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State of Washington

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WASHINGTON STATE
SUPREME COURT

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**IN THE SUPREME COURT OF THE STATE OF
WASHINGTON**

(Division III Case Number 350525)

T.L.M, Respondent

v.

Kerry Milliken, Appellant

**PETITION FOR REVIEW of RCW 13.32A
(CHINS) Appeal Dismissed as Moot**

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A. IDENTITY OF PETITIONER

Kerry Milliken asks this court to accept review of the Court of Appeals decision terminating review designated in Part B of this petition.

B. COURT OF APPEALS DECISION

Kerry Milliken asks the court to consolidate and review the decisions of the Court of Appeals of 5/16/17 in two companion cases (34988-8-III) and 35052-5-III) which denied Ms. Milliken's Motion to Modify the Commissioner's decision of 3/10/17, after the Division III Commissioner dismissed the CHINS appeals as moot.

A copy of the Commissioner's decision in No. 349888 is in the Appendix at pages A-1 through A-3, and the Appellate Panel's Order denying the Motion to Modify is in the Appendix at page A-4. A copy of the Commissioner's decision in No. 350525 is in the Appendix at pages A-5 through A-7, and the Appellate Panel's Order denying the Motion to Modify is in the Appendix at page A-8.

C. ISSUES PRESENTED FOR REVIEW

1. Are the Child-in-Need of Services Statutes (RCW 13.32A) Constitutional after *Troxel*? (Answer: No.)

The only significant case to address constitutionality of a CHINS-like intrusion upon parental rights was the 1980 *Sumey* case, which found the predecessor statute to the current "Child in Need of Services"

(CHINS) statute to be constitutional.

The key *Sumey* factor is that a vehement *Sumey* minority believed that strict scrutiny should apply to all parental rights cases, including CHINS cases. *In re Sumey*, 94 Wash. 2d 757, 621 P.2d 108 (1980).

Post-*Troxel* cases require strict scrutiny of any state action that infringes upon parental rights. *In re Custody of Smith*, 137 Wash. 2d 1, 13, 969 P.2d 21, 27 (1998), *aff'd sub nom. Troxel v. Granville*, 530 U.S. 57, 120 S. Ct. 2054, 147 L. Ed. 2d 49 (2000). *Troxel* surely has proven the *Sumey* minority to have been correct.

No case, since the 1980 *Sumey* case has ruled on the constitutionality of the current CHINS practice, nor has any decision been made regarding any CHINS-type legal intrusion onto parental rights, post-*Smith-Troxel*.

Troxel appears to have effectively reversed *Sumey*, elevating the *Sumey* minority opinion into the modern majority view. All the post-*Troxel* case law has continued to take a strict scrutiny approach to limitations upon parental rights, as the *Sumey* minority opinion required.

2. Are Serial CHINS Petitions Constitutional? (Answer: No.)

Given that the *Sumey* court majority found the predecessor CHINS statute to be constitutional because of the strict statutory time limitation of the CHINS-like restriction on parental rights, serial CHINS Petitions

cannot pass even the relaxed, pre-*Troxel*, standards of the *Sumey* court.

3. Is a Serial CHINS Petition Essentially a Dependency Without the Parental Protections of a Dependency? (Answer: Yes.)

Serial CHINS Petitions subject a parent to even greater (time period) deprivations of their children than do many dependencies, and CHINS does so without any of the protections that parents have in a dependency, in terms, for example, of due process, presumptions of fitness, and rights to counsel, etc.

4. Was the CHINS Statute Constitutional as Applied to Ms. Milliken? (Answer: No.)

Even if the CHINS statutes are constitutional, and even if CHINS Petitions are allowed to be filed serially (essentially creating a dependency action with none of the parental protections of the dependency statutes), the statutes were unconstitutional as applied to Kerry Milliken.

5. Should Review Be Accepted Even Though the Case is Formally Moot? (Answer: Yes)

This court has accepted numerous moot cases regarding the At-Risk-Youth (ARY) Petition sanctions as applied to wayward juveniles. Parental rights, especially those which remain in peril, should merit at least as much attention as the sanctions given misbehaving youths. The parental rights at issue merit review. (RCW 13.32A overlaps CHINS and

ARYS in their definitions and remedies, with distinct subparts.)

D. STATEMENT OF THE CASE

1. Procedural History of the Two CHINS Appeals

Ms. Milliken had two CHINS Petitions filed against her by her 13-year-old daughter, T.M., in Spokane County, one in January of 2016 and a second, serial, CHINS filed in December of 2016 as the statutory timeline of the first CHINS was terminating that case.

The Opening Brief, that was submitted in Division III with the Motion to Modify, is included in the Appendix, starting at A-9, and is incorporated herein. The Clerk's Papers were already ordered for each case on appeal, and are referenced herein. Those two sets of Clerk's Papers are not included in the appendix, as it is assumed that the Clerk's Papers will be forwarded with the case file in each case. And a Motion to Consolidate these two Petitions for Review will be submitted to the Supreme Court Commissioner.

Ms. Milliken is the appellant in those two related cases: Division III case number **349888** (from Spokane County case no. 16-7-00091-9) and Division III case number **350525** (from Spokane County case no. 16-7-02842-2). References to the Clerk's Papers in the first case shall be "CP," and references to the Clerk's Papers in the second case shall be "CP2."

To summarize, the brief in the Appendix at A-9 is submitted for both cases, and the Motion to consolidate the reviews shall be promptly filed with the Commissioner of the State Supreme Court.

As to the precipitating events and factual summary:

A wealthy, adult, female, Candi Davis, came to know T.M. while dating the biological father of T.M. (See A-9.)

Candi Davis remained interested in T.M. after no longer dating the biological father. Ms. Davis began subverting the parental rules of Kerry Milliken, as Ms. Davis labored to win the affection of Ms. Milliken's 13 year old daughter, T.M. This behavior led Ms. Milliken to restrict contact between T.M. and Candi Davis. (See A-9.)

From these attentions, T.M. was incited by Candi Davis to violate these restrictions (see, e.g., testimony of T.M. at CP: 253-54 and the testimony of Ms. Milliken at CP: 297-99, and see the factual summary in Ms. Milliken's declaration at CP: 40-42). NOTE: To momentarily leap ahead in chronology, on 4/8/16, Commissioner Ressa, in her ruling after trial, found the behavior of Candi Davis to be "wholly inappropriate." CP: 330.

Returning to chronology, the problems with Candi Davis escalated in the last half of 2015, until Ms. Milliken had to finally chase Ms. Davis out of Kerry's own home on 12/21/15, leading to criminal charges, now

resolved.

T.M. filed her CHINS Petition on 1/12/16 (CP: 1-7), three weeks after the incident of 12/21/15, likely with the assistance of Candi Davis (CP: 43). The CHINS Petition emphasized that T.M. did not want to live with Ms. Milliken any longer. (CP: 4 and 7.) These allegations are not sufficient under the CHINS statute. RCW 13.32A.

On 1/25/16, the court ordered out-of-home placement, and set the matter for further fact-finding. CP: 23-24.

Ms. Milliken was represented by Mr. Deonier on 1/25/16, after which Mr. Mason appeared on 2/4/16, and Mr. Mason filed a Motion for Reconsideration (CP: 28-44). This motion was denied on 3/16/16 (CP: 68).

Ms. Milliken set a motion to dismiss for 4/8/16 to be heard before the trial to be held on that date. Once again, Ms. Milliken requested dismissal, on the basis that T.M. clearly “had no intention of reconciling with the family...[the child seeking reconciliation is a necessary element of a CHINS action]” (CP: 75). See also CP: 4 and 7, and CP2: 40-42.

On 4/8/16, the court denied Ms. Milliken’s motion to dismiss, and then the trial with live testimony was held that same day. (The transcript of the 4/8/16 trial is at CP: 203-342.)

Out-of-home placement of T.M. with her grandparents was

ordered. (Order of 4/8/16 at CP: 76-80.)

At the review hearing of 6/17/16, the court reconvened to castigate Candi Davis for her failure to respect boundaries and for her failure to respect the needs of T.M. and the court orders (CP: 102-03).

A subsequent Motion to Dismiss (CP: 106-109) was brought by Kerry Milliken on 9/16/16 at the review hearing, and that motion to dismiss was also denied. See CP: 121-24 for the written order.

(Note: The 9/16/16 transcript is filed separately from the Clerk's Papers, per the Statement of Arrangements.)

Two Motions to Dismiss were set for 12/9/16. First, the Motion to Dismiss the first CHINS Petition, and second, a Motion to Dismiss the 2nd, serial, CHINS case. The transcript of 12/9/16 is at CP: 149-65. (There is some confusion in the early pages of the transcript, as Mr. Mason also had a criminal matter to attend that morning, and his communications with opposing counsel and court staff had not been shared with the commissioner; however, the 12/9/16 hearing was held, as the transcript shows.)

T.M. had filed a second, serial, overlapping, CHINS Petition on 11/29/16, to evade the statutory time limit requiring her return to her mother's home. CP:136-43. On behalf of Ms. Milliken, Mr. Mason raised constitutional and statutory objection to any serial CHINS Petition.

In response to Mr. Mason's constitutional objection to serial CHINS petitions, Commissioner Ressa said that finding serial CHINS unconstitutional required a continuance for her own research, as Commissioner Ressa stated: **"That would definitely shift practice in this county pretty drastically if I decide it [serial CHINS] was unconstitutional."** CP: 163.

That quote shows why appellate review is necessary. The Spokane County pattern and practice of serial CHINS Petitions is acknowledged by Commissioner Ressa, on the record, and the constitutional (and statutory) questions raised by serial CHINS Petitions should be addressed by the Washington State Supreme Court.

After 12/9/16, the first CHINS expired on 12/12/16, and on 12/16/16, the second CHINS was re-assigned to a new juvenile commissioner, and the hearing on the dismissal was re-set for additional briefing. The order continuing the Motion to Dismiss is at CP2: 21-22.

The Motion to Dismiss the 2nd CHINS Petition on statutory and constitutional grounds was ultimately heard on 1/13/17. (The 1/13/17 transcript was filed with Division III on 2/2/17, per the Statement of Arrangements in case No. 350525.)

The Motion to Dismiss was denied in terms of both the statutory argument and the constitutional argument. On 1/13/17: (1) The court

denied that serial CHINS Petitions violated legislative intent; (2) the court denied dismissal that was requested on the face of the petition as not meeting statutory criteria, (3) nor was strict scrutiny deemed to apply, and, (4) finally, the court denied the constitutional argument that a serial CHINS violated constitutional parental rights.

However, after T.M. made clear at trial, through her testimony, that she had no desire to return home, her Petition was dismissed, on statutory grounds, on Ms. Milliken's Motion for Directed Verdict. CP2: 60-61. (Note: The Clerk's Papers mis-state in the index that the dismissal was with prejudice, but at CP2: 61 it is clear that the dismissal was without prejudice, leaving Ms. Milliken's parental rights in peril.)

This appeal followed.

2. CHINS/ARY/BECCA Cases Heard Despite Mootness

In this section, the published cases pertaining to the CHINS statutes, regarding mootness, are presented and discussed.

(i) *Bellevue Sch. Dist. v. E.S.* (2011): Truancy case heard despite being moot: In *Bellevue Sch. Dist. v. E.S.*, the State Supreme Court heard a moot truancy matter, and reversed Division One's determination that truants had a right to counsel at an initial truancy hearing:

We are asked to decide whether the due process clause of the Fourteenth Amendment to the United States Constitution or the due process clause set forth in article I, section 3 of the Washington Constitution requires appointment of counsel to represent a child at an initial truancy hearing. The Court of Appeals, Division One held that due process protections compel appointment of counsel at that stage of a truancy proceeding. We

hold that the Court of Appeals erred in making that determination and, therefore, reverse its decision.¹ (see below)

Bellevue Sch. Dist. v. E.S., 171 Wash. 2d 695, 698–99, 257 P.3d 570, 572

(2011) Fn1:

This *case appears to be moot*, as counsel for E.S. informed us during oral argument that the truancy petition against E.S. has been dismissed. Wash. Supreme Court oral argument, *Bellevue Sch. Dist. v. E.S.*, No. 83024–0 (Jan. 19, 2010), at 27 min., 18 sec., audio recording by TVW, Washington State's Public Affairs Network, available at <http://www.tvw.org>. However, the question of whether or not a child has the right to counsel at an initial truancy hearing is an issue of significant public interest affecting many parties and will likely be raised in the future.

