

DEPARTMENT OF SOCIAL SERVICES
KING COUNTY OFFICE
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IN THE SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

WASHINGTON STATE COALITION FOR)
THE HOMELESS; STANLEY and MARIE)
and MARIE HILL, and their minor)
children, BAYYINAH, AQUILA,)
STANLEY, TAMIKA, and HABIBAH; and)
KERRY COUGHLIN, and her minor)
children, J.C., J.V. and L.V.,)
through their guardian ad litem)
BRADFORD KINSEY; ELIZABETH SANDERS,)
A.S., E.S., and S. S., through)
their guradian ad litem, BRADFORD)
KINSEY, and other persons)
similarly situated,)

Plaintiffs,

vs.

DEPARTMENT OF SOCIAL AND HEALTH)
SERVICES; and JEAN SOLIZ, in)
her official capacity as Secretary)
of the Department of Social and)
Health Services; and their)
successors,)

Defendants.

NO. 91-2-15889-4

DEFENDANTS' REPLY
MEMORANDUM IN SUPPORT
OF MOTION FOR SUMMARY
JUDGMENT

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I. INTRODUCTION 1

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C. THE CHILDREN AND FAMILY SERVICES ACT, RCW 74.14A, WAS NOT INTENDED TO CREATE A "HOUSING ASSISTANCE" PROGRAM. 9

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E. THE PLAINTIFFS HAVE FAILED TO DEMONSTRATE ANY DUE PROCESS VIOLATIONS. 14

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II. CONCLUSION

1 I. INTRODUCTION

2 The Department's Child Welfare Plan describes the child
3 welfare services available for the children in this state. See
4 Exs. A-C. The focus of the Plan and the services described are on
5 those children most in need: children at risk of serious abuse or
6 neglect. The goal is to maintain those children in their homes,
7 with services, when possible or, when necessary, to place them in
8 foster care where they will be safe while services continue to be
9 provided to families.

10 Homelessness, poverty or substandard housing can be a factor
11 used by Department staff when evaluating a family, but does not
12 automatically necessitate intervention. Declaration of Lee Doran
13 at 2, paragraph 5; Ex. W at 9-19. The facts of the named
14 plaintiffs in this case, who are typical of the class, aptly
15 demonstrate how the system works. In the case of the Hills, who
16 were homeless according to the class definition, there would be no
17 reason for intervention. The Hill children were in a safe,
18 transitional shelter with their parents with supportive services.
19 There were no issues of abuse or neglect. From their shelter they
20 went into subsidized housing. There is no service that the
21 Department could offer the Hills that they were not already
22 receiving. The plaintiffs have never stated what relief they
23 request on behalf of the Hills or any other persons who are in

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1 shelters.

2 In contrast, the Department intervened in the Coughlin and
3 Sanders families, even though they both had shelter, because the
4 children were at risk of abuse and neglect. In the case of the
5 Coughlins, severe addiction problems ultimately led to plaintiff
6 Coughlin's relinquishing her children. For the Sanders, the
7 caseworker helped the family find emergency shelter. If plaintiff
8 Sanders had found shelter for her children and protect them from
9 the father, the state's role would have ended. Unfortunately, she
10 chose not to believe her daughter's accusation of rape. She chose
11 to go to California and force her children to live with the father
12 who had raped A. She chose to actively obstruct the father's
13 prosecution by preventing her daughter from testifying against Mr.
14 Sanders.

15 Plaintiffs maintain that if the state had provided housing
16 (they don't state what type or for how long), Sanders would have
17 been reunited with her children. They ignore the fact that she
18 was separated from them because of her choices. They ignore the
19 fact that she chose a job which came with an apartment that did
20 not allow children. And they ignore the complex psychological
21 factors and ambivalence which plaintiff Sanders had to face:
22 caring and nurturing for the child who had testified against her
23 incarcerated husband; caring for those children who, only two

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1 years before, she had betrayed and was willing to sacrifice to
2 save her husband from prison.

