

FILED  
Court of Appeals  
Division II  
State of Washington  
7/30/2021 11:40 AM  
No. 55647-2

---

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION TWO

---

In Re Dependency of P.D., a Minor Child,

State of Washington/Department of Children, Youth, and Families,  
Respondent,

v.

P.D.,  
Petitioner.

---

BRIEF OF *AMICI CURIAE* WASHINGTON DEFENDER  
ASSOCIATION, LAVENDER RIGHTS PROJECT, ACLU-WA, LEGAL  
COUNSEL FOR YOUTH AND CHILDREN, AND QLAW  
FOUNDATION IN SUPPORT OF CHILD-PETITIONER'S  
MOTION FOR DISCRETIONARY REVIEW

---

<p>D'Adre Cunningham, WSBN 32207 Washington Defender Ass'n 110 Prefontaine Pl S, Ste 610 Seattle, WA 98104 T: (206) 623-4321 E: <a href="mailto:dadre@defensenet.org">dadre@defensenet.org</a></p> <p>Attorney for amicus curiae WASHINGTON DEFENDER ASS'N</p>	<p>Megan Dawson, WSBN 51471 Lavender Rights Project 1004 MLK Way Tacoma, WA 98405 T: (206) 639-7955 E: <a href="mailto:megan@lavenderrightsproject.org">megan@lavenderrightsproject.org</a></p> <p>Attorney for amicus curiae LAVENDER RIGHTS PROJECT</p>
<p>Nancy Talner, WSBN 11196 Yvonne Chin, WSBN 50389 Antoinette M. Davis, WSBN 29821 ACLU of Washington Foundation P.O. Box 2728 Seattle, WA 98111 T: (206) 624 2184</p>	<p>Erin L. Lovell, WSBN 36614 Legal Counsel for Youth and Children P.O. Box 28629 Seattle, WA 98118 T: (206) 494-0323 E: <a href="mailto:erin@lcywa.org">erin@lcywa.org</a></p>

<p>E: <a href="mailto:talner@aclu-wa.org">talner@aclu-wa.org</a>  <a href="mailto:ychin@aclu-wa.org">ychin@aclu-wa.org</a>  <a href="mailto:tdavis@aclu-wa.org">tdavis@aclu-wa.org</a></p> <p>Attorneys for amicus curiae  ACLU-WASHINGTON</p>	<p>Attorney for amicus curiae  LEGAL COUNSEL FOR YOUTH AND  CHILDREN</p>
<p>Denise Diskin, WSBN 41425  Executive Director  QLaw Foundation of Washington  101 Yesler Way, #300  Seattle, Washington, 98104  T: 206-483-2725  E: <a href="mailto:denise@qlawfoundation.org">denise@qlawfoundation.org</a></p> <p>Attorney for amicus curiae  QLAW FOUNDATION OF WASHINGTON</p>	

## TABLE OF CONTENTS

I.	IDENTITY AND INTEREST OF <i>AMICI CURIAE</i> .....	1
II.	INTRODUCTION.....	1
III.	ISSUES TO BE ADDRESSED BY AMICI .....	2
A.	Did the dependency court commit probable error under RAP 2.3(b)(3) when it denied the child’s requests on account of his transgender identity and his age? .....	2
IV.	STATEMENT OF THE CASE .....	2
V.	ARGUMENT .....	3
A.	The dependency court committed probable error when it denied M.D.’s motion based on his transgender identity.....	3
1.	The court’s departure from accepted court practice was manifestly unreasonable and based upon untenable grounds. ....	3
2.	The court’s failure to affirm the child’s dignity, personal autonomy, and emotional wellbeing was manifestly unreasonable.5	
3.	The court’s failure to ensure this dependent child’s wellbeing is protected during reunification was based on untenable grounds--his age.....	10
VI.	CONCLUSION .....	12

## TABLE OF AUTHORITIES

### Washington Supreme Court Cases

<i>In re Marriage of Muhammad</i> , 153 Wn.2d 795, 108 P.3d 779 (2005).....	
.....	5, 12, 14
<i>In re Welfare of C.S.</i> , 168 Wn.2d 51, 225 P.3d 953 (2010).....	13
<i>Matter of B.P. v. H.O.</i> , 186 Wn.2d 292, 376 P.3d 350 (2016) .....	13

