The Siufanuas contend that Fuga's absence during most of LMS's life is abandonment. The Siufanuas allege that LMS was living with them at their home the entire time, so Fuga should have known where to find her. They argue that "the most critical element of a fit parent . . . is that that parent is *there* for the child. Without even seeing the child or participating in the child's life, a parent is not even performing that most basic function that has to comprise the core of fit parenting."

Fuga responds that he was out of contact with LMS because he believed that the child was living with her mother, who cut off contact by repeatedly changing her phone number and moving residences without informing him. Fuga says that he did not find out that LMS was living with the Siufanuas until he showed up at their home in October 2014 to ask them where she was. Fuga does not persuasively explain why he did not take this step earlier. At the same time, the Siufanuas do not claim that they ever tried to let Fuga know that they had taken over the care of LMS. On this record, it is fair to say that LMS's mother, and perhaps the Siufanuas as well, played a part in Fuga's failure to maintain a close relationship with his daughter.

Fuga probably could have done more to find LMS and renew his relationship with her. Still, even if his conduct has some of the hallmarks of

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abandonment, the important question is whether his past absence has rendered him currently unable to meet LMS's basic needs. On that question, the unrebutted evidence shows him to be able and willing. We conclude that the trial court did not abuse its discretion in finding that Fuga is not unfit to parent his daughter.

#### GUARDIAN AD LITEM

At the adequate cause hearing, the Siufanuas requested the appointment of a guardian ad litem to represent LMS's interests. The commissioner denied the request for a guardian ad litem, stating that it was probably not necessary and would be very expensive. Instead, the commissioner ordered a home visit as a means to assure that Fuga's home is appropriate for LMS. At the revision hearing, the Siufanuas renewed their request for a guardian ad litem. The court denied it. On appeal, the Siufanuas contend that a guardian ad litem should have been appointed.

A court may appoint a guardian ad litem to represent the interests of a minor or dependent child "when the court believes the appointment of a guardian ad litem is necessary to protect the best interests of the child." RCW 26.12.175. Under this statute, a court may appoint a guardian ad litem in contested custody proceedings. RCW 26.10.130. A trial court should appoint a guardian ad litem or an attorney for a child if it would assist the court in determining the custody issue. Stell, 56 Wn. App. at 370-71. In Stell, the trial court refused to consider repeated and unanimous expert opinions. This court reversed and ordered that a guardian ad litem be appointed on remand. Stell, 56 Wn. App. at 370-71.

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The decision to appoint a guardian ad litem is discretionary. See RCW 26.12.175; RCW 26.10.130 (court *may* appoint a guardian ad litem). A trial court abuses its discretion if its decision is not based on tenable grounds or tenable reasons. Eagle Point Condo. Owners Ass'n v. Coy, 102 Wn. App. 697, 701, 9 P.3d 898 (2000). Here, the court had a tenable basis for refusing to appoint a guardian ad litem. An adequate cause determination is based on the parties' affidavits, and the affidavits did not show adequate cause for an evidentiary hearing. In contrast to Stell, there was no custody trial in this case, nor did the trial court refuse to consider evidence. We find no abuse of discretion.

Both parties request attorney fees under RCW 26.10.080, which provides that upon any appeal, "the appellate court may, in its discretion, order a party to pay for the cost to the other party of maintaining the appeal and attorney's fees in addition to statutory costs." We must balance the needs of the party requesting fees against the other party's ability to pay. See, e.g., B.M.H., 179 Wn.2d at 244. Balancing the parties' respective needs and ability to pay, we decline to award attorney fees.

Affirmed.

Becker, J.

WE CONCUR:

Trickey, J.

Schneider, J.



