No. _____
COA No. 83810-5-I (consolidated with No. 83811-3-I)

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

In re the Dependency

of M.L.W. and I.A.W.

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

MOTION FOR DISCRETIONARY REVIEW

Kate L. Benward
Attorney for Petitioner

WASHINGTON APPELLATE PROJECT
1511 Third Avenue, Suite 610
Seattle, WA 98101
(206) 587-2711
katebenward@washapp.org
wapofficemail@washapp.org

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Washington Supreme Court Decisions

Statutes

Other Authorities

Rules

Constitutional Provisions

United States Supreme Court Decisions

Washington Court of Appeals Decisions

A. INTRODUCTION

The sibling bond is critical to a child's sense of place in the world. It is particularly significant for Black families like Ms. W.'s, who are overrepresented in the child welfare system and whose emotional bonds are often devalued by the State actors who decide whether they will remain a family.

The Department sought to terminate Ms. W.'s parental rights to only her two youngest children, but not her 15-year-old son, M.W. M.W. sought to intervene through counsel in his mother's trial to advocate for his right to family integrity. The court prohibited his participation and the Court of Appeals affirmed, finding M.W. did not have an adequate interest in the proceedings that would result in the destruction of his family, and that the right to family integrity did not apply protect a sibling who was not the subject of the termination trial.

The Court of Appeals' limitation on a sibling's right to family integrity in termination proceedings is a question of constitutional import, and is particularly significant for families

of color who are disproportionately subject to state intervention and forced separation. This Court should accept review.

B. IDENTITY OF PETITIONER

Ms. W., the mother of M.L.W. and I.W., moves for discretionary review of the Court of Appeals' published opinion in *re M.L.W,* no. 83810-5, which affirmed the orders of termination. RAP 18.13A; RAP 13.5A. The opinion, filed September 18, 2023, is attached.

C. ISSUES PRESENTED FOR REVIEW

1. This Court recognizes a child's due process right to "maintaining the integrity of the family relationships, including the child's parents, siblings, and other familiar relationships." *In re Dependency of M.S.R.*, 174 Wn.2d 1, 20, 271 P.3d 234 (2012); U.S. Const. amend. XIV; Const. art. I, sec. 3. This constitutional right to family integrity is especially critical to dependent children, who are disproportionately poor and non-White, but whose family connections are typically evaluated by White and middle class Department and court employees.

When, as here the Department seeks to sever a bonded family by terminating parental rights only as to the younger siblings, this Court should recognize a sibling's right to intervene to protect their constitutional right to family integrity. RAP 13.4(b)(1), (3)-(4).

2. The Department is required to offer a parent all reasonably available, necessary services before a court can terminate their parental rights. In Ms. W.'s case, a culturally competent service provider recommended family therapy for Ms. W and her bonded family. A Department social worker overrode this recommendation based on her presupposition that Ms. W. was a danger to her children. This Court should accept review of the Court of Appeals decision that perpetuates racial bias in dependency proceedings by allowing a Department employee to override a culturally competent service provider's recommendation. RAP 13.4(b)(4).

D. STATEMENT OF THE CASE

1. Ms. W. and her children remain a deeply bonded family despite separation during the dependency.

Ms. W. had her son, M.W., in 2006; her daughter I.W., in 2011; and her daughter, M.L.W., in 2014. Ex. 9. In August 2018, the Department removed Ms. W.'s children based on allegations of neglect and substance abuse when the family was living in an RV. Ex. 9; CP 1706, FF 2.7. [1]

The Department placed Ms. W.'s youngest children into numerous licensed foster placements throughout the dependency. CP 1706, FF 2.9. M.W. was placed with fictive kin. CP 7; RP112. Despite their separation, Ms. W.'s children remained deeply bonded to each other and their mom throughout the dependency. RP68, 613, 885. Ms. W.'s children always looked forward to visits and had difficulty leaving their mom when visits were over. RP352, 839, 1370, 1824. Ms. W. and her children always desired to reunite as a family. RP70.

[1] The father's parental rights were terminated by default and are not at issue in this appeal. Ex. 34.

2. Like many Black women subjected to the child welfare system, Ms. W. is treated unfairly and struggles to comply with the Department's requirements.

Trenecsia Wilson is a licensed psychotherapist who runs a counseling service that works predominantly with Black and Brown people, many of whom are involved in the child welfare system. RP394, 453. Ms. Wilson explained that the child welfare system disproportionately impacts Black women. RP451. They face challenges concerning the "expectations of women and parenting, specific cultural implications, racism, [...] unrealistic expectations," and lack of access to "culturally competent or trauma-informed" providers. RP451.

The State physically removes children from the care of their Black mothers more often and requires them to do more to have their children returned. RP455. Ms. Wilson observed, "Black parents, Black families, and Black mothers in particular are . . . given these laundry list of not only services, but this expectation of engagements around these services being long-

term, being scrutinized . . . this checking-in and . . . policing of services." RP455. Because of these experiences, she found Black women are more "distrustful of CPS." RP461.

Ms. W.'s experiences mirrored much of Ms. Wilson's observations about how social service providers and the Department treat Black mothers.

Ms. W. entered an agreed order of dependency. Ex. 9. She was required to complete a drug and alcohol evaluation and treatment, random urinalysis testing, a psychological evaluation with a parenting component and follow the recommendations. Ex. 9.

Ms. W. completed a psychological evaluation with licensed clinical psychologist Dr. Tatyana Shepel in July 2019. Ex. 59; RP710. Dr. Shepel met with Ms. W. and observed that she might be under the influence but did not inquire into the degree of intoxication or how it impacted Ms. W.'s functioning. RP913, 1699-1700. Dr. Shepel proceeded with the evaluation

and diagnosed Ms. W. with a litany of psychological disorders. Ex. 59; RP916-17.

Dr. Daniel Rybicki, a licensed clinical and forensic psychologist, conducted a "work-product review" of Dr. Shepel's report. RP1658-59. He concluded her "diagnostic conclusions" and intensive treatment recommendations were "not supported by the data." RP1716-17.

Dr. Shepel admitted her conclusions could have been different if Ms. W. was not under the influence, but did not recommend retesting because her contract with the Department had ended. RP933.

Still, the Department social workers and CASA insisted Ms. W. complete Dr. Shepel's intensive recommendations based on this flawed report. CP 12-13; RP1348, 1377, 1503. The Department filed a termination petition in March 2020, alleging Ms. W. was not engaged in substance abuse treatment and did not comply with Dr. Shepel's recommendations. CP 12-13.

3. The Department questions and discounts Ms. W.'s culturally competent treatment providers who resist the Department's over-policing of Ms. W.

