

63601-4

63601-4

COA NO. 63601-4-I

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

In re the Dependency of T.M., a Minor,

STATE OF WASHINGTON/DSHS,

Respondent,

v.

TERRY MORRISON,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR KING COUNTY

The Honorable James A. Doerty, Judge

BRIEF OF APPELLANT

CASEY GRANNIS
Attorney for Appellant

NIELSEN, BROMAN & KOCH, PLLC
1908 East Madison
Seattle, WA 98122
(206) 623-2373

FILED
COURT OF APPEALS DIV. #1
STATE OF WASHINGTON
2010 JAN 19 PM 3:33

TABLE OF CONTENTS

| | Page |
|--|------|
| A. <u>ASSIGNMENTS OF ERROR</u> | 1 |
| <u>Issues Pertaining To Assignment Of Error</u> | 5 |
| B. <u>STATEMENT OF THE CASE</u> | 5 |
| C. <u>ARGUMENT</u> | 23 |
| 1. THE STATE FAILED TO PROVE BY CLEAR, COGENT AND CONVINCING EVIDENCE THAT MORRISON WAS CURRENTLY UNFIT TO CARE FOR HIS CHILD..... | 23 |
| a. <u>The Propriety Of Termination Must Be Viewed In Light Of The Gravity Of The Rights At Stake</u> | 24 |
| b. <u>Standard of Review</u> | 25 |
| c. <u>The State Must Establish Current Parental Unfitness Before Parental Rights Can Be Terminated</u> | 27 |
| d. <u>In Terminating Morrison's Parental Rights, The Trial Court Improperly Ignored Nearly Everything Positive About Morrison And His Relationship With His Daughter</u> | 30 |
| e. <u>Morrison's Mental Health Issues Did Not Render Him Incapable Of Adequately Caring For His Daughter</u> | 37 |
| f. <u>Drugs Did Not Render Morrison An Unfit Parent</u> | 49 |
| g. <u>Other Findings And Conclusions Are Not Sufficiently Supported By The Evidence</u> | 54 |
| 2. THE STATE FAILED TO PROVE TERMINATION WAS IN THE CHILD'S BEST INTERESTS..... | 64 |
| D. <u>CONCLUSION</u> | 65 |

TABLE OF AUTHORITIES

| | Page |
|---|--------|
| <u>WASHINGTON CASES</u> | |
| <u>Hanson v. City of Snohomish</u> , 121 Wn.2d 552, 852 P.2d 295 (1993)..... | 26 |
| <u>In re Adoption of Lybbert</u> , 75 Wn.2d 671, 453 P.2d 650 (1969)..... | 30, 35 |
| <u>In re Custody of Smith</u> , 137 Wn.2d 1, 969 P.2d 21 (1998), <u>aff'd sub nom.</u> , <u>Troxel v. Granville</u> , 530 U.S. 57, 120 S. Ct. 2054, 147 L. Ed. 2d 49 (2000)..... | 27-29 |
| <u>In re Dependency of C.R.B.</u> , 62 Wn. App. 608, 814 P.2d 1197 (1991)..... | 26 |
| <u>In re Dependency of D.A.</u> , 124 Wn. App. 644, 102 P.3d 847 (2004)..... | 65 |
| <u>In re Dependency of H.W.</u> , 92 Wn. App. 420, 961 P.2d 963 (1998)..... | 34, 64 |
| <u>In re Dependency of J.C.</u> , 130 Wn.2d 418, 924 P.2d 21 (1996)..... | 34, 52 |
| <u>In re Dependency of J.S.</u> , 111 Wn. App. 796, 46 P.3d 273 (2002)..... | 64 |
| <u>In re Dependency of K.R.</u> , 128 Wn.2d 129, 904 P.2d 1132 (1995)..... | 29, 30 |
| <u>In re Dependency of K.S.C.</u> , 137 Wn.2d 918, 976 P.2d 113 (1999)..... | 26 |

TABLE OF AUTHORITIES (CONT'D)

Page

WASHINGTON CASES (CONT'D)

| | |
|--|----------------|
| <u>In re Dependency of Moseley,</u> 34 Wn. App. 179, 660 P.2d 315 (1983)..... | 62 |
| <u>In re Dependency of P.A.D.,</u> 58 Wn. App. 18, 792 P.2d 159 (1990)..... | 35, 47 |
| <u>In re Dependency of Roberts,</u> 46 Wn. App. 748, 732 P.2d 528 (1987)..... | 32 |
| <u>In re Dependency of Schermer,</u> 161 Wn.2d 927, 169 P.3d 452 (2007)..... | 28, 62 |
| <u>In re Dependency of T.L.G.,</u> 126 Wn. App. 181, 108 P.3d 156 (2005)..... | 37 |
| <u>In re Dependency of V.R.R.,</u> 134 Wn. App. 573, 141 P.3d 85 (2006)..... | 24 |
| <u>In re Interest of J.D.,</u> 42 Wn. App. 345, 711 P.2d 368 (1985)..... | 65 |
| <u>In re Interest of Pawling,</u> 101 Wn. 2d 392, 679 P.2d 916 (1984)..... | 25, 50 |
| <u>In re Interest of S.G.,</u> 140 Wn. App. 461, 166 P.3d 802 (2007)..... | 26, 27, 29, 60 |
| <u>In re Marriage of Furrow,</u> 115 Wn. App. 661, 63 P.3d 821 (2003)..... | 65 |
| <u>In re Neff,</u> 20 Wn. 652, 56 P. 383 (1899)..... | 28 |

TABLE OF AUTHORITIES (CONT'D)

| | Page |
|---|------------|
| <u>WASHINGTON CASES (CONT'D)</u> | |
| <u>In re Welfare of C.B.</u> , 134 Wn. App. 942, 143 P.3d 846 (2006)..... | 25 |
| <u>In re Welfare of Coverdell</u> , 39 Wn. App. 887, 696 P.2d 1241 (1984)..... | 64 |
| <u>In re Welfare of Gibson</u> , 4 Wn. App. 372, 483 P.2d 131 (1971)..... | 45 |
| <u>In re Welfare of Hall</u> , 99 Wn.2d 842, 664 P.2d 1245 (1983)..... | 26 |
| <u>In re Welfare of H.S.</u> , 94 Wn. App. 511, 973 P.2d 474 (1999)..... | 36, 48 |
| <u>In re Welfare of J.M.</u> , 130 Wn. App. 912, 125 P.3d 245 (2005)..... | 31, 36 |
| <u>In re Welfare of Luscier</u> , 84 Wn.2d 135, 524 P.2d 906 (1974)..... | 24, 36, 45 |
| <u>In re Welfare of May</u> , 14 Wn. App. 765, 545 P.2d 25 (1976)..... | 64, 65 |
| <u>In re Welfare of M.R.H.</u> , 145 Wn. App. 10, 188 P.3d 510 (2008)..... | 25, 31 |
| <u>In re Welfare of Myricks</u> , 85 Wn.2d 252, 533 P.2d 841 (1975)..... | 25 |
| <u>In re Welfare of Segó</u> , 82 Wn.2d 736, 513 P.2d 831 (1973)..... | 27, 30, 63 |

TABLE OF AUTHORITIES (CONT'D)

Page

WASHINGTON CASES (CONT'D)

In re Welfare of Sumey,
94 Wn.2d 757, 621 P.2d 108 (1980)..... 25, 28, 45, 63

In re Welfare of S.V.B.,
75 Wn. App. 762, 880 P.2d 80 (1994)..... 30, 60

In re Welfare of T.B.,
150 Wn. App. 599, 209 P.3d 497 (2009)..... 32

Moore v. Burdman,
84 Wn.2d 408, 526 P.2d 893 (1974)..... 24

State v. Hutton,
7 Wn. App. 726, 502 P.2d 1037 (1972)..... 26, 40, 43

State v. Niedergang,
43 Wn. App. 656, 719 P.2d 576 (1986)..... 27

Wold v. Wold,
7 Wn. App. 872, 503 P.2d 118 (1972)..... 31

FEDERAL CASES

Duchesne v. Sugarman,
566 F.2d 817 (2d Cir. 1977) 24

Lassiter v. Dep't of Soc. Servs. of Durham County, NC,
452 U.S. 18, 101 S. Ct. 2153,
68 L. Ed. 2d 640 (1981)..... 36, 62

TABLE OF AUTHORITIES (CONT'D)

Page

FEDERAL CASES (CONT'D)

M.L.B. v. S.L.J.,
519 U.S. 102, 117 S. Ct. 555,
136 L. Ed. 2d 473 (1996)..... 30, 31, 36

Santosky v. Kramer,
455 U.S. 745, 102 S. Ct. 1388,
71 L. Ed. 2d 599 (1982)..... 24, 63, 65

Snyder v. Massachusetts,
291 U.S. 97, 54 S. Ct. 330,
78 L. Ed. 674 (1934)..... 25

Stanley v. Illinois,
405 U.S. 645, 92 S. Ct. 1208,
31 L. Ed. 2d 551 (1972)..... 27, 62

STATE CASES

Hawk v. Hawk,
855 S.W.2d 573 (Tenn.1993)..... 28

STATUTES AND CONSTITUTIONS

RCW 13.34.020 28

RCW 13.34.030(5)(c) 28

RCW 13.34.136(2)(b)(ii) 32

RCW 13.34.180 4, 27

TABLE OF AUTHORITIES (CONT'D)

Page

STATUTES AND CONSTITUTIONS (CONT'D)

| | |
|--------------------------------|------------|
| RCW 13.34.180(1)..... | 26, 29, 64 |
| RCW 13.34.180(1)(e) | 30, 60, 61 |
| RCW 13.34.180(1)(e)(ii) | 37 |
| RCW 13.34.180(1)(f)..... | 61, 62 |
| RCW 13.34.190..... | 4, 64 |
| RCW 13.34.200(1)..... | 65 |
| U.S. Const. Amend. XIV | 24 |
| Wash. Const. art. I, § 3 | 24 |

A. ASSIGNMENTS OF ERROR

1. The trial court erred in terminating appellant's parental rights. CP 361-381.¹

2. The court erred in entering the following findings of fact and conclusions of law:

(a) "The father reports completing over one hundred random urinalysis tests but has not provided any documentation to the Department. The court concludes that either the father has not engaged in these claimed UAs or the results of the testing would not be favorable to the father." CP 365 (FF 1.23).

(b) "The father's repeated delays in completing the psychological evaluation demonstrate an inability to put [T.M.'s] needs before his own." CP 367 (FF 1.43).

(c) "The father can articulate his daughter's needs but is psychologically unable to put those needs ahead of his own psychological and mental health needs." CP 370 (FF 1.61).

(d) "The father's inability to take responsibility for any of his actions or accept responsibility for the factors that brought [T.M.] into care

¹ The trial court's "Findings Of Fact, Conclusions Of Law, And Order Of Termination Of Parent-Child Relationship As To The Father, Terry Morrison And The Mother, Ladonna Fofanna" are attached as appendix A.

are indicative of his inability to make the necessary changes to parent her now or in the future." CP 375 (FF 1.97).

(e) "The father's lack of an ability to maintain interpersonal relationships with service providers such as visit supervisors, Mr. Rost, US Healthworks, all three CASAs, all four social workers, DSHS office staff and his own children are indicative of his ability to have an appropriate relationship with [T.M.], her school personnel, medical personnel and friends." (CP 375 (FF 1.98).

(f) "The father has not demonstrated the ability to maintain healthy adult relationships[.]" CP 375 (FF 1.100).

(g) "The father's ability to attend visits is not indicative of his ability to parent." CP 375 (FF 1.101).

(h) Appellant "has not demonstrated a stable living capacity or lifestyle as evidenced by his seven moves since this dependency was filed." CP 376 (FF 1.102).

(i) "The father suffers from serious untreated mental health issues that prevent him from providing stability for [T.M.]" CP 376 (FF 1.104).

(j) "The father's inability to take responsibility for any of his actions or accept responsibility for the factors that brought [T.M.] into care

are indicative of his inability to make the necessary changes to parent her now or in the future." CP 378 (FF 1.113).

(k) "The father has had over two years to make significant progress in improving his parental deficiencies and has not done so." CP 378 (FF 1.121).

(l) "The rebuttable presumption that there is little likelihood that conditions will be remedied in the near future has been proven and not rebutted. This is a clear case involving a diagnosed and demonstrated psychological incapacity rendering the father incapable of the most basic parenting requirement of placing the child's needs about [sic] his own." CP 378-79 (FF 1.122).

(m) "There is little likelihood that the conditions could be remedied so that [T.M.] could be returned home to either parent in the near future." CP 379 (FF 1.123).

(n) "[T.M.] has no chance for stability and permanence with the father in her life." CP 379 (FF 1.124).

(o) "Continuation of the parent-child relationship between the above-named minor child and her [father] clearly diminishes the child's prospects for early integration into a stable and permanent home." CP 379 (FF 1.125).

(p) Appellant is "not capable of providing the child with a safe, stable home. [He has] not demonstrated the ability to provide the child with a stable home, and will not do so in the future." CP 379 (FF 1.126).

(q) "Although the child is placed in a stable home, the home cannot be permanent unless parental rights are terminated." CP 379 (FF1.126).

(r) Appellant is "unfit to parent this child." CP 379 (FF 1.130).

(s) "It is in this child's best interests to have her needs for stability and permanency met which her father . . . [is] unable to do now or in the future." CP 380 (FF 1.131).

(t) "Termination of the parent-child relationship between the child and her . . . father is in the child's best interests." CP 380 (FF 1.132).

(u) "Termination of the parent-child relationship between the above-named minor child, [and] the father . . . is in the child's best interest. The father . . . [is] not able to remedy [his] parental deficiencies within the near future." CP 380 (CL 2.2).

(v) "The foregoing finding of fact and the allegations of RCW 13.34.180 and .190 have been proven by clear, cogent and convincing evidence." CP 380 (CL 2.3).

Issues Pertaining To Assignments Of Error

1. Is reversal required because the State failed to prove by clear, cogent and convincing evidence that appellant was a currently unfit parent?

2. Is reversal required because the trial court failed to take into account the bond between child and parent in determining the child's best interests?

B. STATEMENT OF THE CASE

Appellant Terry Morrison is the father of T.M. (d.o.b. 3/3/06). CP 362. LaDonna Fofanna is the biological mother.² CP 362. Morrison and Fofanna are not married and do not live together. CP 363; 1RP 49-50.³

Fofanna has a history of drug abuse and severe mental problems, including depression and symptoms associated with schizophrenia or bipolar disease. Exh. 80; 1RP 16-17. In March 2006, Child Protective Services (CPS) became involved following a report that T.M.'s parents had abandoned her with Morrison's adult son Kyle and his ex-wife Angel. Exh. 80. Morrison and Kyle gave conflicting versions of the incident that prompted CPS intervention. 5RP 5-7, 15, 23-24; 5RP 80-82; 6RP 78-80.

² The termination of Fofanna's parental rights is not a part of this appeal.

³ The verbatim report of proceedings is referenced as follows: 1RP - 3/31/09; 2RP - 4/1/09; 3RP - 4/2/09; 4RP - 4/6/09; 5RP - 4/7/09; 6RP - 4/8/09; 7RP - 4/9/09; 8RP - 5/29/09.

