

No. 98003-9

NO. 78790-0-I

**COURT OF APPEALS, DIVISION
OF THE STATE OF WASHINGTON**

In Re the Dependency of Z.G. and M.G., Minors,

STATE OF WASHINGTON,
Department of Children, Youth and Families

Respondent,

v.

S.G.

Appellant.

DEPARTMENT'S RESPONSE BRIEF

ROBERT W. FERGUSON
Attorney General

KELLY TAYLOR
WSBA #20073
Office Identification #91016
Office of the Attorney General
800 Fifth Avenue #2000
Seattle, WA 98104
(206) 464-7045

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I. INTRODUCTION

The appellant is the father of two children who were the subject of an initial shelter care hearing held in July 2018. Under the Indian Child Welfare Act and its accompanying regulations, if there is a “reason to know” the children in a dependency proceeding are Indian, the court must apply the ICWA placement requirement at the shelter care hearing. Here, prior to the shelter care hearing, the Department social worker contacted the tribe the children had potential eligibility for membership with—the Tlingit and Haida Tribes of Alaska. The Tlingit and Haida Tribes of Alaska informed the social worker that neither the mother nor the children were members of the tribe, but confirmed the maternal grandmother was a member. The information provided was contrary to the legal definition of an “Indian child,” and the term, “Indian child,” is included in the “reason to know” factor at issue here. The information provided to the dependency court failed to satisfy the “reason to know” factor.

At the initial shelter care hearing, the dependency court should have asked all of the participants whether there was reason to know the children were Indian children. Instead, every participant volunteered information on the issue without prompting from the dependency court. The dependency court used the information provided to make the “reason to know” determination. The record demonstrates substantial compliance with the

intent of the regulation, and no remedy is required.

II. COUNTERSTATEMENT OF ISSUES

1. Does the Indian Child Welfare Act ten-day notice requirement apply at the initial shelter care hearing, or is the initial shelter care hearing considered an “emergency placement” under the Indian Child Welfare Act?

2. When a federally recognized tribe informs the Department prior to the shelter care hearing the mother is not a member and the children are not members, does this information fail to satisfy the “reason to know” criteria?

3. If the dependency court incorrectly concluded at the shelter care hearing that there was not a “reason to know” the children were Indian, is the proper remedy to remand the matter for a hearing to make the determination required by 25 U.S.C. § 1922 and RCW 13.38.140(1)?

4. If all the parties at a shelter care hearing provided information to the court to aid in its determination of whether there is reason to know the children are Indian children, is there substantial compliance with the intent of the regulation requiring the dependency court to make an inquiry regarding this information?

III. COUNTERSTATEMENT OF FACTS

The appellant is the father of two children, Z.G. and M.G., who are currently placed out-of-home. CP 14. On June 29, 2018, the Department¹ filed a dependency petition as to Z.G. and M.G. CP 1. The initial shelter care hearing took place on July 2 and July 3, 2018. RP 1, 59. Both parents opposed the Department's request to place the children out of their care. RP 8. Prior to the start of the shelter care hearing, the Department social worker made a phone call to the Tlingit Haida Indian Tribes of Alaska, and the tribe informed him that the maternal grandmother of the children is an enrolled member. RP 11. The tribe also informed the social worker that the children's mother was not an enrolled member, and the children were not enrolled members. RP 11. The social worker also understood that the father also was not a member of any federally recognized tribe. RP 11-12. The Department's dependency petition states as follows:

Mother has Tlingit-Haida heritage and is eligible for membership with Klawock Cooperative Association. She is also identified as having Cherokee heritage on her paternal side. Father states he may have native heritage with Confederated Tribes of the Umatilla in Oregon. [...]

Inquiry to the tribes has been initiated. Worker has called Central Council Tlingit Haida regarding this family and

¹ A few days later, on July 1, 2018, the Department of Children, Youth, and Families assumed the child welfare services duties and functions of the Department of Social and Health Services. RCW 43.216.906; *see also* Laws of 2017, ch. 6.

petition. Further inquiry and notification to tribes ongoing.

CP 2.

During the shelter care hearing, the children's mother testified she is not a member of Tlingit and Haida Tribes of Alaska, but she is eligible for membership with that tribe, and the children were also eligible. RP 88, 90. The father testified that he had Native American heritage with the Confederated Tribes of Umatilla. RP 67. He did not testify that he was a member of or eligible for membership in a federally recognized tribe.

During closing statements, the mother's attorney argued that there is "reason to know that the children are Indian children." RP 113. The father's attorney asked the dependency court to apply the out of home placement standard for Indian children. RP 110.

The Department argued that the ICWA requirements requested by the attorneys for the parents did not apply because the information available at the time of the hearing did not rise to the proper "reason to know" threshold level. RP 117. The Department noted that neither parent had testified that they were a member of any federally recognized tribe, and it was undisputed that the children were not tribal members. RP 117.

The dependency court found that based upon the testimony of the social worker and parents, the ICWA's out-of-home placement requirements did not apply at that time. RP 118. The dependency court's

factual basis for determining there was “not a reason to know” the children were Indian children was reflected in the shelter care order as follows:

mother and father are not enrolled members in a federally recognized tribe. Maternal grandmother is enrolled member, Department continuing to investigate. Mother believes she is eligible for tribal membership.

CP 10.

The dependency court found that specific services had been offered, but it was not possible to remedy the unsafe conditions in the home and to make it possible for the children to return home. CP 11. The dependency court found releasing the children back into the care of the parents would “present a serious threat of substantial harm” to the children. CP 12. The father sought interlocutory review of the initial shelter care hearing order. The Department moved to supplement the record with evidence that the Confederated Tribes of Umatilla Indian Reservation, the Eastern Band of Cherokee Indians, and the United Keetowah Band of Cherokee Indians in Oklahoma have stated the children are not members nor eligible for tribal membership. Notation Ruling (January 9, 2019) at 4. Commissioner Mary Neel granted review and also granted the Department’s Motion to Supplement. *Id.* On March 28, 2019, the father entered into agreed dependency and partially agreed upon dispositional order. This agreed order

contains the out of home placement standard applicable to Indian children.²

IV. ARGUMENT

A. **The Initial 72 Hour Shelter Care Hearing Is an Emergency Proceeding so Certain ICWA Requirements Do Not Apply**

The applicability of various requirements of the ICWA depend upon the type of proceeding involved. 25 C.F.R. § 23.104. Under Washington law, when the Department files a dependency petition, the juvenile court is required to hold a shelter care hearing within 72 hours. RCW 13.34.065(1)(a). Shelter care is temporary physical care in a licensed facility or in a home not required to be licensed. RCW 13.34.030(18). The purpose of the initial shelter care hearing is to make a preliminary determination regarding whether there is probable cause to take the child into custody. *In re Welfare of Brown*, 29 Wn. App. 744, 748, 631 P.2d 1 (1981). An initial shelter care “hearing is a preliminary proceeding; it is not a final adjudication.” *In re Dependency of R.H.*, 129 Wn. App. 83, 87, 117 P.3d 1179 (2005) (citing *Lesley for Lesley v. Dep’t of Soc. and Health Serv.*, 83 Wn. App. 263, 276, 921 P.2d 1066 (1996)). At a shelter care hearing, witnesses may be unavailable, information may be limited, and

² This information is provided under the authority of *In re the Guardianship of Way*, 79 Wn. App. 184, 192, 901 P.2d 349 (1995), *review denied*, 128 Wn.2d 1014, 911 P.2d 1343 (1996)(noting that “to ensure the relief we afford is in the best interests of the parties, particularly the dependent child or the incapacitated person, we must have before use the most complete and up-to-date record possible, even if that means considering evidence or circumstances which were not before the trier of fact.”)

investigations may still be ongoing. *In re Dependency of H.*, 71 Wn. App. 524, 531, 859 P.2d 1258 (1993) (recognizing the “rapid fire nature of shelter care proceedings”). Hearsay evidence is admissible if supported by sworn testimony. RCW 13.34.065(2)(c); *see also* ER 1101(c)(3). The initial shelter care hearing is an emergency hearing, so certain ICWA requirements (such as formal legal notice and the “active efforts”) do not apply. An emergency placement of an Indian child does require a finding that the placement is necessary to “prevent imminent physical damage or harm to the child.” 25 C.F.R. § 23.113(b)(1); *see also* 25 U.S.C. § 1922 and RCW 13.38.140(1).

Under the ICWA and the WICWA, there are two types of out-of-home placements: “emergency placements” and “foster care placements.” Washington’s initial shelter care hearing is an emergency custody proceeding because it is an emergency removal or emergency placement. 81 Fed. Reg. 38,819 (June 14, 2016); 25 C.F.R. § 23.2 (definition of “emergency proceeding”). The commentary accompanying the federal regulations explains that emergency hearings are “known in various States as 72-hour hearings, detention hearings, shelter care hearings, and other terms.” 81 Fed. Reg. 38,819 (June 14, 2016).

Here, the father concedes that shelter care hearings under ICWA are “classified as emergency proceedings.” Br. Petitioner at 9-10. The federal

regulations expressly do not apply ICWA's "active efforts" requirement or its ten-day notice provision to emergency proceedings. 25 C.F.R. § 23.104. As explained in more detail in the section below, to the extent the father implies that WICWA differs from the federal law in this regard, he is incorrect.

