

08744-1

08744-1

NO. 68744-1-I

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

KATHIE COSTANICH,

Appellant,

v.

STATE OF WASHINGTON, DEPARTMENT OF SOCIAL AND
HEALTH SERVICES (DSHS), SANDRA DURON and JOHN DOE
DURON, CAROL SCHMIDT and JOHN DOE SCHMIDT, BEVERLY
PAYNE and JOHN DOE PAYNE, JAMES BULZOMI, ROBERT STUTZ
and JANE DOE STUTZ, INGRID McKENNY and JOHN DOE
McKENNY,

Respondents.

RESPONDENTS' BRIEF

ROBERT W. FERGUSON
Attorney General

THOMAS R. KNOLL, JR.
Assistant Attorney General
WSBA 38559
7141 Cleanwater Drive SW
PO Box 40126
Olympia, WA 98504-0126
360-586-6300

FILED
COURT OF APPEALS DIV I
STATE OF WASHINGTON
2013 JAN 29 PM 1:16

ORIGINAL

TABLE OF CONTENTS

I. INTRODUCTION.....1

II. ISSUES.....4

 1. Whether Ms. Costanich had standing to bring a claim of negligent investigation as a dependency guardian where the court order did not terminate the mother’s parental rights, maintained visitation, and kept DSHS the supervising agency?

 2. Could Ms. Costanich meet the elements of a *de facto* parent when she was a paid foster parent, the parental rights of the children’s mother had not been terminated, and the foster children were subject to the jurisdiction of the Kalispel tribe under the Indian Child Welfare Act?

 3. Did DSHS make a “harmful placement” decision concerning EN and BN when Ms. Costanich agreed to the June 2002 visitation order that allowed Indian foster children EN and BN to reside with the Kalispel tribe during July and August of 2002?

 4. Does the record contain any evidence that the Kalispel Tribe entered its Agreed Visitation Order with Ms. Costanich because of DSHS’ abuse investigation?

 5. Does the pursuit of a referral of child abuse against a licensed foster parent based on substantial allegations that she subjected foster children to physical abuse and vulgar profanity constitute utterly atrocious conduct sufficient to meet the threshold for actionable misconduct constituting the tort of outrage?

III. COUNTER STATEMENT OF FACTS.....5

 A. History Of Costanich Foster Home.....5

B.	Alleging Physical And Emotional Abuse Of Foster Children Referral (Number 28).....	6
C.	The Investigation	7
D.	Appeal Of Abuse Finding And License Revocation.....	10
E.	Location Of Costanich Foster Children During And After Abuse Investigation	13
F.	Summer Vacation With The Kalispel Tribe	14
G.	Procedural History Of Present Matter.....	15
IV.	ARGUMENT	18
A.	Standard Of Review	18
B.	Ms. Costanich Lacks Standing To Bring A Claim For Negligent Investigation Where The Court Has Not Terminated The Mother’s Parental Rights, Has Maintained Visitation, And Kept DSHS As The Supervising Agency Over Children In A Dependency Guardianship	19
C.	<i>De Facto</i> Parentage Does Not Apply To Negligent Investigation Claims And Must Be Established Prior To Allegations That Specific Duties Are Owed To Them	20
D.	Ms. Costanich’s Negligent Investigation Claim Was Properly Dismissed Because There Is No Evidence That DSHS Made A Harmful Placement	25
1.	DSHS Conducted A Complete And Unbiased Abuse Investigation Against Ms. Costanich.....	27
2.	DSHS’ Investigation Did Not Result In The Harmful Placement Of EN And BN Such As Removing Them From The Care Of Ms. Costanich	28

3.	There Is No Evidence That Ms. Costanich’s Agreed Visitation Order Was A By Product Of The DSHS Abuse Investigation	32
4.	The Summer Vacation Was Consistent With Original Dependency Guardianship Orders	34
E.	Ms. Costanich Has Failed To Identify Facts Sufficient To Rise To The Level Of Outrage And Therefore Her Claim Should Be Dismissed As A Matter Of Law.....	36
1.	First Element Of Outrage Claim Not Met.....	37
2.	Second Element Of Outrage Claim Not Met.....	40
3.	Third Element Of Outrage Claim Not Met.....	41
V.	CONCLUSION	41
VI.	APPENDIX	
a.	Declaration of John Seward	
b.	Declaration of Kevin Davies	
c.	Agreed Visitation Order	
d.	Transfer of Jurisdiction to the Kalispel Court	
e.	Dependency Guardianship Order - EN	
f.	Dependency Guardianship Order - BN	
g.	Payments to Costanich for care of EN & BN	
h.	RCW's	

TABLE OF AUTHORITIES

Cases

<i>A.H. v. M.P.</i> , 447 Mass. 828, 857 N.E.2d 1061 (2006).....	25
<i>Babcock v. State</i> , 112 Wn.2d 83, 768 P.2d 481 (1989), <i>aff'd in pertinent part on reconsideration</i> , 116 Wn.2d 596, 809 P.2d 143 (1991).....	38
<i>Baldwin v. Sisters of Providence, Inc.</i> , 112 Wn.2d 127, 769 P.2d 298 (1989).....	18
<i>Banks v. Nordstrom, Inc.</i> , 57 Wn. App. 251, 787 P.2d 953, <i>review denied</i> , 115 Wn.2d 1008, 797 P.2d 511 (1990)	38
<i>Bennett v. Hardy</i> , 113 Wn.2d 912, 784 P.2d 1258 (1990).....	21
<i>Benoy v. Simons</i> , 66 Wn. App. 56, 831 P.2d 167, <i>review denied</i> , 120 Wn.2d 1014 (1992).....	38
<i>Blackwell v. Dep't of Soc. & Health Svcs.</i> , 131 Wn. App. 372, 127 P.3d 752 (2006).....	20
<i>Celotex Corp. v. Catrett</i> , 477 U.S. 317, 106 S. Ct. 2548, 91 L. Ed. 2d 265, (1986).....	18
<i>Columbia Pictures Indus., Inc. v. Prof'l, Inc.</i> , 944 F.2d 1525 (9th Cir. 1991), <i>aff'd</i> , 508 U.S. 49 (1993).....	18
<i>Costanich v. Dep't of Soc. & Health Svcs.</i> , 164 Wn.2d 925 (2008).....	13
<i>Costanich v. Dep't of Soc. & Health Svcs.</i> , 136 Wn. App. 1053, 2007 WL 211203 (2007).....	12

<i>Costanich v. Dep't of Soc. & Health Servs.</i> , 627 F.3d 1101 (2010).....	15, 16
<i>Costanich v. State Dep't of Soc. & Health Servs.</i> , 138 Wn. App. 547, 156 P.3d 232 (2007).....	5, 11
<i>Ducote v. Dep't of Soc. & Health Servs.</i> , 167 Wn.2d 697, 222 P.3d 785 (2009).....	19, 21
<i>Forsberg v. Pac. Nw. Bell Tel. Co.</i> , 840 F.2d 1409 (9th Cir. 1988)	19
<i>Grimsby v. Samson</i> , 85 Wn.2d 52, 530 P.2d 291 (1975).....	36
<i>Hartley v. State</i> , 103 Wn.2d 768, 698 P.2d 77 (1985).....	33
<i>Hudesman v. Foley</i> , 73 Wn.2d 880, 441 P.2d 532 (1968).....	18
<i>In re Beach v. Johnston</i> , 159 Wn. App. 686, 246 P.3d 845 (2011).....	23
<i>In re Parentage of L.B.</i> , 155 Wn.2d 679, 122 P.3d 161 (2005).....	21, 24
<i>In re Parentage of M.F.</i> , 168 Wn.2d 528, 228 P.3d 1270 (2010).....	22
<i>Johnson v. Dep't of Soc. & Health Servs.</i> , 80 Wn. App. 212, 907 P.2d 1223 (1996).....	18
<i>Keates v. City of Vancouver</i> , 73 Wn. App. 257, 869 P.2d 88 (1994).....	40
<i>La Mon v. Butler</i> , 112 Wn.2d 193, 770 P.2d 1027 (1989).....	19
<i>M.W. v. Dep't of Soc. & Health Servs.</i> , 149 Wn.2d 589, 70 P.3d 954 (2003).....	26

<i>Miles v. CPS</i> , 102 Wn. App. 142, 6 P.3d 112 (2000).....	33
<i>Morgan v. Dep't of Soc. & Health Servs.</i> , 99 Wn. App. 148, 992 P.2d 1023 (2000).....	10, 40
<i>Olympic Fish Prods., Inc. v. Lloyd</i> , 93 Wn.2d 596, 611 P.2d 737 (1980).....	18
<i>Rice v. Janovich</i> , 109 Wn.2d 48, 742 P.2d 1230 (1987).....	36
<i>Roberson v. Perez</i> , 156 Wn.2d 33, 123 P.3d 844 (2005).....	passim
<i>Steinbock v. Ferry County Public Utility Dist. No. 1</i> , 165 Wn. App. 479, 269 P.3d 275 (2011).....	36
<i>Tamas v. State of Washington</i> , 630 F.3d 833 (9th Cir. 2010)	37
<i>Tyner v. Dep't of Soc. & Health Servcs.</i> , 141 Wn.2d 68, 1 P.3d 1148 (2000).....	29
<i>Vacova Co. v. Farrell</i> , 62 Wn. App. 386, 814 P.2d 255 (1991).....	19
<i>Waller v. State</i> , 64 Wn. App. 318, 824 P.2d 1225, <i>review denied</i> , 119 Wn.2d 1014 (1992).....	36, 38
<i>Woodward v. Steele</i> , 32 Wn. App. 152, 646 P.2d 167 (1982).....	41

Statutes

25 U.S.C. § 1903(9).....	23
25 U.S.C. § 1911(b).....	14
42 U.S.C. § 1983.....	15

RCW 13.36.040	22
RCW 26.33	22
RCW 26.44.010	19, 20, 21
RCW 26.44.050	21, 27, 39
RCW 26.44.125	10, 11

Rules

CR 56	18
CR 56(c).....	18
RAP 2.5(a)(2).....	19

Regulations

WAC 388-148-0095(2)(b)	11, 40
WAC 388-15-130(3)(d)	10
WAC 388-15-130(3)(g)	10, 40

I. INTRODUCTION

Kathie Costanich (Ms. Costanich) is a former State of Washington foster parent. In July 2001, the Department of Social and Health Services (DSHS) investigated a referral of child abuse and neglect regarding Ms. Costanich, which concluded with a finding of emotional abuse. DSHS then revoked Ms. Costanich's foster care license. Ms. Costanich alleges that DSHS' investigation that resulted in a founded finding of emotional abuse and revocation of her foster care license amount to tortious conduct. Ms. Costanich sued DSHS in King County Superior Court under the following legal theories: (1) intentional infliction of emotional distress; (2) negligent investigation; (3) malicious prosecution; and (4) abuse of process. All her claims were dismissed on summary judgment. She now appeals dismissal of intentional infliction of emotional distress and negligent investigation.¹

In December 2001, Ms. Costanich was determined to have emotionally abused children in her care by calling them names such as: asshole, cock sucker, son of a bitch, bitch, fucker, slut, fucking cunt, and nigger. Six foster children in the Costanich home were interviewed about

¹ The trial court never concluded that Ms. Costanich had standing to sue for negligent investigation prior to this claim being dismissed. The court merely noted that there was a material question of fact as to whether Ms. Costanich has standing either as a dependency guardian or as a *de facto* parent. Ultimately, the court was able to dismiss this claim because there was no proof of a "harmful placement" on the part of DSHS.

the name calling and five independently confirmed the allegations. Ms. Costanich admitted to frequently using the words “fuck”, “son of a bitch” and telling an African American boy in her care to move his “black ass.” She also claimed that the investigating social worker fabricated evidence against her in order to reach a founded finding. Over ten years later, the former Costanich foster children still hold fast to their prior statements of extreme verbal abuse. *See* Appendix (App.) A and B. Ms. Costanich’s appellate record to the Court of Appeals in 2007 regarding her foster care license revocation and the appellate record to the Ninth Circuit in 2010 regarding the dismissal of her § 1983 civil rights claim did not contain evidence that the former foster children in her care had reaffirmed the truth of the abuse allegations that brought about the revocation of Ms. Costanich’s foster care license. The new reaffirming abuse statements are contained in App. A and B.

The trial court properly granted DSHS’ motion for summary judgment based on: 1) the time spent by foster children EN and BN with the Kalispel Tribe during July and August of 2002 was the result of an agreed visitation order signed by Ms. Costanich and her attorney, not an involuntary placement by DSHS; 2) the order transferring jurisdiction of EN and BN’s dependency cases to the Kalispel Tribe in April 2002 and the Agreed Visitation Order of June 2002 is not a harmful placement as a

matter of law; and 3) the actions taken by DSHS social workers in pursuing a referral of child abuse and neglect against Ms. Costanich's foster care license does not satisfy the threshold for the tort of outrage, when the children stated that the abusive language and conduct had occurred and still maintain the veracity of those allegations today.

II. ISSUES

1. Whether Ms. Costanich had standing to bring a claim of negligent investigation as a dependency guardian where the court order did not terminate the mother's parental rights, maintained visitation, and kept DSHS the supervising agency?

2. Could Ms. Costanich meet the elements of a *de facto* parent when she was a paid foster parent, the parental rights of the children's mother had not been terminated, and the foster children were subject to the jurisdiction of the Kalispel tribe under the Indian Child Welfare Act?

3. Did DSHS make a "harmful placement" decision concerning EN and BN when Ms. Costanich agreed to the June 2002 visitation order that allowed Indian foster children EN and BN to reside with the Kalispel tribe during July and August of 2002?

4. Does the record contain any evidence that the Kalispel Tribe entered its Agreed Visitation Order with Ms. Costanich because of DSHS' abuse investigation?

5. Does the pursuit of a referral of child abuse against a licensed foster parent based on substantial allegations that she subjected foster children to physical abuse and vulgar profanity constitute utterly atrocious conduct sufficient to meet the threshold for actionable misconduct constituting the tort of outrage?