Kyle asserted Morrison was using cocaine and would disappear for several days at a time. 5RP 11. Morrison testified he was coming off a three day drug binge, but denied disappearing for days at a time. 5RP 80; 6RP 78-79. The Department of Children and Family Services (DCFS) determined T.M. was not abandoned and the case was closed. Exh. 80.

Two weeks later, the sheriff's office was alerted that Fofanna was calling relatives in an effort to give T.M. away. Exh. 80. Police arrived at Fofanna's home and found her incapacitated by psychosis. Exh. 80; 1RP 21-23. Morrison was not present. Exh. 80. Morrison was aware of Fofanna's mental health problems and for this reason tried to make sure Angel helped look after T.M. while he was away from the household. 1RP 21-23; 6RP 75-82. Morrison denied purposefully leaving T.M. alone with her mother. 6RP 82-83.

T.M. was taken into protective custody and placed in a foster home. Exh. 80. DCFS later concluded there were no grounds to keep T.M. from her father, and she was placed back in his care. Exh. 80.

On March 31, 2007, CPS removed T.M. from Morrison's care and custody. Exh. 3; Exh. 80. Morrison had been arrested for assaulting Fofanna. Exh. 3. During the arrest, police located a marijuana grow operation in the basement. Exh. 80; 1RP 27-30. Morrison was in jail for six days. 1RP 36; 6RP 56. Morrison denied the assault allegation, Fofanna later

recanted and the charge was dismissed. Exh. 3; Exh. 80. Charges in connection with the marijuana operation were also dismissed. Exh. 80.

Morrison acknowledged he made a bad choice in connection with the marijuana operation. 1RP 31. He explained he had no job due to a back injury and no income at the time. 1RP 28, 31; 6RP 88. He now had income from social security disability payments, and so would not again need to grow marijuana to survive. 6RP 176.

T.M. was placed in the care of Morrison's ex-wife, Deborah Morrison. Exh. 80. Morrison's ex-wife told the social worker that Morrison's home had no electricity. Exh. 3. The social worker visited the home and saw the outside was dirty with glass and litter, and some windows were patched with wood or cardboard. Exh. 3. According to Morrison, the main floor had bare walls and the house needed remodeling. 1RP 25; 6RP 88-89. The house had electricity, heat, a kitchen, and a clean, functional bathroom. 1RP 28-29.

In August 2007, the court entered an agreed order of dependency and disposition and ordered the following services (1) random urinalysis testing (UA's) to address a history of substance abuse; (2) drug and alcohol evaluation and recommended treatment only if Morrison had a positive urinalysis result; (3) mental health counseling; (4) parenting classes; and (5) psychological evaluation with parenting component. Exh. 3.

Morrison had done random UA's since May 2007 without any positive results. Exh. 3. The initial progress review order entered in October 2007 noted Morrison was in partial compliance with services in that he participated in visitation and random UA's. Exh. 4. The permanency planning order entered in March 2008 likewise found Morrison in partial compliance with services. Exh. 6. He participated in visitation and random UA's but had not engaged a parenting class, mental health counseling, or a psychological evaluation. Exh. 6.

In April 2008, Morrison filed a motion to place T.M. with himself.⁴ Exh. 7. Morrison was living with the ex-wife at the time, as allowed by court order. Exh. 3, 7. Morrison alleged his ex-wife and her fiancé were unsuitable caregivers for a variety of reasons. Exh. 7. In support of returning T.M. to his care, Morrison cited the fact that the marijuana charge had been dismissed and he had no pending criminal matters. Exh. 7. Morrison had obtained monthly social security income in the amount of \$1910. Exh. 7, 65. In May 2008, the court removed T.M. from the ex-wife's home and placed her in licensed foster care due to Morrison's allegations and conflict between Morrison and his ex-wife. Exh. 8, 10.

⁴ Morrison earlier filed a motion to change placement in October 2007, but the motion was later withdrawn. Exh. 5; 3RP 39; 6RP 136.

In May 2008, T.M. began living in a foster home. Exh. 75. That same month, Morrison began living with his long time friends on a farm in Asotin, Washington. 4RP 54-55, 57. In October 2008, Morrison filed a motion to place T.M. in his home in Asotin or, in the alternative, to place T.M. in an approved foster home closer to his own home. Exh. 20. In January 2009, Morrison filed another motion to place T.M. in his home. Exh. 25, 26. The court denied Morrison's motion. Exh. 26.

The court's August 2008 review order determined Morrison was in partial compliance with services. Exh. 16. Morrison had completed a parenting class and engaged counseling with Muna Cook in Lewiston. Exh. 16; Exh. 75, 76. He had not provided a urinalysis sample since May 27, 2008. Exh. 16. Morrison obtained hair follicle testing starting in the fall of 2008. Exh. 86 at 18.

The November 2008 review order indicated Morrison had partially complied with court ordered services. Exh. 26. He had completed a parenting class and was in partial compliance with the conditional drug and alcohol evaluation requirement. Exh. 26. Morrison had completed 15 UA's, with one positive result on February 22, 2008. Exh. 26. The result was positive for a prescribed medicine. Exh. 7; 1RP 87-88.

Drug use was an issue at trial. Morrison testified that he binged on cocaine while living with Fofanna before T.M.'s conception. 1RP 15-17.

Morrison denied using drugs afterwards. 1RP 17, 20. Morrison maintained he was drug free. 5RP 117; 6RP 64.

Morrison did not complete a drug and alcohol assessment during the dependency. Exh. 16. A drug and alcohol assessment from October 2005 recommended intensive outpatient treatment. Exh. 69.

The Department of Social and Health Services (the Department) eventually contracted with Sterling Laboratories for drug testing. Exh. 67, 68. A Sterling drug test from a urine sample collected on April 29, 2008 came back positive for cocaine. Exh. 67. At the termination trial, the Sterling technical director looked at the report and saw no indication of a faulty test. 2RP 96, 103. He did not personally perform the test and only testified in general terms about protocols in place to prevent a false positive. 2RP 98-102, 109-13. A Sterling hair follicle test from a sample collected January 5, 2009 came back positive for cocaine. Exh. 68. Morrison contended the positive tests conducted by Sterling were falsified or incorrect. 5RP 118, 120; 6RP 63-64.

Morrison obtained hair follicle tests from Omega Laboratories. Exh. 72, 86 at 6, 16, 18. An Omega hair follicle test from a sample collected Nov. 3, 2008 came back negative for drugs. Exh. 86 at 18. Another Omega hair test from a sample collected December 15, 2008

came back negative for drugs. Exh. 72. Sterling hair tests from February 4, 2009 and March 14, 2009 were negative for drugs. Exh. 73, 74.

For hair follicle testing, the window of detection for drug use is 90 days for a hair sample one and one half inches in length. 2RP 105. According to the Sterling technical director, the negative result for the February 2009 hair test did not necessarily mean the positive January 2009 result was wrong because the time periods for detection did not completely overlap. 2RP 105-108. The window of detection for the positive January 2009 sample covered October, November, and December 2008. 2RP 107-08. The window of detection for the negative February 2009 sample covered November, December 2008, and January 2009. 2RP 108.

The negative results for the November and December 2008 hair tests and the January 2009 positive result could be explained by the different cut off amounts for detection. 2RP 113; Exh. 88. The cut off used by the lab that conducts hair tests for Sterling was 300 picograms per milligram of hair. 2RP 108; Exh. 68. The cut off used by Omega was 500 picograms per milligram of hair. Exh. 72, 86 at 16, 18.

The relationship between the Department and Morrison grew acrimonious throughout the course of the dependency, with Morrison accusing the Department of acting in bad faith and the Department

accusing Morrison of failing to do what he needed to do to enable the return of his daughter. 1RP 150; 2RP 52, 56, 132, 141; 3Rp 117, 124.

Morrison felt the Department needlessly turned their relationship into an adversarial one. 1RP 82, 2RP 141. He believed the Department demonized him, twisted his words and misrepresented what was going on in its reports. 1RP 150; 2RP 132, 141.

According to social worker Tuong Pham, the biggest problem was Morrison's conflict with service providers. 2RP 32, 46. Morrison accused the Department of kidnapping his daughter and believed Pham was not acting in his daughter's best interests. 2RP 47, 52. According to Pham, Morrison was focused on the conflict with the Department and the service providers, not on his child. 2RP 62. DCFS social worker Cara Moore's main concern was that Morrison was unable to put T.M.'s needs above his own in that he was unwilling to "jump through the hoops" by getting his services done. 3RP 5-6, 16, 20.

In reviewing the case file, social worker Luis Galvan said there was a pattern of Morrison having conflicts with anyone who cares for T.M. 3RP 74, 94. Social workers expressed concern that, if T.M. and Morrison were reunified, Morrison would be unable to appropriately interact with the professionals in T.M.'s life, such as doctors, teachers, dentists, and day care providers. 2RP 61; 3RP 92-95, 142, 147-48, 163.

Morrison disagreed that he could not work with professionals involved with his daughter's life if his daughter were returned to him. 5RP 123-24; 6RP 35-36, 38-39. He noted any issues he had with professionals was confined to those associated with the Department during the dependency. 6RP 38. He recognized any future dynamic would be different because it would not entail pitting him against an authority in a fight for his daughter's care and custody. 5RP 124.

Morrison's contact with Fofanna during the dependency was also a concern at trial. Morrison and Fofanna lived together in Bellingham for three months starting in August 2007. 6RP 90-92, 123. Fofanna was stabilized on medication. 6RP 90-92, 123. Fofanna was present at visits during this time. 6RP 91-92. Morrison believed Fofanna could safely be around T.M. while medicated, but he did not let T.M. be alone with her. 6RP 123, 150-51. Fofanna ultimately suffered a psychotic break at work and assaulted Morrison. 6RP 90-93, 123.

After Fofanna went to jail for assault, Morrison testified he had contact with her over the phone from October 2007 to March 2008 in an effort to get her to engage treatment. 6RP 119-21, 136-40. Morrison testified he mostly dissociated himself from Fofanna after he moved out to Eastern Washington. 6RP 48, 155.

In March 2009, Fofanna called Morrison and he took her to the police station so that she could turn herself in on an outstanding warrant. 6RP 47-49, 155-56. He helped her out of empathy and compassion; she was ill and in distress. 6RP 156-57. Morrison said he would not have picked her up if he had T.M. with him. 1RP 152; 6RP 47-48.

Morrison severed physical contact with Fofanna from May 2008 until he transported her to the police station in March 2009. 1RP 49-50. Morrison had a few infrequent telephone contacts with Fofanna during this period. 1RP 49-50, 52-53, 151-52. Morrison said he resisted her requests for help. 1RP 53. He came to the "conclusion that it was a choice between [Fofanna] or my daughter, and I believed the appropriate choice was to focus on my daughter." 1RP 53.

Morrison testified he was not going to have any interpersonal involvement with Fofanna. 6RP 49. If the court denied the termination petition and Fofanna called him in the future, Morrison said he would not have contact with her without structure or psychiatric care or no contact at all because she was beyond help. 6RP 50. Fofanna would only be involved in T.M.'s life if the court allowed contact through visitation in a structured setting. 1RP 54; 6RP 157-58.

In May 2008, Dr. Brian Coleman, a psychiatrist at Valley Cities, evaluated Morrison for medications as part of a self-referral. 3RP 99; Exh.

71. Coleman diagnosed Morrison with a bipolar affective disorder mixed without psychosis. 3RP 100. This meant he had mood swings, periods of depression and manic behavior. 3RP 100-01. Prognosis with medication was good; fair to poor without. 3RP 103. Substance abuse would exacerbate symptoms. 3RP 103. Social worker Galvan wondered about Morrison's bipolar diagnosis: "if he's on a manic episode and therefore more explosive and [T.M.] challenges him, what will be his response to that? If he's on a down swing and very depressed, will he respond to her needs, or will he lose himself in despair and usage, drug usage?" 3RP 144.

In November 2008, the parties agreed Morrison would submit to a psychological evaluation from a provider of Morrison's choosing before being evaluated by Dr. Deutsch, who was a Department referral. Exh. 24.

In December 2008, clinical psychologist Dr. Kevin Kracke completed a psychological evaluation after Morrison's self-referral. Exh. 65; 1RP 56. Morrison did not show any signs of uncooperativeness or opposition during extensive assessment sessions. Exh. 65.

Kracke reported Morrison had no disorder or a minimally severe disorder on the basis of test data, assuming lack of denial. Exh. 65. He diagnosed Morrison with "narcissistic and paranoid personality traits" and cannabis and cocaine related disorders, sustained full remission (by report). Exh. 65.

Morrison's responses to psychological testing suggested an effort to present a socially acceptable front and resistance to admitted shortcomings. Exh. 65. According to Kracke, the profile generated for Morrison had marginal utility because Morrison "attempted to place himself in an overly positive light by minimizing faults and denying psychological problems. This defensive stance is characteristic of individuals who are trying to maintain the appearance of adequacy and self-control. This client tends to deny problems and is not very introspective o insightful about his own behavior." Exh. 65.

Kracke's psychological testing showed Morrison "tended to minimize potential psychological issues but does present himself as somewhat narcissistic with paranoid characteristics." Exh. 65. Morrison was very goal directed but expressed a significant amount of disappointment regarding how the Department had handled the dependency. Exh. 65.

Kracke's report did not recommend against placing T.M. with Morrison. Rather, Kracke concluded that if the court granted Morrison's request for change of placement, which was pending at the time, it would be beneficial for Morrison to follow a sequential residential program and remain in therapeutic counseling to address issues that may compromise his parenting ability. Exh. 65. Kracke further recommended random drug

analysis and random supervised visits. Exh. 65. Kracke treated Morrison's efforts to visit T.M., the quality of those visits, and the bond between father and daughter as positives. Exh. 65.

In January 2009, the Department's contracted provider Dr. Robert Deutsch completed a psychological evaluation with parenting component. Exh. 66. At first Morrison refused to consent to the evaluation, but eventually agreed and "was cooperative in giving an accurate portrayal of himself." Exh. 66. He became tearful in discussing his daughter's plight and deprivations. Exh. 66. His thought was goal directed, though he tended to persevere on the injustice of the CPS system and the damage done to his daughter. Exh. 66.

The psychological shortcomings demonstrated by Morrison stemmed from his blame of CPS and the system that took his daughter away. 2RP 14-16. Deutsch was concerned Morrison could not accurately appraise situations and effectively work through the system to reunify with his daughter because he blew things out of proportion and did not have an appropriately measured response to the dependency. 2RP 16-19. His problem, in this context, was that he was oversensitive and over reactive when it came to trying to protect his daughter's best interests. 2RP 19.

Unlike many people involved in custody disputes, Morrison was open and cooperative rather than guarded and defensive during the

evaluations. Exh. 66; 2RP 25. This was a positive thing. 2RP 25. Morrison "produced a valid profile which is probably a good indication of his present level of functioning." Exh. 66.

Morrison had the profile of a man who was insecure, hypersensitive and tended to blame others for his problems. Exh. 66. He protects himself in relationships because he does not fully trust anyone. Exh. 66.

