Supreme Court No. (to be set)
Court of Appeals No. 87313-0-I

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

State of Washington, Respondent
v.
Faafetai Santisteban, Petitioner

Snohomish County Superior Court
Cause No. 97-1-01216-8

PETITION FOR REVIEW

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Introduction and Summary of Argument

The trial court ordered Faafetai Santisteban's conditional release to a safe, secure adult family home where she would receive 24-hour care, medication management, and structured support. She would not be permitted to leave the facility without staff escort.

State law makes the Department of Social and Health Services (DSHS) responsible for paying the costs of such inpatient treatment. RCW 10.77.2009(1). However, instead of complying, DSHS refused to fund the placement, waited until the last day of the court's transition period, and filed an appeal—without ever becoming a party in the case.

The Court of Appeals reversed the funding provision without addressing the statute that requires DSHS to pay. The appellate court concluded that the trial court lacked personal jurisdiction over DSHS and

that the Department could not be ordered to meet its statutory obligation.

The Supreme Court should grant review and reverse the Court of Appeals' opinion. The decision below conflicts with other appellate decisions and raises significant constitutional issues that are of substantial public interest.

Decision Below and Issues Presented

Petitioner Faafetai Santisteban seeks review of the unpublished Court of Appeals opinion filed on June 23, 2025.[1] The decision reversed the Snohomish County Superior Court's order directing the Department of Social and Health Services ("DSHS") to fund Ms. Santisteban's inpatient treatment in an adult family home.

[1] A motion to publish was denied on July 23, 2025.

This case presents three related issues:

1. Under RCW 10.77.2009, may a trial court direct DSHS to fund inpatient treatment in an adult family home?

2. Having declined to intervene in the trial court, is DSHS barred from seeking review as an "aggrieved party" under RAP 3.1?

3. Does the Court of Appeals decision deprive Ms. Santisteban of due process because it denies her release to a less restrictive alternative placement that is supported by unanimous professional judgment?

Statement of the Case

Faafetai Santisteban has resided at Western State Hospital since the court found her not guilty by reason of insanity in December of 1998. CP 581, 589. She has earned privileges within the hospital. CP 581; RP (4/9/24) 5.

She filed for conditional release in March of 2024, with the support of two different forensic risk

assessments. CP 582. The prosecuting attorney agreed that Ms. Santisteban posed no substantial danger to other persons, and that she posed no substantial likelihood of committing criminal acts jeopardizing public safety or security under RCW 10.77.6011. CP 582-583.

Ultimately, Ms. Santisteban's treatment team at the hospital agreed that she was a good candidate for conditional release.[2] CP 583, 585. The treatment team "recommended [her] for an Adult Family Home level of care" if she were to be released. CP 309.

The parties appeared in court in April of 2024. RP (4/9/24) 1-2. Despite the directive requiring that "[c]onditional release planning should start at

[2] Initially, the treatment team had opposed conditional release. CP 307.

admission,"[3] the Department of Social and Health Services (DSHS) had not completed any release planning in the 26 years they'd had Ms. Santisteban in their custody. RP (4/9/24) 5. The Court directed DSHS to complete a release plan by July 19, 2024. Order Directing Compliance entered 4/9/24, Supp. CP; RP (4/9/24) 14-15.

The Department's release plan recommended release to an adult family home. RP (10/24/24) 29. According to the treatment team, this would provide her "access to support, resources, and 24/7 staff monitoring." CP 309. She would be in a house with "no more than 6 individuals with a high ratio of onsite staff." CP 310. Such facilities also "[p]rovide medication management, which ensures adherence to psychotropic

[3] RCW 10.77.6016(1).

medication and assistance with maintenance of complex medical needs." CP 311. They also "provide support and flexibility for cognitive limitations (e.g. memory aids, staff assistance and engagement, reminders, slow pace of activity, learning, and interaction)." CP 311.

A social worker developed a release plan with conditions and supervision that included medication management, a structured setting, professional support, and appropriate treatment. CP 583. No expert opinion supported Ms. Santisteban remaining in the state hospital. CP 584. Nor did anyone suggest that she could only be treated in an Intensive Behavioral Health Treatment Facility (IBHTF). CP 2, 4.

The prosecuting attorney agreed that Ms. Santisteban was an appropriate candidate for conditional release. The parties agreed to a plan that

involved supervision by a multidisciplinary team, treatment, community escorts, and other conditions set by the court. CP 582-583.

Application for funding was made to Home and Community Services (HCS), a division of DSHS. CP 585. In a report the trial court would later find "incompetent," HCS denied funding for an adult family home because Ms. Santisteban was seen as too high functioning. CP 585, 587. The treatment team, as well as both parties to the case in court, disagreed with the decision of HCS.[4] CP 586-588.

The trial court held a hearing on the parties' agreed plan on September 23, 2024. RP (9/23/24) 2. The

[4] The Public Safety Review Panel (PSRP) agreed that Ms. Santisteban needs the level of treatment and support offered in the adult family home. CP 588. The PSRP therefore opposed release, citing the HCS denial of funding. CP 588.

prosecuting attorney and Ms. Santisteban's counsel presented their agreed order for review. RP (9/23/24) 3. Counsel noted that RCW 10.77.2009 (formerly RCW 10.77.250) provides the authority to require DSHS to pay for inpatient treatment at an adult family home. RP (9/23/24) 6.

An attorney representing DSHS appeared at the hearing. RP (9/23/24) 3-4. The Department had received a copy of the proposed order prior to the hearing. Opening Brief, p. 9. However, it had not filed a motion to intervene, a notice of appearance, or any other pleadings.[5] RP (9/23/24) 6-7. Noting that there is a procedure for intervention, the trial court ruled that

[5] At that September hearing, the assistant attorney general claimed DSHS did not have sufficient time to intervene in the case. RP (9/23/24) 11. During the month it waited to file for appellate review, the Department did not seek to intervene in the trial court.

absent an appropriate and timely motion, DSHS did not have standing to object. RP (9/23/24) 9-12.

