

FILED
SUPREME COURT
STATE OF WASHINGTON
2/1/2024 11:22 AM
BY ERIN L. LENNON
CLERK

NO. 102693-5

SUPREME COURT OF THE STATE OF WASHINGTON

IN RE E.J.O., S.D.O., S.S.M.O., J.O. AND K.M.O,

**ANSWER TO MOTION FOR
DISCRETIONARY REVIEW**
[Treated as Answer to Petition for Review](#)

ROBERT W. FERGUSON
Attorney General

JARED T. CORDTS
Assistant Attorney General
WSBA #32130
Office Code: OC638509
1116 West Riverside Ave, Suite 100
Spokane, Washington 99201-1106
(509) 456-3123

TABLE OF CONTENTS

I.	INTRODUCTION.....	1
II.	RESTATEMENT OF THE ISSUE.....	2
III.	RESTATEMENT OF THE FACTS	2
	A. Dependency and Disposition Regarding J.O., S.D.O., S.S.M.O., and E.J.O.....	3
	B. Dependency and Disposition Regarding K.M.O.....	5
	C. The Mother’s Psychological Evaluation.....	6
	D. Chemical Dependency Assessment and Treatment	9
	E. Random UA/BA Testing	11
	F. Parenting Assessment	11
	G. Mental Health Treatment/Individual Counseling	12
	H. Family Therapy.....	13
	I. Parenting Programs.....	16
	J. Termination Petition Filed and Parent-Child Relationships Terminated by Trial Court	17
IV.	ARGUMENT	21
	A. Substantial Evidence Supports the Trial Court’s Determination that the Department Investigated and Tailored Services Toward Mother’s Cognitive Abilities.....	21

B. The Department Tailored Services, and the Offer of Services, to the Mother’s Individual Needs	27
V. CONCLUSION	31

TABLE OF AUTHORITIES

Cases

<i>In re D.H.</i> , 195 Wn.2d 710, 464 P.3d 215 (2020).....	22
<i>In re Dependency of D.A.</i> , 124 Wn. App. 644, 102 P.3d 847 (2004).....	22
<i>In re Parental Rights to E.J.O.</i> , No. 39266-0-III, 2023 WL 8270785 (Wash. Ct. App. Nov. 30, 2023)	20, 25, 26
<i>In re Parental Rights to I.M.-M.</i> , 196 Wn. App. 914, 385 P.3d 268 (2016).....	22, 26, 27, 28
<i>In re Termination of Parental Rights to M.A.S.C.</i> , 197 Wn.2d 685, 486 P.3d 886 (2021).....	23, 25, 26

Statutes

RCW 13.34.180(1)(d)	21, 22, 25, 31
---------------------------	----------------

Rules

RAP 13.4	32
RAP 13.4(b)(1).....	26
RAP 13.4(b)(2).....	26
RAP 13.4(b)(3).....	21
RAP 13.4(b)(4).....	21

I. INTRODUCTION

Five children lived in the chaos caused by their mother's unaddressed substance use and mental health issues, necessitating Department intervention into the children's care. A psychological evaluation concluded that the mother had an unspecified personality disorder and a borderline I.Q. The Department tailored the mother's services to her individual needs, and she progressed with some of those services. But after four years of a dependency, and despite various treatment programs, the mother continued to lack insight into her parenting, her mental health, and the children's needs, and refused to participate in certain court-ordered services. The trial court terminated the mother's parental rights to her five children and the Court of Appeals affirmed.

The mother cannot show that her case involves an issue of substantial public interest or a significant question of law. Here, substantial evidence supports the trial court's finding that the Department understandably offered or provided the mother with

all court-ordered and necessary services, tailored to her particular circumstances. This Court should deny the mother's Motion for Discretionary Review.

II. RESTATEMENT OF THE ISSUE

Does substantial evidence support the trial court's conclusion that the mother was provided all necessary and court-ordered remedial services, and the services and offer of services were appropriately tailored?