Deutsch's overall impression was of a hard working and conscientious man with deep-seated psychological vulnerabilities. Exh. 66. Morrison had trouble developing healthy adult relationships with women, but managed to set limits and protect T.M. in his relationship with the child's mother, albeit in questionable circumstances involving the marijuana grow operation. Exh. 66. Morrison agreed it was a poor choice to grow marijuana in his home back in 2007. Exh. 66. He took precautions to avoid exposing T.M. to the grow operation but did not take into account the potential negative consequences of raising her in an environment of illegal activity. Exh. 66.

Deutsch also reported that Morrison feels exploited by others. Exh. 66. In response, Morrison tends to act overzealously, not necessarily recognizing the effect he has on others because he feels he is acting for a just cause in which he vehemently believes. Exh. 66. His antagonism

towards those he feels have wronged him, including the Department, was "a last ditch effort to protect his vulnerability and the vulnerability of those with whom he identifies (i.e., his daughter)." Exh. 66. He overcompensates for his poor interpersonal skills with bluster, but also with productive action. Exh. 66. He resorted to drugs in the past when overwhelmed. Exh. 66. Although Morrison may have a passive-aggressive streak and felt deeply resentful at being taken advantage of by the Department and others, he did not appear to be a violent man. Exh. 66.

Deutsch further reported Morrison was conscientiously and earnestly trying to bolster his limited psychological resources and personal development with counseling and education. Exh. 66. He was in the process of acquiring knowledge and sensitivity about psychological and relationship matters that confounded him in the past. Exh. 66. He appeared able to put some of his past in perspective and show insight into current affairs. Exh. 66.

Psychological testing is suggestive. 2RP 10. Morrison's scores on one of the tests suggested a profile of indifference to the welfare of others. Exh. 66.

Deutsch ultimately concluded, however, that Morrison's parental strengths included empathy for his daughter and a wish for her well being that supersedes his dependency needs for her. Exh. 66. His behavior with

her is generally appropriate and she seems to feel safe with him. Exh. 66. He has a genuine desire to learn about child development and parenting, and seems to have an ability to enact what he learns. Exh. 66. Deutsch believed Morrison put T.M.'s needs first. 2RP 18-19.

Weaknesses included poor role modeling during his childhood years, distrust and some disregard for authority, and self-defeating behavior. Exh. 66. Morrison had an anxiety disorder. Exh. 66. Deutsch did not diagnose Morrison with a personality disorder of any kind. 2RP 11. He only concluded Morrison had antisocial and paranoid traits of a disorder. 2RP 11; Exh. 66. The presence of a personality disorder is much more significant and severe than the "traits" found in Morrison. 2RP 12.

Deutsch believed counseling and parenting classes would address his mental health problems. 2RP 19-20. Morrison's anxiety interfered with his parenting ability. 2RP 20. Addressing his antisocial and paranoid personality features would enable him to better deal with the world as he cared for his daughter's needs. 2RP 20-21. Parenting classes would improve his parenting ability regardless of diagnosis. 2RP 21. Morrison expressed keen interest in learning and applying child development concepts. 2RP 26-27. Deutsch further recommended that Morrison's plan to move to Eastern Washington with his daughter be explored for feasibility. Exh. 66.

Deutsch's prognosis was "somewhat optimistic." Exh. 66. Morrison was learning about himself and trying to overcome his personal shortcomings. Exh. 66. His adversarial nature when feeling threatened will persist and take away from his ability to advocate for his daughter and undermine otherwise thoughtful intentions. Exh. 66. "Although Mr. Morrison is learning new concepts and interpersonal skills, his zealous sense of injustice will continue to interfere with his ability to deal on his daughter's behalf. If, or as, the intensity of the current situation abates, Mr. Morrison will be better able to modulate his feelings, apply new knowledge and interpersonal skills as well as bring a more objective perspective." Exh. 66.

Morrison stopped counseling with Cook when he came over to Seattle to stay with his ex-wife in the run up to the termination trial. 1RP 44; 5RP 129. He intended to reestablish contact with Cook. 5RP 129. Deutsch's recent receipt of Dr. Coleman's report and information that Morrison was currently living with his ex-wife impacted his opinion that Morrison's prognosis was somewhat optimistic, but said he needed more information to come to any further conclusion. 2RP 8-9. Deutsch said his prognosis is "somewhat less optimistic if he's not in counseling." 2RP 22. Deutsch resisted the prosecution's attempt to get him to change his view of Morrison based on his having contact with the child's mother. 2RP 29-30.

As of December 1, 2008, Morrison had completed 20 personal therapy sessions with Muna Cook in Lewiston. Exh. 65; 1RP 44. He ultimately completed 25 sessions from May 2008 to January 2009. Exh. 88.

Morrison maintained his focus was always on his daughter's care during the dependency. 5RP 134-35. That was one of the reasons why he was so upset about the perceived injuries to her. 5RP 135. The major source of his anxiety was having his daughter kept from him. 1RP 64.

At trial, Morrison reiterated his plan to move to Eastern Washington with a couple he had known for many years once reunited with his daughter, which is why he had not established what he considered a permanent home on the west side of the state. 1RP 8, 33; 2RP 142. He planned to enroll his daughter in a Head Start daycare program. 1RP 34, 2RP 142. A Head Start coordinator who was Morrison's friend had, at Morrison's request, earlier contacted the Head Start director in Lewiston and reserved a space for T.M. in a class for September 2008. 6RP 106-07. Morrison testified he would appropriately clothe T.M. and ensure regularly scheduled meals, baths, play times, mental help and dental hygiene. 2RP 144; 6RP 62.

Morrison acknowledged he made bad choices in the past. 1RP 66. He believed he had room for improvement but did not believe his

parenting deficiencies were sufficient to disqualify him from parenting his child. 1RP 67-68; 2RP 143-44; 6RP 50-51, 62.

The trial court terminated Morrison's parental rights, concluding the State had proven the statutory requirements for termination. CP 380. The court determined Morrison was an unfit father due his mental health, drug use, lack of stable living arrangements, inability to maintain interpersonal relationships, poor judgment in publicizing the dependency and attempting to change T.M.'s placements during the dependency, and failure to put his daughter's needs before his own. CP 363-80. Services had not corrected those deficiencies. CP 371 (FF 1.73). The court found Morrison lacked credibility in some respects, including his testimony that he had addressed concerns regarding drug use and his "enmeshment" with Fofanna. CP 364 (FF 1.16, 1.22); 372 (FF 1.78, 1.81); 373 (FF 1.82, 1.84). This appeal timely follows. CP 314-337.

C. ARGUMENT

1. THE STATE FAILED TO PROVE BY CLEAR, COGENT AND CONVINCING EVIDENCE THAT MORRISON WAS CURRENTLY UNFIT TO CARE FOR HIS CHILD.

The State did not prove Morrison's mental health issues or any other deficiency made him so unfit that he was incapable of caring for the basic needs of his daughter. The termination of Morrison's parental rights

therefore violated his constitutional due process right to the care and custody of his child. Reversal is required.

a. The Propriety Of Termination Must Be Viewed In Light Of The Gravity Of The Rights At Stake.

Parents have a fundamental liberty interest in the care and custody of their children protected by the Fourteenth Amendment of the United States Constitution and article I, section 3 of the Washington Constitution. Santosky v. Kramer, 455 U.S. 745, 753, 102 S. Ct. 1388, 71 L. Ed. 2d 599 (1982); In re Dependency of V.R.R., 134 Wn. App. 573, 581, 141 P.3d 85 (2006). Children have a corollary interest in having the affection and care of their natural parents. Moore v. Burdman, 84 Wn.2d 408, 411, 526 P.2d 893 (1974). The fundamental due process right to the preservation of family integrity "encompasses the reciprocal rights of both parent and children." Duchesne v. Sugarman, 566 F.2d 817, 825 (2d Cir. 1977). In light of the rights at stake, parents and children "share a vital interest in preventing erroneous termination of their natural relationship." Santosky, 455 U.S. at 760.

Morrison's appeal of the trial court's order terminating his relationship with his daughter must be assessed in light of these fundamental interests.

b. Standard of Review

"The family entity is the core element upon which modern civilization is founded." In re Welfare of Luscier, 84 Wn.2d 135, 136, 524 P.2d 906 (1974). The right to care for one's child has been described as a "sacred right." In re Welfare of Sumey, 94 Wn.2d 757, 762, 621 P.2d 108 (1980). The right is "so rooted in the traditions and conscience of our people as to be ranked as fundamental." In re Welfare of Myricks, 85 Wn.2d 252, 254, 533 P.2d 841 (1975) (quoting Snyder v. Massachusetts, 291 U.S. 97, 105, 54 S. Ct. 330, 78 L. Ed. 674 (1934)). For this reason, "a trial court asked to interfere with that right should employ great care." In re Welfare of M.R.H. 145 Wn. App. 10, 23, 188 P.3d 510 (2008).

In the light of the fundamental interests at stake, "clear, cogent and convincing evidence" is necessary to sustain an order terminating parental rights. In re Interest of Pawling, 101 Wn. 2d 392, 399, 679 P.2d 916 (1984). This means the ultimate fact in issue must be shown by evidence to be "highly probable." Id.

Findings of fact must otherwise be supported by "substantial evidence" in light of the "highly probable" test. Id. Substantial evidence is evidence sufficient to persuade a fair-minded, rational person of the truth of the declared premise. In re Welfare of C.B., 134 Wn. App. 942, 953, 143 P.3d 846 (2006). Evidence in parental termination cases,

however, "must be more substantial than in the ordinary civil case." In re Welfare of Hall, 99 Wn.2d 842, 849, 664 P.2d 1245 (1983).

Deference to the trial judge's findings is of particular importance in deprivation proceedings because the judge has the advantage of personally observing the witnesses. In re Dependency of K.S.C., 137 Wn.2d 918, 925, 976 P.2d 113 (1999). Nevertheless, whether substantial evidence supports a finding is a question of law. State v. Hutton, 7 Wn. App. 726, 728, 502 P.2d 1037 (1972). The findings must support the court's conclusions that the requirements of termination have been met. In re Interest of S.G., 140 Wn. App. 461, 467, 166 P.3d 802 (2007). Those conclusions include whether the statutory requirements for termination are satisfied and the parent-child relationship should be terminated. Id. Conclusions of law are reviewed de novo. Hanson v. City of Snohomish, 121 Wn.2d 552, 556, 852 P.2d 295 (1993).

The trial court's determination that the State met its burden of proving Morrison was unfit by establishing the six statutory factors under RCW 13.34.180(1), as well as the determination that termination is in the best interests of the child, was arrived at by a process of legal reasoning from facts in evidence. These are conclusions of law and should be reviewed as such. See In re Dependency of C.R.B., 62 Wn. App. 608, 618-19, 814 P.2d 1197 (1991) (purported findings that parrot language of

RCW 13.34.180 are actually legal conclusions); State v. Niedergang, 43 Wn. App. 656, 658-59, 719 P.2d 576 (1986) (if determination is made by a process of legal reasoning from facts in evidence, it is a conclusion of law).

c. The State Must Establish Current Parental Unfitness Before Parental Rights Can Be Terminated.

Parents have the right to rear their children without state interference. In re Custody of Smith, 137 Wn.2d 1, 15, 969 P.2d 21 (1998), aff'd sub nom., Troxel v. Granville, 530 U.S. 57, 120 S. Ct. 2054, 147 L. Ed. 2d 49 (2000). This right "undeniably warrants deference and, absent a powerful countervailing interest, protection." Stanley v. Illinois, 405 U.S. 645, 651, 92 S. Ct. 1208, 31 L. Ed. 2d 551 (1972). "A proceeding to terminate parental rights requires the court to balance a parent's fundamental liberty interest in the care and custody of his or her children against the State's obligation to protect the basic safety and health of the children." S.G., 140 Wn. App. at 467. When the rights of parents and the welfare of their children are in conflict, the welfare of the minor children must prevail. In re Welfare of Seago, 82 Wn.2d 736, 738, 513 P.2d 831 (1973).

But that conflict must be sufficiently serious before severance of the parent-child bond is warranted. The State may intervene to protect a child only "when a child's physical or mental health is seriously

jeopardized by parental deficiencies." In re Dependency of Schermer, 161 Wn.2d 927, 941-42, 169 P.3d 452 (2007). A parent "has the natural and legal right to the custody and control of the children, unless so completely unfit for such duties that the welfare of the children themselves imperatively demanded another disposition of their custody." In re Neff, 20 Wn. 652, 655, 56 P. 383 (1899).

The Legislature recognized this right in RCW 13.34.020, which states "the family unit should remain intact unless a child's right to conditions of *basic* nurture, health, or safety is jeopardized" (emphasis added).⁵ The State may constitutionally intrude on parental rights only when parental actions seriously conflict with the child's physical or mental health. Smith, 137 Wn.2d at 20; Sumey, 94 Wn.2d at 762-63.

Washington thus allows interference with a parent's protected right to raise his or her child only where the State seeks to prevent harm or risk of harm to the child. Smith, 137 Wn.2d at 18. "[T]he requirement of harm is the sole protection that parents have against pervasive state interference in the parenting process." Id. at 19-20 (quoting Hawk v. Hawk, 855 S.W.2d 573, 580 (Tenn. 1993)).

⁵ See also RCW 13.34.030(5)(c) (defining "dependent child" as one who has no parent "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." (emphasis added).

The parental rights of a fit parent cannot be terminated. S.G., 140 Wn. App. at 468. The State must therefore prove by clear, cogent, and convincing evidence that current parental deficiencies render the parent unfit before the parent-child relationship may be severed. Id. at 467-68; In re Dependency of K.R., 128 Wn.2d 129, 142, 904 P.2d 1132 (1995).

The child's best interests should not to be balanced against the parent's fitness. Rather, the State must first establish parental deficiencies render a parent unfit to care for the child before the court may reach the issue of whether the child's best interests are served by terminating the parent-child relationship. S.G., 140 Wn. App. at 470. "Short of preventing harm to the child, the standard of 'best interest of the child' is insufficient to serve as a compelling state interest overruling a parent's fundamental rights." Smith, 137 Wn.2d at 20. The State can intrude upon a family's integrity only when parental actions or decisions seriously conflict with the physical or mental health of the child. Id. at 18.

A finding of current parental unfitness is implicitly established when the State proves the six elements under RCW 13.34.180(1) by clear, cogent, and convincing evidence. K.R., 128 Wn.2d at 142. Before a court may terminate the parent-child relationship, clear, cogent, and convincing evidence must therefore show "there is little likelihood that conditions will be remedied so that the child can be returned to the parent in the near

future." RCW 13.34.180(1)(e). This element focuses on whether parental deficiencies exist and, if they do, whether they will be corrected in the near future. K.R., 128 Wn.2d at 144; In re Welfare of S.V.B., 75 Wn. App. 762, 773-74, 880 P.2d 80 (1994).

"[C]ourts undertake a grave responsibility when they deprive parents of the care, custody and control of their natural children." Sego, 82 Wn.2d at 738. For this reason, statutes providing for the termination of parental rights are strictly construed. In re Adoption of Lybbert, 75 Wn.2d 671, 674, 453 P.2d 650 (1969).

