

*Ducote (Kent) v. State Dep't of Soc. & Health Servs.*

No. 81714-6

Chambers, J. (dissenting) — I would hold that a stepparent who has lived in the family home long enough to become an integral part of the family and who contributes to the well being of the family is entitled to bring a claim of negligent investigation against the Department of Social and Health Services. The trial court dismissed this case at summary judgment, ruling that stepparents did not have a cause of action because stepparents are not explicitly listed as having interests worthy of protection under chapter 26.44 RCW. The majority goes a step further and finds that stepparents lack standing. But RCW 26.44.010 specifically recognizes the legitimate interests of parents, custodians, and guardians. These ordinary, undefined terms should be given their plain and common meaning unless a contrary legislative purpose appears. *In re Pers. Restraint of Skylstad*, 160 Wn.2d 944, 956, 162 P.3d 413 (2007) (citing *Ravenscroft v. Wash. Water Power Co.*, 136 Wn.2d 911, 920, 969 P.2d 75 (1998)). I find no contrary legislative purpose. Because the majority does, I respectfully dissent.

Chapter 26.44 RCW protects both children and their families. *Tyner v. State Dep't of Soc. & Health Serv.*, 141 Wn.2d 68, 78, 80, 1 P.3d 1148 (2000) (citing RCW 26.44.010, .050). The legislature has, rightly, found

these interests inextricable. “The bond between a child and his or her parent, custodian, or guardian is of paramount importance, and any intervention into the life of a child is also an intervention into the life of the parent, custodian, or guardian.” RCW 26.44.010. We found that RCW 26.44.050 creates an implied cause of action for negligent investigation of child abuse, because that cause of action helps to protect those legislative purposes. *Tyner*, 141 Wn.2d at 80 (“Thus, by recognizing the deep importance of the parent/child relationship, the Legislature intends a remedy for both the parent and the child if that interest is invaded.”). Given the policies underlying chapter 26.44 RCW, recognizing that some stepparents are also protected by the implied cause of action is simple common sense. A negligent investigation of a stepparent who is integrated into the child’s life and home will be just as disruptive to the child and the family as a negligent investigation of a parent whose legal rights have already been formally established.

The majority’s technical approach is also inconsistent with the principles underlying our recent opinion in *Zellmer v. Zellmer*, 164 Wn.2d 147, 188 P.3d 497 (2008). There we held that a stepparent who stands in loco parentis to a child is entitled to the same parental immunity as a legal parent. *Id.* at 151. We found “no principled distinction between a legal parent and a stepparent who assumes all the obligations and exercises all the responsibilities of parenthood, as the public policy reasons supporting immunity for a biological or adoptive parent apply equally to one standing in

loco parentis.” *Id.* at 164-65. I see no reason why that same principle should not apply here. The majority’s approach is also inconsistent with *Tyner*. *Tyner* recognized that “[t]he procedural safeguards of RCW 26.44.050 protect both children and family members; children are protected from potential abuse and needless separation from their families and family members are protected from unwarranted separation from their children.” *Tyner*, 141 Wn.2d at 79. This separation could be just as devastating when it is a stepparent as a natural, de facto, or adoptive one. Finally, it is inequitable to create a system where stepparents have legally enforceable obligations toward children without the State having a legally enforceable duty of care when interfering with their lives because of those very children. *See* former RCW 26.16.205 (1990) (“The expenses of the family and the education of the children, including stepchildren, are chargeable upon the property of both husband and wife, or either of them, and they may be sued jointly or separately.”).

I agree with the majority that it would not serve the statutory purposes to extend this cause of action to all stepparents. I would limit this cause of action to a stepparent who resided with the family long enough to have become an integral part of that family and who has contributed to the well being of the family. *Cf. Zellmer*, 164 Wn.2d 147. In my view, whether a stepparent qualifies should be treated as a question of fact to be determined based on the individual family situation. Here, the plaintiff’s case was

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dismissed merely because he was a stepparent. That is inconsistent with RCW 26.44.010, .050, *Tyner* and *Zellmer*.

Based ultimately on the wording of a dissent, the majority contends that “[a]lthough the remedy is implicit, the right and recipients of the right are explicit.” Majority at 10. But the statute is not so cramped. It uses ordinary terms that ordinarily would be understood to include a stepparent who is well integrated into the child’s family.

I respectfully dissent.

AUTHOR:

Justice Tom Chambers

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WE CONCUR:

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Justice Richard B. Sanders

Justice Debra L. Stephens

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