Ms. W. contested the validity of Dr. Shepel's report and its intensive recommendations, but still engaged in substance abuse and mental health treatment. Ms. W. undertook mental health treatment with Ms. Wilson and substance abuse treatment with Shaundra King after her counsel insisted she be treated by culturally competent providers. RP1210.

Ms. Stark-Bell, Ms. W.'s DCYF social worker, did not question Dr. Shepel's report or the abilities of any other service providers but did question the opinions of the providers who were selected for their cultural competency. Ms. Stark-Bell questioned and scrutinized Ms. Wilson's and Ms. King's abilities and treatment decisions. RP467, 1338-39, 1349 RP1338-39. Ms. Stark-Bell expected Ms. Wilson to be available to her daily and weekly, which Ms. Wilson found invasive. RP 466. Ms. Stark-Bell's communication with Ms. Wilson included suggestions about how Ms. Wilson should be

treating Ms. W. RP 466. Ms. Wilson found Ms. Stark-Bell's requests for information and communication with her about treatment "beyond what [Ms. Wilson] had experienced in her professional career." RP 493. Ms. Stark-Bell doubted Ms. Wilson provided adequate treatment, testifying, it was "very vague to me what was actually happening in therapy." RP 1349.

Similarly, Ms. Stark-Bell insisted Ms. King consider her views in treating Ms. W. Ms. Stark-Bell provided "additional written context in my emails about the history so that any misunderstandings or mischaracterization that I felt Ms. King had would be clarified." RP 1338.

But Ms. King understood the "context" of Ms. W.'s "history" and understood Ms. W.'s needs without Ms. Stark-Bell's interference. She received Ms. W.'s discharge paperwork from Navos, received her UA results, and conducted a new assessment. She increased her level of care to intensive inpatient treatment based on the urinalysis results and

information she received.[2] RP1287-88. In short, Ms. King assessed and treated Ms. W. based on her professional judgment and experience, which was different from Ms. Stark-Bell's. Both Ms. Wilson and Ms. King were Black women.

Ms. Stark-Bell also rejected the recommendation for family therapy made by Lauren Brown, a Native American therapist with whom Ms. W. successfully completed the Triple P Program. RP535, 565; CP 1708, FF 2.16. Ms. Brown told Ms. Stark-Bell that this service was necessary and would "make or break Ms. W.'s capacity to address how her [substance] use . . . had impacted and was still impacting the children." RP1354. Ms. Stark-Bell agreed this was a necessary service, but did not offer it to Ms. W. and her family because she disagreed on the "timing." RP1360-61.

[2] Ms. Stark-Bell insisted Ms. King had mistakenly reduced, rather than increased Ms. W.'s treatment levels despite urinalysis results that indicated substance use, but this was not Ms. King's testimony. RP 1287, 1343-44.

4. The court prohibits Ms. W.'s oldest child from advocating for the siblings' opposition to termination of their mother's parental rights.

M.W. was 15 years old at the time of his mother's termination trial. CP 1485. M.W. was represented by an attorney. CP 1486. He objected to termination of his mother's parental rights and planned to advocate against the Department at trial. CP 1486. However, just before trial, the Department dismissed M.W. from the termination case and filed a motion to exclude M.W. from his mother's termination trial. CP 1303, 1486. M.W. sought to intervene in the proceedings to protect his and his siblings' due process right to family integrity. CP 1488.

M.W. was specifically concerned that the "behavior of the department and CASA in these proceedings is extremely suspect." CP 1489. M.W. had advocated for dismissal of the termination petition "since it was filed." CP 1489. He felt the Department "strung [him] along for an extended period of time, subjecting him to unnecessary anxiety about the trial, only to

pull the rug out from under him and turn things against him" just before trial. CP 1489. He believed the Department "knew [M.W.] would be heavily contesting the trial . . . and realized that they would be in a better position strategically if this opposing force was removed from their sight." CP 1489.

M.W. believed his advocacy was necessary to protect their right to remain a family. CP 1489.

The Department and CASA argued "any issues regarding sibling relationships" can be "addressed in dependency and adoption proceedings." CP 1306-07. The court agreed and excluded M.W. from participating in the termination trial. RP53; CP 1705, FF 2.3.

5. The Court of Appeals affirms the trial court's termination of Ms. W.'s parental rights in a published opinion that concludes Washington's constitutional right to family integrity does not protect dependent siblings' relationships with each other.

The Department and CASA believed the children needed "permanency" above all else, and advocated to terminate Ms.

W.'s parental rights regardless of her children's wishes and their strong family bond. RP965, 1182-84, 1575, 1600-01.

The court found Ms. W.'s bond with her daughters was so strong that even if her parental rights were terminated, she "will always be [I.W.] and [M.L.W.]'s mother." RP1969. After this hollow pronouncement, the court terminated Ms. W.'s parental rights. CP 1703. The Court of Appeals affirmed, finding 15-year-old M.W. did not have a constitutional interest in his siblings' relationship with their mother, and that the Department offered Ms. W. all necessary services despite the Department social worker's refusal to offer her family therapy. Op. at 7-9; 12-16.

E. ARGUMENT

1. The Court of Appeals' published opinion wrongly deprives dependent children of their constitutional right to family integrity.

Children have a constitutional right to prevent the legal dissolution of their family through wrongful termination of parental rights. *Santosky v. Kramer,* 455 U.S. 745, 760, 102 S.

Ct. 1388, 71 L.Ed.2d 599 (1982). The "integrity of the family unit has found protection in the Due Process Clause of the Fourteenth Amendment." *Stanley v. Illinois*, 405 U.S. 645, 651, 92 S. Ct. 1208, 31 L. Ed. 2d 551 (1972). Washington specifically recognizes a child's due process right to "maintaining the integrity of the family relationships, including the child's parents, siblings, and other familiar relationships." *M.S.R.*, 174 Wn.2d at 20; U.S. Const. amend. XIV; Const. art. I, sec. 3.

This Court should accept review and find that in Washington, dependent children have a constitutional right to family integrity that entitles them to intervene at trial when the Department seeks to terminate a parent's rights to the dependent child's siblings.

a. 15-year-old M.W.'s right to family integrity, including his relationship with his siblings, warranted intervention in the termination trial that resulted in the destruction of his family.

Civil Rule 24 provides a right to intervene in dependency and termination proceedings. *Matter of J.D.P.*, 17 Wn. App. 2d 744, 762, 487 P.3d 960 (2021) (citing *In re Dependency of J.H.*, 117 Wn.2d 460, 460, 815 P.2d 1380 (1991)). This rule provides for "permissive" intervention and "as a matter of right." CR 24.

The criteria a court considers in considering an intervention as a matter of right are whether:

> (1) the party seeking to intervene establishes timely application for intervention;
>
> (2) an applicant claims an interest which is the subject of the action;
>
> (3) the applicant is so situated that the disposition will impair or impede the applicant's ability to protect the interest; and
>
> (4) the applicant's interest is not adequately represented by the existing parties.

