SUPREME COURT NO. 102693-5

COURT OF APPEALS NO. 39266-0-III

IN THE 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., Minor Children,

STATE OF WASHINGTON, Respondent,

Z.O. (MOTHER), Petitioner.

MOTION FOR DISCRETIONARY REVIEW
FROM THE COURT OF APPEALS, DIVISION THREE
OF THE STATE OF WASHINGTON

Treated as a Petition for Review

PETITIONER'S MOTION FOR DISCRETIONARY REVIEW OF THE COURT OF APPEALS NOVEMBER 30, 2023 DECISION IN IN RE E.J.O., COA #39266-0-III

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FEDERAL CASES

RULES, STATUTES, AND OTHERS

A. IDENTITY OF PETITIONER

Z.O., mother of minor children E.J.O., S.D.O., S.S.M.O., J.O., and K.M.O., petitions this court to accept review of the Court of Appeals decision of November 30, 2023, upholding the trial court termination of the parent-child relationship between the mother and all four children. A copy of the Court of Appeals decision is attached (Appendix A).

B. ISSUES PRESENTED FOR REVIEW

1. Does the juvenile court's decision to terminate the parent-child relationship between Z.O. and her children involve a significant question of law under the United States and Washington Constitutions and/or involve an issue of substantial public interest that should be determined by the Supreme Court? The Court of Appeals, Division III, rejected the mother's argument that the Department of Children,

Youth, and Families failed to meet its burden to tailor services under RCW 13.34.180(1)(d) when it possessed psychological reports indicating the mother had cognitive impairments, yet failed to undertake further psychometric testing or additional inquiries as to the mother's mental faculties. Did the Court err denying that mother required further testing and tailoring of services as a necessary first step towards providing accommodations to ensure that all necessary services capable of ameliorating parental deficiencies were offered or provided?

C. STATEMENT OF THE CASE

The full facts are set forth in the mother's opening brief as appellant before the Court of Appeals, and incorporated herein by reference. However, the pertinent facts relevant to this motion

are set forth below:

a. Background of Dependency

Z.O. is the mother of ten-year-old J.O.; eight-year-old S.D.O.; seven-year-old S.S.M.O.; four-year-old E.J.O.; and two-year-old K.M.O.. RP 12, 32, 494. The eldest four children were found Dependent in an agreed order in 2018 after E.J.O. tested positive for methamphetamine at birth, and K.M.O. at a later date. RP 12, 129, 34-35. The Department's concerns at the outset of the dependency included substance abuse, mental health concerns, lack of parenting ability, and an unsafe home environment. RP 28.

Services ordered pursuant to the dependency included a chemical dependency assessment and any recommended treatment, random UAs, a psychological evaluation with recommended

treatment, a parenting assessment, a mental health assessment and treatment. RP 30-31, 35., Z.O. had, at varying times over the years of the dependency and regarding various services compliance levels that ranged from non-compliant near the initiation of the dependency to partially or substantially compliant during later periods, as reflected in various review hearing findings and orders. RP 21, 23, 35, 37-38, 43-45, 99, 104, 135-139, 149, 181, 175-176, 200-203, 226, 285, 430.

b. Mother's Intellectual Capacity

Dr. Deborah Brown administered the mother's psychological and cognitive exams in February of 2019 and gave testimony at trial that the mother "scored in the low average to borderline range of I.Q. on her perceptual reasoning, her verbal performance, her verbal comprehension, her working

memory, processing speed and her full scale I.Q.". RP 302-304. Dr. Brown emphasized the importance of the full scale IQ in particular and noted that the mother scored in the fifth percentile, which she described as "a solid borderline diagnosis." RP 302. The mother's auditory memory and visual memory were also tested, with results in the first percentile and thirty-second percentile respectively. RP 303. Dr. Brown also gave unambiguous testimony that the mother's memory deficits were likely to result in substantial learning impairment and that she generally would not recall things that were said to her. RP 303. She described the mother's mental faculties as "hovering just above mental retardation" and confirmed that it was possible that the mother was not competent to participate in a court proceeding. RP 303-304.

