FILED
SUPREME COURT
STATE OF WASHINGTON
OCTOBER 14, 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-647

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 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 30, 2020 Extended and Revised 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. Agreed orders may be presented ex parte, however, contested matters must afford due process, as determined by application of the Mathews v. Eldridge balancing test.
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. The Court shall ensure these private consultations are not recorded.
5. Consistent with its due process determinations, the court shall make reasonable accommodation for attorneys, parties, and other participants who, due to disability or high risk of infection, the court determines are unable to safely appear at the proceeding in person without compounding said risk despite the court's health and safety precautions. Reasonable accommodation shall include virtual participation in the hearing.
6. Except as otherwise ordered herein, any courts that are not conducting courthouse-based operations are encouraged to hear non-emergency matters and may 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 nonemergency matters provided social distancing and other public health measures are strictly observed.
7. 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 both personal service and in-person court appearances that would jeopardize public health and safety. If they have not done so already, courts

should post in a public location notice of a process by which parties appearing in response to notice of a hearing on a petition may do so without jeopardizing their health and safety. This public notice does not constitute actual notice. 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.

8. While this emergency order remains in effect, courts should hear motions about visitation regardless of whether they are considered emergency motions. Courts should rule on motions about visitation 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.

9. 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.
10. 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: a) the court orders that such hearing may proceed with participation by a method or combination of methods that affords due process, as determined by application of the *Mathews v. Eldridge* balancing test; or b) an agreed order of dependency is entered, or such hearings can be held by video, equally accessible to all parties; or c) the hearing proceeds in-person provided that social distancing and other public health measures are strictly observed.
11. As referenced by guidance from the Children's Bureau and Washington Courts, Resuming Dependency Fact Finding and Termination of Parental Rights Trials in Washington State: Guidelines for Operations During the COVID-19 Pandemic, June 2020, courts shall decide whether to conduct or continue a trial on a petition to terminate parental rights or establish a Title 13 guardianship. If the trial proceeds by remote means, the court shall decide on a case-by-case basis what trial procedures to use, applying the *Mathews v. Eldridge* factors, to ensure the respondent is afforded due process. *See* 424 U.S. 319, 335, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976). The Court has a strong preference in favor of respondents being allowed to present testimony in-person when it can be done safely and the respondent wishes to do so. If, after weighing the *Mathews* factors, the

court determines that due process requires the trial to be conducted in-person, and the court cannot safely do so, the court shall order a continuance.

12. In order to provide courts an opportunity to decide whether it is necessary to craft additional safeguards when a trial will be conducted with remote participation, courts should, throughout the proceedings, invite participants to inform them if they believe the court's trial procedures are inadequate to meet due process requirements.
13. 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.
14. Nothing in this order prevents courts from developing and implementing jurisdiction specific procedures that meet the directives outlined herein.
15. 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 14th day of October, 2020.

For the Court

Stephens, C.J.

CHIEF JUSTICE