J.D.P., 17 Wn. App. 2d at 762 (citing *Westerman*, 125 Wn.2d at 303).

M.W. met this criteria. His motion was timely because he filed it before trial, in response to the Department's motion to exclude him from trial, and the Department was able to respond. CP 1485; RP 50-51. He established an "interest" in his mother's termination trial because he has a constitutional right to prevent the legal dissolution of his family through the wrongful termination of his mother's parental rights. A "child and his parents share a vital interest in preventing erroneous termination of their natural relationship." *Santosky,* 455 U.S. at 760; s*ee also M.S.R.,* 174 Wn.2d at 20.

M.W.'s right to the integrity of his family turned on Ms. W.'s legal rights to his younger siblings. If Ms. W.'s rights were terminated, she would no longer have the right to contact them, and certainly not to demand they see each other as a family. RCW 26.33.130(2); RP1368; RP1780. This question about the family's *legal* relationship with each other necessarily included M.W.'s legal relationship with his siblings and their

relationship as a family, which would be extinguished upon termination of Ms. W.'s parental rights.

The trial court and Court of Appeals determined, however, that M.W. did not establish an interest in the litigation. Op. at 13; CP1705, FF 2.3. The Court of Appeals determined that though a dependent child "may have strong feelings about their contacts" with their siblings, they "have no legal interest beyond what is found in dependency statutes for limited contact facilitation by the Department." Op. at 13.

But M.W. and his siblings' *legal* relationship, and the cohesion of his entire family, including his mother, is not protected by the dependency statutes cited by the Court. Op. at 13 (citing *Matter of J.D.P.*, 17 Wn. App. 2d 744, 762, 487 P.3d 960 (2021)). Though M.W. can demand visitation with his siblings through *his* dependency, his right to see his siblings cannot be forced upon his younger sister's adoptive family, absent a separate legal agreement. RCW 26.33.420. M.W., who like his mother, had a strong emotional and psychological bond

with his siblings, was at risk of losing his legal relationship to his siblings. Contrary to the Court of Appeals' assessment, "broadly interpreted," M.W. established he had a cognizable "interest" in the litigation. *Westerman v. Cary*, 125 Wn.2d 277, 303, 892 P.2d 1067 (1994).

M.W. also established he was "so situated" that disposition impaired his ability to protect his interest in maintaining a legal relationship with his siblings, whose interests were not adequately protected. CR 24(3),(4).

The Department's decision to belatedly dismiss the termination petition as to M.W. only removed his ability to challenge the destruction of his family's legal relationship. M.W. explained to the court that "[t]he department essentially strung [M.W.] along for an extended period of time, subjecting him to unnecessary anxiety about the trial, only to pull the rug out from under him and turn things against him." CP 1489.

Only M.W. was represented by counsel. M.W. and his siblings' legal relationship was not otherwise adequately

protected in the proceedings without his intervention. As M.W. informed the court, "The CASA has stated that [M.L.W.] and [I.W.] do not want their mother's rights to be terminated. Yet the CASA is advocating for termination." CP 1489. As the only child with counsel, only M.W. could advocate for the siblings' *stated interests*.

Not only did M.W. establish the Department's actions deliberately undercut his legal rights to his relationship with his siblings, but even more, the Department misconstrued and distorted their stated opposition to the termination of their mother's parental rights. CP 1490. The Department and CASA contended that M.L.W. and I.W. "want someone to make a decision for them." CP 1490. This was exactly what the Department claimed M.W. said to justify proceeding with the termination petition as to him. CP 1490. However, this claim was untrue: M.W. insisted "for over a year that he did not support termination and that he would not consent to adoption." CP 1490. He believed the identical claims made about his

sisters' wishes were unsupported and "should be taken to task." CP 1490. Without a legal advocate intervening for the siblings' position against termination, their legal rights were not protected in the termination trial.

Finally, M.W.'s advocacy for his family at trial was necessary to counter deep-seated class and racial biases that fail to value "relationship[s] between poor, black parents and their children." Christina White, *Federally Mandated Destruction of the Black Family: The Adoption and Safe Families Act*, 1 NW J.L. & Soc. Pol'y 303 (2006). It was critical that M.W.—a poor, Black child—be able to advocate and fight for the depth and meaning of his family bond that the social worker and CASA—both White and middle class—viewed very differently.

Even if a person is not entitled to intervene as a matter of right, courts may grant permissive intervention if the applicant's claim and the main action have a question of law or fact in common. CR 24(b)(2). The trial court also erroneously denied M.W.'s motion for permissive intervention because

M.W. and his mother's legal rights were not in conflict. M.W. and Ms. W. shared an interest in maintaining a *legally binding* relationship with M.L.W. and I.W.

M.W. had a strong legal interest in the action. The Department's decision to terminate as to only the two younger, unrepresented children left M.W. without an advocate for his and his siblings' legal relationship with one another. The Court of Appeals' ruling that a dependent child has no independent legal interest in a relationship with his siblings "beyond what is found in the dependency statutes" undercuts this Court's recognition of a child's right to family integrity. *See M.S.R.*, 174 Wn.2d at 17-18.

b. This Court should accept review and afford dependent children a constitutional right to their family relationships.

Though M.W. had a statutory right to intervene, this Court should also find that M.W. has a due process right to family integrity that entitled him to intervene in the State's quest to break up his family.

When a "liberty" or "property" interest is within the Fourteenth Amendment's protection, it must be determined "what process is due" under a *Mathews v. Eldridge* balancing test. *Smith v. Org. of Foster Families For Equal. & Reform*, 431 U.S. 816, 847-49, 97 S. Ct. 2094, 2109, 53 L. Ed. 2d 14 (1977) (citing *Mathews v. Eldridge*, 424 U.S. 319, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976)).

This inquiry requires a court to consider (1) the private interest that will be affected by the official action; (2) the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and (3), the Government's interest, including the function involved and the fiscal and administrative burdens of the additional or substitute procedural requirement. *Mathews*, 424 U.S. at 335.

Applying these factors establishes that the court should have allowed M.W. to intervene to protect his constitutional right to family integrity. CP 1490; RAP 2.5(a)(3). M.W. has a

powerful interest at stake in maintaining his natural family. A child's liberty interest in a dependency proceeding is at least as great as the parent's, which is even "more precious . . . than the right of life itself." *M.S.R.*, 174 Wn.2d at 17-18. In a dependency or termination proceeding, children are "at risk of not only losing a parent but also relationships with sibling(s), grandparents, aunts, uncles, and other extended family." *Id.* at 15.