With regard to accommodations, the record is absent of any testimony regarding any discussions taking place between the Department and service providers to tailor services or select particular services to match the mother's intellectual needs. Likewise, no testimony or evidence was provided by the Department which indicated that the it undertook additional cognitive testing to confirm or further measure the extent of Z.O.'s cognitive deficits, after Dr. Brown's examination.

c. Termination

On September 16, 2022, the court entered it's Findings of Fact, Conclusions of Law, and Orders Terminating Parent-Child Relationship as to all five children. CP 1923-1932. The orders specify the court's finding that all elements of RCW 13.34.180

and 13.34.190 had been met and specifically found that “Services court-ordered under RCW 13.34.130 have been expressly and understandably offered or provided and all necessary services, reasonably available, capable of correcting parental deficiencies within the foreseeable future have been offered or provided.” The orders also expressly state that “The court specifically finds that these services were offered in a manner that was tailored to the mother's unique needs.” However, the only specific reference in the orders to such tailoring relates exclusively to the manner in which the offer of services were made, insofar as information provided by the Department was made in writing and repeated regularly, with no mention of how the services themselves were tailored. CP 1923-1932.

d. Court of Appeals Decision.

The mother timely appealed the trial court orders of termination to Division Three of the Court of Appeals. CP 1984. The Court of Appeals rendered its opinion on November, 2023, affirming the trial court's orders. *In re Dependency of E.J.O.* Nos. 39266-0-III; 39267-8-III; 39268-6-III; 39269-4-III; 39270-8-III. (Nov. 30, 2023).

The Court of Appeals analysis notes the affirmative burden of the Department in establishing, by a standard of clear, cogent, and convincing evidence, that the Department offered or provided "all necessary services, reasonably available, capable of correcting [the mother's] parental deficiencies within the foreseeable future," per RCW 13.34.180(1)(d). *In re Dependency of E.J.O.* at 8.

The Court of Appeals then noted that the Department's obligation to provide all "necessary services" under RCW 13.34.180(1)(d) entails "meeting a parent where they are at" by providing services in an understandable manner. Id. More specifically, the court ruled 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, per *In re Parental Rights to M.A.S.C.*, 197 Wn.2d 685, 699, 486 P.3d 886 (2021). *In re Dependency of E.J.O. at 8.*

The court also expressly rejected an argument the Department had advanced that the Department was obliged to accommodate a parent's cognitive needs only if those needs rise to the level of an intellectual or developmental disability. *In re*

Dependency of E.J.O. at 8. The court found rather that the Department is obliged to treat all parents as individuals and to provide tailored services, even if the parent is not formally disabled, relying on *In re Parental Rights to D.H.*, 195 Wn.2d 710, 727, 464 P.3d 215 (2020). *In re Dependency of E.J.O. at 8.*

Nevertheless, the Court of Appeals found that the Department had met it's burden to investigate possible cognitive impairment as a potential source of needed accommodations. The court cited a singular fact from the record in support of this conclusion: that there was no indication from Dr. Brown (or any other providers) that Z.O. needed further testing or evaluation. *In re Dependency of E.J.O.* at 9. The court then distinguished the Department's level of support for Z.O. from the failure to investigate and tailor services in *In re Parental*

Rights to I.M.-M., 196 Wn. App. 914, 923-24, 385 P.3d 268 (2016). *I.M.-M.*, also involved a mother whose intellectual deficits were generally known, but not thoroughly explored before the termination of her parental rights. The court further disagreed with the mother's related argument that such services as were ordered were not appropriately tailored, finding that it was the mother's lack of engagement with some services "that compelled the juvenile court to terminate Z.O.'s parental rights." *In re Dependency of E.J.O. at 9-10.*

D. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

This court should grant review under RAP 13.4(b)(3) and (4):

> (b) Considerations Governing Acceptance of Review. A petition for

review will be accepted by the Supreme Court only:

> (3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or
>
> (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

1. THE COURT OF APPEALS DECISION AFFIRMING THE TRIAL COURT'S DECISION TERMINATING THE PARENT-CHILD RELATIONSHIP BETWEEN Z.O. AND HER CHILDREN INVOLVES A SIGNIFICANT QUESTION OF LAW UNDER THE UNITED STATES CONSTITUTION AND INVOLVES AN ISSUE OF SUBSTANTIAL PUBLIC INTEREST THAT SHOULD BE DETERMINED BY THIS COURT.