Because we decide cases of substantial public interest likely to recur even though the issues may be moot, we reach the issues presented. *See Durner v. McLaughlin*, 100 Wash.2d 832, 838, 676 P.2d 444 (1984).

Bellevue Sch. Dist. v. E.S., 171 Wash. 2d 695, 699, 257 P.3d 570, 572

(2011).

Application of *Bellevue Sch. Dist. v. E.S.* Parental rights are also matter of “substantial public interest,” and the issues of the constitutionality of CHINS petitions in general will surely recur, and the issue of serial CHINS petitions are “likely to recur.” Review should be granted.

(ii) *In re Silva*: Moot Case Accepted for Review: In the *Silva* case, Division III certified the case to the State Supreme Court, regarding the exercise of contempt power in At-Risk-Youth proceedings:

This case involves the judicial authority to incarcerate a child for contempt of court for failing to comply with court orders entered in at-risk youth (ARY) proceedings. We have previously analyzed a juvenile court's exercise of its inherent contempt authority in *In re Dependency of A.K.*, 162 Wash.2d 632, 174 P.3d 11 (2007) (plurality opinion). *A.K.* dealt with dependency statutory proceedings, and we find, in all relevant respects, that case controls our analysis here. We accepted direct review of the juvenile court's decision imposing punitive sanctions for contempt of court and vacate that decision.¹ (see below)

In re Silva, 166 Wash. 2d 133, 137, 206 P.3d 1240, 1243 (2009).

Fn1: *This case is technically moot.* However, we accepted review of this case because it, like *A.K.*, involves matters of continuing and substantial public interest. *A.K.*, 162 Wash.2d at 635, 174 P.3d 11. In deciding whether an issue of substantial public interest is involved, the court looks at three criteria: (1) the public or private nature of the question presented, (2) the desirability of an authoritative determination that will provide future guidance to public officers, and (3) the likelihood that the question will recur. *A.K.*, 162 Wash.2d at 643, 174 P.3d 11. As in *A.K.*, each of the three criteria are met. First, the public has a great interest in the protection of juveniles, and the authority of the court in these cases is a public matter. Second, a determination of how the court's inherent contempt power interacts with the statutory contempt scheme in ARY proceedings will provide useful guidance to juvenile court judges. Third, the juvenile court's exercise of inherent contempt authority in ARY proceedings is likely to recur.

In re Silva, 166 Wash. 2d 133, 137, 206 P.3d 1240, 1243 (2009) (emphasis added).

Application of *In re Silva*: Parental rights under current attack surely have a greater weight in public policy concerns than do the long-past

contempt sanctions of wayward juveniles. For recent cases on the importance of parental rights see e.g., *In re Parentage of C.A.M.A.*, 154 Wash. 2d 52, 57, 109 P.3d 405, 408 (2005) and *In re Custody of ALD*, 191 Wash. App. 474, 495–96, 363 P.3d 604, 614–15 (2015).

In this instance, the CHINS issues at stake in out-of-home placement being ordered without sufficient factual foundation, and the issues of serial CHINS petitions being filed which extend out-of-home placement far beyond what the legislature intended, (1) are matters of public concern; and (2) an authoritative State Supreme Court decision is necessary to guide judges, parents, and public agencies, in a manner that would be scoped by a decision on review. And, finally, (3) the parental rights questions are sure to recur in the CHINS context.

(iii) *In re Mowery*: Review Was Again Accepted for Juvenile Rights.

Despite Mootness: The juvenile at issue in *Mowery* had aged-out of jurisdiction, and yet the court heard the appeal:

Mr. Mowery contends the appeal is moot. Ryan has served the sentence imposed, the original order that he violated has expired, and because he has turned 18 he is no longer subject to the jurisdiction of the juvenile court. We elect to decide Ryan's appeal on the merits because there is the possibility that we can provide effective relief. Ryan incurred a criminal sanction and it is not clear that he will be free of future consequences if it remains on his record. In any event his appeal involves a matter of continuing and substantial public interest. See *In re Interests of M.B.*, 101 Wash.App. 425, 432–33, 3 P.3d 780 (2000).

In re Mowery, 141 Wash. App. 263, 274, 169 P.3d 835, 840 (2007), as amended (Nov. 8, 2007).

Application of *In re Mowery*: Once again, Kerry Milliken asserts that her constitutional rights to parent her child are at least as great as those rights of juvenile truants, and Ms. Milliken reminds the court that her peril is ongoing, unlike the peril to Mr. Mowery, who was no longer under the jurisdiction of the juvenile court. Mr. Mowery's appeal was reached, despite its obvious mootness; and for stronger reasons still, the court should hear Ms. Milliken's appeal.

The CHINS issues will certainly "recur" in the juvenile system, generally, and recurrence is a real risk for Ms. Milliken in particular and in fact. Review by the State Supreme Court is requested.

(iv) *In re Dependency of A.K.: Moot appeal for truants:* In *A.K.*, teenage girls were held in contempt for repeatedly running away from foster care, and the appeal was heard even though the girls were over the age of 18 and no actual remedy could be had:

This case is technically moot, petitioners having each served the sentence imposed for contempt. *In re Det. of Swanson*, 115 Wash.2d 21, 24, 793 P.2d 962, 804 P.2d 1 (1990). Consequently, effective relief cannot be afforded to either of them. Moreover, petitioners are now over the age of 18 and no longer subject to the jurisdiction of the juvenile court.

However, "[t]his court may decide a moot case if it involves matters of continuing and substantial public interest." *Id.* To determine "whether or not a sufficient public interest is

involved,” this court looks at three criteria: “ (1) the public or private nature of the question presented; (2) the desirability of an authoritative determination which will provide future guidance to public officers; and (3) the likelihood that the question will recur.’ ” *Id.* at 24–25, 793 P.2d 962, 804 P.2d 1 (quoting *Dunner v. McLaughlin*, 100 Wash.2d 832, 838, 676 P.2d 444 (1984)).

This consolidated case meets each of the three criteria. Although the due process rights of juveniles are individual rights, the public has a great interest in the care of children and the workings of the foster care system. *See, e.g., In re Interest of M.B.*, 101 Wash.App. 425, 433, 3 P.3d 780 (2000). The authority of the courts is similarly a public matter. *In re Cross*, 99 Wash.2d 373, 377, 662 P.2d 828 (1983). A determination of how the courts' inherent power interacts with the statutory contempt scheme will provide useful guidance to judges. Finally, the Court of Appeals noted in this case that the “exercise of inherent contempt authority to force compliance with placement orders is likely to recur,” making “[c]larification of the court's authority to exercise inherent contempt power ... a matter of continuing public interest.” *A.K.*, 130 Wash.App. at 870 n. 4, 125 P.3d 220. We agree. This case alone involved four such exercises of inherent contempt power in less than two months. The fact that we have been presented with a number of amicus curiae briefs speaks to the substantial public interest. Thus, we consider it appropriate to review this case.

In re Dependency of A.K., 162 Wash. 2d 632, 643–44, 174 P.3d 11, 16–17 (2007).

Application of *In re Dependency of A.K.*: First, Kerry Milliken’s parental rights remain imperiled, and, further, the public has a great interest in the operation of CHINS Petitions, and CHINS interactions with parental constitutional rights, especially if the legislative intent of a short-term infringement upon parental rights is defeated by a habitual practice of serial CHINS Petitions which can last longer than a dependency, and with

fewer parental protections as to due process and rights of counsel, etc.

(v) Additional Case Examples of Moot Matters Being Heard: *In re*

J.L., In re M.B., In re N.M., In re Rebecca K, and In re M.G.

In the case of *In re J.L.*, the youth was not given purge conditions with an opportunity to avoid incarceration:

The State asks that we decline to review this issue as it is now moot. We agree that, as to *J.L.*, we can grant no relief. The scope of a juvenile court's authority to incarcerate truants is an issue involving juveniles over whom the court frequently loses jurisdiction before the appeal process has run its course, rendering the individual case moot. But the issue of whether a truant can constitutionally be incarcerated under RCW 28A.225.090 is a continuing issue of substantial public interest. *In re Interests of M.B.*, 101 Wash.App. 425, 432, 3 P.3d 780 (2000) (citing *In re Detention of Swanson*, 115 Wash.2d 21, 24-25, 793 P.2d 9672, 804 P.2d 1 (1990)), *review denied*, 142 Wash.2d 1027, 21 P.3d 1149 (2001). Therefore, we address *J.L.*'s claim that the truancy contempt procedures violated due process.

In re J.L., 140 Wash. App. 438, 443, 166 P.3d 776, 779 (2007).

In the case of *In re M.B.* six moot appeals were consolidated, and contempt sanctions were addressed on appeal:

The issues presented are technically moot. Each of the juveniles has either served or purged the detention time imposed. Nevertheless, we may decide a moot case if it involves a matter of continuing and substantial public interest.³ In determining whether an issue involves a substantial public interest, we consider the public or private nature of the question presented, the need for an authoritative determination that will provide future guidance to public officers, and the likelihood the question will recur.⁴

These six cases meet these criteria. The public nature of the issues and their frequency of recurrence are evident. Our

resolution will affect the nature and process by which courts impose contempt sanctions on children who violate CHINS, ARY, and truancy orders. In addition, the constitutional due process issues raised by the 1998 amendments to the Becca Bill indicate the need for clarification of the distinction between civil and criminal contempt. These are matters of substantial and continuing public interest, and we therefore review the merits.

In re M.B., 101 Wash. App. 425, 432–33, 3 P.3d 780, 784–85 (2000).

FN1 *See generally* RCW 13.32A (ARY, CHINS); RCW 28A.225 (truancy). The legislature amended the statutes governing ARY, CHINS, and truants in 2000. *See* Laws of 2000, ch. 162. Nothing in these amendments, however, affects the court's contempt powers challenged here.

FN2 *See* discussion *infra* Section J.

FN3 *In re Detention of Swanson*, 115 Wash.2d 21, 24–25, 804 P.2d 1 (1990).

FN4 *In re Detention of McLaughlin*, 100 Wash.2d 832, 838, 676 P.2d 444 (1984).

In re M.B., 101 Wash. App. 425, 432–33, 3 P.3d 780, 784–85 (2000).

Application of *In re M.B.* and *In re J.L.*: There is no rational basis for treating constitutional parental rights as less important than the rights of “aged out” truants, especially when the parent’s rights are subject to ongoing invasion or potential invasion; and the public interest in the clarification is just as great. Review is requested under RAP 13.4(b).

In the case of *In re N.M.* the court again addressed moot contempt conditions under an At-Risk-Youth Petition:

1. *Mootness*

The issues presented here are technically moot. We will nonetheless reach the merits, because the questions involve

matters of continuing and substantial public interest.²(see below)

In re N.M., 102 Wash. App. 537, 539–40, 7 P.3d 878, 879 (2000).

Fn2 See *In re Interest of M.E.*, 101 Wash.App. 425, 432–33, 3 P.3d 780, (2000) (citing *In re Detention of Swanson*, 115 Wash.2d 21, 24–25, 804 P.2d 1 (1990)).

In re N.M., 102 Wash. App. 537, 540, 7 P.3d 878, 879 (2000).

The same rationale was applied by the court in accepting a review of moot ARY sanctions in *In re Rebecca K.*:

The minors contend the court did not have authority to impose the sanction it did and violated their due process rights. Each at-risk youth petition has been dismissed and each minor has served his or her term of confinement. Therefore, the court can no longer provide effective relief and the issue is moot. See *Washam v. Pierce County Democratic Cent. Comm.*, 69 Wash.App. 453, 458, 849 P.2d 1229 (1993), *review denied*, 123 Wash.2d 1006, 868 P.2d 872 (1994).

