

FILED
SUPREME COURT
STATE OF WASHINGTON

3/26/2025 8:00 AM Statement of Grounds for Direct Review

BY SARAH R. PENDLETON
CLERK

(Rule 4.2(b))

No. 59733-1

SUPREME COURT OF THE STATE OF WASHINGTON

Lewis County Superior Court)	STATEMENT OF GROUNDS
Court of Appeals Division II)	FOR DIRECT REVIEW BY
Damia Yvonne Bjurling)	THE SUPREME COURT OF
Vs.)	STATE OF WASHINGTON
Sydney Kate Naber)	

GROUND'S FOR DIRECT REVIEW

Treated as a petition for review; see the
Clerk's letter dated 3-27-25
Supreme Court Clerk's Office

I. INTRODUCTION

The petitioner respectfully seeks direct review by the Washington State Supreme Court of the trial court's ruling that permits the use of marijuana while caring for vulnerable adults. This ruling raises significant legal and public policy questions regarding the interpretation of Washington State's marijuana laws, the Vulnerable Adult Protection Act (RCW 74.34), and the duty of care owed to vulnerable adults.

II. STATEMENT OF THE CASE

The trial court ruled that the use of marijuana by a caregiver does not constitute neglect or abuse under RCW 74.34, despite evidence that such use impaired the caregiver's ability to provide adequate care. The trial court erred in the ruling affirming that she did not commit abuse when that is the reason for termination.

III. ISSUES PRESENTED FOR REVIEW

Substance abuse by caregivers poses significant risks to the well-being and safety of vulnerable adults. The legal landscape surrounding this issue is complex, involving interpretations of state laws, the duty of care owed to vulnerable adults, and the constitutional rights of appellants. In Washington State, the ruling by the trial court that permits the use of marijuana while caring for vulnerable adults raises critical questions regarding the interpretation of the Vulnerable Adult Protection Act (RCW 74.34) and the broader implications for public policy and constitutional rights.

IV. GROUNDS FOR DIRECT REVIEW

Case Law Precedents

Several cases highlight the legal challenges and precedents related to substance abuse by caregivers:

Washington State v. Peterson

In this landmark case, the Washington State Supreme Court ruled that the use of controlled substances by a caregiver constitutes neglect under RCW 74.34. The court emphasized that impaired judgment and motor skills due to substance abuse significantly hinder the caregiver's ability to provide adequate care, thereby violating the duty of care owed to the vulnerable adult.

In re Care of Smith

The case of In re Care of Smith involved a caregiver who used marijuana while caring for an elderly patient. The court found that the caregiver's substance abuse impaired their ability to respond effectively in emergencies and perform daily care tasks, leading to the patient's injury. This ruling reinforced the principle that substance abuse, even if legal under state law, can still constitute neglect and abuse under the Vulnerable Adult Protection Act.

Johnson v. State

In Johnson v. State, the appellant argued that their constitutional rights were violated when the state terminated their employment due to marijuana use while caring for vulnerable adults. The court held that the state's interest in protecting vulnerable adults outweighed the appellant's right to use marijuana, affirming that constitutional rights must be balanced against public safety concerns.

Grounds for Direct Review

The legal issues presented by the use of marijuana by caregivers in Washington State, particularly as it relates to the care of vulnerable adults, are both novel and of substantial public interest. The direct review by the Washington State Supreme Court is warranted for several reasons:

1. ****Novel Legal Questions****: The interpretation of the Vulnerable Adult Protection Act in the context of legal marijuana use raises new and unresolved legal questions. The court's guidance is essential in setting a clear standard that balances the rights of caregivers with the safety and well-being of vulnerable adults.
2. ****Public Policy Implications****: The outcomes of these cases have far-reaching implications for public policy. As marijuana legalization becomes more widespread, the courts must address how these laws intersect with the duty of care owed to vulnerable adults. This review will help shape future legislative and regulatory approaches to substance use by caregivers.
3. ****Consistency in Legal Standards****: There is a need for consistency in how the courts interpret and apply the Vulnerable Adult Protection Act. Different trial and appellate courts have addressed similar issues with varying outcomes. The Supreme Court's review will ensure that a uniform standard is applied across all jurisdictions in the state.
4. ****Constitutional Considerations****: The balance between individual constitutional rights and public safety concerns is a critical issue. The court's direct review will provide clarity on how to reconcile these competing interests, ensuring that the rights of caregivers do not undermine the state's responsibility to protect its most vulnerable citizens.
5. ****Precedential Value****: The rulings in these cases will serve as important precedents for future litigation involving substance abuse by caregivers. Direct review by the state's highest court will establish authoritative guidance that lower courts can rely upon.