The Court of Appeals incorrectly held that substantial evidence supports the trial court's findings that the Department offered all remedial

services, reasonably available and capable of correcting the parental deficiencies within the foreseeable future, were expressly and understandably offered or provided.

Specifically, by ruling that the Department could be in possession of expert reports identifying multiple, substantial indicia of significantly limited intellectual capacity, and not act to further investigate these deficits or tailor services, the court relieved the Department of its statutory burden to provide, in good faith, all necessary services reasonably available, capable of correcting parental deficiencies. Under well-established case law, this burden includes the requirement that the Department must, as the Court of Appeals itself framed the matter "meet the parent where they are" by investigating the need for tailored services, and then providing such services. The

Department failed to undertake such an effort in this instance. *In re Dependency of E.J.O. at 8.*

In reviewing parental rights cases, the reviewing court limits its analysis to whether substantial evidence supports the juvenile court's findings of fact and whether those findings of fact support the juvenile court's conclusions of law. *In re Welfare of X.T.*, 174 Wn. App. 733, 737, 300 P.3d 824 (2013) (citing *In re Dependency of M.P.*, 76 Wn. App. 87, 90, 882 P.2d 1180 (1994)). Evidence is substantial if, viewed in the light most favorable to the prevailing party, a rational trier of fact could find the fact by a preponderance of the evidence. *X.T.*, 174 Wn. App. at 737 (citing *M.P.*, 76 Wn. App. at 90-91).

Parents have a constitutionally protected fundamental liberty interest in raising and caring for their children. *Matter of Dependency of M.-A.F.-S.*, 4

Wn. App. 2d 425, 445, 421 P.3d 482, 494 (2018); Santosky v. Kramer, 455 U.S. 745, 753, 102 S.Ct. 1388, 71 L.Ed. 2d 599 (1982) (plurality opinion) ("[F]reedom of personal choice in matters of family life is a fundamental liberty interest protected by the Fourteenth Amendment" to the United States Constitution.) To terminate a parent's parental rights, the Department must establish by clear, cogent, and convincing evidence that the parent is currently unfit. *In re the Welfare of A.B.*, 181 Wn. App. 45, 58, 323 P.3d 1062 (2014). To prove current unfitness, the Department must show that the parent's deficiencies prevent the parent from providing the child with "basic nurture, health, or safety." *A.B.*, 181 Wn. App. at 61 (quoting RCW 13.34.020).

To prevail in a termination proceeding, the state must prove by clear, cogent, and convincing

evidence that the services ordered under RCW 13.34.136 which are capable of correcting the parental deficiencies within the foreseeable future have been expressly and understandably offered or provided. RCW 13.34.180(1)(d); *In re Dependency of K.D.S.*, 176 Wn.2d 644, 652, 294 P.3d 695 (2013):

The Department's duty to offer or provide services is meant to address individual parental deficiencies with the ultimate goal of preserving the family unit. RCW 13.34.020; *In re S.V.B.*, 75 Wn. App. 762, 769, 880 P.2d 80 (1994). To meet this statutory burden, the Department must tailor the services it offers to meet each individual parent's needs. *In re Dependency of T.R.*, 108 Wn. App. 149, 161, 29 P.3d 1275 (2001). The facts of each individual case determine which services are

necessary. *In re Welfare of Sego*, 82 Wn.2d 736, 738, 513 P.2d 831 (1973).