1. The ICWA and WICWA requirement of "active efforts" is inapplicable to the initial shelter care hearing because it is an emergency placement

Under the ICWA and the WICWA, placement of an Indian child in a "foster care placement" requires the Department to show that "active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful." 25 U.S.C. § 1912(d), see also RCW 13.38.130(1). But, emergency placements are different. In the 2016 regulations, one section is entitled, "What provisions of this subpart apply to each type of child-custody proceeding?" 25 C.F.R. § 23.104. The regulation contains a chart that lists each regulation and the type of proceeding (emergency, voluntary, or involuntary (foster-care placement and termination of parental rights)) to which the regulation applies. The following excerpt from the table located at 25 C.F.R. § 23.104 instructs that the "active efforts" requirement does not apply at the time of an emergency placement, as the requirement only applies to "foster care placement" and

at “termination of parental rights”:

Section	Type of Proceeding
23.120 (How does the State court ensure that active efforts have been made?)	Involuntary (foster-care placement and termination of parental rights).

Thus, the ICWA regulations provide deference to state law for emergency removal and placement of Indian children without the active efforts requirement at the time of the emergency custody proceedings stage. *See also, In re T.S.*, 315 P.3d 1030, 1040, (2013 Ok Civ App 108) (holding children’s emergency placement in a foster home was not a “foster care placement” and did not require “active efforts”); *State ex rel. Juvenile Dep’t of Multnomah Cnty. v. Charles*, 688 P.2d 1354, 1358 (Or. Ct. App. 1984) (holding that emergency removal of a child is initially purely a state law matter and is not subject to all of the Indian Child Welfare Act requirements); *In the Matter of Esther V.*, 149 N.M. 315, 248 P.3d 863, 872–74 (2011)(ex parte and custody hearing stages are emergency proceedings to which “active efforts” requirement does not apply); *In re S.B.*, 130 Cal.App.4th 1148, 30 Cal.Rptr.3d 726, 734–36 (2005) (held not all provisions of ICWA apply to a detention/emergency removal hearing). Although the reasoning of these courts varied with the facts of each case

and with the individual state's procedures, each of the foregoing decisions ultimately relied upon the federal ICWA.

Similarly, WICWA does not impose an active efforts requirement before an Indian child can be placed out of home at a shelter care proceeding. Instead, the emergency removal or placement of Indian child statute instructs:

Notwithstanding any other provision of federal or state law, *nothing shall be construed to prevent the department or law enforcement from the emergency removal of an Indian child who is a resident of or is domiciled on an Indian reservation, but is temporarily located off the reservation from his or her parent or Indian custodian or the emergency placement of such child in a foster home, under applicable state law, to prevent imminent physical damage or harm to the child.*

RCW 13.38.140(1) (emphasis added). Construing the "active efforts" requirement to require the Department to "show to the court that it has actively worked with the parent, parents, or Indian custodian to engage them in remedial services and rehabilitation programs to prevent the breakup of the family" prior to an emergency placement would run afoul of the emergency provision's mandate that "nothing shall be construed to prevent . . . the emergency placement of [an Indian] child in a foster home, under state law, to prevent imminent physical damage or harm to the child." See RCW 13.38.040(1)(a); RCW 13.38.140(1). Accordingly, under both ICWA and WICWA, the "active efforts" determination is not required prior to the

initial shelter care hearing.

2. The ten day notice provision is not required prior to the initial shelter care hearing

ICWA's and WICWA's ten-day notice requirement is inapplicable to an initial shelter hearing. Both acts require formal written notice to the tribe prior to placing a child out-of-home at disposition and prior to terminating parental rights. 25 U.S.C. § 1912(a); 25 C.F.R. § 23.111; RCW 13.38.070. However, an emergency placement at a shelter care hearing is distinct from a "foster care placement" under ICWA, and the formal notice requirement does not apply prior to an emergency placement.

The commentary accompanying the 2016 regulations notes that "[s]everal commenters opposed the proposed rule's requirements for notice and time limits to apply to emergency hearings (known in various States as 72-hour hearings, detention hearings, shelter care hearings, and other terms." 81 Fed. Reg. 38,819 (June 14, 2016) The response provided in the commentary provides, the "final rule does not require that the section 1912(a) notice provisions and waiting periods for notices apply to emergency proceedings." *Id.* The table located at 25 C.F.R. § 23.104 indicates the ten-day notice provision does not apply for the hearing on an emergency placement:

Section	Type of Proceeding
23.111 (What are the notice requirements for a child-custody proceeding involving an Indian child?)	Involuntary (foster-care placement and termination of parental rights).

Not only do the regulations and commentary indicate the ten-day notice provision is inapplicable at shelter care hearings, but also courts in a number of different states have considered and rejected the argument. *See, D.E.D. v. State of Alaska*, 704 P.2d 774, 779 (Alaska 1985)(holding certain notice requirements under ICWA inapplicable to emergency custody proceedings or emergency hearings); *In re S.B. v. Jeannie V.*, 130 Cal.App.4th 1148, 30 Cal.Rptr.3d 726, 734-736 (Cal. Ct. App. 2005) (holding notice provision do not apply to a detention/emergency removal hearing); *In the Matter of Esther V.*, 149 N.M. 315, 248 P.3d 863, 872-74 (2011)(holding ex parte and custody hearing stages are emergency proceedings and the ten day notice requirement does not apply). *Cheyenne River Sioux Tribe v. Davis*, 822 N.W.2d 62, 66 (S.D. 2012) (holding that the trial court does not have a duty to follow ICWA at a temporary custody hearing). The ICWA was not intended to prevent or delay emergency custody proceedings like Washington State's initial shelter care proceeding

by requiring the State to provide ten-day notice prior to the initial shelter care hearing.

WICWA also was not intended to prevent or delay an initial shelter care proceeding. WICWA's emergency removal statute instructs that "nothing shall be construed to prevent the . . . emergency placement of [an Indian] child in a foster home, under applicable state law, to prevent imminent physical damage or harm." RCW 13.38.140(1). This statute also contains a section regarding notification to the child's tribe:

When the nature of the emergency allows, the department must notify the child's tribe before the removal has occurred. If prior notification is not possible, the department shall notify the child's tribe by the quickest means possible. The notice must contain the basis for the Indian child's removal, the time, date, and place of the initial hearing, and the tribe's right to intervene and participate in the proceeding. This notice shall not constitute the notice required under RCW 13.38.070 for purposes of subsequent dependency, termination of parental rights, or adoption proceedings.

RCW 13.38.140(3). These preliminary contact provisions pertain to emergency placements and are distinguished from WICWA's written ten-day notice by certified mail under RCW 13.38.070(1). Moreover, to require a ten day notice prior to an emergency placement would run afoul of the statute's mandate that "nothing be construed" to prevent the emergency placement of an Indian child when warranted. RCW 13.38.140(1).

In summary, despite the father's various references in his appellate briefing to notice requirements and "active efforts," the provisions of the

ICWA and the WICWA addressing these requirements were inapplicable at the time of the initial shelter care hearing at issue here. Neither ICWA nor WICWA requires ten days of notice prior to an emergency proceeding. For an emergency proceeding, the regulations suggest that the Department include in the petition “steps taken to provide notice to the child’s parents, custodians, and Tribe about the emergency proceeding.” 25 C.F.R. § 23.113(d)(3). Similarly, under WICWA, notice of emergency removal is to be provided to the child’s tribe “by the quickest means possible.” RCW 13.38.140(3). Both the federal regulation and the WICWA provision were followed here, because the Department social worker contacted the tribe³ most likely to have an association with the children prior to the shelter care hearing. CP 2.

3. RCW 13.38.070(1) has no bearing on any issue presented during an emergency placement hearing

The issue here is whether, under the facts presented, the dependency court was required to apply the Acts’ standard for out of home placement at an emergency proceeding; that is, that placing the child in shelter care was necessary “to prevent imminent physical damage or harm to the child.”

³ The social worker telephoned the Tlingit and Haida Indian tribes of Alaska before the shelter care hearing, RP 11. The dependency petition states the mother is eligible for membership in the Klawock Cooperative Association. CP 2. The central council for Klawock Cooperative Association is the Tlingit and Haida Indian Tribes of Alaska. <http://www.klawock.org/central-council.html>, (last visited March 15, 2019). The Tlingit and Haida Indian Tribes of Alaska later intervened in the proceeding. CP 19.

RCW 13.38.140(1); 25 C.F.R. § 23.113(a); *see also* 25 U.S.C. § 1920.

The formal notice requirements of RCW 13.38.070 are not at issue here. The father mistakenly imports WICWA's formal notice provision for the criteria under which the court determines there is "reason to know" a child is Indian such that WICWA's heightened standards apply. Br. Petitioner at 13-14. Neither WICWA's notice provision (RCW 13.38.070(1)) nor ICWA's notice provision (25 U.S.C. § 1912(a)) bears on any issue presented during an emergency placement hearing where formal legal notice is not implicated. Consequently, whether the ten-day notice provision in WICWA casts a wider net than the ten-day notice provision in ICWA is not relevant to this appeal and is not a question that should be answered in this appellate proceeding. *See Johnson v. Morris*, 87 Wn.2d 922, 931, 557 P.2d 1299 (1976) (noting that, generally, courts should avoid deciding issues unnecessary to resolve a case, especially where the issue involves the interpretation of a statute). If this Court elects to compare RCW 13.38.070(1) to 25 U.S.C. § 1912(a), this issue is addressed later, on pages 29-31 of this brief.

B. The Information Provided at the Hearing Did Not Trigger the Out-Of-Home Placement Standard for an Indian Child Under the WICWA and the ICWA

1. The application of the out of home placement standard at an emergency proceeding applies when there is “reason to know” a child is an Indian child

The ICWA and the WICWA define an Indian child in substantially the same manner. An “Indian child” is “any unmarried person who is under age eighteen and is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.” 25 U.S.C. § 1903(4); *see also* RCW 13.38.040(7).⁴ Under federal law, when the court has “reason to know” that the child is an Indian child, but it does not have sufficient information to determine whether the child is or is not an Indian child, the court must treat the child as an Indian child, unless and until it is determined on the record that the child is not an Indian child. 25 C.F.R. § 23.107(b)(2). Thus, the application of ICWA’s out of home placement standard at an emergency proceeding applies when there is “reason to know” a child is an Indian child. If there is “reason to know” the child is an Indian child, to place that child in shelter care the dependency court must “make a finding on the record that the

⁴ RCW 13.38.040(7) defines an “Indian child” as “an unmarried and emancipated Indian person who is under eighteen years of age and is either: (a) A member of an Indian tribe; or (b) eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.”

emergency removal or placement is necessary to prevent imminent physical damage or harm to the child.” 25 C.F.R. § 23.113; *see also* RCW 13.38.140(1); 25 U.S.C. § 1922. Here, because the information available to the dependency court at the initial shelter care hearing did not provide a “reason to know” the children were Indian as defined under the Acts, the court did not err.