Terminating a parent-child relationship impacts "essential aspects" of children's "identity and humanity," including with whom the children grow up and stay connected. Lisa Kelly, *Abolition or Reform: Confronting the Symbiotic Relationship Between "Child Welfare" and the Carceral State*, 17 Stan. J. Civ. Rts. & Civ. Liberties 255, 267 (2021). The lost connection with siblings, in particular, can lead to a loss of identity. *Id.* at 284-91. "Relational permanence is particularly critical for Black, Indigenous, and other children of Color, who are disproportionately affected by the trauma of child welfare

and other legal systems." *Matter of K.W.,* 199 Wn.2d 131, 155, 504 P.3d 207 (2022). Sibling relationships are especially critical in dependency proceedings, as "sibling support can even mitigate various risk factors such as poverty, and that it has a cushioning effect during family crises and stressful life events." Ruth Zafran, *Reconceiving Legal Siblinghood,* 71 Hastings L.J. 749, 758-59 (2020).

Yet the Court of Appeals concluded this Court's decision in *M.S.R.* "does not confer on one sibling a constitutional interest in the parent-child relationship between another sibling and a shared parent." Op. at 17. This Court should accept review of the Court of Appeals' opinion that denies a dependent child the constitutional right to advocate against the destruction of their family. RAP 13.4(b)(3)-(4).

2. The Court of Appeals' decision that allows a Department social worker to override a culturally competent service provider's recommendation risks perpetuating systemic racial bias in the Department's incursion into the lives of families of color.

The Department social worker's unilateral decision to deny Ms. W. and her children family therapy, a necessary service, wrongly devalued the strength and connectedness of Ms. W. and her children's bond and minimized the advice of a culturally competent service provider. This should have been a required, necessary service under RCW 13.34.180(1)(d). This Court should accept review.

a. The Department failed to offer family therapy, a "make or break" service recommended by a trusted, culturally competent provider.

"The primary purpose of a dependency" is to help parents "alleviate the problems" that motivated the Department to intervene and to "preserve and mend family ties." *In re Dep. of T.L.G.*, 126 Wn. App. 181, 203, 108 P.3d 156 (2005). RCW 13.34.180(1)(d) requires the Department to prove that all court-ordered and necessary services were "expressly and

understandably offered or provided" to the parent. *In re Termination of Parental Rights to M.A.S.C.*, 197 Wn.2d 685, 698, 486 P.3d 886 (2021).

A service is "necessary" and required by RCW 13.34.180(1)(d) "if it is needed to address a condition that precludes reunification of the parent and child." *Matter of Parental Rights to I.M.-M.*, 196 Wn. App. 914, 921, 385 P.3d 268 (2016) (citing *In re Welfare of C.S.*, 168 Wn.2d 51, 56 n.3, 225 P.3d 953 (2010)).

This statutory requirement "protects not just the parent but also the child," who has "a vital interest in preventing erroneous termination of their natural relationship with their parents." *M.A.S.C.*, 197 Wn.2d at 698 (quoting *Santosky*, 455 U.S. at 760); U.S. Const. amend. XIV, §1; Const. art. I, § 3. At the termination fact-finding, the State cannot presume that a child and his parents are adversaries. *Santosky*, 455 U.S. at 760. Only after the Department proves parental unfitness can courts

assume the interests of the child and the natural parents diverge. *Id.*

There was no dispute Ms. W. and her children deeply loved each other, and shared the goal of reunification. *See e.g.*, RP69-70. Ms. Brown, a Native American social worker, saw Ms. W. had the ability to parent her children. RP535, 565. She also recognized that the dependency had damaged Ms. W.'s relationship with her children:

> There was a lot of blame towards her for how long they'd been in care, how long . . . what she needed to do so that they could go home. . . there was some underlying animosity and distrust, I believe, between the—the kids and—with their mom.

RP550.

Ms. Brown believed "being able to hear from a child's perspective and accept responsibility in that aspect I think was difficult for Mom," who blamed the Department and social workers for separating her from her children. RP550-51. This underlying tension of Ms. W. not being able to address her role

in the dependency with her children was "always at the surface." RP551.

Ms. Brown believed a "therapeutic intervention like family counseling" was "really important" for Ms. W. and her children to "deal with the heavy stuff," including how Ms. W.'s substance abuse impacted her relationship with her children. RP551; 570; 620-22. Ms. Brown believed it was "an intervention that was either going to make or break" the reunification. RP621.

Ms. Brown suspected Ms. W. struggled with substance abuse and spoke with Ms. Stark-Bell about how to "facilitate that conversation between Mom and the kids specifically related to the substance abuse." RP548, 620.

Ms. Stark-Bell understood Ms. Brown was recommending family therapy as a service that would "make or break Ms. W.'s capacity to address how her [substance] use had—had impacted and was still impacting the children." RP1354. Ms. Stark-Bell did not think "this service [was]

unnecessary; she claimed it was really about timing." RP1361. Rather than offer family therapy to help Ms. W. and her children achieve reunification, Ms. Stark-Bell thought family therapy was only appropriate "when reunification was imminent." RP1361. Considering the "best interests of the children," she declined to offer Ms. W. and her children the service, even though this service was intended to bring Ms. W. and her children closer and assist Ms. W. to address the issue of substance abuse that was keeping them apart. RP1360.

The Court of Appeals agreed this was not a "necessary service" because Ms. W. had not made the progress this service was intended to help her achieve. Op. at 9. Instead of seeing Ms. W. and her children's bond as a critical aspect of what makes a service necessary, the Department and court presumed Ms. W.'s children needed to be protected from her. The court's decision ignored that family therapy was intended to help Ms. W. address her substance abuse by coming to better understand

how it affected her children, and would have assisted in their reunification, which her family deeply craved.

b. This Court should accept review of this published opinion that invites unilateral decisions by social workers that are susceptible to racial bias.

When the parent and children are bonded and share the goal of reunification, "courts should . . . inquire into the quality and quantity of the services being provided and how those services directly protect family unit." John Thomas Halloran, *Families First: Reframing Parental Rights As Familial Rights in Termination of Parental Rights Proceedings*, 18 U.C. Davis J. Juv. L. & Pol'y 51, 88 (2014). Centering the family's needs, rather than a parent's perceived deficits, is also an important counterweight to the racial biases and assumptions that may shape a social worker's decisions about what services to offer Black families. White, 1 NW J.L. & Soc. Pol'y 303.

"America's legacy of racial separation" results in a lack of empathy across racial lines, which "makes it especially difficult— if not impossible—for most white Americans to

imagine Black children as part of their family." Dorothy E. Roberts, *The Value of Black Mothers' Work*, 26 Conn. L. Rev. 871, 878 (1994). This legacy makes it less likely a Black family will be treated as a unit that should be sustained, which impacts how the offer of services is viewed in a dependency. For instance, one study "found that only forty percent of black families receive family centered prevention based counseling compared with sixty percent of white families." White, 1 NW J.L. & Soc. Pol'y 303.