As a general rule, appellate courts will not decide moot questions or abstract propositions. *Id.* at 457, 849 P.2d 1229. But “a moot case may be decided if it involves a matter of continuing and substantial public interest.” *In re A.D.F.*, 88 Wash.App. 21, 24, 943 P.2d 689 (1997). “In determining whether an issue involves a sufficient public interest, we consider the public or private nature of the question, the need for future guidance provided by an authoritative determination, and the likelihood of recurrence.” *Id.*

The question presented meets these criteria for nonetheless deciding a moot case. The public nature of the issue and the likelihood of recurrence are demonstrated by these cases, which involve the same question and indicate the need for future guidance. We thus choose to decide the issue presented in these moot cases.

In re Rebecca K., 101 Wash. App. 309, 313, 2 P.3d 501, 503 (2000).

Moot constitutional issues regarding a dispositional order were addressed by the court in *In re M.G.*:

The dispositional order prohibited M.G. from entering the Pike Place Market area, the University District, and the Broadway area without parental permission. M.G. appeals, arguing that the orders impermissibly restrict her constitutional rights of movement and free expression.

In re M.G., 103 Wash. App. 111, 116, 11 P.3d 335, 338 (2000).

Supervision of M.G. was terminated because the court found she was no longer at risk. The issue presented here is therefore technically moot. We may decide a moot case when it involves a matter of continuing and substantial public interest.⁴ In determining whether such an interest is involved, we consider the public or private nature of the question presented, the need for an authoritative determination that will provide guidance to public officers, and the likelihood the question will recur.⁵

This case meets these criteria. No previous case has addressed the question presented here, and the substantial public nature of the issue and the potential frequency of its recurrence are evident. We therefore reach the merits.

In re M.G., 103 Wash. App. 111, 116–17, 11 P.3d 335, 338–39 (2000) (the footnotes 4 and 5, omitted, cited as authority *In re M.B.*, supra).

Application of *In re M.B.*, *In re M.G.*, *In re Rebecca K.*, and *In re N.M.*:

Once again, there is simply no rational standard which would elevate resolution of these moot juvenile issues above resolving the scope of CHINS to infringe upon the constitutional rights of parents. Both issues are important; both should be addressed by the State Supreme Court, but so far only the rights of wayward juveniles have been addressed by

appellate courts.

Issues of parental rights should receive the same exception from the mootness doctrine as have the rights of aged-out juveniles.

E. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

The U.S. Supreme Court ultimately heard the *Troxel* case, because the issue of parental rights is so important. *In re Custody of Smith*, 137 Wash. 2d 1, 13, 969 P.2d 21, 27 (1998), *aff'd sub nom. Troxel v. Granville*, 530 U.S. 57, 120 S. Ct. 2054, 147 L. Ed. 2d 49 (2000).

Determining the constitutionality of RCW 13.32A as regards to parental rights under a CHINS Petition, and especially under serial CHINS Petitions, is of equally vital public interest, and doctrinal resolution should be articulated by the State Supreme Court. RAP 13.4(b)(4).

Also, the question of parental rights under the lax standards for intrusion under a CHINS petition raises a significant question of law under constitutional authority, rooted in *Troxel*, supra, and its progeny, that strict scrutiny is the proper standard of review for the CHINS statute. RAP 13.4(b)(3).

The evasion of these issues by Division III is not coherent with other precedent, given that the appellate courts frequently take moot cases on behalf of misbehaving juveniles, but now use the mootness doctrine to evade passing judgment on the issue of serial CHINS petitions that

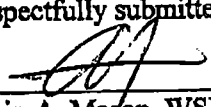
significantly infringe constitutionally protected parental rights. Review is requested under RAP 13.4(b)(1), (2), (3), and (4).

F. CONCLUSION AND RELIEF REQUESTED

The court is asked to hear a consolidated appeal from Division III case number 349888 (from Spokane County case no. 16-7-00091-9) and Division III case number 350525 (from Spokane County case no. 16-7-02842-2).

The court is asked to find that substantial public interest and ongoing peril to Ms. Milliken justify hearing a technically moot case, and the court is asked to apply strict scrutiny to the CHINS regime, on its face, and as applied to Ms. Milliken, and to apply strict scrutiny to the extra-statutory Spokane County pattern and practice of serial CHINS Petitions, on its face, and as applied to Ms. Milliken.

Respectfully submitted on 6/8/17,



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Appendix:

A-1 to A-3: Commissioner's 3/10/17 decision in No. 349888 denying the appeal as moot.

A-4: Appellate Panel's Order of 5/16/17 denying the Motion to Modify.

A-5 to A-7: Commissioner's 3/10/17 decision in No. 350525 denying the appeal as moot.

A-8: Appellate Panel's Order of 5/16/17 denying the Motion to Modify.

A-9: Opening Brief of Appellant.

The Court of Appeals

of the
State of Washington
Division III

FILED
Mar 10, 2017
Court of Appeals
Division III
State of Washington

In re the Interest of:

T.L.M.

No. 34988-8-III

COMMISSIONER'S RULING
RE: APPEALABILITY

K.M. (mother) filed a notice of appeal on January 9, 2017 from multiple interim Orders of the Spokane County that related to the Child in Need of Services (CHIN) petition brought on behalf of her minor child, T.L.M. This Court set the matter on its motion docket to determine whether it was appealable as a matter of right.

Subsequently, the superior court dismissed the petition. But, shortly after the dismissal, the child filed a second petition. The superior court later dismissed that second petition on January 13, 2017, without prejudice, based upon the minor's testimony that "(1) she never intended to go home, (b) that nothing would change her mind; and (3) that counseling would not change her mind." Motion and Order of Dismissal at 1. The

A-1

No. 34988-8-III

mother appealed the January 13, 2017 Order, no. 35052-5-III, and now moves the Court to consolidate her appeal of that Order with her appeal of the previous Orders.

RCW 13.32A.120(2) provides that “[i]f a child and his or her parent cannot agree to an out-of-home placement under RCW 13.32A.090(3)(d)(ii), either the child or parent may file a child in need of services petition to approve an out-of-home placement or the parent may file an at-risk youth petition.” (Emphasis added.)

The mother contends that even though the superior court has dismissed both petitions, the issue she raises is *not* moot because the matter involves serial petitions. This Court has determined that the matters are moot even though the dismissals do not prevent a later filed CHINS petition. A matter is moot if the court can no longer provide effective relief for the appealing party. *Spokane Research & Defense Fund v. City of Spokane*, 155 Wn.2d 89, 99, 117 P.3d 1117 (2005). Here, dismissal of the petition is the only relief for the parent on review, and the superior court has already dismissed the petitions.


Nevertheless, the mother contends that this Court should continue its review of her appeals because the issue she presents is one of public interest which would benefit from a court determination. *See In re Matter of Eaton*, 110 Wn.2d 892, 895, 757 P.2d 961 (1998). Specifically, she contends the statute in question is unconstitutional because it is vague as to the circumstances that support a CHIN petition.

No. 34988-8-III

However, the court in *In re Sumey*, 94 Wn.2d 757, 621 P.2d 108 (1980) held that the statute, which only establishes procedures for the *temporary* alternative residential placement of a child outside the parental home, does not violate due process because the substantial interests of the State and child are sufficient to justify the limited infringement upon the parents' constitutional rights to care, custody and companionship of the child.

Sumey satisfies the public's interest in an appellate court decision on the constitutionality of the statutory scheme at issue here.

Accordingly, IT IS ORDERED, the matters are dismissed as moot. The mother's motion to consolidate is denied, given that both appeals are dismissed.



Monica Wasson
Commissioner

FILED
MAY 16, 2017
In the Office of the Clerk of Court
WA State Court of Appeals, Division III

COURT OF APPEALS, DIVISION III, STATE OF WASHINGTON

In re the Interest of T.L.M.

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No. 34988-8-III

ORDER DENYING
MOTION TO MODIFY

THE COURT has considered appellant's motion to modify the Commissioner's Ruling of March 10, 2017, and is of the opinion the motion should be denied. Therefore,

IT IS ORDERED, the motion to modify is hereby denied.

PANEL: Judges Fearing, Siddoway, Lawrence-Berréy

FOR THE COURT:



GEORGE B. FEARING, Chief Judge

A-4

The Court of Appeals
of the
State of Washington
Division III

FILED
Mar 10, 2017
Court of Appeals
Division III
State of Washington

In re the Interest of:

T.L.M.

No. 35052-5-III

COMMISSIONER'S RULING
RE: APPEALABILITY

K.M. (mother) filed a notice of appeal on January 9, 2017 from multiple interim Orders of the Spokane County that related to the Child in Need of Services (CHIN) petition brought on behalf of her minor child, T.L.M. This Court set the matter on its motion docket to determine whether it was appealable as a matter of right.

Subsequently, the superior court dismissed the petition. But, shortly after the dismissal, the child filed a second petition. The superior court later dismissed that second petition on January 13, 2017, without prejudice, based upon the minor's testimony that "(1) she never intended to go home, (b) that nothing would change her mind; and (3) that counseling would not change her mind." Motion and Order of Dismissal at 1. The

A-5

No. 35052-5-III

mother appealed the January 13, 2017 Order, no. 35052-5-III, and now moves the Court to consolidate her appeal of that Order with her appeal of the previous Orders.

RCW 13.32A.120(2) provides that “[i]f a child and his or her parent cannot agree to an out-of-home placement under RCW 13.32A.090(3)(d)(ii), either the child or parent may file a child in need of services petition to approve an out-of-home placement or the parent may file an at-risk youth petition.” (Emphasis added.)

The mother contends that even though the superior court has dismissed both petitions, the issue she raises is *not* moot because the matter involves serial petitions. This Court has determined that the matters are moot even though the dismissals do not prevent a later filed CHINS petition. A matter is moot if the court can no longer provide effective relief for the appealing party. *Spokane Research & Defense Fund v. City of Spokane*, 155 Wn.2d 89, 99, 117 P.3d 1117 (2005). Here, dismissal of the petition is the only relief for the parent on review, and the superior court has already dismissed the petitions.

Nevertheless, the mother contends that this Court should continue its review of her appeals because the issue she presents is one of public interest which would benefit from a court determination. *See In re Matter of Eaton*, 110 Wn.2d 892, 895, 757 P.2d 961 (1998). Specifically, she contends the statute in question is unconstitutional because it is vague as to the circumstances that support a CHIN petition.

No. 35052-5-III

However, the court in *In re Sumey*, 94 Wn.2d 757, 621 P.2d 108 (1980) held that the statute, which only establishes procedures for the *temporary* alternative residential placement of a child outside the parental home, does not violate due process because the substantial interests of the State and child are sufficient to justify the limited infringement upon the parents' constitutional rights to care, custody and companionship of the child.

Sumey satisfies the public's interest in an appellate court decision on the constitutionality of the statutory scheme at issue here.

Accordingly, IT IS ORDERED, the matters are dismissed as moot. The mother's motion to consolidate is denied, given that both appeals are dismissed.



Monica Wasson
Commissioner

FILED
MAY 16, 2017
In the Office of the Clerk of Court
WA State Court of Appeals, Division III

COURT OF APPEALS, DIVISION III, STATE OF WASHINGTON

In re the Interest of T.L.M.

No. 35052-5-III


ORDER DENYING
MOTION TO MODIFY

THE COURT has considered appellant's motion to modify the Commissioner's Ruling of March 10, 2017, and is of the opinion the motion should be denied. Therefore,

IT IS ORDERED, the motion to modify is hereby denied.