2. The “reason to know” criteria were not satisfied at the initial shelter care hearing

ICWA’s and WICWA’s emergency out of home placement requirements under 25 U.S.C. § 1922 and RCW 13.38.140(1) are triggered when information is sufficient to cross the “reason to know” threshold. In 2016, the Bureau of Indian Affairs (BIA) issued federal regulations regarding ICWA. 81 Fed. Reg. 38,864-76 (June 14, 2016) (codified at 25 C.F.R. Part 23). The regulations were released with extensive commentary. 81 Fed. Reg. 38,787-854. Unlike guidelines, the regulations are entitled to the force of law. *Perez v. Mort. Bankers Ass’n*, 575 U.S. ___, 135 S. Ct. 1199, 1203, 191 L.2d 186 (2015) (“Rules issued through the notice-and-comment process are often referred to as ‘legislative rules’ because they have the ‘force and effect of law’” (citation omitted)). The 2016 regulations control whether a court has “reason to know” a child is Indian under ICWA. The 2016 regulations apply to petitions filed after December 12, 2016.

25 C.F.R. § 23.143. The petition at issue here was filed in June 2018, so the 2016 regulations are binding. CP 1.

According to the Bureau of Indian Affairs, the regulations provide “clear guidance regarding when a court has ‘reason to know’ the child is an ‘Indian child.’” 81 Fed. Reg. 38,804. The final federal rule “[e]stablishes what factors indicate a ‘reason to know.’” 81 Fed. Reg. 38,856. The existence of the following factors establish there is “reason to know” a child is an Indian child:

- (1) Any participant in the proceeding, officer of the court involved in the proceeding, Indian Tribe, Indian organization, or agency informs the court that the child is an Indian child;
- (2) Any participant in the proceeding, officer of the court involved in the proceeding, Indian Tribe, Indian organization, or agency informs the court that it has discovered information indicating that the child is an Indian child;
- (3) The child who is the subject of the proceeding gives the court reason to know he or she is an Indian child;
- (4) The court is informed that the domicile or residence of the child, the child’s parent, or the child’s Indian custodian is on a reservation or in an Alaska Native village;
- (5) The court is informed that the child is or has been a ward of a Tribal court; or
- (6) The court is informed that either parent or the child possesses an identification card indicating membership in an Indian Tribe.

25 C.F.R. § 23.107(c); 81 Fed. Reg. 38,870.

The father argues in favor of an expansive interpretation of the “reason to know” determination, claiming any report of heritage with a

federally recognized tribe constitutes a “reason to know.” Br. Petitioner at 39. His argument fails because it is contrary to current federal regulations and guidelines. Notably, none of the foregoing factors refer to a report of native American ancestry or heritage. Instead, Congress crafted ICWA’s definition of “Indian child” so that ICWA’s application relates to tribal membership. 25 U.S.C. § 1903(4). This focused definition—dependent on the child’s tribal membership or eligibility for membership where a biological parent is also a member—only triggers ICWA’s application when a child’s tribe has a sovereign, political interest in that child.

“ICWA does not apply simply based on a child or parent’s Indian ancestry. Instead, there must be a political relationship to the Tribe.” 2016 Guidelines at 10. The “trigger for treating the child as an ‘Indian child’ is the reason to know that the child is an Indian child. This is not based on the race of the child but rather indications that the child and her parent(s) may have a political affiliation with a Tribe.” 81 Fed. Reg. 38,806 (June 14, 2016). Tribal members must voluntarily decide to affiliate themselves as such and can terminate their tribal membership of their own free will, underscoring the political dimensions of tribal membership; one cannot renounce one’s ancestry in this manner. *See Means v. Navajo Nation*, 432 F.3d 924, 935 (9th Cir. 2005) (“[Petitioner] has chosen to affiliate himself politically as an Indian by maintaining enrollment in a tribe. His Indian

status is therefore political, not merely racial.”). As noted in the executive summary accompanying the 2016 regulations, under ICWA, tribal citizens “may voluntarily relinquish their citizenship.” 81 Fed. Reg. 38,783.

If, as the father in this case advocates, any report of heritage with a federally recognized tribe constitutes a “reason to know,” then the court would be required to treat all children with reported Native American heritage as Indian children under ICWA until or unless it is determined that they are not Indian. 80 Fed. Reg. 10,147; 25 C.F.R. § 23.107(b)(2). This would mean that children would receive ICWA’s coverage based on ancestry or race instead of their political relationship with a tribe. Interpreting the statutes in this manner would make the ICWA and the WICWA vulnerable to constitutional challenge. *See, e.g., In re A.W.*, 741 N.W.2d 793, 813 (Iowa 2007) (Supreme Court of Iowa holding Iowa’s state version of the ICWA unconstitutional as applied to children who were not members of a tribe or eligible for membership in a tribe); *Brackeen v. Zinke*, 388 F. Supp. 3d 514 (N.D. Tex 2018) (stayed and re-captioned *Brackeen v. Bernhardt*, No. 18-11479 (5th Cir. Nov. 19, 2018)(holding ICWA unconstitutional for many reasons, including that it violates equal protection and improperly requires state agencies to apply federal standards to state claims). The ICWA and the WICWA are constitutional and this Court should construe ICWA’s requirements to maintain—not jeopardize—the

Acts' constitutionality. *State v. Sanchez*, 177 Wn.2d 835, 843; 306 P.3d 935 (2013) (holding courts are to construe a statute's language to find it constitutional).

The Department is not arguing that *Brackeen* was correctly decided by the federal district court.⁵ However, the “reason to know” determination advocated for by the father here, based on any report of Native American heritage, is more akin to the Iowa Indian Child Welfare Act the Iowa Supreme Court determined was unconstitutional in *In re A. W.*, 741 N.W.2d 793 (2007), than it is to ICWA or WICWA. As the father notes, in that case “the Iowa Supreme Court found the Iowa Indian Child Welfare Act (ICWA) contained an improper racial classification, but ICWA did not.” Br. Appellant at 35. There, Iowa’s ICWA defined Indian without regard to whether the child or parent is a member of a tribe. *Id.* (citing *In re A. W.*, 741 N.W.2d at 799). In other words, it expanded “the definition of Indian child to include ethnic Indians not eligible for membership in a federally recognized tribe” and therefore “constitute[d] a racial classification.” *In re A. W.*, 741 N.W.2d at 810 (internal quotations omitted). The father’s advocacy of a “reason to know” standard based on reported Native

⁵ Washington’s State Attorney General joined the amicus brief filed in *Brackeen* to support the constitutionality of ICWA. A copy of this brief is available at https://agportals3bucket.s3.amazonaws.com/uploadedfiles/Another/News/Press_Releases/Brackeen%20Amicus.pdf, (last visited March 26, 2019)

American heritage, whereby all children with reported heritage would be “treated as Indian children” under ICWA unless or until it is determined they are not, should be rejected.

Instead, the “reason to know” factors set forth at 25 C.F.R. § 23.107(c) determine when the threshold is crossed. The “reason to know” threshold was not met under the facts of this case as developed at the time of the initial shelter care hearing. Both parents testified that they have Native American ancestry but neither testified that the children are Indian children or that they themselves are members of any tribe. RP 67, 88, 90. And, instead of informing the dependency court that the children are, in fact, Indian children, the father’s attorney argued for the ICWA standard based upon the parents’ testimony that the children were eligible for membership even though the parents were not members themselves. RP 110. The “reason to know” criteria in 25 U.S.C. § 1912 were not satisfied. *See Geouge v. Traylor*, 68 Va. App. 343, 808 S.E.2d 541 (2017) (holding “reason to know” threshold was not met by parent’s report of Cherokee ancestry and allegation that the child might be an Indian child); *In re L.R.D.*, 2019 Ohio 178, ___ N.E. 3d ___, 2019 WL 296876 (holding “reason to know” threshold was not met by mother report’s that her father was “Iroquois”).

The father claims one particular regulatory factor, 25 C.F.R. § 23.107(c)(2), was satisfied under the facts presented at the shelter care

hearing. Br. Petitioner at 43. This factor provides the threshold is reached when any participant “informs the court that it has discovered information indicating that the child is an Indian child.” 25 C.F.R. § 23.107(c)(2). This factor, 25 C.F.R. § 23.107(c)(2), deliberately refers to the term, “Indian child.” The legal definition of an “Indian child” is “either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.” The facts here established that the biological mother was eligible to be a member, but she was not a member of the Tlingit and Haida Tribes of Alaska. RP 11. This information did not satisfy the “reason to know” factor set forth at 25 C.F.R. § 23.107(c)(2) because determination of tribal membership is “solely within the jurisdiction and authority of the Tribe,” and Tlingit and Haida Tribes of Alaska reported information contrary to the definition of an Indian child. 25 C.F.R. § 23.108(b). In other words, the dependency court was provided with information from the tribe (by way of the Department social worker) which was contrary to the definition of an Indian child. The “reason to know” standard is designed to address a situation where “the court does not have sufficient evidence to determine that the child is or is not an ‘Indian child.’” 25 C.F.R. § 23.107(b). Here, instead, there was sufficient information from the tribe to contradict the legal definition, as the tribe itself reported the mother was not a member and the children were not members. At the time

of the initial shelter care hearing, the dependency court properly determined the “reason to know” criteria were not satisfied.