Given the complexity and significance of these issues, direct review by the Washington State Supreme Court is necessary to provide definitive legal interpretations and to protect the interests of vulnerable adults in the state.

Duty of Care

The duty of care owed to vulnerable adults is paramount in ensuring their safety and well-being. Substance abuse by caregivers compromises this duty, leading to impaired judgment, slower reaction times, and reduced ability to provide adequate

care. Courts have consistently ruled that substance abuse constitutes neglect and abuse, reaffirming the importance of maintaining a high standard of care.

Interpretation of Marijuana Laws

The legalization of marijuana in Washington State adds complexity to the issue of substance abuse by caregivers. While marijuana use may be legal, its impact on caregiving responsibilities and the safety of vulnerable adults cannot be overlooked. Courts must navigate the nuances of marijuana laws and their intersection with the Vulnerable Adult Protection Act.

Constitutional Rights


The appellant's constitutional rights, including the right to use marijuana, must be balanced against the state's interest in protecting vulnerable adults. Courts have affirmed that public safety concerns take precedence over individual rights when it comes to caregiving responsibilities. This balance ensures that the constitutional rights of caregivers do not infringe upon the rights and safety of vulnerable adults.

V. CONCLUSION

Substance abuse by caregivers, whether involving marijuana or other controlled substances, poses significant risks to vulnerable adults. Legal precedents in Washington State emphasize that impaired caregiving due to substance abuse constitutes neglect and abuse under the Vulnerable Adult Protection Act. While caregivers may have constitutional rights to use substances, these rights must be balanced against the duty of care owed to vulnerable adults and the state's interest in public safety. The Washington State Supreme Court's direct review of this issue will provide clarity on the interpretation of marijuana laws and the protection of vulnerable adults, ensuring that their safety and well-being remain a top priority. For the foregoing reasons, the petitioner respectfully requests that the Washington State Supreme Court grant direct review of the trial court's ruling.

March 25, 2025

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Damia Bjurling', written over a horizontal line.

Signature

Damia Yvonne Bjurling 253-398-5935 510 Lilly Rd
SE Apt 18 Olympia WA 98501

[Amended effective September 1, 2006; amended effective September 1, 2010]

DAMIA BJURLING - FILING PRO SE

March 25, 2025 - 8:02 PM

Filing Motion for Discretionary Review of Superior Court (RAP 15.2(h))

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: Case Initiation
Trial Court Case Title: Damia Yvonne Bjurling Vs Sydney Kate Naber
Trial Court Case Number: 25-2-30129-34 (JIS Number: 25-2-30129-7)
Trial Court County: Thurston Superior Court
Signing Judge: Christopher Lanese
Judgment Date: 3/4/2025

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A copy of the uploaded files will be sent to:

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March 25, 2025

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

DAMIA Y. BJURLING,

Appellant,

v.

JULES J. FORBES,

Respondent.

No. 59733-1-II

UNPUBLISHED OPINION

LEE, J. — Damia Y. Bjurling appeals the superior court’s orders denying her motion to modify the protection order she obtained restraining Jules J. Forbes and denying her motion for a contempt hearing. The superior court did not abuse its discretion. Accordingly, we affirm.

FACTS

In October 2023, the superior court entered a protection order prohibiting Forbes from contacting Bjurling and requiring Forbes to stay 500 feet away from Bjurling and Bjurling’s residence.¹ VRP 5-6. On November 27, 2023, Bjurling filed a motion to modify the protection order, claiming continued harassment by Forbes through a third party and requesting “mental health services” due to concerns over Forbes’ conduct. CP at 2. The motion was based on a social media messages between Forbes and a third party. In the messages, Forbes asked the third party for advice regarding the protection order; Forbes did not ask the third party to contact Bjurling.