3 The Child Welfare Plan describes the services which have been
4 developed to protect the "welfare of all of the children of the
5 state. . ." RCW 74.13.010. The DCFS Manual states that:

6 All children are eligible for foster care assessment,
7 prevention, and placement services without regard to
8 income.

9 Ex. X at 11.

10 The Department places a premium on providing preventive
11 services. Its manual states that "primary efforts of the service
12 worker should be focused toward identifying and remedying those
13 problems which place children in jeopardy of out-of-home
14 placement." Ex. X at 15. Specific instructions regarding a full
15 assessment of the family are given. Id. And, a three-page list
16 of potential resources, some available within the Department and
17 some from the community, are listed. Id. at 17-19 (Attached as
18 Appendix A). Homeless children, just like other children, may
19 receive the services that are available if they fall under the
20 assessment criteria.

21 **A. THE AMBIGUITY OF THE WORD "HOMELESS" ALLOWS THE COURT TO
22 EXAMINE THE LEGISLATIVE INTENT; IT NEITHER DEFINES NOR
23 LIMITS THE CHILDREN ELIGIBLE FOR SERVICES.**

24 The plaintiffs have misunderstood the import of the
25 definitions of "homeless" cited by the Department in its
26

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1 Memorandum in Support of Motion for Summary Judgment, at 19-25.
2 The various definitions demonstrate that there can be no claim of
3 "plain meaning" that would translate to the program the plaintiffs
4 wish to have implemented. The Department's argument has not
5 sought to define the categories of children who are eligible for
6 services by its references to the many definitions of the term
7 "homeless", but rather has demonstrated that the term is not
8 unambiguous and, therefore, the court may resort to other
9 techniques for determining legislative intent. The term
10 "homeless" has many definitions, including people who have no
11 shelter.

12 However, just as homeless has many shades of meaning, so to,
13 do the other terms contained within RCW 74.13. The term
14 "dependent" has more than one meaning. Under the child welfare
15 statutes, the term has a definite meaning relating to an
16 adjudicated finding that a child is "dependent". RCW
17 13.34.130(2). For the purposes of Aid to Families With Dependent
18 Children (AFDC), a dependent child is any child under eighteen who
19 is "in need" and deprived of parental support. RCW 74.12.010. In
20 a common yet still legally based understanding of the term,
21 "dependent" can mean a child under the age of 18 who is claimed as
22 a deduction for federal income tax purposes. Similarly, the term
23 "neglected" has shades of meaning. A neglected child can be a

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1 "dependent" child, RCW 13.34.130(2) or it can refer to children
2 who are ill-fed, ill-housed, or unclothed and it can include
3 children who are abandoned entirely, or emotionally. It would be
4 ludicrous to argue that the Legislature intended that the child
5 welfare statutes were drafted to offer child welfare services to
6 all children who are claimed as deductions, or that services could
7 be offered to children only after they had been adjudicated as
8 "dependent". None of these terms can realistically be read to
9 require a specific, separate service plan, unavailable to others.
10 The clear import of RCW 74.13.031 is that the Department is
11 required to have a plan governing child welfare services that is
12 available to the children of this state that fall under the
13 general descriptions of the act. See Declaration of Lee Doran,
14 Defendant's Memorandum, App. at 3-8.

15 The plaintiffs' argument has the same quality as a demand by
16 a different advocacy group that the term "dependent" means that
17 there should be immediate entry into drug treatment facilities,
18 with no waiting periods or eligibility standards for parents with
19 substance abuse problems. Drug abuse is a factor in 70% of the
20 referrals received by DCFS regarding child abuse and neglect
21 issues. Ex. C at 8. The Legislature has created substance abuse
22 programs by enacting the ADATSA substance abuse program. RCW
23 74.50. But there is no guarantee of access to the programs, or of

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1 immediate access if a person qualifies. See WAC 388-40-090; 388-
2 40-030(1). There is an equal relationship between the word
3 "dependent" and substance abuse treatment, and the word "homeless"
4 and housing assistance. Both relationships require assumptions of
5 what is best for the children and of what resources are available.

6 The statutes require that the Department have a plan to deal
7 with the child welfare issues of all children. The Department has
8 been designated to develop the plan based upon an assessment of
9 the needs and the best service delivery system for the children of
10 the state. The Plan, covering all children, including those whose
11 families are homeless, has been submitted to the court. See Exs.
12 A-C. Additionally, the Department is instituting a plan to
13 enhance the services provided to homeless children and families
14 who lack shelter through the Comprehensive Plan, Ex. D. That plan
15 complements the other services offered to children. The
16 plaintiffs' view that only housing can be helpful to homeless
17 families and that the term "homeless" translates into guaranteed
18 housing at state expense has no basis in law.