Most of the cases cited by the father to support his “reason to know” claim are distinguishable because the cases predate the “reason to know” factors set forth at 25 C.F.R. § 23.107(c). For example, the father relies on *In re Dependency of T.L.G.*, 126 Wn. App. 181, 108 P.3d 156 (2005) and *In re Welfare of L.N.B.-L.*, 157 Wn. App. 215, 256-57, 237 P.3d 944 (2010). Both *T.L.G.* and *L.N.B.-L.* were decided prior to 2016, when the Bureau of Indian Affairs (BIA) issued federal regulations regarding ICWA. 81 Fed. Reg. 38,864-76 (June 14, 2016). The ICWA holding in *L.N.B.-L.* rested upon *T.L.G.* *L.N.B.-L.* 157 Wn. App. at 245, n. 30. *T.L.G.* relied on the Guidelines for State Courts; Indian Child Custody Proceedings published in 1979 at 44 Fed. Reg. 67,584-595 (1979 Guidelines). *T.L.G.*, 126 Wn. App. at 187-189. The BIA has since replaced the 1979 (and 2015) versions of the guidelines. 81 Fed. Reg. at 96,476-77 (Dec. 30, 2016); see also <https://perma.cc/3TCH-8HQM>, Guidelines for Implementing the Indian Child Welfare Act (Dec. 2016), (last visited March 29, 2019). The father’s reliance upon the expansive interpretation contained in cases predating the 2016 regulations is misplaced. Moreover, these cases addressed whether there was “reason to know” the child was an Indian child such that formal notice was required under law as it was at that time. The law at that time did

not require that if there was a “reason to know” the child was Indian that the court must treat the child as an Indian child with all of the Act’s requirements—not just notice—until or unless it was determined that the child is not Indian. *Compare* Guideline B.1 44 Fed. Reg. 67,586 (requiring the court to seek verification of child’s status) *with* 25 C.F.R. § 23.107(b)(1)-(2) (requiring both verification of child’s tribal membership *and* treating the child as an Indian child).

The father also cites to three cases from other states to support his claim that the majority of courts in other states are following a more expansive standard for “reason to know,” even in light of the 2016 regulations. Br. Petitioner at 29. The cases cited fail to support the father’s argument. One of the cases he relies upon did not actually apply the 2016 regulations. *Matter of L.D.*, 391 Mont. 33, 2018 MT 60 (2018), determined the 2015 Guidelines, not the 2016 regulations, were in effect at the time of the termination of parental rights trial. *Matter of L.D.*, 391 Mont. at 38 n.2. Not only does *L.D.* fail to provide guidance on the 2016 ICWA regulations, but also *L.D.* is problematic in that it appears to require a “conclusive tribal determination of *L.D.*’s tribal membership status.” *Id.* at 41. While it may be that more should have been done to determine whether *L.D.* was an Indian child, it is interesting that the tribe “was aware of the status of the case and apparently would not intervene or assume jurisdiction.” *Id.* at 35.

The fact that the tribe had notice in *L.D.* underscores the possibility that a tribe may not respond when notice or inquiry is sent. See, e.g., *In re Dependency of G.B., T.B., K.B.*, No. 77311-9-I, 2018 WL 5802524, at *4 (Wash. Ct. App. November 5, 2018) (unpublished) (noting that when the Department mailed out inquiry letters to three federally recognized Cherokee tribes, only two of the three tribes responded).

Despite the real possibility that not all tribes will respond in a timely manner (or at all), the father advocates for the position that any report of Indian heritage requires the court to apply the additional ICWA standards until it is determined “by conclusive evidence” that the child is not an Indian child. Br. Petitioner at 24. The father’s argument for “conclusive evidence” following a “reason to know” determination is a position wisely rejected by WICWA and the ICWA regulations. Under the ICWA regulations, once the “reason to know” determination is made, it requires “due diligence to identify and work with all of the Tribes...” 25 C.F.R. § 23.107(b)(1). Congress has not (and presumably could not) require tribes to provide “conclusive evidence.” Under WICWA, when a claim of ancestry is made, the Department makes a “good faith effort to determine whether the child is an Indian child,” but it is not required to locate conclusive evidence. RCW 13.38.050 provides:

Any party seeking the foster care placement of, termination

of parental rights over, or the adoption of a child must make a good faith effort to determine whether the child is an Indian child. This shall be done by consultation with the child's parent or parents, any person who has custody of the child or with whom the child resides, and any other person that reasonably can be expected to have information regarding the child's possible membership or eligibility for membership in an Indian tribe to determine if the child is an Indian child, and by contacting any Indian tribe in which the child may be a member or may be eligible for membership.

...

RCW 13.38.050. The problematic holding in *L.D.*, which appears to require receipt of “conclusive evidence” from the tribe regarding tribal membership, is inconsistent with WICWA and the 2016 regulations, which require “good faith effort” and “due diligence,” respectively. RCW 13.38.050; 25 C.F.R. § 23.107(b)(1).

The father also mistakenly relies upon *In Matter of J.W.E.*, 2018 OK CIV APP 29, 419 P.3d 374 (2018), a case inapposite to his position. Br. Petitioner at 29. In *J.W.E.*, the mother testified she was a member of Cheyenne and Arapaho Tribes of Oklahoma and that her children were “in the process of being enrolled” in the Choctaw Tribe. *J.W.E.*, 419 P.3d at 375. The Court of Civil Appeals in Oklahoma held that the mother’s testimony was sufficient to provide “reason to know” that these were Indian children. *Id.* at 379. The Department agrees with the determination in *J.W.E.* that there was “reason to know” the children were Indian children. In a situation where the mother testifies she is a member of a federally

recognized tribe and her children are eligible for membership in another federally recognized tribe, this constitutes “reason to know” under the federal factors. *See*, 25 C.F.R. § 23.107(c)(6). However, that is not the case here. Unlike the mother in *J.W.E.*, here it is uncontested that the mother was not a member of a federally recognized tribe.

The father also mistakenly relies upon *Matter of A.P.*, 818 S.E.2d 396 (N.C. Ct. App. 2018). Br. Petitioner at 29. The holding of *A.P.* is distinguishable, because it was based on the likelihood that court orders would be “voided in the future, when claims of Indian heritage arise, even where it may be unlikely the juvenile is an Indian child.” *Matter of A.P.* at 400. Unlike North Carolina, which appears to rely on formal legal notice provision in ICWA to ascertain whether a child is an Indian child, Washington petitioners are required by WICWA to investigate in order to ascertain whether a child is an Indian child. As explained previously, under RCW 13.38.050, when a party provides information about a child’s Native American ancestry, the Department is then required to make a good faith effort to determine whether the children are Indian. This obligation attaches regardless of whether the information is sufficient to provide a “reason to know.” Because Washington law creates an obligation to make good faith efforts to investigate whether children are Indian children, the likelihood that future orders will be voided due to lack of notice is diminished and

Matter of A.P. is distinguishable for this reason.

In summary, under the facts presented here, the trial court did not have “reason to know” that these were Indian children at the time of the initial shelter care hearing, and case law from North Carolina and Montana does not support a contrary position, given the requirements of WICWA. Although the testimony here did not cross the “reason to know” threshold, the testimony still required the Department to continue its good faith effort to determine whether the child is an Indian child, which it did. RCW 13.38.050. Less than one month after the dependency petition was filed, the dependency court signed an order permitting Tlingit and Haida Tribes of Alaska to intervene. CP 19. In addition, the Confederated Tribes of Umatilla Indian Reservation, the Eastern Band of Cherokee Indians, and the United Keetowah Band of Cherokee Indians in Oklahoma responded to inquiries sent by the Department; each of these tribes stating that the children are neither members nor eligible for tribal membership. Notation Ruling (January 9, 2019) at 4.

3. The “reason to know” determination under WICWA is identical to that set forth in federal law

The numerous references in the father’s brief to the ten-day notice requirements of the ICWA and the WICWA are irrelevant to the issue at hand, and this Court should decline to address them. If this Court

nonetheless chooses to consider the father's argument regarding the notice statutes, WICWA's notice provision differs somewhat from the federal notice provision, but the difference in language does not signal an intention to deviate from the federal "reason to know" standard. 25 U.S.C. § 1912(a), requires notice to the tribe when the court "knows or has reason to know that an Indian child is involved," and WICWA's language at RCW 13.38.070(1) requires notice when the court "knows, or has reason to know, that the child is or may be an Indian child. Under both state and federal law, when the court "knows" the child is an Indian child, notice must be sent, and when the court is not certain but has a "reason to know," then notice also must be sent. Federal law requires notice in certain cases where there is still a degree of uncertainty as to whether the child is an Indian child. The language in federal law and state law is not substantially different in this regard. The inclusion in WICWA of the "may be Indian" language is designed to clarify that notice under both ICWA and WICWA is appropriate in cases where there remains some uncertainty, but there is a "reason to know" that the child is an Indian child.

Certainly, WICWA contains no language stating that formal legal notice must be sent whenever there is a mere report of ancestry. And, reading WICWA to require formal notice based upon a bare report of ancestry would render the preliminary contact provision set forth at

RCW 13.38.050 superfluous, as formal legal notice would be sent based upon the mere report of ancestry. Instead, WICWA provides tribes with preliminary opportunities to review the inquiry letters and the ancestry information sent to them. Under WICWA, these types of written responses from the tribes are considered “conclusive” as to whether the child qualifies as an Indian child for purposes of ICWA and WICWA. RCW 13.38.070(3)(a).

