

IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON

In the Matter of the Dependency of

A.W., d.o.b. 03/11/98,
T.W., d.o.b. 02/19/02,
A.K., d.o.b. 08/06/09,

Minor Children.

SHAWLEE GEIGER,

Appellant,

v.

STATE OF WASHINGTON,
DEPARTMENT OF SOCIAL AND
HEALTH SERVICES,

Respondent.

No. 67801-9-I

(Consolidated with Nos. 67802-7-I
and 67803-5-I)

DIVISION ONE

UNPUBLISHED OPINION

FILED: November 5, 2012

Leach, C.J. — Shawlee Geiger appeals an order of dependency as to her three children, A.W., T.W., and A.K. She claims that the trial court violated her due process rights by allowing the State to amend its dependency petitions to add allegations of abandonment and abuse or neglect under RCW 13.34.030(6)(a) and (b). Because Geiger did not raise this issue in the trial court and does not show actual prejudice, she cannot assert it now. We affirm.

Background

Shawlee Geiger is the biological mother of A.W., born March 11, 1998,

No. 67801-9-I (consol. with
Nos. 67802-7-I and 67803-5-I)

T.W., born February 19, 2002, and A.K., born August 6, 2009. In April 2011, the Department of Social and Health Services filed dependency petitions for each of the children.¹ The petitions alleged dependency under RCW 13.34.030(6)(c), claiming that the children have “no parent, guardian, or custodian capable of adequately caring for the child, such that the child is in circumstances which constitute a danger of substantial damage to the child’s psychological or physical development.” After a shelter-care hearing, a court commissioner ordered the children placed in a relative’s care. In September 2011, the court held a fact-finding hearing. At the close of its case, the State orally moved to amend the petitions to also allege dependency under RCW 13.34.030(6)(a) and RCW 13.34.030(6)(b), asserting that Geiger abandoned the children and also abused or neglected them. The court found all three children dependent under RCW 13.34.030(6)(a), (b), and (c). Without challenging any of the trial court’s findings of fact, Geiger appeals.

Analysis

Geiger contends that the trial court violated her due process rights by allowing the State to amend its petitions at the close of its case. Because she did not raise the due process issue in the trial court, we initially determine

¹ Because Geiger’s appeal concerns purely legal issues, we do not set forth the substantive facts of the dependency proceedings in this opinion.

No. 67801-9-I (consol. with
Nos. 67802-7-I and 67803-5-I)

whether she demonstrates a manifest error affecting a constitutional right.² As we explain, Geiger may not raise the due process claim because she fails to show prejudice.

When issues are tried by the parties' express or implied consent but were not raised in the pleadings, CR 15(b) allows a party to amend its pleadings to conform to the evidence. An objecting party may request a continuance if it needs more time to meet the evidence.³

With few exceptions, we will not consider an error raised for the first time on appeal.⁴ This rule applies to appeals from deprivation proceedings.⁵ Because Geiger did not object to the amendment in the trial court, we limit our review to whether she may challenge the amendment on appeal. Under RAP 2.5, a party may raise for the first time on appeal only a manifest error affecting a constitutional right.⁶ To demonstrate that an asserted error is manifest, the appellant must show actual prejudice.⁷ Actual prejudice means that the alleged error had practical and identifiable consequences in the trial of the case.⁸

² RAP 2.5(a)(3); State v. McFarland, 127 Wn.2d 322, 333, 899 P.2d 1251 (1995).

³ CR 15(b).

⁴ In re Roberts, 46 Wn. App. 748, 756, 732 P.2d 528 (1987).

⁵ Roberts, 46 Wn. App. at 756.

⁶ RAP 2.5(a)(3); McFarland, 127 Wn.2d at 333.

⁷ State v. Kirkman, 159 Wn.2d 918, 935, 155 P.3d 125 (2007).


⁸ State v. O'Hara, 167 Wn.2d 91, 99, 217 P.3d 756 (2009).

No. 67801-9-I (consol. with
Nos. 67802-7-I and 67803-5-I)

Geiger does not demonstrate prejudice.⁹ She does not identify any evidence or trial strategy that she might have used if the original petitions included the additional statutory provisions. Geiger does not challenge the trial court's factual findings that A.W., T.W., and A.K. had no parent capable of adequately caring for them and that she has not participated in parenting the children since 2010. These findings all support the conclusion that the trial court properly found the children to be dependent under all three provisions. Geiger does not claim that the amendment had any practical and identifiable consequence in the fact-finding hearing. Consequently, any alleged prejudice is entirely speculative and not sufficient to meet Geiger's burden.¹⁰ Because Geiger fails to show prejudice, we decline to address her due process claim.

Conclusion

Because Geiger did not raise her due process claim in the trial court and has not shown that the amendment of the original petitions prejudiced her, we affirm.

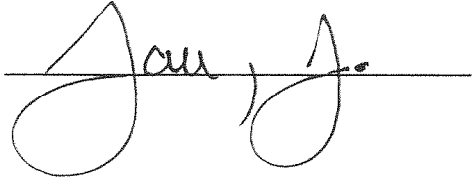
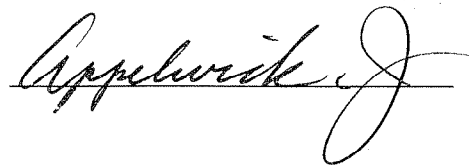


⁹ For purposes of this analysis, we assume but do not decide that this alleged error is of constitutional magnitude.

¹⁰ See generally State v. Norby, 122 Wn.2d 258, 264, 858 P.2d 210 (1993) (“The mere possibility of prejudice is not sufficient to meet the burden of showing actual prejudice.”).

No. 67801-9-I (consol. with
Nos. 67802-7-I and 67803-5-I)

WE CONCUR:

A handwritten signature in cursive script, appearing to read "Jan J.", written over a horizontal line.A handwritten signature in cursive script, appearing to read "Appelwick J.", written over a horizontal line.