McKINLEY IRVIN  
FAMILY LAW

***APPENDIX - B***

**RCW 26.10.032**

**Child custody motion—Affidavit required—Notice—Denial of motion—Show cause hearing.**

(1) A party seeking a custody order shall submit, along with his or her motion, an affidavit declaring that the child is not in the physical custody of one of its parents or that neither parent is a suitable custodian and setting forth facts supporting the requested order. The party seeking custody shall give notice, along with a copy of the affidavit, to other parties to the proceedings, who may file opposing affidavits.

(2) The court shall deny the motion unless it finds that adequate cause for hearing the motion is established by the affidavits, in which case it shall set a date for hearing on an order to show cause why the requested order should not be granted.

[2003 c 105 § 6.]



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FAMILY LAW

***APPENDIX - C***

**RCW 13.34.030****Definitions.**

For purposes of this chapter:

(1) "Abandoned" means when the child's parent, guardian, or other custodian has expressed, either by statement or conduct, an intent to forego, for an extended period, parental rights or responsibilities despite an ability to exercise such rights and responsibilities. If the court finds that the petitioner has exercised due diligence in attempting to locate the parent, no contact between the child and the child's parent, guardian, or other custodian for a period of three months creates a rebuttable presumption of abandonment, even if there is no expressed intent to abandon.

(2) "Child," "juvenile," and "youth" means:

(a) Any individual under the age of eighteen years; or

(b) Any individual age eighteen to twenty-one years who is eligible to receive and who elects to receive the extended foster care services authorized under RCW 74.13.031. A youth who remains dependent and who receives extended foster care services under RCW 74.13.031 shall not be considered a "child" under any other statute or for any other purpose.

(3) "Current placement episode" means the period of time that begins with the most recent date that the child was removed from the home of the parent, guardian, or legal custodian for purposes of placement in out-of-home care and continues until: (a) The child returns home; (b) an adoption decree, a permanent custody order, or guardianship order is entered; or (c) the dependency is dismissed, whichever occurs first.

(4) "Department" means the department of social and health services.

(5) "Dependency guardian" means the person, nonprofit corporation, or Indian tribe appointed by the court pursuant to this chapter for the limited purpose of assisting the court in the supervision of the dependency.

(6) "Dependent child" means any child who:

(a) Has been abandoned;

(b) Is abused or neglected as defined in chapter 26.44 RCW by a person legally responsible for the care of the child;

(c) Has no parent, guardian, or custodian capable of adequately caring for the child, such that the child is in circumstances which constitute a danger of substantial damage to the child's psychological or physical development; or

(d) Is receiving extended foster care services, as authorized by RCW 74.13.031.

(7) "Developmental disability" means a disability attributable to intellectual disability, cerebral palsy, epilepsy, autism, or another neurological or other condition of an individual found by the secretary to be closely related to an intellectual disability or to require treatment similar to that required for individuals with intellectual disabilities, which disability originates before the individual attains age eighteen, which has continued or can be expected to continue indefinitely, and which constitutes a substantial limitation to the individual.

(8) "Educational liaison" means a person who has been appointed by the court to fulfill responsibilities outlined in RCW 13.34.046.

(9) "Extended foster care services" means residential and other support services the department is authorized to provide under RCW 74.13.031. These services may include placement in licensed, relative, or otherwise approved care, or supervised independent living settings; assistance in meeting basic needs; independent living services; medical assistance; and counseling or treatment.

(10) "Guardian" means the person or agency that: (a) Has been appointed as the guardian

of a child in a legal proceeding, including a guardian appointed pursuant to chapter **13.36** RCW; and (b) has the legal right to custody of the child pursuant to such appointment. The term "guardian" does not include a "dependency guardian" appointed pursuant to a proceeding under this chapter.

(11) "Guardian ad litem" means a person, appointed by the court to represent the best interests of a child in a proceeding under this chapter, or in any matter which may be consolidated with a proceeding under this chapter. A "court-appointed special advocate" appointed by the court to be the guardian ad litem for the child, or to perform substantially the same duties and functions as a guardian ad litem, shall be deemed to be guardian ad litem for all purposes and uses of this chapter.