WICWA was enacted with the intention of “clarifying existing laws and codifying existing policies and practices...” *Matter of T.A.W.*, 186 Wn.2d 828, 843, 383 P.3d 492 (2016) (quoting RCW 13.38.030). The Legislature’s “desire to import much of the language of ICWA into WICWA, and WICWA’s aim of clarifying existing law” leads to the conclusion that “the acts should be read as coextensive barring specific differences in their statutory language.” *T.A.W.* at 844. WICWA does not contain a “reason to know” definition in its definition section at RCW 13.38.040, so there is no specific difference in language to support anything but a coextensive “reason to know” determination under WICWA and ICWA.

C. The Remedy for an Improper “Reason to Know” Determination is Remand for a New Hearing With ICWA and WICWA Compliance and a Possible Reversal

Whether ICWA and WICWA apply is a question of law that is

reviewed *de novo*. *Matter of Adoption of T.A.W.*, 186 Wn.2d 828, 840, 383 P.3d 492 (2016). When an ICWA requirement is not satisfied, the proper remedy is not outright reversal but remand for compliance with ICWA and for possible reversal based upon ICWA's application. *In re Welfare of L.N.B.-L.*, 157 Wn. App. 215, 223, 237 P.3d 944 (2010). In *L.N.-B.-L.*, this Court held that the Department should have notified two additional tribes of termination proceedings. *L.N.B.-L.* at 223. The remedy was to remand for properly notice, and if the notified tribes declined to intervene, the termination order would stand. *Id.*

Similarly, if the dependency court incorrectly determined there was no "reason to know" the children were Indian children, the proper remedy would be to remand for compliance with ICWA's and WICWA's requirements. Specifically, the remedy would to remand for a new hearing where the dependency court would determine whether shelter care is necessary to "prevent imminent physical damage or harm to the child." 25 C.F.R. § 23.113(b)(1); *see* 25 U.S.C. § 1922 and RCW 13.38.140(1).

Appellate review was granted with the understanding that the issues raised may be moot. At the time review was granted, the dependency fact-finding trial was pending. The Tlingit and Haida Tribes of Alaska intervened, and the trial court was on notice that ICWA and WICWA standards applied at the dispositional hearing. Recently, on March 27, 2019,

a dependency and dispositional order was entered, and the dispositional order contains the ICWA and WICWA standards for out of home placement for a dispositional order. The father's order contains a finding that states, "facts establish by clear and convincing evidence, including the testimony of a qualified expert witness that continued custody of the child by the [parents] is likely to result in serious emotional or physical damage to the child." App. A. at 2. Consequently, there is no longer an effective remedy to provide in this case.

D. The Record Demonstrates Substantial Compliance with the Intent of the Court's Inquiry Requirement, and the Inquiry Requirement is Not of Constitutional Significance

1. The record demonstrates substantial compliance with the intent of the court's inquiry requirement

25 C.F.R. § 23.107(a) specifically requires that:

State courts must ask each participant in an emergency . . . proceeding whether the participants knows or has reason to know that the child is an Indian child. The inquiry is made at the commencement of the proceeding and all responses should be on the record.

The facts of this case demonstrate substantial compliance with 25 C.F.R. § 23.107(a). Although the court did not ask the participants whether there was reason to know the children were Indian, the parties volunteered the required information to the court, provided argument, and the court made a determination. CP 10. The fact that the parties provided the information

without the court first asking satisfies substantial compliance with the regulation's inquiry requirement.

The doctrine of substantial compliance is applicable to requirements of the ICWA. *In re Welfare of M.S.S.*, 86 Wn. App. 127, 135, 936 P.2d 36 (1997); *In re Welfare of L.N.B.-L.*, 157 Wn. App. 215, 244, 237 P.3d 944 (2010). In *M.S.S.*, the Department mailed overnight notice to the Cook Inlet tribe, and the tribe had actual notice of the termination of parental rights proceeding. *M.S.S.*, 86 Wn. App. at 135. On review, the father argued the ICWA required notice to be sent by way of registered mail with return receipt requested. *Id.* *M.S.S.* held even though ICWA required registered mail, "the overnight mailing substantially complied with the mailing requirements of the act." *Id.* This Court reached a similar conclusion in *In re Welfare of L.N.B.-L.*, 157 Wn. App. at 244, where the record was unclear as to whether the Department provided proper notice to the Nooksack tribe, but because the Nooksack tribe intervened and tribal counsel appeared and participated telephonically in the proceeding, there was no need for "strict compliance" with the ICWA notice provisions.

In another termination of parental rights proceeding, the trial court failed to make an express finding that active efforts had been made, as required by 25 U.S.C. § 1912(d). *In re Dependency of A.M.*, 106 Wn. App. 123, 137, 22 P.3d 828 (2001). Nonetheless, *A.M.* affirmed the order

terminating parental rights, deciding that while it “would be preferable for the court to make an ultimate finding in the language of 25 U.S.C. § 1912(d) where Indian children are concerned, as well as in the language of the services provisions of our state statute, the evidentiary and ultimate findings utilizing the language of the state statute are sufficient in this case.” *A.M.*, 106 Wn. App. at 137. In both *M.S.S.* and *A.M.*, the reviewing court did not require technical compliance with the exact statutory provisions of the ICWA in situations where the intent of the statute was satisfied.

Applying the substantial compliance doctrine found in *M.S.S.* and *A.M.* to the facts here, substantial compliance with the intent of 25 C.F.R. § 23.107(a) occurred. The parties volunteered the required information to the court, and the court made a preliminary determination regarding whether there was a “reason to know” the children were Indian based upon the information provided. The dependency court used the information provided to make a “reason to know” determination. CP 10. As a result, there was substantial compliance with the regulation’s inquiry requirement, and no remedy is required. If a remand were required for the court to first inquire of the parties before they provided information, it is hard to envision what additional information the court would be provided such that a remand would be necessary. *See State v. Mecca Twin Theater & Film Exch., Inc.*, 82 Wn.2d 87, 92-93, 507 P.2d 1165 (1973)(where essential facts were not

in dispute, remand for findings would be a useless act). The parties already volunteered information at the initial shelter care hearing, without the court's prompting, and then provided argument to the court about how it should rule. No remedy is required here in regards to the court's inquiry requirement under 25 C.F.R. § 23.107(a).

2. ICWA and the WICWA do not confer rights of a constitutional nature

The ICWA provides "substantive and procedural safeguards to prevent the unwarranted separation of Native American children from their families and culture." *In the Welfare of M.S.S.*, 86 Wn. App. 127, 132-33, 936 P.2d 36 (1997). The father incorrectly equates a regulatory safeguard with due process protections. Br. Petitioner at 7-9. He fails to cite to any case law supporting his due process claims in the context of a shelter care hearing. Instead, he relies upon *In re K.J.B.*, 187 Wn.2d 592, 387 P.3d 1072 (2017), which addresses statutorily required considerations for incarcerated parents when determining whether the legal elements are satisfied in a termination of parental rights proceeding. Br. Petitioner at 9. His reliance on *K.J.B.* is misplaced. *K.J.B.* does not address due process and ICWA did not apply to that case. *K.J.B.* resulted in reversal of a termination of parental rights for a failure of the trial court to consider a statutorily required set of factors used to inform a particular termination statute element.

K.J.B., 187 Wn.2d at 606.

The situation addressed in *K.J.B.* is distinguished easily from the circumstances presented here, because at Z.G. and M.G.'s shelter care hearing, the dependency court actually considered the information required. Without prompting from the dependency court, all of the parties volunteered the information the court was supposed to inquire about and then the court addressed the question of whether the children were Indian. Before the hearing started, the Department's petition referenced the possibility that the children were Indian children. CP 12. During the shelter care hearing, the children's mother testified she is not a member of Tlingit Haida, but she is eligible for membership with that tribe. RP 88, 90. The father testified that he has Native American heritage with the confederated tribes of Umatilla. RP 67. During closing statements, the father's attorney asked the dependency court to treat the children as Indian children and to apply the out of home placement standard requiring "a risk of imminent physical damage or harm." RP 110. The mother's attorney argued that there is "reason to know that the children are Indian children." RP 113. The Department social worker testified about the contacts he had made with Tlingit and Haida Tribes of Alaska, and his understanding that there was no reason to know the children were Indian. RP 11-12. The important information regarding whether the participant knows or has "reason to

know” that the child is an Indian child was provided by every participant despite the court lack of inquiry. As a result, the purpose of the regulation was satisfied.

While ICWA certainly provides important procedural requirements, the ICWA regulation at issue here does not rise to the level of a due process constitutional right, and the remedy, if one were necessary, would be to remand for a new hearing where the trial court asks to be given the same information it was already provided. The father fails to raise a constitutional claim, and no remedy is needed as regards to 25 C.F.R. § 23.107(a).

V. CONCLUSION

For all of the foregoing reasons, the trial court did not err, and the shelter care order should be affirmed. In the alternative, if the dependency court incorrectly determined there was no “reason to know” the children were Indian children, the proper remedy would have been to remand for compliance with ICWA and WICWA’s requirements if the children had still been in shelter care status. Additionally, the record demonstrates substantial compliance with the court’s inquiry requirement, and no remedy is required

as regards to 25 C.F.R. § 23.107(a)

RESPECTFULLY SUBMITTED this 29th day of March, 2019.

ROBERT W. FERGUSON
Attorney General

By



KELLY TAYLOR

WSBA #20073

Office Identification #91016

800 Fifth Ave., Suite 2000

Seattle, WA 98104

(206) 464-7045

APPENDIX "A"

- King West OICW
- White Center MLK
- King East King Southwest
- King SouthEast Adoptions/BRS

**Superior Court of Washington
County of King Juvenile Court**

Dependency of:

M.G.
DOB: (

Z.G.
DOB: (

No: 18-7-02178-1 SEA
18-7-02176-4 SEA

**Order of Dependency as to the alleged
father, Scott James Greer
(OROD)**

- Agreed as to mother father other
- Contested as to mother father other
- Default as to mother father other
- Dismissed (ORDYMT) 4.1
- Disposition Order (ORDD) Included
- Clerk's Action Required.** Paragraphs 4.1, 4.3, 4.6 (EDL), 4.7, and the boxes below.