Morrison does not need to prove he is a fit parent. The State has the burden of proving he is an unfit parent. Parental unfitness will not be found unless clear, cogent, and convincing evidence shows Morrison would seriously jeopardize his daughter's basic physical or mental health if she were returned to his care. For the reasons set forth below, that standard is not met here.

d. In Terminating Morrison's Parental Rights, The Trial Court Improperly Ignored Nearly Everything Positive About Morrison And His Relationship With His Daughter.

When the State moves to irrevocably sever the parent-child bond, parents must be protected from unwarranted usurpation, disregard, and disrespect. M.L.B. v. S.L.J., 519 U.S. 102, 116, 117 S. Ct. 555, 136 L. Ed.

2d 473 (1996); In re Welfare of J.M., 130 Wn. App. 912, 921, 125 P.3d 245 (2005). Morrison's case, involving the State's authority to permanently sever a parent-child bond, demands the close consideration long required when a family association so undeniably important is at stake. M.L.B., 519 U.S. at 116-17. A trial court asked to destroy a family should employ great care before doing so. M.R.H. 145 Wn. App. at 23.

In its findings of fact, however, the trial court ignored important evidence. The court's findings betray a lack of comprehensive and fair assessment of Morrison as a parent and the importance of the bond his daughter shared with him.

While a trial court is not required to make specific findings of fact in regard to every item of evidence introduced in a case, findings must be made on all material issues. Wold v. Wold, 7 Wn. App. 872, 875, 503 P.2d 118 (1972). The strong bond between Morrison and T.M. and the quality of their interaction are material issues in this case.

Morrison visited T.M. two days a week for two hours a day. 1RP 94. Morrison missed only one visit in two years. 5RP 77. Morrison was very consistent and good about visits, despite the distance he had to travel. 1RP 94-95; 5RP 42.

The court erroneously found Morrison's "ability to attend visits is not indicative of his ability to parent." CP 375 (FF 1.101). This finding

does not bear scrutiny. Courts routinely look to the ability to attend visits during dependency as a means to measure a parent's fitness, holding the ability to consistently attend visits against a parent in termination proceedings. See, e.g., In re Welfare of T.B., 150 Wn. App. 599, 609, 209 P.3d 497 (2009) (failure to visit children on consistent basis); In re Dependency of Roberts, 46 Wn. App. 748, 749-50, 732 P.2d 528 (1987) (missed visits or arrived late; child withdrawn and anxious during visits); see also RCW 13.34.136(2)(b)(ii) ("Early, consistent, and frequent visitation is crucial for maintaining parent-child relationships and making it possible for parents and children to safely reunify.").

The trial court's finding on the matter demonstrates a double standard. When a parent does not have the ability to attend visits, that failing is attributed to the parent's deficiency. Had Morrison failed to attend visits, the trial court doubtless would have held that against him. But where, as here, a parent has the ability to attend visits and faithfully follows through, the effort is breezily dismissed as irrelevant to his parenting ability.

This finding is symptomatic of the trial court's approach to this case. The trial court ignored evidence showing Morrison's shortcomings were not as severe as the one-sided findings would have this Court believe.

It is telling that the only finding related to the quality of visitation focuses exclusively on an isolated incident in the summer of 2008 where Morrison lost his temper in front of T.M. and accused visitation supervisor Freda Harris of kidnapping his daughter. CP 377 (FF 1.110); 6RP 7-9.⁶

The court otherwise found nothing about the quality of Morrison's visits with his daughter to be relevant to the termination decision. It is not as if evidence was lacking. Witnesses consistently had positive things to say about the visits. Visitation supervisor Selena Taylor testified T.M. was excited to visit with her father. 1RP 138. They respond affectionately to one another. 1RP 138. She is happy when she greets him. 1RP 128. She is upset upon departing, saying she does not want to go. 1RP 128, 142. Morrison tells her he will see her at the next visit. 1RP 142. He tells her he loves her. 1RP 142. She tells him she loves him back. 1RP 142.

During visits, Morrison interacted "very well" with his daughter. 1RP 95-96, 138. He talked with her, played with her and taught her things. 1RP 96, 139. They did appropriate activities together. 1RP 139. Morrison and T.M. sang songs and painted. 7RP 49-50, 54-55. He brought her toys, coloring books, clothes, and shoes. 1RP 123, 139. He arranged to celebrate her birthday, setting up the kitchen with balloons and a cake, with presents for her to open. 1RP 126.

⁶ Morrison disputed this version of events. 6RP 37.

T.M.'s behavior was that of a typical three year old. 1RP 97. There was nothing unusual about the content of their conversations. 1RP 96. Morrison did not talk about the foster placement with T.M. 1RP 111. He did not discuss the upcoming termination trial in front of T.M. 1RP 119.

Even the visitation supervisor on duty the day of the summer 2008 incident testified nothing like that had ever happened before. 6RP 9, 12. According to the visitation report for that day, "[T.M.] greeted her dad with a big smile and bright eyes" at the beginning of the visit and "[T.M.] walks holding dad's hand and smiling. [T.M.] gives eye contact and smiles to dad." Exh. 65. Previous visits were fine. 6RP 14. Morrison and T.M. were pleasant with one another. 6RP 19. She greeted her father happily and with affection. 6RP 17. Morrison appropriately played with her. 6RP 17-20. DCFS social worker supervisor Fred Pfistner did not have any concern with the supervised visits, which he described as generally appropriate. 4RP 51.

The quality of visits and the relationship displayed during them are important factors to consider, especially since those are the only opportunities a parent typically has to directly demonstrate appropriate, hands-on care for his or her child during the dependency process. See, e.g., In re Dependency of H.W., 92 Wn. App. 420, 423, 961 P.2d 963 (1998) (positive visits and evidence of bond); In re Dependency of J.C., 130 Wn.2d 418, 422, 428-29, 924 P.2d 21 (1996) (poor quality of visits);

In re Dependency of P.A.D., 58 Wn. App. 18, 25-26, 792 P.2d 159 (1990) (poor quality of visits and parent cut them short because conflicted with scheduled lunch).

Evaluator Kracke reported Morrison and T.M. were substantially attached to one another. Exh. 65. Evaluator Deutsch reported Morrison's behavior with T.M. is generally appropriate and she seems to feel safe with him. Exh. 66. Even the ex-wife, whom Morrison had earlier vilified, testified she had no concerns about Morrison's care of T.M. while he lived with them. 4RP 82. Morrison's longtime friend Debra Reeves testified T.M. was connected to her father and he took good care of her every need during a visit. 4RP 54, 56-58. Richard Luccetti, a special needs coordinator at Albina Head Start, had known Morrison for 30 years. 6RP 100-01, 103. He observed the interaction between Morrison and T.M. during a visit and noticed it was very loving and normal. 6RP 103. He testified "Mr. Morrison has a tremendous love for the child and the child corresponds just likewise." 6RP 103. CASA worker Joan Kalhorn testified T.M. was clearly very attached to her father. 7RP 102, 110. CASA worker Laura Knudson testified T.M. loves her father. 5RP 42.

One of the basic attributes of parenthood is the ability to express love and affection for a child. Lybbert, 75 Wn.2d at 674. Morrison possessed that attribute and T.M. responded to it. They love each other.

There is a bond. Cf. In re Welfare of H.S., 94 Wn. App. 511, 517, 973 P.2d 474 (1999) (lack of ability to form bond was deficiency contributing to unfitness).

The parent-child bond is of basic importance to society. Smith, 137 Wn.2d at 15; M.L.B., 519 U.S. at 116-17. Termination of parental rights "is one of the severest of state actions." J.M., 130 Wn. App. at 921. Courts must therefore zealously guard family integrity. Luscier, 84 Wn.2d at 136. Morrison accordingly has an interest in an accurate and just decision. Lassiter v. Dep't of Soc. Servs. of Durham County, NC, 452 U.S. 18, 28, 101 S. Ct. 2153, 68 L. Ed. 2d 640 (1981). That interest is not served by the trial court's one-sided consideration of the evidence in this case. The trial court's findings present a caricatured version of Morrison and his daughter's relationship with him.

The trial court should have taken the ability of Morrison to maintain a loving bond with his daughter into account in determining whether Morrison was so unfit a father as to make termination imperative. The court should also have taken his ability to consistently visit and the quality of his interaction with T.M. during visits into account in determining Morrison's fitness. This is affirmative evidence that Morrison's shortcomings, addressed in more detail below, were not so severe as to warrant termination.

e. Morrison's Mental Health Issues Did Not Render Him Incapable Of Adequately Caring For His Daughter.

The trial court's primary concern revolved around Morrison's mental health. Morrison had mental health issues. But the State did not prove by clear, cogent and convincing evidence that his mental problems reached the level of rendering him an unfit parent.

"[M]ental illness is not, in and of itself, proof that a parent is unfit or incapable. The court must examine the relationship between the mental condition and parenting ability. Termination must be based on current unfitness; children may not be removed from their homes merely because their parents are mentally ill." In re Dependency of T.L.G., 126 Wn. App. 181, 203, 108 P.3d 156 (2005). When a parent's alleged deficiencies stem from mental health problems, the court may consider whether there is a "[p]sychological incapacity or mental deficiency of the parent that is so severe and chronic as to render the parent incapable of providing proper care for the child for extended periods of time or for periods of time that present a risk of imminent harm to the child." RCW 13.34.180(1)(e)(ii).

Dr. Deutsch, Dr. Kracke and Dr. Coleman diagnosed Morrison with certain mental problems, but no evaluator opined Morrison's mental issues rendered him an unfit parent incapable of adequately caring for T.M.

Both Dr. Deutsch and Dr. Kracke treated return of T.M. to Morrison as a viable option despite Morrison's mental issues. Dr. Deutsch specifically recommended that Morrison's plan to move to Eastern Washington with his daughter be explored for feasibility. According to the Department's own evaluator, Morrison's behavior with his daughter was generally appropriate and she seemed to feel safe with him.

Dr. Deutsch's mental health conclusions centered on Morrison's ability to successfully navigate the dependency process to enable reunification. Morrison was unable to do so because he mistrusted the Department's motives and was angry at being kept apart from his daughter. Dr. Deutsch's belief that Morrison's zealous sense of injustice would continue to interfere with his ability to deal on his daughter's behalf focused on Morrison's inability to do what the Department thought he needed to do to get his daughter back.

From the trial court's perspective, Morrison was unable to engage services or sufficiently benefit from those he did engage. The trial court held this against him. The sentiment was aptly summed up by social worker Cara Moore, who testified her main concern was that Morrison was unable to put T.M.'s needs above his own in that he was unwilling to "jump through the hoops" by getting his services done. 3RP 16, 20. But an identified need to engage in services to enable reunification presupposes

that a parent is unfit in the first place. In relation to Morrison's mental health, Morrison could improve and benefit from continued counseling. But, as further addressed below, he did not need to jump through that hoop to become a fit father.

In connection with mental health concerns, the trial court erroneously found "[t]he father's lack of an ability to maintain interpersonal relationships with service providers such as visit supervisors, Mr. Rost, US Healthworks, all three CASAs, all four social workers, DSHS office staff and his own children are indicative of his ability to have an appropriate relationship with [T.M.], her school personnel, medical personnel and friends." CP 375 (FF 1.98). The court also wrongly found "[t]he father suffers from serious untreated mental health issues that prevent him from providing stability for [T.M.]." CP 376 (FF 1.104).

First, social worker Pham admitted Morrison he knew of no conflicts with counselor Muna Cook. 2RP 70. This shows Morrison was not categorically incapable of maintain relationships with service providers. It is significant that Morrison's relationship with Cook involved a professional that was not hired by the Department.

Second, Morrison had unequivocally demonstrated an ability to have an appropriate relationship with T.M. herself. That evidence has already been set forth above and need not be repeated here. Morrison's relationships

with Department personnel and their contracted service providers were marked by conflict, yet Morrison and T.M. had a good relationship unmarked by conflict. This shows the trial court's purported link between Morrison's ability to have an appropriate relationship with his daughter and his inability to maintain conflict free relationships with those who were part of the system did not actually exist.

FCAP evaluator Mueser noted Morrison had a history of unstable relationships, and opined Morrison would need to maintain stability and consistency in his relationship with T.M. if she were returned to him. SRP 176. T.M. was an intense child and she was going to create conflict, appropriately so as a two year old, and more so in adolescence. SRP 176-77. Mueser was concerned "there could be plenty of room for conflict between the two of them." SRP 148.

Of course there would be plenty of room for conflict. What parent-child relationship lacks plenty of conflict? The dispositive question is whether there is a serious risk that conflict would harm T.M.'s basic needs to nurture, health, and safety. Speculation is not substantial evidence. Hutton, 7 Wn. App. at 728.

The link between Morrison's mental health and a purported inability to act appropriately around T.M.'s friends in the future is also weak. This type of relationship dynamic went unexplored at trial. Certainly it is a far

cry from the hostile dynamic between Morrison and those he saw as barriers to reunification during the custody process. Morrison had a good relationship with the only child in his life. If any reasonable inference is to be drawn, it is that he would treat his daughter's friends in kind because they could not be expected to try to remove his daughter from his care and then terminate his parental rights.

Moreover, Morrison's lack of relationships with his other three children does not show he was unable to have an appropriate relationship with his daughter. Morrison did not have sustained relationships with his other children for various reasons and never developed a bond with any of them. 1RP 71-76; Exh. 80. In sharp contrast, the relationship between Morrison and T.M. was warm and loving and it had endured despite the hardships attendant to the dependency process. Morrison developed a bond with his daughter. History did not repeat itself.

The basic problem here is that the trial court viewed Morrison's parental fitness through the distorting prism of his interactions with state actors and agents that, from Morrison's perspective, were part of a system that kept him from his daughter without sufficient justification. A recurring theme at trial, reflected in the court's finding, is that Morrison was unable to interact with the professionals involved in T.M.'s life. This, according to witnesses, raised concerns that Morrison would sabotage

T.M.'s health if she were returned to his care because he would remove her from day care providers, doctors, and schools once a conflict developed.

For example, social worker Galvan was concerned that Morrison would conflict with T.M.'s future care providers if they were reunified: "I mean if he disagrees with the caretaker and he's living in the home, what's not to say he will not take [T.M.] and go somewhere else?" 3RP 142. "What's not to say?" is not the standard of proof, yet this sentiment sums up the argument about fitness advanced by the State and accepted by the trial court.

Galvan expressed concern with Morrison's bipolar diagnosis in the same fashion: "if he's on a manic episode and therefore more explosive and [T.M.] challenges him, what will be his response to that? If he's on a down swing and very depressed, will he respond to her needs, or will he lose himself in despair and usage, drug usage?" 3RP 144. These are good questions, but wondering how Morrison would react to theoretical situations in the future is not clear cogent and convincing evidence that Morrison would harm the basic needs of his daughter if she were returned to him.

Similarly, CASA worker Emma Margraf thought Morrison should have completed recommended services because "the Department wanted -- wanted to feel very confident about Terry Morrison's mental health status before they were willing to -- before they were willing to consider

reunification, and, um, you know, having Mr. Morrison participate in counseling and very rigorous mental health services would have given us information that we didn't have, um, about, uh, whether or not he was -- he was mentally stable enough to be a father." 4RP 14-15. The absence of certainty about fitness was used as a basis for showing the Department proved unfitness by clear, cogent, and convincing evidence.