III. RESTATEMENT OF THE FACTS

Mother Z.O. has eight children; her five youngest children are involved in this matter: J.O. (now 12 years old), S.D.O. (now ten years old), S.S.M.O. (nearly nine years old), E.J.O. (now five years old), and K.M.O. (now four years old). CP 1-2, 7-8, 14-15, 20-21, 537-38; Ex. P-10 at 1-2, P-27 at 1-2; RP 31, 331, 493-94. Her three eldest children have resided with their maternal grandmother, their legal custodian, since 2008. RP 168, 381-82, 428.

The Department has worked with the mother since 2003. RP 426; Ex. P-10 at 4. It has received dozens of reports of “violent parenting” and “significant neglect” of the children in the family home. Ex. P-10 at 4; RP 424-26. The mother tested positive for methamphetamine at the births of S.D.O. and S.S.M.O. RP 29, 339, 425; Ex. P-10 at 3. Despite the Department’s attempts throughout the years to address unsafe conditions through services, the mother has demonstrated “a pattern of substance use, a lack of supervision of her children, a lack of parenting skills, and assaultive behavior towards adults and her children.” Ex. P-10 at 4-5; RP 29, 427.

A. Dependency and Disposition Regarding J.O., S.D.O., S.S.M.O., and E.J.O.

In July 2018, the Department received a report that the mother tested positive for methamphetamine while at the hospital giving birth to E.J.O. RP 29; Ex. P-10 at 3. This report was the fifth intake in five months regarding the family. Ex. P-10 at 3. The other four incidents alleged that the mother abused

substances and failed to supervise the children. Ex. P-10 at 3; *see* RP 28.

On July 18, 2018, the Department filed a dependency petition as to J.O., S.D.O., S.S.M.O., and E.J.O. (K.M.O. had not yet been born). Ex. P-10. It identified substance use, mental illness, lack of parenting ability, and an unsafe home environment as parenting deficiencies warranting court intervention. RP 29; Ex. P-10 at 3.

The mother agreed to orders of dependency and disposition in November 2018. Ex. P-14; RP 35; *see* CP 2, 8, 15, 21. Her dispositional order required her to complete a chemical dependency assessment; participate in random urinalysis (UA)/breathalyzer (BA) testing; complete a parenting assessment; complete a psychological evaluation; complete mental health treatment or individual counseling; and follow any service provider recommendations. Ex. P-14; RP 35.

B. Dependency and Disposition Regarding K.M.O.

K.M.O. was born in September 2019. RP 279. The mother tested positive for amphetamine the day before K.M.O.'s birth. Ex. P-27 at 3. The Department filed a dependency petition a month later. Ex. P-27. The Department agreed to place K.M.O. in the mother's care while she attended inpatient treatment. RP 50-51, 57, 282, 460; Ex. P-29. The juvenile court later removed K.M.O. and placed her in foster care. RP 283-84, 460; Ex. P-33.

In November 2019, the mother agreed to an order of dependency and disposition as to K.M.O. that required her to engage in chemical dependency treatment, participate in random UA/BA testing, and engage in mental health counseling. Ex. P-30 at 3. While the court did not require parenting education at that time, it did incorporate all of the services it had previously ordered her to complete. Ex. P-30 at 3.

C. The Mother's Psychological Evaluation

The mother completed her psychological evaluation in February 2019 with Dr. Deborah Brown. RP 296. Dr. Brown has 30 years of experience as a psychologist. RP 293. Dr. Brown diagnosed the mother with persistent depressive disorder and an “unspecified personality disorder of avoidant borderline and schizoid.” RP 298. She identified the mother’s symptoms as apathy, untruthfulness, withdrawal, using isolation as a defense, and avoiding psychological treatment. RP 299-300, 301, 302. Dr. Brown identified the mother’s general symptoms of borderline personality disorder as mistrust, no sense of direction, untruthfulness, and negative behaviors. RP 300, 302.

The evaluation also carefully examined the nature and extent of the mother’s intellectual and cognitive functioning. RP 298. First, Dr. Brown conducted an I.Q. test to determine her level of cognitive functioning and scored her in the “low average to borderline range” with an I.Q. of 75, in the fifth percentile. RP 302. Dr. Brown described the mother’s I.Q. as “fairly low”

and diagnosed her with borderline I.Q. RP 298. This I.Q. score raised “some” concern about the mother’s intellectual functioning, but did not indicate any developmental delay. RP 317-18.

