FILED
SUPREME COURT
STATE OF WASHINGTON
APRIL 30, 2020
BY SUSAN L. CARLSON
CLERK

THE SUPREME COURT OF WASHINGTON

IN THE MATTER OF STATEWIDE RESPONSE BY WASHINGTON STATE COURTS TO THE COVID-19 PUBLIC HEALTH EMERGENCY	))))))	EXTENDED AND REVISED ORDER RE: DEPENDENCY AND TERMINATION CASES No. 25700-B-622

WHEREAS, in light of the novel coronavirus (COVID-19) pandemic, on March 18, 2020, the Court entered Order No. 25700-B-606, paragraph 14 of which indicated the Court would consider additional proposals regarding dependency and termination matters; and

WHEREAS, on March 26, 2020, Governor Jay Inslee issued Proclamation 20-33 and Directive 20-02 regarding in-person visits with children in foster care and remedial services; and

WHEREAS, on March 27, 2020, The United States Department of Health and Human Services Children's Bureau issued guidance concerning the appropriate handling of child welfare matters during the COVID-19 pandemic; and

WHEREAS, the Court has received requests by the Office of Public Defense and the Office of Civil Legal Aid to adopt a statewide Order to ensure consistency of practice and due process rights of parents and children during the present COVID-19 public health emergency; and

WHEREAS, the Court has received and reviewed responses to these requests from the Attorney General's Office and the Department of Children, Youth, and Families as well as the

Superior Court Judges Association; and

WHEREAS, it is necessary to modify certain provisions of the Court's April 3, 2020 Order re: Dependency and Termination Cases in order to better guide court operations going forward;

NOW, THEREFORE, pursuant to the Court's authority to administer justice and to ensure the safety of the courts, personnel, litigants, and the public during this public health emergency, it is hereby ORDERED:

1. Shelter care hearings are emergency matters. Between now and a reasonable time after courthouse-based operations resume, courts and all parties in shelter care hearings shall make their best efforts to make it possible for the shelter care emergency matter to be heard by video or in-person provided social distancing and other public health measures are strictly observed. These efforts shall include working together to address alternative means of providing and accepting discovery, client contact information, and pleadings.
2. Nothing in this order alters the rights of parents under RCW 13.34.090. Attorneys for the parent(s) and the child(ren) must be given contact information for the client and a copy of the dependency petition in order to allow an opportunity to review the supervising agency records prior to the hearing.
3. Juvenile courts shall undertake an individualized determination at as early a time as is practicable whether appointment of an attorney is indicated under the criteria and considerations set forth in *In re Dependency of E.H.*, 191 Wn.2d 872, 427 P.3d 587 (2018), and shall enter findings on the record regarding decisions of whether to appoint attorneys for children in such cases.

4. When contested matters are not heard in person, the Court must allow the parents and children the opportunity to speak confidentially with their attorneys prior to cross-examination of witnesses.
5. Between now and a reasonable time after courthouse-based operations resume, courts are encouraged to hear non-emergency matters and have the authority to hear these matters by video, telephone, or other means that do not require in-person attendance, provided that the parties are able to suitably participate in the hearings. These include procedural and substantive motions. Courts are encouraged to resume in-person hearings for non-emergency matters provided social distancing and other public health measures are strictly observed.
6. No default orders for dependency fact-findings, termination fact-findings, or Title 13 guardianship fact-findings shall be entered until a reasonable time after courthouse-based operations resume, if these require personal service and in-person court appearances that would jeopardize public health and safety. Default orders may be entered if (a) the defaulted party was served by publication, based upon a court finding that this alternative service was authorized by RCW 13.34.080 (1); or (b) the defaulted party was personally served or accepted service and the court finds, based upon evidence provided by the moving party, that the defaulted party was aware of or had been actually provided with notice and written information on how to participate in the scheduled hearing by telephone, video or other means. The court may set aside a default order if the party shows they were unable to appear or participate.

7. While in general video or other forms of virtual visitation may serve on a temporary basis to preserve family connections during the time of the public health emergency as described in the Governor's Proclamations, such visitation will not be sufficient in some cases, because it cannot be accessed by the parent or child, or both, and the disruption/denial of visitation will not be in the best interests of the child. If, pursuant to the Governor's Proclamation 20-33 and Directive 20-02, DCYF modifies in-person visits between children and their parents or children and their siblings, DCYF will notify the parties of any modification, the child if 12 or older or their counsel if represented, and the CASA/Guardian ad Litem. While this emergency order remains in effect, courts should hear motions by a parent or child seeking in-person visits regardless of whether they are considered emergency motions. Courts should rule on motions seeking in-person visits based on the relevant facts of the case, the relevant dependency statutes, case law, Governor's Proclamations and Directives, guidance from the United States Department of Health and Human Services Children's Bureau, public health risks resulting from exposure to COVID-19, the child's age and developmental level, the feasibility of in-person and remote visitation, functional capacity of the parent and child, the child's best interests, and the child's health, safety, and welfare. Any court-ordered in-person visitation shall mandate the specific health, safety and welfare protocols that must be followed.
8. As the COVID-19 emergency has caused some service delivery to be disrupted, courts are encouraged to consider whether parents were out of compliance with their services plans due to the COVID-19 emergency, and whether such plans shall be extended.

9. Exceptional reasons pursuant to RCW 13.34.070(1) exist to continue all dependency fact-finding hearings that are set between now and a reasonable time after courthouse-based operations resume, unless an agreed order of dependency is entered, or such hearings can be held by video, equally accessible to all parties, or in person provided that social distancing and other public health measures are strictly observed.
10. For hearings set between now and a reasonable time after courthouse-based operations resume, juvenile courts may find that the COVID-19 pandemic is a basis to find a good cause exception under RCW 13.34.145(5)(a) not to order the Department of Children, Youth, and Families to file a petition to terminate parental rights.
11. Nothing in this order prevents courts from developing and implementing jurisdiction-specific procedures that meet the directives outlined herein.
12. The Supreme Court may extend the time frames in this Order as required by continuing public health emergency, and if necessary, will do so by further order.

DATED at Olympia, Washington this 30th day of April, 2020.

For the Court

Stephens, C.J.
CHIEF JUSTICE