### Washington Court of Appeals Cases

<i>Matter of Det. of C.S.</i> , No. 80655-6-I, 2021 WL 2313409 (Div. 1 June 7, 2021) .....	4
<i>State v. Perry</i> , No. 35476-8-III, 12 Wn.App.2d 1010, 2020 WL 550253 (Div. 3 February 4, 2020) .....	5

### Other Cases

<i>Doe v. City of New York</i> , 976 N.Y.S.2d 360 (Sup. Ct. 2013).....	9
<i>Farmer v. Haas</i> , 990 F.2d 319 (7th Cir. 1993) .....	4
<i>Jonathan L. v. Superior Ct.</i> , 81 Cal. Rptr. 3d 571 (Ct. App. 2008).....	3
<i>Kluge v. Brownsburg Cmty. Sch. Corp.</i> , No. 1:19-cv-2462-JMS-DLP, 2021 WL 2915023 (S.D. Ind. July 12, 2021).....	9
<i>Kosilek v. Spencer</i> , 774 F.3d 63 (1st Cir. 2014) .....	4
<i>Prescott v. Rady Children's Hosp.-San Diego</i> , 265 F. Supp. 3d 1090 (S.D. Cal. 2017).....	9
<i>Stanley v. City of New York</i> , 141 N.Y.S.3d 662 (Sup. Ct. 2020).....	9
<i>Supre v. Ricketts</i> , 792 F.2d 958 (10th Cir. 1986).....	4

### Statutes

RCW 13.34.020 .....	9
RCW 13.34.025 .....	11

RCW 13.34.105 .....	12
RCW 13.34.136 .....	11
RCW 13.34.138 .....	11
RCW 13.34.145 .....	11

## **Rules**

CJC 2.2.....	10
CJC 2.3.....	10
CJC 2.6.....	10
GR 14.1 .....	5
RAP 2.3.....	2

## **Constitutional Provisions**

U.S. Const. XIV Amend. ....	10
Wa. Const. art. I, sect. 3.....	10

## **Other Authorities**

Anne A. Fast & Kristina R. Olson, <i>Gender development of preschool transgender children</i> . 89 Child Dev. 2, March 2018, at 620 .....	9, 10
Caitlyn Ryan, Ph.D., <i>Helping Families Support Their Lesbian, Gay, Bisexual, and Transgender (LGBT) Children</i> , National Center for Cultural Competence, Georgetown University Center for Child and Human Development (2009).....	8
Clare Wilson & Laura A. Cariola, <i>LGBTQI+ Youth and Mental Health: A Systematic Review of Qualitative Research</i> , 5 Adolesc. Rsch. Rev. 6, June 2020, at 187 .....	6, 7, 8
Hudaisa Hafeez et al., <i>Health Care Disparities Among Lesbian, Gay, Bisexual, and Transgender Youth: A Literature Review</i> , 9 Cureus 4, April 2017 .....	8

James R. Rae et al, <i>Predicting Early-Childhood Gender Transitions</i> , 30 Psychological science 5, March 2019, at 669 .....	9, 10
Kristina R. Olson et al., <i>Gender cognition in transgender children</i> . 26 Psychological Science 4, April 2015, at 467 .....	9, 10
Kristina R. Olson, <i>Prepubescent transgender children: What we do and do not know</i> , 55 J. Am. Acad. of Child & Adolesc. Psychiatry 3, March 2016, at 155.....	6
Leah E. Lurye et al., <i>Gender identity and adjustment: Understanding the impact of individual and normative differences in sex typing</i> , 120 New Dir. Child Adolesc. Dev. 31 (2008).....	6, 7
National Juvenile Defender Center (NJDC) & State Justice Institute (SJI), National Council of Juvenile and Family Court Judges (NCJFCJ), <i>Access to Juvenile Justice Irrespective of Sexual Orientation, Gender Identity, and Gender Expression (SOGIE) Bench card 2</i> (2017) .	3, 4, 11
Stephen T. Russell et al., <i>Chosen Name Use Is Linked to Reduced Depressive Symptoms, Suicidal Ideation, and Suicidal Behavior Among Transgender Youth</i> , 63 J Adolesc Health 4, Oct. 2018, at 503.....	7
Substance Abuse and Mental Health Servs. Admin., <i>Top Health Issues for LGBT Populations Information &amp; Resource Kit</i> (2012).....	1
Teresa DeCrescenzo & Gerald P. Mallon, <i>Serving Transgender Youth: The Role of the Child Welfare System</i> (2000).....	12
Walter Meyer III et al., <i>The Harry Benjamin International Gender Dysphoria Association's Standards of Care for Gender Identity Disorders</i> (6th ed. 2001) .....	12

