Supreme Court No._____

NO. 58967-2-II

THE SUPREME COURT OF THE STATE OF WASHINGTON

In re the Guardianship of

J.S.

ON APPEAL FROM THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR COWLITZ COUNTY

MOTION FOR DISCRETIONARY REVIEW
Treated as a PETITION FOR REVIEW

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A. INTRODUCTION

The Court of Appeals upheld a permanent guardianship under a best-interest rubric—sidestepping the required clear, cogent, and convincing-evidence standard and glossing over a year-long due-process violation. This Court's review is needed to clarify RCW 11.130's emergency-and-permanent guardianship framework and protect parents' fundamental liberty interests. The Court should provide guidance that emergency guardianships require affidavit-supported findings of imminent harm, a 120-day maximum term (extendable once by 60 days), and a show-cause hearing within five days. And that permanent guardianships can only be justifiable by clear, cogent, and convincing proof of likely substantial harm to override a parent's fundamental liberty interest.

B. IDENTITY OF MOVING PARTY AND DECISION BELOW

Mr. L., the father of J.S., asks this Court to accept review of under RAP 13.4 of the Court of Appeals's opinion in *In re Guardianship of J.S.*, 58967-2-II.

C. ISSUES PRESENTED

1. If the court appoints an immediate emergency guardian, RCW 11.130.225 requires the court to hold a show cause hearing on the emergency guardianship within five days. But here, the trial court erred by extending the immediate emergency guardianship for over eight months without a show cause hearing. The eight-month delay in the statutorily mandated five-day show-cause hearing violate due process. The Court of Appeals dismisses Mr. L.'s claim that the unlawful prolongation of the emergency guardianship in violation of due process and the fundamental liberty

interest in the care, custody, and management of his child. It reasons this due process claims is moot because the court appointed full guardians. The opinion overlooks that the Petitioners cemented their advantage over the natural parent during almost a year-long delay. The Court of Appeals disregards Mr. L.'s claim that under RCW 11.130.240, more than a year later, the court was required to return J.S. home because the basis for appointing either an emergency or full guardian no longer existed. Under this statute, the Court of Appeals could still provide relief. The application of the mootness doctrine overlooks the protracted delay in holding a statutorily required show cause hearing for over eight months prejudiced Mr. L.'s rights. The court's repeated, and admittedly erroneous, extensions of the emergency order effectively deprived Mr. L. of his parental rights for an entire year without

a proper hearing in violation of the due process requirement for a hearing at a "meaningful time and in a meaningful manner." The convenient application of the mootness doctrine once the full guardianship was granted overlooks the irreparable harm caused by the delay itself and overlooks the fact the Court can still grant relief. Review is necessary under RAP 13.4(b)(1),(3), (4).

2. The Court of Appeals upheld the appointment of the child's grandparents as full guardians based on a finding that Mr. L. was "unable to perform parenting functions." This ruling fails to meet the constitutional standard required to abridge a natural parent's fundamental liberty interest in raising their child.

The Court of Appeals upholds a guardianship on based on the court's finding that it was in J.S.'s "best interest," and that Mr. L. was unable to perform

parenting functions. That decision is untethered from any showing of likelihood of substantial harm to J.S.. The Court should grant review to provide guidance whether an emergency or full guardianship can only be justified only by showing clear, cogent, and convincing proof of likelihood that returning a child to a natural parent poses substantial risk of harm to the child, rather than "best interest." RAP 13.4.(b),(3), and (4).

D. STATEMENT OF THE CASE

In October 2019, J.S. was born to J.L. and K.S. RP 962. When J.S. was three months old, an Oregon Court granted Mr. L. sole custody because J.S.'s biological mother, K.S., struggled to care for her and ultimately severed ties. RP 544, 796-97, 949. Mr. L., then 19, had not cared for children before and gradually learned how to care for J.S. with the help of his grandmother and friends. RP 778, 781-82. Mr. L.

made sure J.S. was fed and dressed appropriately. *Id*.

At one point, Mr. L. and J.S. moved in with father, Kie, and Kie's partner, Kelly, in Silver Lake. RP 437-39, 802, 811; RP 88.

In June 2021, Kie and Kelly asked Mr. L. to move out of their home. Mr. L. agreed to let Kie and Kelly take J.S., and they signed a "Temporary Guardianship Affidavit" that granted Kelly guardianship for six months so she could make medical decisions while Mr. L. figured out his next move. RP 888-89; CP 14-18. Mr. L. moved back in with his grandmother, Terisia, in Oregon. RP 889-900, 951, 987.

A few weeks later, Mr. L. returned to Kie and Kelly's home for a graduation party. RP 834. During the party, Mr. L. and Kelly got into an argument, and someone tackled him and his flailing arms and palm smacked Kelly's lip. RP 890. As a result, Kelly obtained

a no-contact order (NCO) against Mr. L., which prohibited him from contacting Kelly or coming within 1,000 feet of her and her home. RP 949-950. The NCO did not apply to J.S. or Kie, and Kie stated that it was their intention that Mr. L. could still visit J.S. However, Mr. L. stayed away from Kelly, and since his daughter attended daycare at Kelly's workplace, he avoided visiting J.S. there. RP 379. The NCO expired in August 2022. RP 479.

In October 2022, Mr. L. went to Kie and Kelly's house asking to parent J.S., as the charges against him were dropped and the restraining order was lifted. RP 156; RP 897. Kie and Kelly filed an emergency minor guardianship petition, alleging that removing J.S. from her home would be damaging to her and that Mr. L. was not equipped to care for her. CP 13; CP 1-11, 20-25; RP 897. Mr. L., who was unrepresented by counsel,

objected to the petition, asserting he was J.S.'s legal custodial parent and had never abandoned her. CP 54-57.

A court commissioner signed an immediate emergency guardianship order on October 6, 2022, without a hearing. CP 36. Over objection, the court extended the emergency guardianship multiple times over the next several months, and a show cause hearing was not held until May 2023, eight months later. CP 133; RP 336-37, 343-44. Mr. L. argued that the court lacked the legal authority to extend the emergency guardianship beyond the 120-day statutory limit. RP 336. The court acknowledged its delay was erroneous, but denied Mr. L.'s motion to dismiss the case and return J.S. to his care. RP 344.

Following a three-day trial on the minor guardianship petition, the superior court appointed Kie

and Kelly as full guardians of J.S.

The trial court found that Mr. L. had not established by clear, cogent, and convincing evidence that he was willing and able to parent because he still had some "impediments" he needed to overcome to properly exercise appropriate parenting functions. RP 1108-09.

The trial court entered a written finding that appointing guardians was in J.S.'s best interest because, although Mr. L was "willing," he was "not able" to provide parenting functions at the moment. CP 282. The court appointed Kie and Kelly as guardians in part because Mr. L. had not been able to exercise the necessary parenting functions for J.S.'s care and growth in the past year. CP 282; RP 1095. Mr. L. appealed the decision.

Without requiring any showing of substantial

danger J.S. could face in Mr. L.'s care, the Court of Appeal affirmed the superior court's finding that Mr. L. is "willing but unable to perform parenting functions." Slip. Op at 1, 23. And that terminating the guardianship would be "harmful" to J.S. and not in her "best interests." *Id.*

E. ARGUMENT

In 2019, the legislature enacted the Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act, chapter 11.130 RCW, which "completely overhaul[ed] the statutory framework for guardianships in the state of Washington." LAWS OF 2019, ch. 437; *See In re Guardianship of L.C.*, 28 Wn. App. 2d 766,771, 538 P.3d 309 (2023). Other than *L.C.*, there is a paucity of case law guiding courts on how to apply the new guardianship framework.

The published opinion is blueprint on flouting RCW 11.130's safeguards. Its mootness ruling ignores that an eight-month delay in holding a statutorily required five-day hearing inflicted irreparable due-process harm on a natural parent—precisely the harm the five-day hearing was intended to prevent. Under *In re Marriage of Horner*, 151 Wn.2d 884, 891-892, 93 P.3d 124 (2004), the question (1) affects public guardianship practice, (2) demands authoritative guidance, and (3) will recur absent correction.