Again, speculation is not substantial evidence. Hutton, 7 Wn. App. at 728. Based on the evidence presented at trial, predictions of what might happen if T.M. were returned to Morrison's care in relation to how he would deal with school, medical and daycare personnel do not equal a high probability that her basic needs would be harmed. Predictions about Morrison's ability to interact with T.M.'s future teachers doctors, and child care providers do not pass the requisite proof of harm needed to terminate parental rights.

If anything, the record shows Morrison was very concerned with his daughter's health. Morrison's concerns about T.M. being injured in her dependency placements stems from his love for his daughter and his deeply held conviction that a father should parent his child and no one else. While the trial court found his concerns over injury were misplaced, Morrison's obsession with reuniting with his daughter is by no means

freakish. It is the natural reaction of a parent who deeply loves his child and feels aggrieved that his daughter is not in his care.

Morrison was criticized for focusing on his crusade against the Department but the Department's own response indicates an institutional failure to maintain appropriate focus on whether Morrison was really so unfit as to be incapable of caring for T.M. Once the dependency started, it was assumed he was unfit and that if he did not successfully and timely complete all evaluations and services he remained unfit. This approach to the case is based on a false premise of current unfitness. Neither the Department nor the trial court could see the forest for the trees. The Department's wrangling with Morrison resulted in appropriate focus being lost on Morrison's parenting abilities as well as on T.M. herself.

Foster Care Assessment Program (FCAP) evaluator Laura Mueser testified "it is very difficult to get information about [T.M.], because so much of the records focused exclusively on (Inaudible) her father's actions." 5RP 148. In her report, Mueser states "the referral to FCAP requested that a focus be maintained upon [T.M.] and her needs due to concern that interventions in this case have focused on Mr. Morrison, possibly diminishing the attention [T.M.] receives. Hence, *only moderate attention has been paid to the issues of Mr. Morrison's compliance and parenting abilities.*" Exh. 80 (emphasis added).

The focus on how Morrison interacted with the Department and its contracted service providers results in a misleading picture of how Morrison could be expected to interact with those who were not involved with a system that prevented Morrison from reunifying with his daughter. Dr. Deutsch recognized Morrison's antagonism towards those he feels have wronged him, including the Department, was a last ditch effort to protect his vulnerability as well as the vulnerability of his daughter. Morrison himself recognized his conflicts with professionals involved in the dependency stemmed from the fact that the relationships were adversarial. That is, they existed in the artificial environment of the dependency process where the demands placed on him by these professionals served as barriers to reunification.

The trial court held Morrison's anger, passion and feelings of injustice against him, as if such reactions were abnormal and somehow indicative of his ability to parent. The right to care for one's child is considered to be "more precious to many people than the right of life itself." Luscier, 84 Wn.2d at 137 (quoting In re Welfare of Gibson, 4 Wn. App. 372, 379, 483 P.2d 131 (1971)). It is a sacred right. Sumey, 94 Wn.2d at 762. Morrison certainly shared this view. It is understandable that Morrison reacted extremely to an extreme situation, and he was not always able to keep his temper in check or jump through all the hoops

required of him with grace. This does not mean it was highly probable he presented a serious risk of placing his daughter's basic needs in jeopardy due to an inability to maintain relationships with the doctors, teachers, and day care providers that would not be actors in a dependency process.

The court wrongly found "The father has not demonstrated the ability to maintain healthy adult relationships[.]" CP 375 (FF 1.100). Morrison's relationship with counselor Cook was good. 2RP 70.

He maintained appropriate relationships with other adults. T.M.'s godmother, Debra Reeves, had known Morrison for 41 years. 4RP 54, 74. Morrison lived with her and her husband before the termination trial and would live with them again if Morrison and T.M. were reunified. 1RP 8; 4RP 78. There was no evidence of conflict between them. Indeed, the trial court identified his living with the Reeves as a positive thing. See C. 1. g. infra at p. 55 n.7.

Richard Luccetti, the Head Start special needs coordinator, had known Morrison for 30 years. 6RP 100, 103. Over the course of those 30 years, Morrison exhibited no behavioral concerns. 6RP 1-3-04. Luccetti testified Morrison had a "different style," but thought he was just a normal person. 6RP 104.

Morrison's nephew, Robert McClure, had known him for 30 years. 6RP 127. There was no evidence this was an unhealthy relationship.

According to McClure, Morrison had always been a nice guy to him and was always courteous. 6RP 130. McClure did not have a real close relationship with Morrison, but neither did the professionals involved in the dependency, yet the court held Morrison's inability to get along with them against him. Conversely, the court erred in not recognizing Morrison did have relationships with adults that were not marked by conflict.

Cases affirming termination of parental rights due to mental illness are distinguishable from Morrison's case. P.A.D. involved a schizophrenic mother who was unable to meet her own basic needs for food, clothing, and shelter. P.A.D., 58 Wn. App. at 20. It was highly likely the child would experience developmental delays and possibly be retarded due to the parent's actions. Id. Subsequent to the entry of the dispositional plan, the mother was involuntarily committed to Western State Hospital on the basis of grave disability and continued to reside there throughout the period of dependency. Id. at 21. The mother's schizophrenia left her unable to care for herself, let alone her child. Id. at 26-27.

In contrast, Morrison was able to take care of his own basic needs for food, clothing and shelter. There was no evidence that T.M. suffered physical or psychological damage due to Morrison's actions. Morrison was not involuntarily committed during the dependency. He was

involuntarily committed for two days over two decades ago. 1RP 45; 6RP 72. There is no recent history of paralyzing mental problems.

H.S involved parents who both suffered from chronic schizophrenia and were hospitalized right before their child's birth. H.S., 94 Wn. App. at 516. The mother was hospitalized again shortly after giving birth. Id. The dependency arose primarily from concerns about lack of parent-child bonding and the baby's failure to thrive. Id. at 517. The underlying findings were that the mother's rigid and obsessive thinking endangered the baby's health, her thinking was confused, and she could not respond to questions about the baby's daily care. Id. She was uncooperative and resistant to support. Id. The mother also experienced strong sexual urges toward the infant. Id. Neither parent could appropriately feed the child. Id. They had an inability or unwillingness to respond to safety concerns and to accept suggested parenting skills. Id. They failed to pick up on the child's cues or understand her basic needs. Id. at 517, 529. There was a continued absence of bonding. Id. While the parents' capacity for improvement had reached a plateau, the child's condition was disintegrating. Id. at 518.

Unlike the parent in H.S., Morrison and his daughter were bonded. His mental health issues did not prevent him from loving his daughter and his daughter returning that love. Moreover, there is no evidence that T.M.

failed to thrive or suffered psychological damage while in his care, as one would expect to see if his parenting abilities were as poor as the trial court made them out to be. T.M. was a normal child with no significant problems. 5RP 141. The only psychological concern was tantrums exhibited while in foster care, which receded the longer she stayed there as she naturally matured. 5RP 139-41, 159-62. She did not have an attachment disorder. 5RP 143. Concerns about her language development and tantrums were "minor concerns." 5RP 139. She had "very minor potential delays" and was "essentially on target developmentally." 5RP 141.

If Morrison were really such a horrible parent, serious negative effects would have manifested themselves in T.M. But she was not a damaged child when the Department took her away from Morrison. She remains a normal kid with no significant problems, despite the turmoil in her life. T.M.'s healthy condition is incompatible with the conclusion that Morrison is so mentally damaged that he could not care for her.

f. Drugs Did Not Render Morrison An Unfit Parent.

The trial court identified drugs as a parental deficiency. The evidence failed to show drug use or his past involvement with drugs currently rendered Morrison an unfit parent.

Police discovered a marijuana grow operation in Morrison's basement in 2007, which prompted CPS involvement. Charges in connection with the alleged marijuana operation were dismissed and there had been no reports that Morrison had harbored any similar criminal activity in his home since the disposition. Morrison now had a stable and legal income and did not need to resort to illegal activity to survive. 6RP 176. There was no evidence Morrison grew marijuana or sold any other controlled substance after that event. This shows significant improvement in his behavior. If he were unconcerned with his daughter's needs, he would have continued to deal drugs. He did not. Parental unfitness must be current, not past.

Morrison had a misdemeanor conviction involving marijuana in 2003. Exh. 65. He had two felony drug convictions in 1981 and 1984. Exh. 65. Morrison had significantly improved this aspect of his life. Morrison was never jailed and did not face any criminal charges related to drugs during the dependency. Cf. Pawling, 101 Wn.2d at 393, 398, 400 (incarceration relevant to issue of parental fitness and child welfare; termination appropriate where father provided negligible child support and did not provide any guidance, love, affection, or personal concern while incarcerated for over five years while serving a maximum sentence of 37 years).

When specifically asked how substance abuse related to Morrison's ability to parent T.M., social worker Galvan said "the binge factor," by which he meant "[b]asically where he goes on a binge under stress and leaves [T.M.] -- if he leaves [T.M.] uncared for in -- with who knows who." 3RP 141.

Morrison had a history of drug use, but he also improved this aspect of his life during the dependency. The Department submitted lab reports that he tested positive for cocaine on two occasions. Morrison accused the Department of fraud or maintained the results were otherwise inaccurate. The trial court found the two results showed drug use and that Morrison's denial of drug use was not credible. Even so, two isolated instances of drug use do not show Morrison was an unfit parent. Most of his tests were clean. He had improved. There must be a nexus between drug use and parental unfitness. The mere fact that evidence showed he used cocaine twice over a two year period does not, by itself, show he was incapable of adequately caring for his daughter. Significantly, the evidence showed his last cocaine use was in October 2008, more than seven months before the court terminated his parental rights. CP 364 (FF 1.21).

Before T.M. was taken from his care, evidence showed Morrison was a binge user of cocaine, which resulted in his disappearance for several days at a time. But there is no evidence that he continued this

pattern of drug use following the establishment of the dependency. Specifically, there is no evidence that Morrison continued binging on cocaine. And if he had continued binging, it is highly unlikely he would have only missed one visit with his daughter during the entire course of the dependency. Of the many Department employees and service providers in contact with Morrison, not one ever reported Morrison exhibited any sign of being under the influence of a drug.

Past history is a factor that a court may consider in weighing a parent's current fitness, which makes sense because "if substance abuse is so extensive as to render a person unfit to parent and it is unlikely that the unfitness can be remedied in the near future, it makes little difference whether that abuse occurred in the past or present." J.C., 130 Wn.2d at 428. In Morrison's case, any drug use was not so extensive that it rendered him an unfit parent. He had complied with hair testing with no positive results for over seven months before termination. Social worker Galvan held an intensely negative view of Morrison, but even he admitted the hair sample results showed "at least low level of drug use." 3RP 141.

The trial court found "The father reports completing over one hundred random urinalysis tests but has not provided any documentation to the Department. The court concludes that either the father has not

engaged in these claimed UAs or the results of the testing would not be favorable to the father." CP 365 (FF 1.23).

This determination is wrong for two main reasons. First, the court's conclusion that Morrison had not done UAs is contradicted by its own finding to the contrary. Specifically, the court found "[t]he father was doing UAs at US Healthworks in 2007 and early 2008 until they refused to do a UA without identification." CP 364 (FF 1.19). As of entry of the disposition order on August 10, 2007, Morrison had done random UA's since May 2007 without any positive results. Exh. 3. Johanna Lehr, the assigned CPS social worker from June 2007 to April 2008, testified Morrison was doing random UA's when she had the case. 3RP 34-35, 43. There was a couple months where he was not regular but Morrison otherwise did them steadily and she received the results. 3RP 45.

Second, social worker Pham testified Morrison told him he had done over 70 UA's at U.S. HealthWorks and that "a list of UAs" were in "the file," but he never counted them up. 2RP 60. According to Pham's testimony, the Department had information regarding UAs. If any inference is to be drawn from a failure to put the list of UAs into evidence, it ought to be that the results were clean because the Department had them in its possession but did not present them to the trial court.

Even if the finding is valid, Morrison was indisputably in compliance with hair testing and those tests showed he last used cocaine in October 2008. This shows Morrison had substantially improved in the area of drug use.

g. Other Findings And Conclusions Are Not Sufficiently Supported By The Evidence.

The court found "[T.M.] has no chance for stability and permanence with the father in her life." CP 379 (FF 1.124). The court also determined Morrison is "not capable of providing the child with a safe, stable home. [He has] not demonstrated the ability to provide the child with a stable home, and will not do so in the future." CP 379 (FF 1.126). The court elsewhere found Morrison "has not demonstrated a stable living capacity or lifestyle as evidenced by his seven moves since this dependency was filed." CP 376 (FF 1.102).

These findings are erroneous. There was no evidence that Morrison's planned living arrangement upon reunification was unstable. Morrison intended to return to live in Eastern Washington with the Reeves, his long time friends. Exh. 65; 7RP 9. The Reeves were willing to let Morrison and

his daughter stay with them. The court itself elsewhere recognized Morrison's residence with the Reeves was a positive endeavor.⁷ Morrison had already set up a bedroom for his daughter at the home, which included a bed, dresser, dollhouse, dolls, and a red wagon. Exh. 65.

The Reeves residence was a stable home. Morrison lived there for over six months, and only temporarily moved to Seattle in an effort to engage the upcoming termination trial. Given that T.M. was not in his care at this time, the temporary change of residence had no effect on T.M. Moreover, there was no testimony Morrison would be in danger of being ejected from the Reeves' property, or that he would be unable to remain if he had his child with him.

Morrison should not lose his children because his living arrangement was unconventional. Furthermore, the measure of a stable home is not whether a family will permanently reside in any particular dwelling. Rather, stability is a matter of an enduring relationship with a parent who is capable of providing for the child's basic needs, including suitable housing.

⁷ Finding of fact 1.112 refers to "leaving the most stable environment he has had in Clarkston." CP 377. The reference to Clarkston is a scrivener's error. The court meant Asotin, where the Reeves reside. The court had earlier found Morrison "currently resides at 24680 Cloverland Road, Clarkston, Washington, 99403." CP 362 (FF 1.3); 7RP 9. 24680 Cloverland Road is the street address for the Reeves residence in Asotin. 4RP 54. The Reeves residence is in the "Lewiston/Clarkston area." 4RP 57.

The court was also concerned with Morrison's off and on contacts with Fofanna, the biological mother. The two, however, did not live together and there was no evidence that they planned to do so. According to Galvan, Morrison's continued contact with the mother would impact T.M. if they were together in a household: "who knows if she's going to show up there?" 3RP 143. But if T.M. were returned to Morrison's care, it is not as if Fofanna would be in the household. Moreover, Morrison and T.M. would be physically distant from Fofanna because they would be living in Asotin with the Reeves. That distance would serve as a buffer of protection.