Re temporary visitation

The court will hear disposition initial progress review interim review dependency review permanency planning 4/19/19 (type of hearing) on (date) 2:30pm at _____ a.m./p.m. at: King County Superior Court, Room/Department: _____ located at: by fire E-209

King County Courthouse, 516 Third Avenue, Rm. E-209, Seattle, Washington 98104
 Regional Justice Center, 401 Fourth Avenue North, Kent, Washington 98032

Additional clerk's action required: Enter the code(s) that apply. *Judge Berry*

About today's hearing:
Was adequate and timely notice given to the child's caregiver? Yes (CGATN) No (CGNATN)
Did the court receive a caregiver report? Yes (CGRR) / No
 The caregiver appeared. Did the court give the caregiver an opportunity to be heard? Yes / No

↓
on 5/28/19 at 1:30p
↓
E-201

I. Hearing

- 1.1 **Petition:** A petition was filed by DCYF alleging that the above-named child is dependent.
- 1.2 **Appearance:** The following persons appeared at the hearing:

- | | |
|--|---|
| <input type="checkbox"/> Child | <input type="checkbox"/> Child's Lawyer |
| <input type="checkbox"/> Mother | <input type="checkbox"/> Mother's Lawyer |
| <input type="checkbox"/> Father | <input checked="" type="checkbox"/> Father's Lawyer - M. Bjork |
| <input checked="" type="checkbox"/> Child's GAL: V. Whalen | <input checked="" type="checkbox"/> GAL's Lawyer - L. Irwin <i>BERRIS</i> |
| <input checked="" type="checkbox"/> DCYF Worker - A. Enright | <input checked="" type="checkbox"/> Agency's Lawyer - K. Lohr |
| <input type="checkbox"/> Tribal Representative - C. Mills | <input type="checkbox"/> Current Caregiver |
| <input type="checkbox"/> Interpreter for <input type="checkbox"/> mother <input type="checkbox"/> father | <input type="checkbox"/> Other _____ |
| <input type="checkbox"/> other _____ | |

Tribe was called and did not appear. Court notified tribe of tribe date/time.

- 1.3 Basis: The court heard testimony The parties submitted an agreed order.
 The child is 12 years old or older and the court made the inquiry required by RCW 13.34.100(7).
on temporary visit order

II. Findings

Except where otherwise indicated, the following facts have been established by a preponderance of evidence:

2.1 **Child's Indian Status:** On this date On _____, the court asked each participant on the record whether the participant knows or has reason to know the child is an Indian child.

The petitioner has has not made a good faith effort to determine whether the child is an Indian child.

Based upon the following, there is not a reason to know the child is an Indian child as defined in RCW 13.38.040 and 25 U.S.C. § 1903(4), and the Federal and Washington State Indian Child Welfare Acts do not apply to this proceeding:

Based upon the following, there is reason to know the child is an Indian child as defined in RCW 13.38.040 and 25 U.S.C. § 1903(4), and Federal and Washington State Indian Child Welfare Acts apply to this proceeding, unless and until it is determined on the record that the child does not meet the definition of an Indian child:

The children are eligible for enrollment in the Tlingit and Haida tribe, which has intervened in the dependency case.

Based on the following summary, the petitioner used due diligence to identify and work with the tribes of which there is reason to know the child may be a member or eligible for membership, to verify whether the child is in fact a member (or the biological parent is a member and the child is eligible for membership).

Prior to the 72-hour hearing, inquiries were sent to all potential tribes. The worker also called the Central Council of the Tlingit and Haida tribe. Subsequent to the 72, legal notice was provided to the tribes of which the children may be eligible for enrollment, and the Tlingit and Haida tribe has intervened.

The facts establish by clear, cogent and convincing evidence, including the testimony of a qualified expert witness that continued custody of the child by the mother father Indian custodian is likely to result in serious emotional or physical damage to the child.

Reserved pending 1/15/20

DCYF made active efforts by actively working with the parent, parents, or Indian Custodian to engage them in remedial services and rehabilitative programs to prevent the breakup of the Indian family beyond simply providing referrals to such services, but those efforts have been unsuccessful.

The petitioner has has not provided notice of this proceeding as required by RCW 13.38.070 and 25 U.S.C. § 1912(a) to all tribes to which the petitioner or court

knows or has reason to know the child may be a member or eligible for membership if the biological parent is also a member.

2.2 **Facts:**

Facts establishing dependency have not been proved.

The following facts establishing dependency have been agreed upon proved:

1. Lindsey Kaitlyn Graham is the mother of *Z.G.* (DOB) and *M.G.* (DOB). The alleged father of these children is Scott James Greer. There is no father listed on the birth certificates for *Z.G. and M.G.*
2. On 5/30/2018, the Department received an intake from the King County Sherriff's Office, reporting concerns about whether the children's basic needs were being met. The family was living in a broken-down RV parked on the side of the road.
3. Soon after, a Department social worker visited the family's RV. The mother reported *M.G.* had not seen a doctor recently, and agreed to take him to the doctor by the end of the following week. She did not do so. The parents report had an appointment for *M.G.* three-month-old check up, but the children were removed prior to the appointment. The parents had brought *M.G.* to the doctor for his one-month-old check up, and missed the two-month-old check up because of problems with insurance.
4. During the Department's involvement throughout the month of June, the social worker discussed the following services with family, Public Health Nurse, housing assistance, case manager support, concrete goods (gas cards), hygiene products, connecting to parent partner program, and possibly paying for a hotel room.
5. On 6/22/2018, the Department social worker Richard Summers went out to family home to provide concrete goods and discuss services. The family was not home.
6. On 6/27/18, the *M.G. and Z.G.* were placed into protective custody by the Kent Police Department. Officers noted the inside of the RV was "utterly deplorable." There was a sticky substance covering the carpet, a strange odor, and flies buzzing around the interior. There was no working refrigerator and the officer could not find any fresh food in the RV.
7. On 6/28/2018, the social worker arranged for the parents to complete a UA. The social worker told the parents that the facility closed at 6:00 PM. Nobody realized that the facility stopped providing UAs for CPS cases at 5:00 PM. The parents arrived between 5:00 PM and 6:00 PM. The parents completed a UA on 6/29/18.
8. The children were seen by a doctor shortly after their removal. *M.G.* had had lost weight since his last appointment and was underweight. Medical staff recommended increasing the frequency of his feedings. *Z.G.* had a rash and/or bug bites covering his torso.
9. In 2016 and 2017, the family had 6 intakes (none were founded). Allegations included parents' substance abuse, unsanitary living conditions, and inability to meet the children's needs. There is also a CPS history related to the alleged father's older child, James K Greer, reporting concerns of substance abuse by his parents.
10. The alleged father has a conviction in Washington State for assault 3 and convictions in Oregon state for assault on a public safety officer (felony), theft 2, forgery 2, and assault 4 (not DV).
11. Both parents report a history of substance abuse.

12. Records indicate the mother and alleged father both have had head injuries/head trauma in the past. The mother reports a history of anxiety and depression. The alleged father has reported ~~learning or cognitive delay~~, forgetfulness, and has sought services for this mental health.
13. The parents have been offered visits since the petition was filed. The parents have not visited with the children since December 2018.

2.3 **Statutory Basis:** The child is dependent according to RCW 13.34.030(6), in that the child:

- (a) has been abandoned, as defined in RCW 13.34.030;
- (b) is abused or neglected, as defined in Chapter 26.44 RCW, by a person legally responsible for the care of the child; and/or
- (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.

2.4 **Placement:** *pending disposition hearing*

- If the court schedules a separate disposition hearing, the child should remain in the placement and care authority of DCYF pending further order of the court.
- The child should be placed or remain in the home of the mother father legal custodian guardian.
- It is currently contrary to the child's welfare to return home. The child should be placed or remain in the custody, control and care of DCYF a relative an other suitable person for the following reasons:
- there is no parent or guardian available to care for the child; and/or
- the parent or guardian is unwilling to take custody of the child; and/or
- the court finds by clear, cogent and convincing evidence that a manifest danger exists that the child will suffer serious abuse or neglect if the child is not removed from the home, and an order under RCW 26.44.063 will not protect the child from danger.
- The child should be placed or remain in:
- Relative placement.
- Placement with a suitable person and this placement is in the child's best interests.
- Adoptive parent or other person with whom the child's siblings or half-siblings live.
- Licensed care:
- pending completion of DCYF investigation of relative placement options.
- because there is no relative or other suitable person who is willing, appropriate, and available to care for the child, with whom the child has a relationship and is comfortable.
- because there is reasonable cause to believe that relative placement would jeopardize the safety or welfare of the child; and/or hinder efforts to reunite the parent(s) and child.
- The child is an Indian child as defined in RCW 13.38.040, and this placement complies with the placement priorities in RCW 13.38.180, and 25 U.S.C. § 1915.

2.5 **Reasonable Efforts:**

- DCYF made reasonable and active efforts to prevent or eliminate the need for removal of the child from the child's home; but those efforts were unsuccessful because:

- The health, safety, and welfare of the child cannot be adequately protected in the home.
- Specific services have been offered or provided to the parent(s), guardian or legal custodian and have failed to prevent the need for out-of-home placement and make it possible for the child to return home. The following services have been offered or provided to the child and the child's parent(s), guardian or legal custodian:
 - as listed in the social study; and/or
 - Prior CPS interventions with this family include: Urinalysis testing, Parents agreeing to complete CD assessments, housing support, PHN services. Parents have been previously referred for FVS and FAR services with no sustained changes in the care of the children. During 2017 investigation where Department paid for hotel for family for two weeks while they sought out more permanent housing the father got arrested for stabbing another individual; the mother was not responsive with Department to ensure that Z.G. has prescribed diaper rash medication nor to allow Department into hotel room to do health and safety checks. Parents were both referred from UA's but they did not take them (8/18/2017). Parents and children left the hotel and could not be contacted or located to provide any additional supports or services

housing assistance, if applicable.