III. COUNTER STATEMENT OF FACTS²

A. History Of Costanich Foster Home

Ms. Costanich was first licensed as a foster parent for the State of Washington on October 31, 1983. CP at 631. Her initial license only allowed “one male foster child between the ages of 11 and 14.” CP at 631. By March 23, 2000, Ms. Costanich’s foster license had been amended to allow them a maximum of six foster children of either sex ranging in ages from 0-18. CP at 631. Over time, the Costanich foster home became known as a placement for “violent, sexually aggressive youth (SAY) and medically fragile infants.” *Costanich v. State Dep’t of Soc. & Health Servs.*, 138 Wn. App. 547, 551, 156 P.3d 232 (2007). She also became known as a foster parent home that “received numerous Child Protective Services (CPS)/Licensing complaints with respect to the care and treatment of foster children placed in [their] home.” CP at 631. As of June 11, 2001, there had been a total of 27 CPS/Licensing referrals made

² Ms. Costanich’s Statement of Facts and arguments contained within the body of her brief rely heavily on a declaration signed by her on April 8, 2012. CP at 1510-30. This is particularly true when she argues about why the Kalispel Tribe decided to have EN and BN stay on the reservation in July 2002. DSHS sought to strike this declaration and the lower court made the following finding: “The Declaration of Kathie Costanich is laced with hearsay, conclusory assertions, and irrelevancies. Rather than striking the declaration in the wholesale manner advocated by DSHS, however, the court, to the best of its ability has considered Ms. Costanich’s declaration to the extent that it offers admissible and relevant evidence for the purpose of understanding her perspective and for the purpose of viewing the evidence and all reasonable inferences from the evidence in the light most favorable to her.” CP at 1662-80. It remains DSHS’ position that this declaration should be disregarded or at a minimum, limited to showing her subjective state of mind.

against the Costanich home.³ CP at 632-38. These referrals consisted of licensing concerns, physical abuse and neglect, sex abuse, and emotional abuse.

B. Alleging Physical And Emotional Abuse Of Foster Children Referral (Number 28)

On July 11, 2001, DSHS received the 28th abuse referral against the Costanich home. CP at 639. This referral alleged that Ms. Costanich both physically and emotionally abused the foster children in her care. CP at 1391-92. The referent to DSHS was Richard Crabb. He learned the details of the abuse allegation from Kevin Davies who was a foster child living in the Costanich home. At the time of the referral, Mr. Crabb was Mr. Davies therapist. CP at 110. Based on Mr. Crabb's referral, DSHS recorded three instances of possible abuse in the Costanich home. These incidents included (1) Ms. Costanich physically assaulting foster child FW and saying "stop fucking lying, tell the truth, I'll kill you bastard" (CP at 1391-92); (2) Ms. Costanich being physical with foster child PT for bed wetting and telling him to "get his black ass in and clean his room" (CP at 1392); and (3) Ms. Costanich's copious swearing, including telling foster child EN to "clean your fucking room, you cunt." CP at 1392.

³These 27 DSHS referrals consisted of 8 claims of physical abuse; 6 claims of physical neglect; 4 claims of sex abuse; 28 licensing issues; 3 claims of emotional abuse. During the time of these referrals, Ms. Costanich was alleged to have cussed at her foster children (CP at 632); used derogatory names against a foster child such as "bastard" (CP at 634); and swearing in front of the foster children (CP at 634).

At the time of this referral, there were six dependent foster children living in the Costanich home; FW (age 17); KD (age 16); JS (age 12); PT (age 10); EN (age 8); and BN (age 4).⁴ CP at 109, 119.

C. The Investigation

The July 11 abuse referral was assigned to DSHS investigator Sandy Duron (Ms. Duron). CP at 415. Ms. Duron personally interviewed each foster child residing in the Costanich home and reviewed extensive documentation. CP at 415, 476, 478-83. With the exception of BN, all stated that Costanich regularly used profanity such as “fuck” and “bitch” and would often tell the children to “go to your fucken room.” CP at 479. Four year old BN stated she learned the words “fuck you”, “shit”, “fucker” and “asshole” from Ms. Costanich. CP at 479. The children corroborated that Ms. Costanich called eight year old EN a “cunt.” Also they confirmed that ten year old PT was told to “get his black ass down to his room” and that urine soaked sheets were rubbed on his face. CP at 478-79. Finally, the children reported that Ms. Costanich kicked them and/or pulled their hair. CP at 478-79, 482.

Ms. Duron also interviewed the Costanichs’ assistants. CP at 479, 481-82. They confirmed Ms. Costanich used profanity, such as “fuck”

⁴ FW was in a dependency guardianship with Ms. Costanich. KD, JS, and PT were identified as sexually aggressive youth (SAY). EN and BN were in dependency guardianships with Ms. Costanich. See App. E and F.

and “bitch,” around the children. CP at 479, 481-82. Ms. Hill also confirmed that Ms. Costanich called EN a “cunt” and a “bitch.”⁵ CP at 481. Ms. Duron interviewed friends and relatives of Ms. Costanich, as well as PT’s Guardian ad Litem and the girls’ psychiatrist, Dr. Vincent. CP at 482-83. With the exception of Dr. Vincent, these witnesses all confirmed that they observed Ms. Costanich direct profanity at the children. CP at 480-83.

DSHS stopped placing children in the Costanich home on July 18, 2001, resulting in no new children being placed in their home. CP at 454, 629, 1320. On July 19, 2001, Ms. Duron personally interviewed Ms. Costanich.⁶ CP at 452-53. Ms. Duron asked Ms. Costanich about the allegations in the referral and further information disclosed during the investigation. CP at 452-53. Ms. Costanich confirmed she used the words “fuck”, “son of a bitch”, and “black ass”. CP at 453. A representative of the Washington foster parent association, Larry Stevens, stated Ms. Costanich used “fuck” as “every noun, verb, adjective there is.” CP at 453. Ms. Costanich and Larry Stevens then laughed about the use of this word. CP at 453.

⁵ This statement was never repudiated by Ms. Hill. CP at 568.

⁶ Also at this interview was Ms. Costanich’s husband, Ken Costanich and Larry Stevens, a representative of the Foster Parent Association of Washington State (FPAWS). CP at 452.

DSHS held several meetings throughout the course Ms. Duron's investigation of Ms. Costanich to discuss whether the children should be removed from the home. CP at 416-17. Present at these various meetings were licensing workers, the children's social workers, supervisors, Deputy Regional Administrator Robert Stutz, Assistant DSHS Secretary Roslyn Oreskovich, and the Seattle Assistant Attorney General Division Chief for Social and Health Services, Noella Rawlings. CP at 416-17, 650.

In a meeting held on October 3, 2001, the group suggested that an outside consultant be hired to give input as to the allegations. CP at 417. Consequently, DSHS retained Clinical Psychologist Beverly Cartwright, to opine as to the effect humiliating and demeaning verbal abuse would have on foster children that have a history of abuse. CP at 417, 492. Dr. Cartwright concluded that "[p]erjorative statements can erode a child's confidence, a child's will to succeed and capacity to change This behavior can also maintain attachment difficulties, undermines relationships with authority figures, and exacerbate poor self-management styles that include not [*sic*] withdrawal and suppression of emotions, but also acting out." CP at 493-94.

In 2001, the definition of child abuse that applied to foster parent licensure included cruel or inhumane acts, "regardless of observable injury" and actions that injured or created a risk to a child's mental health.

WAC 388-15-130(3)(d) and (g). Additionally, recent case law provided that profanity could constitute humiliating discipline. *Morgan v. Dep't of Soc. & Health Servs.*, 99 Wn. App. 148, 155, 992 P.2d 1023 (2000). Based on the interviews, document review, group meetings, consultation with her supervisor Beverly Payne, and Dr. Cartwright's report, Ms. Duron determined that the referral for child abuse and neglect was founded as to emotional abuse, but inconclusive as to physical abuse. CP at 119, 706. Ms. Duron personally informed Ms. Costanich of these findings on November 2, 2001, and that she could meet with members of DSHS to discuss the findings. CP at 417. Ms. Costanich was also informed of the findings by letter dated December 18, 2001. CP at 700.

D. Appeal Of Abuse Finding And License Revocation

By agreement with Ms. Costanich and pursuant to the requirements of RCW 26.44.125, Kyle Smith (Ms. Smith), DLR/ CPS section manager, agreed to automatically review Ms. Costanich's founded finding of abuse. CP at 700. Although not typical in such a review, Ms. Smith also had her assistant, Sonja Heard, contact several additional witnesses whose names were supplied by Ruth Graham, foster parent liaison.⁷ CP at 701. After further review and consideration of the additional witness statements, Ms. Smith upheld the finding of emotional abuse. CP at 701, 714. Given

⁷ A listing of all the additional witnesses and a summary of their statements can be found at CP at 707 -12.

Ms. Smith's sustained finding of emotional abuse, Ingrid McKinney, licensor of the Costanich foster home, revoked the foster care license pursuant to WAC 388-148-0095(2)(b).

Ms. Costanich appealed the emotional abuse finding and revocation decision under RCW 26.44.125. *Costanich*, 138 Wn. App. at 553. The requested administrative hearing was conducted over 19 days from September 23, 2002, to January 14, 2003. CP at 500. Although the Administrative Law Judge (ALJ) found that Ms. Costanich used profanity, such as "fuck", "bitch", "asshole", and "black ass", and touched urine soaked sheets to 10 year old PT's face, the ALJ did not find that Ms. Costanich's actions rose to the level of emotional abuse because there was no showing that the foster children in question sustained injury. CP at 508, 525-26. Accordingly, the ALJ overturned DSHS' finding of emotional abuse and revocation of the foster care license. CP at 526. DSHS appealed the ALJ's decision to the Department of Social and Health Services Board of Appeals. CP at 529. The Board of Appeals Review Judge (in a lengthy opinion) overturned the ALJ decision regarding emotional abuse and made the following conclusions: (1) Ms. Costanich "abused children by saying 'I'll kill you bastard' to FW; (2) telling PT to "move his black ass"; and (3) "calling a child a bitch and cunt, and swearing at children." CP at 608. Also, the judge concluded

that Ms. Costanich's foster care license "shall be revoked because [she] violated six foster care licensing rules." CP at 608.

After the Review Judge's decision, Ms. Costanich appealed to the Superior Court of Washington for King County. CP at 610. The Superior Court reversed the Review Judge's decision because he had made additional findings of fact that were inconsistent with the ALJ's decision. CP at 611-12. However, the Superior Court also specifically found there was substantial evidence Ms. Costanich swore at the children and this was "theoretically" a ground for revocation. CP at 612.

DSHS appealed and the Court of Appeals affirmed the Superior Court. *Costanich v. Dep't of Soc. & Health Servs.*, 136 Wn. App. 1053, 2007 WL 211203 (2007) (unpublished opinion). However, the Court also held that DSHS's actions were initially justified and on that basis reversed the Superior Court's award of attorney fees to Ms. Costanich's attorney. *Id.*

Ms. Costanich moved for reconsideration of the decision on attorney fees. *Costanich*, 138 Wn. App. 547. On reconsideration this Court reiterated that DSHS was substantially justified in its initial concerns for the children, but ruled that since the Review Judge was part of DSHS, and he acted in an arbitrary and capricious manner by exceeding his authority, the award of attorney fees was reinstated. *Id.* at 564.

Ms. Costanich then appealed the amount of the award of attorney fees to the Washington Supreme Court. She did not prevail. *Costanich v. Dep't of Soc. & Health Servs.*, 164 Wn.2d 925 (2008).

E. Location Of Costanich Foster Children During And After Abuse Investigation

Of the six foster children in the Costanich home at the start of the abuse investigation, DSHS decided to place KD, JS, and PT in other foster homes where they would not be subject to Ms. Costanich's emotional abuse.⁸ CP at 3. The young sisters EN and BN and the oldest boy FW (who was almost ready to age out of the foster care system) remained with the Costanichs after completion of the subject abuse investigation. CP at 3.

Although EN and BN remained in the Costanich home, efforts were made by DSHS to remove the girls from Ms. Costanich's control. The social worker for EN and BN, Jackie Timentwa-Wilson, had significant concerns about these two girls continuing to live in the Costanich home. CP at 658. Ms. Timentwa-Wilson and an Assistant Attorney General filed a motion to terminate Ms. Costanich's dependency guardianship for EN and BN in King County. CP at 657-59. Prior to the King County Juvenile Court hearing on DSHS' motion to terminate

⁸ DSHS also decided JS had to be removed from the Costanich home because he offended against another foster child while visiting another foster home and DSHS was concerned with JS remaining in the Costanich home around EN and BN. CP at 650.

guardianship of EN and BN, the Kalispel Tribe filed a motion to take jurisdiction of the girls' dependency cases. (App. D).

Ms. Costanich agreed to the Tribe's motion to transfer jurisdiction.⁹ CP at 1102-03. As a result of Ms. Costanich's agreement with the Kalispel Tribe, the DSHS motion to terminate guardianship was never heard by the King County Juvenile Court. CP at 659. Accordingly, EN and BN were never removed from Ms. Costanich's care by DSHS. CP 1606. Despite maintaining jurisdiction over EN and BN's dependency cases, the Kalispel Tribe requested that DSHS provide courtesy supervision for both girls, but DSHS no longer had input into the decisions of the tribe after they assumed jurisdiction. CP at 659.

F. Summer Vacation With The Kalispel Tribe

By June 2002, Ms. Costanich and the Kalispel Tribe entered into an "Agreed Visitation Order." (App. C). The order provided for EN and BN to go to the Kalispel Reservation for a 30 day (July to August 2002) visit which was meant to be a "summer vacation." CP at 1594, 1606. The vacation allowed EN and BN an opportunity to stay with their extended family members on the Kalispel Reservation and to meet certain Kalispel

⁹ Ms. Costanich claims to have had no choice in the decision to transfer EN and BN's dependency case to the Kalispel Tribe. This is an inaccurate statement. She could have objected to the transfer pursuant to the Indian Child Welfare Act, 25 U.S.C. § 1911(b). Instead of objecting, Ms. Costanich remained silent. *See* Order of Dismissal on Reconsideration of Summary Judgment Order, footnote 10, CP 1674-1675.

tribal members. They also were included in tribal youth events and other exciting events such as the Kalispel Tribal Pow Wow. CP at 1594-95.

DSHS was not a party to the Tribe's visitation order, nor did DSHS provide any input or opposition to the creation of the order. CP at 659, 1593-96. At the end of the 30 day summer vacation, the Tribe returned both EN and BN to the Costanich home. CP at 659, 1606. EN remained in the Costanich home until June 2010. BN still resides with Ms. Costanich. CP at 1606.

G. Procedural History Of Present Matter

Pending Ms. Costanich's appeal of her abuse finding and licensing revocation, she filed federal civil rights claims¹⁰ and other state tort claims¹¹ against DSHS and six individually named defendants. CP at 1, *Costanich v. Dep't of Soc. & Health Servs.*, 627 F.3d 1101, 1106 (2010). The lawsuit was initially filed in the Superior Court of the State of Washington for King County on December 17, 2004. "DSHS removed the action to federal court, where it was held in abeyance pending the state court appeal." *Costanich*, 627 F.3d at 1106. Once the state court license revocation appeal concluded, DSHS moved for summary judgment

¹⁰ 42 U.S.C. § 1983; CP at 7.

