

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

In re Dependency of:

██████████

No. ██████████

**Motion and Declaration to  
Reinstate Visitation for the  
Father**

**I. MOTION**

██████████, father of the above-named child, by and through his attorney, Michele Kemmerzell, requests the court to reinstate visitation between himself and his child to begin immediately.

The father's visitation was suspended by the Court on August 14, 2020 and he has not had any contact with his daughter or updates regarding her since this date. Prior to that date, the father only had two visits with his daughter since the children were removed prior to the Shelter Care on July 24, 2020. The Department brought a motion before the Court on August 14, 2020 to suspend visitation and any contact between the parents and children. Visitation is a constitutional right of the

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Visitation for the Father**

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child and the parent. To allow continued suspension of visitations is essentially a quasi-termination of parental rights.

## II. AUTHORITY

The department must “encourage the maximum parent and child . . . contact.” RCW 13.34.136(1)(b)(ii). The legislature has found that “early, consistent, and frequent visitation is crucial for maintaining parent-child relationships and making it possible for parents and children to safely reunify.” *Id.* This finding is supported by numerous studies, which have demonstrated that:

Parent and children have a right to visits during a dependency. *RCW 13.34.136(2)(b)(ii)*. A court may only restrict visitation upon a showing that visits would harm the child’s health, safety, or welfare. *RCW 13.34.136(2)(b)(ii)(C)*; *In re Dependency of Tyler L.*, 150 Wn. App. 800, 804, 208 P.3d 1287 (2009); *In re Dependency of T.L.G.*, 139 Wn. App. 1, 14, 156 P.3d 222 (2007).

The department must demonstrate a risk of actual harm to justify denial of visits. *T.L.G.*, 139 Wn. App. 17-18. Speculation based on reports or on a single past incident is insufficient. *Id.* The fact that a family may need additional services, such as therapeutic visitation, cannot justify failure to offer visits. *Id. At 18*. Rather, the department must provide the professional services necessary to ease the transition for the children and to satisfy the legislature’s mandate to maximize parent-child interaction. *Id.*

After a child has been declared dependent, the state has an affirmative duty to offer and provide all services necessary to parents in an effort to facilitate reunification and to preserve the family unit. *RCW 13.34.136(1)(b)(iv)*; *In re S.V.B.*, 75 Wn. App. 762, 769, 880 P.2d 80 (1984);

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*In re P.A.D.*, 58 Wn. App. 18, 29, 792 P.2d 159, rev. denied, 115 Wn.2d 1019 (1990). Visitation is the right of a family during dependency proceedings.

The court should reinstate the father's visitation with his child. The state did not demonstrate that visits would cause actual harm to the child.

### **III. ARGUMENT**

#### **1. The Department has not demonstrated that these visits are detrimentally harming.**

Suspension of visitation is only based upon harm to the child's health, safety, or welfare. *RCW 13.34.136(2)(b)(ii)(C)*; *In re Dependency of Tyler L.*, 150 Wn. App. 800, 804, 208 P.3d 1287 (2009); *In re Dependency of T.L.G.*, 139 Wn. App. 1, 14, 156 P.3d 222 (2007). Here, the father has not caused any harm to his child's health, safety, or welfare in visitation. Even though there is an open criminal investigation, the father has not been charged with any crimes, let alone convicted. Until that time, he is presumed innocent by our judicial system. The state provided a letter from the Detective of the criminal case which recommended no contact between the parents and the children. However, the detective is not a child psychology expert nor does he have a duty to act in the child's best interest. The detective only has a duty to act in the best interests of their own case, which should not be conclusive for this Court. The state has not provided any statements from any child psychology experts to state that this would be detrimental to the child's psychological welfare. Further, in a supervised setting these visits would not be physically harmful to the child. Therefore, we ask that visitation be immediately reinstated, or at the very least, that family therapy be ordered.

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The legislatively mandated risk of harm for limitation or denial of visitation with a child in a dependency proceeding must be an actual risk, not a speculation. *T.L.G. 139 Wn. App. At 18*. Here, stating that the child's emotional welfare would be harmed is merely speculation. There is no evidence that has been presented that anything inappropriate or criminal has occurred to this child by the father. Outside of the detective's perspective and speculation, the state has not produced any actual evidence that these visits would cause actual harm to the child. We ask that at the very least, family therapy be ordered to have a child psychology expert weigh in on the relationship between the father and his daughter.

