FILED
SUPREME COURT
STATE OF WASHINGTON
APRIL 3, 2020
BY SUSAN L. CARLSON
CLERK

# THE SUPREME COURT OF WASHINGTON

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| IN THE MATTER OF STATEWIDE RESPONSE BY WASHINGTON STATE COURTS TO THE COVID-19 PUBLIC HEALTH EMERGENCY | ) ) ) ) | ORDER RE: DEPENDENCY AND TERMINATION CASES<br><br>NO. 25700-B-614 |

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;

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 through May 5, 2020, 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 telephone, video, or other means that do not require in-person attendance. 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. Courts have the authority to determine that any hearing in a dependency case is an emergency matter, depending on the facts and circumstances of that case, except that shelter care hearings are emergency matters pursuant to Section 1 of this order.
6. No default orders for dependency fact-findings, termination fact-findings, or Title 13 guardianship fact-findings shall be entered until after May 5, 2020, if these involve

personal service and in-person court appearances that would jeopardize public health and safety.

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. Upon motions by a parent or child seeking in-person visits, courts should consider whether such motions present an emergency, and if they do present an emergency, hear them by remote means if possible. 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 May 5, 2020, unless an agreed order of dependency is entered by telephone, video, or other means that do not require in-person attendance.
10. For hearings set between now and May 5, 2020, 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 3rd day of April, 2020.

For the Court

Stephens, C.J.
CHIEF JUSTICE