Even though Mr. L.'s asked to terminate the full guardianship because the basis appointing guardians no longer existed, the Court of Appeals disregards this claim and affirmed without requiring any showing there was substantial risk of harm posed by the natural parent, as the constitution requires. Especially given the lack of case law guidance on the new

guardianship statute, this case presents an important constitutional question on an issue of substantial public interest that this Court can provide guidance for lower courts. RAP 13.4(b)(3),(4).

1. **Review is necessary because the Court of Appeals holds that separating a natural parent from his daughter in violation of due process is not an issue of substantial public importance.**

The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner. *State v. Karas*, 108 Wn. App. 692, 699, 32 P.3d 1016 (2001), *citing Mathews v. Eldridge*, 424 U.S. 319, 333, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976). "An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them

an opportunity to present their objections." *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314-15, 70 S. Ct. 652, 657-58, 94 L. Ed. 865 (1950).

General considerations governing what process is due in a certain situation include weighing "(1) the private interest involved, (2) the risk that the current procedures will erroneously deprive a party of that interest, and (3) the governmental interest involved." *Karas*, 108 Wn.App. at 699.

It is beyond dispute that an emergency guardianship implicates several private interests, including "the interest in one's children." *Id.* at 699.

In Re Custody of E.A.T.W., 168 Wn.2d 335, 341, 227 P.3d 1284 (2010), after two children primarily lived with their grandparents for many years, the grandparents filed a nonparental custody petition. The trial court found adequate cause to proceed with a

hearing on the merits based solely on the fact that the children were not in the physical custody of a parent. *Id*. at 341. The father sought discretionary review, arguing that the petitioners must also establish parental unfitness at an adequate cause hearing before the court could hold a hearing on the merits of the nonparental custody petition. *Id*. at 341-42. The Supreme Court agreed with the father and remanded. *Id*. at 342.

Importantly, in *E.A.T.W*., there was no debate about whether the trial court must hold an adequate show cause hearing. *Id*. The parties agreed that an adequate show cause hearing was required before a nonparental custody petition could even move forward. Id. That situation is analogous to this case.

At issue here is RCW 11.130.225 which authorizes emergency guardianships only upon

affidavit-supported findings of imminent harm and caps them at 120 days (extendable once by 60 days), with a mandatory show-cause hearing within five days. The requirement of an adequate cause hearing is a procedural safeguard required by due process. *Karas*, 108 Wn.App. at 699.

"In a dependency, [Guardianship], as in any case, questions of statutory interpretation are reviewed de novo." *Matter of Welfare of C.W.M.*, 27 Wn. App. 2d 747, 756, 533 P.3d 1199 (2023) *citing In re Dependency of D.L.B.*, 186 Wn.2d 103, 116, 376 P.3d 1099 (2016); *State v. Ervin*, 169 Wn.2d 815, 820, 239 P.3d 354 (2010). "Generally, when the meaning of a statute is 'plain on its face,' a court must give effect to that meaning." *Id.*

a. The Court of Appeals could still provide relief because the basis for any guardianship no longer exists.

Here, without a hearing, the court entered an emergency guardianship order on October 6, 2022, then—despite RCW 11.130.225's 120-day cap—allowed it to linger until May 2023, when a belated show-cause hearing occurred. Soon thereafter, a three-day trial produced a permanent guardianship. CP 36; RP 320.

Petitioners explained a commissioner of the court signed the "wrong order" and should have entered an emergency guardianship order, and it would have prompted a show cause hearing on the appropriateness of the emergency appointment within five days. RP 336-37. The error stemmed from the commissioner "extending" the emergency guardianship "over and over again." *Id*. The petitioners acknowledged that an emergency guardianship is "self-limiting" to a

maximum of 120 days within which a guardianship must be resolved, but they claimed this case was different because Mr. L. requested multiple "show cause"-like hearings to ask for visitation. RP 336. The petitioners acknowledged the "procedural error" but contended Mr. L "essentially" waived the statutory deadline by asking for permission to visit J.S.. RP 336-37.

During those hearings contesting the right to visit J.S., the trial court did not rule on the merits: whether there was adequate cause to proceed with a hearing on the merits of the emergency petition. Other hearings and rulings on collateral issues did not satisfy its statutory obligation to conduct a hearing on the merits of the emergency petition within five days.

Based on unfounded allegations in the petitioners' numerous affidavits supporting their

emergency petition, the court felt compelled to extend the emergency guardianship beyond the 120-day statutory period, which resulted in Mr. L. being prevented from parenting his child, not even through overnight visits, for more than a year. RP 80, 166, 187, 254, 259.

This protracted delay unlawfully deprived Mr. L. the right to parent J.S., in violation of due process and irreparably compromised the outcome of his case. From October to December 2022, when the court was extending the emergency guardianship without lawful authority, Mr. L was unrepresented by counsel. CP 54-57; RP 14. When Mr. L received counsel and asked for permission to visit J.S., the court responded by extending the emergency guardianship and postponing the show cause hearing. RP 336-37, 343-44.

The court faulted Mr. L for not communicating, reaching out to the daycare or directly contacting J.S. during that "timeframe" even though it recognized that going to the daycare was "a little dicey" because a restraining order prohibited him from coming near Kelly and the daycare where she worked. RP 1108. Partly based on not having parented for such a long time, the court found he was not capable of performing parental functions because he had not been performing some of the parental functions enumerated in statute. CP 282; RP 1096. The right to a hearing within five days safeguards the right of being heard at a meaningful time and in a meaningful manner. This did not happen.

RCW 11.130.225(2) expressly states that the authority of an emergency guardian for a minor "may not exceed sixty days" and may be *extended only once*

for not more than sixty days if the court finds that the conditions necessitating the appointment persists.

By its terms, the statute contemplates that emergency guardianship will be temporary. It shows this by capping the amount of time a minor can spend in emergency guardianship to 120 days. RCW 11.130.225(2).

The authority of the emergency guardianship lapsed on January 6, 2023, yet the trial court extended it five more months. It had no authority to do that. A court only has authority to extend the emergency appointment if it conducts the show-cause hearing and concludes based on the affidavits or testimony that the minor's health, safety, or welfare will be substantially harmed in the pendency of a full guardianship trial. See RCW 11.130.225(4), (7). This is the hearing that

should have happened within five days, but the court did not hold it until eight months later.

The court's repeated, and admittedly erroneous, extensions of the emergency order effectively deprived Mr. L. of his parental rights for an entire year without a proper hearing, a violation of the due process requirement for a hearing at a "meaningful time and in a meaningful manner." Because the court had no authority to keep J.S. in guardianship, it was required to immediately return J.S. to Mr. L.

The Court of Appeals dismisses Mr. L.'s claims that the unlawfully prolonged emergency guardianship violated his due process rights and his fundamental liberty interest in the care, custody, and management of his child as moot because a full guardianship was eventually established. Slip. Op. at 18. This application of the mootness doctrine is incorrect because the

protracted delay in holding a statutorily required show cause hearing for over eight months prejudiced Mr. L.'s rights and compromised his chances of reuniting with his daughter.

The opinion's rationale that the issues were moot once the full guardianship was granted overlooks the irreparable harm caused by the delay itself. Slip. Op. at 18. More importantly, the Court of Appeals overlooks Mr. L.'s claim that the basis for guardianship no longer exists and without a new showing of substantial harm to J.S. the court was required to return her home.

b. The Court of Appeals incorrectly supposes this issue of substantial public interest is unlikely to recur.

Moreover, to determine whether a moot matter is of continuing and substantial importance, this Court considers whether (1) the issue is of a public or private nature; (2) whether an authoritative determination is

desirable to provide future guidance to public officers; and (3) whether the issue is likely to recur. *In re Marriage of Horner*, 151 Wn.2d 884, 892, 93 P.3d 124 (2004).