19 **B. THE LEGISLATURE HAS NOT BEEN IGNORANT OF THE ACTIVITIES**
20 **OF THE DEPARTMENT REGARDING HOUSING ASSISTANCE AND HAS**
21 **ACQUIESCED IN THE DEPARTMENT'S PLAN.**

22 The ambiguous meaning of the word "homeless" requires the
23 court to look to other indicia of legislative intent. The
24 plaintiffs have diverted the argument to imply the Legislature

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1 acquiesced in the definition of the word "homeless" as children
2 without families. This is not the point. The Legislature has
3 acquiesced with the Child Welfare Plan, while at the same time
4 designating the DCD as the agency responsible for housing
5 assistance. The intent can hardly be clearer.

6 The Legislature should be presumed to be aware of programs it
7 has funded. It has been shown that the Legislature amended RCW
8 74.13.031 numerous times without requiring housing assistance.
9 Additionally, the Governor's Commission on Children report, which
10 was submitted to the Legislature in 1989, and the Department
11 reports summarizing services, which were provided to the
12 Legislature in 1984, all apprised the Legislature of the fact that
13 there was no housing assistance program within the Department.¹
14 Defendants' Memorandum at 5-7, 21-22.

15 The Legislature has also stated that it does not intend the
16 Department to institute any new program not already in existence
17 at the time the budget bills are passed. See, eg. 1991 Wash.
18 Sess. Laws, p. 2699, Sec. 201(2); 1993 Wash. Sess. Laws, p. 2911,
19 Sec. 201(2).

20 ¹In 1983 the Children and Family Services Act required the
21 Department to develop an implementation plan for RCW 74.14A and to
22 deliver it to the appropriate committees of the House and Senate.
23 Laws 1983, ch. 192, §5. See, Defendants' Memorandum at 9-10;
24 Implementation Plan, Ex. O. The Governor's Commission on Children
25 report was also required by law to be submitted to the appropriate
26 committees of the legislature. RCW 43.260.010(4).

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1 The Legislature has further expressed its intent that housing
2 assistance will be provided through the Department of Community
3 Development (DCD). It has articulated its intent through the
4 emergency mortgage and rental assistance program for dislocated
5 forest products workers, RCW 43.63A.600, and the housing
6 assistance program, RCW 43.185. The DCD was established as the
7 agency to coordinate the programs for low income housing from the
8 federal Department of Housing and Urban Development. RCW
9 43.63A.065(7). As indicated in the Plaintiffs' Memorandum
10 Opposing Defendant's Motion for Summary Judgment, when the
11 Legislature intended other agencies to share service
12 responsibility with DSHS, it has stated so. Plaintiffs' Response
13 at 21, fn. 41, and at 22, fn. 46. There is no such indication of
14 a sharing of duties in any of the statutes discussing DCD's
15 housing assistance.

16 The plaintiffs ask this court to infer from the language of
17 74.13 that the Legislature, in 1965, passed an act that carried a
18 specific intent that housing would be provided to homeless
19 families by DSHS, through its child welfare plan; that the
20 Department never acted upon the mandate; that when the Legislature
21 enacted its other housing assistance plans, it believed that it
22 was complementing an existing program; and that for 26 years, the
23 Legislature, when examining the services of the Department during

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1 the budget process, and that when examining reports regarding
2 Department services, never noticed that its 26 year old mandate
3 was being ignored by the Department. It is hard to understand
4 how, with such a low opinion of the Legislature, the plaintiffs
5 would try to argue its position based on a belief the Legislature
6 could mean only one thing when it used the word "homeless".

7 C. THE CHILDREN AND FAMILY SERVICES ACT, RCW 74.14A, WAS
8 NOT INTENDED TO CREATE A "HOUSING ASSISTANCE" PROGRAM.

9 The plaintiffs do not dispute that the plain language of RCW
10 74.14A sets forth broad policy guidelines for the Department.
11 They do not dispute that the statute does not create a "housing
12 assistance" program for any class of individuals. They do not
13 dispute that policy statements do not create enforceable rights.
14 See Aripa v. Department of Social and Health Services, 91 Wn.2d
15 135, 139, 588 P.2d 185 (1978). The plaintiffs do not dispute that
16 the Legislature received two reports from the Department as a
17 result of a legislative mandate in RCW 74.14A. These reports
18 documented the changes the Department was undertaking to comply
19 with RCW 74.14A. None of those changes involved the creation of
20 a housing assistance program. See Defendants' Memorandum at 5-6,
21 26-27, Exs. 0, P.