**2. Social vulnerability due to race has severely negatively impacted the structure of this case.**

Social vulnerability refers to the susceptibility of social groups to potential losses from hazard events of society's resistance and resilience to hazards. (Blaikie et al., 1994; Hewitt, 1977). "Research shows that black and Hispanic pediatric emergency room patients with minor head trauma are two to four times more likely to be evaluated and then reported (as suspected abusive head trauma) when compared with white, non-Hispanic patients." A Child Bumps Her Head. What Happens Next Depends on Race. Jessica Horan-Block. NY Times Opinion. August 24, 2019. <https://www.nytimes.com/2019/08/24/opinion/sunday/child-injuries-race.html>. "Significant race/ethnicity-based disparities in AHT evaluation and reporting were observed at only 2 of 18 sites and occurred almost exclusively in lower risk patients. In the absence of local confounders, these disparities likely represent the impact of local physicians' implicit bias." (Hymel et al., 2018)

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Research has documented racial disparities at each stage along the child welfare pathway including: Acceptance for investigation, Substantiation of alleged maltreatment, out of home placement, length of time in placement, longer time to reunification (Dettlaff et al., 2011). Racial disparities in the CW system are not due to poverty alone, but are related to caseworker assessment of risk - Race was not an explanatory factor in substantiation decisions when only poverty (family income) was analyzed - BUT when caseworker assessment of risk was added to the model, race emerged as a significant explanatory factor in substantiation decisions. *Id.* “Too many families with young children grow up facing conditions that challenge their full and healthy development. This is especially true for children of color and children in low income neighborhoods. Children of color are represented disproportionately in the child welfare system. In Washington this is particularly true for American Indian/Alaska Native and African American populations.” Graham, J. Christopher (2019). Washington State DCYF Racial Disparity Indices Report (2018). Olympia, WA: Department of Children, Youth, and Families.

Here, there are no parental deficiencies outlined in the petition for the father, nor were any services offered at Shelter Care for the father. The father is a fit parent, except for this open criminal case that conveniently came to light just as the children were being returned home. The allegations as to [REDACTED] are purely speculative. Further, as shown through the above research, Black children are far more likely to be assessed as abuse and criminal investigations opened than for white children. Having this suspension of contact is not only negatively impacting this case but also causing long-term issues for [REDACTED] and her father. By not having any local relatives available to take [REDACTED], she was placed with a white family relative who does not value any of her culture

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or heritage. As the father lines out in his declaration, his Black culture is extremely important and paramount for [REDACTED] safety growing up in America. By not allowing visitation, the father is not able to continue teaching [REDACTED] his culture and beliefs which will negatively impact [REDACTED] as she grows up. She is essentially being stripped of her own Black identity by being placed with a white family who has very different values than the parents.

**3. The Court has effectively terminated the father's rights by suspending visitation.**

The department appears to be absolved of their statutory duty to make reasonable efforts to reunify this family; Specifically, the Washington State Supreme Court has found: 'There is a two-step process when deciding whether to terminate the right of a parent to relate to his or her natural child. The first step focuses on the adequacy of the parents and must be proved by clear, cogent, and convincing evidence. The father does not have any identified parental deficiencies neither any requested services by the Department. The second step focuses on the child's best interest, and need be proved by only a preponderance of the evidence. Only if the first step is satisfied may the court reach the second.'" *In re the Welfare of A.B.*, 168 Wash. 2d 908, 911, 232 P.3d 1104 (2010). It is not within the purview of this court to effectively terminate the father's rights to his child prior to an actual termination hearing. This case is still in shelter care status and has not even had a proper fact finding trial yet, so it is far too early to contemplate termination. Additionally, the detective is using my client's past offenses against him in his judgement for this case. My client served his time with no incident and has completely changed his life around, which the Court itself has acknowledged in previous hearings. Therefore at this time a dependency could not be established, let alone a

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termination trial be successful. So we ask that the father's visitation be immediately reinstated as he has been effectively terminated from his child because of the no contact that is currently allowed.

#### **IV. CONCLUSION**

We would ask that the court reinstate the father's visitation immediately. If the court finds that supervised visitation would not be sufficient to protect the child, then we ask that family therapy be ordered to access the relationship and allow the father and his daughter time to continue their bond and right to see each other.

DATED this \_\_\_\_\_ day of February, 2021.

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