The Court of Appeals claims that the issues in this case are unlikely to reoccur: "While this case is public in nature insofar as it impacts family relationships, any procedural irregularities that arose were specific to the parties and not due to a lack of guidance, nor are they likely to reoccur in other circumstances." Slip. Op. at 18.

It seems to agree that it is an issue of public importance that impacts all family relationships, but curiously baldly asserts without elucidation or providing any analysis why the procedural irregularities are unlikely to reoccur. *Id*.

The issue of which Mr. L seeks review is one of "substantial and continuing public importance" to all families in Washington. *See Horner*, 151 Wn.2d at 891; *Matter of Dependency of Z.J.G.*, 196 Wn.2d 152, 471 P.3d 853 (2020) (assessing the merits and reversing in a moot shelter care case involving Native children).

Matters involving statutory interpretation are public in nature, likely to recur, and their resolution can provide critical guidance to public officials. *Hart v. Dep't of Soc. & Health Serv.*, 111 Wn.2d 445, 449, 759 P.2d 1206 (1988). And courts may consider " 'the likelihood that the issue will escape review because the facts of the controversy are short-lived.' " *Horner*, 151 Wn.2d at 892 (*quoting Westerman v. Cary*, 125 Wn.2d 277, 286-87, 892 P.2d 1067 (1994)).

The statute's proper meaning and the permissible scope of a court's legal authority to interfere with

families through guardianships is a public issue that would benefit from further guidance. *Id*. Further, the question presented here is likely to recur given the dearth of case law guiding our courts on the proper application of the Guardianship statutes. The issue is likely to reoccur also because the Court of Appeal's published decision provides a blue print on how courts can skirt due process violations. The scope of a court's legal authority to interfere with families through a full or emergency guardianship meets the continuing and substantial public interest exception to mootness. This Court should take review to provide guidance that our courts should not unlawfully interfere with families when there is no imminent risk of harm. RAP 13.4(b)(3),(4).

2. **Review is also appropriate because the Court of Appeals upheld separation of a child from a natural parent without requiring a showing she would suffer**

substantial harm in the care of her natural parent is unconstitutional.

Natural parents have a fundamental right to autonomy in decisions involving the care and control of their children. *See e.g., Troxel v. Granville*, 530 U.S. 57, 77, 120 S. Ct. 2054, 147 L. Ed. 2d 49 (2000). The United States Supreme Court has "long recognized" that the 14th Amendment protects "a parent's interests in the nurture, upbringing, companionship, care, and custody of children." *Id.*; *In re Custody of Smith*, 137 Wn.2d 1, 13, 969 P.2d 21 (1998).

Washington courts have described this right as "sacred," *In re Hudson*, 13 Wn.2d 673, 685, 126 P.2d 765 (1942), and "more precious to many people than the right to life itself." *In re J.D.*, 42 Wn. App. 345, 347, 711 P.2d 368 (1985) (*quoting In re Gibson*, 4 Wn. App. 372, 379, 483 P.2d 131 (1971)).

A statute that facilitates the deprivation of a fundamental right must pass strict scrutiny. *In re Parentage of C.A.M.A.*, 154 Wn.2d 52, 57, 109 P.3d 405 (2005).

Since the custody of one's own child is a fundamental constitutional right, state interference is justified only if the State can show that it has a compelling interest and such interference is narrowly drawn to meet only the compelling state interest involved. *Smith*, 137 Wn.2d at 15. This is the strict scrutiny test. *C.A.M.A.,* 154 Wn.2d at 57. Only under "extraordinary circumstances" does there exist a compelling state interest that justifies interference with parental rights. *In re Custody of Shields*, 157 Wn.2d 126, 145, 136 P.3d 117 (2006) (*quoting In re Marriage of Allen*, 28 Wn. App. 637, 649, 626 P.2d 16 (1981)).

RCW 26.16.125 and the Parenting Act are instructive as they codify a natural parent's fundamental rights to raise, participate, and nurture their offspring by ensuring that each parent has substantially equal time and control with their child. This equal time, unless shown to be harmful, is consistent with the fundamental premise that, even in disputes between parents, each parent has "a fundamental liberty interest in the care, custody and management of their children." *See Underwood v. Underwood*, 181 Wn. App. 608, 612, 326 P.3d 793 (2014).

The State lacks authority to redistribute infants to provide each child with the "best family." *Smith*, 137 Wn.2d at 20. The State also lacks the power to make significant decisions concerning the custody of children merely because it could make a "better decision." *Id.*

The "requirement of harm is the sole protection that parents have against pervasive state interference in the parenting process." *Id*. at 19-20 (*quoting Hawk v. Hawk*, 855 S.W.2d 573, 580 (Tenn. 1993)).

Here, the court took away Mr. L.'s right to make decisions concerning his daughter's education, health and upbringing although Mr. L. was law-abiding, able to contribute financial for his child, and has been actively involved in the life of his daughter. At the guardianship hearing, there was no showing that J.S. faced an emergency situation or would be harmed if she lived with J.S..

An emergency guardian may be appointed for a minor if the court finds the appointment of an emergency guardian is likely to prevent substantial harm to the minor's health, safety, or welfare, and no other person appears to have the authority and

willingness to act to prevent such harm. RCW 11.130.225(1).

A court may appoint a guardian for a minor if the court finds the appointment is in the minor's best interest and:

> (a) Each parent of the minor, after being fully informed of the nature and consequences of guardianship, consents;
> (b) All parental rights have been terminated; or
> (c) 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.

RCW 11.130.185(2); see generally RCW 11.130.190.

A minor guardianship should terminate when the court finds that the basis in RCW 11.130.185 for appointment of a guardian no longer exists, unless the court finds that:

> (i) Termination of the guardianship would be harmful to the minor; and

> (ii) The minor's interest in the continuation of the guardianship outweighs the interest of any parent of the minor in restoration of the parent's right to make decisions for the minor.

RCW 11.130.240(1)(b).

In *Smith* and *C.A.M.A.*, the Supreme Court invalidated third-party visitation statutes because they did not require a showing of harm, even though those statutes only minimally infringed on the parents' rights. *Smith*, 137 Wn.2d at 20; *C.A.M.A.*, 154 Wn.2d at 66.

In the context of a dependency, "When a child's health, safety, and welfare are seriously jeopardized by parental deficiencies, the State has the power to intervene and act in its capacity as provider of protection to those unable to care for themselves." *In re Dependency of Schermer*, 161 Wn.2d 927, 941-42, 169 P.3d 452 (2007). However, when parental actions or

decisions do not seriously conflict with the physical or mental health of the child, the State does not have a *parens patriae* right to intervene to protect the child. *In re Welfare of Sumey*, 94 Wn.2d 757, 762, 621 P.2d 108 (1980). The State cannot interfere with a parent's parental rights in the absence of harm to the child's health, safety, and welfare. *Id.*

Here, Petitioners should have been required to show that full guardianship was necessary to prevent substantial harm to J.S.'s health, safety, and welfare that should would suffer in the care of Mr. L.. RCW 11.130.225(1). No such showing was made. The court appointed guardians without any evidence that Mr. L.'s conduct posed a present danger of substantial harm to J.S.

The hearing on the emergency guardianship and the guardianship petitions happened weeks apart. At

trial, Mr. L. proved by clear evidence that he: maintains steady, benefits-eligible employment; secured stable housing with supportive family; completed a parenting class and drug testing; has no criminal convictions impacting child safety; and enjoys a strong emotional bond with J.S. RP 814-15. RP 459, 898-99. Yet the court ignored these facts, substituting a thin 'best interest' label for the required harm-based showing.

Mr. L. understood J.S.'s medical care and insurance. RP 899. J.S.'s speech and hearing was age-appropriate, she had no special needs and she was otherwise healthy. RP 452-53; 457-58. Mr. L. provided data showing his location history from his cellphone showing he had never taken J.S. anywhere near a girlfriend's home or near a registered sex offender and he assured the court he would never do that. RP 385,

388, 510. The court entered an order prohibiting Mr. L. from taking J.S. anywhere near that girlfriend's house, and since Mr. L. had shown he could abide by court no-contact orders, this less intrusive measure should have sufficiently met any concerns of the court. CP 239, 285.