Second, Dr. Brown assessed the mother’s visual memory as scoring in the 32nd percentile, with her auditory memory scoring in the first percentile. RP 302-03. This meant that the mother would have difficulty in classroom settings and, in particular, remembering what people told her. RP 303. Dr. Brown thus recommended following up on any oral directions to the mother with written information in the form of visual diagrams, explained repeatedly in small amounts. RP 305-06.

Third, Dr. Brown also tested the mother’s executive functioning, which revealed she was in the “mild/moderate impaired range.” RP 304-05. This meant that the mother struggled with complex reasoning and planning, but with repeated explanation, and as long as she was interested, “she

should be able to understand the general course of most things.”

RP 305. The mother scored higher than average in her abstract reasoning skills and her “logical ability to handle life things.”

RP 305.

In light of these tests, Dr. Brown concluded that together, the mother’s personality disorders, substance use, and borderline I.Q. posed barriers to her progress in services. RP 309. Dr. Brown stated that the results of her intellectual testing was not as “glaring as her psychological problems.” RP 298. Due to her avoidant personality, Dr. Brown opined that “[the mother] will avoid going to treatment.” RP 308.

In Dr. Brown’s opinion, if the mother did not get treatment, then her depression and psychological symptoms would not improve, which would affect her ability to engage in treatment. RP 308. That said, Dr. Brown believed that with treatment, her symptoms relating to personality disorder could improve. RP 321. She recommended intensive outpatient treatment with dialectical behavior therapy (DBT) because DBT

was, in her professional opinion, most effective for treatment of personality disorders. RP 310. The mother needed more than cognitive behavior therapy (CBT) alone, as DBT would teach boundaries and coping skills. RP 310-11. In addition, Dr. Brown recommended medication for depression and abstinence from substances. RP 312. Dr. Brown opined that the mother would likely need extensive treatment “over a number of years” before she could safely parent. RP 312-13.

While the mother participated and progressed in some recommended services, the mother never engaged in DBT, despite the Department’s repeated encouragement for her to do so verbally and in writing. RP 170-71, 179, 180, 391-92, 418; Ex. P-41 at 10.

D. Chemical Dependency Assessment and Treatment

The mother obtained a chemical dependency assessment and completed a six-month inpatient treatment program with New Horizons in April 2020. RP 132-33, 138, 197, 198, 202. Upon discharge, the mother’s provider recommended that she

engage in intensive outpatient treatment, mental health treatment, and medication management. RP 138.

The mother then moved into transitional housing, but lost that housing in April 2020 after she tested positive for methamphetamine and broke house rules. RP 178-79, 194, 203-04, 283-84; Ex. P-37 at 8. The Department referred her to Anna Ogden Hall, a residential chemical dependency program, to provide structure and support. RP 384-85. The mother disagreed that she needed the structure of that program and refused to engage. RP 384; *see* RP 412.

The mother began intensive outpatient treatment at New Horizons in April 2020, with Sue Hernandez. RP 190, 198, 199, 200. She was required to attend group sessions, individual sessions, and self-help support meetings. RP 190, 191. The mother appeared “willing to do what she needed to do” in treatment, and although she would get frustrated when she felt she was not being heard, she was receptive to feedback. RP 196. The mother went from intensive outpatient treatment to

outpatient treatment and relapse prevention in December 2020, and then engaged in moral reconnection therapy. RP 199, 200.

Ms. Hernandez discharged the mother from treatment in August 2021. The Department then offered the mother chemical dependency treatment services with other providers to further support the mother's recovery. RP 186-87. She refused to engage in further treatment. Ex. P-43 at 9.

E. Random UA/BA Testing

While in outpatient treatment, the mother completed monthly, random UA tests that were negative. RP 201, 202; Ex. P-37 at 8. After her discharge, she "adamantly refused to provide UAs, reporting she thought she completed that service already." RP 178; Ex. P-41 at 10; *see* Ex. P-43 at 9; RP 422.