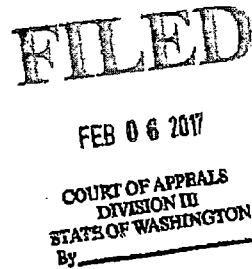
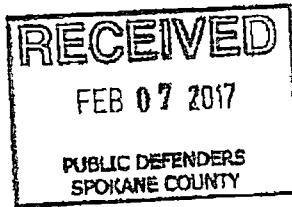
PANEL: Judges Fearing, Siddoway, Lawrence-Berrey

FOR THE COURT:



GEORGE B. FEARING, Chief Judge

A-8



No. 349888

COURT OF APPEALS, DIVISION III,
FOR THE STATE OF WASHINGTON

T.L.M, Respondent

v.

Kerry Milliken, Appellant

**APPELLANT'S SUPPLEMENTAL BRIEF ON
JUSTICIABILITY**

**In Support of the Response to the Division III
Letter of 1/23/17 on Appealability,
and in Support of the Motion to Consolidate**

Craig Mason, WSBA#32962
Attorney for Appellant
W. 1707 Broadway
Spokane, WA 99201
509-443-3681

A-9

I. Party Providing Supplemental Briefing on Justiciability (Responding to the Court's Letter of 1/23/17 and Moving for Consolidation of Appeals): Kerry Milliken

Kerry Milliken -- appellant in Division III case number 349888 (from Spokane County case no. 16-7-00091-9), and appellant in a newly-filed appeal from Spokane County case no. 16-7-02842-2 -- previously appeared to respond to the Division III letter of 1/23/17, and to request that the court consolidate both appeals in these two CHINS cases.

Ms. Milliken herein provides authority as to the justiciability of the issues before this court.

II. A Matter of Substantial Public Interest

The inter-related actions regarding truancy, At-Risk-Youth Petitions, and CHINS Petitions have usually terminated or expired by the time a case reaches the appellate court, and yet the court will proceed to hear the cases as matters of public importance.

For example, *In re M.B.* the court heard six consolidated appeals on the contempt power of the court over juveniles in such cases, even though each case was technically moot:

The issues presented are technically moot. Each of the juveniles has either served or purged the detention time imposed. Nevertheless, we may decide a moot case if it involves a matter of continuing and substantial public interest.³ In determining whether an issue involves a substantial public interest, we consider the public or private nature of the question presented, the need for an authoritative determination that will provide future guidance to public officers, and the likelihood the question will recur.⁴

In re M.B., 101 Wash. App. 425, 432-33, 3 P.3d 780, 784-85 (2000).

Footnotes included below:

1 See generally RCW 13.32A (ARY, CHINS); RCW 28A.225 (truancy). The legislature amended the statutes governing ARY, CHINS, and truants in 2000. See Laws of 2000, ch. 162. Nothing in these amendments, however, affects the court's contempt powers challenged here.

2 See discussion *infra* Section J.

3 *In re Detention of Swanson*, 115 Wash.2d 21, 24–25, 804 P.2d 1 (1990).

4 *In re Detention of McLaughlin*, 100 Wash.2d 832, 838, 676 P.2d 444 (1984).

Application of *In re M.E.*: The constitutional issues in this case are of continuing and substantial public interest, and even if the case were technically moot (denied in Section III, *infra*), it should be heard.

III. The Kerry Milliken's Appeals Are Not Moot, and Are Not "Purely Academic"

Ms. Milliken's issues are not moot. Not only is the original CHINS Petition and orders on appeal, but the idea of serial CHINS petitions is at issue, assuming the serial CHINS appeal is consolidated with this case, per Ms. Milliken's prior-filed motion to consolidate the cases.

"A moot case is one which seeks to determine an abstract question which does not rest upon existing facts or rights." *Hansen v. W. Coast Wholesale Drug Co.*, 47 Wash.2d 825, 827, 289 P.2d 718 (1955). Applied to Kerry Milliken, the refusal of the court to dismiss the serial CHINS on constitutional grounds, and the refusal to dismiss with prejudice, means

that the peril to Kerry Milliken's parental rights are real and are ongoing. See *Exhibit A*, attached, the 1/13/17 Transcript of the final hearing in Spokane County case no. 16-7-02842-2. (Division III case number pending assignment.) The transcript of 1/13/17 shows clearly that the child's attorney is scheming to file another serial CHINS petition.

These facts are a parental equivalent of the truant-student issues which the appellate court addressed in *State v. Turner*, over the State's objection that the issue was moot as the students had served their detention:

The State initially contends that these cases are moot because appellants have already fully served their sentences. A case is moot if the issues it presents are "purely academic". *Grays Harbor Paper Co. v. Grays Harbor Cy.*, 74 Wash.2d 70, 73, 442 P.2d 967 (1968). It is not moot, however, if a court can still provide effective relief. *Pentagram Corp. v. Seattle*, 28 Wash.App. 219, 223, 622 P.2d 892 (1981).

Here, we can still provide effective relief...

State v. Turner, 98 Wash. 2d 731, 733, 658 P.2d 658, 659 (1983).

State v. Turner was recently-relied upon in *West v. Thurston Cty.*, to proceed to hear a public records request appeal, despite all requested documents being produced by the agency. And the matter was not heard simply because of substantial public importance. The issue was that effective relief could be provided:

The County responds in part that because it has provided West with all the invoices in its possession, i.e., the invoices up to the

amount of its \$250,000 insurance deductible, this issue is moot. An issue is moot if it is "purely academic," but it is not moot if its resolution can provide a party with effective relief. *See State v. Turner*, 98 Wash.2d 731, 733, 658 P.2d 658 (1983).

West v. Thurston Cty., 144 Wash. App. 573, 580, 183 P.3d 346, 350

(2008). The *West* court proceeded to consider the appeal.

Application of *State v. Turner* and *West v. Thurston Cty.*: Given the clear loss of her parental rights, and ongoing stigma and threat of further invasion of her parental rights, the appeal of Ms. Milliken is not moot.

Exhibit A shows clearly the ongoing peril to her parental rights.

The appeal should be heard, on either basis: As (a) not moot, or (b) as an issue of substantial public interest.

IV. Conclusion: The Appeals Should Be Consolidated and Heard

While Ms. Milliken does not believe that her appeal is moot, she concludes this supplemental memo with a summary of the elements of a justiciable controversy, as presented in *Matter of Eaton*:

Generally, this court will dismiss an appeal if the issues presented are moot. *In re Myers*, 105 Wash.2d 257, 261, 714 P.2d 303 (1986); *Sorenson v. Bellingham*, 80 Wash.2d 547, 558, 496 P.2d 512 (1972). However, the court will make an exception to this rule and address a moot case "when it can be said that matters of continuing and substantial public interest are involved." *Sorenson*, at 558, 496 P.2d 512. Three criteria must be considered when determining whether the requisite degree of public interest exists: (1) the public or private nature of the question presented, (2) the need for a judicial determination for future guidance of public officers, and (3) the likelihood of future

recurrences of the issue. *Myers*, 105 Wash.2d at 261, 714 P.2d 303.

Matter of Eaton, 110 Wash. 2d 892, 895, 757 P.2d 961, 963 (1988).

Applying *Matter of Eaton* to the Milliken case:

Criteria #1: The parental rights at issue are significant public questions of policy and constitutional law. See e.g., *In re Custody of ALD*, 191 Wash. App. 474, 496, 363 P.3d 604, 615 (2015) and cases summarized therein.

Criteria #2: It is absolutely certain that the statute is vague as to the facts upon which a CHINS Petition may intrude upon parental rights, and whether a serial CHINS Petition may be filed needs to be clarified for the officers of the court and social work agencies.

Criteria #3: The number of CHINS cases is high in Spokane County, and this frequency is likely to continue, and in the particular case of Ms. Milliken the future peril is plain.

For the foregoing reasons, Ms. Milliken asks the court to accept consolidated review of her two CHINS cases.

Respectfully submitted on 2/6/17,

Craig A. Mason, WSBA#32962
Attorney for Kerry Milliken
W. 1707 Broadway
Spokane, WA 99201
509-443-3681

recurrences of the issue. *Myers*, 105 Wash.2d at 261, 714 P.2d 303.

Matter of Eaton, 110 Wash. 2d 892, 895, 757 P.2d 961, 963 (1988).

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For the foregoing reasons, Ms. Milliken asks the court to accept consolidated review of her two CHINS cases.

Respectfully submitted on 2/6/17,



Craig A. Mason, WSBA#32962
Attorney for Kerry Milliken
W. 1707 Broadway
Spokane, WA 99201
509-443-3681/ masonlawcraig@gmail.com

Exhibit A: Transcript of CHINS hearing of 1/23/16 in which the CHINS Petition was not dismissed on Constitutional Grounds, and was not dismissed on the insufficiency of the Petition, but was only dismissed on directed verdict after the juvenile rejected reunification as a goal.

COPY

RECEIVED
FEB 02 2017
PUBLIC DEFENDERS
SPOKANE COUNTY

IN THE SUPERIOR COURT OF WASHINGTON
IN AND FOR THE COUNTY OF SPOKANE
JUVENILE DIVISION

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In the Interest of:)
TAYLOR MILLIKEN,)
(DOB: 12/15/02))
Petitioner,)
and)
KERRY MILLIKEN,)
Respondent.)

CAUSE NO. 16-7-02842-2

FILED
FEB 02 2017
COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

VERBATIM REPORT OF PROCEEDINGS

Motion to Dismiss Hearing and Contested Trial of January 13, 2017

Spokane County Courthouse
Spokane, Washington
Before COMMISSIONER PRO TEM NICHOLE SWENNUMSON

APPEARANCES

FOR PETITIONER: NATHAN EILERT
Spokane County Public Defender's Office
1033 West Gardner
Spokane, WA 99260

FOR RESPONDENT: CRAIG A. MASON
Mason Law
1707 W. Broadway
Spokane, WA 99201

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Commissioner Swennumsom's Ruling re Directed Verdict on CHINS
Petition 41

1 * * * * *

2 THE COURT: Mr. Eilert, if you want to put us on the record, and then I'll tell
3 you how we're going to proceed.

4 MR. EILERT: Thank you, your Honor. Your Honor, we are here *In the Interest*
5 *of Taylor Milliken*, date of birth December 15, 2002. This is Cause No. 16-7-02842-2. Present
6 in the courtroom today is Taylor Milliken, represented by counsel, Nathan Eilert. Too, your
7 Honor, I am standing in for her appointed counsel, Mr. Carter, who is unfortunately out with a
8 shoulder surgery.

9
10 Also present in the courtroom today is Taylor's mother, Kerry Lynn Milliken,
11 with her counsel, Mr. Mason, as well as the current placement, Sue and Paul Milliken, and
12 assigned case manager, Tracie Hubbell. Your Honor, there are also various other individuals in
13 the courtroom. I believe that some of them may be called to testify today.

14 I believe there are a couple matters that need to be addressed before that is
15 decided. Your Honor, I think that there's a Motion to Dismiss before the court today, as well as
16 a contested hearing, if the case is allowed to continue. Your Honor, I'll reserve any further
17 comments for whether the witnesses should be sequestered --

18 THE COURT: Okay.

19 MR. EILERT: -- until after the court makes its decision.

20 THE COURT: Okay. Thank you, Mr. Eilert. Mr. Mason, any --

21 MR. MASON: No, your Honor, and I'll wait for your decision.

22 THE COURT: Okay. And nobody had wanted to, I didn't suspect anyone would,
23 but nobody wants, has any further remarks to make on the Motion to Dismiss?

24 MR. MASON: Your Honor, I think we could stand on the briefing if, assuming
25

1 you've reviewed that and that, I think that will do. And then I agree, we have about three
2 witnesses and whether you'd want to have them wait in the hall if you proceed --

3 THE COURT: Okay.

4 MR. MASON: - is up to you.

5 THE COURT: All right. So I did take the time to go through the various
6 briefings that were submitted in this case, and Mr. Mason, I know that Mr. Eilert accidentally put
7 the other case number on his response brief, but I, I think we all know that it was meant for this.
8 That's, in fact, where I looked for it in the other case number when I did, in fact, go to look for it
9 because I got your reply before I got his response which told me that there was a response. So I
10 did go look for it and do that.
11

12 The original hearing on this matter, for the record, was back on December 16,
13 2016. I was filling in for Commissioner Ressa at that time who's had a lot of contact with the
14 previous CHINS Petition under 16-7-00091-9, and the Motion to Dismiss that I heard argument
15 on that day was filed by Mr. Mason objecting to, well asking the court to dismiss the second
16 petition for a CHINS proceeding.