The Court of Appeals has found that a failure to investigate intellectual disability can vitiate a finding of compliance with RCW 13.34.180(1)(d). See *In re M.A.S.C.*, 197 Wn.2d 685, 699, 486 P.3d 886, 894 (2021) (quoting *In re Parental Rights to I.M.-M.*, 196 Wash. App. 914, 924, 385 P.3d 268 (2016).

In the present case, the Court of Appeals confirmed the mother's argument that *M.A.S.C.* creates an affirmative obligation such that "[i]f 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." *In re Dependency of E.J.O. at 8.*

However, the court then ruled that the requirement was not triggered by the facts of the present case because "there was no indication from Dr. Brown or any other providers that Z.O. needed further testing or evaluation. Thus, this is not a case like *In re Parental Rights to I.M.-M.*, 196 Wn. App. 914, 923-24, 385 P.3d 268 (2016), where the Department failed to follow up on the 'apparent likelihood' that the mother was developmentally disabled." *In re Dependency of E.J.O. at 9.*

The Court of Appeals identified the correct precedent, but failed to apply it correctly. Neither *I.M.-M.* nor *M.A.S.C.* indicate that a recommendation by a contracted service provider is necessary to prompt the Department's efforts to seek to understand a parent's need for tailored services in a particular area. Further as the Court of Appeals

correctly noted, a diagnosis of severe disability is not necessary to trigger the Department's obligation to investigate and tailor its services. *In re Dependency of E.J.O.* at 8.

The expert who conducted the initial psychometric testing in *I.M.-M.* also did not reach a formal diagnosis of disability and also did not push for further testing, yet the court held the Department was still required to investigate further. *I.M.-M.*, 196 Wn. App. at 924.

In *I.M.-M.*, Dr. Smitham made several important findings about C.M.'s level of intellectual functioning, but his assessment was incomplete. *Id.* at 919. Although Dr. Smitham found evidence C.M. might be developmentally disabled, he never reached a final diagnosis. Id. This was because he never performed the applicable testing. Id. The

Department's failure to investigate the apparent likelihood of a developmental disability diagnosis was significant and had the Department obtained a comprehensive mental health evaluation revealing a developmental disability diagnosis, it would have been statutorily obliged to refer C.M. for services with the Department's developmental disabilities administration and coordinate a care plan under RCW 13.34.136(2)(b)(i)(B). Id.at 924.

The reason for such coordination is to ensure the provision of tailored services. Id. "The Department cannot escape its obligation to provide coordinated services by inexplicably failing to investigate the likelihood a parent is developmentally disabled." Id.

The mother here, in E.J.O., argues that the court of appeals erred affirming termination where

the Department was aware of her severe intellectual deficits ("floating just above mental retardation") but failed to further investigate or provide tailored services.

The Court of Appeals also found that tailored services would have been futile because the mother's issues with some services were defined by poor engagement and a lack of acceptance of the need for continued mental health treatment as the dependency wore on. *In re Dependency of E.J.O. at 9-10.* While it is true that the Department is excused from providing otherwise required services, if doing so would be futile (*In re Welfare of M.R.H.*, 145 Wn.App. 10, 25, 188 P.3d 510 (2008)), a finding of futility must be supported by substantial evidence, and the weight of this evidence is judged in part by indicators to be found in the record of the parent's

positive engagement with services. See *Matter of I.M.-M.*, 196 Wn. App. at 914, 924.

Here, since the Department did not provide adequate testing or services, it cannot establish that tailored services would have been futile. Such an argument is circular and would relieve the Department of its burden to ever provide a person with intellectual disabilities those services that person could benefit from.

Much as with the mother in *I.M.-M.*, the mother here engaged heavily with services over substantial portions of the dependency, despite the lack of tailored services. As such her failure to adequately engage in certain mental health services is inadequate to establish by substantial evidence that services would have been futile had they been appropriately tailored.

This case presents both constitutional and public interest concerns because parents should not be deprived of their fundamental liberty interest in the care and welfare of their minor children when the parent has worked hard and engaged in services to address parental deficiencies and the state, embodied by the Department, has failed to meet a statutory burden which the legislature has set intentionally high, in order to protect those most vital and precious of rights involved in the integrity of the family unit.

