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SUPREME COURT
STATE OF WASHINGTON
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CLERK

No. 94798-8

THE SUPREME COURT OF THE STATE OF WASHINGTON

IN RE THE DEPENDENCY OF E.H.,

A minor child.

STATE OF WASHINGTON,

Respondent,

v.

R.R.,

Petitioner.

PETITIONER'S SUPPLEMENTAL BRIEF
AS TO SEALING OF DEPENDENCY RECORDS

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A. SUPPLEMENTAL ISSUE ON REVIEW

Should trial court records contained in the appellate file in dependency cases be sealed?

B. STATEMENT OF THE CASE

This Court granted Ms. R.'s motion for discretionary review, consolidating the case with In re Dependency of S.K.-P., on the issue of the right to counsel for dependent children.

Ms. R. relies upon the Statement of the Case in her Supplemental Brief, and the Facts Relevant to Motion in the Joint Motion to Seal, filed on January 24th.

Clerk's Papers have not been designated in E.H., because the Court of Appeals did not accept discretionary review. See RAP 9.6(a). The parties in E.H. filed a Joint Appendix for this Court's review, which was comprised of the appendices to the Court of Appeals pleadings. See Corrected Joint Appendix, filed with Petitioner's Supplemental Brief, January 25, 2018. The documents in the appendix were redacted in order to remove names, images, and other identifying information of E.H. and his family members.

C. ARGUMENT

Experience and logic compel the sealing of trial court records contained in the appellate file in dependency cases.

This Court has already upheld the sealing of juvenile records in the context of protecting juvenile offenders. State v. S.J.C., 183 Wn.2d 408, 352 P.2d 749 (2015); GR 15(c)(2)(A). Dependency cases present an even more compelling argument for sealing; in dependency proceedings, children have done nothing to bring themselves into the public eye, and thus, the balance weighs in favor of sealing. See RCW 13.50.100(2); GR 15(c)(2)(A), (F). Here, E.H.'s mother moved for appointment of counsel in the dependency proceedings to protect her son's legal interests. It would be illogical to require a minor and his family to expose to the public the most private details of his life in order to protect those interests.

For the reasons set forth in the Joint Motion to Seal Appendices to Court of Appeals Motion for Discretionary Review and Responses filed on January 24th, Ms. R. adopts by reference S.K.P.'s Supplemental Brief in Support of Motion to Seal. RAP 10.1(g).¹

¹ RAP 10.1(g) provides:

Furthermore, the experience of the parties and this Court is that redaction is an imperfect solution to the continuing challenge of protecting the confidentiality of children and families. See, e.g., Letter, Erin L. Lennon to counsel in Supreme Court Cause No. 94798-8, dated January 25, 2018 (advising counsel that five redaction errors remained in 261-page Joint Appendix, and corrected Appendix must be filed); Letter, Erin L. Lennon to counsel in Supreme Court Cause No. 94798-8, dated January 31, 2018 (advising counsel that, despite best efforts, one remaining redaction error remained in footnote of Superior Court opinion; however, Court would redact and accept Joint Appendix).

In light of the logistical difficulties presented by redaction, where dependency records may contain thousands of pages of documents and transcripts, including medical, counseling, and other highly personal records, and where there is no countervailing public interest in access to such records, sealing is the least restrictive alternative. See Supplemental Brief of S.K.P.

In cases consolidated for the purpose of review and in a case with more than one party to a side, a party may . . . file a separate brief and adopt by reference any part of the brief of another.

Accordingly, for the above reasons, petitioner moves to adopt by reference the supplemental brief of S.K.P., and respectfully asks this Court to grant such relief.

D. CONCLUSION

Ms. R. respectfully requests this Court hold that trial court records in dependency cases be sealed, as such result is compelled by the experience and logic test.

DATED this 5th day of February, 2018.

Respectfully submitted,

s/ Jan Trasen

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