17 Counsel both made good arguments that day. I did ask Mr. Eilert for a response
18 brief. There wasn't one at the time. I've now reviewed the response brief, I've reviewed the
19 reply brief or memorandum from Mr. Mason, and I did pull the two cases because I wanted to
20 read them for myself beyond the briefing.
21

22 And really, what the argument here today is that the parents have a constitutional
23 right to parent their children. They have the right to the care, custody, and control of their
24 children. It's a right given by the 14th Amendment and only in very compelling circumstances
25 can we interfere with that right to parent children.

1 And there are a lot of cases under, as Mr. Mason cited, the non-parental custody
2 statutes, but we are here today on a CHINS Petition, which is different than a non-parental, and I
3 understand the argument Mr. Mason is making though that the statute has a very specific
4 timeline of nine months that a child can be out of care under a CHINS petition. Now the statute
5 is silent on can you file a subsequent CHINS petition and that's why we're here today. And Mr.
6 Mason says well, if you file a subsequent CHINS petition and let them be out of home, well
7 that's more than nine months.

8 There, the case, *In re T.E.C.*, I looked that up and read that. It was briefed
9 thoroughly and it did not say one way or the other. The case in that one failed because the child
10 didn't meet the definition necessary under a CHINS petition. They didn't find that that child was
11 a child in need of service and one of the factors under that was that this child is going to be
12 placed in a facility for a year, and from the outset, they could tell that you couldn't meet the nine
13 month period.
14

15 And there were some other issues as well, but the court did say, RCW
16 13.32A.190, does not on its face prohibit a renewal of a CHINS petition, and then it went on to
17 say, however, it does not expressly authorize renewal either. And that's clear that the statute
18 doesn't say that. The case law also didn't either, has been no cases that anyone has presented to
19 me that says it's either restricted or it's not restricted. So the statute is silent on that.
20

21 Mr. Mason's argument is well taken though that continued out of home
22 placements could, in fact, run contrary to the constitutional rights. However, the other case he
23 cited, *In re Sumey*, 94 Wash. 2d 757, talked about the previous RCW 13.32 and also talked about
24 when it was revised, I think in 1979, to 13.32A. That these are temporary removals from the
25 home, that they don't, they can't lead to a termination, that the parent still has the right to the

1 care, custody, and control of their child under it, and that this is not the full, this does not rise to
2 the level of a non-parental custody. It doesn't rise to the level of a termination or a dependency
3 because you can't have termination at the end of that dependency or in this case.

4 And so when doing the balancing test between the State's right to step in and care
5 for the welfare of the children or child versus a parent's right to, to parent their children, this fell
6 just, it didn't rise to the same level. So in this case, there is nothing that prohibits a second
7 CHINS petition from being filed, and so I'm going to deny the Motion to Dismiss because there
8 is nothing that says you cannot do that.

9
10 Now, we go to a full blown trial on this matter and as the cases state and as the
11 statute states, it still must be proven by a preponderance of the evidence that Taylor is a child in
12 need of services and then also that it's appropriate under the burden, the standard, the burden of
13 proof under the matter if she should be placed out of home. So those are two different things that
14 the court must consider on the second petition. So I am going to move forward to the contested
15 trial, and I will make a determination on that matter.

16 Now, Mr. Mason, I know you also asked me to certify this for an appeal. I'm not
17 going to do that. I'm going to let you go ahead and revise if you want to a judge, and then they
18 can, you can take it up from there. It's a very interesting question. It's never been fully
19 articulated by the Appeals Court, but right now there is nothing that prohibits subsequent filings
20 of a CHINS petition, so that's where we're going to go for today.

21
22 Now, Mr. Mason, it was your motion. Do you have any questions about my
23 ruling here today?

24 MR. MASON: Well, your Honor, I guess just, I think it, it's clear is that one is
25 we agree the statute is ambiguous on its face as to whether you can do a subsequent CHINS as

1 T.E.C. said.

2 THE COURT: Well it didn't say ambiguous. It just said it doesn't say one way
3 or the other so --

4 MR. MASON: Right.

5 THE COURT: -- yes.

6 MR. MASON: T.E.C. says it doesn't say --

7 THE COURT: Right.

8 MR. MASON: -- one way or the other and --

9 THE COURT: And so we can't write a legislative intent into it.

10 MR. MASON: Well, I actually, that would be the only other clarification I was
11 making is that the, the intent is clear that it be short term and nine months, and so I would say
12 that, as a statutory matter the, the spread of serial CHINS is contrary to a statutory purpose and
13 then my argument that I wanted to make sure was clear was that since *Troxel*, the *Sumy* dissent
14 has been made the law of the land. And that is what I was asking the court to apply.

15 THE COURT: And, and I understand your whole, I understood that whole line of
16 arguments, and I still think that the statute of the CHINS, and I, I understand you're argument.
17 This is just a different proceeding, and it's not a, and under a non-parental custody, if, if a third-
18 party gets custody of someone, they get custody and then you have to go to 26.09.260 for the
19 basis of modification to get the child back. So I think they're different standards, and I think
20 because, I think the results are different.

21 A non-parental custody can very well lead to a permanent change of placement
22 because then you would have to show a detrimental circumstance or agreement of the parties to
23 then flip the custody back, the placement back. So I do think they're different, because again in
24
25

1 the CHINS, we don't have that permanent change of placement. And so I, I do understand your
2 argument there, Mr. Mason, and I spent a few hours with this because I did find the issue very
3 interesting so --

4 MR. MASON: And, and I appreciate that, and so I'm just making one point for
5 clarification --

6 THE COURT: Yes.

7 MR. MASON: -- not to quarrel with you. I, I understand --

8 THE COURT: Yeah, yeah. And I, I understand that. Yeah.

9 MR. MASON: And that is that I think that two CHINS petitions is longer than a
10 lot of dependencies, have a child out of the home, and so I think that we really are removing a
11 parent, a child from a parent's home in the manner of at least of a dependency and that that
12 would also invoke a heightened scrutiny of it so --

13 THE COURT: And that's well taken. I guess so far my experience, despite we
14 only want 15 months out of home, and in a dependency I've seen a lot go a lot longer than that.
15 But again, the difference would be that a dependency can lead to a permanent deprivation of
16 parent's rights. You can have termination where in this case you can't, but it is well taken,
17 Mr. Mason.

18 Mr. Eilert, did you have any other questions about my ruling here today?

19 MR. EILERT: No, I don't believe so. Thank you.

20 THE COURT: Okay. Are we, is anyone renewing a request or making a request
21 to exclude witnesses from the court?

22 MR. EILERT: Your Honor, I would make that request --

23 THE COURT: Okay.

1 MR. EILERT: -- that we exclude witnesses.

2 THE COURT: Any response, Mr. Mason?

3 MR. MASON: No, that's, that's fine. So folks that haven't testified yet if you'll
4 wait outside, and we won't (inaudible).

5 THE COURT: All right. So the court will exclude all witnesses from the
6 courtroom. I do find that's appropriate.

7 MR. EILERT: Your Honor, I, I do have an additional matter in the interest of
8 judicial economy. My request is whether the court would make judicial notice of the transcribed
9 version of the previous trial in this case to prevent my client from having to testify about those
10 issues all over again. I'm not sure if the court has had a chance to review --

12 THE COURT: I --

13 MR. EILERT: -- the transcription?

14 THE COURT: -- have not.

15 MR. EILERT: Okay.

16 THE COURT: Mr. Mason, what would be your response to that?

17 MR. MASON: No. I think that their petition is as written, and they need to
18 advance the argument as written in their petition which I believe is insufficient on its face.

19 THE COURT: All right. Well, I, I'm going to, of course I can review myself any
20 court files that I want, but I'm going to go that you need to do the testimony. This is the second
21 CHINS Petition. We need to have full testimony because we are nine months down the road,
22 and I would suspect something's got to be a little bit different than it was nine months ago, so
23 I'm going to take it as I think the statute intends that, and I understand it was just for judicial
24 economy, and I don't know that we're going to finish today, but we'll just move forward with
25

1 full testimony.

2 MR. MASON: Along those lines, your Honor, I would ask that they confine their
3 testimony to the scope of the issues raised in the petition because there has been a lot of change,
4 and if we go to a full blown hearing after today, maybe we can talk about that, but I think they
5 should go on what they've plead.

6 THE COURT: Well, and I mean I'm not going to strictly go on what they've
7 plead. I mean, as in any petition, you plead the, the big structure stuff and then you, a lot of little
8 information falls under it, so I will give them leeway. You can renew your objection if you think
9 it goes too far, Mr. Mason, and I will take it one by one. Okay?

11 Mr. Eilert, are you ready to proceed?

12 MR. EILERT: Yes, your Honor.

13 THE COURT: Do you have an opening?

14 MR. EILERT: Your Honor, I, I would be willing to waive opening if both parties
15 are willing to waive opening?

16 THE COURT: Are you going to give an opening, Mr. Mason, or are you going to
17 waive?

18 MR. MASON: I, I can stand on what I just said I guess.

19 THE COURT: Are you sure? Okay. No pressure from the court either way. All
20 right. Mr. Eilert --

21 MR. EILERT: Thank you, your Honor.

22 THE COURT: -- call your first witness.

23 MR. EILERT: I'd call Taylor Milliken to the stand.

24 THE COURT: All right. Ms. Milliken? Before you sit down, if you'll raise your
25

1 right hand for me.

2

3

TAYLOR MILLIKEN

4

called as a witness at the request

5

of the Petitioner herein, having

6

been first duly sworn on oath,

7

did testify as follows:

8

9

MS. MILLIKEN: Yes.

10

11

THE COURT: Okay. So sit down, make yourself comfortable, and then make

12

sure you scoot up and talk into that microphone clearly. I noticed you're soft-spoken so just

13

make sure everyone can hear you, okay? And you'll have to make sure you answer verbally, not

14

nodding or shaking, okay?

15

MS. MILLIKEN: Yeah.

16

THE COURT: Okay.

17

* * * * *

18

PETITIONER'S DIRECT EXAMINATION OF TAYLOR MILLIKEN

19

BY MR. EILERT:

20

Q. Please state your name for the record and spell your last name.

21

A. Taylor Milliken, M-I-L-L-I-K-E-N.

22

Q. And how old are you, Taylor?

23

A. 14.

24

Q. What is your permanent home address?

25

1 A. 10906 E. 22nd Avenue, Spokane, Washington 99206.

2 Q. And who lives in that home with you?

3 A. My grandparents.

4 Q. Taylor, I'll, I'll rephrase my question, I'm sorry. What is your mother's home address?

5 A. 708 N. Barker Road, Spokane, Washington 99016.

6 Q. And who lives in that home with you?

7 A. My mom, Drew, and my little sister.

8 Q. Okay. And what is the home that you're currently living in?

9 A. Like the address?

10 Q. Oh who lives in the home that you're currently living in?

11 A. My grandparents.

12 THE COURT: Okay. I'm going to have you speak up just a little bit, okay? I'm
13 having a real hard time, so use the microphone if you have to. Move it in front of you if you
14 need to. All right.

15 BY MR. EILERT:

16 Q. How long have you been placed with your grandmother and father?

17 A. Nine months or --

18 Q. And what was the court process which caused you to be placed with your grandmother
19 and father?

20 A. I--

21 MR. MASON: Your Honor, I'm going to object. I don't see the relevance of
22 this. We have specific elements to show and this is not part of them.