The judge pointed out that the Department would have the right to intervene under CR 24 if a timely and appropriate motion was filed. RP (9/23/24) 17. Further, the trial judge indicated that even if the assistant attorney general's (AAG) presence were considered an oral motion to intervene, there was still no statement of grounds and no pleadings in support of intervention. RP (9/23/24) 17.

The prosecuting attorney argued that judicial oversight of commitments under RCW 10.77 allows for court orders on the topic of funding. RP (9/23/24) 15. Both parties pointed out that allowing DSHS to deny funding, as they had attempted to do here, would give the Department absolute veto power over privileges

and release of people who do not pose a threat pursuant to RCW 10.77. RP (9/23/24) 14-17.

The trial court found that the agreed release plan followed expert recommendations and provided the level of support needed. CP 588. It held that Ms. Santisteban could be released pursuant to the plan without jeopardizing public safety or security consistent with RCW 10.77.6011. CP 589, 590-596. In her oral remarks, the judge reiterated that the issue for the court was Ms. Santisteban's right to a less restrictive alternative, not the details of its funding. RP (9/23/24) 18.

The court entered findings. The judge noted that DSHS is "responsible for all costs relating to evaluations and inpatient treatment… and the logistical and supportive services pertaining thereto…" under RCW 10.77.2009. CP 589. The court found DSHS

responsible for funding Ms. Santisteban's continued commitment, leaving the particular source of funding to the discretion of DSHS. RP (9/23/24) 18; CP 589, 590.

That order was signed by the court on September 23, 2024. CP 597. It allowed a delay of 30 days for Ms. Santisteban to be brought to the new home at least three times in aid of her transition, and for DSHS to determine its funding mechanism. CP 596. The court directed that Ms. Santisteban be moved to Brooklyn Manor[6] no later than October 23, 2024. CP 596.

DSHS did not bring Ms. Santisteban to visit the adult family home and did not put funding in place to allow her release to Brooklyn Manor. RP (10/24/24) 56-57. DSHS disregarded the court's order without notice

[6] Or any adult home that meets the same criteria. CP 591.

to the parties, objection to the court, or any other action. RP (10/24/24) 56-57.

Instead, waiting every day of the thirty days to file for appellate review, the Department filed a Notice of Appeal on October 23, 2024. CP 319. The following day—after the deadline for Ms. Santisteban's release—it sought and received an emergency stay in the appellate court.[7] CP 3.

On review, the Court of Appeals sided with the Department. Opinion, pp. 1-13. The appellate court concluded that the trial court lacked personal

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[7] Following this decision, the trial court entered an amended order, allowing Ms. Santisteban to be released to the Intensive Behavioral Health Treatment Facility recommended by the Department's attorney. CP 2. This facility provides "a different level of care than ordered in the [original] order." CP 4. Neither the treatment team nor any other professional has never indicated that an IBHTF would be appropriate for Ms. Santisteban. CP 1-855.

jurisdiction over the Department. Opinion, pp. 1, 9-11. Ms. Santisteban now seeks review of that decision.

Argument Why Review Should Be Accepted

I. The trial court had statutory authority to order DSHS to pay for Ms. Santisteban's inpatient treatment and related services.

Consistent with RCW 10.77.2009, the trial court correctly ordered DSHS to pay for Ms. Santisteban's inpatient treatment and related services. The Court of Appeals' decision vacating that order must be reversed.

A. Courts have statutory authority to order the Department to pay for the inpatient treatment of patients within its custody.

By statute, DSHS is "responsible for all costs relating to the evaluation and inpatient treatment of persons committed to it… and the logistical and supportive services pertaining thereto." RCW 10.77.2009(1). This authority is not limited to treatment inside a state hospital.

As the Department has conceded, such a statute may provide the basis for an order obligating DSHS "to take a particular action… without DSHS being made a party to the case." Opening Brief, pp. 19-20, 21. Indeed, no order is necessary: the Department's obligation to pay the cost of inpatient treatment exists regardless of whether any court specifically directs such payment in a particular case.[8]

Here, there was no need for the court to separately acquire personal jurisdiction over DSHS.[9] The legislature requires the Department to pay the

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[8] In this way, it is analogous to DOC's duty to pay the cost of an inmate's incarceration, or the Department of Transportation's obligation to pay for roads it is charged with constructing. These obligations flow from the relevant statutes, not any court order.

[9] On the other hand, personal jurisdiction *would* be required if Ms. Santisteban sought to enforce the obligation through a lawsuit or a contempt finding.

costs of inpatient treatment and related services for insanity acquittees in its care. RCW 10.77.2009.

The Court of Appeals' decision misconstrues the statutory duty the legislature placed on DSHS. It also overlooks how the superior court framed its order.

First, the appellate court ignored the statutory basis for the court's order. *See* Opinion, p. 5 (declining to determine the reach of the statute). That statutory duty is the baseline for the court's funding direction.

Despite its complaints about HCS, the superior court did not purport to rewrite the agency's internal eligibility process or funding priorities. Instead, the court expressly "left the ultimate source of funding to the discretion of DSHS." CP 590; RP (9/23/24) 18.

That is not a naked *in personam* judgment against DSHS. *See* Opinion, p. 9. Instead, it is a

directive consistent with the statutory duty the legislature placed on the Department.

Second, the Court of Appeals erroneously relied on service-of-process principles and cases addressing purely *in personam* judgments[10] ignores the context in which this order arose. A legislative command that an agency "shall be responsible"[11] for the costs of inpatient treatment is not the same as a private money judgment entered against an absent party.