## **I. IDENTITY AND INTEREST OF *AMICI CURIAE***

The identity and interests of *amici curiae* are listed in the motion for leave to file *amici curiae* brief filed under separated cover.

## **II. INTRODUCTION**

Gender identity<sup>1</sup> is deeply personal and inextricably entwined with bodily autonomy and self-determination, two foundational principles that ground our civil rights. Misunderstanding of transgender persons has resulted in widespread personal and systemic discrimination and hate speech. Transgender children are a particularly vulnerable population. Because of their age, their voice is often missing or outright dismissed. Engaging with the courts is often stressful and traumatic for parties. This is especially true for victims, whose autonomy and privacy are often eviscerated a second time by the very legal system that is supposed to protect them.

Transgender dependent children, separated from their family and seeking to be reunified, should be provided the same court intervention procedures as outlined by state law as a child with other developmental needs—court-ordered reunification plans with tailored social services and

---

<sup>1</sup> For clarity, *amici* adopts the following definition of “gender identity”: a person’s internal sense of being male, female, or something else. Since gender identity is internal, one’s gender identity is not necessarily visible to others. Substance Abuse and Mental Health Servs. Admin., *Top Health Issues for LGBT Populations Information & Resource Kit 11* (2012), <https://store.samhsa.gov/sites/default/files/d7/priv/sma12-4684.pdf>.

supports. In this case, the child, M.D.,<sup>2</sup> has unequivocally stated he wants and needs to have his transgender identity recognized, including in the dependency court proceedings. He also has clearly expressed his desire to be reunified with his mother. To that end, he filed a motion asking that the court recognize him by the pronouns “he” and “him,” use his chosen name, grant him leave to cut his hair short, and to order a tailored reunification plan for him and his mother so he could return home safely. All but one of his requests—to cut his hair short—was denied. *Amici* have grave concerns that the child’s dignity, autonomy, emotional wellbeing, and right to be safely reunified have been jeopardized by the dependency court when it denied his requests on the basis of his gender identity and his age.

### **III. ISSUES TO BE ADDRESSED BY AMICI**

- A. Did the dependency court commit probable error under RAP 2.3(b)(3) when it denied the child’s requests on the basis of his transgender identity and his age?

### **IV. STATEMENT OF THE CASE**

*Amici* adopt the facts as stated in the Child-Petitioner’s motion for discretionary review and the state’s cross-motion for discretionary review.

---

<sup>2</sup> *Amici curiae* will refer to the child in its briefing with his preferred pronouns (he/him) and the initials of his chosen name, M.D.



## V. ARGUMENT

A. The dependency court committed probable error when it denied M.D.’s motion based on his transgender identity.

1. The court’s departure from accepted court practice was manifestly unreasonable and based upon untenable grounds.

Dependency courts regularly make important decisions about dependent children over their parent’s objections—like where and with whom the child will live and which of the child’s loved ones he may continue to see and be in contact with—and also other decisions like how the child dresses or cuts his hair and the name the child uses.<sup>3</sup> As juvenile courts, they have been encouraged to recognize a child by his preferred pronouns and chosen name in court proceedings.<sup>4</sup> The rationale for such a court practice is “to promote access to justice of all impartially, competently, and diligently, regardless of race, ethnicity, religion, sexual

---

<sup>3</sup> See, e.g., *Jonathan L. v. Superior Ct.*, 81 Cal. Rptr. 3d 571, 593–94 (Ct. App. 2008) (noting parent’s constitutional right to make *all* child-rearing decisions after dependency finding is properly constrained by dependency court “to satisfy the compelling governmental interest of the child’s safety...[T]he parents in dependency have been judicially determined not to be fit. The focus of dependency proceedings is on the child, not the parent[.]”).