At both the emergency and full guardianship hearings the court shifted the burden on Mr. L. to present clear, cogent, and convincing evidence that he is willing and able to exercise the parenting functions as defined in statute. RP 1095. Which is error.

In short, the Petitioners were not required to present any evidence that J.S. was in any danger of substantial harm in Mr. L.'s care. RP 107, 116. There was no showing that an emergency existed at the time of the emergency appointment or the guardianship itself. There was no compelling interest justifying

abridging Mr. L.'s fundamental liberty interest in parenting his daughter.

Under *Smith*, *C.A.M.A.*, and *Sumey*, the State may override a parent's fundamental liberty interest only upon clear, cogent, and convincing evidence of likely substantial harm to the child—best-interest alone is insufficient.

The Court of Appeals upheld this flawed reasoning, still without identifying any likelihood of substantial harm to J.S. that could have justified depriving Mr. L. of his fundamental rights to parent. It remained preoccupied with Mr. L.'s perceived financial instability, lack of stable housing situation, past marijuana use, and alleged emotional immaturity. Slip. Op. 2, 3, 14. But those facts do not do not meet the high legal threshold of proving a likelihood of substantial harm to the child.

To the extent, the Court of Appeal's decision relies on a "best interests" standard, it is unconstitutional, as it permits state officials to separate a child from a parent merely because a "better [parenting] decision" could be made by the child's grandparents. *Smith*, 137 Wn.2d at 20.

And in any event, J.S.'s best interests are best served with her natural father. It is well-documented that removing children from their natural families causes "catastrophic" harm and trauma to the child. *In re D.H.*, 195 Wn.2d 710, 736, 464 P.3d 215 (2020) (Madsen, J., dissenting) ("Family separation has led to 'catastrophic' results due to the trauma of dividing a child from a parent.") The Court should grant review under RAP 13.4(b), (3), (4).

F. CONCLUSION

Mr. L. respectfully requests this Court to accept review of these constitutional issue of substantial public importance. RAP 13.4(b),(3), (4).

This pleading complies with RAP 18.7 and contains 4,849 words.

DATED this 29th day of August 2025.

Respectfully submitted,

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APPENDIX

Filed
Washington State
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Division Two

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

In the Matter of the Guardianship of: J.S. Minor child.	No. 58967-2-II PUBLISHED OPINION

LEE, J. — J.L. appeals the superior court's findings and order appointing his father and stepmother as guardians of J.L.'s daughter, J.S. J.L. also appeals numerous emergency minor guardianship orders, the superior court's order denying J.L.'s motion to revise the commissioner's emergency minor guardianship orders, and the superior court's denial of J.L.'s motion to dismiss the guardianship action. Specifically, J.L. contends that the superior court commissioner's failure to hold a show cause hearing within five days of the filing of the emergency minor guardianship petition, as required by statute, violated his right to due process and that the commissioner erred in appointing his father and stepmother as emergency guardians of J.S. J.L. also argues that the superior court's decision to appoint his father and stepmother as full guardians of J.S. lacked substantial evidence.

Because there is no longer an emergency minor guardianship in place and because the superior court held a full guardianship trial, J.L.'s challenges pertaining to the emergency minor guardianship orders are moot. Additionally, because substantial evidence in the record supports a finding that J.L. is unable to perform parenting functions, the superior court did not err when it appointed J.L.'s father and stepmother as full guardians of J.S. We affirm.

FACTS

A. BACKGROUND

1. Early Months

J.S. was born to J.L. and K.S. in October 2019. When J.S. was three months old, J.L.—then aged 19—was awarded sole custody of J.S.

For the next several months, J.L., J.S., and J.L.'s then girlfriend, Katelyn, lived in and around Spokane in various homes. Initially, they lived with J.L.'s mother, Crystal. Then, with Crystal, they moved in with J.L.'s uncle. After a few months at his uncle's home, J.L., J.S., Katelyn, and Crystal left, and again lived together. During this time, J.L. did not work. According to Katelyn, J.L. would forget to feed J.S. or change her diapers, J.L. refused to bathe J.S., and J.L. often left J.S. unattended while he played video games or smoked marijuana.

When J.S. was approximately 10 months old, J.L., J.S., and Katelyn moved to the home of J.L.'s grandmother, Terisia, in Toledo, Oregon. The three lived with Terisia through J.S.'s first birthday. Then, in November 2020, J.L., J.S., and Katelyn left Toledo, returned to Spokane, and moved in with Katelyn's mother, Melody. Accounts differ as to why exactly J.L., J.S., and Katelyn left Terisia's home, but the record suggests that J.L.'s grandparents were frustrated with J.L.'s failure to care for J.S. and did not wish for him to continue living there.

While living with Melody, J.L. did not attend to J.S.'s needs. J.L. did not work. J.L. regularly smoked marijuana, played games on his phone, and left J.S. unattended. In many instances, Melody returned home from work to find that J.S. had soaked through her diapers, and it was evident that J.S.'s diaper had not been changed for hours. Melody witnessed J.L. change diapers only when Katelyn pressured him to do so. Melody began stopping at home during the

workday on her breaks to ensure J.S.'s diaper was changed. J.L. failed to dispose of dirty diapers and left them in the bedroom he shared with J.S. J.L. did not bathe J.S. and bathed only once himself over a period of a couple months. J.L. rarely interacted with J.S., and typically, it was Katelyn or Melody who would put J.S. to bed. While J.L. claimed he sought to have "an equal parenting-ship" with Katelyn, according to Melody, J.L. would abdicate responsibility and expect Katelyn or others to provide care for J.S. 2 Verbatim Rep. of Proc (VRP) (Sept. 25, 2023) at 879.

Melody did not allow J.L. to smoke marijuana inside her house. While J.L. would smoke outside, he did so on Melody's patio and left marijuana paraphernalia both inside the house and on the patio. On one occasion, Melody and J.L. fought over J.L.'s marijuana usage, his failure to contribute to the household, and his failure to take care of J.S. J.L. screamed and cursed at Melody and threatened to call the police. Melody told J.L. he was no longer welcome in her home, but Katelyn and J.S. were welcome to stay. J.L., J.S., and Katelyn left and moved in with J.L.'s father, Kie, and Kie's long-term partner, Kelly, in Silver Lake.

When J.L., J.S., and Katelyn arrived at Kie and Kelly's home, J.L. drove a vehicle without a license, car insurance, or valid registration tabs. J.L. lived with Kie and Kelly for a month and a half. During that time, Kie, Kelly, and Katelyn all worked. J.L. had difficulty obtaining a job, so every morning, someone from the household would drop J.L. off at a temp agency and pick him up in the evening. However, Kie and Kelly subsequently learned from the temp agency that J.L. had stopped working there even though family members had continued to drop him off at the agency. Kie and Kelly then discovered that after J.L. was dropped off at the temp agency, he would instead go to a friend's home to "hang out." VRP (Aug. 31, 2023) at 441. J.S. remained at home in the care of another family member.

On days J.L. was at home, J.L. never changed J.S.'s diapers, never gave J.S. a bath, and often slept in until late morning, leaving J.S. alone in her crib. J.L. frequently smoked marijuana at the house, even though Kie and Kelly did not allow marijuana at their home. J.L. would delegate J.S.'s care to Katelyn or leave J.S. unattended. Kie and Kelly provided food, and Kelly took J.S. to doctor appointments. Kelly potty-trained J.S.

A week or two after J.L. and J.S. came to live in Silver Lake, Kelly, who possesses a degree in early childhood education, noticed that J.S. was developmentally delayed. Specifically, Kelly noticed an issue with J.S.'s hearing and that J.S., at 18 months old, could not speak any words. Other family members also noticed the same issues. Kelly urged J.L. to take J.S. to be evaluated, but J.L. never did. Despite the fact that J.S. could not speak, J.L. did not believe J.S. had any developmental delays.