F. Parenting Assessment

Caitlin Soriano conducted a parenting assessment in December 2019, while the mother was engaged in inpatient treatment at New Horizons. RP 118. The provider recommended family therapy because the mother struggled with meeting the

needs of her children when they were together. RP 119. Ms. Soriano also recommended that she focus her individual counseling on “understanding how past experiences for these kids and past experiences in the home have impacted their relationships and work toward repairing that.” RP 122-23.

G. Mental Health Treatment/Individual Counseling

The mother obtained a mental health assessment with New Horizons seven months after her psychological evaluation, in November 2019. RP 148; *see* RP 156. She attended an intake appointment in February 2020, but did not start mental health treatment at New Horizons until May 2020. RP 149, 390-91. New Horizons diagnosed the mother with generalized anxiety disorder and major depressive disorder. RP 157, 160. She engaged in CBT during sessions, but exhibited “some resistance to treatment, resistance to making personal change.” RP 150, 158. However, through treatment, she began to recognize how her thought patterns and choices negatively affected the children. RP 152; *see* RP 153-54. New Horizons discharged the mother

from treatment in October 2020, despite her attending less than three hours of treatment between July and October 2020. RP 149, 150, 156, 397-98; Ex. P-39 at 9. It recommended family therapy and individual counseling as needed. RP 151.

H. Family Therapy

The family began therapeutic contact under the supervision of Alyssa Brudnicki in November 2019. RP 94. When asked about her goals for family therapy, the mother said she did not have any parenting deficiencies and felt that the children should never have been removed from her care. RP 98, 100; 110.

During sessions, Ms. Brudnicki observed that the mother held a “lack of attunement” to the children’s emotional needs and that the children often did not go to the mother to meet their needs, indicating that “the children don't fully trust their mother to meet their needs.” RP 97, 100. Ms. Brudnicki would model for the mother how to set expectations so the children would “see her as a parent.” RP 95. The mother displayed hostility to

feedback and instruction, but made progress in the program. RP 99, 105, 106. At the end of the program in March 2020, Ms. Brudnicki recommended ongoing supervised visits and participation in Promoting First Relationships, a program focusing on the social and emotional well-being of children aged zero to five. RP 99, 100-01, 104, 223.

Mary Ann Sacco has provided family therapy for 30 years. RP 247. She received a referral for family therapy with J.O., S.D.O., and the mother. RP 248. During her second meeting with J.O. and S.D.O., they told her that they wanted to stay in their foster home, did not want family therapy, and did not want to hurt their mother's feelings. RP 248, 249. Ms. Sacco did not believe the children should be forced into family therapy so she did not start services for the family. RP 250.

Ms. Sacco received another referral for family therapy in June 2022, for the mother and all five children. RP 252. In preparation, Ms. Sacco reviewed Dr. Brown's psychological evaluation. RP 260, 266. At the intake session, the mother told

Ms. Sacco that she did not have anything to work on, she had done everything the Department asked of her, and she could parent the children. RP 254-55. The only session with the children took place in July, and Ms. Sacco observed an “incredible amount of anxiety and disconnection” in the children. RP 258. Ms. Sacco described the session as “public crowd control” based on the energy of the five children. RP 268. Ms. Sacco thought that the mother enjoyed her time with the children but that the children “were incredibly relieved to leave.” RP 259. The mother told Ms. Sacco that the children were “obviously” returning to her. RP 259. To Ms. Sacco, this indicated that the mother did not recognize what she needed to do to repair the problems in her relationship with her children. *See* RP 261. Ms. Sacco recommended individual therapy, as the mother’s mental health had “greatly affected her thought process” and her insight and judgment were problematic. RP 262. In Ms. Sacco’s opinion, the mother would need an extended period of time to address the “long-term significant

issues” with her mental health and thinking process. RP 264-65, 267.

I. Parenting Programs

The Department referred the mother six times to Promoting First Relationships, but the mother never engaged. RP 223, 398-400.

The Department next referred the mother to Julie Rudmann for Incredible Years (IY). RP 215. IY helps parents support their children’s development and teaches parents effective parenting skills. RP 214. Ms. Rudmann provided this service to the mother and E.J.O., K.M.O., and S.S.M.O. between September 2021 and February 2022. RP 181, 216, 217, 219, 225.