<sup>4</sup> See National Juvenile Defender Center (NJDC) & State Justice Institute (SJI), National Council of Juvenile and Family Court Judges (NCJFCJ), *Access to Juvenile Justice Irrespective of Sexual Orientation, Gender Identity, and Gender Expression (SOGIE) Bench card 2* (2017), <https://www.ncjfcj.org/publications/access-to-juvenile-justice-irrespective-of-sexual-orientation-gender-identity-and-gender-expression-sogie/>.

orientation gender identity, and gender expression.”<sup>5</sup> The practice of using a transgendered litigant’s chosen name and pronouns goes back decades.<sup>6</sup> In Washington, courts also observe the pronouns and preferred names of participants. *See, e.g., Matter of Det. of C.S.*, No. 80655-6-I, 2021 WL 2313409, at \*1 (Div. 1 June 7, 2021) (unpublished opinion) (“The record reflects that C.S. prefers the pronouns they/them/their. We defer to C.S.’s preferred pronouns.”); *State v. Perry*, No. 35476-8-III, 12 Wn.App.2d 1010, 2020 WL 550253, \*1, n. 1 (Div. 3 February 4, 2020)(unpublished opinion) (using feminine pronouns to refer to transgender woman appealing her convictions but only for periods after gender reassignment for clarity purposes, noting court’s departure from its usual practice, and “[n]o disrespect is intended”).<sup>7</sup>

---

<sup>5</sup> See National Juvenile Defender Center (NJDC) & State Justice Institute (SJI), National Council of Juvenile and Family Court Judges (NCJFCJ), *Access to Juvenile Justice Irrespective of Sexual Orientation, Gender Identity, and Gender Expression (SOGIE) Bench card 1 & fn. 1* (2017), <https://www.ncjfcj.org/publications/access-to-juvenile-justice-irrespective-of-sexual-orientation-gender-identity-and-gender-expression-sogie/>.

<sup>6</sup> *See, e.g., Kosilek v. Spencer*, 774 F.3d 63 (1st Cir. 2014)(using she/her pronouns and chosen name of transgender woman throughout court opinion involving claims against Massachusetts Dept. of Corrections); *Farmer v. Haas*, 990 F.2d 319, 320 (7th Cir. 1993) (“She (the defendants say “he,” but Farmer prefers the female pronoun and we shall respect her preference) is a transsexual.”); *Supre v. Ricketts*, 792 F.2d 958, 964 n. 1 (10th Cir. 1986)(Seymour, J. dissenting)(“I choose the female pronouns “she” and “her” as a matter of courtesy to Shauna Supre. The trial judge adopted this practice, and counsel for the Department of Corrections has sometimes acknowledged Supre in female terms as well.”). *See also* Chan Tov McNamarah, *Misgendering As Misconduct*, 68 UCLA L. Rev. Discourse 40, 53 & n. 54 (2020) (noting “that an adversarial system need not be an antagonistic one” arguments to the contrary are “discredited by the great weight of authority finding professionalism and courtesy to be paramount in litigation.”).

<sup>7</sup> In accordance with GR 14.1, *amici* include the note that these case authorities issued by the Washington Court of Appeals are all unpublished opinions filed on or after March 1,

Here, the dependency court granted M.D.’s request to cut his hair short, but denied his request to use his pronouns and chosen name. It is manifestly unreasonable to conclude that the child has capacity to express his gender identity through a haircut, but not through use of a chosen name and pronouns. *See In re Marriage of Muhammad*, 153 Wn.2d 795, 803, 108 P.3d 779, 783 (2005)(“A trial court abuses its discretion if its decision is manifestly unreasonable or based on untenable grounds or untenable reasons.”).

2. The court’s failure to affirm the child’s dignity, personal autonomy, and emotional wellbeing was manifestly unreasonable.