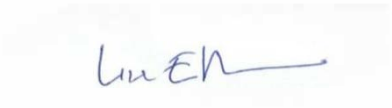
E. CONCLUSION

Petitioner respectfully requests this Court grant review.

I, Lise Ellner certify the word count is 3,249 in compliance with RAP 18.17.

DATED this 2nd Day of January, 2024.

Respectfully submitted,



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APPENDIX A

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

In the Matter of the Termination of the Parental Rights to: E.J.O.	)	No. 39266-0-III (Consolidated with No. 39267-8-III; No. 39268-6-III; No. 39269-4-III; No. 39270-8-III)
In the Matter of the Termination of the Parental Rights to: S.D.O.	)	
In the Matter of the Termination of the Parental Rights to: S.S.M.O.	)	UNPUBLISHED OPINION
In the Matter of the Termination of the Parental Rights to: J.O.	)	
In the Matter of the Termination of the Parental Rights to: K.M.O.	)	

PENNELL, J. — Z.O. challenges a juvenile court order terminating her parental rights to five minor children. We affirm.

FACTS

Z.O. is the mother of eight children; the five youngest are involved in this

proceeding.[1] Z.O. had a traumatic childhood, marked by homelessness, sexual assault, and being surrounded by drug use. Her adult life has been similarly difficult. She has had recurring bouts of drug use and is frequently unhoused. She carries several mental health diagnoses, including persistent depressive disorder and a personality disorder. Z.O. also has low cognitive functioning and difficulty with auditory learning.

Z.O.'s history with the Department of Children, Youth, and Families started as a teenager when she had her first child. Z.O. struggled as a parent. In 2008, Z.O.'s oldest three children were placed in a guardianship with her mother.

In regard to this proceeding, the Department first initiated contact with Z.O. in 2011 after being contacted by the hospital where she gave birth to her son J.O.; the oldest child of the five children involved in the dependency proceedings. The Department received additional intakes when Z.O. tested positive for methamphetamine at the subsequent births of another son and two daughters. By 2016, the Department was receiving reports from day care staff that Z.O.'s children showed signs of abuse and neglect as well as reports from shelter staff and residents describing Z.O.'s physically and verbally abusive behavior toward the children.

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[1] The fathers of the five children have all either voluntarily relinquished their parental rights or had them terminated by default.

In 2018, the Department initiated dependency proceedings regarding the four children who had been in Z.O.'s care. When Z.O.'s youngest child was born in 2019, Z.O. again tested positive for methamphetamine, and a dependency action was filed as to that child as well.[2] The Department's concerns focused on the impact of substance abuse and mental health on Z.O.'s ability to parent.

Early on in the dependency proceedings, Debra Brown, Ph.D., conducted a psychological evaluation of Z.O. at the request of the Department. Dr. Brown recommended Z.O. participate in dialectical behavior therapy (DBT) to address her personality disorder. Dr. Brown also recommended Z.O.'s cognitive impairments be accommodated by following up on oral instructions with "written information" and breaking information down into "small amounts and then checking back with her to see what she understood." 1 Rep. of Proc. (RP) (Jul. 12, 2022) at 306. According to Dr. Brown, Z.O.'s cognitive challenges were not as "glaring as her psychological problems." *Id*. at 298.

After the birth of her youngest child in 2019, Z.O. entered into an inpatient treatment program at a facility known as the Isabella House, a part of the New Horizon

[2] There was also testimony at the termination trial that four of the five children had tested positive for methamphetamine at birth.