During sessions, Ms. Rudmann and the mother would review handouts, discuss how they related to parenting skills, and watch videos of parent-child interactions. RP 217-18. The mother would then use those skills in sessions with the children, and Ms. Rudmann would provide feedback. RP 218. Ms. Rudmann noticed an increase in some of the skills the

mother used to promote stronger parent-child relationships and strengthen communication. RP 218-19; *see* RP 226 (utilized positive parenting skills). The mother successfully completed IY, but “did not identify needs that she had to work on as a parent” and did not “specifically identify deficits that she had.” RP 222, 226.

J. Termination Petition Filed and Parent-Child Relationships Terminated by Trial Court

In February 2020 and October 2021, the Department filed termination petitions identifying the mother’s parental deficiencies as chemical dependency, mental health, and a lack of parenting skills. CP 1-2, 7-8, 14-15, 20-21, 537, 539. A three-day termination trial occurred in July 2022. RP 1, 7, 164, 329.

At trial, the mother testified that she first started using methamphetamine in 2012, after J.O. was born. RP 338. She used methamphetamine a couple of times a week, but as an “on and off thing.” RP 335, 338. She denied using substances around the children, and denied that her use affected her parenting. RP 339, 340. She stated that she had been clean since a relapse around

Christmas 2020. RP 343, 345, 346. She claimed that she found UA testing pointless and a waste of time because she had tested clean repeatedly. RP 348. She thought that chemical dependency treatment had removed the primary barrier to her parenting the children. RP 353, 374.

The mother did not think Dr. Brown's diagnosis of her mental health disorders was "official" because she "had done mental health." RP 351. The mother denied having symptoms of personality disorders but acknowledged experiencing anxiety and, after the children were removed, depression. RP 351-53. The mother could not describe how her behavior had affected the children and said that she "didn't need [mental health treatment] or whatever." RP 357, 363-64. The mother said that she tried to arrange DBT but did not think it was necessary. RP 364-65. She did not find family therapy beneficial, because she had learned all of her parenting skills in parenting classes. RP 367-68.

Three social workers assisted the mother during the dependencies. RP 28, 167, 276, 409, 454. They communicated

with the mother through frequent service letters, emails, texts, and phone calls, and tried to meet with her in-person. RP 36-37, 45-46, 387-88, 396-97, 407-08, 419 (went “line by line” through a service letter); *see* Ex. P-26 at 8 (“bullet-pointed emails”). Department social worker Beth Willey met with the mother and her attorney in-person to discuss DBT. RP 418.

According to Social Worker Willey, the mother’s parental deficiencies included her mental illness, her lack of insight, and her lack of parenting skills. RP 443. The mother asserted that she had done most of her services and did not need to continue or do them again. RP 168. Ms. Willey identified no other remedial services reasonably available in the community to which she could have offered the mother and did not. RP 443-44.

At the conclusion of the trial, the court terminated the mother’s parental rights as to all children. CP 1953-62; RP 518-19. It found that the mother’s “mental health issues are preventing her from gaining the insight that she needs to be able to understand her children’s emotional needs,” despite four years

of services. CP 1959. The court further found that although the mother's intellectual functioning posed challenges to her engagement in services, the Department's communication with the mother had been regular and varied, consistent with Dr. Brown's recommendations, including verbally and in writing, and the mother's response indicated her understanding, though she refused to participate in some services. RP 499, 512; CP 1958. Thus, the trial court concluded that the Department tailored the offer of court-ordered services to the mother, and that all necessary services, reasonably available, capable of correcting parental deficiencies within the foreseeable future had been offered or provided. CP 1955-58; RP 511-12.

On appeal, the Court of Appeals affirmed the termination order. *In re Parental Rights to E.J.O.*, No. 39266-0-III, 2023 WL 8270785 (Wash. Ct. App. Nov. 30, 2023). The mother now seeks Supreme Court review.