¹¹ The state tort claims included: negligent infliction of emotional distress; negligent investigation; malicious prosecution; and abuse of process. CP at 5-7. The negligent infliction claims was later amended to intentional infliction of emotional distress. CP at 359.

claiming absolute immunity and qualified immunity. *Id.* at 1106-07. Ms. Costanich moved for summary judgment on her § 1983 claims and argued that Ms. Duron deprived her of due process rights because Ms. Duron fabricated evidence during the abuse investigation. *Id.* at 1107. The District Court granted summary judgment to DSHS on the § 1983 claims, but declined to exercise supplemental jurisdiction over the state court causes of action.¹² *Id.* Both DSHS and the six individually named defendants appealed to the Ninth Circuit Court of Appeals. *Id.* While the district court's decision on the § 1983 civil rights claims were on appeal in the Ninth Circuit, the King County Superior Court stayed the four remanded state law claims. CP at 67-77. On December 3, 2010, the Ninth Circuit dismissed Ms. Costanich's § 1983 claims on the grounds of absolute immunity and qualified immunity. *Costanich*, 627 F.3d at 1117. Specifically as to Ms. Duron, the court said "we affirm the judgment in favor of Duron on qualified immunity grounds for her investigation and the declaration in support of the guardian termination proceedings because, although genuine issues of material fact exist as to whether Duron deliberately fabricated evidence, Duron did not deprive Costanich of a clearly established constitutional right." *Id.*

¹² The state court causes of action were remanded back to King County Superior Court on July 17, 2008. CP at 13.

With Ms. Costanich's § 1983 claims finally resolved, the King County Superior Court placed her remaining state law claims back on the active docket on March 31, 2011. CP at 78. Ms. Costanich filed a motion for partial summary judgment (CP at 79-107) and DSHS cross-moved for summary judgment CP at 388-409. On December 2, 2011, the Honorable King County Superior Court Judge, Jay V. White, granted DSHS' motion for summary judgment in part. CP at 1086-91. The court granted DSHS' motion as to intentional infliction of emotional distress (outrage), malicious prosecution, and abuse of process, but denied its motion with regard to negligent investigation. CP 1086-91. However, on the eve of trial (April 3, 2012), Judge White reconsidered his prior ruling on DSHS' motion regarding negligent investigation. CP at 1662-80. Judge White requested that the parties submit additional briefing regarding the applicability of *Roberson v. Perez*, 156 Wn.2d 33, 123 P.3d 844 (2005), to the remaining claim of negligent investigation. The judge did not ask for additional facts.¹³ On April 13, 2012, the Court dismissed Ms. Costanich's negligent investigation claim on summary judgment as a matter of law. CP at 1679. The appeal was timely filed. CP at 1652-55.

¹³ Ms. Costanich's briefing contained 205 pages and a new declaration signed by her with 107 paragraphs of alleged new facts. CP 1378-1583.

IV. ARGUMENT

A. Standard Of Review

The purpose of summary judgment is to avoid a useless trial. *Hudesman v. Foley*, 73 Wn.2d 880, 886, 441 P.2d 532 (1968); *Olympic Fish Prods., Inc. v. Lloyd*, 93 Wn.2d 596, 602, 611 P.2d 737 (1980). Summary judgment is appropriate if “there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” CR 56(c); *Johnson v. Dep’t of Soc. & Health Servs.*, 80 Wn. App. 212, 226, 907 P.2d 1223 (1996). A material fact is one upon which the outcome of the litigation depends. *Hudesman*, 73 Wn.2d at 886.

After the moving party has carried its burden under CR 56, the non-moving party may not rest upon the mere allegations or denials of its pleadings, but must set forth evidence specific facts showing that there is a genuine issue for trial. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323-24, 106 S. Ct. 2548, 91 L. Ed. 2d 265, (1986). Mere speculation, suspicions, and beliefs are insufficient to avoid summary judgment. *See Columbia Pictures Indus., Inc. v. Prof'l, Inc.*, 944 F.2d 1525, 1529 (9th Cir. 1991), *aff'd*, 508 U.S. 49 (1993); *Baldwin v. Sisters of Providence, Inc.*, 112 Wn.2d 127, 132, 769 P.2d 298 (1989). Likewise, purely conclusory allegations with no concrete, relevant particulars, will not bar summary judgment. *Forsberg v. Pac. Nw. Bell Tel. Co.*, 840 F.2d 1409, 1419 (9th

Cir. 1988); *Vacova Co. v. Farrell*, 62 Wn. App. 386, 395, 814 P.2d 255 (1991).

B. Ms. Costanich Lacks Standing To Bring A Claim For Negligent Investigation Where The Court Has Not Terminated The Mother's Parental Rights, Has Maintained Visitation, And Kept DSHS As The Supervising Agency Over Children In A Dependency Guardianship

The question of whether Ms. Costanich has standing to bring a claim of negligent investigation is a question of law subject to de novo review. *See Ducote v. Dep't of Soc. & Health Servs.*, 167 Wn.2d 697, 222 P.3d 785 (2009) (stepparent did not have standing to sue for negligent investigation because he was not a parent, guardian, or a custodian under RCW 26.44.010.)¹⁴ The court orders which appointed Ms. Costanich as the dependency guardian for EN and BN did not terminate the mother's parental rights, directed that the mother be included in the children's upbringing including visitation and consultation on cultural and religious issues, kept DSHS as the supervising agency over the dependency, and also directed the Kalispel tribe be involved in the children's upbringing, including religious and cultural events during the children's minority. *See App. E & F.*

¹⁴ Although the trial court concluded that there was a question of fact as to Ms. Costanich's standing to sue, the State respectfully submits that this is an issue of law, related to whether Ms. Costanich has stated a claim upon which relief can be granted. *See RAP 2.5(a)(2)*. The issue was raised below and this court can affirm the dismissal of the negligence investigation claim based on this ground. *La Mon v. Butler*, 112 Wn.2d 193, 200-01, 770 P.2d 1027 (1989).

Ms. Costanich's status was comparable to that of a foster parent. In *Blackwell v. Dep't of Soc. & Health Svcs.*, 131 Wn. App. 372, 377 n.12, 127 P.3d 752 (2006), this court held that foster parents do not have standing to sue for negligent investigation.¹⁵ Because the court did not terminate the parental rights of EN and BN's mother, ordered ongoing visitation with the mother, and maintained DSHS as the supervising agency over the dependency, only EN, BN, and their mother (parent) had standing under RCW 26.44.010 to bring a claim of negligent investigation. *Blackwell*, 131 Wn. App. at 377, n.12. This court should also affirm the dismissal of Ms. Costanich's negligent investigation claim based upon lack of standing.

C. *De Facto* Parentage Does Not Apply To Negligent Investigation Claims And Must Be Established Prior To Allegations That Specific Duties Are Owed To Them

Since Ms. Costanich does not meet the statutory criteria for standing to bring a claim for negligent investigation, she attempts to establish standing by claiming that she is the *de facto* parent of EN and BN. Washington courts do recognize the concept of *de facto* parent and the leading case on this matter is *In re Parentage of L.B.*, 155 Wn.2d 679,

¹⁵ In *Blackwell* the court also noted that the plaintiffs were not legal custodians or guardians as those terms are used in child welfare legislation, citing to RCW 13.34.030(7) and 13.34.210. RCW 13.34.030(7) is now codified as 13.34.030(9). Of additional note, since 2010 conversion of a dependency guardianship to a guardianship is governed by Ch. 13.36 RCW.

122 P.3d 161 (2005). Ms. Costanich fails to meet all the elements of a *de facto* parent even if the court were to consider *de facto* parents eligible to sue for negligent investigation. Accordingly, Ms. Costanich's *de facto* parent argument regarding the case at bar is misplaced and without merit.

When the trial court initially denied DSHS' motion for summary judgment concerning negligent investigation on December 2, 2011, it found that there "are genuine issues of material fact and law as to the threshold issue of whether Ms. Costanich has standing to sue for negligent investigation as a 'parent, custodian, or guardian' within the meaning of RCW 26.44.010, specifically whether Ms. Costanich has standing as a *de facto* parent or guardian." CP at 1659. DSHS is unaware of any Washington case that provides a *de facto* parent the right to sue for negligent investigation or where a dependency guardian was treated as a *de facto* parent.¹⁶

Subsequent to the *L.B.* decision, the Washington Supreme Court clarified that *de facto* parentage designation is not available when other statutory remedies exist whereby a petitioner's relationship to a child can

¹⁶ In *Ducote*, 167 Wn.2d 697, appellant, a stepparent, sought to be designated as a *de facto* parent, but the Supreme Court refused to hear the argument because the appellant failed to raise this argument in a timely manner. The Court stated "[t]his case offers us the opportunity to clarify who, other than parents, are in the class of persons who may sue for negligent investigation under RCW 26.44.050. Consistent with the test articulated in *Bennett v. Hardy*, 113 Wn.2d 912, 784 P.2d 1258 (1990), we confirm that the class of persons who may sue for negligent investigation is limited to those specifically mentioned in RCW 26.44.010, namely, parents, custodians, and guardians, and the child or children themselves." *Id.* at 704-05.

be legally recognized. *In re Parentage of M.F.*, 168 Wn.2d 528, 532, 228 P.3d 1270, 1272 (2010). Therefore, the Court in *M.F.* reasoned that the correct starting point is not whether the *de facto* parent test has been met, but rather does the petitioner have a remedy other than through a *de facto* parent analysis. *Id.* at 534.

Here, Ms. Costanich is not entitled to *de facto* parent status because she clearly has other remedies available to her by statute. After initially being appointed as the dependency guardian for EN and BN, Ms. Costanich never sought to end the dependency and terminate the parental rights of EN and BN's mother, seek custody of the girls pursuant to RCW 26.10.030, or to then pursue adoption under Chapter 26.33 RCW. Regarding adoption, Ms. Costanich never appears to have made an effort to file for adoption, but alleges that the Kalispel Tribe does not permit adoptions.¹⁷ If Ms. Costanich's claim about adoption is true, then a Washington courts certainly have no authority to dictate to the sovereign Kalispel Tribe who can be "parents" for their children. A tribe's right to recognize a parent of an Indian child is absolute and not contingent on artificially created state concepts such as "*de facto*" parent. The term *de facto* parent is meaningless under the confines of Indian law. Pursuant to the Indian Child Welfare Act (ICWA) of 1978, the concept of a *de facto*

¹⁷ In Ms. Costanich's declaration (CP at 819) and her motion for summary judgment (CP at 95), she claims that EN and BN's tribe will not allow adoption.

parent of an Indian child is clearly incompatible. According to 25 U.S.C. § 1903(9), a parent of an Indian child is narrowly defined as:

any biological parent or parents of an Indian child or any Indian person who has lawfully adopted an Indian child, including adoptions under tribal law or custom. It does not include the unwed father where paternity has not been acknowledged or established.

This definition of a “parent” clearly does not include Washington State Supreme Court’s *de facto* parent. Also, this definition requires one who is asserting a right as a parent, such as an unwed father, to have the right acknowledged or established. Here, Ms. Costanich has failed to have her alleged right as a parent for EN and BN acknowledged or established prior to her lawsuit. Finally, in a recent Washington case, the Court of Appeals held that a “*de facto* parent has no standing to claim custody under ICWA . . .” *In re Beach v. Johnston*, 159 Wn. App. 686, 689, 246 P.3d 845 (2011). Accordingly, Ms. Costanich has no standing for negligent investigation pursuant to the ICWA.

If the court believes Ms. Costanich had no other statutory remedies available to be legally recognized as the “parent” for EN and BN, the analysis then moves to *de facto* parent determination. As stated earlier, the leading *de facto* parent case is *L.B.* There, the Court considered whether L.B.’s biological mother’s former lesbian partner had standing to petition for a determination of co-parentage. The Court held that the

former partner could petition for co-parentage if she had established a *de facto* relationship with L.B. To establish a *de facto* parent status, the petitioner must meet the following five elements:

(1) the natural or legal parent consented to and fostered the parent-like relationship; (2) the petitioner and the child lived together in the same household; (3) the petitioner assumed obligations of parenthood without expectation of financial compensation; (4) the petitioner has been in a parental role for a length of time sufficient to have established with the child a bonded, dependent relationship, parental in nature; and (5) the petitioner has fully and completely undertaken a permanent, unequivocal, committed, and responsible parental role in the child's life.

L.B. 155 Wn.2d at 708.

Ms. Costanich fails to meet the five part test outlined in *L.B.* First, Ms. Costanich fails to produce any evidence that EN and BN's biological mother consented to the Costanichs' appointment as dependency guardians and that the biological mother fostered the parent-like relationship with Ms. Costanich. Second, Ms. Costanich has continued to receive substantial financial payments as a dependency guardian for the service she provided to EN and BN. These payments have extended for years and even after filing the present lawsuit.¹⁸ CP at 701, 715-99. Third, Ms. Costanich does not meet is the last requirement of the test:

¹⁸ This significant financial benefit to Ms. Costanich may well have been the real reason why she never sought to end the girls' dependency by petitioning for adoption, legal custody, or conversion of guardianship. See App. G (payments to Ms. Costanich for the care of EN and BN.)

undertaking a permanent role in a child's life. DSHS asserts that because Ms. Costanich failed to end the dependency guardianship, she did not form a permanent legal relationship with EN and BN.

As a practical matter, even if Ms. Costanich had a common law claim for *de facto* parentage and could satisfy all of the elements set forth in *L.B.*, *de facto* parentage status should not be deemed to exist until there has been a judicial determination that one meets the criteria. *See A.H. v. M.P.*, 447 Mass. 828, 857 N.E.2d 1061 (2006) (in the context of a *de facto* parent claim, the best interests standard comes into play only after a judge has determined that the elements of *de facto* parentage exists). Absent notice of a judicial determination of *de facto* parentage, DSHS would have no way of knowing to whom it owes this ethereal tort duty for which Ms. Costanich argues. For all the foregoing reasons stated, Ms. Costanich does not qualify as a *de facto* parent.

D. Ms. Costanich's Negligent Investigation Claim Was Properly Dismissed Because There Is No Evidence That DSHS Made A Harmful Placement

In the case at bar, the lower court assumed DSHS conducted an incomplete investigation for purposes of summary judgment and focused solely on whether Ms. Costanich had evidence of a harmful placement. CP at 1631-32. Ultimately the lower court held that DSHS made no harmful placement decision and that the case of *Roberson*, 156 Wn.2d 33

controlled Ms. Costanich's negligent investigation claim. CP at 1637-42. This Court should affirm the lower court's dismissal based upon *Roberson*.