¹ Bjurling has failed to designate the actual protection order as part of the record on appeal. However, the record contains a September 2024 order renewing the October 2023 order.

On December 4, the superior court continued the hearing on Bjurling's motion to modify the protection order to December 18.

On December 13, Bjurling filed a motion for a contempt hearing. The motion for a contempt hearing was based on a prior protection order violation and a message Bjurling received from a third party letting her know where Forbes had sent copies of the declaration Forbes wrote in response to Bjurling's motion to modify the protection order.

At the December 18 hearing, the superior court found that there was no basis for modifying the protection order:

All right. I'm going to deny the request to modify this.

The only thing that has happened is that she got you the response to you had asked for [sic], so you wouldn't be surprised by it.

The fact that she has a conversation with somebody that gets communicated to you, that that person chooses to give you, and that somehow that offends you, is not a violation of the order. It's certainly not a basis to modify the order.

Verbatim Rep. of Proc. at 10. The superior court denied the motion to modify the protection order.

The superior court also denied the motion for a contempt hearing.

Bjurling appeals.

ANALYSIS

Bjurling raises two issues on appeal: the superior court erred by denying her motion to modify the protection order and the superior court erred by denying her motion to hold a hearing on contempt.² We disagree.

² Bjurling also argues that the superior court's decision has allowed Forbes to violate her constitutional rights as well as several statutes. However, these arguments are raised for the first time on appeal, and, therefore, we decline to address them. RAP 2.5(a).

A. DENIAL OF MOTION TO MODIFY

Bjurling argues that the superior court erred by denying her motion to modify the protection order because Forbes' communication with a third party violated the protection order.

RCW 7.105.500(1) allows the superior court to modify the terms of an existing protection order. We review the superior court's decisions under RCW 7.105.500 for an abuse of discretion. *Sullivan v. Schuyler*, 31 Wn. App. 2d 791, 804, 556 P.3d 157 (2024). "A trial court abuses its discretion when its decision is manifestly unreasonable or based on untenable grounds or reasons." *Id.* (quoting *Fowler v. Fowler*, 8 Wn. App. 2d 225, 234, 439 P.3d 701 (2019)). "A decision is based on untenable grounds or for untenable reasons if the trial court applies the wrong legal standard or relies on unsupported facts." *Id.* (internal quotation marks omitted) (quoting *Salas v. Hi-Tech Erectors*, 168 Wn.2d 664, 669, 230 P.3d 583 (2010)).

Here, the protection order prohibited Forbes from contacting Bjurling. The superior court determined that there were no grounds for modifying the protection order because, although Forbes referenced Bjurling in a conversation with a third party, Forbes did not attempt to communicate with Bjurling through the third party. The superior court's decision was not untenable. Therefore, the superior court did not abuse its discretion in denying Bjurling's motion to modify the protection order.

B. DENIAL OF MOTION FOR A CONTEMPT HEARING

Bjurling argues that the superior court erred by denying her motion to set a contempt hearing because Forbes directly communicated with her by mail and had a third party send her a message.

We review the superior court's orders on contempt for an abuse of discretion. *In re Marriage of Eklund*, 143 Wn. App. 207, 212, 177 P.3d 189 (2008). The superior court abuses its

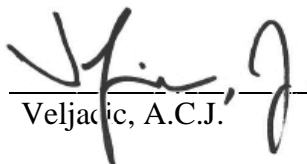
discretion if its decision is based on untenable grounds or untenable reasons. *Id.* “Intentional disobedience of any lawful court order is contempt of court.” *Gronquist v. Dep’t of Corr.*, 196 Wn.2d 564, 569, 475 P.3d 497 (2020).

Here, the only thing that Forbes mailed to Bjurling was Forbes’ response to Bjurling’s motion to modify the protection order. And the third-party communication was to inform Bjurling where Forbes had left a copy of the response in case she mailed the response to the wrong place. Because the only communication with Bjurling was to serve Bjurling with Forbes’ response to Bjurling’s motion to modify the protection order, the superior court did not abuse its discretion by denying Bjurling’s motion to set a contempt hearing.


We affirm the superior court’s orders denying Bjurling’s motions to modify the protection order and to set a contempt hearing.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

We concur:



Veljacic, A.C.J.



Price, J.



Lee, J.