IV. ARGUMENT

The mother seeks review under RAP 13.4(b)(3) and (4). Mot. at 11-12. This Court should deny the mother's Motion for Discretionary Review because the Court of Appeals did not err in concluding that substantial evidence supported the trial court's finding under RCW 13.34.180(1)(d), that the Department properly investigated the nature and extent of the mother's cognitive functioning and tailored services to account for her needs and remedy those deficiencies in a manner that was clear and understandable.

A. Substantial Evidence Supports the Trial Court's Determination that the Department Investigated and Tailored Services Toward Mother's Cognitive Abilities

The mother argues that the Department failed to investigate the extent of her intellectual disabilities and thus failed to expressly and understandably offer tailored services to meet her needs. Mot. at 13-14, 17-22. But the mother completed a psychological evaluation that specified she had a borderline I.Q., explained in detail the nature of her cognitive functioning

in light of other types of tests, and recommended ways to ensure that she understood how to engage in services to address her parental deficiencies and reunify with her children.

To satisfy RCW 13.34.180(1)(d), the Department must prove by clear, cogent, and convincing evidence that it expressly and understandably offered or provided all necessary and reasonably available services. *In re Parental Rights to I.M.-M.*, 196 Wn. App. 914, 921, 385 P.3d 268 (2016). “The court may consider any service received, from whatever source, bearing on the potential correction of parental deficiencies.” *In re Dependency of D.A.*, 124 Wn. App. 644, 651–52, 102 P.3d 847 (2004). In addition, services must be tailored to a parent’s individual needs. *In re D.H.*, 195 Wn.2d 710, 727, 464 P.3d 215 (2020). The Department must “identify a parent’s specific needs and provide services to meet those needs.” *I.M.-M.*, 196 Wn. App. at 924.

Where the Department has reason to believe a parent may have an intellectual disability, it must make reasonable efforts to

ascertain whether the parent does, in fact, have a disability and, if so, how the disability could interfere with the parent's capacity to understand the Department's offer of services. *In re Termination of Parental Rights to M.A.S.C.*, 197 Wn.2d 685, 689, 486 P.3d 886 (2021). The Department must then "tailor its offer of services in accordance with current professional guidelines to ensure that the offer [of services] is reasonably understandable to the parent." *M.A.S.C.*, 197 Wn.2d at 689.

In *M.A.S.C.*, this Court reversed a termination order because it determined that while there was "no question" that the Department had reason to believe that J.C. could have an intellectual disability, the evaluation that J.C. completed failed to examine her intellectual functioning. *Id.* at 700-01. The *M.A.S.C.* court concluded that the Department had not made "sufficient reasonable efforts to ascertain the extent of J.C.'s intellectual disability and how it might affect her capacity to understand" the offer of services. *Id.* at 702.

Here, in contrast, the mother's evaluation *did* assess the mother's intellectual functioning. Dr. Brown specifically tested the mother's cognitive functioning and concluded the mother had an I.Q. of 75, which scored in the "low average to borderline range." RP 302. As a result, Dr. Brown diagnosed the mother with borderline I.Q. RP 298. Dr. Brown also assessed the mother's visual memory, auditory memory, abstract reasoning skills, executive functioning, and her "logical ability to handle life things." RP 302-05.

The mother's I.Q. score raised concern about her intellectual functioning but did not indicate any developmental delay. RP 317-18. However, her borderline I.Q., and the results of Dr. Brown's other tests, meant that the mother would have difficulties with complex reasoning, memory, and planning. RP 305. With repeated explanation, however, and as long as the mother was interested, "she should be able to understand the general course of most things." RP 305. Dr. Brown thus recommended that simple, oral directions to the mother follow

with written information in the form of visual diagrams, explained repeatedly in small amounts, with follow up to determine if she understood. RP 305-06.

The Court of Appeals correctly noted that, if the Department has “reason to believe a parent has a cognitive impairment, it must make reasonable efforts to investigate the nature of the impairment and then offer tailored services.” *E.J.O.*, at *3 (citing *M.A.S.C.*, 197 Wn.2d at 699). The Department must tailor not only its offer of services but the services themselves, to “ensure that the offer is ‘expressly and understandably’ made to the parent in light of their individual needs.” *M.A.S.C.*, 197 Wn.2d at 699 (quoting RCW 13.34.180(1)(d)).