Care Centers. The program lasted six months and Z.O. was able to live at Isabella House with her newborn. Upon successful completion of the inpatient program in April 2020, Z.O. moved into New Horizon's transitional housing with her baby. At that point, the Department was prepared to reunite Z.O. with two more of her children pursuant to a contested court order. However, that plan was aborted when Z.O. was removed from the transitional housing program due to violating COVID protocols and submitting a positive urinalysis test. The Department's social workers then tried to obtain placement for Z.O. at a transitional housing and treatment facility known as Anna Ogden Hall. However, Z.O. declined the placement, explaining "she did not feel she needed treatment anymore." 1 RP (Jul. 13, 2022) at 412. From that point on, Z.O. struggled to maintain housing and her youngest child was placed in foster care.

Despite declining placement at Anna Ogden Hall, Z.O. participated in intensive outpatient treatment (IOP) through New Horizon's chemical dependency program after her discharge from Isabella House. At the time Z.O. started IOP services with New Horizon, the Department believed the organization could also provide Z.O. with DBT, as had been recommended by Dr. Brown. However, it turned out New Horizon was not able to provide this type of service. Z.O. participated in cognitive behavioral therapy (CBT) and IOP through New Horizon, but she declined to pursue DBT through another

organization. Although the Department was not satisfied with the progress demonstrated by Z.O., New Horizon determined Z.O. had successfully met her individualized chemical dependency and mental health treatment goals and closed out her case.

Visitation between Z.O. and her children occurred throughout the dependency proceedings. Before Z.O. entered Isabella House, the visits were chaotic. There were concerns about drug use, and erratic and aggressive behavior. After her successful inpatient treatment at Isabella House, Z.O.'s behavior during sessions with the children improved. Nevertheless, her two older children did not respond favorably to visitation and ultimately requested not to participate in visits. And even though Z.O. demonstrated she was deploying "very positive and great" parenting skills, the children were not responsive. 1 RP (Jul. 11, 2022) at 119-20.

Z.O. specifically participated in a parenting program called Incredible Years with her three younger children from September 2021 until February 2022. Z.O. appeared to have benefitted from the program and was able to demonstrate new skills during her interactions with her children. However, by the end of her time with the program, Z.O. still needed to work on meeting her children's emotional needs. Although it was recommended that Z.O. continue to work on emotion coaching, Z.O. did not recognize in herself any deficits in parenting skills.

The Department filed petitions to terminate Z.O.'s parental rights in February 2020 and October 2021. A three-day termination trial was held in July 2022. At trial, the Department identified Z.O.'s current deficiencies as a lack of insight, untreated mental health, and poor parenting skills.

Z.O. testified at trial. During her testimony, she claimed her drug use did not have a negative impact on her children. She explained she was currently clean from drugs and did not think urinalysis testing was necessary. Z.O. denied mental health diagnoses as identified by Dr. Brown. Z.O. testified that she was "tired" of doing services because she had "done more than what . . . [was] asked." 1 RP (Jul. 13, 2022) at 356. Nevertheless, Z.O. recognized that if her children were returned to her care, the family would need some therapy and counseling.

After the conclusion of evidence, the trial court terminated Z.O.'s parental rights. The court found the Department's social workers had adequately accommodated Z.O.'s cognitive needs by providing instructions orally and in writing. The court recognized that Z.O. had made some progress during the dependency proceedings, but she nevertheless failed to complete necessary services. The court was most concerned that Z.O. had never even attempted to participate in DBT therapy. Given Z.O.'s untreated mental health needs, the court found Z.O. could not remedy her parental deficiencies in the foreseeable

future. The court therefore terminated parental rights as to all five children. Z.O. timely appeals.

ANALYSIS

Parents enjoy fundamental liberty interests in the continued care, custody, and companionship of their children. *Santosky v. Kramer*, 455 U.S. 745, 753, 102 S. Ct. 1388, 71 L. Ed. 2d 599 (1982); *see also Stanley v. Illinois*, 405 U.S. 645, 651, 92 S. Ct. 1208, 31 L. Ed. 2d 551 (1972). Termination of parental rights involves a two-step process. *In re Welfare of A.B.*, 168 Wn.2d 908, 911, 232 P.3d 1104 (2010). The first step focuses on the parent. It requires the Department to prove by clear, cogent, and convincing evidence the six termination factors set forth in RCW 13.34.180(1) along with the nonstatutory factor of current unfitness. *In re Parental Rights to K.M.M.*, 186 Wn.2d 466, 479, 379 P.3d 75 (2016). The second step focuses on the child. Under this portion of the analysis, the Department must establish, by a preponderance of the evidence, that termination is in the best interests of the child. *In re Dependency of K.N.J.*, 171 Wn.2d 568, 576-77, 257 P.3d 522 (2011); *K.M.M.*, 186 Wn.2d at 479. Only if the first step is satisfied may the court reach the second step. *A.B.*, 168 Wn.2d at 911.

