Supreme Court No.1041951
Court of Appeals (Division II) No. 586266
Clark County Superior Court No. 22-4-01613-06

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

In re Matter of the
Guardianship of J.P.C.J.

ANSWER TO PETITION FOR REVIEW OF JM

Donald G. Grant, WSBA#15480
Of Counsel for Respondent

Donald G. Grant, P.S.
Attorneys and Counselors at Law
2005 SE 192nd Avenue, Suite 200
Camas, WA 98607
TEL: (208) 453-6148
E-MAIL: don@dongrantps.com

TABLE OF CONTENTS

TABLE OF AUTHORITIES

I. TABLE OF CASES

II. TABLE OF STATUTES AND COURT RULES

I. STATEMENT OF CASE.

A. Procedural History.

The Court of Appeals, Division II, issued its unpublished decision on May 6, 2025, correctly stating:

> Thus, the evidence supports the trial court findings and the trial court's support in its conclusion that a limited guardianship for JPCJ should be ordered. No additional findings were required to protect JJ's constitution right to parent. The nonparental guardianship order did not violation JJ's constitutional right to parent.

Unpublished Opinion at 18-19. JJ filed his Petition for Review ("Petition") with the Washington Supreme Court on May 19, 2025. JM[1] files this Answer to Petition for Review ("Answer") requesting the denial of the Petition.

B. Statement of Facts.

The unpublished opinion of the Court of Appeals,

---

[1] JJ identifies JM by his actual name in his Petition; however, JM uses "JM" as the correct identifier as did the Court of Appeals.

Division II, correctly and adequately summarized the facts pertaining to the litigation background (Section A), the guardianship hearing (Section B), the testimony about JJ's ability to parent (Section B1), testimony about JM's guardianship qualifications (Section B2), and trial court ruling (Section B3). *Unpublished Opinion at 1-10*. JM's Answer includes additional factual references to the court record where applicable.

II. LEGAL ARGUMENT.

A. Standard for Granting Petition for Review.

RAP 13.4(b) requires at least one of the following criterion for accepting review: (1) if the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; (2) if the decision of the Court of Appeals is in conflict with a published decision of the Court of Appeals; (3) if a significant question of law under the Constitution of the State of Washington or United States

is involved; or (4) if the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

JJ argues that subsections (1), (3) and (4) apply to his Petition for Review. *Petition at 14, 19, 35, and 37* However, as discussed below, none of these criteria are applicable.

B. Legal Discussion.

1. **THE COURT OF APPEALS CORRECTED HELD THAT THE TRIAL JUDGE DID NOT VIOLATE THE APPEARANCE OF FAIRNESS DOCTRINE.**

JJ argues that Judge Cornell violated the appearance of fairness doctrine by "[b]efore hearing all the evidence, the judge expressed her opinion that the dase would likely end with the establishment of a guardianship," "[s]he helped opposing counsel by providing forms that would only be necessary if [JM]

prevailed," "[s]he obtained information from a disqualified judge, and "[s]he also sought out other information that was not admitted into evidence." *Petition at 24-25.*

Washington's "appearance of fairness doctrine seeks to ensure public confidence by preventing a biased or potentially interested judge from ruling on a case." In re Marriage of Meredith, 148 Wn. App. 887, 903, 201 P.3d 1056 (2009). Evidence of a judge's actual or apparent bias is required before a violation of the doctrine can be found. State v. Post, 118 Wn.2d 596, 618, 826 P.2d 172 (1992). Under the appearance of fairness doctrine, "a judicial proceeding is valid only if a reasonably prudent and disinterested person would conclude that all parties obtained a fair, impartial, and neutral hearing." State v. Bilal, 77 Wn. App. 720, 893 P.2d 674 (1995). One's subjective feelings are irrelevant. "Regardless of the standard used . . . a defendant should

not benefit from his or her own misbehavior[.]" Id. at 722. "A party asserting bias on the part of the trial court bears the burden of producing sufficient evidence to demonstrate bias; mere speculation is insufficient." Id.

a. Allegedly Helping JM.