Government agencies have statutory obligations that apply even in the absence of pending litigation. *See, e.g., Pierce Cnty. v. State*, 144 Wn. App. 783, 795, 185 P.3d 594, 601 (2008), *as amended on denial of reconsideration* (July 15, 2008) (concluding that the

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[10] Opinion, pp. 9-11 (citing *City of Seattle v. Fontanilla,* 128 Wn.2d 492, 909 P.2d 1294 (1996); *Martin v. Wilks,* 490 U.S. 755, 109 S. Ct. 2180, 104 L. Ed. 2d 835 (1989)).

[11] RCW 10.77.2009(1).

State is solely responsible for care of involuntarily committed long-term mental health patients); *Gronquist v. Washington State Dep't of Licensing*, 175 Wn. App. 729, 736, 309 P.3d 538 (2013) (addressing statutory duty to comply with public records request). It is only with the commencement of an enforcement action that service of process becomes necessary.

The court's order was bounded by statutory authority and by the court's express reservation of funding mechanics to DSHS. CP 581-597. The Court of Appeals should have upheld the order.

B. The court's order was within the scope of the funding statute.

RCW 10.77.2009(1) requires DSHS to pay for all costs relating to inpatient treatment and related logistical and supportive services. This case turns on the statute's use of the phrase "inpatient treatment."

The statute does not limit "inpatient treatment" to treatment inside of a state psychiatric hospital. RCW 10.77.2009(1). Instead, it specifically refers to "inpatient treatment… pursuant to *any* provisions of this chapter." RCW 10.77.2009(1) (emphasis added).

Inpatient treatment is commonly understood to mean treatment provided in a residential setting. *See, e.g.,* RCW 13.40.020(5)(e) (using "residential treatment" and "inpatient treatment" interchangeably). This meaning is used throughout the Revised Code of Washington. *See, e.g.,* RCW 9.94A.660(7)(d) (granting credit for time served in inpatient treatment); RCW 9.94A.695(6)(a) (facilitating transfer "directly to an inpatient treatment facility" under the mental health sentencing alternative); RCW 13.40.165(6)(b) (authorizing inpatient treatment as a juvenile disposition alternative).

An order of conditional release may provide for release to "residential treatment." RCW 10.77.6011(4); *see also* RCW 10.77.6016 (3)(e). The treatment provider must be licensed "to provide or coordinate the full scope of services required under the less restrictive alternative order."[12] RCW 10.77.6016(6).

The statute defines "treatment" to include "any currently standardized medical or mental health procedure including medication." RCW 10.77.1001(25). This definition covers the residential treatment Ms. Santisteban will receive in an adult family home.

In other words, if conditionally released to Brooklyn Manor (or an equivalent facility), Ms.

[12] Nothing in the record suggests that Brooklyn Manor is not qualified to provide the full scope of required services.

Santisteban will be receiving "inpatient treatment."[13] RCW 10.77.2009(1). Under the court's order, she will be confined to the facility and may not leave without an escort.[14] CP 591-596.

She will be in a placement with a high ratio of onsite staff and no more than five other patients. CP 310. Among other things, the facility will help her "in managing her medications and taking them as prescribed." CP 593.

Ms. Santisteban has a statutory right to "appropriate alternative treatment." RCW 10.77.6007(1). The trial court determined that appropriate inpatient treatment for Ms. Santisteban

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[13] Just as she'd be receiving inpatient treatment if she went to an inpatient substance abuse facility.

[14] Escorts are thus a "logistical and supportive service[] pertaining" to her inpatient treatment. RCW 10.77.2009(1). The Department is obligated to pay for such services. RCW 10.77.2009(1).

requires the level of care found in an adult family home such as Brooklyn Manor. CP 581-597. The court selected this level of care based on the recommendation of her treatment team and multiple other experts. CP 581-838.

The statute explicitly places the financial burden for Ms. Santisteban's inpatient treatment on DSHS. RCW 10.77.2009. DSHS (through her treatment team) supports inpatient treatment in an adult family home. CP 309. The Court of Appeals erred by effectively granting veto power to a different faction of DSHS.

Citing the lack of an adequate record, the Court of Appeals "decline[d] to reach" any issues regarding "the statutory limitations on DSHS's funding

obligations."[15] Opinion, p. 5. But any deficiency in the record should be held against DSHS: the Department had actual notice and was present at the hearing but declined to intervene in the case. Instead, it chose to wait for an adverse decision, delay an additional 30 days, and then (despite its non-party status) file a Notice of Appeal.

The Supreme Court should grant review. It should determine whether RCW 10.77.2009 covers Ms. Santisteban's inpatient placement and related services.

C. Any surplusage relating to the HCS eligibility determination does not affect the legality of the court's order.

The court made findings establishing that conditional release to an adult family home was

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[15] DSHS claims that "inpatient treatment" refers only to hospitalization in a state-operated mental hospital. Opening Brief, pp. 36-41.

appropriate under RCW 10.77.6011. CP 581-597. Pursuant to RCW 10.77.2009, the court directed the Department to pay for Ms. Santisteban's inpatient treatment and made clear that DSHS has discretion to determine "the ultimate source of funding." CP 590; RP (9/23/24) 18.

Any surplus language addressing HCS's internal eligibility determination does not defeat the court's statutory authority to require DSHS to fund inpatient treatment and related logistical/supportive services. The statute makes that authority clear. RCW 10.77.2009.

The appropriate remedy is to excise the surplusage or to remand for clarification — not wholesale nullification of the court's exercise of its

statutory authority to require funding for inpatient treatment that the court found appropriate.[16]

The Court of Appeals decision reversing the trial court's funding directive must be vacated. The Supreme Court should grant review.

II. The constitutionality of Chapter 10.77 RCW rests on the ability of patients to obtain appropriate conditional release.

People in state custody have a constitutional right to treatment based on professional judgment. *Youngberg v. Romeo*, 457 U.S. 307, 321-322, 324, 102 S. Ct. 2452, 73 L. Ed. 2d 28 (1982); *see also Matter of J.S.*, 124 Wn.2d 689, 699-700, 880 P.2d 976 (1994).