Gender identity is a deeply personal issue rooted in one’s right to personal autonomy and self-determination.<sup>8</sup> The formation of one’s gender identity is a journey or process, inextricably linked with a child’s developmental needs as he transitions from childhood to adulthood.<sup>9</sup>

---

2013, and as such “may be cited as nonbinding authorities, if identified as such by the citing party, and may be accorded such persuasive value as the court deems appropriate.” GR 14.1(a).

<sup>8</sup> See Leah E. Lurye et al., *Gender identity and adjustment: Understanding the impact of individual and normative differences in sex typing*, 120 New Dir. Child Adolesc. Dev. 31, 31–46 (2008) (suggesting one’s gender identity development is influenced several competing factors like how important gender is to a person’s overall identity; how a person views their gender in terms of cultural standards, beliefs, and norms; and a person’s feelings about the need to conform to these cultural standards, beliefs, and norms), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2661758/>.

<sup>9</sup> Kristina R. Olson, *Prepubescent transgender children: What we do and do not know*, 55 J. Am. Acad. of Child & Adolesc. Psychiatry 3, March 2016, at 155, 155-156 (suggesting trans children are expressing their “true” identities regardless of whether they grow up to be trans), <https://doi.org/10.1016/j.jaac.2015.11.015>.

Research indicates some children can identify very strongly as transgender at very young ages.<sup>10</sup> The child's social transition and need to live in congruence with his gender identity are most easily manifested by how a child presents himself to the world and what the child is called.<sup>11</sup> Thus, the journey itself, when it starts, and how it progresses, is specific to each and every child.

Supporting children through their journey of exploration of gender identity leads to better health outcomes for the child.<sup>12</sup> To reject a child's assertion that he is transgender simply because of a mistaken belief that he is *too young to know* further undermines the child's wellbeing. The ability of a child to advocate for and obtain respect for his name and pronouns is actually a sign of maturity and growth, not immaturity. The dependency court's failure to acknowledge the child's requests may serve to further

---

<sup>10</sup> Clare Wilson & Laura A. Cariola, *LGBTQI+ Youth and Mental Health: A Systematic Review of Qualitative Research*, 5 *Adolesc. Rsch. Rev.* 6, June 2020, at 187, 187-211 ; Leah E. Lurye et al., *Gender identity and adjustment: Understanding the impact of individual and normative differences in sex typing*, 120 *New Dir. Child Adolesc. Dev.* 31, 31-46 (2008) (suggesting one's gender identity development occurs in childhood in three stages: construction (ages 0-5); consolidation (ages 5-7); and integration (ages 7 and up)).

<sup>11</sup> Stephen T. Russell et al., *Chosen Name Use Is Linked to Reduced Depressive Symptoms, Suicidal Ideation, and Suicidal Behavior Among Transgender Youth*, 63 *J Adolesc Health* 4, Oct. 2018, at 503, 503-505 (suggesting use of chosen name leads to improved mental health in trans youth), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6165713/pdf/nihms945849.pdf>

<sup>12</sup> Clare Wilson & Laura A. Cariola, *LGBTQI+ Youth and Mental Health: A Systematic Review of Qualitative Research*, 5 *Adolescent Research Review* 6, June 2020, at 187, 187-211.

undermine the child's long-term emotional wellbeing and emotional safety.<sup>13</sup>

LGBT youth are a high-risk group who are developmentally vulnerable to discrimination, socioemotional challenges, and behavioral conditions.<sup>14</sup> Their self-identification must be taken seriously *and affirmed* because rejection of their identities greatly increases their risk for mental health conditions stemming from this social ostracization. For example, transgender children, who are rejected by family or caretakers, are up to eight times more likely to attempt suicide by the time they reach young adulthood.<sup>15</sup> Familial and caretaker support can quite literally be the difference between life and death for these children.

In the instant matter, M.D. became aware of his gender identity when he was about eight years old. App at 106, 108. He attempted to communicate his desire to be referred to using “he” and “him” pronouns before making his motion to the court. App. at 74. Being presented with

---

<sup>13</sup> Clare Wilson & Laura A. Cariola, *LGBTQI+ Youth and Mental Health: A Systematic Review of Qualitative Research*, 5 *Adolescent Research Review* 6, June 2020, at 187, 187-211 (transgender children who are supported in their social transition tend to do better in all areas of their lives).