The guardianship statute requires a petitioner to complete several court-approved forms for the new and complex minor guardianship statute. These forms are published by Administrative Office of the Courts. In a colloquy with counsel on May 19, 2023, Judge Cornell simply stated: "There is a - - - Mr. [Donald] Esau, you are correct, there is a template. It's kind of hard to find on courts.wa. I had to do digging myself and I keep copies of it just for all the various parties that come before me." (RP at 116) Additionally, Judge Cornell later pointed out the Disclosure of Bankruptcy and Criminal History Form to "counsel." (RP 129)

JJ cited no applicable Washington law which demonstrates that the simple fact of a trial court's handing out court-approved and mandatory forms to "all the various parties" or to a specific party somehow violates the appearance of fairness doctrine. JJ's trial counsel, Donald Esau, did not object to Judge Cornell's passing out the correct "template" (RP 116) nor to her suggesting the use of the Disclosure of Bankruptcy and Criminal History Form to "counsel." (RP 129)

These actions by Judge Cornell do not demonstrate "evidence of a judge's actual or apparent bias" as required by State v. Post. Neither would a reasonably prudent and disinterested person conclude that these actions prevented JJ from obtaining "a fair, impartial and neutral hearing" as required by State v. Bilal. JJ's feelings are not relevant. At the time, the minor guardianship statute was a relatively new and complex law, so Judge

Cornell maintained copies of the forms for distribution "to all the various parties." (RP 116) JJ's counsel did not object to any of these actions at trial, and even if he did, none of these actions would reasonably or objectively constitute bias. He cannot demonstrate any "actual or apparent bias" by Judge Cornell.

b. Prejudgment and Consultation with Disqualified Judge.

On May 19, 2023, Judge Cornell stated: "I've heard from Judge Banfield how proud she is of your work you're doing there. You know, you're making progress; you're doing the things you need to do." (RP 154) Additionally, she clarified: "I will not judge the proceeding until I hear everything." (RP 155) Her statement about the "headed in the direction it appears to be headed" was made in the context of JPCJ's prior statement that he did not want to live with JJ. (RP 155) JJ later testified to facts about his

recovery: resided in Iron Horse Recovery since January 2023 (RP 97), “90 days clean UA’s (RP 106), and “hair follicle test . . . came back with opiates - - - and amphetamines” (RP 112). He further testified that he did not want to “rip [JPCJ] away from what he knows; my plan is not to - - - to make his life any, you know, worse than it has to be, considering his mom has now passed.” (RP 137)

In actuality, any putative information Judge Cornell received from Judge Banfield was helpful to him: proud of his work! In the other comments, Judge Cornell was simply referencing known facts of the case to which JJ had testified and following up on JPCJ’s prior statements.

JJ cites a death penalty case, State v. McEnroe, 181 Wn.2d 375, 333 P.3d 402 (2014), which simply dealt with the “reassignment request” on appeal for a trial judge who “will exercise discretion on remand regarding the

very issue that triggered the appeal and has already been exposed to prohibited information, expressed an opinion as to the merits of otherwise prejudged the issue." Id. at 387. In McEnroe, the Washington Supreme Court denied the State's request for reassignment on remand without prejudice "to bring the recusal motion in the trial court." Id. at 390.[2] This case is not particularly relevant to JJ's arguments.

Judge Cornell did not "prejudge" the outcome of these guardianship proceedings under any objective and reasonable standard and specifically stated: "I will not judge the proceeding until I hear everything". (RP155) In fact, her oral rulings on July 19, 2023, show a thorough legal analysis of the statute, RCW 11.130.195, and a

---

[2] The other case cited by Jurgens, Smith v. Mount, 45 Wn. App. 623, 726 P.2d 474 (1986), involves quasi-judicial proceedings and actions by a sheriff and dealt with the situation where "the decisionmaker is biased because of a direct or indirect pecuniary interest in the outcome of the hearing." Id. at 628. Judge Cornell did not have any pecuniary interest in the outcome of the guardianship proceedings.

substantive discussion of the pertinent adjudicative facts for each element of the statute. (RP 140-350). In fact, Judge Cornell did NOT grant a full guardianship as requested by JM, but only a limited guardianship granting JJ significant and liberal visitation rights and placing limits on the guardian's authority (e.g., allowed JJ access to the youth's records). (CP 49, 56)

c. Exposure to Facts Not in Record.