The power imbalance between a social worker and a parent is especially fraught because the social worker decides what to report and what to ask for from the court. RP470. In Ms. W.'s case, Ms. Stark-Bell disregarded Ms. Brown's recommendation based on her own assessment. RP1361. This decision ignored Ms. Brown's centering of Ms. W.'s connection to her family in assessing the necessity of the service.

The social worker's denial of family therapy based on her assessment of the children's "best interest" is "vulnerable to judgments based on cultural or class bias." *K.W.*, 199 Wn.2d at 155. Ms. Stark-Bell believed the children's best interests were that they be protected from their mother. This failure to recognize the deep connection and bond they shared as a family is a viewpoint tainted by bias. Roberts, 26 Conn. L. Rev. at 878.

This Court should accept review to address the court's approval of a social worker's unilateral decision to override a service provider of color's recommendation and whether the Department was required to consider the needs of Ms. W.'s bonded family in deciding what services were necessary before the court could terminate her parental rights.

F. CONCLUSION

M.L.W. requests this Court grant review. RAP 13.4(b); RAP 13.5A.

DATED this 18th day of October, 2023

In compliance with RAP 18.17, this document contains 4,977 words.

Respectfully submitted,

KATE L. BENWARD (WSBA 43651)
Washington Appellate Project (91052)
Attorneys for Petitioner
katebenward@washapp.org
wapofficemail@washapp.org

FILED
9/18/2023
Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In the Matter of the Dependency of M.L.W and I.A.W., Minor Children.	No. 83810-5-I (consolidated with No. 83811-3-I) PUBLISHED OPINION

MANN, J. — T.W. appeals a trial court order terminating her parental rights to two of her children, I.A.W. and M.L.W. T.W. argues that (1) the Department of Children, Youth, and Families (Department) failed to provide family therapy as a necessary service, (2) the Department failed to prove continuation of T.W.'s parental rights diminished I.A.W. and M.L.W.'s integration into a stable home, and (3) the trial court erred in denying her older child, M.W.'s, motion to intervene. We affirm.

I

A

T.W. has three children: her son, M.W., was born in 2006, her daughter, I.A.W., was born in 2011, and her other daughter, M.L.W., was born in 2014. M.W. and I.A.W. have no father listed on their birth certificate. It is unknown whether M.L.W. has a father

listed on her birth certificate. The children are not Indian children as defined in RCW 13.38.040 and 25 U.S.C. § 1903(4), and the federal and state Indian Child Welfare Acts do not apply.

The family has been involved with child welfare agencies based on allegations of negligent treatment and T.W.'s substance use since 2006. This is T.W.'s third dependency case.[1]

In August 2018, the Department filed a dependency petition because of the family's Child Protective Services history and recent reports that detailed the children being left unattended at a park, visiting a neighbor's home and asking for food, and being found stealing and unattended at a grocery store. The children also witnessed a physical altercation between T.W. and her partner that M.W. intervened in, and M.L.W. was burned by hot oil in an unattended pan. The Department placed the children in licensed foster care, where they remained throughout the dependency. Agreed orders of dependency were entered on March 11, 2019.

Throughout the dependency, T.W. was ordered to participate in a psychological evaluation and agreed service recommendations, substance abuse evaluation and treatment, urinalysis testing (UA), and in-home services if reunification was imminent.

In late 2019, T.W. completed a psychological evaluation with Dr. Tatyana Shepel, a clinical psychologist with a specialty in neuropsychology. At both evaluation sessions, T.W. was under the influence of substances and displayed drowsy behavior and slurred speech. Dr. Shepel diagnosed T.W. with depression, anxiety disorder, and a

[1] In 2006, the first dependency was filed but was dismissed soon after when T.W. promised to return to Arizona and rely on the support of family members living there. In 2011, the second dependency was filed and lasted one year but was dismissed in 2012 after T.W. completed substance abuse treatment.

personality disorder. Dr. Shepel recommended treating T.W.'s mental health along with her substance use. But Dr. Shepel found T.W. not amenable to treatment because she had an outright denial of problems and did not understand the need to change.

In December 2019, the Department filed a termination petition, alleging that T.W. was not engaged in substance abuse treatment and that she had not complied with Dr. Shepel's recommendations.

In March 2020, T.W. entered Seadrunar, an inpatient substance abuse treatment program, after her first social worker, Natasha Utevsky, helped her find the program. Days before the Department's final reunification planning meeting, T.W. violated a serious rule at Seadrunar by engaging in an intimate relationship with another participant. As a result, the reunification plan fell through. T.W. claimed that she was discriminated against and that they didn't place her children with her, so she left Seadrunar.

After T.W. left Seadrunar, social worker Rachael O'Riordan referred T.W. to Navos for substance abuse and mental health treatment. At Navos, T.W. had a positive UA, which increased the intensity of treatment. T.W. tested positive for methamphetamine, cocaine, and cannabis. From April to August 2021, T.W. denied her drug testing results.

At the request of T.W.'s Office of Public Defense social work team, in April 2021, social worker Colleen Stark-Bell referred T.W. to chemical dependency provider Shundra King at For The Culture for substance abuse treatment. King started T.W. with outpatient treatment, but increased that to intensive outpatient treatment after receiving positive UA results. King found that T.W. had a disconnect when she began addressing

T.W. about her positive UAs. But King finally convinced T.W. that inpatient treatment was necessary. The termination trial had begun in October 2021, but it was paused to allow T.W. to enter inpatient treatment. T.W. completed the inpatient program at Turning Point.

Substance use disorder counselor Joshua Sweet testified that although T.W. gained skills in inpatient treatment, she needed a year in outpatient treatment to succeed in recovery. T.W. was set to resume intensive outpatient treatment with King after Turning Point, but she did not come back. T.W. also did not participate in UA testing. Because T.W. was not participating in intensive outpatient treatment, King could not give a complete prognosis for T.W.

Just as King started as T.W.'s substance abuse counselor, Trenecsia Wilson became her mental health counselor. Wilson found that T.W. had an underlying issue of guardedness and minimizing that led her to have continuous issues. After Wilson reached out to schedule more sessions, T.W. did not return.

T.W. had a strong bond of affection with her children. The family had regular visits up to 12 hours each week. However, as the dependency went on, emotions during the visits escalated because the children were still living in foster care despite T.W.'s claim that she was doing everything she needed for them to return to her. The children showed both emotional and physical reactions to T.W.'s unfulfilled promises. I.A.W. would lose control of her bladder. M.L.W.'s confusion led her to believe that removal was her fault and that if she had been a "better kid," she could go home with T.W. I.A.W. and M.L.W. were in therapy during the dependency. Joan Freeman, I.A.W.

and M.L.W.'s guardian ad litem (GAL), testified that if the dependency were to continue for another year, it would decrease the children's sense of security and stability.