In this case, Ms. Santisteban's treatment team recommended that she receive inpatient treatment in

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[16] Indeed, the Court of Appeals itself reversed specific paragraphs rather than the entire order, recognizing the difference between core directives and surplus language. Opinion, p. 13.

an adult family home. CP 309; RP (10/24/24) 29. Indeed, every professional supported the treatment plan, and the Department did not put forward anyone's professional judgment suggesting she needed to be confined to an Intensive Behavioral Health Treatment Facility. CP 309.

Instead, the Department proposed sending Ms. Santisteban to an IBHTF for financial and bureaucratic reasons. But the cost of a placement can only be considered in implementing professional judgment "*above* a constitutional threshold." *Braam ex rel. Braam v. State*, 150 Wn.2d 689, 711, 81 P.3d 851 (2003) (discussing *J.S., supra*) (emphasis in original).

Here, the Department's own professional judgment is that Ms. Santisteban should be treated in an adult family home. By placing her under greater

restraint, the court violated her right to substantive due process. *Youngberg*, 457 U.S. at 322.

The Court of Appeals, having "resolv[ed] this appeal on procedural grounds," declined to address Ms. Santisteban's constitutional arguments. Opinion, p. 13 n. 4. The Supreme Court should grant review and address the constitutional violation.

III. The Department did not have a right to seek review under the Rules of Appellate Procedure.

A. Although "aggrieved," DSHS was not a "party" to the trial court proceeding.

Only "an aggrieved party may seek review." RAP 3.1. The Rules of Appellate Procedure allow parties to seek appellate relief; non-parties are not covered by the rules. RAP 3.1; *see also* RAP 2.2 ("a party may appeal…") and RAP 2.3 ("a party may seek discretionary review…")

Those who are not parties to an action may not seek review. *Aguirre v. AT & T Wireless Servs.*, 109 Wn. App. 80, 85, 33 P.3d 1110 (2001). Instead, they must avail themselves of other remedies. For example, a nonparty can move to intervene, seek relief through a statutory writ (pursuant to Chapter 7.16 RCW), or apply for a constitutional writ under Wash. Const. art. IV, §4.

Here, DSHS was not a party in the trial court. RP (9/23/24) 3-4. Although it had notice of the proposed order it now contests, it did not seek to intervene, even though it appeared at the hearing where the order was entered.[17] RP (9/23/24) 6-7, 9-12, 17. Nor did DSHS

[17] As post-acquittal matters cannot be described as criminal proceedings, there is no impediment to intervention where appropriate. Even in criminal cases, the Supreme Court has recognized a limited right to intervene. *Yakima v. Yakima Herald-Republic*, 170 Wn.2d 775, 801, 246 P.3d 768 (2011).

seek intervention and reconsideration after entry of the order, even though the trial judge made clear that she would entertain the Department's arguments if it intervened. RP (9/23/24) 9-17.

DSHS could have sought intervention and made its case before asking the Court of Appeals to become involved.[18] It could have presented evidence and argument to the trial court, laying the groundwork for appellate review. It should have done so, rather than relying on the "appellate avenue to voice concerns" in the first instance.[19] RP (9/23/24) 11.

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[18] Alternatively, it could have sought a statutory or constitutional writ.

[19] As the Court of Appeals noted, a complete record of the Department's position "was never created supporting review on the merits." Opinion, p. 5. This deficiency arose from the Department's failure to intervene, even after it had actual notice that its interests would be affected by the court's order.

Allowing non-parties a right to appellate review severely undermines the efficient use of judicial resources.[20] It is the opposite of judicial economy. Because DSHS was not a party to the trial court proceeding, it is not an "aggrieved party" under RAP 3.1. It has no right to seek review. *Id.*

B. Review is not available under *G.A.H.* and similar decisions.

Even though DSHS was not a party, the Court of Appeals erroneously concluded that the Department qualified as an "aggrieved party" under RAP 3.1. Opinion, pp. 5-7. According to the Court of Appeals, any nonparty can appeal a court's order if it believes that its pecuniary rights are substantially affected by

[20] This is especially true where the non-party had an opportunity to resolve the issue in the trial court but did not avail itself of that opportunity.

the order. Opinion, pp. 5-6 (citing *State v. G.A.H.*, 133 Wn. App. 567, 574, 137 P.3d 66 (2006)).

This is false. The legislature routinely allows courts to impose obligations on non-party state agencies. This does not mean the non-party agencies have an automatic right to appeal. Courts can direct public agencies to carry out their duties without granting them party status. This happens daily.

For example, the Department of Corrections (DOC) is not a party to criminal proceedings; however, many convicted felons are sentenced to DOC custody. Although it has "a substantial pecuniary interest affected by"[21] every felony sentencing decision, DOC does not have an automatic right to appeal all sentences. Instead, the legislature has explicitly

[21] Opinion, p. 7.

granted DOC a limited right to petition the Court of Appeals to correct an illegal sentence, but only upon "certification by [DOC] that all reasonable efforts to resolve the dispute at the superior court level have been exhausted." RCW 9.94A.585(7).

The legislature has not granted DSHS a similar right to appeal from conditional release orders. The Department is not automatically entitled to appeal merely because its statutory obligations have a substantial impact on its pecuniary interests.

The *G.A.H.* decision, relied on by the Court of Appeals, does not apply to Ms. Santisteban's case. In *G.A.H.,* the court interpreted RCW 13.04.033(1), a statute that has nothing to do with this matter. The provision is part of the Basic Juvenile Court Act; it allows "[a]ny *person* aggrieved by a final order" of the

juvenile court to appeal such an order. [22] RCW 13.04.033(1) (emphasis added).

The analogous statute governing NGRI cases provides that "[e]ither *party* may seek appellate review." RCW 10.77.2007 (emphasis added). DSHS is not a party; thus, the right conferred in RCW 10.77.2007 does not apply.