JJ futher argues that Judge Cornell reviewed "the family law case" in addition to talking with Judge Banfield. *Petition at 20.* The record does not reflect what types of records that Judge Cornell reviewed. JJ's counsel did not object at trial and JJ's Petition does not specify the nature of the specific documentation.[3] However, the Report of

---

[3] The context of this statement by Judge Cornell is taken significantly out of context. For the context, see RP 172-184, in which the judge was actually assisting JJ with visitation and removing any roadblocks for facilitating it. It is probable that Judge Cornell simply reviewed the prior Parenting Plan about which signification testimony was admitted through the witnesses and discussed by counsel. See RP 10, 12, 34, 38-39, 90-91, 108, 110, 113-14, 118-122

Proceedings indicated that Judge Cornell was concerned that JJ had not exercised visitation because of the requirement that he pay for supervised visitation in the original Parenting Plan with RG. (RP 173) In fact, JJ confirmed the issue of "financial burden" by stating: "It feels like I need to pay a ransom to see my son." (RP 173) Judge Cornell then asked JM if "was willing to kind of supervise, essentially, or hang out or be available maybe these visits can be . . . someplace less. . ." (RP 173) JM stated that "I've always been willing to be the in between guy to help [JJ] and [JPCJ] get to know each other." (RP 172)

In any event, the "Parenting Plan" would not be "prohibited information" as argued by JJ. This information was part of the trial testimony. In viewing all of Judge

---

(testimony of JJ regarding Parenting Plan in family law case), and 124.

Cornell's actions and statements in context, a reasonably prudent, objective, and disinterested person would conclude that JJ obtained a fair, impartial, and neutral hearing.

The Court of Appeals, in its unpublished opinion, thoroughly analyzed JJ's "appearance of fairness" argument, then rightly rejected it. *Unpublished Opinion at 10-12.* It held: "Thus, even if JJ had objected [to this evidence and he did not], JJ's appearance of fairness claim fails." Id. at 12. Moreover, it further concluded that no evidence exists "that the trial court showed bias toward JM[.] Id. at 11.

JJ has not met his burden of proving otherwise and has not established a basis for review under RAP 13.4. The Court of Appeals decision is not demonstrably in conflict with any other Washington appellate court decisions cited by JJ. Additionally, the Petition does not

set forth an issue of "substantial public interest" nor involves a "significant question of law" under any constitutional provision that requires the intervention of the Supreme Court.

2. THE COURT OF APPEALS CORRECTLY DETERMINED THAT THE GUARDIANSHIP ORDER DID NOT VIOLATED THE FATHER'S CONSTITUTIONAL DUE PROCESS RIGHTS.

JJ next argues that "according to the Court of Appeals, these constitutional requirements [of prohibiting interference with family relationships absent unfitness or actual detriment to child], do not apply to minor guardianships under RCW 11.130.185, *et seq. Petition at 13; see also, Petition at 18*. Unfortunately, JJ mischaracterizes the holding of the Court of Appeals which actually stated:

> We hold that if a trial court finds that the nonparental guardianship is in the child's best

> interests and that there is clear and convincing evidence that no parent is willing or able to exercise the parenting functions listed in RCW 26.09.004, those findings will satisfy the protections under the constitutional right to parent. Accordingly, a nonparental guardianship order issued in compliance with the current statutory scheme meets the constitutional threshold to avoid a violation of the constitutional right to parent.

Unpublished Opinion at 17-18 (emphasis added)[4]

Moreover, the Court of Appeals further stated: "JJ also argues, without citation to authority, that the current nonparental guardianship 'statute necessarily incorporates the constitutional standard set forth in L.M.S. and E.A.T.W. JJ contends that this standard was not met in this case. We disagree with JJ." *Unpublished Opinion at 16.*

JJ conflates (and confuses) his constitutional

---

[4] Consequently, JJ's entire legal argument under L.W.S. and E.A.T.W. flows from this initial mischaracterization of the applicability of these cases and compliance with constitutional due process requirements found by the Court of Appeals.

argument with Washington's statute outlining the requirements for a minor guardianship. He totally misunderstands the holding of the Court of Appeals on this issue. The Court of Appeals rejected JJ's argument that the same holding in In re Custody of L.M.S., 187 Wn.2d 567, 387, P.3d 707 (2017), must necessarily be carried over to the instant litigation, but, nevertheless, did hold that the constitutional due process requirements were satisfied by the new nonparental guardianship statute.

However, JJ then argues that

> [t]he constitutionality of the minor guardianship statute turns on the meaning of the term "willing or able" in the phrase "no parent of the minor is willing or able to exercise parental functions. . ." RCW 11.130.185. To be consistent with the due process right to parent, the phrase "willing or able" must be interpreted in light of the standard outlined in E.A.T.W. and L.M.S.

Petition at 17.

Moreover, E.A.T.W. determined that "a parent is unfit if he or she cannot meet a child's basic needs." In re Custody of E.A.T.W., 168 Wn.2d 335, 576, P.3d 1284 (2010). The minor guardianship statute states in relevant part:

> The court may appoint a guardian for a minor who does not have a guardian if the court finds the appointment is in the minor's best interest and . . . There is clear and convincing evidence that no parent of the minor is willing or able to exercise parenting functions as defined in RCW 26.09.004.

