



Case Law Updates | Nov 6-19, 2024

Washington Supreme Court

DEPENDENCY/TERMINATION OF PARENTAL RIGHTS: Parent lacked third party standing to raise issue of child's right to family integrity with younger siblings in termination of parental rights proceeding. Parent could not raise issue on behalf of child where nothing hindered the child's ability to protect own interests.

DEPENDENCY/RACIAL BIAS: Appellate courts must consider the specific record before it in determining if racial bias infected a social worker's decision to defer family therapy prior to seeking termination of parental rights.

[In re Dependency of M.L.W. and I.A.W.](#), ___ Wn.2d ___, No. 102486-0 (Nov. 14, 2024) Mother of three children defended against termination at trial. The termination case for the eldest child, M.W., was dismissed as M.W. was fourteen years old, represented by counsel, and objected to the termination. At the trial court, M.W. asserted he had a stake in the proceedings of his siblings and that his family relationship would be jeopardized by terminating his mother's legal relationship with them. The trial court excluded the eldest sibling from participating in the younger siblings' dependency cases but M.W. did not appeal that ruling. Following termination of parental rights for the younger children, the mother raised her older son's right to family integrity on appeal, arguing her eldest child was entitled to intervene in his siblings' termination trial under CR 24, and, alternatively, argued the right to family integrity conferred a freestanding due process right on a child to intervene in a sibling's termination. The Court rejected Mother's arguments and concluded that even if the eldest sibling had a right to intervene in the trial court, and even if that right was violated, the mother lacked standing to assert that claim on her child's behalf on appeal as nothing hindered M.W.'s ability to protect his own interests. Mother also raised for the first time on appeal the issue of whether racial bias infected the social worker's decision to defer family therapy prior to seeking termination of parental rights. **HELD:** In a termination proceeding, a parent must establish third party standing to raise a due process claim on behalf of a child who is represented by counsel, and who is not the subject of the termination action, which the mother did not do here. Also, the record developed before the trial court did not support the claim of racial bias. Instead, the record sufficiently supported the trial court's conclusion that the social worker's decision to delay family therapy until reunification was closer was reasonable, and that the social worker only made that determination after gathering information and discussing the issue with the providers regarding potential harms to the children.

Washington Court of Appeals

RIGHT TO COUNSEL/REMOTE APPEARANCE: A criminal defendant is entitled to effective assistance of counsel, which includes the ability to confer privately and meaningfully with the attorney at all critical states of the proceedings, pursuant to the Sixth Amendment and Article 1, Section 22 of the Washington constitution.

[State v. Brashear](#), ___ Wn.App.2d ___, No. 86610-9, Div. I (Nov. 19, 2024)

Brashear appeared at every pretrial hearing remotely from the jail while his attorney appeared from a separate location, without objection from Brashear. Some of the hearings occurred at critical states of the proceedings. Brashear argued for the first time on appeal that his attorney's appearance at a separate location violated his constitutional right to hearings. Under RAP 2.5(a)(3) a party may raise an issue for the first time on appeal if it is a manifest error affecting a constitutional right. Deprivation of the right to counsel is a constitutional claim, so the case turned on whether there was a manifest error. A manifest error is one where the appellant can show actual prejudice. In determining whether there was manifest error the court considered the totality of the circumstances, including evidence that Brashear had conferred with counsel about the substance of the critical stage hearings in advance. **HELD***: There was no showing of a manifest error of constitutional magnitude as required by RAP 2.5(a)(3) as Brashear failed to show how communication with counsel at any of the pretrial hearings in his case could have affected the trial.

SPECIFIC DIVISIONAL DISTINCTIONS-- Division I herein, and Division III in *State v. Dimas*, 30 Wn.App. 2d 213 (2024), ruled a defendant's inability to confer privately with counsel during critical stage hearings was subject to the harmless error analysis. Dimas did not object to appearing remotely at the trial court, but did ask to speak with counsel during his last two hearings, which was permitted. Additionally, his sentencing was delayed until Dimas could appear in person. Division II declined to consider the merits of the appeal due to the absence of manifest constitutional error as Dimas failed to show his inability to confer would have made a difference. In *State v. Schlenker*, 31 Wn.App.2d 921 (2024), however, Division III held where defendant did object at the trial level to remote hearings from the jail while his attorney appeared separately, and objected to the inability to converse confidentially with counsel at critical stages of the proceedings, and the trial court failed to provide means for Schlenker to converse confidentially with counsel, Schlenker's confidential rights were violated, the error was not harmless, and the convictions were reversed.