Z.O. challenges the juvenile court's finding that the Department offered or provided "all necessary services, reasonably available, capable of correcting the parental

deficiencies within the foreseeable future." RCW 13.34.180(1)(d). She makes two claims. First, she contends the Department failed to offer appropriate services because it never adequately investigated her cognitive impairment. Second, she argues that to the extent Dr. Brown's assessment amounted to an adequate investigation, Dr. Brown's recommended accommodations were not shared with the service providers who worked with Z.O.

We review a trial court's findings under RCW 13.34.180(1) for substantial evidence, bearing in mind the demanding standard of proof. *In re Parental Rights to B.P.*, 186 Wn.2d 292, 313, 376 P.3d 350 (2016).

The Department's obligation to provide all "necessary services" under RCW 13.34.180(1)(d) entails meeting a parent where they are at and providing services in an understandable manner. 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. *In re Parental Rights to M.A.S.C.*, 197 Wn.2d 685, 699, 486 P.3d 886 (2021).[3] Before termination of parental rights can occur, a trial

[3] The State appears to argue that it is obliged to accommodate a parent's cognitive needs only if those needs rise to the level of an intellectual or developmental disability. This is incorrect. The Department is obliged to treat all parents as individuals and to provide tailored services, even if the parent is not formally disabled. *See In re Parental Rights to D.H.*, 195 Wn.2d 710, 727, 464 P.3d 215 (2020).

court must determine that the Department has reasonably tailored its services to the parent's intellectual needs, keeping in mind current professional guidelines for communicating with individuals with similar needs. *Id.* at 700.

Z.O.'s claim that the Department failed to investigate her intellectual needs rings hollow. As previously indicated, early in the dependency proceedings Z.O. submitted to a psychological evaluation from Dr. Debra Brown, who assessed Z.O.'s intellectual functioning and identified recommended accommodations. There was no indication from Dr. Brown or any other providers that Z.O. needed further testing or evaluation. Thus, this is not a case like *In re Parental Rights to I.M.-M.*, 196 Wn. App. 914, 923-24, 385 P.3d 268 (2016), where the Department failed to follow up on the "apparent likelihood" that the mother was developmentally disabled.

We also disagree with Z.O.'s complaint about the lack of accommodation by service providers. The problem faced by Z.O. during the dependency proceedings was not that she was unable to complete court-ordered services. The evidence showed that Z.O. did well in multiple services, including inpatient treatment, outpatient treatment, and a parenting program. Rather than struggling to complete services, Z.O.'s problem was that she refused to engage with certain services, most importantly a DBT program. Z.O. does not challenge the juvenile court's finding that the Department's social workers deployed

the communication strategies outlined by Dr. Brown in trying to engage Z.O. with services. Yet Z.O. refused to participate, claiming she was tired of participating and did not think she needed more help with her parenting skills. It was this refusal to participate in an essential service that compelled the juvenile court to terminate Z.O.'s parental rights.

The record demonstrates that the Department adequately assessed Z.O.'s cognitive needs and that Z.O.'s failure to engage with services was not attributable to any lack of cognitive accommodation. These being the only challenges raised on appeal, the orders terminating parental rights must stand.

CONCLUSION

The orders on appeal are affirmed.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

Pennell, J.

WE CONCUR:

Lawrence-Berrey, A.C.J.

Cooney, J.

LAW OFFICES OF LISE ELLNER, PLLC

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