To help her understand I.A.W. and M.L.W.'s needs, and how she could meet them as a parent, social worker Stark-Bell referred T.W. to Lauren Brown, a therapist that provides in-home services. Brown oversaw T.W.'s completion of the Triple P parenting education service. Brown concluded that T.W. had basic parenting skills. But Brown remained concerned about the dynamic between T.W. and her children because T.W. continued to deny her substance use.

Brown recommended family therapy for T.W., I.A.W., and M.L.W. Stark-Bell did not, however, make the referral because, after consulting Christine Patuvak, I.A.W. and M.L.W.'s therapist, Stark-Bell determined that family therapy would not be appropriate for T.W. at that time because T.W. was still not admitting to substance use despite positive testing results.

B

The original termination filing involved all three children. But by the time of trial M.W. was 15 years old, and under RCW 26.33.160(1)(a) he had to agree to adoption.[2] On October 13, 2021, M.W.'s termination petition was dismissed after he did not agree to adoption.

On October 18, 2021, the Department and the court appointed special advocate (CASA) filed a joint pretrial motion requesting that M.W. not be allowed legal participation in the trial. In response, M.W. argued that he should be allowed to intervene to address the sibling relationship and the best interests of his sisters. The

[2] RCW 26.33.160(1)(a) requires the consent of the adoptee if they are 14 years of age or older.

Department and CASA argued that M.W. did not have a legal interest in his siblings' cases.

The trial court denied M.W.'s motion to intervene. The trial court found that M.W.'s intervention request was much like that of the older siblings in In re Dependency of J.D.P., 17 Wn. App. 2d 744, 487 P.3d 960 (2021). The trial court determined that, as in J.D.P., M.W.'s interests in ongoing contact with his siblings are considered in dependency and adoption proceedings, so they are not properly considered in the termination proceeding.

The trial court also denied permissive intervention. The trial court found that M.W. had not shown a common question of law or fact that would support permissive intervention. The termination trial went forward without M.W.'s participation.

The termination trial lasted 24 days between October 2021 and February 2022. Seventeen witnesses testified at the trial and over 200 exhibits were admitted into evidence. The trial court found that despite numerous services and programs offered to T.W., she had not progressed in her core parental deficiencies of substance abuse and mental health. The trial court also observed that T.W. was still in denial and not being honest with herself or the court when it came to her substance use and substance use disorder. Given this, the trial court did not believe that T.W. could successfully remedy her substance abuse in the near future for her children. The trial court also found that family therapy was not a necessary service because reunification was not imminent. On February 18, 2022, the trial court terminated T.W.'s parental rights to I.A.W. and M.L.W.

T.W. appeals.

II

An appellate court's role in reviewing a trial court's decision to terminate parental rights is to determine whether substantial evidence supports the trial court's findings of fact by clear, cogent, and convincing evidence. In re Parental Rights to K.M.M., 186 Wn.2d 466, 477, 379 P.3d 75 (2016). Evidence is substantial if, when viewed in the light most favorable to the prevailing party below—here, the Department—it is such that a rational trier of fact could find the fact in question by a preponderance of the evidence. In re Dependency of M.P., 76 Wn. App. 87, 90-91, 882 P.2d 1180 (1994). Termination proceedings are highly fact-specific and, as such, deference to the trial court is particularly important. In re Welfare of Hall, 99 Wn.2d 842, 849, 664 P.2d 1245 (1983). We defer to the trial court's determinations of witness credibility and the persuasiveness of the evidence and will not disturb those findings unless clear, cogent, and convincing evidence does not exist in the record. In re Dependency of K.R., 128 Wn.2d 129, 144, 904 P.2d 1132 (1995). We review whether the trial court's findings of fact support its conclusions of law de novo. K.M.M., 186 Wn.2d at 477.

A

T.W. argues that family therapy was a necessary service because the service would have helped the entire family understand the impact of T.W.'s substance abuse and communicate openly and honestly. We disagree.

RCW 13.34.180(1)(d) requires a petition seeking termination of a parent and child relationship to include a provision of ordered and necessary services. Family therapy was neither ordered nor necessary for T.W. Court-ordered services for T.W. included substance abuse treatment, mental health counseling, and parent education.

Family therapy was not included in ordered services and T.W. does not argue otherwise.

Family therapy was also not a "necessary" service as that term is used in RCW 13.34.180(1)(d) because necessary services are those which are "needed to address a condition that precludes reunification of the parent and child." K.M.M., 186 Wn.2d at 480 (internal quotation omitted). T.W. could have reunified with M.L.W. and I.A.W. if she could have achieved stability in sobriety and addressed her mental health issues. Because she did not, T.W. could not reunify with M.L.W. and I.A.W. and family therapy was largely irrelevant.

Family therapy was also not necessary for reunification because, according to Brown, T.W. did have basic parenting skills. The reason Brown suggested family therapy was to deepen the relationship between T.W. and her children and address the trauma caused by T.W.'s denial of issues despite the children not being returned home. But if she were sober and stable in her mental health, Brown testified that T.W. could meet the basic needs of her children for food, shelter, hygiene, and attention. Refinement of the parent-child relationship was to assist in making a transition successful, not to help make it happen. As the trial court noted, in-home services were ordered to begin when return home was "imminent," and at the time of termination, that was far off.

T.W. claims that social worker Stark-Bell's delay of family therapy was an abuse of power and in disregard of therapist Brown's recommendation. But the trial court weighed the testimony of many individuals, including Brown, in concluding family therapy was not a necessary service to achieve reunification. Brown called family

therapy a "make or break" service for a reunification that was not on the horizon at the time of termination. Every provider who worked with T.W., including Brown and T.W.'s substance abuse and mental health counselors, agreed that T.W.'s denial of issues and lack of sobriety impeded her functioning. When termination was ordered, T.W. was not in substance abuse treatment and was not providing UAs.

The trial court did not err in concluding that family therapy was not an ordered or necessary service under RCW 13.34.180(1)(d).

B

T.W. argues that termination of her parental rights was not necessary for I.A.W. and M.L.W.'s integration into a permanent home because the children were well adjusted in their long-term foster home while maintaining a strong and loving bond with T.W. We disagree.