A negligent investigation claim requires proof of the following two elements: (1) that "DSHS has gathered incomplete or biased information" during the course of its abuse or neglect investigation and (2) that said investigation results in a "*harmful placement decision* such as removing a child from a nonabusive home, placing a child in an abusive home or letting a child remain in an abusive home." *M.W. v. Dep't of Soc. & Health Servs.*, 149 Wn.2d 589, 70 P.3d 954 (2003) (emphasis added).

Subsequent to *M.W.*, the Washington Supreme Court addressed the question of whether a "harmful placement" decision can be premised upon "constructive removal" in the *Roberson* case. In *Roberson*, parents, Jonathan and Honnah Sims, claimed that a negligent investigation resulted in a harmful placement of their child. Both Jonathan and Honnah were named suspects in an abuse and/or neglect referral received by the Department of Social and Health Services. *Roberson*, 156 Wn.2d at 46. Before the investigation commenced, Jonathan and Honnah Sims voluntarily relinquished their parental rights to their son (Daniel) and sent him to stay in Kansas with his grandmother. The decision to send Daniel to Kansas was a "preemptive move" on the part of Daniel's parents to

keep him at arms' length from a Child Protective Services (CPS) investigation. *Id.* at 46. Daniel stayed with his grandmother for approximately seven months. *Id.* at 36. Later, Jonathan and Honnah Sims filed a lawsuit claiming that their voluntary seven month separation from their son was the result of a negligent investigation.

The Supreme Court of Washington labeled this claim as a “constructive placement” and declined to extend the cause of action for negligent investigation to such “constructive placement” decisions. *Id.* at 46. The Supreme Court noted that the extension of the negligent investigation claim to that end was “beyond the statute.” *Id.* The Court expressed three reasons why such constructive placements would be problematic for RCW 26.44.050: (1) “any ‘harm’ resulting from the investigation would be purely speculative in nature” (2) “claimants asserting ‘constructive placement’ could largely control the extent of their damages” and (3) “constructive placement decisions could encourage individuals to frustrate investigations.” *Roberson*, 156 Wn.2d at 46-47.

- 1. DSHS Conducted A Complete And Unbiased Abuse Investigation Against Ms. Costanich**

Ms. Costanich asserts that DSHS conducted an incomplete investigation against her. This assertion is not grounded in the record before the court. Contrary to Ms. Costanich's assertion DSHS'

investigation was thorough and complete. The investigation lasted for approximately five months and consisted of numerous interviews of witnesses some of which were interviewed more than once. CP at 109-23. Importantly, all six of the foster children in Ms. Costanich's home were interviewed regarding the allegations of extreme verbal abuse. CP at 111-12, 115. All with exception of the youngest child, four year old BN, confirmed that Ms. Costanich called them names such as asshole, cock sucker, son of a bitch, bitch, fucker, slut, fucking cunt, and nigger. CP at 111-12, 115. As a result of this investigation, DSHS made a finding of emotional abuse against Ms. Costanich.¹⁹ CP at 119. Over ten years later, the former Costanich foster children still hold fast to their prior statements of extreme verbal abuse. *See* App. A and B.

2. DSHS' Investigation Did Not Result In The Harmful Placement Of EN And BN Such As Removing Them From The Care Of Ms. Costanich

Even if Ms. Costanich is able to persuade this Court that DSHS conducted an incomplete investigation, she must still prove that DSHS made a harmful placement decision regarding EN and BN, such as removing them from the care of Ms. Costanich. It is here that Ms.

¹⁹ In addition to the allegation of emotional abuse, DSHS also investigated an allegation of physical abuse. Physical abuse was determined to be inconclusive. CP at 109.

Costanich negligent investigation claim fails as a matter of law and the lower court's ruling should be affirmed.

Ms. Costanich points to DSHS filing a motion to terminate her dependency guardianship, the Kalispel Tribe taking jurisdiction of EN and BN's dependency cases (App. D), and the entry of the Agreed Visitation Order of June 2002 (App. C) as evidence of a harmful placement. To support this position, she claims *Tyner v. Dep't of Soc. & Health Servcs.*, 141 Wn.2d 68, 1 P.3d 1148 (2000), is instructive. In *Tyner*, a DSHS social worker filed a dependency petition alleging that Mr. Tyner sexually abused his children. Based upon that petition, the court entered an order prohibiting Mr. Tyner from having contact with his children. Subsequent to filing the dependency petition, the social worker concluded his abuse investigation against Mr. Tyner and determined the allegations to be unfounded. However, the social worker failed to inform the court of his finding and the court continued to restrict Mr. Tyner's contact with his children. The restriction on Tyner's contact with his children was directly related to the social worker's failure to update the court on the result of the abuse investigation against Mr. Tyner. As a result, the court found the social worker to have made a harmful placement decision (removing children from a non-abusive parent).

Ms. Costanich's negligent investigation claim is easily

distinguishable from *Tyner*. First, a motion to terminate the dependency guardianship by itself is not a placement decision because the King County Superior Court never had the opportunity to rule on DSHS' motion to terminate before the Kalispel Tribe took jurisdiction. CP at 1610-11. Second, EN and BN never were removed from Ms. Costanich's care unlike the children in the *Tyner* case. CP at 1606. Third, there is no evidence that DSHS represented before the Kalispel Tribal Court that Ms. Costanich is verbally abusive to the children in her care. Finally, there is no evidence that the tribal court received and/or relied on DSHS' abuse investigation report to create the June 2002 Agreed Visitation Order. *Tyner* is not instructive to this matter as asserted by Ms. Costanich.

As the lower court noted, *Roberson* and not *Tyner* is dispositive of Ms. Costanich's negligent investigation claim. Ms. Costanich's pending claim demonstrates all of the problems expressed by the *Roberson* court. The two most notable concerns are: (1) the resulting harm from the investigation is speculative and (2) the claimant had exclusive control over the extent of her damages.

Ms. Costanich's negligent investigation claim is premised upon the same speculative constructive placement theory that was rejected by the *Roberson* court. It would be pure conjecture to assume what, if anything, the King County Juvenile Court would have done with DSHS' motion to

terminate Ms. Costanich's dependency guardianship if the case had remained in state court. Similarly, in *Roberson*, "(CPS) filed a dependency petition concerning [Daniel], with an accompanying motion for a court order to take him into custody . . ."; the social workers received an "order to take [Daniel] into custody and place him in shelter care . . ."; and obtained "an order instructing [Daniel's] grandmother to turn him over to the authorities." *Roberson*, 156 Wn.2d. at 51-52 (Sanders, J. dissenting). None of these actions were considered by the Supreme Court sufficient to constitute a placement decision because the Sims had already voluntarily sent their son out of state and the orders remained unexecuted.

Just as in *Roberson*, once EN and BN's case was voluntarily transferred to tribal court (CP at 1608-11), DSHS no longer had the opportunity to remove the girls from Ms. Costanich's care. Perhaps even more strikingly, DSHS here never went so far as to receive an order to take EN and BN into custody, nor did DSHS obtain an order requiring anyone to turn over EN and BN to authorities. Markedly, DSHS was provided no opportunity for input into the Kalispel Tribe's decisions. CP at 659. In fact, no removal of EN and BN ever occurred while the girls were within the jurisdiction of state court.²⁰ Notably, these children

²⁰ DSHS had no authority to remove EN and BN from Ms. Costanich unless the King County Juvenile Court had granted their motion to terminate guardianship on April 12, 2002.

remained with Ms. Costanich long after the tribe obtained jurisdiction. CP at 1606.

Finally, as the Supreme Court noted in *Roberson*, claimants asserting constructive placements largely control the extent of their damages. *Roberson*, 156 Wn.2d at 46. This is certainly true in the case at bar. Ms. Costanich set in motion the alleged harmful placement by (1) voluntarily agreeing to transfer EN and BN's dependency case to the Kalispel Tribe and (2) voluntarily agreeing to the 30 day "summer vacation" EN and BN had from July to August 2002. Ms. Costanich now seeks to use her agreements with the tribe as a basis for her tort damages against the state. In short, Ms. Costanich is both the originator and beneficiary of her own claim. This potential outcome was anticipated and expressly rejected by the Supreme Court in *Roberson*. Ms. Costanich's negligent investigation claim should be dismissed on this basis alone.

3. There Is No Evidence That Ms. Costanich's Agreed Visitation Order Was A By Product Of The DSHS Abuse Investigation

Ms. Costanich argues that the June 2002 Agreed Visitation Order with the Kalispel Tribe was caused by DSHS' abuse investigation. Proof of proximate cause, both factual and legal, is required to establish state tort

liability. CP. 1593-96; *see, e.g., Hartley v. State*, 103 Wn.2d 768, 777-79, 698 P.2d 77 (1985). To prove a negligence cause of action:

a plaintiff must establish causation. To do that, a plaintiff must produce evidence sufficient to support an inference that the claimed harm would not have occurred but for the claimed negligence.

Miles v. CPS, 102 Wn. App. 142, 160, 6 P.3d 112 (2000).

Here, Ms. Costanich provides no proof that the agreed order had anything to do with the prior investigation or that the two events are causally related. This lack of proof is fatal to her claim for negligent investigation.

Ms. Costanich's claim that DSHS' abuse investigation triggered the Agreed Visitation Order is not substantiated within the four corners of the agreed order or by any other evidence in the record. This order never once mentions DSHS or that it had conducted any abuse investigation against Ms. Costanich. The order in reality only appears to be concerned about EN and BN's tribal connection and that they learn about the customs and culture of the Kalispel Tribe. Finally, if the Kalispel Tribe really had any concerns about Ms. Costanich, why were EN and BN returned to her after the summer vacation? The causation argument asserted by Ms. Costanich does not make sense and further requires the court to disregard what is contained in the Agreed Visitation Order.

4. The Summer Vacation Was Consistent With Original Dependency Guardianship Orders

Even if the Court is inclined to consider the 30 day summer vacation a “placement” decision, Ms. Costanich has utterly failed to provide the Court with any evidence that said alleged “harmful placement” was in fact harmful to EN and BN.²¹ Moreover, Ms. Costanich has identified no evidence that establishes EN and BN’s visit to the reservation resulted from DSHS’ abuse investigation.²² In point of fact, the visitation order that Ms. Costanich herself supported, makes no reference to Ms. Costanich, EN, or BN being investigated for abuse or anything else. *See* App. C. Additionally, the Kalispel Tribe’s decision to enter into a specific agreed visitation schedule with Ms. Costanich in 2002 was wholly independent of the results of any abuse investigation conducted by DSHS. If the Kalispel Tribe had any concerns about Ms. Costanich and how she was treating EN and BN, they certainly would not have let these two girls remain with her prior to the start of the July visitation and after its conclusion. The agreed visitation order was a continued fulfillment of the terms and conditions of the original dependency orders involving EN and BN entered several years

²² Ms. Costanich did not put before the court any evidence to show that DSHS either advocated for the visitation order or opposed it. Again, DSHS was not a party to the June 2002 proceeding. CP at 659.

ago in 1996 and 1998. *See* App. E and F.

The relevant part of the aforementioned dependency order terms and conditions are as follows: (1) visitation and communication is to be facilitated between EN and BN and their biological mother, the foster parents and the Kalispel Tribe; (2) EN and BN's biological mother is to "be consulted with regard" to the children's "cultural and religious issues and contact with extended family"; and (3) the "Kalispel Tribe shall likewise be involved in the [children's] upbringing, including religious and cultural events during the [children's] minority." *See* App. E and F. When these terms and conditions are read in conjunction with the June 2002 order (CP 1612-15), it can easily be seen that this order fulfilled the prior mandates outlined in the 1996 and 1998 dependency orders. For example, the extended family contact provision was met by EN and BN staying with Wilma and Francis Cullooyah.²³ Also, the provision of tribal involvement and exposure to tribal cultural events was fulfilled by EN and BN experiencing the Kalispel culture and customs such as tribal youth events and a Kalispel Tribal Pow Wow. CP at 1612-15. The 30 day summer vacation was not a placement decision mandated or brought about by DSHS action, it was merely an agreement between Ms. Costanich and the Kalispel Tribe to provide EN and BN awareness of

²³ EN and BN's mother agreed with this contact by allowing her attorney to note on the order "agrees w/concept."

their culture.

E. Ms. Costanich Has Failed To Identify Facts Sufficient To Rise To The Level Of Outrage And Therefore Her Claim Should Be Dismissed As A Matter Of Law

In order to establish the tort of intentional infliction of emotional distress, or outrage, Ms. Costanich must show that the emotional distress was intentionally or recklessly induced and that DSHS' conduct was outrageous. *Waller v. State*, 64 Wn. App. 318, 336, 824 P.2d 1225, review denied, 119 Wn.2d 1014 (1992). "Tortious or criminal intent, or malice will not suffice. Liability arises only when the conduct is: '*so outrageous in character; and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community.*'" *Waller*, 64 Wn. App. at 336 (quoting *Grimsby v. Samson*, 85 Wn.2d 52, 59, 530 P.2d 291 (1975)) (emphasis in original)). It is for the court to determine as the gatekeeper, whether the defendant's conduct is so extreme and outrageous as to permit recovery. *Steinbock v. Ferry County Public Utility Dist. No. 1*, 165 Wn. App. 479, 492, 269 P.3d 275 (2011). The third prong requires that Ms. Costanich prove that "severe emotional distress" resulted from the alleged conduct. *Rice v. Janovich*, 109 Wn.2d 48, 61, 742 P.2d 1230 (1987).