Although the *G.A.H.* court also referenced RAP 3.1, it made clear that its decision rested on the "[a]ny person" language of RCW 13.04.033(1). *G.A.H.*, 133 Wn. App. at 574 (referring to *State v. A.M.R.,* 147 Wash.2d 91, 51 P.3d 790 (2002) as "directly on point.")

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[22] In *G.A.H.,* the court also relied on a case that predated adoption of the Rules of Appellate Procedure. *Id.* (citing *State v. Casey*, 7 Wn. App. 923, 503 P.2d 1123 (1972)). In the absence of a statute referencing "persons" rather than "parties," *Casey* does not provide a basis to ignore RAP 3.1, which limits appellate relief to "aggrieved part[ies]." RAP 3.1.

The juvenile court statute does not apply here. Therefore, *G.A.H.* cannot control.

The Rules of Appellate Procedure are explicit. Only an "aggrieved *party*" may seek review. RAP 3.1 (emphasis added). This limitation is reflected in the appellate rules' repeated references to *party* status. *See, e.g* RAP 2.2; RAP 2.3; RAP 3.1; RAP 3.4; RAP 4.1; RAP 4.2; RAP 5.1; RAP 5.2; RAP 5.3. The Court of Appeals ignored the rules' explicit use of the word "party."

The opinion's approach to appealability and the "aggrieved party" language is overbroad: it opens the floodgates for appeals from any nonparties who believe they are impacted by a court decision. It also undermines the incentives to intervene, encouraging parties who have notice of possible adverse consequences to gamble on the outcome and then

invoke appellate review. It also thwarts the trial court's fact-finding function, resulting in an inadequate record for appellate decision-making. *See* Opinion, p. 5.

Because DSHS is not a party, it cannot seek review under the Rules of Appellate Procedure. RAP 3.1. The Supreme Court should grant review, reverse the Court of Appeals, and remand for further proceedings.

IV. The Supreme Court should grant review under RAP 13.4(b).

A. The Court of Appeals' opinion conflicts with multiple appellate court decisions (RAP 13.4(b)(1) and (2)).

The Court of Appeals' opinion directly conflicts with several cases. Accordingly, review is appropriate under RAP 13.4(b)(1) and (2).

First, the decision conflicts with cases recognizing that state agencies have obligations imposed by the legislature that are independent of court orders. *See,*

e.g., Pierce Cnty, supra; *Gronquist, supra.* Such statutory obligations exist regardless of whether a particular court exercises *in personam* jurisdiction over the agency. Second, the decision also conflicts with *Youngberg* and related cases. *Youngberg,* 457 U.S. at 321-322, 324. By reversing the trial court's decision, the Court of Appeals has allowed bureaucratic obstacles to override a committed person's right to less restrictive treatment grounded in professional judgment. Third, the decision conflicts with *Aguirre* and other cases noting that nonparties may not seek relief through the Rules of Appellate Procedure. *Aguirre*, 109 Wn. App. at 85.

The Supreme court should grant review pursuant to RAP 13.4(b)(1) and (2).

B. The decision involves significant questions of constitutional law (RAP 13.4(b)(3)).

This case presents an urgent constitutional issue: whether a person committed under RCW 10.77 retains a due process right to treatment based on professional judgment. *See Det. of D.W. v. Dep't of Soc. & Health Servs.*, 181 Wn.2d 201, 208, 332 P.3d 423 (2014). The Court of Appeals decision allows one faction of DSHS to unilaterally veto such treatment based on reasons unrelated to professional judgment. This frustrates the legislature's goals and violates federal constitutional guarantees. Review is appropriate under RAP 13.4(b)(3).

C. The decision presents issues of substantial public interest that should be determined by the Supreme Court (RAP 13.4(b)(4)).

The opinion permits an executive agency to frustrate judicially-approved mental health treatment, raising separation of powers concerns and undermining

the integrity of RCW 10.77's conditional release system. This will have broad consequences for patients, treatment providers, courts, and agencies across the state. The Supreme Court should grant review pursuant to RAP 13.4(b)(4).

Conclusion

If allowed to stand, the Court of Appeals' decision lets a state agency ignore court orders and deny less restrictive placements recommended by its own experts. The trial court followed the law, respected professional judgment, and acted within its authority.

Furthermore, DSHS was not a party and had no right to appeal. As a nonparty, it should have sought relief through intervention or by means of a statutory or constitutional writ.

The Supreme Court should grant review, reverse the Court of Appeals, and reinstate the provisions of

the trial court's order that recognize the Department's obligation to fund Ms. Santisteban's inpatient treatment.

CERTIFICATE OF COMPLIANCE

I certify that this document complies with RAP 18.17, and that the word count (excluding materials listed in RAP 18.17(b)) is 4787 words, as calculated by our word processing software. The font size is 14 pt.

Respectfully submitted August 15, 2025.

BACKLUND AND MISTRY

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CERTIFICATE

I certify that on today's date, I mailed a copy of this document to:

Faafetai Santisteban
615 Summit Ave North
Kent, WA 98516

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed at Olympia Washington on August 14, 2025,

_____

Jodi R. Backlund, No. 22917
Attorney for the Appellant

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Plaintiff, v. FAAFETAI T. SANTISTEBAN, Respondent, THE DEPARTMENT OF SOCIAL AND HEALTH SERVICES, non-party ordered to pay for services, Appellant.	No. 87313-0-I DIVISION ONE UNPUBLISHED OPINION

BIRK, J. — In 1998, Faafetai Santisteban was committed to Western State Hospital after being acquitted as not guilty by reason of insanity. Santisteban petitioned the superior court for conditional release. The superior court granted Santisteban's petition and directed that she be released to an adult family home. But, in addition, based on the agreement of Santisteban and the Snohomish County prosecutor's office, and without affording the state Department of Social and Health Services (DSHS) notice and an opportunity to be heard, the superior court ordered DSHS to fund services that DSHS disputes it had legal authority to fund. We conclude the superior court did not obtain personal jurisdiction over DSHS and thus could not order DSHS to fund Santisteban's conditional release. We further conclude the superior court did not have appellate jurisdiction to review

an earlier DSHS determination of Santisteban's eligibility for services. We reverse and remand for proceedings consistent with this opinion.