22 The defendants are entitled to Summary Judgment on
23 plaintiffs' claim under RCW 74.14A.020.

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1 D. RCW 13.34 DOES NOT CREATE A RIGHT TO A "HOUSING
2 ASSISTANCE" PROGRAM.

3 In their memorandum discussing RCW 13.34 and the Department's
4 duties, the plaintiffs make several sweeping statements which are
5 erroneous. First, plaintiffs state that the Department maintains
6 that there is no obligation under RCW 13.34 to do anything
7 specific to reduce the need for placement. Plaintiffs' Response
8 at 16. The Department is obligated to provide "reasonable
9 efforts" and "reasonable services" to families in juvenile court.
10 See RCW 13.34.060(8), RCW 13.34.130(1)(b), RCW 13.34.130(5)(b)(i).
11 There is nothing in the statute or the legislative history which
12 indicates that the efforts or services by definition include
13 guaranteed housing at state expense. The efforts and services
14 provided will vary with each case. See Defendants' Memorandum at
15 39-41.

16 The services available to caseworkers are described in the
17 Child Welfare Plans. Exs. A-C. For example, case management
18 provides comprehensive assessments of families, connects clients
19 with services and monitors the delivery of services. Child
20 Welfare Plan, Ex. C at 16. Some of the services available within
21 the Department are child day care, community workers, homemakers,
22 home-based services, and foster care. Id. at 17-29, 42-48.
23 Caseworkers can also use services within the Department of Social
24 and Health Services such as the state-funded treatment for drug

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1 and alcohol abuse, financial programs, mental health treatment,
2 and education and job training. Id. at 30. There are also a
3 multitude of services provided and funded by United Way and other
4 private agencies which the caseworkers help clients access. Id.
5 A good example of a caseworker using a community resource is
6 plaintiff Sanders' caseworker. He took her and her children to an
7 emergency shelter so that they would be safe from the father.
8 Unfortunately, Mrs. Sanders left the safety of that shelter.

9 Second, plaintiffs state that "[s]tate laws require DSHS, at
10 the direction of the superior court if necessary, to provide
11 substantive preventive and reunification services. See
12 Plaintiffs' Memorandum Opposing Defendants' Motion for Judgment on
13 the Pleadings, pages 18-27." There is no authority for the
14 implication that the Department must directly provide housing
15 assistance. Plaintiffs' Memorandum at 18-22 discusses RCW 74.14A.
16 Pages 22 to 26 discuss the federal Adoption Assistance Act and its
17 requirements, which have been dismissed. On page 27, the
18 plaintiffs merely recount the "reasonable efforts" section of RCW
19 13.34 without any support for plaintiffs' sweeping statement.

20 Third, plaintiffs state that "the child welfare laws do
21 mention homelessness (Chapter 74.13 RCW). To the extent that
22 Chapter 74.13 RCW is read together with Chapters 74.14A RCW and
23 13.34 RCW, then of all the needs, housing is more directly

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22 Chapter 74.13 RCW is read together with Chapters 74.14A RCW and
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1 mentioned than others." Plaintiffs' Response at 18. This is
2 nonsense. Plaintiffs cite no authority for reading all of the
3 statutes together. In addition, housing, except for foster care,
4 is not mentioned in any of the statutes cited by plaintiffs. The
5 Legislature has defined child welfare services and the only
6 specific services included in the definition are foster care and
7 day care. RCW 74.13.020(5). The Legislature has provided
8 authority for other services as described in footnote 11 of
9 Defendants' Memorandum at 22.

10 The plaintiffs claim that this court has the authority,
11 pursuant to RCW 13.34, to provide "housing assistance" to a class
12 of plaintiffs. The plaintiffs do not state any statutory or case
13 law language that permits either the Department or this court to
14 order the creation of a "housing assistance" program. The
15 plaintiffs do not state how this assistance will be provided
16 except to state that it will "equip" the caseworker and the
17 juvenile court with the resources they need to provide the
18 assistance in each individual case.

19 The plaintiffs are unable to state what principle would limit
20 this court or the Department from fashioning any new state-wide
21 program that the court believed would be effective in preventing
22 the foster care placement of children. In effect, plaintiffs
23 request this court to become the "super administrator" of the

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1 Department and make decisions regarding programs and budget
2 matters with no consultation with the Department, its experts or
3 the Legislature.