(12) "Guardian ad litem program" means a court-authorized volunteer program, which is or may be established by the superior court of the county in which such proceeding is filed, to manage all aspects of volunteer guardian ad litem representation for children alleged or found to be dependent. Such management shall include but is not limited to: Recruitment, screening, training, supervision, assignment, and discharge of volunteers.

(13) "Housing assistance" means appropriate referrals by the department or other supervising agencies to federal, state, local, or private agencies or organizations, assistance with forms, applications, or financial subsidies or other monetary assistance for housing. For purposes of this chapter, "housing assistance" is not a remedial service or time-limited family reunification service as described in RCW **13.34.025(2)**.

(14) "Indigent" means a person who, at any stage of a court proceeding, is:

(a) Receiving one of the following types of public assistance: Temporary assistance for needy families, aged, blind, or disabled assistance benefits, medical care services under RCW **74.09.035**, pregnant women assistance benefits, poverty-related veterans' benefits, food stamps or food stamp benefits transferred electronically, refugee resettlement benefits, medicaid, or supplemental security income; or

(b) Involuntarily committed to a public mental health facility; or

(c) Receiving an annual income, after taxes, of one hundred twenty-five percent or less of the federally established poverty level; or

(d) Unable to pay the anticipated cost of counsel for the matter before the court because his or her available funds are insufficient to pay any amount for the retention of counsel.

(15) "Nonminor dependent" means any individual age eighteen to twenty-one years who is participating in extended foster care services authorized under RCW **74.13.031**.

(16) "Out-of-home care" means placement in a foster family home or group care facility licensed pursuant to chapter **74.15** RCW or placement in a home, other than that of the child's parent, guardian, or legal custodian, not required to be licensed pursuant to chapter **74.15** RCW.

(17) "Preventive services" means preservation services, as defined in chapter **74.14C** RCW, and other reasonably available services, including housing assistance, capable of preventing the need for out-of-home placement while protecting the child.

(18) "Shelter care" means temporary physical care in a facility licensed pursuant to RCW **74.15.030** or in a home not required to be licensed pursuant to RCW **74.15.030**.

(19) "Sibling" means a child's birth brother, birth sister, adoptive brother, adoptive sister, half-brother, or half-sister, or as defined by the law or custom of the Indian child's tribe for an Indian child as defined in RCW **13.38.040**.

(20) "Social study" means a written evaluation of matters relevant to the disposition of the case and shall contain the following information:

(a) A statement of the specific harm or harms to the child that intervention is designed to

alleviate;

(b) A description of the specific services and activities, for both the parents and child, that are needed in order to prevent serious harm to the child; the reasons why such services and activities are likely to be useful; the availability of any proposed services; and the agency's overall plan for ensuring that the services will be delivered. The description shall identify the services chosen and approved by the parent;

(c) If removal is recommended, a full description of the reasons why the child cannot be protected adequately in the home, including a description of any previous efforts to work with the parents and the child in the home; the in-home treatment programs that have been considered and rejected; the preventive services, including housing assistance, that have been offered or provided and have failed to prevent the need for out-of-home placement, unless the health, safety, and welfare of the child cannot be protected adequately in the home; and the parents' attitude toward placement of the child;

(d) A statement of the likely harms the child will suffer as a result of removal;

(e) A description of the steps that will be taken to minimize the harm to the child that may result if separation occurs including an assessment of the child's relationship and emotional bond with any siblings, and the agency's plan to provide ongoing contact between the child and the child's siblings if appropriate; and

(f) Behavior that will be expected before determination that supervision of the family or placement is no longer necessary.

(21) "Supervised independent living" includes, but is not limited to, apartment living, room and board arrangements, college or university dormitories, and shared roommate settings. Supervised independent living settings must be approved by the children's administration or the court.