<sup>14</sup> Hudaisa Hafeez et al., *Health Care Disparities Among Lesbian, Gay, Bisexual, and Transgender Youth: A Literature Review*, 9 *Cureus* 4, April 2017, at e1184, 2.

<sup>15</sup> See Hudaisa Hafeez et al., *Health Care Disparities Among Lesbian, Gay, Bisexual, and Transgender Youth: A Literature Review*, 9 *Cureus* 4, April 2017, at e1184, 2.; Caitlyn Ryan, Ph.D., *Helping Families Support Their Lesbian, Gay, Bisexual, and Transgender (LGBT) Children*, National Center for Cultural Competence, Georgetown University Center for Child and Human Development (2009).

M.D.’s views and additional expert evidence, including that children as young as three years old have capacity to express a gender identity,<sup>16</sup> the court denied the bulk of the child’s substantive requests. M.D. has done considerable work with his mental health providers, caregivers, and attorney to be able to make such definitive requests to the dependency court. Indeed, the court should have granted M.D.’s motion *specifically because* his brain is still developing and transgender youth are particularly vulnerable to negative wellbeing outcomes when marginalized and rejected by those entrusted with protecting them.<sup>17</sup>

Furthermore, use of M.D.’s pronouns and chosen name may have been deemed to be of minimal importance to the court and perhaps to the child’s parent here; but they are paramount to this child. *See* RCW 13.34.020. Indeed, intentional misgendering is generally considered a demeaning act. *See* Chan Tov McNamarah, *Misgendering As Misconduct*,

---

<sup>16</sup> Kristina R. Olson et al., *Gender cognition in transgender children*. 26 Psychological Science 4, April 2015, at 467, 467-474; Anne A. Fast & Kristina R. Olson, *Gender development of preschool transgender children*. 89 Child Dev. 2, March 2018, at 620, 620-637, 620-637, <https://doi.org/10.1111/cdev.12758>; James R. Rae et al., *Predicting Early-Childhood Gender Transitions*, 30 Psychological science 5, March 2019, at 669, 669-681.

<sup>17</sup> Kristina R. Olson, et al., *Gender cognition in transgender children*. 26 Psychological Science, 4, April 2015, at 467, 467-474 ; Anne A. Fast & Kristina R. Olson, *Gender development of preschool transgender children*. 89 Child Dev. 2, March 2018, at 620, 620-637 (2018) , <https://doi.org/10.1111/cdev.12758>; James R. Rae et al., *Predicting Early-Childhood Gender Transitions*, 30 Psych. Sci. 5, 2019, at 669, 669-681, [https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6512159/pdf/10.1177\\_0956797619830649.pdf](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6512159/pdf/10.1177_0956797619830649.pdf)

68 UCLA L. Rev. Discourse 40, 43 (2020). Recently, federal and state courts alike, while reviewing controversies in other settings, have either acknowledged the importance of affirming a person’s identity through use of their chosen name,<sup>18</sup> or have found the practice of misgendering a person “hostile, objectively offensive, and degrading.” *See Id.*<sup>19</sup>

Calling a person by their correct name and pronoun is the very least the court can do—it requires little effort from the court, is not a burden upon the court’s resources, and is a basic tenet of respect. A child, like an adult, is also entitled to be treated with respect and dignity when engaging with the court process.<sup>20</sup> When a court mandates the use of a

---

<sup>18</sup> *See, e.g., Prescott v. Rady Children's Hosp.-San Diego*, 265 F. Supp. 3d 1090, 1096 (S.D. Cal. 2017) (case involving surviving parent of a transgender boy raising gender discrimination claim related to the provision of healthcare, acknowledging “[f]or a transgender person with gender dysphoria, being referred to by the wrong gender pronoun is often incredibly distressing.”); *Kluge v. Brownsburg Cmty. Sch. Corp.*, No. 1:19-cv-2462-JMS-DLP, 2021 WL 2915023, at \*1 (S.D. Ind. July 12, 2021) (“But a transgender individual may answer that question very differently, as being referred to by a name matching one's identity can provide a great deal of support and affirmation.”)