4 The Department has already pointed out that, based on the
5 Supreme Court's decision in Suter v. Artist M., 118 L. Ed.2d 1,
6 112 S. Ct. 1360 (1992), the federal government's approval of the
7 Department's IVE Plan satisfies the "reasonable efforts"
8 requirements on a state-wide basis. Defendants' Memorandum at 38-
9 39.

10 The plaintiffs are unable to refute the Department's argument
11 that RCW 13.34 requires individual decisions in each case. In
12 fact, they agree. Plaintiffs' Response at 19. Juvenile court is
13 empowered to make individual decisions in each case and the relief
14 it provides will be part of that individual decision. There is no
15 authority for this court to order a new assistance program to be
16 available to other superior court judges for individual cases.

17 Finally, the "reasonable efforts" and "reasonable services"
18 language of RCW 13.34 says reasonable, it does not state that
19 every service shall be provided to a family. The Legislature has
20 defined "reasonable services" as services available within the
21 agency, the community and through existing DSHS contractual
22 arrangements. RCW 13.34.130(3)(b)(iv). What is "reasonable" is
23 the services that exist. It is unreasonable to require the

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1 provision of services that do not exist. Plaintiffs state that
2 "[RCW 13.34.130(3)(b)(iv)] would only exclude those more exotic
3 services that DSHS cannot be expected to provide because they
4 cannot be obtained in the community. Shelter and housing, in
5 contrast is available for purchase." Plaintiffs' Response at 17-
6 18, fn. 34. Plaintiffs miss the point: the plain language of the
7 statute defines reasonable services; they cannot re-define it as
8 any services which the agency could contract for. If this is
9 true, there is no limit to what can be turned "reasonable." The
10 fact is that every service is available for purchase, but the
11 Department has limited resources and must allocate those resources
12 in as effective a way as possible.

13 E. THE PLAINTIFFS HAVE FAILED TO DEMONSTRATE ANY DUE
PROCESS VIOLATIONS.

14 1. This Court Has Already Dismissed Plaintiffs' Claim
15 For Housing Assistance Based on Substantive Due
Process.

16 This court has ordered:

17 2.2 The plaintiffs have no federal or
18 state constitutional right to housing
19 assistance. Neither the federal nor the
20 state constitution confers a right, express
or implied, to affirmative assistance from
the defendants to maintain family integrity.

21 Order on Defendants' Motion for Judgment on
the Pleadings, paragraph 2.2

22 Plaintiffs do not seem to understand that the substantive due
23 process liberty interest that the parents have in their family

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1 integrity is protected by RCW 13.34. This statute provides
2 procedural due process protections for the parents' liberty
3 interest when the state seeks to place their child in foster care.
4 This statute satisfies due process. See Defendants' Memorandum at
5 42.

6 Plaintiffs state that the court's order does not address
7 children in foster care. Plaintiffs' Memorandum at 25, ft. 52.
8 But the court's order applies to all the plaintiffs. The
9 plaintiffs cannot seriously maintain that families with children
10 in foster care, because of abuse and neglect, have a
11 constitutional right to housing assistance while families who have
12 not abused or neglected their children do not have that
13 constitutional right.

14 Plaintiffs cite to their Memorandum Opposing Defendants'
15 Motion for Judgment on the Pleadings, pp. 51-55. The cases there
16 do not support plaintiffs' theory. Two of the cases have nothing
17 to do with family integrity. See Dunn v. Blumstein, 405 U.S. 330,
18 92 S. Ct. 995, 35 L.Ed.2d 274 (1972). [court struck down a 1-year
19 residency requirement pursuant to an equal protection challenge
20 because the state was unable to show a compelling state interest
21 for infringing upon the fundamental right to vote]; Shelton v.
22 Tucker, 364 U.S. 479, 81 S. Ct. 247, 52 L.Ed.2d 231 (1960).
23 [state statute requiring school teachers to list every

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1 organization they belonged to for the last five years was found
2 unconstitutional because it infringed on freedom of speech and
3 association]. The plaintiffs also cite a quotation from the
4 concurring opinion in a tort action brought under federal law
5 against police officers for interference with visitation rights.
6 Wise v. Bravo, 666 F.2d 1328, 1337, 133-35 (10th Cir. 1982). This
7 case makes no mention of any type of assistance to maintain family
8 integrity.