I

Following a 1998 acquittal on criminal charges by reason of insanity, Santisteban was ordered to the care and custody of DSHS for treatment at Western State Hospital.

In November 2023, Santisteban submitted to DSHS an application for conditional release. In December 2023, a division of DSHS, Home and Community Services (HCS), made a determination that she was not functionally eligible for long term care under the "Community First Choice Residential" program. HCS's notice provided information to appeal the eligibility decision if Santisteban disagreed with the denial. The record is silent as to whether Santisteban appealed HCS's decision.

Santisteban petitioned the superior court for conditional release. The superior court scheduled a contested hearing for September 26-27, 2024. On September 18, 2024, Santisteban filed a criminal calendar note setting entry of a proposed "agreed" order for Monday, September 23, 2024. Santisteban served notice of the hearing on the Snohomish County deputy prosecutor. County prosecutors represent the State in conditional release proceedings. RCW 10.77.150(3)(b). On Friday, September 20, 2024, Santisteban filed a memorandum challenging DSHS's release planning for Santisteban and objecting to DSHS's contesting the proposed order.

At the September 23, 2024 hearing, in addition to Santisteban and the county prosecutor, an assistant attorney general appeared for DSHS. Santisteban informed the superior court that the parties—Santisteban and the county prosecutor's office—did not disagree "on the ultimate issue under [RCW] 10.77.150. And that is with the conditions and the amount of supervision laid out in the conditions of the proposed order, there's not a dispute." The parties submitted an agreed proposed order of conditional release to the superior court and requested the court enter it.

Through its counsel, DSHS indicated it was made aware of the hearing and the agreed proposed order the Wednesday before the Monday hearing. DSHS argued the proposed order directed it to pay for an adult family home that it had already determined the patient was not eligible for, it was obligated under the governing statute to pay for only inpatient care, and it was not statutorily obligated to pay for Santisteban's less restrictive care.

The superior court stated that DSHS had not moved to intervene under CR 24. The superior court ruled that "it's abundantly clear from the materials that [Santisteban] meets the criteria for a less restrictive alternative based on the findings as outlined quite thoroughly in the proposed order." In its order granting Santisteban's conditional release, the superior court ruled that "DSHS is responsible for the cost of [Santisteban's] continued commitment," which the court said "includes her conditional release to an adult family home, and ordered "DSHS via HCS to pay for all aspects of [Santisteban's] community living." The superior

court left "the ultimate source of funding to the discretion of DSHS," but found that "[HCS] should pay the cost of all aspects of this conditional release order." The superior court based this on "the parties' stipulation"—that is, Santisteban and the county prosecutor's stipulation—"that the HCS incorrectly found [Santisteban] ineligible for that funding in the first place." DSHS filed a notice of appeal, and it filed a motion in this court to stay the challenged portions of the superior court's order. A commissioner of this court granted the stay.

In this court, DSHS argues that the superior court lacked personal jurisdiction over it and so its directive to DSHS to pay for services must be reversed. DSHS further argues that the superior court lacked appellate jurisdiction to review the merits of HCS's decision about Santisteban's eligibility for long term care benefits. And, on the merits, DSHS argues that the superior court's order that DSHS must fund Santisteban's conditional release to an adult family services home is contrary to the plain language of RCW 10.77.250.

RCW 10.77.250(1) states, "[T]he department shall be responsible for all costs relating to the evaluation and *inpatient treatment* of persons committed to it pursuant to any provisions of this chapter, and the logistical and supportive services pertaining thereto except as otherwise provided by law." (Emphasis added.) DSHS argues that "inpatient treatment" means care other than in a less restrictive alternative based on the statutory language throughout chapter 10.77 RCW. Indeed, under the community behavioral health services act (see RCW 71.24.011), the director of the Washington state health care authority is directed

to take numerous actions associated with making behavioral health services available in the state. RCW 71.24.035(1)-(6). Among these responsibilities, the legislature has directed the health care authority to require behavioral health administrative services organizations and managed care organizations to provide the services required as part of a less restrictive alternative either under the involuntary treatment act (ITA), RCW 71.05.585, or as part of a conditional release of a person acquitted by reason of insanity, RCW 10.77.175. See RCW 71.24.035(5)(l). DSHS argues that the legislature's providing for the health care authority to contract for these services further shows that DSHS's statutory responsibility is to pay for only the inpatient care of those acquitted by reason of insanity, and not less restrictive alternatives. Because DSHS was erroneously deprived of the opportunity to be heard in the superior court, a record was never created supporting review on the merits in this court. We accordingly decline to reach the statutory limitations on DSHS's funding obligations.

II

Santisteban argues that DSHS is not an aggrieved party under RAP 3.1, and it cannot appeal as a matter of right under RAP 2.2. Because aggrieved parties may seek review if they have a pecuniary interest under RAP 3.1, and because there is a basis to grant discretionary review under RAP 2.3(b)(2), we conclude review is appropriate.

Generally, "[t]hose who are not parties to an action may not appeal." Aguirre v. AT&T Wireless Servs., 109 Wn. App. 80, 85, 33 P.3d 1110 (2001). "Washington courts have long recognized that, under some narrow circumstances, persons who were not formal parties to trial court proceedings, but who are aggrieved by orders entered in the course of those proceedings, may appeal as 'aggrieved parties.' " State v. G.A.H., 133 Wn. App. 567, 574, 137 P.3d 66 (2006). RAP 3.1 states that "[o]nly an aggrieved party may seek review by the appellant court." "An 'aggrieved party' is one whose proprietary, pecuniary, or personal rights are substantially affected." G.A.H., 133 Wn. App. at 575.

