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Division I
State of Washington

NO. 74457-7-I

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

In re Dependency of L.D., a Minor
STATE OF WASHINGTON, DSHS,
Respondent,
v.
ASHELY DUKELLIS,
Appellant.

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

The Honorable Deborah Garrett, Judge

REPLY BRIEF

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A. ARGUMENT IN REPLY

WHEN THERE ARE CONFLICTING "BEST INTEREST" FINDINGS, THE STATE HAS FAILED TO MEET ITS BURDEN FOR TERMINATION UNDER THE EXISTING STATUTORY SCHEME.

In response to Dukellis' challenge to the termination order based on inconsistent "best interest" findings,¹ the State claims In re the Dependency of A.V.D., 62 Wn. App. 562, 815 P.2d 277 (1991), controls. Brief of Respondent at 24-27. Although A.V.D. dealt with circumstances very similar to those here, it fails to resolve the issue, concluding only that such inconsistent findings are the:

product of the statutory scheme and is not of the trial court's making. Under the applicable statutes and the procedural circumstances of this case, the trial court was forced to choose between the temporary expedient of a guardianship and the draconian alternative of parental rights termination.

62 Wn. App. at 572-73. This pithy analysis/conclusion, which seems more concerned with protecting the trial court's integrity than ensuring A.V.D.'s father's due process rights were not violated, includes no supporting authority, and does not appear to have been cited once before for this proposition during its 25-year existence. This Court should decline to follow A.V.D.'s hollow reasoning and unsupported conclusion.

¹ The trial court found it was in L.D.'s "best interest" to both maintain and terminate her relationship with her mother. CP 289; RP 345-46, 368.

Dukellis' due process rights should not be disregarded simply because the Legislature failed to provide a statutory roadmap for how to proceed when there is a "tie" between a child's best interest considerations as there is here and as existed in A.V.D.. The State, armed with the A.V.D. decision, invites this Court to make termination the default outcome. This Court should decline the invitation because it does not comport with fundamental fairness and due process, and because it is not supported by the current statutory scheme.

Although the State has an interest in L.D.'s well-being, Dukellis' interest is superior, as it constitutes a fundamental liberty interest. Santosky v. Kramer, 455 U.S. 745, 753, 102 S. Ct. 1388, 71 L. Ed. 2d 599 (1982); Prince v. Massachusetts, 321 U.S. 158, 166, 64 S. Ct. 438, 88 L. Ed. 645 (1944); In re Welfare of A.B., 168 Wn.2d 908, 918, 232 P.3d 1104 (2010). Thus, it is the State, not Dukellis, who bears the burden to ensure compliance with the existing statutory framework. In re R.M.P., 191 Wn. App. 743, 753, 364 P.3d 1073 (2015), as amended on denial of reconsideration (Feb. 2, 2016), review denied, 185 Wn. 2d 1032 (2016). That statutory framework does not allow for termination except when it is in the child best interest to terminate her relationship with her parent. RCW 13.34.190(1)(b).

As discussed in Dukellis' opening brief, the conflicting "best interest" findings made by the trial court here are irreconcilable. Brief of Appellant at 14. Concluding L.D.'s "best interest" is served by both terminating and maintaining her parent-child relationship with Dukellis is a circumstance that cannot be reconciled in favor of termination under the existing statutory scheme. Either it is in her best interest to maintain the relationship, or it is not. If it is, then termination cannot follow because to do so violates Dukellis' due process rights, causes injury to L.D.'s best interest in maintaining a relationship with her mother, and conflicts with the Legislative mandate to terminate a parent-child relationship only when necessary to further the child's best interests. RCW 13.40.190(1)(b).

B. CONCLUSION

For the reasons set forth here in her opening brief, Dukellis asks this Court to reverse the order terminating her parental rights.

DATED this 11th day of August 2016.

Respectfully submitted,

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