23 MR. EILERT: I'm just trying to lay a foundation for how we got here today, your
24

1 Honor.

2 THE COURT: I'm going to let you lay the foundation. Overruled.

3 BY MR. EILERT:

4 Q. What was the court process that brought you here today or that, excuse me, initially took
5 you out of your mother's home?

6 A. Like the reasons or --

7 Q. What was the court process?

8 A. A CHINS Petition.

9 Q. Okay. Thank you. Are you currently enrolled in school?

10 A. Yes.

11 Q. And where do you attend?

12 A. Centennial Middle School.

13 Q. What grade are you in?

14 A. 8th.

15 Q. Do you know what your grades are?

16 A. All A's and a C.

17 Q. Okay. What is your C in currently?

18 A. Science.

19 Q. Okay. When are your grades finalized for this semester?

20 A. The 31st.

21 Q. Do you have any unexcused absences from school since the beginning of the school year?

22 A. No.

23 Q. Okay. Do you have any tardys that you can remember during this school year so far?

1 A. Two.

2 Q. You mentioned a moment ago that you were originally taken out of your mother's home
3 about nine months in a CHINS petition. Was there a specific incident that occurred that caused
4 you to file that CHINS Petition?

5 A. Yes.

6 Q. Okay. To the best of your knowledge, when did that incident occur?

7 A. Winter break.

8 Q. Okay. What happened during that day that lead up to the incident? Where were you at
9 earlier in that morning?

10 A. My mom's boyfriend's house.

11 Q. Okay. And what was happening at your mom's boyfriend's house that day?

12 A. My mom and her boyfriend were drinking.

13 Q. Okay. What were they drinking that day?

14 A. Vodka.

15 Q. What did, you say that it was vodka. Why do you believe that they were drinking vodka
16 that day?

17 A. Cause they always drink vodka, and I saw it.

18 Q. Okay. What did you see exactly?

19 A. The bottle.

20 Q. What did that bottle look like?

21 A. It was just a bottle of vodka.

22 Q. Do you remember the color?

23 A. It was clear and a blue lid.

- 1 Q. Do you remember if it said anything on the bottle?
- 2 A. Platinum vodka.
- 3 Q. Okay. What time did they start drinking that day?
- 4 A. In the morning.
- 5 Q. Okay. Were they drinking the vodka by itself or with something else?
- 6 A. By itself.
- 7 Q. Did their drinking seem to affect their behavior at all that morning when you were around
- 8 them?
- 9
- 10 A. Yes.
- 11 Q. How did it affect their behavior?
- 12 A. They weren't acting right.
- 13 Q. Okay. What do you mean by not acting right, as it related to each other or to you?
- 14 A. To each other and to me and my sister.
- 15 Q. I'm sorry. I didn't hear what you said?
- 16 A. To me and my sisters.
- 17 Q. Okay. Was there any conflict that you saw between your mother and her boyfriend Drew
- 18 that morning?
- 19
- 20 A. No.
- 21 Q. Okay. Was there a special occasion occurring that day?
- 22 A. Yes.
- 23 Q. Okay. What was going on that day?
- 24 A. We were going to a wedding that night.
- 25 Q. Who's wedding was that? Do you remember?

1 A. My older sister's friend.

2 Q. Did you attend that wedding?

3 A. We went to it, but we weren't in it.

4 Q. When you say you weren't in it, do you mean that you did not actually go inside?

5 A. Well like in the wedding, like --

6 Q. Do you remember actually sitting inside the wedding that day?

7 A. No.

8 Q. Okay. Why not?

9 A. Cause we were late.

10 Q. Do you remember why you were late that day?

11 A. Cause my mom wouldn't get ready.

12 Q. Okay. Did you have any conflict with your mother prior --

13
14 MR. MASON: Your Honor, I, I'm going to renew my objection one more time,
15 then if you want to rehash the whole thing then I guess that's your ruling, but they have filed a
16 CHINS Petition. It has elements to show from the present forward. Otherwise, this is an
17 argument that the original CHINS Petition is eternal, so I would ask that they set about showing
18 the elements in defense of this CHINS Petition.

19 THE COURT: Mr. Eilert?

20 MR. EILERT: Your Honor, my response to that is that my client has made
21 allegations in her current CHINS Petition that she's raised concerns about her mother's drinking.
22 I'm trying to establish that not only is there a pattern of drinking, but it also caused a very
23 traumatic and very difficult experience to occur about nine months ago and that has not yet been
24 addressed in family counseling.
25

1 THE COURT: All right. And as I look through the petition, I do see drinking has
2 been alleged, so I'm going to allow this line of testimony, and so overruled.

3 MR. MASON: The one thing, your Honor, on page 3 of her handwritten portion
4 of her petition --

5 THE COURT: Uh huh (affirmative).

6 MR. MASON: -- she says, "I know they won't be drinking around me."

7 THE COURT: Well then I guess on cross-examination that will be your, your
8 questions, but on the first page, it talks about drinking, her and Drew drinking. Mr. Eilert.

9 BY MR. EILERT:

10 Q. Did you have any conflict with your mother about being late?

11 A. No.

12 Q. Okay. What happened after the actual wedding ceremony occurred?

13 A. We were waiting outside for my sister to come back from the wedding, and she was
14 coming inside the car, and my mom told me to move over and she called me the "b" word, and
15 then we drove to the after party. And my mom's boyfriend, Drew, got out of the car and walked
16 away and found a ride home or walked home.

17 Q. Taylor, if I could have you explain something you just said. You said that someone
18 called you a name, is that right?

19 A. Yes.

20 Q. Who, who called you a name?

21 A. My mom.

22 Q. What did your mom call you?

23 A. The "b" word.

1 Q. And, and normally we're not allowed to say curse words in court, but this is one of the
2 exceptions where you can actually say the word.

3 MR. MASON: Okay, your Honor, I'm rethinking my objection. I have brought
4 three copies of the full transcript from 4/8/16, and if you really want, if we're really going to
5 allow all the facts back to that date, then I would go ahead and stipulate those facts into the
6 record for your review.

7 THE COURT: Okay.

8 MR. MASON: And I, of course, object to their relevance, but I'm willing to
9 stipulate them in as opposed to having a rehash of the 4/8/16 hearing if opposing counsel would
10 be good with that.
11

12 THE COURT: All right. Then we will do that for judicial economy.

13 MR. EILERT: Thank you.

14 THE COURT: Thank you.

15 MR. MASON: Where would you like this?

16 THE COURT: Why don't you hand that to my clerk, Mr. Mason.

17 MR. MASON: Thank you.

18 THE COURT: And so, Mr. Eilert, I'll let you finish this question because your
19 client hasn't answered and then if you want to --

20 MR. EILERT: Thank you.

21 THE COURT: -- move on.

22 BY MR. EILERT:

23 Q. Taylor, my question was what name you were called. If you don't feel comfortable
24 saying the actual word if you could just give us enough so that we know what it is.
25

1 A. B-I-T-C-H.

2 Q. Okay. Thank you. Taylor, I'm going to move forward in my questions to your most
3 recent CHINS petition, okay? In your recent CHINS petition, you state that you've engaged in
4 counseling since the original CHINS was granted. What types of counseling do you participate
5 in?

6 A. Individual and family.

7 Q. Okay. Who is your current individual counselor?

8 A. I forgot her name.

9 Q. How long have you been seeing your new individual counselor?

10 A. September.

11 Q. Okay. Have you had the same individual counselor since the start of your case?

12 A. Which case?

13 Q. Excuse me. Since, over the last nine months, have you had the same individual counselor
14 since the start of your first CHINS?

15 A. No.

16 Q. Okay. Which counselor did you have first? Do you remember her name?

17 A. Abba.

18 Q. How long did you see her?

19 A. For six months.

20 Q. And how often were your visits?

21 A. Once a week.

22 Q. What caused the change in your counselors?

23 A. She had to leave. I don't know where she was going though.

1 Q. Okay. Do you know if Abba is planning to come back?
2 A. No.
3 Q. Who is your counselor, do you remember the name of your counselor now?
4 A. No.
5 Q. How long have you worked with this new counselor?
6 A. Since September.
7 Q. And do you see her once a week as well?
8 A. Yes.
9
10 Q. Do you feel you have a good relationship, you had a good relationship with your first
11 counselor?
12 A. No.
13 Q. What types of issues did you work on in counseling over that first six months with your
14 counselor that you had?
15 A. I don't remember.
16 Q. Okay. Family assessment, provided by your social worker, indicates you've struggled
17 with depression in the past, is that right?
18 A. Yes.
19 Q. Have you talked about depression with either of your counselors?
20 A. No.
21 Q. Okay. Can you tell the court what types of situations caused you to feel depressed?
22 A. My mom's drinking.
23 Q. Okay. I'll address that a little bit more in just a second, but has your depression gotten
24 better or worse since you were initially allowed to live outside of your mom's home nine months
25

1 ago?

2 A. Worse.

3 Q. Okay. Why do you feel like it's gotten worse?

4 A. Cause I haven't been with my mom all the days.

5 MR. MASON: I'm sorry. I couldn't hear that.

6 A. Cause I haven't been with my mom every single day.

7 Q. Okay. So are you telling the court today that you feel more depressed because you are
8 not living with your mom?
9

10 A. Yes.

11 Q. Okay. What do you think needs to change to improve your depression?

12 A. For me to change?

13 Q. What do you think you could do or other people around you could do to make you feel
14 less depressed?

15 A. For my mom to not drink around me.

16 Q. Okay. Taylor, you are petitioning the court today to allow you to live outside of your
17 mom's home for additional time. Do you believe that that would help or hurt your depression
18 moving forward?

19 A. Both.

20 Q. Okay. Let's handle that one at a time. Okay, why do you think that living outside of
21 your mom's home would lessen or make your depression less?
22

23 A. That me and my mom wouldn't get in arguments.

24 Q. Okay. What, what types of things do you and your mom argue about?

25 A. Just little things.

1 Q. Can you give an example to the court?

2 A. No.

3 Q. Okay. So on the flip side, you said that living outside of your mom's home might make
4 your depression a little bit worse. Do you, do you remember saying that?

5 A. Yes.

6 Q. Okay. Why do you feel like living outside your mom's home might make you feel more
7 depressed?

8 A. Cause I wouldn't see her every day.

9 Q. Okay. In your petition for the new CHINS, you mentioned that you're engaged in family
10 counseling. Is that correct?

11 A. Yes.

12 Q. How long have you been working on family counseling?

13 A. I don't remember.

14 Q. Okay. Can you give an estimate of how long it's been? Was it before Thanksgiving?

15 A. Yeah.

16 Q. Okay. Was it since the school year has started?

17 A. Yes.

18 Q. Did it start over the summer time?

19 A. Yes.

20 Q. Okay. Did it start before the beginning of or, excuse me, before the end of the last school
21 year?

22 A. No.

23 Q. Okay. So some time between the end of the last school year and the beginning of this
24 year?

1 new school year?

2 A. Yes.

3 Q. Okay. How long, excuse me. Who is your family counselor?

4 A. My individual, but I forgot her name.

5 Q. Okay. So you have the same counselor for individual and family counseling?

6 A. Yes.

7 Q. Did you have, you mentioned that you changed counselors. Did you, did your first

8 counselor also do the family counseling for you?

9

10 A. No.

11 Q. Okay. Who attends family counseling with you?

12 A. My mom.

13 Q. Does anyone else attend with you?

14 A. No.

15 Q. In your CHINS Petition, you state that you don't think that you've made any progress in

16 family counseling. Is that right?

17 A. Yes.

18 Q. Okay. Why do you feel like there's not been any progress in family counseling?

19 A. Because I don't state my feelings.

20 Q. Okay. What types of feelings do you feel like you're not sharing?

21 A. Like about everything.

22 Q. Yeah. What, what types of feelings are, are you experiencing that you don't feel

23 comfortable sharing?

24

25 A. Sad.

1 Q. Okay. What makes you sad that would be appropriate to talk about in family counseling?

2 A. My mom's drinking.

3 Q. Okay. Are there any other issues that are appropriate in family counseling that you
4 haven't shared or that you have trouble sharing?