Here, the Department satisfied its obligations. Dr. Brown diagnosed the mother with a borderline I.Q. Dr. Brown’s evaluation comprised “reasonable efforts to ascertain the extent of the disability and how it could interfere with the parent’s ability to understand and benefit from [the Department’s] offer of services.” *M.A.S.C.*, 197 Wn.2d at 699.

As such, as the Court of Appeals properly concluded, the mother's case differs from *I.M.-M.*, in which the Department failed to investigate the likelihood of cognitive disability as part of a psychological evaluation. *E.J.O.*, at *3. In *I.M.-M.*, the evaluator found C.M., the mother of I.M.-M., to be "significantly cognitively impaired" but completed an incomplete assessment and did not conduct applicable testing. *I.M.-M.*, 196 Wn. App. at 918-19. In contrast, Dr. Brown conducted tests to look at the mother's intellectual functioning and did not see signs that the mother had a developmental disability. RP 298, 318.

The mother agrees that the Court of Appeals here correctly identified *I.M.-M.* and *M.A.S.C.* as the applicable precedent, and does not argue that the decision below conflicts with another decision of this Court or the Court of Appeals. Mot. at 18; RAP 13.4(b)(1), (2). The Department in this case undertook reasonable efforts to ascertain the extent of the mother's intellectual ability, unlike in *I.M.-M.* and *M.A.S.C.* See *I.M.-M.*, 196 Wn. App. at 918-19; *M.A.S.C.*, 197 Wn.2d at 700-01. The

mother's assertion that the Department failed to ascertain the existence of any intellectual disability is without merit.

B. The Department Tailored Services, and the Offer of Services, to the Mother's Individual Needs

The Department also tailored services to the mother's needs. Mot. at 13-14, 20-22. In *I.M.-M.*, 196 Wn. App. 914, the Court of Appeals, Division Three, addressed the Department's obligation to provide services tailored to a parent's individual needs. C.M. became involved with the Department due to issues with substance use and homelessness. *I.M.-M.*, 196 Wn. App. at 917. The dependency petition also recognized that C.M. had low cognitive functioning. *Id.* at 918. A psychological evaluation concluded that C.M.'s intellectual ability could prevent her from completing services and recommended repetition to help C.M. learn skills. *See id.* The Department, however, did not share the evaluation with service providers. *Id.* at 919. C.M. struggled in her services and did not complete chemical dependency treatment. *Id.* at 919-20. The superior court ultimately terminated C.M.'s parental rights. *Id.* at 920. The Court of Appeals

concluded that substantial evidence did not support the lower court's finding that C.M. had been offered all necessary services, and reversed the termination. *Id.* at 922, 926. The court determined that C.M.'s chemical dependency treatment provider lacked sufficient information to accommodate C.M. and could not address C.M.'s needs. *Id.* at 922-23.

In this case, in contrast, the Department identified and expressly and understandably provided services, which for the mother primarily included chemical dependency treatment, parenting programs, and mental health treatment, intended to address her particular parental deficiencies. Ex. P-10, P-14, P-30. Significantly, the mother completed most of her services. RP 99, 138, 149, 197. She testified that she knew that chemical towards addressing her parental deficiencies. RP 363, 373-74. The mother stated that she had learned parenting skills, and service providers testified that she demonstrated improved skills during parenting sessions. RP 119-20, 126, 218-19, 226, 260, 270, 368.

During the dependency, the juvenile court found the mother had complied with many of her services. *See, e.g.*, Ex. P-41 at 9-11.

According to Dr. Brown, the mother, due to her memory, would have difficulty in a classroom setting and should have oral directions augmented with written information. RP 303, 305-06. Further, in Dr. Brown's opinion, the mother "should be able to understand the general course of most things" if the mother was interested and provided with repeated explanations. RP 305. Consistent with Dr. Brown's recommendations, the mother's social workers communicated with the mother frequently in writing, through text messages, emails, and service letters. RP 36-37, 387-88, 407-08, 419; Ex. P-26 at 8. Many of her services took place on an individual or family basis, not in a classroom setting. *See* RP 118-19, 135, 255-56. During the parenting program with Julie Rudmann, the mother reviewed written materials, engaged in oral discussions, and watched videos. RP 217-18.