There is no evidence in this case that DSHS' behavior was outrageous or extreme to merit a finding of outrage. DSHS chose to believe the statements of the children over denials by Ms. Costanich and supporting statements from her friends and healthcare providers. In fact, 11 years later, Ms. Costanich's former foster children still maintain that they were cussed at and called demeaning names such as asshole, cock sucker, son of a bitch, bitch, fucker, slut, fucking cunt, and nigger. See App. A and B. The only people who really know what it was like to live in the Costanich home were those who lived there and saw what happened behind closed doors. The testimony of friends and doctors that probably spent very little time in the Costanich house are not persuasive. Further, it is not surprising that Ms. Costanich denied the abuse allegations because her foster care license was in jeopardy and she knew that she had been investigated twice before concerning name calling and swearing. CP at 634. DSHS has a duty to protect children in their care and they cannot ignore a course of conduct independently verified by five children living in the Costanich home.²⁴

1. First Element Of Outrage Claim Not Met

Even if Ms. Duron made errors during her investigation, no evidence has been provided by Ms. Costanich that such errors were

²⁴ *Tamas v. State of Washington*, 630 F.3d 833 (9th Cir. 2010).

material to the investigation. In the present matter, the case of *Waller* is instructive. In *Waller*, CPS caseworkers investigated an allegation of sexual abuse. *Waller*, 64 Wn. App. at 336. The court dismissed Plaintiff's outrage claim as a matter of law reasoning that although there was "substantial evidence" that the caseworkers were in error in believing the accused's ex-wife's statements and did not thoroughly investigate the accused's claims, their actions, although grossly negligent, did not go "beyond all possible bounds of decency." *Id.* In making this ruling, the court relied upon the fact that the caseworkers' opinion was partially supported by therapists' expert opinions. *Id.* at 337.²⁵

Similar to *Waller*, Ms. Duron chose to believe the statements of the Costanich foster children who consistently stated that Ms. Costanich swore both around and at them; including calling an eight-year-old a "cunt."²⁶

²⁵ Additional cases where outrage was not found as a matter of law. *See also Babcock v. State*, 112 Wn.2d 83, 107, 768 P.2d 481 (1989), *aff'd in pertinent part on reconsideration*, 116 Wn.2d 596, 622, 809 P.2d 143 (1991) (no outrage as a matter of law where caseworkers negligently investigated and violated CPS policies by allowing minor females to be placed into a foster home where they were sexually assaulted); *Benoy v. Simons*, 66 Wn. App. 56, 62-64, 831 P.2d 167, *review denied*, 120 Wn.2d 1014 (1992) (no outrageous conduct as a matter of law where the plaintiffs alleged that the defendant doctor needlessly maintained their child on life support, misled them into believing the child was improving, told them to take the body home on a bus and billed them for needless care); *Banks v. Nordstrom, Inc.*, 57 Wn. App. 251, 263, 787 P.2d 953, *review denied*, 115 Wn.2d 1008, 797 P.2d 511 (1990) (no outrageous conduct as a matter of law where a store customer was misidentified, charged with shoplifting, then charges were later dismissed).

²⁶ Ms. Costanich claims DSHS is somehow unjustified in relying on the children's report of abuse because KD was "known for his 'storytelling.'" *See* Appellant's Brief at 42. This claim of "storytelling" is based solely on Ms Costanich's declaration (CP at 1514), but is not supported anywhere else in the record.

CP at 415-16. Ms. Duron also relied on the opinions of her colleagues, DSHS managers, and the expert opinion of a clinical psychologist, Dr. Beverly Cartwright. CP at 416-18. Even if, as alleged by Ms. Costanich, Ms. Duron misrepresented some of the statements made to her, such action cannot be said to go beyond all bounds of decency. DSHS is mandated to investigate abuse allegations pursuant to RCW 26.44.050, but that mandate does not require a perfect investigation. The basis for Ms. Duron's findings of emotional abuse came from the consistent reports of name calling acknowledged by the children in Ms. Costanich's home. These statements continue to be affirmed by these children now over ten years later. *See* App. A and B. Finally, some of Ms. Duron's findings were confirmed by the ALJ during Ms. Costanich's appeal of her license revocation. For instance the ALJ found that: (1) Ms. Costanich told PT to get his "black ass" to his room;²⁷ (2) urine soaked sheets were rubbed in PT's face;²⁸ and (3) profanity was used around the children.²⁹ However, ultimately the ALJ did not sustain the finding of emotional abuse because there was not sufficient evidence to prove that the children in Ms. Costanich's care suffered injury from her alleged conduct. CP at 525.

²⁷ CP at 508.

²⁸ CP at 526.

²⁹ CP at 526.

It is at this point that Ms. Costanich cites to their alleged expert, Darlene Flowers, to illustrate outrageous conduct. Instead of citing to some admissible evidence such as testimony, Ms. Costanich merely cites to Ms. Flower's CV. CP at 1175-83. Ms. Flower's CV is not sworn testimony as represented by Ms. Costanich and should not be considered by this Court for purposes of this appeal. Ms. Costanich clearly has no evidence to reasonably argue DSHS's conduct has gone beyond all bounds of decency. Therefore she has failed to meet the first element of an outrage claim and for this alone her claim should be dismissed.

2. Second Element Of Outrage Claim Not Met

As to the second element, the evidence is that DSHS employees did not act with intent to inflict emotional distress on Ms. Costanich. Instead, DSHS' actions were driven by statutory obligations. Ms. Duron was required to investigate the allegation of abuse pursuant to RCW 26.44.050. Based on her investigation, her findings met the definition of emotional abuse. CP at 417. *See also* WAC 388-15-130(3)(g); *Morgan*, 99 Wn. App. 148. Once the finding of emotional abuse was made and upheld, licenser McKinney had no choice but to revoke Costanich's license. WAC 388-148-0095(2)(b). As similarly held in *Keates v. City of Vancouver*, 73 Wn. App. 257, 263-64, 269, 869 P.2d 88 (1994), any

alleged emotional distress that ensued as a result of fulfilling these statutory obligations is non-recoverable.

3. Third Element Of Outrage Claim Not Met

Turning to the third element, there is no objective evidence of severe emotional distress. Ms. Costanich alleges that subsequent to the investigation she suffered from stomach pain and depression, for which she was prescribed medication. CP at 9, 697-98. However, Ms. Costanich never found it necessary to seek counseling or professional psychiatric help for the alleged effects of the investigation. CP at 697-98. As such, Ms. Costanich is unable to prove distress that rises to the requisite level of being “so extreme or so severe that no reasonable man could be expected to endure it.” *Woodward v. Steele*, 32 Wn. App. 152, 154, 646 P.2d 167 (1982). Ms. Costanich has failed to prove all three necessary elements for an outrage claim. For all the foregoing reason, Ms. Costanich’s claim for outrage should be dismissed as a matter of law.

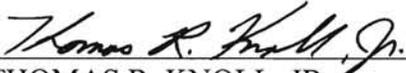
V. CONCLUSION

Based on the foregoing arguments, this Court should affirm the dismissal of Ms. Costanich’s claims because she lacks standing and/or DSHS did not make a harmful placement and the statements of the children and other evidence obtained by Ms. Duron provided her a

reasonable basis from which to find that Ms. Costanich emotionally abused children in her care.

RESPECTFULLY SUBMITTED this 28th day of January, 2013.

ROBERT W. FERGUSON
Attorney General


THOMAS R. KNOLL, JR.
WSBA #38559
Assistant Attorney General
PO Box 40126
Olympia, WA 98504-0126
(360) 586-6300
thomask@atg.wa.gov

PROOF OF SERVICE

I certify that I served a copy of Respawants Brief
on all parties or their counsel of record on the date below via email
transmission and United States Mail, with proper postage affixed as
follows:

Vonda Michell Sargent
Law Offices of Vonda M Sargent
119 1st Ave S Ste 500
Seattle, WA 98104-3400
sisterlaw@mac.com

Shelby R Frost Lemmel
Masters Law Group PLLC
241 Madison Ave N
Bainbridge Island, WA 98110-1811
shelby@appeal-law.com

Carol Farr
Law Offices of Leonard W Moen & Asso
947 Powell Ave SW Ste 105
Renton, WA 98057-2975
carol@leonardmoen.com

Kenneth Wendell Masters
Masters Law Group PLLC
241 Madison Ave N
Bainbridge Island, WA 98110-1811
ken@appeal-law.com

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

DATED this 28th day of January 2013, in Tumwater, Washington.

Jodie Thompson
JODIE THOMPSON, Legal Secretary

APPENDIX A

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT

KATHIE COSTANICH,

Plaintiff,

v.

STATE OF WASHINGTON,
DEPARTMENT OF SOCIAL AND
HEALTH SERVICES (DSHS),
SANDRA DURON and JOHN DOE
DURON, CAROL SCHMIDT and
JOHN DOE SCHMIDT, BEVERLY
PAYNE and JOHN DOE PAYNE,
JAMES BULZOMI and JANE DOE
BULZOMI, ROBERT STUTZ and
JANE DOE STUTZ, INGRID
McKENNY and JOHN DOE
McKENNY,

Defendants.

NO. 04-2-39817-7 KNT

DECLARATION OF JOHN SEWARD
IN SUPPORT OF DEFENDANTS'
MOTION FOR SUMMARY
JUDGMENT

JOHN SEWARD hereby declares under penalty of perjury under the laws of the State of Washington that the following is true and correct. I am over the age of 18, competent to testify as to the matters stated herein, and make this Declaration based on my personal knowledge.

1. I am currently 23 years old and my date of birth is August 26, 1988.
2. I am a former foster child and lived in the foster home of Ken and Kathie Costanich from 1999 to 2001.

1 3. When I was approximately 11 years old, I went to live in the Costanich foster
2 home. In addition to me, there were three boys (FW, KD, PT) and two girls (EN and BN) in
3 the Costanich home.

4 4. FW and KD were older than me and PT was the youngest boy. Both EN and
5 BN were younger than me.

6 5. One of the most memorable things I recall from living in Kathie's home is that
7 she swore all the time. She would say words such as asshole, you cock sucker, fuck, son of a
8 bitch, bitch, and fuckers. When a foster child did something wrong or not to the satisfaction
9 of Kathie, she would call that child an asshole, cock sucker, son of a bitch, bitch, and fucker.
10 These are just some of the names I recall. Out of Kathie's two girls, EN got into trouble the
11 most and therefore was called names more often than BN.

12 6. When we did something wrong, Kathie would often point out our mistakes to
13 the other children that were nearby. She would then yell at us and call use names while the
14 other children watched. This made me feel angry, sad, and humiliated.

15 7. I noticed that Kathie would not swear at the children in her home if someone
16 from DSHS was visiting.

17 8. I remember Kathie specifically threatening me and the other children that if we
18 said anything to DSHS that got her in trouble, we would be grounded to our bedroom for a
19 whole week.

20 9. I specifically recall an incident in the Costanich home where Kathie swore at
21 another child. This memory involves PT. PT had a problem wetting the bed at night and his
22 room often smelled like urine. If he wet the bed, he was supposed to remove the wet sheets
23 and put them in the laundry. One day as I passed by PT's room, I witnessed Kathie swearing
24 at PT. Kathie was yelling at PT for wetting his bed the night before and for not changing his
25
26

1 sheets. Kathie had PT's wet sheets in her hand and began rubbing PT's face with the sheets.
2 PT started to cry and Kathie continued to yell and swear at him for having wet sheets.

3 10. In addition to swearing at us, Kathie would also throw things. For the most
4 part she would throw things on the floor like pots and pans.

5 11. I eventually left the Costanich home in 2001 and was placed in another home.
6 Initially, I wanted to stay with the Costaniches because I knew what to expect and was afraid
7 of what the new home would be like. However, upon reflection, it was good to get out of the
8 Costanich home.

9 12. I do not believe Kathie treated me or any of the other children appropriately.
10 No foster child should be subject to the name calling and humiliation I sustained in Kathie's
11 home.

12
13 DATED this 24th day of October, 2011.

14
15 
16 JOHN SEWARD

APPENDIX B

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

**STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT**

KATHIE COSTANICH,

Plaintiff,

v.

STATE OF WASHINGTON,
DEPARTMENT OF SOCIAL AND
HEALTH SERVICES (DSHS),
SANDRA DURON and JOHN DOE
DURON, CAROL SCHMIDT and
JOHN DOE SCHMIDT, BEVERLY
PAYNE and JOHN DOE PAYNE,
JAMES BULZOMI and JANE DOE
BULZOMI, ROBERT STUTZ and
JANE DOE STUTZ, INGRID
McKENNY and JOHN DOE
McKENNY,

Defendants.

NO. 04-2-39817-7 KNT

DECLARATION OF KEVIN
MATTHEW DAVIES IN SUPPORT
OF DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT

KEVIN MATTHEW DAVIES hereby declares under penalty of perjury under the laws of the State of Washington that the following is true and correct. I am over the age of 18, competent to testify as to the matters stated herein, and make this Declaration based on my personal knowledge.

1. I am currently 25 years old and my date of birth is May 21, 1986.
2. I use to be a foster child in the home of Ken and Kathie Costanich in 2001.

1 3. When I lived in the Costanich home, there were six children all together,
2 including me. The names of the other children in the home were Frank, John, Patrick,
3 Elizabeth, and Barbara.

4 4. Frank Walls and Elizabeth and Barbara were there before me. I do not look
5 back on the time spent in the Costanich home with fond memories because Kathie was
6 verbally and sometimes physically abusive to the children in her home.

7 5. I specifically remember Kathie swearing at foster children all the time. She
8 would call Elizabeth and Barbara a slut, a bitch, and/or fucking cunt. I also remember Kathie
9 telling Patrick, who was black, to move his back ass and calling him a nigger. It was common
10 for Kathie to swear at and call the foster children names.

11 6. By July 2001, I felt that Kathie's name-calling and physical abuse was
12 escalating to the point that it had become dangerous and the abuse needed to be reported to
13 someone in authority. I reported Kathie's abusive behavior to my therapist, Richard Crabb.
14 He in turn reported what I told him to DSHS.

15 7. I have read the DSHS referral that came from Mr. Crabb and it accurately
16 reflects what I told Mr. Crabb and what was going on in the Costanich home.

17 8. Shortly after disclosing Kathie's abusive behavior, I remember being
18 interviewed by a social worker from DSHS. I confirmed for her that the content of the
19 referral was true and correct.

20 9. When I reported Kathie's abusive behavior, I expected to be punished by her if
21 she found out that I made the referral. I do not believe she ever found out that I made the
22 referral.

23 10. Regardless of whether Kathie would punish me for making the referral, I
24 determined that Kathie's behavior was dangerous enough that it had to be reported despite the
25 consequences.
26

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

11. I was eventually removed from the Costanich home May 10, 2002, and placed with another family who later adopted me. I am so thankful for my adoptive parents and their willingness to make me a permanent part of their family.

DATED this 25 day of October, 2011.


KEVIN MATTHEW DAVIES

APPENDIX C

UNITED STATES OF AMERICA
KALISPEL INDIAN RESERVATION
KALISPEL TRIBAL COURT

FILE
10-20-02

DEPENDENCY OF:

Case No. 2002-005JUV

N [REDACTED] E [REDACTED]
N [REDACTED] E [REDACTED]

AGREED VISITATION
ORDER

THIS MATTER came before the Kalispel Tribal Court upon the request of the Kalispel Tribal Indian Child Welfare Worker for an extended visitation of the children on the Kalispel Indian Reservation. Present for Court were [] Christina Nick, natural mother; [] Jans Hayd, attorney for Christina Nick; [] Kathie Costanich, guardian; [] George Costanich, guardian; [] Carol Fax, attorney for guardians; [] DCFS Social Worker; [] Dina Nomes, Kalispel ICW Worker; [x] Kathy Jensen, Kalispel Indian Child Welfare Presenting Officer. The Court having heard the testimony presented, and having read the files and records herein, deeming itself fully advised in the premises, makes the following:

FINDINGS OF FACT

I. E [REDACTED] N [REDACTED] and E [REDACTED] N [REDACTED] are enrolled members of the Kalispel Tribe of Indians and have had limited contact with the Kalispel Tribe and its members.