RCW 13.34.180(1)(f) requires the Department to establish by clear, cogent, and convincing evidence that continuation of the parent-child relationship diminishes the children's prospects for early integration into a stable and permanent home. In re Dependency of A.M.F., 1 Wn.3d 407, 417, 526 P.3d 32 (2023). The Department can prove this element by establishing either that: (1) the parent-child relationship prevents the child from placement in an existing permanent home or (2) the parent-child relationship has a damaging and destabilizing effect on the child that would negatively impact the child's integration into any permanent and stable placement. In re Welfare of R.H., 176 Wn. App. 419, 428, 309 P.3d 620 (2013). The Department proved, and the trial court found, that both alternative ways of demonstrating this element had been met.

T.W. claims that because the children were in a stable placement at the time of the termination, and could remain there without change while the dependency continues, RCW 13.34.180(1)(f) cannot be shown. T.W.'s claim has been rejected repeatedly. For example, in In re Dependency of A.D., 193 Wn. App. 445, 449-50, 376 P.3d 1140 (2016), the mother suffered from depression and her children were placed in foster care. The mother argued that because her children were already in a stable placement, maintaining her legal relationship to them had no impact. A.D., 193 Wn. App. at 457. While the trial court agreed with the mother, this court reversed concluding that RCW 13.34.180(1)(f) was satisfied where the Department demonstrated that, but for the legal relationship between the parent and children, there was a high probability that the children could find a permanent adoptive home. A.D., 193 Wn. App. at 458 (citing R.H. 176 Wn. App. 428; see also In re Dependency of A.C., 123 Wn. App. 244, 98 P.3d 89 (2004)); A.M.F., 1 Wn.3d at 418 (RCW 13.34.180(1)(f) satisfied where without the termination of parental rights, the child would not be eligible for adoption).

Substantial evidence supports the trial court's finding that M.L.W. and I.A.W. are together in a long-term placement that will be their adoptive home, and that adoption cannot be final without termination.

The Department also proved that the parent-child relationship has a damaging and destabilizing effect on the children that would negatively impact the children's integration into any permanent and stable placement. When a parent's interactions with a child make that child emotionally unstable so that they cannot integrate into another home, RCW 13.34.180(1)(f) is satisfied. In re Dependency of K.D.S., 176 Wn.2d 644, 702-03, 294 P.3d 695 (2013). I.A.W. and M.L.W. showed both emotional and physical

reactions to T.W.'s unfulfilled promises as the dependency continued. I.A.W. would lose control of her bladder and M.L.W.'s confusion led her to believe that removal was her fault. I.A.W. and M.L.W. were in therapy during the dependency, and the children's GAL testified that if the dependency were to continue for another year, it would decrease the children's sense of security and stability. Even though her children felt insecure and unstable, T.W. continued to deny her substance use and failed to participate in further treatments.

The trial court did not err in concluding that RCW 13.34.180(1)(f) was satisfied.

C

T.W. argues that she was entitled to have the court consider a guardianship under recent 2022 amendments to RCW 13.34.180(1)(f) requiring the court to consider whether a guardianship is available. We disagree.

Effective June 9, 2022, the legislature amended RCW 13.34.180(1)(f). Under the amended statute, when determining whether the continuation of the parent and child relationship clearly diminishes the child's prospects for early integration into a stable and permanent home, the court must consider "the efforts taken by the [D]epartment to support a guardianship and whether a guardianship is available as a permanent option for the child."[3]

Courts generally presume that statutes apply prospectively unless the legislature expresses a contrary intent. In re Marriage of Hawthorne, 91 Wn. App. 965, 967, 957 P.2d 1296 (1988). There is an exception for remedial statutes where retroactive application would further its remedial purpose. Hawthorne, 91 Wn. App. at 967-68. A

[3] See In re Dependency of G.C.B., No. 84772-4-I, slip op. at 15 (Wash. Ct. App. Sept. 11, 2023).

statute is remedial and has retroactive application when it relates to practice, procedure, or remedies and does not affect a substantive or vested right. Hawthorne, 91 Wn. App. at 968.

The amendment to RCW 13.34.180(1)(f) was not effective until after the trial court terminated T.W.'s parental rights. As a result, there is nothing in the record before us to suggest that a guardianship was available or that a petition for guardianship had been filed. T.W. argues that the 2022 amendments to RCW 13.34.180(1)(f) are remedial in nature and thus apply retroactively because the appeal is pending. But it appears the 2022 revision of RCW 13.34.180(1)(f) is not remedial because it creates a new right of action in favor of T.W. by requiring the court to consider whether the Department affirmatively made efforts to "support a guardianship," and whether a guardianship is available as a permanent option before terminating her parental rights. Because the amended statute is not remedial, it does not apply retroactively.

III

A

T.W. argues that the trial court erred in denying M.W.'s motion to intervene as a matter of right. We disagree.

Civil Rule 24 governs motions to intervene in dependency and termination proceedings. J.D.P., 17 Wn. App. 2d at 762. A party seeking intervention as a matter of right must establish that (1) the application for intervention was timely, (2) the applicant claims an interest which is the subject of the action, (3) the applicant is so situated that the disposition will impair or impede the applicant's ability to protect the interest, and (4) the applicant's interest is not adequately represented by existing parties

to the litigation. J.D.P., 17 Wn. App. 2d at 762. Denial of a motion to intervene as a matter of right is reviewed for error of law. J.D.P., 17 Wn. App. 2d at 762. The parties do not dispute that M.W. timely moved for intervention. Thus, we address the three remaining factors in turn.

First, M.W. cannot claim an interest which is the subject of the action because siblings do not have a right to be involved in a termination proceeding of a parent and another sibling. This court determined in J.D.P. that siblings of a dependent child, although they may have strong feelings about their contacts with that child, have no legal interest beyond what is found in dependency statutes for limited contact facilitation by the Department. 17 Wn. App. 2d at 762. We held that siblings do not have a legal right to intervene at termination:

> While certainly the older siblings may have a natural interest in the fate of their younger siblings, as discussed above, the [Juvenile Court's Act ch. 13.34 RCW] focuses on the interests of siblings in dependency and placement proceedings, not in termination proceedings. There is already a forum for the older dependent siblings to address their relationships with the younger siblings: their own dependency proceedings. A dependent child's contact with siblings is addressed in the statutes describing dependency procedures, not termination procedures.

J.D.P., 17 Wn. App. 2d at 762.

This case is factually consistent with J.D.P. because M.W. is in the same position as that of the older siblings in J.D.P. In J.D.P., the mother had four children. 17 Wn. App. 2d at 749. Because of the mother's substance use disorder, the Department filed for termination of parental rights to the younger siblings while they were placed in foster care. J.D.P., 17 Wn. App. 2d at 751-52. The older siblings moved to intervene in the termination proceeding of their younger siblings. J.D.P., 17 Wn. App. 2d at 752. But as explained above, the court denied intervention as a matter of right because "a

dependent child's contact with siblings is addressed in the statutes describing dependency procedures, not termination procedures." J.D.P., 17 Wn. App. 2d at 762.