In G.A.H., G.A.H. was being held in juvenile detention, and DSHS was not a party in the detention review hearings. Id. at 570-71. At the hearings, the court ordered G.A.H. "released to DSHS for assessment of services" and ordered G.A.H. to be released to DSHS for a possible foster care placement. Id. DSHS appealed the juvenile court's orders, arguing that the court did not have authority to order DSHS to place the minor into foster care. Id. at 572. We concluded, although DSHS was not a party to the proceedings below, "DSHS may appeal this matter as an 'aggrieved party' under RAP 3.1" and the statute governing juvenile courts.[1] Id. at 574. Because "DSHS was ordered to assume custodial and financial responsibility of G.A.H.'s welfare," DSHS was an aggrieved party. Id. at 575.

[1] Santisteban argues that G.A.H. is distinguishable because the court interpreted RCW 13.04.033(1), which allows "[a]ny *person* aggrieved by a final order" of the juvenile court to appeal such an order. 133 Wn. App. at 574 n.3 (emphasis added). However, the court also relied on RAP 3.1, which uses the language of "aggrieved *party*." (Emphasis added.) Santisteban also asks that we overrule G.A.H. We decline to do so.

Santisteban argues that DSHS should have sought intervention in the superior court before asking this court to become involved. G.A.H. did not require DSHS to intervene before determining it was an aggrieved party entitled to appeal. And, Santisteban cites no case holding that CR 24 imposes on persons who have never been served formal notice of an action a duty to monitor a case and resort to CR 24 to avoid forfeiting a right to be heard before their rights are determined. A requirement that a nonparty, who is not given timely notice of the proceeding until they inquire, and is not involved in the day-to-day litigation, should have the foresight to know that its interests will be litigated in absentia, and thus timely intervene, is backwards.

Here, the superior court ordered DSHS to assume financial responsibility for all the expenses related to Santisteban's placement at an adult family services home. Accordingly, DSHS is an aggrieved party with a substantial pecuniary interest affected by the court's decision.

As to appealability, RAP 2.2(a) provides that "[u]nless otherwise prohibited or provided by statute or court rule," a party may appeal from only designated superior court decisions. DSHS argues it is entitled to appeal under RAP 2.2(a)(1), which permits a party to appeal from a "final judgment entered in any action or proceeding." However, a final judgment is one that settles all the issues in a case. See CR 54(a)(1) (providing that a "judgment is the final determination of the rights of the parties in the action"). Pursuant to RCW 10.77.180 and .200, the superior court has continuing jurisdiction over persons acquitted by reason of insanity until

they are unconditionally released. Thus, the conditional release order was not a "final judgment" because it did not constitute a final determination of Santisteban's rights, nor did it settle all the issues in the case. State v. Coleman, 6 Wn. App. 2d 507, 514-15, 431 P.3d 514 (2018) (contrasting appealable final release decision with non-appealable conditional release decision); State v. Howland, 180 Wn. App. 196, 203, 321 P.3d 303 (2014) (denial of conditional release not appealable under RAP 2.2(a)(13)); cf. In re Det. of Turay, 139 Wn.2d 379, 392-93, 986 P.2d 790 (1999) (postcommitment order not appealable final judgment because it did not constitute a final determination of rights, nor did it settle all the issues in the case); In re Det. of Peterson, 138 Wn.2d 70, 88, 980 P.2d 1204 (1999) (same). DSHS may not appeal as a matter of right under RAP 2.2(a)(1) because the superior court's conditional release order is not a "final order."[2]

In the absence of an appealable final judgment, a party seeking review is limited to discretionary review. RAP 5.1(c) states that "[a] notice of appeal of a decision which is not appealable will be given the same effect as a notice for discretionary review." Thus, when RAP 2.2(a) is not met, an appellate court may accept review if the criteria for discretionary review under RAP 2.3(b) are met. See Howland, 180 Wn. App. at 203. RAP 2.3(b)(2) allows discretionary review when the superior court has "committed probable error," and the decision "substantially

[2] DSHS also argues that it has a right to appeal under RAP 2.2(a)(3), which allows a party to appeal from "[a]ny written decision affecting a substantial right in a civil case that in effect determines the actions and prevents a final judgment or discontinues the action." However, DSHS fails to show how the conditional release order prevents a final judgment or discontinues the matter.

alters the status quo or substantially limits the freedom of a party to act." Here, the superior court committed probable error in ruling on DSHS's obligations without acquiring personal jurisdiction over DSHS and affording it a reasonable time to make its appearance. See Mullane v. Cent. Hanover Bank & Tr. Co., 339 U.S. 306, 314, 70 S. Ct. 652, 94 L. Ed. 865 (1950). The effects prong of RAP 2.3(b)(2) is met typically "only when a trial court's order has, as with an injunction, an immediate effect outside the courtroom," in contrast to an order that "merely alters the status of the litigation itself or limits the freedom of a party to act in the conduct of the lawsuit." Howland, 180 Wn. App. at 207. Here, DSHS argues that the trial court's order imposed on DSHS a funding requirement that it contends is inconsistent with statute and unappropriated by the legislature. We are satisfied this is an "immediate effect outside the courtroom" warranting discretionary review in this case. We therefore grant discretionary review.

III

DSHS contends the challenged portions of the order are void because the superior court did not acquire personal jurisdiction over DSHS. We agree.