Wash. Rev. Code §11.130.185 (2024)(emphasis added). RCW 26.09.004(2) defines "parenting functions" as:

> (2) "Parenting functions" means those aspects of the parent-child relationship in which the parent makes decisions and performs functions necessary for the care and growth of the child. Parenting functions include:
>
> (a) Maintaining a loving, stable, consistent, and nurturing relationship with the child;
>
> (b) Attending to the daily needs of the child, such as feeding, clothing, physical care and

> grooming, supervision, health care, and day care, and engaging in other activities which are appropriate to the developmental level of the child and that are within the social and economic circumstances of the particular family;
>
> (c) Attending to adequate education for the child, including remedial or other education essential to the best interests of the child;
>
> (d) Assisting the child in developing and maintaining appropriate interpersonal relationships;
>
> (e) Exercising appropriate judgment regarding the child's welfare, consistent with the child's developmental level and the family's social and economic circumstances; and
>
> (f) Providing for the financial support of the child.

Wash. Rev. Code §26.09.004(2)(2024)(emphasis added)[5]. Inability to perform the "parenting functions" as

---

[5] The statute states that "parenting functions include" the listed items in subparagraphs (a) through (f). "Parenting functions" are not limited to these discrete listed items. Moreover, the guardianship statute simply references whether or not any parent is "able to exercise functions defined in RCW 26.04.004." The trial court is not necessary limited to those specific items in establishing a limited or full guardianship and, even though Judge Cornell went through subparagraphs (a) through (f) in her oral ruling. (RP 339-360)

defined in RCW 26.09.004(2) would constitute "unfitness" to meet a child's basis needs permitting a court to establish a guardianship under RCW 11.130.185(2)(b) and satisfy any constitutional requirements.

So, whether or not the trial court's findings of fact or conclusions of law were based on substantial or clear and convincing evidence on the statutory bases set forth in 11.30.185(2)(c) and RCW 26.09.004(2), the constitutional requirements of due process are satisfied.

The Statement of Facts set forth the unpublished opinion of the Court of Appeals contains the relevant facts for a determination of clear and convincing or substantial evidence standard and the constitutional due process requirements. Without repeating all of them, the following evidentiary summary supports the limited guardianship finding:

1. JJ was convicted of domestic violence against

JPCJ's mother and violated the "no contact" order three times resulting in his incarceration (RP 108-09, 110);

2. JJ tested positive for opiates and amphetamines upon release from prison in 2022 (RP 112);

3. JJ failed to exercise any visitation with JPCJ through the parenting plan dated January 16, 2015, until RG's death in late 2022 (RP 118-19; 120-21);

4 JJ had an informal contact with JPCJ at Chuck E. Cheese in October 2022 supervised by family members (RP 123-24);

5. JJ had no involvement in JPCJ's education or medical care nor had provided any necessities of life for the child since 2013 (RP 126-28);

6. JJ even failed to exercise all of the court-approved visitation with JPCJ after May 19, 2023, because he "decided to just wait until I was to appear in court again" (RP 134-35);

7. JJ plan "was not to rip [JPCJ] from what is known [JM's care] . . . [and not] to make his life worse](RP 137);

8. JJ refused to answer any questions about the potential traumatization of JPCJ if removed

from JM's care "where [JPCJ] had resided for "six, seven years" (RP 146-47; 214-15);

9. JJ, "based on conversations" informed JM that he wanted [JPCJ] to stay with JM but "wants the final say-so on everything [JPCJ] goes through." (RP 264-67; 276);

10. JJ, based on conversations with JM, "doesn't want the court to order a guardianship [because] he thought [the parties] could just work it out, outside of court" (RP 275);

11. JJ's live-in significant other "has an extensive CPS history and isn't supposed to be around children" per his social worker (CP 293);

12. JJ currently resides in an apartment with "two-rooms. . . a little bigger than one hotel room" (RP 99); and

13. JPCJ currently does not want to reside with JJ because JM "has been in my life forever . . . He is my one and true dad. . . [JJ] didn't call me when my mom passed away[.]" (RP 94).