(22) "Supervising agency" means an agency licensed by the state under RCW 74.15.090, or licensed by a federally recognized Indian tribe located in this state under RCW 74.15.190, that has entered into a performance-based contract with the department to provide case management for the delivery and documentation of child welfare services as defined in RCW 74.13.020.

(23) "Voluntary placement agreement" means, for the purposes of extended foster care services, a written voluntary agreement between a nonminor dependent who agrees to submit to the care and authority of the department for the purposes of participating in the extended foster care program.

[2013 c 332 § 2; 2013 c 182 § 2. Prior: 2011 1st sp.s. c 36 § 13; prior: 2011 c 330 § 3; 2011 c 309 § 22; prior: 2010 1st sp.s. c 8 § 13; 2010 c 272 § 10; 2010 c 94 § 6; prior: 2009 c 520 § 21; 2009 c 397 § 1; 2003 c 227 § 2; 2002 c 52 § 3; 2000 c 122 § 1; 1999 c 267 § 6; 1998 c 130 § 1; 1997 c 386 § 7; 1995 c 311 § 23; 1994 c 288 § 1; 1993 c 241 § 1; 1988 c 176 § 901; 1987 c 524 § 3; 1983 c 311 § 2; 1982 c 129 § 4; 1979 c 155 § 37; 1977 ex.s. c 291 § 31.]

#### NOTES:

**Reviser's note:** (1) The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

(2) This section was amended by 2013 c 182 § 2 and by 2013 c 332 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Findings—Recommendations—Application—2013 c 332:** See notes following

**RCW 13.34.267.**

**Findings—2013 c 182:** "The legislature believes that youth residing in foster care are capable of achieving success in school with appropriate support. Youth residing in foster care in Washington state lag behind their nonfoster youth peers in educational outcomes. Reasonable efforts by the department of social and health services to monitor educational outcomes and encourage academic achievement for youth in out-of-home care should be a responsibility of the child welfare system. When a youth is removed from his or her school district, it is the expectation of the legislature that the department of social and health services recognizes [recognize] the impact this move may have on a youth's academic success and provide the youth with necessary supports to be successful in school. The legislature believes that active oversight and advocacy by an educational liaison and collaborations will encourage youth to reach their fullest academic potential." [2013 c 182 § 1.]

**Findings—Intent—2011 1st sp.s. c 36:** See RCW 74.62.005.

**Effective date—2011 1st sp.s. c 36:** See note following RCW 74.62.005.

**Intent—2011 c 330:** See note following RCW 13.04.011.

**Findings—Intent—Short title—Effective date—2010 1st sp.s. c 8:** See notes following RCW 74.04.225.

**Purpose—2010 c 94:** See note following RCW 44.04.280.

**Intent—2003 c 227:** See note following RCW 13.34.130.

**Intent—2002 c 52:** See note following RCW 13.34.025.

**Findings—Intent—Severability—1999 c 267:** See notes following RCW 43.20A.790.

**Conflict with federal requirements—1993 c 241:** "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. The rules under this act shall meet federal requirements that are a necessary condition to the receipt of federal funds by the state." [1993 c 241 § 5.]

**Severability—1988 c 176:** See RCW 71A.10.900.

**Legislative finding—1983 c 311:** "The legislature finds that in order for the state to receive federal funds for family foster care under Title IV-B and Title IV-E of the social security act, all children in family foster care must be subjected to periodic court review. Unfortunately, this includes children who are developmentally disabled and who are placed in family foster care solely because their parents have determined that the children's service needs require out-of-home placement. Except for providing such needed services, the parents of these children are completely competent to care for the children. The legislature intends by this act to minimize the embarrassment and inconvenience of developmentally disabled persons and their families caused by complying with these federal requirements." [1983 c 311 § 1.]

**Severability—1982 c 129:** See note following RCW 9A.04.080.

**Effective date—Severability—1979 c 155:** See notes following RCW 13.04.011.

**Effective dates—Severability—1977 ex.s. c 291:** See notes following RCW 13.04.005.