9 The only case that is relevant to this action is In Re Sumey,
10 94 Wn.2d 757, 621 P.2d 108 (1980), which supports defendants'
11 position. In Sumey, the court recognized the parent's liberty
12 interest in family integrity but allowed the state to place a
13 child in residential care and held that:

14 On balance, the substantial interests of the
15 State and child are sufficient to justify the
16 limited infringement upon the parents'
17 rights.

18 Accordingly, it must be concluded that
19 appellants' due process challenge to RCW
20 13.32 is without merit. Id. at 765.

21 Courts have rejected substantive due process claims under
22 similar circumstances. B.H. v. Johnson, 715 F.Supp. 1387, 1396
23 (N.D. Ill. 1989) [substantive due process does not "impose an
24 obligation on the state to make efforts to reunify families that
25 have been separated by legitimate state intervention. . ."]; Black
26 v. Beame, 550 F.2d 815 (2d Cir. 1977) [court rejected argument

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1 that the state was under a duty to allocate resources to unite
2 children in foster care]. The plaintiff's due process challenge
3 in this case is also without merit.

4 2. The Plaintiffs Do Not Have An Entitlement To
5 Housing Which Requires Procedural Due Process
6 Protections.

7 The plaintiffs, after receiving copies of the Child Welfare
8 Plan, the DCFS Case Manual and other discovery from the defendants
9 are unable to cite any policy or statement which provides them
10 with a property interest in housing assistance. Plaintiffs state,
11 without any support, that the Department does not have adequate
12 criteria. But the Department has a case manual which sets out
13 criteria for child welfare services. Sections of it have been
14 made part of the record. See Exs. T, U, V, W, X.

15 F. **PLAINTIFFS HAVE FAILED TO STATE AN EQUAL PROTECTION**
16 **CLAIM.**

17 In discussing constitutional claims the Washington State
18 Supreme Court has held that "[a]s expressed by the Eighth Circuit,
19 'naked castings into the constitutional sea are not sufficient to
20 command judicial consideration and discussion'" (cites omitted).
21 In Re Rosier, 105 Wn.2d 606, 616, 717 P.2d 1353 (1986).

22 Plaintiffs have pointed to nothing that discriminates against
23 homeless children. They, as well as other children, are
24 considered by the same criteria to determine whether they are at
25 risk of abuse or neglect. The Child Welfare Plan states no

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1 discriminatory criteria regarding them. The plaintiffs' complaint
2 is that homeless children are not treated as a special category
3 with their own "housing assistance" program. The reality is that
4 homeless children are treated as a special category by Housing and
5 Urban Development and DCD which funds numerous programs for them.
6 See Defendants' Memorandum at 30-36.

7 G. AS A MATTER OF LAW, THE NAMED PLAINTIFFS' CLAIMS FOR
8 DAMAGES MUST BE DENIED.

9 1. The Statutes Relied Upon By Plaintiffs Do Not Create A
10 Duty To Provide Housing Assistance.

11 Plaintiffs admit that there must be a duty to maintain a
12 tort. When a statute does not require specific actions, there can
13 be no duty which will give rise to a tort. Melville v. State, 115
14 Wn.2d 34, 38, 793 P.2d 952 (1990). Plaintiffs never state the
15 specific duty owed to the plaintiffs that has been breached. They
16 cannot. In their Motion for Partial Summary Judgment the
17 plaintiffs state:

18 The plaintiffs ask the court for the
19 following relief:

20 A. declare DSHS's duties to homeless children and to
21 those families that need housing assistance to
22 prevent or shorten their children's foster care
23 placement as follows:

24 1. to devise and implement an adequate
25 coordinated and comprehensive plan for the
26 protection and care of homeless children.
(RCW 74.13.031);

27 Id. at 1.

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1 The statutes which plaintiffs rely upon do not establish a
2 clear duty which can give rise to a tort claim. The court has
3 allowed the plaintiffs to engage in discovery. They have received
4 the Child Welfare Plan, the DCFS case manual and numerous other
5 documents. None of these establish a duty to provide "housing
6 assistance" to any group.