In June 2021, after Kie and Kelly discovered J.L.'s dishonesty about working, they asked J.L. to move out. Kie and Kelly offered to take J.S., and J.L. agreed. J.L. and Kelly signed a "Temporary Guardianship Affidavit," a document they found online, granting Kelly guardianship of J.S. for six months. Clerk's Papers (CP) at 14. J.L. and Kelly had the document notarized, and Katelyn and Kelly's daughter, Taylor, served as witnesses.

J.L. decided he wanted to go to Terisia's home, so Kie and Kelly bought J.L. a train ticket, gave him some cash, and told him that he could call or come see J.S. at any time. J.L. then moved in with Terisia.

2. J.S.'s Development

After J.L. moved out, Kelly sought medical care for J.S. and an evaluation to assess potential developmental delays. J.S. was behind on her vaccinations and had severe fluid buildup

behind her ears, which caused her to be nearly deaf. As a result, J.S. had not developed language skills typical of a child her age. J.S. needed surgery on her ears to relieve the fluid buildup and had myringotomy tubes[1] placed. Kie notified J.L. of J.S.'s need for surgery. However, J.L. did not express any interest in or make further inquiries regarding J.S.'s surgery, nor did he go to the hospital for the procedure.

Kelly enrolled J.S. at the Progress Center, an organization that assists children with meeting developmental milestones. The Progress Center provided Kelly with tools to help J.S. reach those milestones.

Kelly actively worked with J.S. on developmental skills every day. For instance, Kelly talked with J.S. about foods during mealtimes, discussed colors, and ensured J.S. would look at family members in the face so J.S. could learn to read lips. Kelly also enrolled J.S. at the Wee Care Daycare and Preschool, where Kelly worked.

After six months, the Progress Center determined that J.S. was developmentally on track and could maintain her normal preschool schedule without additional assistance. Those around J.S. noticed J.S.'s significant improvement after Kelly became J.S.'s guardian.

3. No Contact Order

Two weeks after J.L. moved out, Kie and Kelly hosted a graduation party for Holley, J.L.'s sister. While Kelly prepared for the party, she left J.S. in J.L.'s care. Kelly later discovered J.S. alone in the living room, and Kelly could not find J.L. Kelly called J.L. and learned that he had

[1] Myringotomy tubes are small tubes, surgically placed in an ear to assist with draining fluid. *Pediatric Myringotomy Tubes (Ear Tubes)*, CHILDREN'S NAT'L, https://www.childrensnational.org/get-care/health-library/myringotomy-tubes (last visited July 25, 2025).

left the house without notifying anyone. Kelly became upset and told J.L. that he could not "pick and choose when he wants to be a father." VRP (Aug. 31, 2023) at 468. J.L. hung up on Kelly.

J.L. returned to Kie and Kelly's house, and confronted Kelly. J.L. began yelling "vulgar names" at Kelly, and Kelly asked him to leave. VRP (Aug. 31, 2023) at 469. J.L. then punched Kelly in the mouth.

Terisia, Katelyn, and Taylor were all present when J.L. punched Kelly. Immediately after the punch, Katelyn and Taylor tackled J.L. Terisia stepped in and separated Katelyn, Taylor, and J.L. Terisia then drove away with J.L. while Taylor called the police. J.L. was subsequently arrested for the incident, but the case was later dismissed.[2]

As a result of the incident, Kelly obtained a no-contact order (NCO) against J.L., which prohibited J.L. from contacting her or coming within 1,000 feet of Kie and Kelly's home. Kelly was the only individual listed on the NCO, and the NCO did not apply to J.S., Kie, or anyone else in the family, or any other location. According to Kie, it was his and Kelly's intention that J.L. could still come visit J.S. without Kelly present.

Kie and other family members and friends would reach out to J.L. with photos and updates regarding J.S., but J.L. never engaged. While the NCO was in place, J.L. never attempted to visit J.S., nor did he request information about J.S.'s wellbeing or education. J.L. never provided any financial assistance for J.S.'s care. Additionally, J.L. did not request J.S.'s return when the six months of the Temporary Guardianship Affidavit expired in January 2022.

[2] There is no record on appeal that explains why the case was dismissed.

The NCO expired in August 2022. Then, on October 1, 2022, J.L. contacted Kie and Kelly and informed them he was in town with Terisia and that he intended to pick up J.S. J.L. did not provide any notice of his arrival, and he had not seen J.S. in over a year. When J.L. arrived to pick up J.S., Kie, Kelly, Terisia, and J.L. agreed that J.S. could spend the night with J.L. and Terisia at their hotel, but J.S. would otherwise remain with Kie and Kelly while she and J.L. re-established a relationship.

B. PROCEDURAL HISTORY

1. Petitions Filed and Initial Hearings

On October 4, 2022, Kie and Kelly filed an emergency minor guardianship petition,[3] requesting to be appointed as emergency guardians for J.S. Kie and Kelly asserted that to remove J.S. from the only home she had known and to place J.S. with J.L., whom J.S. had not seen in over a year, would be highly damaging to J.S. Kie and Kelly expressed concern that J.L. was not equipped to provide care for J.S. based on his unstable housing situation and his inability to anticipate a young child's needs. The trial court entered an order appointing Kie and Kelly as limited guardians and set a hearing for October 6.

On October 6, Kie and Kelly appeared before the superior court commissioner. The commissioner inquired if they had been able to serve J.L. with the emergency petition. Kelly responded that they had attempted to serve him, but J.L. had not been "forthcoming" with his current address. VRP (Oct. 6, 2022) at 9. Consequently, the commissioner extended the order

[3] Kie and Kelly subsequently filed an amended emergency minor guardianship petition on October 6, 2022.

appointing Kie and Kelly as limited guardians and put the matter over for two weeks to allow for service to be made on J.L.

On October 20, Kie, Kelly, and J.L. appeared before the commissioner. J.L. objected to the emergency minor guardianship petition. J.L. also filed several declarations and requested that an attorney be appointed to represent him. Kie and Kelly had not received copies of J.L.'s filings.

The commissioner acknowledged J.L.'s right to have an attorney appointed upon request, but the commissioner noted that the lack of available attorneys in Cowlitz County may cause a delay in appointing J.L. an attorney. To account for the delay, the commissioner again extended the order appointing Kie and Kelly as limited guardians and put the matter over until November 3 to allow for time for an attorney to become available for J.L. and for Kie and Kelly to receive J.L.'s filings.

Kelly requested the appointment of a Guardian ad Litem (GAL) for J.S. The commissioner determined that appointment of a court visitor, rather than a GAL, was appropriate at the time. The commissioner entered an order appointing Sherri Farr[4] as the court visitor.

J.L. also requested weekend custody of J.S. before the November 3 hearing, in part because he resided in Oregon and it was a several hour drive to Kie and Kelly's residence in Silver Lake. Kelly did not oppose visitations but objected to overnights because J.S. had only seen J.L. once or twice over the course of the last year and a half. Kelly also noted she and Kie had "left it open to [J.L.] to come see [J.S.] anytime he wants to, to do video calls anytime he wants to, and he ha[d]

[4] Farr was later appointed as the GAL.

not taken [them] up on that offer." VRP (Oct. 20, 2022) at 18. The parties agreed to Saturday visits between J.L. and J.S., with video calls on Tuesdays and Thursdays.

On December 2, Kie and Kelly filed a minor guardianship petition, alleging that there is no parent for J.S. who is willing or able to provide for J.S.'s support, care, education, health, safety, and welfare. The guardianship petition identified the emergency minor guardianship petition filed on October 4.

2. Extensions

Between November 2022 and July 2023, the parties participated in 12 hearings. At each hearing, the matter was continued[5] for various reasons, including to allow for notice of the hearings to J.S.'s biological mother[6]; to appoint attorneys for J.L., Kie, and Kelly; and J.L.'s delays in providing information to the court.