AGREED VISITATION ORDER - 1

Kalispel Tribal Attorney's Office
P.O. Box 39
Unk, Washington 99180
(509) 445-1147 x 229
Fax: (509) 445-1705

05052174

1 2. E [redacted] and B [redacted] N [redacted] shall reside with Wilma and Francis Cullooyah while
 2 visiting with the Kalispel Tribe. Wilma and Francis Cullooyah are authorized to consent to
 3 routine and emergency medical and dental treatment as may be necessary to the children's health
 4 and development.

5 3. Kathie and Ken Costanich shall visit with the children on the Kalispel Indian
 6 Reservation as follows:

- 7 a. Saturday, July 20, 2002;
- 8 b. Saturday, July 27, 2002, if the children desire the visitation;
- 9 c. The weekend of the Kalispel Tribal Pow wow, August 2 through 4, 2002;
- 10 d. Other visitation as agreed upon between the Costanichs and Dina Nomes,
 11 ICW Worker.

12 4. The Costanichs shall support and encourage the children's relationship with the
 13 Kalispel Tribe of Indians. *The Costanichs fully support the girls' close and continuing relationship with their Tribe, + are pleased that the girls have the opportunity to know their relatives other members +*

14 5. It is in the children's best interest that they spend the summer with the Kalispel
 15 Tribe. *to learn more about their culture + customs* CA

16 4. All prior orders of this Court not inconsistent with this order remain in full force
 17 and effect.

18 5. This matter shall be reviewed at the July 18, 2002 court date, or as soon thereafter
 19 as possible.

20 DONE IN CLOSED COURT this ___ day of June 2002.

21
 22 *Milton Nomes*
 23 Milton Nomes, Chief Judge
 24 Kalispel Tribal Court

Kalispel Tribal Attorney's Office
 P.O. Box 39
 Uck, Washington 99180
 (509) 443-1147 x 225
 Fax: (509) 445-1705

25 AGREED VISITATION ORDER - 3

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Presented by:

Kathy Jensen
Kathy Jensen, ICW Presenting Officer

Agreed as to form and content; Notice of
Presentment Waived:

agrees w/ concept

Jana Heyd, mother's attorney

Carol Farr

Carol Farr, guardians' attorney

27670

Dina Nomes, ICW Worker

AGREED VISITATION ORDER - 4

Kalispel Tribal Attorney's Office
P.O. Box 39
Ulk, Washington 99180
(509) 445-1147 x 223
Fax: (509) 445-1709

TOTAL P.05

05052177

APPENDIX D

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY
JUVENILE DEPARTMENT

IN THE INTEREST OF:

Barbara Nick DOB 5-8-97
Elizabeth Nick DOB 8-7-92
DOB:

An Indian Child

No. 97-7-01447-4 SEA
93-7-00216-3 SEA

Agreed SEA KNT

MOTION & ORDER TO TRANSFER
JURISDICTION TO TRIBAL COURT
(Clerk's Action Required)

I. MOTION

The undersigned moves this court for an order to transfer jurisdiction of these proceedings from this court to the Tribal Court of the ~~Kelispel~~ *Kelispel* Tribe of Indians.

This motion is based on the provisions of 25 U.S.C. 1911 (b), the Indian Child Welfare Act.

Date: 4/12/02

[Signature]
Signature TONY REMANNE WSBA 15710
Attorney for Kelispel Tribe of Indians
Title:

ORDER

The matter has come before the court upon a motion under 25 U.S.C. 1911 (b) to transfer of jurisdiction of these proceedings from this court to the Tribal Court of the ~~Kelispel~~ *Kelispel* Tribe of Indians.

The Court has considered the above motion, therefore, IT IS HEREBY ORDERED that this court releases any and all jurisdiction of these proceedings and transfers the same to the Tribal Court of the ~~Kelispel~~ *Kelispel* Tribe of Indians. This release and transfer is contingent upon acceptance of jurisdiction by the Tribal Court, ~~attached hereto~~ *attached hereto*.

The hearings set for 4/17/02 and 5/8/02 are STRICKEN.

ORIGINAL

1 April 12, 2002
Date

Terrence Canada-She' +
Judge / Commissioner

2
3 Presented by:
4 [Signature] USBA 15710
Attorney for Katiqal Tribe of Indians

[Signature] #13567
Assistant Attorney General
Name of Tribal Representative

- AAG
- DCFS Social Worker
- Private Agency

Jana Heyd WSB
701 D

- Father or
- Father's Attorney

- Mother or
- Mother's attorney

- Guardian Ad Litem
- Attorney for Minor

17 Case File #27470
18 attorney for ~~Katiqal~~
19 guardians
20 Kattue & Non Courtman

APPENDIX E

RECEIVED
KING COUNTY, WASHINGTON

JAN 05 1996

DEPARTMENT OF
JUDICIAL ADMINISTRATION

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

SUPERIOR COURT OF WASHINGTON FOR THE COUNTY OF KING
JUVENILE DIVISION

IN RE. THE WELFARE OF:)

E [REDACTED] N [REDACTED])

Minor Child.)

NO. 93-7-00216-3

FINDINGS OF FACT, CONCLUSIONS
OF LAW AND ORDER APPOINTING
GUARDIAN OF MINOR
(Indian Child)

THIS MATTER came on regularly before the undersigned Judge of
the above-entitled court to appoint Kathy Costanich and George
Costanich as guardians for the above-named minor child. The court
having considered the files and records herein, having heard the
testimony presented, and being fully advised in the premises, now
makes the following:

1.0 FINDINGS OF FACT

1.1 E [REDACTED] N [REDACTED] was born on August 7, 1992, and currently
resides in foster care in King County, Washington.

1.2 The child's mother, [REDACTED] currently resides at
an unknown address.

1.3 The child's putative father, [REDACTED] currently
resides at an unknown address.

05050594

ATTORNEY GENERAL OF WASHINGTON
900 Fourth Avenue #2000
Seattle, WA 98164-1012
(206) 464-7045

ORIGINAL

1 1.4 The child has been found to be dependent pursuant to RCW
2 13.34.030(2) on May 25, 1993 as to the child's mother and on May
3 28, 1993 as to the father.

4 1.5 The court also entered a dispositional order pursuant to
5 RCW 13.34.130 on May 25, 1993 as to the child's mother and on May
6 28, 1993 as to the father.

7 1.6 The Indian Child Welfare Act, 25 U.S.C. Section 1901 et.
8 seq. applies to these proceedings. The child's tribe was
9 properly and timely served.

10 1.7 Neither parent is a member of the Armed Forces and the
11 Soldiers and Sailors Civil Relief Act does not apply to the
12 proceedings.

13 1.8 The child has been removed from the custody of the
14 parents for a period of at least six months pursuant to a finding
15 of dependency under RCW 13.34.030(2).

16 1.9 Services ordered under RCW 13.34.130 have been offered
17 or provided and all necessary services reasonably available,
18 capable of correcting the parental deficiencies within the
19 foreseeable future have been offered or provided.

20 1.10 There is little likelihood that conditions will be
21 remedied so that the child can be returned to the parents in the
22 near future.

23 1.11 Guardianship rather than termination of the parent-
24 child relationship or continuation of efforts to return the child
25 to the parents' custody is in the best interests of the child.
26

05050595

ORIGINAL

GUARDIANSHIP

FFCL & ORDER OF ~~TERMINATION~~ - 2

Page 100

ATTORNEY GENERAL OF WASHINGTON

900 Fourth Avenue #2000

Seattle, WA 98164-1012

(206) 464-7045

1 1.12 Active efforts have been made to provide remedial
2 services and rehabilitative programs designed to prevent the
3 breakup of the Indian family and these efforts have been
4 unsuccessful.

5 1.13 The court finds by clear and convincing evidence,
6 including the testimony of a qualified expert witness, that
7 continued custody of the child by the parent is likely to result
8 in serious emotional or physical damage to the child. This
9 finding shall not be deemed sufficient in itself to support an
10 order of termination pursuant to RCW 13.34.180.

11 1.14 The requirements of RCW 13.34.236 have been met, and
12 Kathy Costanich and George Costanich are suitable to act as
13 guardians for the minor child.

14 2.0 CONCLUSIONS OF LAW

15 2.1 The court has jurisdiction over the parties and subject
16 matter herein.

17 2.2 Except where otherwise noted, the above findings have
18 been proven by ^{clear, cogent + convincing} ~~a preponderance of~~ evidence.

19 3.0 ORDER

05050596

20 IT IS HEREBY ORDERED:

21 3.1 That the child's dependency status is reaffirmed. The
22 Tribe, DCFS and the mother agree to review this matter in
23 approximately one year.

24 3.2 Kathy Costanich and George Costanich are appointed
25 guardians for the minor child. This appointment is for the
26 purpose of assisting the court in the supervision of the

ORIGINAL
GUARDIANSHIP

ATTORNEY GENERAL OF WASHINGTON
900 Fourth Avenue #2000
Seattle, WA 98164-1012
(206) 464-7045

1 dependency, and is not for any other purpose. The guardians have
2 the following rights and duties:

- 3 a. To maintain the physical custody of the juvenile;
- 4 b. To protect and educate the juvenile;
- 5 c. To provide food, clothing, shelter, education as
6 required by law, and routine medical care for the
7 juvenile;
- 8 d. To consent to emergency medical and surgical care and to
9 sign a release of medical information to appropriate
10 authorities, pursuant to law;
- 11 e. To consent to social activities of the child such as
12 travel, vacations, religious education and school
13 activities, etc.;
- 14 f. The right to notice and representation by counsel at any
15 review hearing scheduled by the parents, agency, GAL,
16 guardian or court.
- 17 g. Other: To develop with the tribal and DCFS social
18 workers, and carry out, a specific plan for maintaining
19 contact between the child and the Kalispel Tribe,
20 including exposure to the Tribe's culture.

21 3.3 The guardianship will continue until the child reaches
22 18 years of age or until further order of the Court.

23 3.4 Pursuant to RCW 13.34.233 and RCW 13.34.150 any order
24 made by the court in the case of a dependent child may be changed,
25 modified, or set aside only upon a showing of a change in
26 circumstance.

3.5 Visitation/communication will be facilitated between the
mother, child, foster parents and the Kalispel Tribe as follows:

05050597

1) Mother shall be included in the child's upbringing, including visitations and shall be consulted with regard to cultural and religious issues and contact with extended family.

2) The Kalispel Tribe shall likewise be involved in the child's upbringing, including religious and cultural events during the child's minority. Foster parents shall maintain contact with the Tribe regarding the child's status, including pictures and medical information.

3.6 DCFS shall be the supervising agency.

3.7 The guardians are authorized to consent to all necessary medical, dental or psychological treatment for the child.

DATED this ~~17~~^{5th} day of ~~December~~ January, 1996.

Jana A. Lovell
JUDGE/COMMISSIONER

Presented by:

Mary F. Li
Mary F. Li
Assistant Attorney General
WSBA #13567

Allen Sanders
Allen Sanders
Attorney for the Kalispel Tribe

Jana Heyd WSB 20157
Jana Heyd, Attorney for Mother
As to form

05050598

ORIGINAL

ATTORNEY GENERAL OF WASHINGTON
900 Fourth Avenue #2000
Seattle, WA 98164-1012
(206) 464-7045

APPENDIX F

FILED

93 JUL -1 AM 10:47

KING COUNTY
SUPERIOR COURT CLERK
SEATTLE, WA.

SUPERIOR COURT OF WASHINGTON FOR THE COUNTY OF KING
JUVENILE DIVISION

IN RE THE DEPENDENCY OF:

NO. 97-7-01447-4 SEA

B [REDACTED] R [REDACTED] N [REDACTED]

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER
APPOINTING DEPENDENCY
GUARDIAN (INDIAN CHILD)
[CLERK'S ACTION REQUIRED]

BD 5/8/97

Minor child.

THIS MATTER came on regularly before the undersigned Judge of the above-entitled court to appoint dependency guardians for the above-named minor child. The court having considered the files and records herein, having heard the testimony presented, and being fully advised in the premises, now makes the following:

1.0 FINDINGS OF FACT

1.1 B [REDACTED] R [REDACTED] N [REDACTED] the minor child herein, was born on May 8, 1997. The child currently resides in foster care in King County, Washington.

1.2 The child's mother, [REDACTED] was last known to be living at the First Avenue Shelter, 2015 Third Ave., Seattle, WA.

1.2a Ms. [REDACTED] did ~~did not~~ appear in response to notice by personal service *through her attorney.*

05050820

FINDINGS OF FACT, CONCLUSIONS OF
LAW, AND ORDER APPOINTING
DEPENDENCY GUARDIAN (INDIAN

ATTORNEY GENERAL OF WASHINGTON
900 FOURTH AVENUE, SUITE 200
SEATTLE, WASHINGTON 98164-1012
TELEPHONE (206) 464-7045

EXHIBIT C

1 1.3 The identity and whereabouts of the child's natural
2 father are unknown.

3 1.4 The child was found to be dependent pursuant to RCW
4 13.34.030 on June 11, 1997.

5 1.5 The court also entered dispositional orders pursuant to
6 RCW 13.34.130 on June 11, 1997.

7 1.6. The Indian Child Welfare Act, 25 U.S.C. § 1901 et seq.
8 applies to these proceedings.

9 1.6a. The child is a member of the Kalispel Indian Tribe,
10 which is federally recognized.

11 % 1.6a. The child is eligible for membership in the Indian
12 Tribe, which is federally recognized, and is the biological child
13 of a member of a federally recognized Indian Tribe.

14 1.6b. The child is not a ward of Tribal Court and is not
15 resident/domiciled on an exclusive jurisdiction Indian
16 reservation.

17 1.6c. The child's tribe has been notified of this proceeding
18 by registered mail received at least 15 days prior to the hearing.

19 1.7 Neither parent is a member of the Armed Forces and the
20 Soldiers and Sailors Civil Relief Act, 50 U.S.C. § 501 et seq.,
21 does not apply to these proceedings.

22 1.8 The child has been removed from the custody of the
23 parents for a period of at least six months pursuant to a finding
24 of dependency under RCW 13.34.030.