The court found, in accordance with Department trial witnesses, that Morrison could not parent T.M. because evidence showed he was unable to put her needs before his own. CP 367 (FF 1.43); CP 370 (FF 1.61). The court identified placing the child's needs above his own as "the most basic parenting requirement." CP 378-79 (FF 1.122). The court also found "[t]he father's inability to take responsibility for any of his actions or accept responsibility for the factors that brought [T.M.] into care are indicative of his inability to make the necessary changes to parent her now or in the future." CP 375 (FF 1.97). Social worker Galvan contended Morrison's inability to accept responsibility meant he could never adequately care for his child: "You have to accept responsibility for your child's needs

and for your own actions, and if you fail to do something, what example is that going to set for the child, first of all, and how are you going to even effectively meet their needs?" 3RP 90- 91.

This rhetoric sounds good but what does it mean in relation to parental fitness? It is overblown hyperbole. Certainly it is in a child's best interest to have a parent that always put the child's need first. Assuming the validity of the court's findings that Morrison was unable to put T.M.'s needs first, this does not mean Morrison was an unfit father. The same goes for the trial court's findings that Morrison would not take responsibility for his own actions. Parents who are selfish and unable to admit their shortcomings are nevertheless fit if they can care for the child's basic needs. They do not need to be perfect. They can even suffer from marked defects yet still adequately care for a child. Termination, where appropriate, should be based on a dispassionate and objective review of the evidence as a whole, not overblown rhetoric and categorical judgment.

That being said, the court's findings about Morrison's supposed inability to put T.M.'s needs first are gross overstatements. Dr. Deutsch, the Department's own evaluator, concluded Morrison's parental strengths included empathy for his daughter and a wish for her well being that supersedes his dependency needs for her. Exh. 66. Deutsch believed Morrison put T.M.'s needs first. 2RP 18-19.

If Morrison were unable to put his daughter's needs first, he would not have stopped dealing drugs. He would not have attained a stable, legal income. He would not have stopped getting arrested. He would not have stopped his drug binging ways. He would not have set up a stable residence with the Reeves with concrete plans to return there after the termination trial. He would not have stopped living with Fofanna. He would not have refrained from talking about the foster mother and the upcoming termination trial with T.M. during visits. The evidence shows Morrison did put his daughter's needs first in significant ways.

Furthermore, the trial court largely defined the concept of T.M.'s needs and Morrison's ability to satisfy them in relation to Morrison's ability or willingness to engage services. But, as argued above, that approach retains validity only if the premise that Morrison was an unfit father is true.

The trial court also criticized Morrison for instigating the change in placement with his ex-wife and attempting to disrupt the foster placement. The court also determined Morrison did not act in T.M.'s best interest in publicizing her identity as part of his crusade against the Department. Those actions may not have been in T.M.'s best interest under the circumstances, but it does not mean Morrison was incapable of adequately addressing her needs if she were returned to him.

For the reasons set forth above in C. 1. d., e., f., and g., supra, the court erred in determining Morrison is "unfit to parent this child." CP 379 (FF 1.130).

The court erroneously concluded "[t]here is little likelihood that the conditions could be remedied so that [T.M.] could be returned home to either parent in the near future." CP 379 (FF 1.123). This determination is predicated on the presumption that Morrison is currently unfit to care for his child. T.M. could be returned to Morrison because he is a fit parent.

The court found "[t]he father's inability to take responsibility for any of his actions or accept responsibility for the factors that brought [T.M.] into care are indicative of his inability to make the necessary changes to parent her now or in the future." CP 378 (FF 1.113). This finding is wrong insofar as it presumes Morrison needed to make necessary changes to adequately parent T.M. As set forth above, Morrison is a fit parent.

The court erred in concluding termination was in T.M.'s best interests on the ground that Morrison was unable to remedy his parental deficiencies and therefore could not meet T.M.'s needs for stability and permanence. CP 380 (FF 1.131), (FF 1.132); CP 380 (CL 2.2), (CL 2.3). As set forth above, the Department did not prove Morrison was an unfit parent. His deficiencies did not rise to the level of rendering him unfit to adequately care for his daughter's basic needs.

Even if termination was in T.M.'s best interests, such a conclusion is insufficient as a matter of law to justify termination. Termination is proper only when a parent is currently unfit. S.G., 140 Wn. App. at 468.

The court wrongly determined "The rebuttable presumption that there is little likelihood that conditions will be remedied in the near future has been proven and not rebutted. This is a clear case involving a diagnosed and demonstrated psychological incapacity rendering the father incapable of the most basic parenting requirement of placing the child's needs about [sic] his own." CP 378-79 (FF 1.122).

RCW 13.34.180(1)(e) provides "A parent's failure to substantially improve parental deficiencies within twelve months following entry of the dispositional order shall give rise to a rebuttable presumption that there is little likelihood that conditions will be remedied so that the child can be returned to the parent in the near future."

This rebuttable presumption is predicated on the further presumption that a parent is currently unfit. This is necessarily so because current unfitness is a prerequisite to termination and RCW 13.34.180(1)(e) focuses on fitness. S.G., 140 Wn. App. at 468; S.V.B., 75 Wn. App. at 773-74. No rebuttable presumption arises, regardless of whether a parent has substantially improved deficiencies, if the parent is currently fit to parent.

Because Morrison is a currently fit parent, the court erred in relying on the rebuttable presumption in RCW 13.34.180(1)(e).

Furthermore, evidence shows Morrison had substantially improved identified deficiencies. The court found Morrison "has made some improvement to his situation including improving his income and not being arrested since the dependency was filed." CP 375-76 (FF 1.102). The court, without explaining why, did not view these changes as substantial improvement. The court similarly found "The father has had over two years to make significant progress in improving his parental deficiencies and has not done so." CP 378 (FF 1.121).

These findings are wrong. As set forth above, substantial improvement is shown by (1) no longer dealing drugs; (2) attaining a stable, legal income; (3) no arrests; (4) no evidence of drug binges; (5) setting up a stable residence with the Reeves with concrete plans to return there after the termination trial; and (6) not living with Fofanna.

Before a court may terminate parental rights, the State must prove by clear, cogent and convincing evidence that "continuation of the parent and child relationship clearly diminishes the child's prospects for early integration into a stable and permanent home." RCW 13.34.180(1)(f). As set forth above, Morrison is a fit parent capable of currently providing a safe home for his child. It necessarily follows that the State failed to

prove RCW 13.34.180(1)(f). The court therefore erred in concluding RCW 13.34.180(1)(f) was satisfied. CP 379 (FF 1.125).

Adoption was the permanent plan for T.M. CP 379 (FF 1.125). The court wrongly found "although the child is placed in a stable home, the home cannot be permanent unless parental rights are terminated." CP 379 (FF 1.126). "Where a trial court's decision to terminate parental rights is based even partially on a child's chance for a 'better home,' prejudicial error has occurred." In re Dependency of Moseley, 34 Wn. App. 179, 186, 660 P.2d 315 (1983). Morrison is not an unfit father. The court's consideration of T.M.'s prospects for adoption was therefore erroneous.

In addition, the trial court identified the foster placement as an adoptive home and heard evidence that T.M. was "very adoptable" and the foster mother was good. 5RP 142-43, 163; 7RP 42-47, 100-01. The trial court errs in hearing evidence of adoptability where the record does not support a finding of unfitness. Moseley, 34 Wn. App. at 187.

In sum, Morrison's interest in the companionship, care, custody, and management of her daughter "undeniably warrants deference and, absent a powerful countervailing interest, protection." Lassiter, 452 U.S. at 27 (quoting Stanley, 405 U.S. at 651). The State may constitutionally intrude on parental rights only when parental actions seriously jeopardize or conflict with the child's physical or mental health. Schermer, 161

Wn.2d at 941-42; Sumey, 94 Wn.2d at 762. That standard is not met here. Morrison's mental health and other problems may have affected his parenting ability but did not rise to the level where it was highly probable that he seriously jeopardized his daughter's basic health.

Termination is not allowed on the basis that someone is a less than model parent and could be a better one. Santosky, 455 U.S. at 753. If that were the standard, every father would lose his child. Rather, termination is only appropriate where the parent's deficiencies are so egregious that they present a serious risk of substantial harm to the child. Speculation that a mentally ill father will present a risk of such harm if he received an actual chance to parent again free from state interference is not substantial evidence supporting termination.

The State did not satisfy its burden of proving it was highly probable Morrison would not care for his daughter's basic needs. Termination should be allowed only for the most powerful reasons because parents have a fundamental liberty interest in the care and custody of their children. Santosky, 455 U.S. at 753; Sego, 82 Wn.2d at 738. Such reasons do not exist here. Reversal is required.

2. THE STATE FAILED TO PROVE TERMINATION WAS
IN THE CHILD'S BEST INTERESTS.

The court erred in concluding termination was in T.M.'s best interests because it did not take into account how severance of the parent-child bond would affect T.M. CP 380 (FF 1.132).

Before it may terminate a parent's rights, the court must determine by a preponderance of the evidence whether termination is in the best interests of the child. RCW 13.34.190. The six termination requirements under RCW 13.34.180(1) must be established by clear, cogent and convincing evidence before the court may focus on the best interests of the child. H.W., 92 Wn. App. at 425.

"Our courts have emphatically repudiated the concept that all children are wards of the State and that the State and its agencies have an unhampered right to determine what is best for the child." In re Welfare of May, 14 Wn. App. 765, 768, 545 P.2d 25 (1976). The State may not disrupt and destroy the family unit simply because the child might have a better home with someone else. In re Dependency of J.S., 111 Wn. App. 796, 808, 46 P.3d 273 (2002); In re Welfare of Coverdell, 39 Wn. App. 887, 891, 696 P.2d 1241 (1984) ("Inevitably, it becomes an unequal battle since in most instances the natural parent's shortcomings have brought the matter to court in the first place. The fact the child may have certain

advantages in another's home cannot be determinative of the court's decision."). Rather, the court must determine whether the father's conduct has been such that he has abdicated or forfeited his parental rights. May, 14 Wn. App. at 768.

A termination order eliminates all of a father's legal rights to his child, including visitation rights. RCW 13.34.200(1). If the termination order stands, T.M. will not see her father again.

An order terminating parental rights deprives children of their right to companionship and guidance. In re Marriage of Furrow, 115 Wn. App. 661, 664, 63 P.3d 821 (2003). The potentially devastating mental and emotional impact on the child should be considered. In re Interest of J.D., 42 Wn. App. 345, 350, 711 P.2d 368 (1985).

Morrison loves his daughter and his daughter formed a loving bond in return. Cf. In re Dependency of D.A., 124 Wn. App. 644, 658, 102 P.3d 847 (2004) (lack of bond factor in determining best interests of child). Termination of that relationship exposes T.M. to emotional trauma and deprives her of Morrison's companionship. When there is still reason to believe positive, nurturing parent-child relationships exist, the State's interest in protecting the welfare of the child favors preservation, not severance, of natural familial bonds. Santosky, 455 U.S. at 766-67.

The trial court, in deciding termination was in T.M.'s best interests, did not give any consideration to whether involuntary severance of her relationship to her father would traumatize her or otherwise result in psychological damage. The court had an obligation to consider this issue before terminating the relationship. Reversal is required.

D. CONCLUSION

For the reasons stated, this Court should reverse the order terminating Morrison's parental rights.

DATED this 19th day of January 2010.

Respectfully Submitted,

NIELSEN, BROMAN & KOCH, PLLC.



CASEY GRANNIS
WSBA No. 37301
Office ID No. 91051
Attorneys for Appellant

APPENDIX A

FILED
09 MAY 29 AM 9:21
KING COUNTY
SUPERIOR COURT CLERK
SEATTLE, WA

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY
JUVENILE DEPARTMENT

IN RE THE DEPENDENCY OF:

NO. 08-7-01117-6 SEA

TELA MARIE MORRISON
DOB: 3/3/06

Minor child.

FINDINGS OF FACT, CONCLUSIONS OF
LAW, AND ORDER OF TERMINATION
OF PARENT-CHILD RELATIONSHIP AS
TO THE FATHER, TERRY MORRISON
AND THE MOTHER, LADONNA
FOFANNA

[CLERK'S ACTION REQUIRED]

THIS MATTER came on regularly before the Honorable James Doerty on March 31; April 1, 2, 5, 6, and 7, 2009, for a hearing on a Petition for Termination of Parent-Child Relationship. Appearing before the court were the petitioner, the Washington State Department of Social and Health Services (DSHS), represented by T. Luis Galvan, social worker, and Tanya L. Thorp, Assistant Attorney General; Joan Kalhorn, the child's court-appointed special advocate (CASA) and Lori Irwin, her attorney; Terry Morrison, the child's father; Michael Salazar, his attorney; the mother, Ladonna Marie-Deshawn Bradley, a.k.a. Ladonna Fofanna, did not appear in person or through counsel.

The court heard testimony from the father, Terry Morrison, Tuong Pham, Johnna Lehr, Cara Moore, T. Luis Galvan, social workers for DSHS, Fred Pfistner, social worker

FPCL AND ORDER OF TERMINATION OF
PARENT-CHILD RELATIONSHIP AS TO
THE FATHER AND MOTHER

1

ATTORNEY GENERAL OF WASHINGTON
800 Fifth Avenue, Suite 2000
Seattle, WA 98104-3188
(206) 464-7744

Rev. 05/05 lmr

1 supervisor for DSHS, Laura Mueser, FCAP assessor for Tela, Kyle Morrison, Terry
2 Morrison's adult son, LaShalle Jones, DSHS administrative assistant, Renee Border-
3 Harris, DSHS Home Support Specialist, Laura Knudson, Emma Margraf and Joan
4 Kalhorn, Tela's CASAs, Dr. Robert Deutsch, the father's psychological provider, Dr.
5 Brian Coleman M.D., the father's psychiatric evaluator, Selena Taylor, visit supervisor,
6 Debra Reeves, father's friend, Deborah Morrison, the father's ex-wife and former
7 placement for the child, Freda Harris, visit supervisor, Dr. Bert Toivola, technical
8 director for Sterling Reference Laboratories, Paul Rost, UA provider for the father,
9 Richard Luccetti, friend of the father, Robert McClure, father's uncle and an offer of
10 proof for testimony expected from Richard Morrison, paternal grandfather to Tela and
11 Murrar Salea, friend of the father. The court also admitted into evidence several
12 documentary exhibits, including court orders from this child's dependency case,
13 declarations and letters from the father, and treatment reports.
14 Having considered the evidence presented, the files and records herein, and being fully
15 advised in these premises, the court now makes the following:

16 **I. FINDINGS OF FACT**

17 1.1 Tela Marie Morrison was born on March 3, 2006. The child currently
18 resides in foster care.

19 1.2 The child's mother is Ladonna Marie-Deshawn Bradley, a.k.a. Ladonna
20 Fofanna. The mother is not a minor and presently resides at the King County Jail. The
21 mother is currently incarcerated at the King County Jail.

22 1.3 The child's father is Terry Morrison. The father is not a minor and
23 currently resides at 24680 Cloverland Road Clarkston, Washington, 99403; however the
24

1 father is temporarily living with his ex-wife Deborah Morrison and her fiancée Ben Warren
2 in Burien.

3 1.4 The child's parents are not married to each other.

4 1.5 The child has been found dependent by a default order as to the mother on
5 July 27, 2007 and by agreed order as to the father entered on August 10, 2007. Exs. 2
6 and 3.