During the same time period, J.L. continually requested expanded visitation hours with J.S.—specifically, overnight visitations on weekends because he lived hours away in Oregon and the expense of driving and finding accommodation near Kie and Kelly was burdensome. However, J.L. was not forthcoming about his residence and, for months, failed to coordinate a video walkthrough with Farr to assess the safety of his home. When J.L. finally did coordinate a video walkthrough of his residence with Farr, J.L. informed Farr during the video meeting that the location he was showing her—his girlfriend's home in Silverton, Oregon—was not where he

[5] With each continuance, the commissioner entered amended immediate orders granting limited guardianship of J.S. to Kie and Kelly.

[6] J.S.'s mother, K.S., is not a party to these proceedings, nor is there any dispute that she has relinquished parental custody rights.

actually intended to live with J.S. and he only "temporarily" resided there. VRP (Jan. 19, 2023) at 60. J.L. informed Farr that he intended to live with J.S. at Terisia's home in Toledo. Then, for months, J.L. again failed to coordinate a video walkthrough with Farr of Terisia's house. When J.L. finally did coordinate a video walkthrough of Terisia's house, Farr noted that the yard was filled with junk and was unsafe for a toddler. Additionally, J.L. failed to disclose that his girlfriend's son, who lived at the same Silverton residence where J.L. "temporarily" resided with his girlfriend, was a registered sex offender who had been convicted of rape of a child.

During J.L.'s allowed visitations with J.S., J.L. always brought either his girlfriend or Terisia along with him. Terisia or J.L.'s girlfriend, instead of J.L., provided the care and parenting for J.S. during these visits. J.L. would often cut short his in-person visits with J.S. or fail to show for phone visits without explanation or advance warning. Over the previous two-year period, J.L. had not spent more than five hours alone with J.S. J.L. often arrived unprepared to his in-person visits, and it was Kelly who provided J.S. with a bag or backpack of supplies.

J.L. allegedly took a four-hour online parenting course; however, he never provided information about the course or what he learned after Farr inquired about it. The parenting class that J.L. took turned out to be a course on how to parent children in families going through divorce. J.L. stated he took the course, but he "didn't know it was supposed to be for divorced children." 2 VRP (Sept. 25, 2023) at 996.

Kie and Kelly also hoped that J.L. would participate in counseling, such as for mental health, substance abuse, and domestic violence. J.L. refused to participate in any counseling or evaluations unless Kie and Kelly paid for them; however, J.L. never reached out to Kie or Kelly to ask for financial assistance for such programs. J.L. was often unresponsive to Farr and failed

to answer inquiries Farr made regarding whether J.L. had identified childcare options for J.S. in Toledo, a doctor for J.S., and if J.L. was looking for a job closer to where he intended to live.[7]

At each hearing, the commissioner revisited J.L.'s visitation schedule. The commissioner added Sunday in-person visits. The commissioner noted continued concerns over J.L.'s ability to care for J.S., but also suggested opportunities to J.L. that would prove his ability, including increasing J.L.'s responsibilities during in-person visits, such as feeding J.S. dinner, spending time with J.S. alone, and increasing communication with Farr, Kie, and Kelly.

On May 5, 2023, the commissioner held an evidentiary hearing on the emergency minor guardianship petition. The parties were unable to finish presenting their case, so the hearing was continued to May 17. However, the commissioner failed to enter an order extending Kie and Kelly's limited guardianship of J.S. The commissioner then retired, and the court struck the hearing date without resetting it before another commissioner.[8]

3. Motion to Dismiss and Emergency Guardianship Hearing

On July 14, 2023, J.L. filed a motion to dismiss the guardianship action and for the immediate return of J.S. to his custody. J.L. argued in part that all immediate orders extending Kie and Kelly's limited guardianship of J.S. had expired, and that no emergency, as contemplated by the emergency minor guardianship statute, existed.

[7] J.L. worked three minutes from his girlfriend's home in Silverton. Terisia's house in Toledo is approximately 90 miles away.

[8] Between May 5 and July 11, the parties appeared in court five additional times to discuss expanded visitation for J.L., scheduling the full guardianship trial, and other motions not pertinent to the issues on appeal.

On July 18, the parties appeared before a new commissioner. At the hearing on J.L.'s motion to dismiss, the new commissioner noted the current procedural status of the case, including the irregularities with continuances and confusion with the retirement of the prior commissioner. Based on the fact that the parties had not completed the emergency minor guardianship evidentiary hearing, the commissioner denied J.L.'s motion to dismiss. The commissioner ruled that the parties would move forward with an emergency minor guardianship hearing to be followed by a full guardianship trial.

On July 25, the commissioner held the hearing on the emergency minor guardianship petition. The commissioner expressly stated that the hearing was for the emergency petition only and that the full guardianship petition had been set for trial in August 2023.

During the hearing on the emergency minor guardianship petition, Kie and Kelly argued that J.L. did not have the ability to prevent substantial harm to J.S. based on J.L.'s neglect of J.S. during her infancy; J.L.'s unstable housing situation; J.L. living in the same home as a registered sex offender; J.L.'s unlikely move to Terisia's house based on his job, which was in Silverton near his girlfriend's home where J.L. actually lived and 90 minutes away from Terisa's house; J.L.'s inability to even care for himself; and J.L.'s failure to take affirmative steps to demonstrate an interest in and awareness of J.S.'s needs. J.L. argued he had the ability to properly care for J.S., that he planned to move to Terisia's home as soon as he had custody of J.S., and that he would never take J.S. to his girlfriend's home. J.L. again requested dismissal of the guardianship action.

The commissioner granted the emergency minor guardianship and appointed Kie and Kelly as emergency guardians. In its oral ruling, the commissioner cited to RCW 11.130.225[9] and stated its reasons for granting the emergency minor guardianship petition, including J.L.'s "lack of self-awareness" regarding J.S.'s needs, J.L.'s unwillingness to engage in mental health and domestic violence evaluations, and J.L.'s living arrangements. VRP (July 25, 2023) at 392.

J.L. moved for revision of the commissioner's order appointing Kie and Kelly as emergency guardians. J.L. argued that there was insufficient evidence presented to show the requirements to appoint emergency guardians had been met and that the commissioner improperly considered inadmissible evidence. The superior court denied J.L.'s motion for revision.[10]

4. Trial

The superior court then held a three-day trial on the minor guardianship petition. Several witnesses testified consistent with the facts described above, including J.L., Kie, Kelly, Farr, and Terisia, among others.

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[9] RCW 11.130.225(1) provides in pertinent part:

> [T]he court may appoint an emergency guardian for the minor if the court finds:
>
> (a) Appointment of an emergency guardian is likely to prevent substantial harm to the minor's health, safety, or welfare; and
>
> (b) No other person appears to have authority, ability, and the willingness to act to prevent substantial harm to the minor's health, safety, or welfare.

[10] The motion for revision of the commissioner's order appointing Kie and Kelly as emergency guardians in July 2023 was timely filed; however, the superior court did not enter its order denying the motion until October 3, 2023, citing the fact that a trial on the guardianship petition had already been held, and a minor guardianship had already been granted in September 2023, as the reasons for denial of the motion.

Following trial, the superior court appointed Kie and Kelly as full guardians of J.S. The superior court found that clear and convincing evidence showed J.L. was "not able to make decisions and perform functions that are necessary for the care and growth of J.S." 3 VRP (Sept. 29, 2023) at 1096. In its oral ruling, the superior court provided extensive reasoning, pointing to evidence such as J.L.'s lack of financial support for J.S., J.L.'s unstable housing, J.L.'s apparent disinterest in J.S. and cancelled visitations, and concerns about J.L.'s credibility and judgment. The superior court also cited the standards it applied for the guardianship trial—specifically, RCW 11.130.185, RCW 26.09.004, and RCW 11.130.240.