The whereabouts of the mother father alleged father guardian or legal custodian are unknown.

Additional Reasonable Efforts Findings:

Reasonable efforts are not required at this time to attempt to reunify the child with his/her parent(s), guardian or legal custodian because:

- The child has been abandoned.
- Aggravated circumstances exist and reasonable efforts are not in the child's best interests, as determined by clear, cogent, and convincing evidence. In determining whether aggravated circumstances exist by clear, cogent, and convincing evidence, the court considered and found:

that the following factor(s) listed in RCW 13.34.132, exist:

other: _____

The court ordered the child removed from the home pursuant to RCW 13.34.130(1)(b), and DCYF has recommended that a petition be filed seeking termination of the parent-child relationship between the child's mother father and the child. Because of abandonment of the child and/or the existence of aggravated circumstances as set forth above, filing of a termination petition is in the child's best interest and DCYF is not required to make reasonable efforts to reunify the family.

2.6 Sibling contact: The children are placed together

If disposition is heard separately, reserved pending dispositional hearing.

- The court ordered the child removed from the home and it is is not in the child's best interest to be placed with or to have contact or visits with these siblings (which could include step-siblings if there is a pre-existing relationship and the child is comfortable with the step-siblings): _____

and, a) the court has jurisdiction over the child(ren) listed above or the parents of the child(ren) for whom there is no jurisdiction are willing to agree; and b) there is no reasonable cause to believe that the health, safety, or welfare of any child would be jeopardized or that efforts to reunite the parent and child would be hindered by placement, contact or visitation.

2.7 Child's school: The children are not of school age

- If disposition is heard separately, reserved pending dispositional hearing.
- The court found that the child should be removed from the home pursuant to RCW 13.34.130(1)(b) and placed into out-of-home care. A placement that allows the child to remain in the same school he or she attended prior to the start of the dependency proceeding is is not practical and is is not in the child's best interests.
- The child meets the criteria for appointment of an educational liaison. DCYF recommends that the court appoint (name) _____ as the child's educational liaison.
- The parents are not able to serve as the educational liaison because:

2.8 Other:

- The parent or guardian/custodian was informed of the right to appear in court for presentation and entry of this agreed order of dependency.
- The parent or guardian/custodian appeared before the court for entry of this order.
- The parent or guardian/custodian waived his/her right to be present in court for entry of this order by submitting the attached Waiver of Right to Appear In Court.
- The parent or guardian/custodian had actual notice of the right to appear before the court and chose not to do so after stipulating to this agreed order. The other parties to the order have appeared and advised the court of the parent's/guardian's knowledge of the right to be present for entry of the stipulated order, and his/her understanding of the legal effects of this order as set forth in RCW 13.34.110.

The Court finds:

1. The parent or guardian/custodian understands the terms of the order he/she signed, including his/her responsibility to participate in remedial services in the below dispositional order.
2. The parent or guardian/custodian understands that entry of the order starts a process that could result in the filing of a petition to terminate his/her parental rights if he/she fails to comply with the terms of the dependency or dispositional orders or fails to substantially remedy the problems that necessitated the children's out-of-home placement.
3. The parent or guardian/custodian understands that entry of this agreed order of dependency is an admission that the child is dependent with the meaning of RCW 13.34.030. The parent or guardian/custodian understands that he/she will not have the right to challenge this determination in a subsequent proceeding.
4. The parent or guardian/custodian knowingly and willingly stipulated and agreed to entry of this order and did so without duress, misrepresentation or fraud by any other party.

III. Conclusions of Law

3.1 Jurisdiction: The court has jurisdiction over:

- the child the mother

Order of Dependency (OROD, ORDYMT) - Page 6 of 14

WPF JU 03.0400 (07/2018) - JuCR 3.7; RCW 13.34.030, .046, .110, .120, .130, .132

the alleged father the guardian or legal custodian

3.2 **Notice:**

The following have received timely and proper notice of these proceedings:

The mother alleged father guardian or legal custodian child if 12 or older.
 The child is 12 or older and was notified that he/she may request an attorney.

3.3 **Default:** The following have failed to appear and a default order has been entered:

The mother father guardian or legal custodian.

3.4 **Dependency:**

The child is not dependent and the matter should be dismissed.
 The child should be found dependent pursuant to RCW 13.34.030.

3.5 **Termination petition:** A termination petition should be filed pursuant to RCW 13.34.132.

3.6 **Other:**

IV. Order

4.1 **Dependency:**

The child is not dependent and the matter is dismissed.
 The child is dependent pursuant to RCW 13.34.030(6) (a) (b) (c).

4.2 **Social study:**

DCYF has conducted a social study, a report of which was filed and provided to the parties.
 DCYF has not conducted a social study and shall return a report to the court and to the parties on a timely basis.

4.3 **Disposition hearing:**

A disposition hearing has been held.
 A disposition hearing **regarding placement, visitation, and some of the recommended services** is set for the date and time on page one.

4.4 **Placement:**

[The issue of placement with maternal grandmother will be heard at the dispositional hearing. The children shall remain in licensed foster care in the meantime, unless agreed-to by all parties]

If disposition is heard at a later date, the child shall remain in the placement and care authority of DCYF pending further order of the court.

- The child shall be placed or remain in the home of the mother father legal custodian guardian.
Subject to the following conditions
- The child is placed in the custody, control and care of DCYF, which shall have the authority to place and maintain the child in:
- Relative placement with _____ (name).
 - Placement with a suitable person: _____ (name).
 - The home of an adoptive parent or other person with whom the child's siblings or half-siblings live.
 - Licensed care:
 - pending completion of DCYF investigation of relative placement options.
 - because there is no relative or other suitable person with whom the child has a relationship and who is willing, appropriate and available to care for the child.
 - because there is reasonable cause to believe that relative placement or placement with a proposed other suitable person would jeopardize the safety or welfare of the child and/or hinder efforts to reunite the parent(s) and child.

Absent good cause, DCYF shall follow the wishes of the natural parent regarding the placement of the child in accordance with RCW 13.34.260.

- DCYF is authorized to place the child with a relative who is willing, appropriate and available, with prior reasonable notice to the parties, subject to review by the court.
- The ordered placement is subject to the following placement conditions: _____
-

4.5 **Services:**

- If disposition is heard separately, reserved pending dispositional hearing:
(Random UA's, Drug/Alcohol Evaluation, and Neuropsych exam set for Dispo)
- Services for the parents/guardians/legal custodians entered pursuant to RCW 13.34.130 [any evaluation must comply with RCW 13.34.370]:
- see attached service plan.
 - as follows:

[set for dispositional hearing] Random urinalysis 1x/week [with ETG testing] for 30 days

- The parent's compliance with this requirement shall be based upon attendance at all required UAs and consistent negative results. An unexcused missed appointment, violation of program rules, or diluted UA shall be deemed a positive result.
- The parent shall refrain from all legal and illegal substances during the UA period, and any results showing use of legal substances will be considered a positive UA unless a valid prescription is provided.
- Participation in this service shall begin immediately.
- This requirement shall be completed after 90 days of clean, not missed, not diluted UAs.
- Responsibility for payment: The Department, if at agency referred to by the Department.

[set for dispositional hearing] Drug/alcohol evaluation and follow treatment recommendations

- The parent's compliance shall be based upon making the initial appointment, completing all steps necessary to complete the evaluation, and enrolling in and successfully completing any recommended treatment program. Progress will be verified by reports from the service provider.
- The evaluation shall be completed within 30 days of the date of this order and completed as recommended by the treatment provider.

Parenting assessment and follow all recommendations

- The parent's compliance with the assessment will be evaluated based upon the parent's cooperation in selecting a mutually agreed upon provider in a timely fashion; the participation in and cooperation with the assessment in a timely fashion; and the compliance with recommended services, if any. The assessment may include direct observation of the parent and child together, a parenting and family history, collateral contacts, review of records and standardized testing.
- The assessment is to be scheduled by the parent within thirty (30) days of the date of this order. The assessment is to be completed within ninety (90) days of the date of this order, as allowed by the schedule of the provider. Any services recommended are to be initiated promptly.
- The Department shall pay for the assessment.

[set for dispositional hearing] Neuropsychological evaluation and follow through with any treatment recommendations

- The parent's compliance shall be based upon cooperating in selecting a mutually agreed upon evaluator, completing the evaluation in a timely fashion, complying with the recommended treatment, and by progress reports from the service providers.
- The evaluation is to be scheduled *by the parent* within 30 days of the date of the referral. Any follow-up treatment shall be initiated promptly and completed as determined by the treatment provider.
- Responsibility for payment: the Department shall pay for the initial evaluation. For any recommended treatment, the parent shall pay or utilize funding sources such as medical coupons, if the parent is unable to pay.

Cooperate with the establishment of paternity.

Upon reunification, parents to engage with IFPS services to develop an on-going plan to ensure cleanliness of home environment and connect parents to long-term housing resources.

- DCYF shall provide and the child shall participate in the following examinations, evaluations, or services:

Routine medical and dental care and follow recommendations.

Birth-Three early intervention services and follow recommendations.

Upon return home, enrollment in Childhaven therapeutic daycare or an equivalent daycare.

Upon return home, infant mental health services.

- SAY evaluation, and the child was notified that he/she may request an attorney.

The child is 12 or older and agrees to the services was notified of the services was notified that he/she may request an attorney.