The Department in this case expressly and understandably offered and tailored services to meet the mother's individual needs. The mother participated in inpatient and outpatient chemical dependency treatment, "four or five" parenting programs, family therapy, and mental health treatment, and she completed many of her recommended services. RP 94, 99, 133, 138, 149, 181, 190, 197, 367, 390-91.

Despite the mother's compliance with and completion of services, the mother's mental health prevented reunification. Dr. Brown, through extensive testing conducted over three days, had concluded that the mother's intellectual functioning was not anywhere near as glaring as her psychological problems. RP 296, 298. Dr. Brown diagnosed the mother with persistent depressive disorder and unspecified personality disorder. RP 298. Dr. Brown identified the symptoms of the mother's personality disorder as isolation, apathy, withdrawal, untruthfulness, mistrust, negative behaviors, and avoidance of psychological treatment. RP 299-302. Dr. Brown recommended DBT as an

effective way to treat the mother's personality disorders. RP 310-11. The mother never engaged in DBT treatment, despite frequent encouragement by the Department. *See, e.g.*, RP 170-71, 391-92, 418; Ex. P-41 at 10.

Consistent with her diagnosis, the mother often did not attend treatment sessions in outpatient and mental health treatment, although providers considered her discharges from treatment as successful. Ex. P-39 at 9, P-41 at 9-10; RP 177, 397-98. Unfortunately, the mother's mental health disorders put her in a tenuous Catch-22 situation that she could not overcome over the course of the dependency: Because the mother did not fully engage in her recommended mental health treatment, her depression and psychological symptoms did not improve, which then affected her ability to engage in treatment. *See* RP 308.

V. CONCLUSION

The Court of Appeals correctly concluded that substantial evidence supported the trial court's finding under RCW 13.34.180(1)(d), that the Department investigated the

nature and extent of the mother's cognitive functioning and tailored services appropriately to account for her needs. The mother cannot meet the standard for review under RAP 13.4. The Department respectfully requests that this Court deny the mother's Motion for Discretionary Review.

This document contains 4,982 words, excluding the parts of the document exempted from the word count by RAP 18.17.

RESPECTFULLY SUBMITTED this 1st day of February, 2024.

ROBERT W. FERGUSON
Attorney General



JARED T. CORDTS
Assistant Attorney General
WSBA #32130
Office Code: OC638509
1116 West Riverside Ave, Suite 100
Spokane, Washington 99201-1106
(509) 456-3123

CERTIFICATE OF SERVICE

I certify that I served all parties, or their counsel of record,
a true and correct copy of the Answer to Motion for Discretionary
Review to the following address:

Lise Ellner
Attorney at Law
Liseellnerlaw@comcast.net

Service completed
via the Appellate Portal

DATED this 1st day of February, 2024, at Spokane,
Washington.



MARCIE W. BERGMAN
Paralegal 3

SPOKANE DIVISION - SHS / AGO

February 01, 2024 - 11:22 AM

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: 102,693-5
Appellate Court Case Title: In re the Dependency of: E.J.O.; S.D.O.; S.S.M.O.; J.O.; K.M.O.
Superior Court Case Number: 20-7-00586-2

The following documents have been uploaded:

- 1026935_Answer_Reply_20240201111958SC585171_4781.pdf
This File Contains:
Answer/Reply - Answer to Motion for Discretionary Review
The Original File Name was Answer_EJO.pdf

A copy of the uploaded files will be sent to:

- Liseellnerlaw@comcast.net
- Marcie.Bergman@atg.wa.gov
- colin@saintevens.com
- sposhsunit@atg.wa.gov
- val.liseellnerlaw@gmail.com

Comments:

Sender Name: Marcie Bergman - Email: Marcie.Bergman@atg.wa.gov

Filing on Behalf of: Jared Thomas Cordts - Email: jared.cordts@atg.wa.gov (Alternate Email:)

Address:
1116 W. Riverside, Ste. 100
Spokane, WA, 99201-1106
Phone: (509) 456-3123

Note: The Filing Id is 20240201111958SC585171