<sup>19</sup> *See, e.g., Stanley v. City of New York*, 141 N.Y.S.3d 662, 673 & n. 5 (Sup. Ct. 2020) (court using pronouns and chosen name of deceased transgender man throughout court opinion, and characterizing one of the legal claims brought by surviving partner as based on allegations “that Frederick was deadnamed—when used as a verb, this refers to the use of the incorrect name and pronouns.”); *Doe v. City of New York*, 976 N.Y.S.2d 360, 364 (Sup. Ct. 2013) (case involving transgender woman’s gender discrimination claims against her employer, categorizing “purposeful use of masculine pronouns in addressing plaintiff, who presented as female” as “not a light matter, but one which is laden with discriminatory intent.”).

<sup>20</sup> *See* National Juvenile Defender Center (NJDC) & State Justice Institute (SJI), the National Council of Juvenile and Family Court Judges (NCJFCJ), *Access to Juvenile Justice Irrespective of Sexual Orientation, Gender Identity, and Gender Expression (SOGIE) Bench card 2-3* (2017), <https://www.ncjfcj.org/publications/access-to-juvenile-justice-irrespective-of-sexual-orientation-gender-identity-and-gender-expression-sogie/>

name other than the child's chosen name and the use of incorrect pronouns in dependency court, it fails to support equitable access for LBGT children and youth and it fails to honor that child.<sup>21</sup> These actions are manifestly unreasonable, and, therefore, an abuse of discretion.<sup>22</sup> *See In re Marriage of Muhammad*, 153 Wn.2d 795, 803, 108 P.3d 779, 783 (2005).

3. The court's failure to ensure this dependent child's wellbeing is protected during reunification was based on untenable grounds—his age.

It is the responsibility of the dependency court to ensure a dependent child's wellbeing throughout the dependency court process, whether the child is in an out-of-home placement or is placed with his parent during a trial return home. *See* RCW 13.34.138 (2)(b)(ii), (2)(c)(vii); RCW 13.34.145 (4)(b). When assessing the child's wellbeing, the court must take requests of the parties seriously and rule on the merits of those requests, particularly where, as here, the child is requesting and the State is attempting to provide necessary reunification services, so that

---

<sup>21</sup> It is by now axiomatic that a judge should perform the duties of judicial office fairly and impartially, and without bias or prejudice. *See* CJC 2.2; CJC 2.3 (A). Every person who has a legal interest in a proceeding, or that person's lawyer, has the right to be heard according to law. *See* U.S. Const. XIV Amend.; Wa. Const. art. I, sect. 3; CJC 2.6 (A).

<sup>22</sup> *See* Walter Meyer III et al., *The Harry Benjamin International Gender Dysphoria Association's Standards of Care for Gender Identity Disorders* 9 (6th ed. 2001), <http://www.cpath.ca/wp-content/uploads/2009/12/WPATHsocv6.pdf>; Teresa DeCrescenzo & Gerald P. Mallon, *Serving Transgender Youth: The Role of the Child Welfare System* 19 (2000).



the child may return home safely.<sup>23</sup> After a child is found dependent and when, as in M.D.’s case, reunification is the permanency plan of care, the dependency court *shall* order remedial reunification services, supports, and activities necessary to ensure safe return of a child to his parent’s home.<sup>24</sup>

Here, the dependency court refused to address the child’s request to be called by his chosen name and pronouns and refused to order necessary reunification services to ensure his safe return home simply because he is “a ten-year old.”<sup>25</sup> App. at 29. The Legislature intended for courts to take the preferences and concerns of a dependent child into account about issues before the court, even when the child is not represented by an attorney. *See* RCW 13.34.105 (1)(b) (mandating a duty upon the guardian *ad litem* “[t]o ...report to the court any views or positions expressed by the child on issues pending before the court.”). It contravenes logic for a dependency court to conclude it cannot take the child’s views and positions into account when he *is* represented by an

---

<sup>23</sup> *See, e.g., Matter of B.P. v. H.O.*, 186 Wn.2d 292, 297, 376 P.3d 350, 353 (2016) (termination reversed because services were not futile and agency failed to provide same services to parents as was provided to foster parents to care for child’s needs); *In re Welfare of C.S.*, 168 Wn.2d 51, 225 P.3d 953 (2010) (termination reversed because agency did not provide the mother services necessary to meet the child’s needs).