25 1.9 Services ordered under RCW 13.34.130 have been offered
26 or provided, and all necessary services reasonably available and

05050821

FINDINGS OF FACT, CONCLUSIONS OF 2
LAW, AND ORDER APPOINTING
DEPENDENCY GUARDIAN (INDIAN

ATTORNEY GENERAL OF WASHINGTON
900 FOURTH AVENUE, SUITE 2000
SEATTLE, WASHINGTON 98164-1012
TELEPHONE (206) 464-7045

EXHIBIT C
Page 1114

1 capable of correcting the parental deficiencies within the
2 foreseeable future have been offered or provided.

3 1.10 There is little likelihood that conditions will be
4 remedied so that the child can be returned to the parents in the
5 near future. The parents are not fit or capable of parenting the
6 child at this time.

7 1.11 Dependency guardianship rather than termination of the
8 parent-child relationship or continuation of efforts to return the
9 child to the parents' custody is in the best interests of the
10 child.

11 1.12 Pursuant to 25 U.S.C. §1912(d), active efforts have
12 been made to provide remedial services and rehabilitative programs
13 designed to prevent the breakup of the Indian family, and these
14 efforts have been unsuccessful.

15 1.13 Pursuant to 25 U.S.C. §1912(f), the court finds by
16 clear and convincing evidence, including the testimony of a
17 qualified expert witness, that continued custody of the child by
18 the parents or Indian custodian is likely to result in serious
19 emotional or physical damage to the child.

20 1.14 George and Kathie Costanich are suitable to act as
21 dependency guardians of the child and meet the minimum
22 requirements to care for the child as provided in RCW 74.15.030.

23 1.15 The proposed guardians do not fall within the
24 placement preferences of 25 U.S.C. 1915, but there is good cause
25 to continue placement with the proposed guardians because the
26 child is a special needs child. The tribe has not chosen to be a

05050822

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

information to appropriate authorities pursuant to law
The term "health care" includes, but is not limited to
medical, dental, psychological and psychiatric care and
treatment.

- e. To consent to social and school activities of the child;
- f. To provide an annual written accounting to the court regarding receipt by the dependency guardians of any funds, benefits, or property belonging to the child and expenditures made therefrom;
- g. The right to notice and representation by counsel at an hearing scheduled by the parents, agency, GAL, dependency guardian or court.
- h. To keep DSHS informed of your current residential address and phone number.
- i. To develop with the tribal and DCFS social workers, and carry out, a specific plan for maintaining contact between the child and the Kalispel tribe including exposure to the tribes culture.

3.3 The dependency guardianship will continue until the child reaches 18 years of age or until further order of the Court

3.4 Pursuant to RCW 13.34.233 any party may request the court to modify or terminate a dependency guardianship order under RCW 13.34.150; notice of any motion must be properly and timely served on all parties including the guardian; the dependency guardianship may be modified or terminated if the court finds by preponderance of the evidence that there has been a change of circumstances subsequent to the establishment of the dependency guardianship and that it is in the child's best interest to modify or terminate the dependency guardianship.

05050824

1 3.5 Visitation/communication will be facilitated between
2 the mother, child, foster parents and the Kalispel tribe as
3 follows: A. The mother shall be included in the child's
4 upbringing including visitations and shall be consulted with
5 regard to cultural and religious issues and contact with extended
6 family. B. The Kalispel tribe shall likewise be involved in the
7 child's upbringing including religious and cultural events during
8 the child's minority. C. The foster parents shall maintain
9 contact with the tribe regarding the child's status including
10 pictures and medical information.

11 3.6 DCFS shall be the supervising agency.

12 3.7 The dependency review hearing previously set is
13 stricken.

14 3.8 The fact finding hearing in this matter previously
15 scheduled is stricken.

16 DATED this 1 day of July, 1998.

17
18 Jama A. Udely
19 JUDGE/COMMISSIONER

19 Presented by:

20
21 By T. W. Malolepsy
22 TERRI W. MALOLEPSY
23 Assistant Attorney General
24 WSBA # 16368

25
26

05050825

APPENDIX G

Payments for BN. CP at 715-48.

	Amount Received By Costanich
January-06	\$794.36
February-06	\$794.36
December-05	\$794.36
January-06	\$446.23
February-06	\$446.23
December-05	\$446.23
November-05	\$446.23
November-05	\$518.33
October-05	\$446.23
October-05	\$518.33
September-05	\$446.23
September-05	\$518.33
August-05	\$446.23
August-05	\$518.33
July-05	\$445.23
July-05	\$518.33
June-05	\$441.81
June-05	\$513.19
May-05	\$441.81
May-05	\$513.19
April-05	\$441.81
April-05	\$513.19
March-05	\$441.81
March-05	\$513.19
February-05	\$441.81
February-05	\$513.19
January-05	\$441.81
January-05	\$513.19
December-04	\$441.81
December-04	\$513.19
November-04	\$441.81
November-04	\$513.19
October-04	\$441.81
October-04	\$513.19
September-04	\$441.81
September-04	\$513.19
August-04	\$441.81
August-04	\$513.19
July-04	\$441.81
July-04	\$513.19
June-04	\$513.19
June-04	\$441.81
May-04	\$441.81

May-04	\$513.19
Apr-04	\$441.81
Apr-04	\$513.19
Mar-04	\$441.81
Mar-04	\$513.19
Feb-04	\$441.81
Feb-04	\$513.19
Jan-04	\$441.81
Feb-04	\$513.19
Dec-03	\$441.81
Dec-03	\$513.19
Nov-03	\$441.81
Nov-03	\$513.19
Oct-03	\$441.81
Oct-03	\$513.19
Sep-03	\$441.81
Sep-03	\$513.19
Aug-03	\$441.81
Aug-03	\$513.19
Jul-03	\$441.81
Jul-03	\$513.19
May-03	\$29.76
May-03	\$75.50
May-03	\$202.44
Jun-03	\$513.19
Jun-03	\$366.31
May-03	\$366.31
Apr-03	\$366.31
Mar-03	\$276.92
Feb-03	\$366.31
Jan-03	\$366.31
Dec-02	\$366.31
Nov-02	\$366.31
Oct-02	\$366.31
Sep-02	\$366.31
Jul-02	\$366.31
Aug-02	\$366.31
Jul-02	\$513.19
Jun-02	\$366.31
Jun-02	\$505.61
May-02	\$366.31
May-02	\$505.61
Apr-02	\$366.31
Apr-02	\$505.61
Mar-02	\$366.31
Mar-02	\$505.61
Feb-02	\$366.31

Feb-02	\$505.61
Jan-02	\$366.31
Jan-02	\$505.61
Dec-01	\$366.31
Dec-01	\$505.61
Nov-01	\$366.31
Nov-01	\$505.61
Oct-01	\$366.31
Oct-01	\$505.61
Sep-01	\$366.31
Sep-01	\$505.61
Aug-01	\$366.31
Aug-01	\$505.61
Apr-01	\$152.01
Apr-01	\$300.00
Mar-01	\$351.31
Mar-01	\$152.01
Mar-01	\$300.00
Feb-01	\$351.31
Jul-01	\$366.31
Jul-01	\$505.61
Jun-01	\$495.21
Jun-01	\$351.31
May-01	\$351.31
May-01	\$495.21
Apr-01	\$351.31
Feb-01	\$152.01
Feb-01	\$300.00
Jan-01	\$351.31
Jan-01	\$152.01
Jan-01	\$300.00
Dec-00	\$351.31
Dec-00	\$300.00
Dec-00	\$152.01
Nov-00	\$351.31
Nov-00	\$152.01
Nov-00	\$300.00
Oct-00	\$351.31
Oct-00	\$152.01
Oct-00	\$300.00
Sep-00	\$351.31
Sep-00	\$152.01
Sep-00	\$300.00
Aug-00	\$351.31
Aug-00	\$152.01
Aug-00	\$300.00
Jul-00	\$351.31

Jul-00	\$152.01
Jul-00	\$300.00
Jun-00	\$344.42
Jun-00	\$149.03
Jun-00	\$300.00
May-00	\$344.42
May-00	\$149.03
May-00	\$300.00
Apr-00	\$344.42
Apr-00	\$149.03
Apr-00	\$300.00
Mar-00	\$149.03
Mar-00	\$69.02
Mar-00	\$344.42
Feb-00	\$344.42
Jan-00	\$344.42
Dec-99	\$344.42
Nov-99	\$344.42
Oct-99	\$344.42
Sep-99	\$344.42
Aug-99	\$344.42
Jul-99	\$344.42
Jun-99	\$337.67
May-99	\$337.67
Apr-99	\$337.67
Mar-99	\$82.37
Mar-99	\$255.30
Mar-99	\$110.40
Feb-99	\$337.67
Feb-99	\$146.11
Jan-99	\$337.67
Jan-99	\$146.11
Dec-98	\$337.67
Dec-98	\$146.11
Nov-98	\$337.67
Nov-98	\$146.11
Oct-98	\$337.67
Oct-98	\$146.11
Sep-98	\$337.67
Sep-98	\$146.11
Aug-98	\$337.67
Aug-98	\$146.11
Jul-98	\$337.67
Jul-98	\$146.11
Jun-98	\$325.17
Jun-98	\$146.11
May-98	\$325.17

May-98	\$146.11
Apr-98	\$325.17
Apr-98	\$146.11
Mar-98	\$325.17
Mar-98	\$146.11
Fed 98	\$235.17
Fed 98	\$146.11
Jan-98	\$325.17
Jan-98	\$146.11
Dec-97	\$325.17
Dec-97	\$146.11
Nov-97	\$325.17
Nov-97	\$146.11
Oct-97	\$325.17
Oct-97	\$146.11
Sep-97	\$325.17
Sep-97	\$146.11
Aug-97	\$146.11
Jul-97	\$146.11
Jun-97	\$86.40
Aug-97	\$325.17
Jul-97	\$325.17
Jun-97	\$213.48
Jun-97	\$179.46
May-97	\$355.80
	\$74,723.26

Payments for EN. CP at 749-99.

	Amount Received By Costanich
Dec-05	\$794.36
Feb-06	\$794.36
Jan-06	\$794.36
Dec-05	\$520.10
Feb-06	\$520.10
Jan-06	\$520.10
Dec-05	\$520.10
Nov-05	\$518.33
Oct-05	\$518.33
Oct-05	\$520.10
Sep-05	\$520.10
Sep-05	\$518.33
Aug-05	\$518.33
Aug-05	\$520.10
Jul-05	\$520.10
Jul-05	\$518.33
Jun-05	\$513.19
Jun-05	\$514.95
May-05	\$513.19
May-05	\$514.95
Apr-05	\$513.19
Apr-05	\$514.95
Mar-05	\$513.19
Mar-05	\$514.95
Feb-05	\$513.19
Feb-05	\$514.95
Jan-05	\$513.19
Jan-05	\$514.95
Dec-04	\$513.19
Dec-04	\$514.95
Nov-04	\$513.19
Nov-04	\$514.95
Oct-04	\$513.19
Oct-04	\$514.95
Sep-04	\$513.19
Sep-04	\$514.95
Aug-04	\$513.19
Aug-04	\$514.95
Jul-04	\$513.19
Jul-04	\$441.81
Jun-04	\$513.19
Jun-04	\$441.81
May-04	\$513.19

May-04	\$441.81
Apr-04	\$513.19
Apr-04	\$441.81
Mar-04	\$513.19
Mar-04	\$441.81
Feb-04	\$513.19
Feb-04	\$441.81
Jan-04	\$513.19
Jan-04	\$441.81
Dec-03	\$513.19
Dec-03	\$441.81
Nov-03	\$513.19
Nov-03	\$441.81
Oct-03	\$513.19
Oct-03	\$441.81
Sep-03	\$513.19
Sep-03	\$441.81
Aug-03	\$513.19
Aug-03	\$441.81
Jul-03	\$513.19
Jul-03	\$441.81
Jun-03	\$513.19
Jun-03	\$441.81
May-03	\$441.81
May-03	\$513.19
Apr-03	\$441.81
Mar-03	\$513.19
Apr-03	\$513.19
Mar-03	\$513.19
Mar-03	\$333.96
Feb-03	\$513.19
Feb-03	\$441.81
Jan-03	\$513.19
Jan-03	\$441.81
Dec-02	\$513.19
Dec-02	\$441.81
Nov-02	\$513.19
Nov-02	\$441.81
Oct-02	\$513.19
Oct-02	\$441.81
Sep-02	\$513.19
Sep-02	\$441.81
Aug-02	\$513.19
Jul-02	\$513.19
Aug-02	\$441.81
Jul-02	\$441.81
Jun-02	\$505.61

Jun-02	\$441.81
May-02	\$505.61
May-02	\$441.81
Apr-02	\$505.61
Apr-02	\$441.81
Mar-02	\$441.81
Mar-02	\$505.61
Feb-02	\$505.61
Feb-02	\$441.81
Jan-02	\$505.61
Jan-02	\$441.81
Dec-01	\$441.81
Dec-01	\$505.61
	\$441.81
Apr-01	\$152.01
Apr-01	\$300.00
Mar-01	\$351.31
Mar-01	\$152.01
Mar-01	\$300.00
Feb-01	\$351.31
Feb-01	\$152.01
Feb-01	\$300.00
Jan-01	\$351.31
Jan-01	\$152.01
Jan-01	\$300.00
Dec-00	\$351.31
Dec-00	\$300.00
Dec-00	\$843.00
Nov-00	\$843.00
Aug-00	\$843.00
Sep-00	\$843.00
Oct-00	\$843.00
Feb-00	\$149.03
Nov-01	\$505.61
Oct-01	\$505.61
Oct-01	\$441.81
Sep-01	\$514.95
Sep-01	\$441.81
Aug-01	\$514.95
Aug-01	\$441.81
Jul-01	\$514.95
Jul-01	\$441.81
Jun-01	\$495.21
May-01	\$495.21
Jun-01	\$426.81
May-01	\$426.81
Apr-01	\$426.81

Mar-01	\$426.81
Feb-01	\$426.81
Jan-01	\$426.81
Dec-00	\$426.81
Nov-00	\$426.81
Oct-00	\$426.81
Sep-00	\$426.81
Sep-00	\$426.81
Dec-00	\$152.01
Nov-00	\$351.31
Nov-00	\$152.01
Nov-00	\$300.00
Oct-00	\$351.31
Oct-00	\$152.01
Oct-00	\$300.00
Sep-00	\$351.31
Sep-00	\$152.01
Aug-00	\$351.31
Aug-00	\$152.01
Aug-00	\$300.00
Jul-00	\$351.31
Jul-00	\$152.01
Jul-00	\$300.00
Jun-00	\$344.42
Jun-00	\$149.03
Jun-00	\$300.00
May-00	\$344.42
May-00	\$149.03
May-00	\$300.00
Apr-00	\$344.42
Apr-00	\$149.43
Apr-00	\$300.00
Jul-00	\$426.81
Jun-00	\$418.44
May-00	\$418.44
Apr-00	\$418.44
Mar-00	\$418.44
Feb-00	\$418.44
Jan-00	\$418.44
Mar-00	\$149.03
Mar-00	\$69.02
Mar-00	\$344.42
Feb-00	\$344.42
Jan-00	\$344.42
Dec-99	\$418.44
Nov-99	\$418.44
Oct-99	\$418.44