7 1.6 The court also entered a dispositional order pursuant to RCW 13.34.130 as
8 to the father on August 10, 2007 and as to the mother on July 27, 2007. Exs. 2 and 3.

9 1.7 The child has been removed from the custody of her parents for a period
10 of at least six months pursuant to a finding of dependency under RCW 13.34.030. The
11 child was removed from the custody of her parents on March 31, 2007. Ex. 1.

12 1.8 The father was convicted of possession of marijuana in 2003. The father
13 indicated it was his intent to sell the marijuana to support himself.

14 1.9 At the time of the child's birth the parents were using illegal drugs and
15 demonstrating instability with their living arrangements. Ex. 69.

16 1.10 At the time of Tela's birth the mother's mental health was unstable and
17 she was actively using drugs. During this time, the mother asked other family members
18 to care for Tela.

19 1.11 The father was engaging in the sale of marijuana to support himself at the
20 time of Tela's birth.

21 1.12 At the time of Tela's removal in 2007, the father was arrested for growing
22 marijuana in the basement of the home he shared with Tela.

23 1.13 Tela and her family were involved with CPS at the time of her birth until
24 Tela was about two months old.

1 1.14 The father reported to Safe Harbor Treatment facility that he was using
2 cocaine in October 2005. Ex. 69.

3 1.15 Kyle Morrison credibly testified that the father has a long history of
4 substance abuse that has lasted since Kyle Morrison developed a relationship with the
5 father at the age of 19. Kyle Morrison is now 36 years old.

6 1.16 The father has denied that he was advised to do drug treatment by Safe
7 Harbor Treatment facility. The father denied ever drinking alcohol and defined himself as
8 a "teetotaler". The father's denials are not credible. Ex. 69.

9 1.17 Safe Harbor Recovery Center recommended that the father engage in
10 intensive outpatient treatment for his diagnosis of cocaine dependence, cannabis abuse,
11 alcohol dependence and nicotine dependence. The father has not engaged in drug/alcohol
12 treatment. Ex. 69.

13 1.18 The father described his cocaine use as "binge use" and that he could be
14 sober for up to 60-90 days at a time. Ex. 69.

15 1.19 The father was doing UAs at US Healthworks in 2007 and early 2008 until
16 they refused to do a UA without identification. The father refused to continue services
17 there.

18 1.20 The father has tested positive for cocaine in May 2008 and January 2009.
19 Exs. 67 and 69.

20 1.21 The positive hair sample test from January 2009 indicates last usage of
21 cocaine in October 2008. Ex. 69. The cut off level is 300 pg/mg, which is 200 pg/mg
22 lower than the father's Omega hair test completed in December 2008. Exs. 69 and 72.

23 1.22 The father's belief that the urine testing results and hair sample testing
24 results are fraudulent is refuted by credible evidence to the contrary.

1 1.23 The father reports completing over one hundred random urinalysis tests
2 but has not provided any documentation to the Department. The court concludes that
3 either the father has not engaged in these claimed UAs or the results of the testing would
4 not be favorable to the father.

5 1.24 The father moved to the Clarkston Washington area in April/May 2008.
6 This put considerable distance between the father and his daughter, although he
7 continued to visit with her. The father's decision to move to Clarkston also distanced
8 himself from service providers that were arranged for him.

9 1.25 The last random urinalysis completed by the father the Department
10 received was in May 2008 from Quality Behavioral Health located in Clarkston,
11 Washington.

12 1.26 The father claimed he stopped doing UAs at Quality Behavioral health
13 because they would not provide him two UAs per week. However, Quality Behavioral
14 Health was able to provide two UAs per week, but was not able to schedule them as
15 requested by the father, who reported he was too busy to do random UAs.

16 1.27 After the father had a disagreement with Quality Behavioral Health
17 regarding his UAs he stopped receiving services there. Quality Behavioral Health is a
18 contracted Department provider that also offered drug and alcohol assessment and
19 treatment, mental health services and random drug testing.

20 1.28 The father denies having any need for drug or mental health services and
21 claims he only participated at Safe Harbor Recovery and Valley Cities in order to assist
22 the mother's engagement in services.
23
24

1 1.29 The father's previous significant relationships included his first wife who
2 was addicted to drugs and his second wife, Deborah Morrison, who was controlling and
3 against whom he sought restraining orders. Exs. 65 and 66.

4 1.30 The father has three adult sons, none of whom were raised by him.

5 1.31 The father was diagnosed with bipolar disorder in May 2008 by Dr. Brian
6 Coleman. Ex. 71.

7 1.32 The father was not forthcoming with the Department regarding his mental
8 health status. The father denied receiving mental health services at Valley Cities. The
9 father denied having a psychiatric history. The father denied ever using or being
10 prescribed psychotropic medication.

11 1.33 The father has been previously involuntarily committed at Harborview
12 Hospital in the 1980s. Exs. 69-71.

13 1.34 During the father's psychological evaluation with Dr. Kracke the father
14 disclosed that he previously took Zoloft and Valium, but that he had not taken either of
15 the medications for a number of months due to running out of the medication. Ex. 65.

16 1.35 In May 2008, the father requested refills of Zoloft and Depakote from Dr.
17 Coleman as his previous prescriptions had run out. Dr. Coleman provided the father with
18 prescriptions for both Zoloft and Depakote in May 2008. Ex. 71.

19 1.36 The father's mental health diagnosis is concerning when combined with
20 any drug use as drug use exacerbates the symptoms of bipolar disorder.

21 1.37 The father did not sign releases of information to the Department or
22 CASA regarding his evaluations at Valley Cities.

23 1.38 The father did not provide his psychiatric treatment/evaluation at Valley
24 Cities to either Dr. Kracke or Dr. Deutsch.

1 1.39 The father would not participate in a psychological evaluation until he had
2 one performed by his own provider. The father waited until November 2008 to share this
3 information with the Department and the CASA.

4 1.40 The Department made numerous referrals for a psychological provider for
5 the father. Either the provider would not do the evaluation or the father refused to
6 participate.

7 1.41 In November 2008 the father agreed that Dr. Deustch would complete his
8 psychological evaluation and that failure to engage in this service would affect his ability
9 to reunify with his child. Ex. 23.

10 1.42 The father eventually completed his own psychological evaluation with
11 Dr. Kevin Kracke, Ph.D. in December 2008 and provided the evaluation to the
12 Department in January 2009.

13 1.43 The father's repeated delays in completing the psychological evaluation
14 demonstrate an inability to put Tela's needs before his own.

15 1.44 Dr. Kracke did not receive any collateral information from the Department
16 or service providers affiliated with the Department.

17 1.45 The father presented himself in a socially acceptable front and resisted
18 admitting personal shortcomings on the Millon Clinical Multiaxial Inventory-III
19 performed by Dr. Kracke. Ex 65. Despite the father's failure to be forthcoming in this
20 testing it was interpreted to show narcissistic personality features. Ex. 65.

21 1.46 The father also responded to the Minnesota Multiphasic Personality
22 Inventory performed by Dr. Kracke in a marginally valid manner. Dr. Kracke interpreted
23 the father's MMPI profile to show a person who is likely to have little awareness of his
24 difficulties and who is likely to be rigid and inflexible to his approach to problems and

1 may not be open to psychological self-evaluation. The profile also noted that the father
2 endorsed some personality characteristics such as oversensitivity, mistrust, and
3 suspiciousness that may make him vulnerable to developing psychological symptoms
4 under stress. Ex. 65.

5 1.47 Dr. Kracke concluded that the father presents himself as somewhat
6 narcissistic with paranoid characteristics. Therefore he may view himself as overly
7 entitled and have an inflated sense of self-image while being somewhat cautious and
8 suspicious of others actions and at times assuming ulterior motives. Ex. 65.

9 1.48 Dr. Kracke diagnosed the father with cannabis related disorder NOS
10 sustained full remission by report; cocaine related disorder NOS sustained full remission
11 by report and an Axis II diagnosis of Narcissistic and paranoid personality traits. Ex. 65.

12 1.49 The father finally engaged in a psychological evaluation with Dr. Robert
13 Deutsch on December 29, 2008 and January 7, 2009. Ex. 66.

14 1.50 The father's MMPI-2 profile administered by Dr. Deutsch indicates a man
15 who is overly sensitive and easily hurt, who may remain somewhat detached and aloof.
16 He is concerned that others may take advantage of him. He may occasionally be touchy
17 and argumentative and somewhat moralistic and rigid in his approach to life. He tends to
18 externalize blame and sees other people as being responsible for his problems. Ex. 66.

19 1.51 The father's MMPI-2 profile administered by Dr. Deutsch reflects some
20 persistent personality features that predispose him to being hurt. Periodically individuals
21 with the father's profile may have episodes of anger. It is likely the father is chronically
22 hypersensitive and overly responsive to the reactions of others. Ex. 66.

23 1.52 The father's MMPI-2 profile administered by Dr. Deutsch reflects a man
24 who protects himself in relationships because he does not fully trust anyone. He is likely

1 to have difficulties in relationships and may become oppositional. The father feels
2 insecure and is hypersensitive to rejection. Ex. 66.

3 1.53 The father's MCMI-III profile administered by Dr. Deutsch indicates that
4 the father is experiencing psychic tension and anxiety; his profile presents an indifference
5 to the welfare of others and a facile if not deceptive social manner. Ex. 66.

6 1.54 The father's MCMI-III profile administered by Dr. Deutsch indicates
7 antisocial behavior, alcoholism or drug problems would not be inconsistent with the
8 father's profile. Ex. 66. The father's substance abuse history and criminal history are
9 consistent with this profile.

10 1.55 The father's MCMI-III profile administered by Dr. Deutsch indicates that
11 much of the father's reported restlessness and edginess may derive their energy from the
12 uncontrollable and diffuse anxiety he experiences. Ex. 66.

13 1.56 Dr. Deutsch concluded that the father appears to be a hard working man
14 with deep seated psychological vulnerabilities. The father has never learned to trust or to
15 properly stand up for himself and is easily influenced and prone to dependency issues.
16 The father's underlying sense of loneliness and neglect led him to identify with needy
17 and damaged women. His desire to rescue these women is bested by their ability to
18 influence him. Ex. 66.

19 1.57 The father's psychiatric profile indicates that he has questionable stability.

20 1.58 The father has an inability to deal with people and manage complex
21 situations. The father has initiative but it is coupled with poor judgment borne of a blend
22 of pragmatism, desperation and disrespect for authority. Ex. 66.

23 1.59 The father's passion and conviction drive him to act overzealously, which
24 leads the father to overreact to situations. Ex. 66.

1 1.60 The father's zealous sense of injustice will continue to interfere with his
2 ability to act on his daughter's behalf. Ex. 66.

3 1.61 The father can articulate his daughter's needs but is psychologically
4 unable to put those needs ahead of his own psychological and mental health needs.

5 1.62 Dr. Deutsch concluded that the father had an Axis I diagnosis of an
6 anxiety disorder NOS and an Axis II diagnosis of antisocial and paranoid personality
7 features.

8 1.63 While the father's personality features are not to the level of a personality
9 disorder they are well entrenched long held belief structures that are unlikely to change
10 without significant mental health intervention. The father's personality traits are greater
11 than what is found in the general population of people and affects his view of the work
12 and ability to negotiate in the world on his daughter's behalf.

13 1.64 The father calling the police to the child's foster home because she missed
14 a visit was an overreaction; however, the father asserts that his response was appropriate.

15 1.65 The father engaged in counseling with Muna Crook from May 2008 to
16 sometime in January 2009.

17 1.66 The information the father did provide to the Department regarding Ms.
18 Crook was provided prior to his psychological evaluations and was limited due to his
19 recent engagement with counseling.

20 1.67 The Department had difficulty obtaining information from Ms. Crook to
21 assess the quality of counseling due to the father not signing releases of information.

22 1.68 The father did sign a release of information for Tuong Pham to speak with
23 Ms. Crook; however that release was at the outset of the counseling. Ex. 76.

1 1.69 The father has not asserted what if any other services should have been
2 offered that were not offered to him. The father communicated a substantial amount of
3 information via email, letters and posting about his perceived injustice, but he did not
4 address in his letters, declarations or requests to the court assistance with payment for his
5 services or articulate what service he felt the Department denied him.

6 1.70 The Department has accommodated the father's demands to change his
7 drug testing from urine analysis to hair follicle testing. The Department also
8 accommodated the father's objections to other providers such as substance abuse
9 evaluators or psychological evaluations.

10 1.71 The father's reasons for seeking vacation of the dependency order is not
11 because he did not understand the services required of him, but rather that too much time
12 had elapsed and Tela had not been returned to his care so he concluded he was wrong to
13 agree to her dependency.

14 1.72 The father also arranged for some evaluations and services in areas
15 identified by the dispositional and subsequent court orders on his own demonstrating that
16 he clearly understood what was expected and ordered.

17 1.73 Services ordered under RCW 13.34.130 have been expressly and
18 understandably offered or provided and all necessary services reasonably available,
19 capable of correcting the parental deficiencies within the foreseeable future have been
20 expressly and understandably offered or provided to the father.

21 1.74 The father states a willingness to do services; however, the father does not
22 believe his child should be dependent and does not believe that he should have been
23 ordered to do services. Ex. 19. Additionally it took the father almost two years to
24 complete the court ordered psychological evaluation. The father's resistance to services

1 indicates that he is unlikely to benefit from services because he does not believe he has
2 problems that need to be addressed.

3 1.75 The father is no longer in counseling with Ms. Crook and denies that he
4 needs counseling.

5 1.76 When additional services were offered to the father by social worker
6 Galvan; the father denied needing the services and was unwilling to take the referrals.

7 1.77 The services that were ordered, offered and engaged in by the father have
8 not been effective because the father has not been forthcoming in his participation and he
9 has been highly manipulative in attempting to assure that his self-selected providers do
10 not have collateral information that would be necessary for those services to be effective.

11 1.78 The father's testimony while apparently sincere is not credible.

12 1.79 On numerous occasions during his testimony the father evaded answering
13 questions by stating he could not remember even relatively recent and significant events.
14 During testimony the father avoided dealing with many allegations he previously made in
15 sworn declarations by stating "I don't know- I was under a lot of stress at that time".

16 1.80 During testimony the father contradicted testimony about the content of
17 many meetings with the CASAs and Department social workers in detail. However he
18 professed not to remember whether or when many of these meetings and discussions took
19 place. The father's memory is exceptionally selective in a very self-serving way.

20 1.81 The father did acknowledge that involvement with controlled substances,
21 both as a user and a seller, has been a major issue in his life. But he then asserted that he
22 is in active recovery but was unable to identify the last time he attended a twelve step
23 meeting. The father's assertion that he is engaged in recovery from involvement with
24 controlled substances is not credible.

1 1.82 The father's testimony that he used cocaine recreationally, participated in
2 drug evaluations only to support Tela's mother by pretending to have a substance abuse
3 problem so she wouldn't get suspicious, is far fetched and not credible.

4 1.83 The father's demeanor during trial would waver between simpering and
5 giggling inappropriately during critical points of certain witnesses' testimony and at other
6 times appeared vacuous and inattentive despite the testimony being salient and intense.
7 The father's demeanor undermined his credibility.