The following established facts also support Judge Cornell's findings and/or conclusions by clear and convincing or substantial evidence and the constitutional due process requirements:

1. JJ has a history of "not providing a loving, stable, nurturing, drug-free, non-tumultuous family environment for the child" (Fact No. 6);

2. JJ has not "attended to the feeding, clothing, and daily needs of the child . . . [he has] not attended to visitation with the child" (Fact No. 7);

3. Since RG's death, JJ "has not attended to any of the needs for the education of the child" (Fact No. 8);

4. JM has encouraged JJ "to visit and spend time with the child, but [JJ] has not attended to these interpersonal needs of the child" (Fact No. 9);

5. JJ "has made strides in performing parental functions and has asserted that he loves and cares for the child" (Fact No. 10);

6. JJ has "done great work" with his other six-year old son under the oversight of DCYF (Fact No. 11); and

7. JJ testified that "he doesn't want to rip Murphy and [JPCJ] apart (Fact No. 13).[6]

---

[6] The Minor Guardianship Findings of Fact, Conclusions of Law, and and Order were drafted by JJ's legal counsel. (CP 59) Interestingly, JJ, In his Petition, does not appear to challenge any of the trial court's specific findings or conclusions nor the Court of Appeals' decision upholding these specific factual findings and conclusions.

All of these facts supported the trial court's limited guardianship order by clear and convincing or substantial evidence (1) leading to Judge Cornell's conclusion that JJ is not able to exercise the parenting functions ("unfit") as set forth in RCW 26.09.004 pursuant to RCW 11.130.185(2); and (2) satisfying any constitutional due process concerns.

JJ does not meet any of the requirements of RAP 13.4 mandating the granting of his Petition for Review. The unpublished opinion of the Court of Appeals does not conflict with any other published appellate Washington decision including L.W.S. and E.A.T.W. Moreover, JJ has not presented by "significant question of law" under any constitution nor any issue of "substantial public interest" requiring the intervention of the Washington Supreme Court.

III. CONCLUSION.

Based on the foregoing, JM requests that the Washington Supreme Court deny JJ's Petition for Review.

I CERTIFY PURSUANT TO RAP 18.17(c)(2) THAT RESPONDENTS' BRIEF, EXCLUSIVE OF WORDS CONTAINED IN THE APPENDICES, THE TITLE SHEET, THE TABLE OF CONTENTS, THE TABLE OF AUTHORITIES, THIS CERTIFICATE OF COMPLIANCE, THE CERTIFICATE OF SERVICE, SIGNATURE BLOCKS, AND PICTORIAL IMAGES CONTAIN 3,672 WORDS PURSUANT TO THE WORDPERFECT WORD COUNT CALCULATION USED TO PREPARE THIS DOCUMENT AND IS PRESENTED IN SANS SERIF ARIAL 14 FONT PURSUANT TO RAP 18.17(a)(2).

DATED: June 17, 2025.

/s/ Donald G. Grant
DONALD G. GRANT, WSBA#15480
Of Counsel for Respondent

Donald G. Grant, P.S.
Attorneys and Counselors at Law
2005 SE 192nd Avenue, Suite 200
TEL: (208) 453-6148
CELL: (360) 907-3094
E-MAIL: don@dongrantps.com

IV. CERTIFICATE OF SERVICE

I certify that I served the foregoing pleading on the following on June 17, 2025:

Manek R. Mistry
Backlund & Mistry
P. O. Box 6490
Olympia, WA 98507-6490
E-MAIL: backlundmistry1@gmail.com
Of Counsel for Appellant

Jodi R. Backlund
Backlund & Mistry
P. O. Box 6490
Olympia, WA 98507-6490
E-MAIL: backlundmistry1@gmail.com
Of Counsel for Appellant

___ by directly e-mailing a true copy thereof to his or her e-mail address listed above.

_x_ by service through the electronic case management system of the Court of Appeals.

DONALD G. GRANT, P.S.

/s/ Donald G. Grant
DONALD G. GRANT, WSBA#15480
Of Counsel for Respondent

DONALD G GRANT, PS

June 17, 2025 - 12:06 PM

Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	104,195-1
Appellate Court Case Title:	In the Matter of the Guardianship of J.P.C.J.
Superior Court Case Number:	22-4-01613-3

The following documents have been uploaded:

- 1041951_Answer_Reply_20250617120406SC752806_0409.pdf
  This File Contains:
  Answer/Reply - Answer to Petition for Review
  The Original File Name was Answer to Petition for Review.pdf

A copy of the uploaded files will be sent to:

- backlundmistry1@gmail.com
- backlundmistry@gmail.com
- courtneybaasch@gmail.com

Comments:

Sender Name: DONALD GRANT - Email: DON@DONGRANTPS.COM
Address:
2005 SE 192ND AVE STE 200
CAMAS, WA, 98607-7475
Phone: 208-453-6148

Note: The Filing Id is 20250617120406SC752806