5 A. Talking about Drew.

6 Q. Okay. I'll address that a bit more in just a second, okay? Your mom claims that you are
7 purposefully not participating in family counseling. Is that true?

8 A. No.

9 Q. Okay. What's, what's the reason that you feel uncomfortable sharing these things in
10 counseling?

11 A. I don't like to talk about it in front of my mom.

12 Q. Do you think that it helps to talk about with your mom or that it's not helpful?

13 A. Both.

14 Q. Okay. Have you seen any changes in your relationship with your mom since you've
15 started family counseling?

16 A. No.

17 Q. Okay. You mentioned in your petition that you once addressed your concerns about your
18 mom's drinking in the home. Do you remember writing that in your petition?

19 A. Yes.

20 Q. Okay. How did your mom respond when you brought that up in family counseling?

21 A. She said that it's none of my business.

22 Q. Okay. When, when did you bring that up? How long ago was that?

23 A. October.

- 1 Q. How did that make you feel when your mom said that was none of your business?
- 2 A. Mad and sad.
- 3 Q. Okay. Have you tried to talk about alcohol use since then in counseling?
- 4 A. No.
- 5 Q. Why not?
- 6 A. I'm too scared to.
- 7 Q. Scared of what?
- 8 A. Of what my mom's gonna say.
- 9
- 10 Q. Okay. How, how often would your mom and her boyfriend drink when you lived in their
- 11 home?
- 12 A. Once a month.
- 13 Q. Okay. Would they drink together or would one of them drink more often than the other?
- 14 A. Together.
- 15 Q. And would they drink around you in your presence?
- 16 A. Yes.
- 17 Q. And what would they drink?
- 18 A. Vodka.
- 19
- 20 Q. All right. Would, in your first petition, you stated that the drinking in your home made
- 21 you feel unsafe. Is that right?
- 22 A. Yes.
- 23 Q. Okay. Why would it make you feel unsafe?
- 24 A. Because they would get out of hand and act crazy and be loud.
- 25 Q. Okay. What do you mean by act crazy? What would they do that you felt was acting

1 crazy?

2 A. They wouldn't be their selves.

3 Q. Okay. What do you mean by not themselves?

4 A. I don't know.

5 Q. Would your mother and Drew ever get in fights in your home?

6 A. They would argue but not fistfights.

7 Q. Okay.

8
9 THE COURT: Can you say that again?

10 A. They would argue but not fistfights.

11 THE COURT: Okay.

12 BY MR. EILERT:

13 Q. How often would they argue in the home?

14 A. Not that often.

15 Q. Okay. What types of things would they say to each other during these fights?

16 A. I don't know. I would be in my room.

17 MR. MASON: I'm sorry. I couldn't hear that.

18 THE COURT: She said she doesn't know. She would be in her room.

19 MR. MASON: Okay.

20 BY MR. EILERT:

21 Q. Do you know how these fights would end?

22 A. My mom's boyfriend would go sleep in his truck, and my mom would be crying
23 downstairs.
24

25 Q. Okay. About how often would that happen?

1 A. Like months, every five months.

2 Q. Once --

3 THE COURT: Once a, go ahead, Mr. Eilert.

4 BY MR. EILERT:

5 Q. Once every five months? Is that what you said?

6 A. Yeah.

7 Q. Okay. Other than the incident we started talking about at the beginning of this hearing,
8 have the police ever been to your home?

9
10 A. Only that one time.

11 Q. Okay. Would other people ever come to your house when your mother and Drew were
12 drinking?

13 A. Yes.

14 Q. Okay. Did you know these people?

15 A. Yes.

16 Q. How did it make you feel having people come over to the house and drink around you?

17 A. Worried.

18 Q. Worried about what?

19 A. What they would all do.

20 Q. Okay. What were you, what were you afraid that they would do?

21 A. I don't know.

22 Q. Okay. Something to you or something to those around you?

23 A. Around me.

24 Q. Okay. Did you ever fear for your own safety?
25

1 A. Yes.

2 Q. Okay. How so?

3 A. What do you mean?

4 Q. What were you afraid would happen to you if the people around you were drinking?

5 A. I don't know.

6 Q. Okay. Do you have any concerns about any other substances, substance abuse that

7 occurred when you were living at home?

8 A. No.

9 Q. Okay. Was there any other substance use going on in the home?

10 A. Yes.

11 Q. What substance?

12 A. Smoking marijuana.

13 Q. Okay. Did that concern you or did that not concern you?

14 A. It did and it didn't.

15 Q. Okay. What bothered you about it?

16 A. The smell.

17 Q. Okay. Did you ever ask them to stop?

18 A. No.

19 Q. Why not?

20 A. Cause I was scared to.

21 Q. Why were you scared to ask them to stop?

22 A. Cause I don't like talking about that stuff to them.

23 Q. Okay. Can you help the judge understand why you don't feel comfortable talking about

1 that stuff with them?

2 A. I've never talked about that stuff to them.

3 Q. Okay. Has marijuana use been addressed in your counseling?

4 A. No.

5 Q. Okay. Why haven't you brought up the marijuana use in counseling?

6 A. Cause it would be awkward to talk with my mom and a counselor about it.

7 Q. Is that something that you want to see change about your mom's home?

8 A. Yes.

9 Q. Okay. What would you like to see change about it?

10 A. To not do it around us.

11 Q. Okay. And what would you like to see changed about the drinking in your home?

12 A. To not drink around us.

13 Q. Okay. You mentioned a minute ago that you have talked about your concerns about Drew. And, and who is Drew again?

14 A. My mom's boyfriend.

15 Q. At the time you wrote your recent CHINS petition, you mentioned that you had talked about Drew the last two times. Have you continued to talk about Drew in your counseling sessions?

16 A. Yes.

17 Q. How long has your mother been together with Drew?

18 A. Two years.

19 Q. Okay. How long have you lived in the same or how long have you lived in the same home with Drew?

20

21

22

23

24

25

1 A. A year.

2 Q. Okay. What types of specific issues do you talk about concerning Drew in counseling?

3 A. That I don't like him.

4 Q. Okay. Why don't you like Drew?

5 A. Cause he's always been mean to me.

6 Q. Okay. How is he mean to you?

7 A. He would say rude comments to me.

8 Q. Okay. What, can you explain to the Judge what these rude comments were about?

9 A. Like what I would wear.

10 Q. Okay. Do you have an example of something that he would say to you about what you

11 would wear?

12

13 A. No.

14 Q. Okay. How did that make you feel when he would make those comments about what you

15 were wearing?

16 A. Sad and mad.

17 Q. Okay. Do you ever tell him to stop?

18 A. No.

19 Q. Did you bring up this issue in your counseling?

20 A. Yeah.

21 Q. And do you remember how your mom responded?

22 A. No.

23 Q. If you were to return home today, would you still have these same concerns about your

24 relationship with Drew?

25

1 A. Yes.

2 Q. Okay. Has Drew been involved in any of the family counseling sessions?

3 A. No.

4 Q. Okay. Do you know why Drew has not come to any family counseling sessions?

5 A. No.

6 Q. To your knowledge, has anyone asked for him to not come to the sessions?

7 A. No.

8 Q. Besides the alcohol use in the home and the marijuana use in the home and the
9 discussions about Drew, are there any other issues that you've been working on in family
10 counseling?
11

12 A. No.

13 Q. Okay. Those are the three things that you're focusing on?

14 A. Yes.

15 Q. Okay. Do you feel like you've made any progress on any of those three issues?

16 A. No.

17 Q. And why do you feel like no progress has been made?

18 A. Cause it's hard to talk about it in counseling.

19 Q. Okay. Do you feel like it's, do you feel like that's something that you can control or do
20 you feel like other people in counseling are making it difficult to make progress on that?
21

22 A. Both.

23 Q. Did you say both?

24 A. Yeah.

25 Q. Okay. What, what do you feel like is outside of your control in counseling?

1 A. What do you mean?

2 Q. You said that you haven't made progress in counseling because of some things that
3 you've done and some things that other people have done. What things that other people have
4 done have made it hard to make progress in counseling?

5 A. Talking about Drew.

6 Q. Okay. So if you could explain that answer a little bit more. Are you talking about
7 people's responses to you bringing up the, the conversation about Drew?

8 A. Yes.

9 Q. Okay. How does your mom respond when you try to talk about Drew?

10 A. I don't know.

11 Q. You don't remember?

12 A. No.

13 Q. Okay. Throughout the CHINS, over the last nine months, have you seen your mom and
14 Drew outside of family counseling?

15 A. Yes.

16 Q. How often have you had visits?

17 A. Once a week.

18 Q. And are these overnight visits or just during the day?

19 A. Sometimes --

20 Q. Or both? I'm sorry. I didn't mean to interrupt you.

21 A. Both.

22 Q. Okay. How would you describe your visits when you go home?

23 A. Good.

1 Q. Good? Are there anything, is there anything that concerns you when you go home?
2 A. Drinking.
3 Q. Okay. Have you seen any drinking around you when you've gone home?
4 A. Once.
5 Q. Okay. When was that? About?
6 A. In the summer.
7 Q. Who was drinking?
8 A. My mom and Drew.
9 Q. And do you remember what they were drinking?
10 A. Vodka.
11 Q. Okay. What was the situation where they were drinking, like where were you? Where
12 were all of you?
13 A. They were by the front door, and I walked by to see what they were doing, and I saw
14 them drinking.
15 Q. What were they drinking out of?
16 A. The bottle.
17 Q. Okay. Was that the only time that you saw drinking in the home?
18 A. Yes.
19 Q. How did that make you feel when you saw that?
20 A. Sad.
21 Q. Why did it make you sad?
22 A. Because they weren't supposed to be drinking around me.
23 Q. Okay. Did you talk to them about that? Let them know that you saw that?
24
25

1 A. No.

2 Q. Why not?

3 A. Cause I didn't want to.

4 Q. In your CHINS Petition, you say that Drew will not talk to you when you're at home. Is
5 that right?

6 A. Yes.

7 Q. What do you mean by that?

8 A. He won't say anything to me.

9 Q. Okay. Do you have family dinners when you're at home?

10 A. Yes.

11 Q. Are you part of the conversation during those dinners?

12 A. Sometimes.

13 Q. Okay. Who asks you the questions?

14 A. Anyone.

15 Q. Does Drew ask you questions during dinner?

16 A. No.

17 Q. Okay. Do you ever ask him questions?

18 A. No.

19 Q. Okay. Why not?

20 A. Because I don't want to.

21 Q. Okay. Would you say that this has happened every time you go home that you feel like
22 they're not talking to you?

23 A. Yeah.

24

25

- 1 Q. Excuse me, that Drew is not talking to you?
- 2 A. Yeah.
- 3 Q. Do you feel like you can have a conversation with your mother when you go home?
- 4 A. Yeah.
- 5 Q. Have you had any visits over the holidays?
- 6 A. Yes.
- 7 Q. Okay. I'll back up, excuse me. You mentioned a minute ago that you've done overnight
- 8 visits in the home. Is that right?
- 9
- 10 A. Yes.
- 11 Q. Okay. About how many times would you say you've done that?
- 12 A. A lot.
- 13 Q. Okay. And when was the most recent time that you had overnight visits?
- 14 A. Christmas.
- 15 Q. How many days were you at home?
- 16 A. Four.
- 17 Q. Okay. So was that three overnights?
- 18 A. Yes.
- 19 Q. Do you feel that that was a good visit home or not a good visit home?
- 20 A. Good.
- 21 Q. Okay. What was good about it?
- 22 A. We went sledding, and I got presents.
- 23 Q. Who did you go sledding with?
- 24 A. My mom, my younger sister, Drew, Drew's daughter, and my mom's friend's son.
- 25

1 Q. Okay. Were there anything about your visit that concerned you when you went home
2 over Christmas?

3 A. No.

4 Q. Okay. From your point of view, do you have any idea why Drew does not talk to you
5 when you go home?

6 A. No.

7 Q. You also state in your petition that you're concerned that if you return home, your mom
8 will cut you off from extended members of your family? Is that true?