8 1.84 The father's testimony and belief that he has addressed the concerns that
9 gave rise to the dependency including substance abuse, criminal activity, decrepit and
10 unstable living arrangements lack of income to support himself or access services, and
11 enmeshment with Tela's mother, is not credible.

12 1.85 The mother and father have had a chaotic and volatile relationship since
13 they met.

14 1.86 The mother was arrested for assaulting the father in Bellingham in late
15 2007.

16 1.87 The father claims to have separated himself from the mother in 2008;
17 however, the father listed the mother as his emergency contact for services at Valley
18 Cities. Ex. 70. The father also had telephone contact with the mother during May 2008
19 to mid-March 2009. The father asserts that he has not had physical contact with the
20 mother since May 2008 until mid-March 2009.

21 1.88 The father provided the mother a ride to the Seattle Police Precinct on 6th
22 Avenue and Virginia from Broadway in mid-March 2009 so she could turn herself into
23 the authorities to address her outstanding warrants. The father provided the mother with
24 a ride because he wanted to help her.

1 1.89 The father did not report his contact with the mother to the Department or
2 provide the Department with information to contact the mother.

3 1.90 The father told the mother about the termination trial.

4 1.91 The father sabotaged Tela's placement with Ms. Morrison and has tried
5 his best to sabotage the current foster care placement.

6 1.92 The father has continued to lobby accusations against the care Tela has
7 received in every placement she has had. Currently the father is alleging that Tela is
8 being injured in the foster home; however, these injuries have not been reported or
9 observed by other people who see Tela regularly. The father continues his belief and
10 paranoia that Tela is being abused despite contrary explanations and investigations
11 regarding the injuries. There is no credible evidence that Tela has been harmed by her
12 current placement.

13 1.93 The father will continue to hold the belief that Tela is being injured
14 anytime she is placed outside of his home and persevere until someone agrees with him.

15 1.94 The father reacts strongly when he does not like what other people do or
16 say to him, particularly if they disagree with him.

17 1.95 Tela has an intense personality for a child her age and currently has some
18 speech delays in expressive and receptive speech, which requires further assessment.
19 Tela's inability or difficulty communicating with others can cause Tela frustration which
20 can trigger tantrums. Tela needs a stable environment with consistency and limit setting
21 in order to continue her steady progress and growth.

22 1.96 The father's instability in relationships and Tela's intense personality will
23 create conflict between the two of them now and in the future.

1 1.97 The father's inability to take responsibility for any of his actions or accept
2 responsibility for the factors that brought Tela into care are indicative of his inability to
3 make the necessary changes to parent her now or in the future.

4 1.98 The father's lack of an ability to maintain interpersonal relationships with
5 service providers such as visit supervisors, Mr. Rost, US Healthworks, all three CASAs,
6 all four social workers, DSHS office staff and his own children are indicative of his
7 ability to have an appropriate relationship with Tela, her school personnel, medical
8 personnel and friends.

9 1.99 The father has not demonstrated the ability to maintain healthy adult
10 relationships including maintaining continual involvement with Tela's mother right up to
11 the eve of trial and maintaining involvement with his ex-wife and her partner who only
12 months ago he demonized as the source of all of his problems.

13 1.100 The father's purported reconciliation with his ex-wife as a demonstration
14 that he can maintain healthy adult relationships is not credible as the purported
15 reconciliation has nothing to do with any improvement in his behavior, but is due to his
16 ex-wife's commitment to the Christian virtue of forgiveness.

17 1.101 The father's ability to attend visits is not indicative of his ability to parent.
18 Parenting requires more than four hours per week of contact. The father's need and
19 willingness to awake at 3:00 a.m. in order to prepare for a two hour visit is unrealistic as
20 to his actual ability to effectively engage in day to day parenting.

21 1.102 Tela has been the victim of her parents' criminal activity, substance abuse,
22 domestic violence and in her father's case an untreated mental health condition all of her
23 life. Tela has been out of her parents' care for over two years not including the one
24 month out of home placement when the child was two months old. The father has made

1 some improvement to his situation including improving his income and not being arrested
2 since the dependency was filed, but he has not demonstrated a stable living capacity or
3 lifestyle as evidenced by his seven moves since this dependency was filed.

4 1.103 The father's compliance with drug tests has been inconsistent and there is
5 evidence of cocaine use.

6 1.104 The father suffers from serious untreated mental health issues that prevent
7 him from providing stability for Tela. Dr. Deutsch, Dr. Kracke and Dr. Coleman have
8 diagnosed the father with a variety of psychological impairments including anxiety
9 disorder, bipolar disorder, antisocial and paranoid personality features, cannabis and
10 cocaine related disorders and narcissistic and paranoid personality features. Exs. 65, 66
11 and 71.

12 1.105 Mental health counseling was possibly the most important service;
13 however, the father failed to effectively engage in such treatment. The consequence of
14 the father's failure to effectively engage in mental health counseling created an essential
15 inability to let go of his need to be angry for the sake of Tela.

16 1.106 The father's diagnosis of bipolar disorder and personality features are
17 concerning as to how stably the father is functioning much less his stability to take on the
18 demands of a three year old who is likely to challenge him and test boundaries.

19 1.107 The impact of the father's untreated mental health issues is his persistent
20 exercise of poor judgment and decision-making both on his on behalf and that of Tela.

21 1.108 The father's poor decision-making and poor judgment have caused
22 dangerous and harmful results for his daughter including disappearing for days on drug
23 binges, leaving her with people, he himself characterizes as violent and dangerous
24 including her mother, and growing marijuana in the home she lived in.

1 1.109 The father's poor decision-making and poor judgment led the father to
2 sabotage and attempt to sabotage Tela's placements to her detriment. First, the father
3 sabotaged placement with Ms. Morrison in the most venomous of ways by alleging
4 sexual abuse and substance abuse. The father then fails to acknowledge the slightest
5 responsibility for this. After Tela was moved into foster care at the father's request, the
6 father has stalked and harassed the foster parent in an attempt to disrupt Tela's second
7 placement without regard for Tela's best interests.

8 1.110 In the summer of 2008, the father created a major and alarming public
9 scene with a visitation supervisor that left Tela terrified and crying. He fails to
10 acknowledge the slightest understanding of how his behavior impacts Tela. The father
11 has exposed details of Tela's life to the public without regard to her best interests. This
12 included photographs on the internet and fliers he has posted at numerous locations.

13 1.111 The father's insistence on Tela's removal from Ms. Morrison's home, his
14 attempts to disrupt Tela's current foster placement, his leaving Tela with her unstable
15 mother right after her birth, and his living in a home that was decrepit with a marijuana
16 grow operation was neglectful of Tela's welfare and safety

17 1.112 The father continues to place his own needs above Tela's including
18 leaving the most stable living environment he has had in Clarkston and abandoning
19 counseling in Lewiston to return to Seattle in January in order to prepare for a trial in
20 April without a plan to engage in services in the Seattle area. The father abandoned the
21 two most positive endeavors for his daughter for the sake of his crusade against the
22 Department. The father's current decision making demonstrates that he has not remedied
23 the concerns or gained insights into the issues for which mental health counseling was
24 ordered and this is not likely to be remedied in the near future.

1 1.113 The father's inability to take responsibility for any of his actions or accept
2 responsibility for the factors that brought Tela into care are indicative of his inability to
3 make the necessary changes to parent her now or in the future.

4 1.114 The near future for Tela is immediate. She has spent the majority of her
5 life in out of home care. And when she was in the care of her father she was exposed to
6 his chaotic and unstable lifestyle.

7 1.115 The mother has not come forward as a resource for her child.

8 1.116 The Department stood ready and willing to provide any all services court
9 ordered and necessary to address her parental deficiencies had the mother come forward
10 to participate.

11 1.117 The mother has only had one visit with her child since Tela was removed.
12 There is no relationship between the mother and Tela.

13 1.118 The mother continues to have untreated substance abuse and mental health
14 issues that impair her ability to parent Tela now or in the near future.

15 1.119 The mother has not made any contact with the Department since the end
16 of 2007.

17 1.120 The mother's dependency attorney withdrew from representation after
18 having no contact with the mother for over six months. Ex. 81.

19 1.121 Tela needs stability and permanence. Tela has been in out of home care for
20 over two years and her need for stability is urgent. The father has had over two years to
21 make significant progress in improving his parental deficiencies and has not done so.

22 1.122 The rebuttable presumption that there is little likelihood that conditions
23 will be remedied in the near future has been proven and not rebutted. This is a clear case
24 involving a diagnosed and demonstrated psychological incapacity rendering the father

1 incapable of the most basic of parenting requirement of placing the child's needs about
2 his own. Adding to the psychological incapacity is a history with controlled substances
3 and an unwillingness to complete treatment.

4 1.123 There is little likelihood that the conditions could be remedied so that Tela
5 could be returned home to either parent in the near future.

6 1.124 Tela has no chance for stability and permanence with the father in her life.

7 1.125 Continuation of the parent-child relationship between the above-named
8 minor child and her parents clearly diminishes the child's prospects for early integration
9 into a stable and permanent home. Adoption is the permanent plan for the child, which
10 cannot be achieved so long as the parental rights remain intact.

11 1.126 The parents are not capable of providing the child with a safe, stable
12 home. The parents have not demonstrated the ability to provide the child with a stable
13 home, and will not do so in the near future. Although the child is placed in a stable
14 home, the home cannot be a permanent home unless parental rights are terminated.

15 1.127 The child is not an Indian child as that term is defined by the Indian Child
16 Welfare Act, 25 U.S.C. 1901, et seq.

17 1.128 The parents are not a member of the Armed Forces and the
18 Servicemembers Civil Relief Act does not apply to these proceedings.

19 1.129 The status of the child's sibling relationships and the nature and extent of
20 sibling placement, contact or visits is as follows: the child has three adult half-siblings
21 and several maternal half-siblings. The court does not have jurisdiction over the siblings.
22 Contact amongst the siblings is supported by the Department as long as in Tela's best
23 interests.

24 1.130 The child's parents are unfit to parent this child.

1 1.131 It is in this child's best interests to have her needs for stability and
2 permanency met which her father and mother are unable to do now or in the near future.

3 1.132 Termination of the parent-child relationship between the child and her
4 mother and father is in the child's best interest.

5 From the foregoing Findings of Fact, the court enters the following:

6 **II. CONCLUSIONS OF LAW**

7 2.1 The court has jurisdiction over the parties and subject matter herein.

8 2.2 Termination of the parent-child relationship between the above-named
9 minor child, the father and the mother is in the child's best interest. The father and
10 mother are not able to remedy their parental deficiencies within the near future.

11 2.3 The foregoing findings of fact and the allegations of RCW 13.34.180 and
12 .190 have been proven by clear, cogent and convincing evidence. Having heretofore
13 entered Findings of Fact and Conclusions of Law, the court hereby makes the following:

14 **III. ORDER**

15 3.1 **IT IS HEREBY ORDERED** that the above-named minor child remain
16 dependent child pursuant to RCW 13.34.030.

17 3.2 **IT IS FURTHER ORDERED** that the parent-child relationship between
18 the above-named minor child, the child's father, Terry W. Morrison and the child's
19 mother, Ladonna Marie-Deshawn Bradley, a.k.a. Ladonna Fofanna, be permanently
20 terminated pursuant to RCW 13.34.180 et seq., divesting the father, mother and child of
21 all legal rights, powers, privileges, immunities, duties and obligations between each
22 other.

23 3.3 **IT IS FURTHER ORDERED** that the Washington State Department of
24 Social and Health Services is hereby granted:

25 FFCL AND ORDER OF TERMINATION OF
26 PARENT-CHILD RELATIONSHIP AS TO
THE FATHER AND MOTHER

Rev. 05/05 lmr

20

ATTORNEY GENERAL OF WASHINGTON
800 Fifth Avenue, Suite 2000
Seattle, WA 98104-3188
(206) 464-7744

1 PERMANENT LEGAL CUSTODY of the above-named minor child with the
2 right to place such child in a prospective adoptive home; the power to consent to the
3 adoption of said child; and the power to place said child in temporary care and authorize
4 any needed medical care, dental care or evaluations of said child until the adoption is
5 finalized.

6 3.4 **IT IS FURTHER ORDERED** that once permanent legal custody is granted
7 to the Department of Social and Health Services, the probate or other department of any
8 Superior Court of the State of Washington is granted concurrent jurisdiction for purposes of
9 proceeding with an adoption.

10 3.5 **IT IS FURTHER ORDERED** that the matter be set for a review hearing
11 as previously scheduled, unless an order of guardianship or adoption is sooner entered.

12 3.6 **IT IS FURTHER ORDERED** that the Clerk of the Court shall provide
13 certified copies to DSHS-DCFS at **NO COST**.

14 DATED this 29 day of May, 2009.

15
16 
17 JUDGE JAMES DOERTY

18 Presented by:

19 ROBERT M. MCKENNA
20 Attorney General

21 By 
22 TANYA L. THORP
23 Assistant Attorney General
24 WSBA #32955

25 FFCL AND ORDER OF TERMINATION OF
26 PARENT-CHILD RELATIONSHIP AS TO
THE FATHER AND MOTHER

Rev. 05/05 lmr

21

ATTORNEY GENERAL OF WASHINGTON
800 Fifth Avenue, Suite 2000
Seattle, WA 98104-3188
(206) 464-7744

1 Approved as to form: Copy received:

2

3

per record:

4

directed not to sign by client

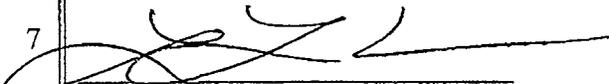
Michael Salazar, WSBA# 0

5

Attorney for Father

6

7



8

Lori Irwin, WSBA# 13523

Attorney for CASA

9



JOAN KALHORN

Court Appointed Special Advocate

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

FFCL AND ORDER OF TERMINATION OF
PARENT-CHILD RELATIONSHIP AS TO
THE FATHER AND MOTHER

Rev. 05/05 lmr

22

ATTORNEY GENERAL OF WASHINGTON
800 Fifth Avenue, Suite 2000
Seattle, WA 98104-3188
(206) 464-7744

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION I**

| | | |
|--------------------------|---|-------------------|
| STATE OF WASHINGTON/DSHS |) | |
| |) | |
| Respondent, |) | |
| |) | |
| v. |) | COA NO. 63601-4-I |
| |) | |
| TERRY MORRISON, |) | |
| |) | |
| Appellant. |) | |

DECLARATION OF SERVICE

I, PATRICK MAYOVSKY, DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOLLOWING IS TRUE AND CORRECT:

THAT ON THE 19TH DAY OF JAUARY, 2010, I CAUSED A TRUE AND CORRECT COPY OF THE **BRIEF OF APPELLANT** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

- [X] TONYA THORP
ATTORNEY GENERAL'S OFFICE
800 5TH AVENUE
SUITE 2000
SEATTLE, WA 98104

- [X] TERRY MORRISON
C/O DEBRA MORRISON
1401 S. 132ND STREET
BURIEN, WA 98168

SIGNED IN SEATTLE WASHINGTON, THIS 19TH DAY OF JAUARY, 2010.

x *Patrick Mayovsky*