7 The defendants are entitled to summary judgment as a matter
8 of law because there is no duty that has been breached.

9 Even if the plaintiffs could point to a duty, there is no
10 legal causation. Any action by the state is too far removed from
11 any damage they have suffered. It is unclear what damages the
12 Hills suffered; the plaintiffs have not been separated from their
13 children. Living in a transitional shelter is the result of their
14 choices: the decision to return to Seattle from California
15 without sufficient funds for housing, and the inability to access
16 subsidized housing because they had left Seattle without paying
17 their rent in 1988. Plaintiff Coughlin was separated from her
18 children because of her addiction. Any problems she had were
19 connected to those addictions. Plaintiff Sanders ignores the
20 cause in fact of the separation from her children: she was guilty
21 of witness tampering and made no effort to protect her children
22 from Mr. Sanders. Plaintiff Sanders housing situation was a
23 result of her personal decision regarding the priorities in her

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1 life.

2 "[Legal liability] is always to be determined on the facts of
3 each case upon mixed considerations of logic, common sense,
4 justice, policy and precedent..." King v. Seattle, 84 Wn.2d 239,
5 250, 525 P.2d 228 (1974) [cite omitted]. In King, the court held
6 there was no legal liability because the damages were sustained as
7 a result of the plaintiff's own business judgment. Id. at 250-
8 251. The court observed that "[i]f this were not so, the
9 plaintiff would be able to create liability in another by his own
10 independent judgment." Id. at 251. That is what the plaintiffs
11 seek to do in this case and the court should not allow it.

12 2. The Doctrine of Discretionary Immunity Defeats
13 Plaintiffs' Claims For Damages.

14 Plaintiffs state that the defendants do not meet two of the
15 necessary requirements for discretionary immunity. First, they
16 state that defendants' Child Welfare Plan does not require basic
17 policy evaluation, judgment and expertise on the part of the
18 Department. The Plan involves all of these factors. While many
19 services the Department uses are mandated by statute, i.e. the Aid
20 to Families with Dependent Children (AFDC) Program, RCW 74.12 et.
21 seq., some are not. The Department, based on its expertise
22 regarding the problems children face, the services that are
23 available and the effectiveness of those services must decide how
24 to allocate funds and whether to retain programs.

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1 Second, plaintiffs state that the Department does not have
2 the authority to act. It is, however, the Department that has
3 been delegated the authority to coordinate child welfare services
4 for children. RCW 74.13.031.

5 Plaintiffs cite a single sentence from a long decision which
6 says that a reasonable decision is not necessarily authorized.
7 Plaintiffs' Memorandum at 27, citing Miotke v. Spokane, 101 Wn.2d
8 307, 329, 678 P.2d 803 (1984). But the plaintiffs omit the next
9 sentence which states that "[t]hey [defendants] had no alternative
10 under federal and state law but to comply with the waste discharge
11 permit." Id. at 330-31. In this case there is no statute which
12 plaintiffs can say directs the Department to provide housing
13 assistance and leaves them no alternative as to what services to
14 provide for any group of persons.

15 This is exactly the type of case that the doctrine of
16 discretionary immunity was intended to address. The basic policy
17 decisions the Department makes in its Child Welfare Plan about
18 programs and allocation of money among programs should not give
19 rise to tort complaints.

20 3. Plaintiffs' Facts Fail To Support A Claim For
21 Negligent Infliction of Emotional Distress.

22 Plaintiffs do not dispute that a cause of action for
23 negligent infliction of emotional distress requires a showing that
24 the plaintiffs were in actual peril. In this case plaintiffs do

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1 not dispute that they cannot show that they were in peril and
2 therefore summary judgment must be granted to defendants.

3 **II. CONCLUSION**

4 The Department has the formidable task of balancing the needs
5 of Washington state children and the fiscal constraints of the
6 state budget. The Department's goal is to create and maintain a
7 child welfare program that will serve as many of the varied and
8 pressing needs of the children of this state as is fiscally
9 possible. It is crucial to recognize that the Department
10 possesses the knowledge of the needs of children throughout the
11 state, knowledge of existing programs in the Department and the
12 community, a thorough knowledge of the budget available to fill in
13 gaps, and a knowledge of the most economical means of delivering
14 services. In refusing to strike down general rules administering
15 public assistance programs, the Supreme Court has stated that:

16 the intractable economic, social and philosophical
17 problems presented by public welfare assistance programs
18 are not the business of the court . . . [T]he
19 Constitution does not empower this Court to second-guess
20 state officials charged with the difficult
21 responsibility of allocating limited public welfare
22 funds among the myriad of potential recipients.