4.6 Educational Liaison

(Name) _____ is appointed as the child's educational liaison to carry out the responsibilities described in RCW 13.34.046. The educational liaison must complete criminal background checks required by DCYF.

4.7 **Visitation:** ** Pending disposition order.*

If disposition is heard separately, reserved pending dispositional hearing [issue for dispositional hearing is whether the maternal grandmother can supervise visitation if the children are placed with her]

The specific visitation plan between the child(ren) and mother shall be:
 as set forth in the visitation attachment.

as follows:

The Court heard testimony and argument re: this temporary visit provision pending the dispositional hearing.

The specific visitation plan between the child(ren) and alleged father shall be:

as set forth in the visitation attachment.

The court finds the

as follows: 1x/times per week for two hours each visit, supervised by the Department or its designee. Visits may be in the community. Parents shall confirm visit by 5pm the night before visit or visit will not occur. Parents shall arrive at visit site prior to children being transported to visits.

Children need stability - predictability and

shows that this temporary order is in the

Following 3 consecutive weeks of visit attendance/confirmation, visits shall increase to 2x/week for 2 hours, supervised by DCYF/designee.

children's best interests

Following 3 consecutive weeks of successful 2x/week for 2 hour visits, the parents no longer will be required to confirm attendance in advance or arrive at site prior to visit. Should the parents start missing visits, the Department has authority to require advance confirmation/arrival similar to the above.

Visitation between the parent/custodian Scott James Greer and the children may be expanded upon agreement of the parties.

Dept will provide time cards for Dept-provided phone and ensure it works

The specific plan for visitation or contact between the child and child's siblings shall be:
 as set forth in the visitation attachment.

as follows:

4.8 **Restraining Order:**

The court entered a separate restraining order pursuant to RCW 26.44.063.

4.9 **Parental Cooperation:**

The parents shall cooperate with reasonable requests by DCYF and provide DCYF with income and asset information necessary to establish and maintain the child's eligibility for medical care, evaluations, counseling and other remedial services, foster care reimbursement, and other related services and benefits.

4.10 **Health Care:**

DCYF with custody of the child shall have full power to authorize and provide all necessary, routine and emergency medical, dental, or psychological care as recommended by the child's treating doctor or psychologist, subject to review by the court, as needed.

4.11 Release of Information:

All court-ordered service providers shall make all records and all reports available to DCYF, attorney for DCYF, parent's attorney, the guardian ad litem and attorney for the child. Parents shall sign releases of information and allow all court-ordered service providers to make all records available to DCYF and the guardian ad litem or attorney for the child. Such information shall be provided immediately upon request. All information, reports, records, etc., relating to the provision of, participation in, or parties' interaction with services ordered by the court or offered by DCYF may be subject to disclosure in open court unless specifically prohibited by state or federal law or regulation.

DCYF may continue to make reasonable efforts to locate and investigate an appropriate relative or other suitable person who is available and willing to care for the child, and is authorized to share information about the child, as necessary, with potential relative or other suitable person placement resources to determine their suitability and willingness as a placement for the child.

4.12 Reports:

DCYF shall submit a report for the next review hearing to the court and to the parties in a timely manner.

4.13 Termination Petition:

Due to abandonment of the child and/or existence of aggravated circumstances as found by this court, filing of a termination petition is in the child's best interests and DCYF is not required to make reasonable efforts to reunify the family. DCYF shall file within _____ days a petition to terminate the parent-child relationship between the child's mother father and the child. A permanency planning review hearing shall be held within thirty (30) days.

4.14 Child's Indian Status:

Any party who subsequently receives information that provides a reason to know the child is an Indian child under 25 C.F.R. § 23.107 shall inform the court.

4.15 All parties shall appear at the next scheduled hearing (see page one).

4.16 Other:

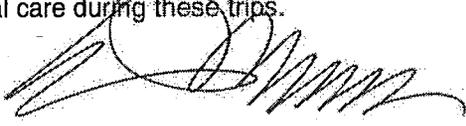
The permanent plan for the child is to return home to the mother father other:

The department shall notify the parents within 1 business day if there is a change in placement.

DCYF is authorized to consent to travel by the child with their licensed foster parent/relative caregiver/other suitable person placement for up to two weeks within Washington State or to other states within the United States. If the travel will interfere with scheduled visits between the child and a parent, DSHS shall give 10 calendar days' notice to that parent so that a plan for make-up visits can be made. The licensed foster parent/relative caregiver/other suitable person placement may consent to emergency medical and dental care during these trips.

Dated: _____

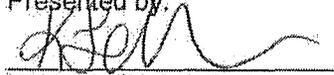
3/27/2019



Judge/Commissioner

JUDGE ELIZABETH J. BERNIS

Presented by:



KATELYNN C. LOHR
Assistant Attorney General
WSBA #47921

Notice: A petition for permanent termination of the parent-child relationship may be filed if the child is placed out-of-home under an order of dependency. (RCW 13.34.180.)

Copy Received; Approved for Entry; Notice of Presentation Waived:

Signature of **Child**

Signature of Child's Lawyer

Print Name

WSBA No.

Signature of **Mother**

Pro Se, Advised of Right to Counsel

Signature of Mother's Lawyer

Print Name

WSBA No.

Signature of **Father**

Pro Se, Advised of Right to Counsel

Signature of Father's Lawyer

Print Name

WSBA No.

Signature of **Guardian or Legal Custodian**

Pro Se, Advised of Right to Counsel

Signature of Guardian or Legal Custodian's Lawyer

Print Name

WSBA No.

Signature of Child's **GAL**

Signature of Lawyer for the Child's GAL

Print Name

Print Name

WSBA No.

Signature of **DCYF Representative**

Signature of DCYF Representative's Lawyer

Print Name

Print Name

WSBA No.

Signature of **Tribal Representative**

Signature

Print Name

Print Name

WSBA No.

Lawyer for _____

Scott Green

[Handwritten signature]

Matthew Bjork

54089

See Page 12A

Copy Received; Approved for Entry; Notice of Presentation Waived:

Signature of **Child**

 Signature of Child's Lawyer

Print Name WSBA No.

 Signature of **Mother**
 Pro Se, Advised of Right to Counsel

 Signature of Mother's Lawyer

Print Name WSBA No.

 Signature of **Father**
 Pro Se, Advised of Right to Counsel

 Signature of Father's Lawyer

Print Name WSBA No.

 Signature of **Guardian or Legal Custodian**
 Pro Se, Advised of Right to Counsel

 Signature of Guardian or Legal Custodian's Lawyer

Print Name WSBA No.

Virginia Whalen, mom
 Signature of Child's **GAL**

MR
 Signature of Lawyer for the Child's GAL

Virginia Whalen
Print Name

Berri's 32874
Print Name WSBA No.

Signature of **DCYF Representative**

Signature of DCYF Representative's Lawyer

Print Name

Print Name WSBA No.

 Signature of **Tribal Representative**

 Signature

Print Name

Print Name WSBA No.
Lawyer for _____

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**AGREED DEPENDENCY/DISPOSITIONAL STATEMENT
WAIVER OF RIGHT TO APPEAR IN COURT FOR PRESENTATION
AND ENTRY OF AGREED ORDER OF DEPENDENCY**

If the father, mother or legal guardian/custodian agrees to dependency and desires to waive presentation and not appear in court for entry of this order, the following certification shall also be signed.

The undersigned declares that:

I have read or been told the contents of this Agreed Order of Dependency and Disposition, and I agree that the order is accurate and should be signed by the court. I understand the terms of the order being entered, including my responsibility to participate in remedial services as provided in the dispositional order.

I understand that entry of this order starts a process that could result in the filing of a petition to terminate my relationship with my child if I fail to comply with the terms of this order and/or I fail to substantially remedy the problems that caused the child's out-of-home placement.

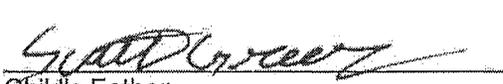
I understand also that entry of this order is an admission that the child is dependent within the meaning of RCW 13.34.030 and it shall have the same legal effect as a finding by the court that the child is dependent by at least a preponderance of the evidence. I understand that I will not have the right in any subsequent proceeding to challenge or dispute the fact that the child was found to be dependent.

I stipulate and agree to entry of this order, and do so knowingly and willingly without duress, misrepresentation or fraud by any other party.

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

Child's Mother

Date/Place of Signature



Child's Father

3/26 Agurn, WA

Date/Place of Signature

Child's Legal Guardian/Custodian

Date/Place of Signature

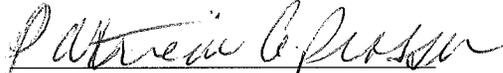
CERTIFICATE OF SERVICE

The undersigned certifies under the penalty of perjury under the laws of the State of Washington that on the below date, the original documents to which this Declaration is affixed/attached, was filed in the Court of Appeals, Division One, under Case No. 78790-0-I, and a true copy was e-mailed or otherwise caused to be delivered to the following attorneys or party/parties of record at the e-mail addresses as listed below:

1. Dana Nelson, Nielsen Broman & Koch, PLLC,
sloanej@nwattorney.net; and nelsond@nwattorney.net; and
2. Dependency CASA Program, casa.group@kingcounty.gov.

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 29th day of March, 2019, at Seattle, WA.


PATRICIA A. PROSSER
Legal Assistant
Office Identification #91016

ATTORNEY GENERAL'S OFFICE, SHS, SEATTLE

March 29, 2019 - 3:00 PM

Transmittal Information

Filed with Court: Court of Appeals Division I
Appellate Court Case Number: 78790-0
Appellate Court Case Title: Dependency of: Z.J.G. 9/3/16, Scott James Greer, Petitioner v. DSHS, Respondent
Superior Court Case Number: 18-7-02176-4

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