Sep-99	\$418.44
Aug-99	\$418.44
Jul-99	\$418.44
Jun-99	\$410.24
Jan-00	\$149.03
Dec-99	\$149.03
Nov-99	\$149.03
Oct-99	\$149.03
Sep-99	\$149.03
Aug-99	\$149.03
Jul-99	\$149.03
Jun-99	\$146.11
May-99	\$410.24
Apr-99	\$410.24
Mar-99	\$410.24
Feb-99	\$410.24
Jan-99	\$337.67
Dec-98	\$337.67
Nov-98	\$337.67
May-99	\$146.11
Apr-99	\$146.11
Mar-99	\$146.11
Feb-99	\$146.11
Jan-99	\$146.11
Dec-98	\$146.11
Nov-98	\$146.11
Aug-98	\$146.11
Sep-98	\$146.11
Oct-98	\$146.11
Jul-98	\$146.11
Jun-98	\$146.11
May-98	\$146.11
Apr-98	\$146.11
Mar-98	\$146.11
Feb-98	\$146.11
Oct-98	\$337.67
Sep-98	\$337.67
Aug-98	\$337.67
Jul-98	\$337.67
Jun-98	\$325.17
May-98	\$325.17
Apr-98	\$325.17
Mar-98	\$325.17
Feb-98	\$325.17
Jan-98	\$325.17
Dec-97	\$325.17
Nov-97	\$325.17

Oct-97	\$325.17
Sep-97	\$325.17
Jan-97	\$325.17
Jan-98	\$146.11
Dec-97	\$146.11
Nov-97	\$146.11
Oct-97	\$146.11
Sep-97	\$146.11
Aug-97	\$146.11
Jul-97	\$146.11
Jun-97	\$141.85
May-97	\$141.85
Apr-97	\$141.85
Mar-97	\$141.85
Feb-97	\$141.85
Aug-97	\$325.17
Jul-97	\$325.17
Jun-97	\$303.56
May-97	\$303.56
Apr-97	\$303.56
Mar-97	\$303.56
Feb-97	\$303.56
	\$303.56
Jan-97	\$141.85
Dec-96	\$141.85
Nov-96	\$141.85
Oct-96	\$141.85
Sep-96	\$141.85
Aug-96	\$141.85
Jul-96	\$141.85
Jun-96	\$139.07
May-96	\$139.07
Apr-96	\$139.07
Mar-96	\$139.07
Jan-97	\$139.07
Dec-96	\$303.56
Nov-96	\$303.56
Oct-96	\$303.56
Sep-96	\$303.56
Aug-96	\$303.56
Jul-96	\$303.56
Jun-96	\$297.60
May-96	\$297.60
Apr-96	\$297.60
Feb-96	\$297.60
Mar-96	\$297.60
Jan-96	\$297.60

Dec-95	\$297.60
Nov-96	\$297.60
Jan-96	\$139.07
Dec-95	\$139.07
Nov-95	\$139.07
Oct-95	\$139.07
Sep-95	\$139.07
Aug-95	\$139.07
Jul-95	\$139.07
Jun-95	\$136.34
May-95	\$136.34
Apr-95	\$136.34
Mar-95	\$136.34
Feb-95	\$136.34
Oct-95	\$297.60
Sep-95	\$297.60
Aug-95	\$297.60
Jul-95	\$297.60
Jun-95	\$291.76
May-95	\$291.76
Apr-95	\$291.76
Mar-95	\$291.76
Feb-95	\$291.76
Jan-95	\$291.76
Dec-94	\$291.76
Nov-94	\$291.76
Oct-94	\$291.76
Apr-94	\$291.76
Dec-94	\$136.34
Nov-94	\$136.34
Oct-94	\$136.34
Sep-94	\$136.34
Aug-94	\$136.34
Jan-95	\$136.34
Jul-94	\$136.34
Sep-94	\$291.76
Aug-94	\$291.76
Jul-94	\$291.76
Jun-94	\$291.76
May-94	\$291.76
Feb-93	\$383.30
Mar-93	\$410.40
Mar-93	\$119.70
Apr-93	\$291.76
May-93	\$291.76
Jun-93	\$291.76
Mar-94	\$291.76

Nov-93	\$291.76
Oct-93	\$291.76
Jul-93	\$291.76
Aug-93	\$291.76
Sep-93	\$291.76
Feb-94	\$291.76
Dec-93	\$291.76
Jan-94	\$291.76
	\$116,837.78

APPENDIX H

RCW 13.36.040
Hearing — Establishing guardianship —
Exceptions — Conversion of dependency
guardianship to guardianship.

(1) At the hearing on a guardianship petition, all parties have the right to present evidence and cross-examine witnesses. The rules of evidence apply to the conduct of the hearing. The hearing under this section to establish a guardianship or convert an existing dependency guardianship to a guardianship under this section is a stage of the dependency proceedings for purposes of RCW 13.34.090(2).

(2) A guardianship shall be established if:

(a) The court finds by a preponderance of the evidence that it is in the child's best interests to establish a guardianship, rather than to terminate the parent-child relationship and proceed with adoption, or to continue efforts to return custody of the child to the parent; and

(b) All parties agree to entry of the guardianship order and the proposed guardian is qualified, appropriate, and capable of performing the duties of guardian under RCW 13.36.050; or

(c)(i) The child has been found to be a dependent child under RCW 13.34.030;

(ii) A dispositional order has been entered pursuant to RCW 13.34.130;

(iii) At the time of the hearing on the guardianship petition, the child has or will have been removed from the custody of the parent for at least six consecutive months following a finding of dependency under RCW 13.34.030;

(iv) The services ordered under RCW 13.34.130 and 13.34.136 have been offered or provided and all necessary services, reasonably available, capable of correcting the parental deficiencies within the foreseeable future have been offered or provided;

(v) There is little likelihood that conditions will be remedied so that the child can be returned to the parent in the near future; and

(vi) The proposed guardian has signed a statement acknowledging the guardian's rights and responsibilities toward the child and affirming the guardian's understanding and acceptance that the guardianship is a commitment to provide care for the child until the child reaches age eighteen.

(3) The court may not establish a guardianship for a child who has no legal parent unless the court, in addition to making the required findings set forth in subsection (2) of this section, finds one or more exceptional circumstances exist and the benefits for the child of establishing the guardianship outweigh any potential disadvantage to the child of having no legal parent. Exceptional circumstances may include but are not limited to:

(a) The child has special needs and a suitable guardian is willing to accept custody and able to meet the needs of the child to an extent unlikely to be achieved through adoption; or

(b) The proposed guardian has demonstrated a commitment to provide for the long-term care of the child and: (i) Is a relative of the child; (ii) has been a long-term caregiver for the child and has acted as a parent figure to the child and is viewed by the child as a parent figure; or (iii) the child's family has identified the proposed guardian as the preferred guardian, and, if the child is age twelve years or older, the child also has identified the proposed guardian as the preferred guardian.

(4) Upon the request of a dependency guardian appointed under chapter 13.34 RCW and the department or supervising agency, the court shall convert a dependency guardianship established under chapter 13.34 RCW to a guardianship under this chapter.

RCW 26.44.010
Declaration of purpose.

The Washington state legislature finds and declares: The bond between a child and his or her parent, custodian, or guardian is of paramount importance, and any intervention into the life of a child is also an intervention into the life of the parent, custodian, or guardian; however, instances of nonaccidental injury, neglect, death, sexual abuse and cruelty to children by their parents, custodians or guardians have occurred, and in the instance where a child is deprived of his or her right to conditions of minimal nurture, health, and safety, the state is justified in emergency intervention based upon verified information; and therefore the Washington state legislature hereby provides for the reporting of such cases to the appropriate public authorities. It is the intent of the legislature that, as a result of such reports, protective services shall be made available in an effort to prevent further abuses, and to safeguard the general welfare of such children. When the child's physical or mental health is jeopardized, or the safety of the child conflicts with the legal rights of a parent, custodian, or guardian, the health and safety interests of the child should prevail. When determining whether a child and a parent, custodian, or guardian should be separated during or immediately following an investigation of alleged child abuse or neglect, the safety of the child shall be the department's paramount concern. Reports of child abuse and neglect shall be maintained and disseminated with strictest regard for the privacy of the subjects of such reports and so as to safeguard against arbitrary, malicious or erroneous information or actions. This chapter shall not be construed to authorize interference with child-raising practices, including reasonable parental discipline, which are not proved to be injurious to the child's health, welfare and safety.

[2012 c 259 § 12; 1999 c 176 § 27; 1987 c 206 § 1; 1984 c 97 § 1; 1977 ex.s. c 80 § 24; 1975 1st ex.s. c 217 § 1; 1969 ex.s. c 35 § 1; 1965 c 13 § 1.]

RCW 26.44.050

Abuse or neglect of child — Duty of law enforcement agency or department of social and health services — Taking child into custody without court order, when. (*Effective until December 1, 2013.*)

Upon the receipt of a report concerning the possible occurrence of abuse or neglect, the law enforcement agency or the department of social and health services must investigate and provide the protective services section with a report in accordance with chapter 74.13 RCW, and where necessary to refer such report to the court.

A law enforcement officer may take, or cause to be taken, a child into custody without a court order if there is probable cause to believe that the child is abused or neglected and that the child would be injured or could not be taken into custody if it were necessary to first obtain a court order pursuant to RCW 13.34.050. The law enforcement agency or the department of social and health services investigating such a report is hereby authorized to photograph such a child for the purpose of providing documentary evidence of the physical condition of the child.

[1999 c 176 § 33. Prior: 1987 c 450 § 7; 1987 c 206 § 5; 1984 c 97 § 5; 1981 c 164 § 3; 1977 ex.s. c 291 § 51; 1977 ex.s. c 80 § 28; 1975 1st ex.s. c 217 § 5; 1971 ex.s. c 302 § 15; 1969 ex.s. c 35 § 5; 1965 c 13 § 5.]

Notes:

Findings -- Purpose -- Severability -- Conflict with federal requirements -- 1999 c 176: See notes following RCW 74.34.005.

Severability -- 1984 c 97: See RCW 74.34.900.

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

Purpose -- Intent -- Severability -- 1977 ex.s. c 80: See notes following RCW 4.16.190.

Severability -- 1971 ex.s. c 302: See note following RCW 9.41.010.

RCW 26.44.050

Abuse or neglect of child — Duty of law enforcement agency or department of social and health services — Taking child into custody without court order, when. (*Effective December 1, 2013.*)

Except as provided in RCW 26.44.030(11), upon the receipt of a report concerning the possible occurrence of abuse or neglect, the law enforcement agency or the department of social and health services must investigate and provide the protective services section with a report in accordance with chapter 74.13 RCW, and where necessary to refer such report to the court.

A law enforcement officer may take, or cause to be taken, a child into custody without a

court order if there is probable cause to believe that the child is abused or neglected and that the child would be injured or could not be taken into custody if it were necessary to first obtain a court order pursuant to RCW 13.34.050. The law enforcement agency or the department of social and health services investigating such a report is hereby authorized to photograph such a child for the purpose of providing documentary evidence of the physical condition of the child.

[2012 c 259 § 5; 1999 c 176 § 33. Prior: 1987 c 450 § 7; 1987 c 206 § 5; 1984 c 97 § 5; 1981 c 164 § 3; 1977 ex.s. c 291 § 51; 1977 ex.s. c 80 § 28; 1975 1st ex.s. c 217 § 5; 1971 ex.s. c 302 § 15; 1969 ex.s. c 35 § 5; 1965 c 13 § 5.]

RCW 26.44.125

Alleged perpetrators — Right to review and amendment of finding — Hearing.

(1) A person who is named as an alleged perpetrator after October 1, 1998, in a founded report of child abuse or neglect has the right to seek review and amendment of the finding as provided in this section.

(2) Within thirty calendar days after the department has notified the alleged perpetrator under RCW 26.44.100 that the person is named as an alleged perpetrator in a founded report of child abuse or neglect, he or she may request that the department review the finding. The request must be made in writing. The written notice provided by the department must contain at least the following information in plain language:

(a) Information about the department's investigative finding as it relates to the alleged perpetrator;

(b) Sufficient factual information to apprise the alleged perpetrator of the date and nature of the founded reports;

(c) That the alleged perpetrator has the right to submit to child protective services a written response regarding the child protective services finding which, if received, shall be filed in the department's records;

(d) That information in the department's records, including information about this founded report, may be considered in a later investigation or proceeding related to a different allegation of child abuse or neglect or child custody;

(e) That founded allegations of child abuse or neglect may be used by the department in determining:

(i) If a perpetrator is qualified to be licensed or approved to care for children or vulnerable adults; or

(ii) If a perpetrator is qualified to be employed by the department in a position having unsupervised access to children or vulnerable adults;

(f) That the alleged perpetrator has a right to challenge a founded allegation of child abuse or neglect.

(3) If a request for review is not made as provided in this subsection, the alleged perpetrator may not further challenge the finding and shall have no right to agency review or to an adjudicative hearing or judicial review of the finding, unless he or she can show that the department did not comply with the notice requirements of RCW 26.44.100.

(4) Upon receipt of a written request for review, the department shall review and, if appropriate, may amend the finding. Management level staff within the children's administration designated by the secretary shall be responsible for the review. The review must be completed within thirty days after receiving the written request for review. The review must be conducted in accordance with procedures the department establishes by rule. Upon completion of the review, the department shall notify the alleged perpetrator in writing of the agency's determination. The notification must be sent by certified mail, return receipt requested, to the person's last known address.

(5) If, following agency review, the report remains founded, the person named as the alleged perpetrator in the report may request an adjudicative hearing to contest the finding. The adjudicative proceeding is governed by chapter 34.05 RCW and this section. The request for an adjudicative proceeding must be filed within thirty calendar days after receiving notice of the agency review determination. If a request for an adjudicative proceeding is not made as provided in this subsection, the alleged perpetrator may not further challenge the finding and shall have no right to agency review or to an adjudicative hearing or judicial review of the finding.

(6) Reviews and hearings conducted under this section are confidential and shall not be open to the public. Information about reports, reviews, and hearings may be disclosed only in accordance with federal and state laws pertaining to child welfare records and child protective services reports.

(7) The department may adopt rules to implement this section.

[2012 c 259 § 11; 1998 c 314 § 9.]