23 Dandridge v. Williams, 397 U.S. 471, 486, 90 S.Ct. 1153, 25
24 L.Ed.2d 491 (1970).

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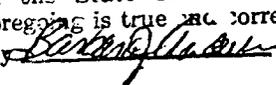
1 The Department has fulfilled its obligations to plan and
2 implement child welfare services and the Department is entitled to
3 summary judgment.

4 Respectfully submitted this 18th day of October, 1993.

5 
6 CHARLOTTE E. CLARK-MAHONEY
7 Assistant Attorney General
8 WSBA #13096

9 
10 MICHAEL W. COLLINS
11 Assistant Attorney General
12 WSBA #19375

13 CERTIFICATE OF MAILING

14 I certify that I mailed a copy of this
15 document, postage prepaid, to all parties and
16 their counsel of record on 10/18/93.
17 I certify under penalty of perjury under laws
18 of the State of Washington that the
19 foregoing is true and correct.
20 By  in Seattle, WA

21
22
23
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B. Resources

It is important to connect the family to supports within the community. Each DCFS staff shall have knowledge about local resources.

1. Explore, or develop to the extent possible where gaps in service exist, both in-home and out-of-home resources prior to placing a child in out-of-home care.
2. The following resource list links family need to potential services. The services available will vary from community to community and are provided through a multitude of delivery systems including voluntary agencies, regular social service agencies, DSHS, and by purchase-of-service.

FAMILY RELATEDINCOME

- AFDC, GA-U, Social Security
- Churches
- Credit Counseling
- Employment Referrals

CLOTHING

- Clothing Bank (local, schools)
- Salvation Army/Goodwill

HOUSING

- Low-income Housing
- Emergency Shelter
- Missions

MEDICAL CARE/DENTAL CARE

- Medical Insurance
- Medical Assistance
- Community Health Nurse, Well-Child Clinics, Hospice
- Civic Groups, Kiwanis, etc.
- Crippled Children's Services

NUTRITION

- WIC
- Food Banks
- Food Stamps/Commodities
- Community Health Nurse

TRANSPORTATION

- FISH/Volunteers
- Bus Passes

JOB TRAINING/EMPLOYMENT

- Vocational Rehabilitation
- College Financial and Women's Centers
- Employment Security,
- FIP

MENTAL HEALTH

- Community Mental Health
- Case Management (through Community Mental Health)
- Day Treatment
- Specialized Counseling
- In-Home Therapy
- Group Therapy

ABUSE/NEGLECT

- Anger Control Group
- Parent's Anonymous
- Mother's Groups
- Parent Aids
- CPS/CWS Day care
- Chore Services
- Respite Care
- Coop Preschools
- Headstart, Bug-in-the-Ear
- Parenting Classes
- Parent Workshops
- Parent Advocates
- In-Home Specialists
- (health or education)
- Emergency Caretakers
- Crisis Nursery
- Homemaker Services
- Public Health
- Court

SUBSTANCE ABUSE

- Alcoholics Anonymous
- Narcotics Anonymous
- Community Alcohol/Drug Agencies
- Alateen/Alanon
- Inpatient Treatment
- ADATSA

SOCIAL ISOLATION

- Extended Family
- Churches
- Friends
- Parents Without Partners

- Clubs, Civic Groups
- Special Interest/Support Groups (SIDS, DDD)
- Culturally-related Organizations
- Recreational Activities,
- YMCA, YWCA

COORDINATION

- Diagnostic Teams
- Consultation
- Staffings
- Resource Development

CHILD RELATEDSCHOOL ATTENDANCE

- School Counselors
- Staffings
- Alternative Schools
- Teachers

SCHOOL PERFORMANCE

- Tutoring
- Alternative Schools
- Evaluation - Special
- Education Services

JOB TRAINING/EMPLOYMENT

- Youth Jobs
- Vocational Programs

MENTAL HEALTH

- Group Therapy
- Community Mental Health
- Family Therapy
- Casework Counseling
- Specialized Counseling
- Therapeutic Day Care

BEHAVIOR (ACTING OUT, RUNNING AWAY)

- Peer Counseling
- One-To-One Programs
- (Big Brothers, Big Sisters)
- Family Reconciliation Services
- Recreational (Camps,
- Sports YMCA, YWCA)
- Skill-Building Classes
- Preschool-Coops