In the written minor guardianship findings and order, the superior court stated:

> The approval [of the guardianship] is based on the following facts: [J.L.] displayed a pattern of abdicating parental responsibilities to others, particularly women in his life. He provided minimal financial support for [J.S.'s] daily needs despite having the means to contribute more. [J.L.'s] ongoing use of marijuana raised concerns about his motivation and ability to fulfill parental responsibilities. An incident of violence involving [J.L.] at a graduation party shortly after he left [J.S.'s] home raised concerns about his emotional regulation and ability to handle stressful situations. He had a history of housing instability, frequently moving between difference residences, which raised doubts about his ability to provide a stable living environment. Concerns arose regarding [J.L.'s] communication and his failure to disclose important information about his living situation to relevant parties. Despite having a bond with [J.S.], there were concerns about [J.L.'s] tardiness to visits and the presence of other individuals during visitation. He lacked involvement in [J.S.]'s education, including failure to inquire about her progress at daycare. Based on these facts, the court finds that [J.L.] was willing but not able to exercise the necessary parenting functions for [J.S.'s] care and growth, leading to the decision to appoint a guardian for [J.S.].

CP at 236.

The superior court entered its findings and order on the minor guardianship on December 22, 2023.

J.L. appeals.

ANALYSIS

J.L. argues that the superior court commissioner violated his right to due process when it continually extended the immediate emergency orders for eight months without an evidentiary hearing, the superior court erred when it appointed Kelly and Kie as emergency guardians, and the superior court's decision to appoint Kelly and Kie as full guardians lacked substantial evidence. We disagree.

A. EMERGENCY GUARDIANSHIP PETITION

1. Legal Principles

RCW 11.130.225 addresses emergency minor guardianships. RCW 11.130.225(1) provides:

> On its own, on motion when a guardianship petition is filed under RCW 11.130.190, or on petition by a person interested in a minor's welfare, including the minor, the court may appoint an emergency guardian for the minor if the court finds:
> (a) Appointment of an emergency guardian is likely to prevent substantial harm to the minor's health, safety, or welfare; and
> (b) No other person appears to have authority, ability, and the willingness to act to prevent substantial harm to the minor's health, safety, or welfare.

A court may appoint an emergency guardian for no more than 60 days and may extend the emergency guardianship once for up to an additional 60 days. RCW 11.130.225(2). Nevertheless, a court may extend an emergency guardianship beyond the 120-day maximum "pending the outcome of a full hearing under RCW 11.130.190 [petition for appointment of guardian for minor] or 11.130.220 [standby guardian for minor]." RCW 11.130.225(7).

Prior to a hearing on the emergency petition, reasonable notice must be provided to each parent of the minor. RCW 11.130.225(3)(c). A court may appoint an emergency guardian without

notice and a hearing "only if the court finds from an affidavit or testimony that the minor's health, safety, or welfare will be substantially harmed before a hearing with notice on the appointment can be held." RCW 11.130.225(4). If that is the case, a hearing must be held within five days to determine the appropriateness of the appointment. RCW 11.130.225(4).

Appointment of an emergency guardian "is not a determination that a basis exists for appointment of a guardian under RCW 11.130.185." RCW 11.130.225(5). A court may remove an emergency guardian at any time. RCW 11.130.225(6).

2. J.L.'s Challenges Regarding the Emergency Petition are Moot

a. Show cause hearing

J.L. argues that his right to due process was violated when the superior court commissioner appointed Kie and Kelly as limited emergency guardians on October 6, 2022, but failed to a hold a show cause hearing within five days. J.L. asserts that the "protracted" eight-month delay "illegally deprived" him of his right to parent J.S. and the commissioner repeatedly extended the limited emergency guardianship "without lawful authority." Br. of Appellant at 25. We hold that J.L.'s challenge to the emergency guardianship petition is moot.[11]

A challenge is moot when "the appellate court can no longer provide effective relief." *In re Dependency of L.C.S.*, 200 Wn.2d 91, 98, 514 P.3d 644 (2022). "When an appellant has already

[11] Mootness aside, J.L.'s briefing implies that the superior court did not afford him an opportunity to be heard for eight months after the filing of the emergency minor guardianship petition. However, the record shows that between October 2022, when the emergency petition was filed, and July 25, 2023, when the hearing on the emergency petition was held, the parties participated in 18 hearings during which the court addressed ongoing issues and offered repeated opportunities to the parties to be heard on those issues. Moreover, Kie and Kelly filed a minor guardianship petition in December 2022, which allowed for the extension of the emergency guardianship beyond the 120-day maximum set forth in the statute. RCW 11.130.225(7).

obtained the requested relief, an appeal is technically moot." *Dep't of Lab. & Indus. v. Fowler*, 23 Wn. App. 2d 509, 534, 516 P.3d 831 (2022), *review denied*, 200 Wn.2d 1027 (2023). Further, a final judgment renders the propriety of a temporary order moot. *Ferry County Title & Escrow Co. v. Fogle's Garage, Inc.*, 4 Wn. App. 874, 881, 484 P.2d 458, *review denied*, 79 Wn.2d 1007 (1971).

Here, J.L.'s challenge to the commissioner's alleged failure to hold a show cause hearing on the emergency petition within five days is moot. The purported relief we would provide J.L. would be to reverse the appointment of Kie and Kelly as emergency guardians and to return J.S. to J.L.'s care. However, the possibility of relief from the emergency guardianship petition became moot once the superior court held a trial on the full minor guardianship petition and appointed Kie and Kelly as full guardians of J.S. *Id.* There is no longer an emergency guardianship in place.[12] *Fowler*, 23 Wn. App. 2d at 534. Moreover, appointment of an emergency guardian "is not a determination that a basis exists for appointment of a guardian under RCW 11.130.185." RCW 11.130.225(5). Thus, even if there had been an error, that error would have had no bearing on a subsequent guardianship appointment.

Additionally, the factors that would allow this court to review a moot issue have not been met. Courts may consider a moot issue if it "is a matter of continuing and substantial public interest." *Dependency of L.C.S.*, 200 Wn.2d at 99. To determine whether an issue falls within the public interest exception, courts consider "whether the issue is of public or private nature, whether an authoritative determination is desirable to provide future guidance, and whether the issue is

[12] The most recent "Order on Emergency Minor Guardian," filed September 27, 2023, expired September 29, 2023. J.L. also appeals the Order on Emergency Minor Guardian, entered August 15, 2023, and the immediate emergency minor guardianship orders entered on December 29, 2022, February 10, 2023, and March 23, 2023. These orders also have already expired.

likely to reoccur." *Id.* While this case is public in nature insofar as it impacts family relationships, any procedural irregularities that arose were specific to the parties and not due to a lack of guidance, nor are they likely to reoccur in other circumstances. *Id.* Accordingly, the challenges to the emergency orders are moot.

b. Appointment of grandparents as emergency guardians

J.L. argues that the superior court commissioner erred when it appointed Kie and Kelly as emergency guardians[13] because it applied the incorrect legal standard and because there was no showing that a guardianship was necessary to prevent substantial harm to J.S.'s health, safety, and welfare.

Again, J.L.'s challenge is moot. As stated above, there is no existing emergency minor guardianship in place, and the possibility of relief became moot once the superior court appointed Kie and Kelly as full guardians of J.S. after a trial on the minor guardianship petition. *Ferry County Title & Escrow Co.*, 4 Wn. App. at 881. Therefore, we decline to review the merits of J.L.'s arguments regarding the appointment of emergency guardians.[14]

[13] J.L.'s briefing conflates the emergency minor guardianship appointment with the full minor guardianship appointment. J.L. cited to the guardianship trial when he claimed that the superior court applied the incorrect standard in the emergency guardianship hearing. J.L. then advances arguments centered only on the appointment of emergency minor guardians and RCW 11.130.225. Thus, this opinion assumes J.L.'s challenge is to the appointment of Kie and Kelly as emergency minor guardians.