"[T]he general rule [is] that 'one is not bound by a judgment *in personam* in a litigation in which he is not designated as a party or to which he has not been made a party by service of process.' " City of Seattle v. Fontanilla, 128 Wn.2d 492, 502, 909 P.2d 1294 (1996) (quoting Martin v. Wilks, 490 U.S. 755, 761, 109 S. Ct. 2180, 104 L. Ed. 2d 835 (1989)).[3] In G.A.H., the court held that because DSHS

[3] In Martin, the United States Supreme Court noted that a judgment may be binding upon a nonparty if the interests of the nonparty are adequately represented

was not a party to G.A.H.'s detention review hearings, the court lacked personal jurisdiction over DSHS. 133 Wn. App. at 576. The court further reviewed the superior court's authority to act in the scope of a juvenile offender proceeding under chapter 13.40 RCW, including considering whether the court could order DSHS to take custody of a juvenile. Id. The court found that the statute did "not provide the court with the authority to order DSHS to place an adjudicated offender in foster care." Id. at 577. The court concluded that because DSHS was not a party to juvenile offender proceedings, and because none of the circumstances allowing DSHS to place a youth in foster care applied, the juvenile court had no personal jurisdiction over DSHS and no authority to order DSHS to place the adjudicated offender in foster care. Id. at 579-80.

Here, DSHS was not a party in the superior court proceedings, and there is no evidence in the record that the superior court obtained personal jurisdiction over DSHS by service of process. "A judgment is void if the court lacks jurisdiction over the parties or the subject matter." Tupper v. Tupper, 15 Wn. App. 2d 796, 801, 478 P.3d 1132 (2020). The fact DSHS's counsel appeared at the hearing scheduled for entry of the agreed proposed order does not change the analysis. Lack of personal jurisdiction by itself barred the superior court from binding DSHS, actual notice is not a substitute for valid service of process, Haberman v. Wash. Pub. Power Supply Sys., 109 Wn.2d 107, 177, 744 P.2d 1032, 750 P.2d 254 (1987), and "[a] voluntary appearance does not waive any objection to the court's

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by a party with the same interests. 490 U.S. at 762 n.2. None of those circumstances are present here.

jurisdiction," Adkinson v. Digby, Inc., 99 Wn.2d 206, 210, 660 P.2d 756 (1983). And notice of Santisteban's arguments the Friday before the Monday hearing was insufficient, because as due process case law analogously instructs, when a party is entitled to notice, the notice "must afford a reasonable time for those interested to make their appearance." Mullane, 339 U.S. at 314. Because the superior court did not have personal jurisdiction over DSHS, the portions of the September 23, 2024 order requiring DSHS to pay for Santisteban's conditional release are void.

IV

DSHS argues the superior court erred in reviewing HCS's eligibility determination without following the mandatory procedures under the Administrative Procedure Act (APA), chapter 34.05 RCW. We agree.

The APA governs judicial review of agency decisions. Burnham v. Dep't of Social & Health Servs., 115 Wn. App. 435, 438, 63 P.3d 816 (2003). The APA is the exclusive means of judicial review of an agency action, except in specific circumstances where another statute expressly authorizes a different form of review, none of which are applicable here. RCW 34.05.510.

When reviewing an administrative decision, "the superior court is acting in its limited appellate capacity, and all statutory procedural requirements must be met before the court's appellate jurisdiction is properly invoked." Seattle v. Pub. Emp't Rels. Comm'n, 116 Wn.2d 923, 926, 809 P.2d 1377 (1991). Thus, under the APA, a superior court does not obtain jurisdiction over an appeal from an agency decision unless the appealing party files a petition for review in the superior

court. Id. A person may file a petition for judicial review "only after exhausting all administrative remedies available within the agency whose action is being challenged." RCW 34.05.534; see also Stafne v. Snohomish County, 174 Wn.2d 24, 34, 271 P.3d 868 (2012). While there are limited exceptions to the exhaustion doctrine—futility, patently inadequate remedies, or irreparable harm—a "strong bias exists toward requiring parties to follow the statutorily prescribed administrative path before resorting to the courts." Stafne, 174 Wn.2d at 34-35.

Here, HCS, a division of DSHS, determined Santisteban was not eligible for long term care. To the extent our record shows, Santisteban did not appeal although she was provided information on HCS's appeal process. Instead, Santisteban argued before the superior court that HCS conducted an "incompetent assessment," and the superior court entered an order that, among other things, determined "HCS incorrectly found [Santisteban] ineligible for that funding in the first place." Because Santisteban failed to exhaust her administrative remedies, the superior court reviewed HCS's determination without properly obtaining appellate jurisdiction over the action. A person cannot avoid the APA's mandatory requirements by stipulating with a third party, in separate litigation, that the agency erred. We conclude the portions of the order relating to HCS's determinations are void.

We reverse paragraphs B.15-19, C.23, D.28-30, D.33, and D.34, and the last sentence of paragraph C.25 in the superior court's September 23, 2024 order, and remand for proceedings consistent with this opinion.[4]

Birk, J.

WE CONCUR:

[4] Santisteban argues the superior court violated her substantive due process rights by amending the conditional release order to place her in a facility that was "greater restraint" than recommended by her treatment team. In a statement of additional authority, Santisteban cites In re Detention of D.W. v. Department of Social & Health Services, in which, because of overcrowding, patients were detained under the ITA in circumstances where they received " 'no psychiatric care or other therapeutic care for their mental illness.' " 181 Wn.2d 201, 206, 332 P.3d 423 (2014). This kind of detention was not based on "medical justification for involuntarily detaining that individual patient outside of a certified facility," but on "generalized lack of room at certified facilities." Id. at 211. In rejecting this kind of detention, the court explained, "Anyone detained by the State due to 'incapacity has a constitutional right to receive such individual treatment as will give each of them a realistic opportunity to be cured or to improve his or her mental condition.' " Id. at 208 (internal quotation marks omitted) (quoting Ohlinger v. Watson, 652 F.2d 775, 778 (9th Cir.1981)). Because we resolve this appeal on procedural grounds, our opinion should not be taken as addressing the medical justification necessary for commitment and release to a less restrictive alternative.

Santisteban also filed a motion to supplement the record to provide a declaration regarding the new facility. We deny the motion to supplement the record and note that the declaration would not have changed our analysis of the challenged portions of the September 23, 2024 order.

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