9 A. Yes.

10 Q. Okay. Why do you believe that she'll cut you off from your members of your family?

11 A. Cause she doesn't see them.

12 Q. Has she said anything to you that makes you think that she would do this?

13 A. She said that she cut them off from her.

14 Q. Okay. Have you addressed this in counseling yet?

15 A. She said that in counseling.

16 Q. Okay. And what did, what did your counselor say after that?

17 A. I don't remember.

18 Q. Do you remember if you told the counselor that that would bother you?

19 A. I don't remember.

20 Q. Okay. You also write in your petition that your mother told you she would rather see you
21 in foster care than with your grandparents. Is that true?

22 A. Yes.

23 Q. When did she say this?

1 A. A couple months ago.

2 Q. And where were you?

3 A. In counseling.

4 Q. What, do you remember what you were talking about that lead up to that statement?

5 A. No.

6 Q. How did that make you feel when she said that?

7 A. Sad.

8 Q. Did your counselor respond to that statement?

9 A. I think so.

10 Q. Do you remember what she said?

11 A. No.

12 Q. Okay. Do you enjoy living with your grandparents?

13 A. Yes.

14 Q. Do you feel comfortable living with them?

15 A. Yes.

16 Q. Would you rather live in a foster care home than with your grandparents?

17 A. No.

18 Q. Okay. Why not?

19 A. Cause I wouldn't know the foster care people.

20 Q. Okay. And that, and how would that make you feel if you didn't know them?

21 A. Uncomfortable.

22 Q. Do your grandparents make any inappropriate remarks to you about your mom?

23 A. No.

24 Q. Do your grandparents make any inappropriate remarks to you about your mom?

25 A. No.

1 Q. Do they encourage you to continue living outside of her home?

2 A. No.

3 Q. Do you believe that they are neutral placements for you?

4 A. I don't know.

5 THE COURT: Huh?

6 A. I don't know.

7 Q. Okay. Do you believe that they would support you in improving your relationship with
8 your mom?

9 A. Yes.

10 Q. Taylor, are you asking to live with your grandparents because you don't like the rules in
11 mom's home?

12 A. No.

13 Q. Okay. Do you believe that the rules in mom's home are reasonable?

14 A. Sometimes.

15 Q. Okay. Can you give me an example of a rule that you don't think is reasonable?

16 A. No.

17 Q. Okay. Can you give me an example of a rule that you think is reasonable?

18 A. Do the dishes.

19 Q. Okay. Anything else?

20 A. Do work.

21 Q. Are you expected to do chores in your grandparent's home?

22 A. Yes.

23 Q. Okay. What chores are you expected to do there?

1 A. Make the coffee, clean the cat box, shut the blinds, and shovel snow.

2 Q. Do you have any problem doing those things when they ask you to do them?

3 A. No.

4 Q. Okay. Taylor, your mom claims in her response declaration, that a woman named Candi
5 Davis is somehow responsible for you filing your second CHINS. Is that true?

6 A. No.

7 Q. Who is Candi, excuse me, is it, who is Candi Davis?

8 A. My dad dated her.

9 Q. And when was the last time you saw Candi Davis?

10 A. The beginning of last year.

11 Q. Are you talking about around January as the beginning of last year?

12 A. Yeah.

13 Q. And when was the last time you had any kind of contact with Candi, either through text
14 or social media or anything?

15 A. The beginning of last year.

16 Q. Okay. Why have you stopped communicating with Candi?

17 A. Cause the court said.

18 Q. Excuse me?

19 A. Cause the other judge said I couldn't have any contact with her.

20 Q. Okay. So you followed that order that the other judge gave you?

21 A. Yes.

22 Q. Are you willing to follow any additional restrictions on contact with Candi if the court
23 today decided to put those on you?

24

25

1 A. Yes.

2 Q. Okay. Why?

3 A. Why to follow them?

4 Q. Uh huh (affirmative).

5 A. Cause the judge said to.

6 Q. Okay. Your mom stated in her declaration that she believes it's been your intent to never
7 return home, ever since you filed your first CHINS. Is that true?

8

9 A. Yes.

10 Q. Is it true that you never want to go home?

11 A. Yes.

12 Q. Is there anything that could change in your home that would make you change your mind
13 about going home?

14 A. No.

15 Q. You mentioned a couple issues that you've talked about in counseling, the drinking, the
16 marijuana, and Drew. If you were able to address those things in counseling, would that change
17 your mind do you think?

18 A. No.

19 Q. Okay. Taylor, what do you think the purpose of a CHINS is?

20 A. To be replaced (sic) out of your home if you're in need.

21 Q. Okay. What does the word reunification mean to you?

22 A. I don't know.

23 Q. Okay.

24

25 MR. EILERT: Your Honor, I have no further questions.

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THE COURT: Okay. Mr. Mason, you have cross?

MR. MASON: I, I would, but first I would move for a directed verdict because she has no intention of reconciling and that is the purpose of the statute, and she's basically defeated that purpose. So I would ask the court to dismiss the petition based on the sworn testimony.

THE COURT: Mr. Eilert, a response?

MR. EILERT: Your Honor, I understand that her most recent testimony seemed to indicate that to the court. I would just ask the court to look at her initial testimony which talked about things that she wanted to see changed in the home before she felt comfortable returning.

THE COURT: All right. I'm going to take five minutes. I'm going to look at this, and I'll be right out to make a decision on this motion.

MR. EILERT: Thank you.

THE COURT: Yeah.

(RECESS)

* * * * *

(CONVENE)

JUDICIAL ASSISTANT: Please be seated.

THE COURT: All right. We're back on the record *In re the Matter of Taylor Milliken*, Spokane County Cause No. 16-7-02842-2. I took a brief recess. We'd heard the testimony from Taylor Milliken, her direct.

At the end of her direct testimony, Mr. Mason, on behalf of his client, mom, Ms. Kerry Milliken, asked the court for a directed verdict to dismiss I suspect the CHINS based

1 upon the child's end of her testimony in regards to, this is what I wrote down. It's probably not a
2 direct quote. That she never wants to go home, nothing could change her mind about wanting to
3 go home, addressing her mom and Drew's alcohol use, marijuana use, and addressing Drew
4 would not help to change her mind about wanting to return home, and those were the three things
5 she outlined in her testimony that she was in family counseling about.

6 When asked what she, what she thought a CHINS petition was she talked about it
7 being, to be able to placed outside of her home, didn't know what reunification was. It was
8 based upon that that Mr. Mason asked for a directed verdict because a CHINS petition, although
9 allows for an out of home placement, doesn't only allow for out of home placement. I could
10 place in home under a CHINS. It's based upon reunifying the family. The intent of the
11 legislature for all cases is to preserve the family unit, and it sets out specific areas where we can
12 interfere with the parental, I, I started this matter on a motion to dismiss, a parent's right to the
13 care, custody, and control of their children.

14 And frankly at this point, I'm going to dismiss this CHINS Petition because as we
15 talked about at the beginning of this case, this is supposed to be different than a non-parental
16 custody, but if a child never intends to go home and there's nothing that can be done to fix that,
17 this is not the proper procedure anymore because I'm supposed to be doing things to reunify this
18 family, not keep this family apart.

19 I don't know if you would have met the definition. I didn't get to hear cross-
20 examination. I got to hear direct. But I have to say based upon only the direct, I don't know if I
21 would have found that you had made reasonable efforts to reunify at this point, to even be
22 considered a child in need of services. But I didn't even have to go that far because you don't
23 want to go home, and that's not an option in this case.

1 The end goal of this court is to return you to your mom, and I understand that it's
2 hurtful to you that she maybe doesn't like her extended family, but it's actually, it started with
3 the *Troxel* case that was cited to me at this case. Grandparents don't have rights in our country.
4 Parents have rights, and they get to determine who kids see or not. And that not, might not be in
5 your best interests, but I have to presume a fit parent will act in their child's best interests.

6 I would hope that a parent would take somebody of sufficient maturity's wishes to
7 seek extended family seriously and know that your emotional stability is only going to improve
8 their relationship because discord between a child and a parent is going to be expected, but
9 extreme discord is not going to help anything and probably also goes against preserving the
10 family, the family unit. But at this point, I can't see going forward on something that I don't
11 think will have a purpose, so I'm going to dismiss.

12 MR. EILERT: Your Honor, are you dismissing this without prejudice, without
13 prejudice or with prejudice? We should be allowed to bring up further case --

14 MR. MASON: Well, by with prejudice, I only meant on the facts to date of
15 course.

16 THE COURT: I'm going to do it without prejudice. If facts arise in the future,
17 that in she has a different outlook on things, that might change it. Forever her words are here
18 and that she had no intent of reunifying.

19 MR. EILERT: And, your Honor, it's, thank you, and it's your ruling that in case
20 there might have been some sort of a confusion or a misunderstanding that she couldn't clear that
21 up with the court?

22 THE COURT: I went back and I looked at the petition. I read the petition, and I
23 read a few other things in the file, Mr. Eilert, and nowhere in there does it really talk about her
24
25

1 reunifying. In fact, it, I, from what I had read and then the testimony, I was already very wary
2 about if your client had that intent or not because it didn't seem like any progress had been made
3 on her part in the counseling.

4 But, ma'am, there are some changes that need to probably be made to your
5 household or else you might end up here again. And so I think you need to take this last year to
6 heart of what's gone on, and I certainly would continue the counseling. The individual
7 counseling and the family counseling, and I know I can't order that here today. I'm dismissing
8 that, but your daughter needs it. Okay? And I think that effort needs to be made.
9

10 Go off the record.

11

12

(Recording ends at 11:28:42)

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CERTIFICATE

I certify under penalty of perjury under the laws of the State of Washington that the following is true and correct:

1. That I am a certified court reporter or authorized transcriptionist working on the certification and will have it by 1/1/17;

2. I received the electronic recording directly from the trial court conducting the hearing;

3. This transcript is a true and correct record of the proceedings to the best of my ability; including any changes made by the trial judge reviewing the transcript;

4. I am in no way related to or employed by any party in this matter, nor any counsel in the matter; and

5. I have no financial interest in the litigation.

SIGNED AND SWORN this 22nd day of January, 2017, in Spokane County, Washington.

Robin R. Dean
ROBIN R. DEAN
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Spokane, WA 99208
509-953-1676

FILED

JUN 13 2017

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

IN THE SUPREME COURT OF THE STATE OF
WASHINGTON

(Division III Cause No. 350525)

T.L.M., Respondent

v.

Kerry Milliken, Appellant


PROOF OF SERVICE RE PETITION FOR REVIEW

On the 13th day of June, 2017, I caused to be served a true and correct copy of Appellant's PETITION FOR REVIEW UNDER RCW 13.32A (CHINS) Appeal Dismissed as Moot, on all interested parties to this action as follows:

Via 11:02 a.m. transmittal confirmation, stating an uploaded file would be sent to dcarter@spokanecounty.org.

A copy of this Proof of Service was delivered via EWAS to:

**David Andrew Carter
Spokane County Public Defenders
1033 W. Gardner
Spokane, WA 99260-0280**



LORI MASON
Paralegal to Craig A. Mason

ORIGINAL

MASON LAW

June 13, 2017 - 11:02 AM

Transmittal Information

Filed with Court: Court of Appeals Division III
Appellate Court Case Number: 35052-5
Appellate Court Case Title: In re the Interest of: T. L. M.
Superior Court Case Number: 16-7-02842-2

The following documents have been uploaded:

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- masonlawlori@gmail.com
- Craig A Mason (Undisclosed Email Address)

Comments:

This petition is filed with Division III, Case #349888, and a Motion to Consolidate the two petitions will follow upon receipt of the appeals by the State Supreme Court. Payment to follow.

Sender Name: Lori Mason - Email: masonlawlori@gmail.com

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