[14] Because the issues relating to the emergency petition are moot, we do not review J.L.'s appeal of the superior court's order denying dismissal of the emergency guardianship, dated July 18, 2023, and the order denying J.L.'s motion for revision of the emergency minor guardianship appointment, dated October 3, 2023.

B. MINOR GUARDIANSHIP PETITION

J.L. argues that the superior court's finding that J.L. was willing but not able to perform parenting functions is not supported by substantial evidence. J.L. asserts that because the finding was not supported by substantial evidence, the superior court erred when it appointed Kie and Kelly as guardians. J.L. also argues for the termination of the minor guardianship because the basis for the guardianship no longer exists. We disagree.

1. Legal Principles

A court may appoint a guardian for a minor if

> the court finds the appointment is in the minor's best interest and:
> (a) Each parent of the minor, after being fully informed of the nature and consequences of guardianship, consents;
> (b) All parental rights have been terminated; or
> (c) 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.

RCW 11.130.185(2); *see generally* RCW 11.130.190. Under RCW 26.09.004, "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.

RCW 26.09.004(2).

> A minor guardianship can terminate when
>
> the court finds that the basis in RCW 11.130.185 for appointment of a guardian no longer exists, unless the court finds that:
> (i) Termination of the guardianship would be harmful to the minor; and
> (ii) The minor's interest in the continuation of the guardianship outweighs the interest of any parent of the minor in restoration of the parent's right to make decisions for the minor.

RCW 11.130.240(1)(b).

A superior court's minor guardianship determination is reviewed for an abuse of discretion. *In re Guardianship of F.S.*, 33 Wn. App. 2d 24, 35, 559 P.3d 138 (2024), *review denied*, 4 Wn.3d 1015 (2025). "Determining who should be appointed as a child's guardian is a fact-intensive inquiry that trial courts are necessarily in a better position than the appellate courts to decide." *In re Guardianship of L.C.*, 28 Wn. App. 2d 766, 772, 538 P.3d 309 (2023)).

> Under the abuse of discretion standard, we will find error only if the "court's decision (1) adopts a view that no reasonable person would take and is thus manifestly unreasonable, (2) rests on facts unsupported in the record and is thus based on untenable grounds, or (3) was reached by applying the wrong legal standard and is thus made for untenable reasons."

Guardianship of F.S., 33 Wn. App. 2d at 35 (quoting *Guardianship of L.C.*, 28 Wn. App. 2d at 772).

We review challenges to factual findings for substantial evidence. *Id.* Under the clear and convincing standard, substantial evidence exists "'when the ultimate fact in issue is shown by the evidence to be highly probable.'" *In re Dependency of A.N.C.*, 24 Wn. App. 2d 408, 414, 520 P.3d 500 (2022) (internal quotation marks omitted) (quoting *In re Dependency of K.R.*, 128 Wn.2d 129,

141, 904 P.2d 1132 (1995)), *review denied*, 1 Wn.3d 1012 (2023); RCW 11.130.185(2)(c). "Unchallenged findings of fact are verities on appeal." *In re Welfare of A.W.*, 182 Wn.2d 689, 711, 344 P.3d 1186 (2015).

There is a "strong interest in the finality of cases involving the custody of a child, as disruption to the child's life can result in harm to the child." *Guardianship of L.C.*, 28 Wn. App. 2d at 772; *see generally In re Custody of C.D.*, 188 Wn. App. 817, 826, 356 P.3d 211 (2015) (stating, "'Appellate courts are generally reluctant to disturb a child custody disposition because of the trial court's unique opportunity to personally observe the parties'" (quoting *In re Custody of Stell*, 56 Wn. App. 356, 366, 783 P.2d 615 (1989))). Further, we do not decide on appeal the credibility of witnesses or weigh evidence. *Welfare of A.W.*, 182 Wn.2d at 711.

2. Substantial Evidence Supports Appointment of Grandparents as Guardians

Here, the record shows that J.L. consistently ignored J.S.'s daily needs, failed to attend to J.S.'s education and health, and did not exercise appropriate judgment regarding J.S.'s welfare. RCW 26.09.004(2)(b), (c), (e). For instance, during J.S.'s infancy, J.L. left J.S. in diapers for hours and only changed her when pressured to do so by others. J.L. would leave J.S. unattended and both expected and relied on others to provide for J.S.'s care. J.L. failed to notice that J.S. was developmentally delayed, a circumstance that ultimately required J.S. to undergo surgery and participate in a remedial development program.

J.L. left J.S. in Kie and Kelly's care, and he did not once inquire about J.S., her medical needs, or her education. Nor did J.L. attempt to see J.S. for over a year, even when he knew J.S. was undergoing surgery, despite family and friends reaching out to him with updates on J.S. After a visitation schedule was established, J.L. was consistently late to in-person visits or cut them

short, and J.L. often failed to show up for phone visits without explanation or advance notice. J.L. had not spent more than five hours alone with J.S. in the two years prior to trial. He would arrive unprepared to his in-person visits, despite seeing J.S. every weekend. Furthermore, at the time of trial, J.S. had spent the majority of her life in the care of Kie and Kelly.

The record also shows that J.L. was afforded ample opportunity over the course of nearly a year to demonstrate his ability to care for J.S., and he consistently did not do so. Throughout the guardianship action, J.L. did not seek his own housing, and indeed, was often not forthright about where he actually intended to live with J.S. J.L. claimed he took a parenting course; however, the course was a four-hour online course for parents with children going through divorce. J.L. always brought other individuals with him to his visits with J.S. rather than spend time with her alone. Moreover, J.L. failed to communicate with Farr or respond to Farr's inquiries regarding whether he had identified childcare options for J.S., a doctor for J.S., and if J.L. was looking for a job in Toledo. J.L. appears to have proceeded on the assumption that his simply wanting custody of J.S. and having a relationship with her was sufficient to establish that he could perform parenting functions.

Moreover, the record clearly demonstrates that Kie and Kelly have provided a stable and loving home for J.S. Kelly sought and coordinated medical care for J.S. Kelly enrolled J.S. in the Progress Center so that J.S. could achieve developmental milestones. Kelly practiced new skills with J.S. every day. Kie and Kelly enrolled J.S. in daycare and paid for J.S.'s expenses out of their own pockets. Indeed, Kie and Kelly never requested financial assistance from J.L.

J.L.'s conduct through the course of the proceedings demonstrated that he was unable to perform the parenting functions outlined in RCW 26.09.004(2). Thus, substantial clear and

convincing evidence supports the superior court's finding that J.L. is willing but unable to perform parenting functions. And given the evidence presented, a reasonable basis exists for the appointment of guardians for J.S. RCW 11.130.185(2)(c). Accordingly, the superior court did not abuse its discretion when it appointed Kie and Kelly as J.S.'s guardians. *Guardianship of F.S.*, 33 Wn. App. 2d at 35.

As for J.L.'s argument that the minor guardianship should be terminated, J.L. contends that the superior court "did not enter a finding that termination of the guardianship was harmful to [J.S.], or that [J.S.]'s interest in the guardianship outweighed [J.L.]'s interest in the restoration of his right to make decisions for [J.S.]." Br. of Appellant at 58. However, J.L.'s contention is belied by the record. The superior court ruled:

> [T]here's not going to be a termination of the guardianship at this point [be]cause I . . . find that it would be harmful . . . to J.S. if that were to occur. And it's not in [J.S.]'s best interest for the guardianship to end at this time.

3 VRP (Sept. 29, 2023) at 1109.

Thus, because substantial clear and convincing evidence supports the superior court's finding that J.L. is willing but unable to perform parenting functions and because the superior court found that terminating the guardianship would be harmful to J.S. and not in her best interests, we affirm the superior court.

CONCLUSION

J.L.'s challenges to the emergency minor guardianship orders are moot. Additionally, because substantial evidence in the record supports a finding that J.L. is unable to perform parenting functions, the superior court did not err when it appointed J.L.'s father and stepmother as full guardians of J.S. We affirm.

L[illegible], J.

We concur:

Veljacic, A.C.J.

Che, J.

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