<sup>24</sup> RCW 13.34.145 (8); *see* RCW 13.34.136 (2)(a), (b). *Cf.* RCW 13.34.025 (1), (2) (outlining the state agency’s mandate to coordinate reunifications services).

<sup>25</sup> The dependency court explicitly reasoned that “[t]here is no way the court can let a youth of that age have a significant say in this.” App. 28-29.

attorney. The court refused here to fulfill its role as impartial decision-maker and demonstrated bias against this child by presuming he is wholly incapable of knowing what he needs, by treating him differently than a cisgender child would be treated, and by ruling contrary to the evidence presented. The court's ruling is based on untenable grounds, and, thus, constitutes an abuse of discretion.<sup>26</sup>

## VI. CONCLUSION

For the reasons stated above, *amici* respectfully request that petitioner's relief be granted.

Respectfully submitted this 30<sup>th</sup> day of July, 2021.

*Electronically signed by Counsel for Amici Curiae listed below*

D'Adre Cunningham, WSBN 32207  
Attorney for amicus curiae  
WASHINGTON DEFENDER ASS'N

Megan Dawson, WSBN 51471  
Attorney for amicus curiae  
LAVENDER RIGHTS PROJECT

Nancy Talner, WSBN 11196  
Yvonne Chin, WSBN 50389  
Antoinette M. Davis, WSBN 29821  
Attorneys for amicus curiae  
ACLU-WASHINGTON

---

<sup>26</sup> See *In re Marriage of Muhammad*, 153 Wn.2d 795, 803, 108 P.3d 779, 783 (2005).

Erin L. Lovell, WSBN 36614  
Attorney for amicus curiae  
LEGAL COUNSEL FOR YOUTH AND CHILDREN

Denise Diskin, WSBN 41425  
Attorney for amicus curiae  
QLAW FOUNDATION OF WASHINGTON

### **CERTIFICATE OF SERVICE**

I declare under penalty of perjury under the laws of the State of Washington, that on July 30, 2021, the foregoing document was electronically filed with the Washington State's Appellate Court Portal, which will send notification of such filing to all attorneys of record.

Signed in Seattle, Washington, this 30<sup>th</sup> day of July, 2021.

/s/ D'Adre Cunningham

D'Adre Cunningham

Attorney for Amicus Curiae

WASHINGTON DEFENDER ASSOCIATION

# WASHINGTON DEFENDER ASSOCIATION

July 30, 2021 - 11:40 AM

## Transmittal Information

**Filed with Court:** Court of Appeals Division II  
**Appellate Court Case Number:** 55647-2  
**Appellate Court Case Title:** In re the Welfare of P.E.D.  
**Superior Court Case Number:** 19-7-00625-6

### The following documents have been uploaded:

- 556472\_Briefs\_20210730113625D2688632\_8171.pdf  
This File Contains:  
Briefs - Amicus Curiae  
*The Original File Name was Final Brief In Re MD.pdf*
- 556472\_Motion\_20210730113625D2688632\_6491.pdf  
This File Contains:  
Motion 1 - Other  
*The Original File Name was Final Motion for Leave In Re MD.pdf*

### A copy of the uploaded files will be sent to:

- Drew.Pugsley@atg.wa.gov
- dadre@defensenet.org
- denise@qlawfoundation.org
- erin@lcycwa.org
- megan@lavenderrightsproject.org
- shsappealnotification@atg.wa.gov
- talner@aclu-wa.org
- tdavis@aclu-wa.org
- tiffinie@washapp.org
- wapofficemail@washapp.org
- ychin@aclu-wa.org

### Comments:

---

Sender Name: D'Adre Cunningham - Email: dadre@defensenet.org  
Address:  
110 PREFONTAINE PL S STE 610  
SEATTLE, WA, 98104-2626  
Phone: 206-623-4321

**Note: The Filing Id is 20210730113625D2688632**