Like the mother in J.D.P., T.W. had three children. Because of T.W.'s substance use disorder, the Department placed I.A.W. and M.L.W. in foster care and filed for termination of parental rights. M.W. was the oldest sibling and he sought to intervene in the termination proceeding. Thus, like the holding in J.D.P., M.W. did not have a legal interest beyond what is found in dependency statutes.

Even if M.W. had a right to intervene in his sisters' termination proceeding, it is not T.W.'s right to argue. M.W. could have appealed the trial court's order denying his intervention and prohibiting his legal participation in his sisters' termination proceeding. See, e.g., Westerman v. Cary, 125 Wn.2d 277, 280, 892 P.2d 1067 (1994) (a prosecutor appeals the superior court's denial of his motion to intervene). T.W. lacks standing to argue M.W.'s alleged constitutional right.

Second, the disposition will not impair or impede M.W.'s ability to protect his interest because he had other avenues to participate in the termination trial if he wished to. Even though the trial court denied M.W.'s motion to intervene as a matter of right, the Department and CASA's joint motion suggested that M.W. could participate in the termination trial by providing testimony or a declaration. M.W. chose not to do so.

Further, while T.W. claims that M.W. and his sisters' legal relationship is not protected absent a separate legal agreement, the evidence showed that M.W. was having liberal visits with his sisters at his discretion. Stark-Bell testified that I.A.W. and M.L.W.'s foster parents even offered to be the caregivers to M.W. to facilitate his bond with his sisters, but M.W. preferred to remain where he was. Thus, while T.W.'s claim

that M.W.'s right to see his sisters cannot be forced upon his sisters' adoptive family absent a legal agreement is legally correct, as a factual matter, the adoptive family was supportive of M.W. maintaining his bond with his sisters.

Third, M.W.'s interest is adequately represented by existing parties to the litigation because all the parties involved in the termination proceeding are legally represented. M.W. was 15 years old and he did not agree to adoption; therefore, his termination petition was dismissed. Thus, only I.A.W. and M.L.W. were subject to the termination petition. I.A.W., M.L.W., and T.W. were legally represented. There was no interest not being represented.

The trial court did not err in denying M.W.'s motion to intervene as a matter of right.

B

T.W. argues that the trial court erred in denying M.W.'s permissive intervention because T.W. and M.W. shared an interest in maintaining a legally binding family relationship with I.A.W. and M.L.W. We disagree.

Under CR 24(b)(2), a trial court may grant permissive intervention where the applicant's claim and the main action have a question of law or fact in common. J.D.P., 17 Wn. App. 2d at 763. "The decision of a trial court to allow or deny permissive intervention in a dependency is within the court's informed discretion and will not be disturbed absent an abuse of discretion." J.D.P., 17 Wn. App. 2d at 763. A trial court abuses its discretion when no reasonable person would take the position taken by the trial court. J.D.P., 17 Wn. App. 2d at 763.

T.W. and M.W. did not have a shared interest in maintaining a family relationship with I.A.W. and M.L.W. As the Department correctly points out, T.W. was not a crucial connector between the siblings. So, the relationship between M.W. and his siblings was not relevant to whether termination was in the children's best interests.

The trial court did not err in denying permissive intervention.

C

T.W. argues in the alternative that M.W. has a constitutional right to family integrity that entitled M.W. to intervene. We disagree.

T.W. bases her constitutional argument on her claim that M.W. has a right to "family integrity" which she describes as applicable in sibling to sibling relationships. T.W. cites Santosky v. Kramer, 455 U.S. 745, 760, 102 S. Ct. 1388, 71 L. Ed. 2d 599 (1982), which held that termination matters should be decided based on clear, cogent, and convincing evidence. The quote T.W. relies on addresses the interest that: "[T]he child and his parents share . . . in preventing erroneous termination of their natural relationship." Santosky, 455 U.S. at 760. But the right expressed in Santosky is expressed in the singular—the right the child and his parents share. Santosky does not address a right between siblings or one sibling's right to have a say over another sibling's relationship with their parents.

T.W. also cites In re Dependency of MSR, 174 Wn.2d 1, 271 P.3d 234 (2012), in support of her claim that Washington recognizes a due process right to maintain the integrity of family relationships. MSR, however, examined what rights children have in a proceeding where their own legal relationship with their parent may be terminated in the context of whether counsel must be appointed for the child at termination. 174 Wn.2d at

15-20. While T.W. is correct that the court noted a child's interest in "maintaining the integrity of family relationships, including the child's parents, siblings, and other familiar relationships," those interests arose because the children were directly involved in the termination proceeding—not because they were siblings of other children going through termination. MSR, however, does not confer on one sibling a constitutional interest in the parent-child relationship between another sibling and the shared parent. 174 Wn.2d at 15-20.

The trial court was not required to grant intervention to M.W. based on a constitutional right to family integrity.

We affirm.

Mann, J.

WE CONCUR:

Bjorgen, J.

Cheung, J.

DECLARATION OF FILING AND MAILING OR DELIVERY

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the below date, the original document **Motion for Discretionary Review to the Supreme Court** to which this declaration is affixed/attached, was filed in the **Washington State Supreme Court** under **COA Case No. 83810-5-I**, and a true copy was mailed with first-class postage prepaid or otherwise caused to be delivered to the following attorney(s) or party/parties of record at their regular office or residence address as listed on ACORDS:

☒ respondent Patricia Allen, AAG
[patricia.allen@atg.wa.gov]
[SHSSeaEF@atg.wa.gov]
Office of the Attorney General

☐ petitioner

☐ Attorney for other party

MARIA ANA ARRANZA RILEY, Paralegal
Washington Appellate Project

Date: October 18, 2023

WASHINGTON APPELLATE PROJECT

October 18, 2023 - 4:24 PM

Filing Motion for Discretionary Review of Court of Appeals

Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	Case Initiation
Appellate Court Case Title:	In re the Dependency of M.L.W. (838105)

The following documents have been uploaded:

- DCA_Motion_Discretionary_Rvw_of_COA_20231018162416SC416478_2498.pdf
  This File Contains:
  Motion for Discretionary Review of Court of Appeals
  The Original File Name was washapp.101823-01.pdf

A copy of the uploaded files will be sent to:

- casa.group@kingcounty.gov
- kathleen.martin@kingcounty.gov
- patricia.allen@atg.wa.gov
- shsseaef@atg.wa.gov

Comments:

Sender Name: MARIA RILEY - Email: maria@washapp.org
Filing on Behalf of: Kate Benward - Email: katebenward@washapp.org (Alternate Email: wapofficemail@washapp.org)

Address:
1511 3RD AVE STE 610
SEATTLE, WA, 98101
Phone: (206) 587-2711

Note: The Filing Id is 20231018162416SC416478