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No. 51381-1-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

IN RE the Welfare of K.M.T.,

MATTHEW TODD,
Appellant,

v.

CRYSTAL MURPHY and ERIC MURPHY
Respondents.

ON REVIEW FROM THE SUPERIOR COURT OF THE STATE OF
WASHINGTON FOR PIERCE COUNTY

BRIEF OF RESPONDENTS

JASON BENJAMIN, WSBA No. 25133
LAW OFFICES OF BENJAMIN & HEALY, PLLC
Attorney for Petitioners
1201 Pacific Ave, Ste C7
Tacoma, WA 98402
(253) 512-1196

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I. RESTATEMENT OF ISSUES

1. Did the trial court comply with this Court's mandate addressing unfitness or "substantial lack of regard" in light of its Decision and Order on Mandate (CP 87 to 96) which appears to be totally ignored by Appellant, as well as the revised findings of fact, conclusions of law and order terminating parental rights.

2. Was there substantial evidence to support the trial court's findings by clear, cogent and convincing evidence that M.T. showed a substantial lack of regard for his parental obligations and that termination was in K.T. best interests?

II. RESTATEMENT OF THE CASE

K.T. is now eight years old and has had no contact with her biological father M.T. since she was five months old. CP 15, 94 and 270. K.T. was born March 22, 2010. CP 126. In fact, M.T. has on visited with K.T. on three occasions in her whole life. CP 92-94 and 262.

M.T. blames his military service and K.T.'s mother for his lack of contact, despite the fact that he has been out of the military since at least March 2014 when he was medically discharged from the Army and moved in with his parents in Ohio. CP 185-186 and 200-201. However, the court house doors have been open to him and he has taken zero action to enforce his rights. CP 93.

After M.T.'s parental rights were terminated, K.T. was adopted by E.M. on May 8, 2015. CP 26-28.

M.T. cared so little about his parenting rights to K.T. that he did not even bother to appear in person on the first day of trial. CP 101-103, 110.

The evidence at trial showed that M.T.:

- (1) was severely physically and psychologically abused as child; RP 234-235, P2 page 4;
- (2) was raised by alcoholic father; RP 234-235, P2 page 4;
- (3) has engaged in extensive criminal conduct; P2 page 2;
- (4) has been extremely psychologically abusive to K.T.'s mother; P5 pages 1-2;
- (5) repeatedly threatened to kill C.M.'s cat; RP 155-159;
- (6) that he would become so enraged that he was "scared of himself"; P1;
- (7) when C.M. told Matthew that she was pregnant, he flew into a rage, called all kinds of profane and abusive names and demanded that she get an abortion; P5, CP 135;
- (8) that he brags about his guns, drugs and gangster lifestyle; P2 page 2;
- (9) he bragged that when he got out of the Army he wanted to be a police officer so he could murder a black man and get away with it; CP 237, P2 page 2;
- (10) C.M. and he broke up due to his extensive use of marijuana and snorting Oxycontin; P5 page 2, RP 133-135;
- (11) that he screamed at K.T.'s pediatrician over the telephone that the pediatrician was a "Bitch!" when K.T. was 2 weeks old; RP 239;
- (12) he sent C.M. a letter dated 10/31/2012 stating he was instructing his lawyer to terminate his parental rights to K.T. and he would no longer pursue being a part of her life; RP 231-232;
- (13) has not expressed love and affection for K.T.; CP 132;
- (14) has not expressed personal concern over K.T.'s health, education and general well-being; CP 132;
- (15) has not supplied K.T. the necessary food, clothing and medical

care; CP 132;
(16) has not supplied K.T. an adequate domicile; CP 132; and,
(17) has not furnished social and religious guidance to the child. CP
132-33.

K.T. has two (2) half siblings ages 3 and 5 who reside with K.T.
and her mother and adoptive-father, E.M. CP 129.

Unlike M.T., C.M. and E.M. express love and affection for K.T.,
express personal concern over K.T.'s health, education and general well-
being, supply K.T. the necessary food, clothing and medical care, supply
K.T. an adequate domicile and furnish K.T. social and religious guidance
to the child. CP 132-133.

The trial court stated in its oral ruling, "I think that she [K.T.] is so
integrated in this other life now that I think that she has been so removed
from you" CP 308. The trial court added, "I think once that letter
got written in 2012, you were out of it." And he further stated, "She
[K.T.] hasn't seen you in almost five years." CP 308.

The trial court found that M.T. abused C.M. when he stated, "To a
great extent, I think that you created those conditions. You can't abuse
somebody and not have them take it seriously. I think that's what you did
here." CP 309.

The trial court found that M.T. was not excluded by C.M. from
seeing or visiting with K.T. CP 94-95.

In referring to the termination of M.T.'s parental rights, the court stated, "It is in the best interest of the child." CP 309.

The court made these findings by clear, cogent and convincing evidence when he stated, "Well, when I say close, I do mean, in part, it was close because of the clear, cogent, convincing standard. If it was just a preponderance of the evidence, it wouldn't have been so close." CP 310.

The trial court relied upon items enumerated 1-17 above which were either admitted by M.T. or corroborated by independent evidence in finding that it was in the best interests of K.T. to terminate M.T.'s parental rights.

The trial court found it was in the best interests of K.T. to terminate M.T.'s parenting rights. CP 319.

III. ARGUMENT

A. THE STANDARD OF REVIEW.

The Washington State Supreme Court in *In re Parental Rights to K.M.M.*, affirmed the duties of the reviewing court and the standard of review in termination of parental rights cases as follows:

Our role in reviewing a trial court's decision to terminate parental rights is to determine whether substantial evidence supports the trial court's findings of fact by clear, cogent, and convincing evidence. *See In re Dependency of K.S.C.*, 137 Wn.2d 918, 925, 976 P.2d 113 (1999). Because of the highly fact-specific nature of termination proceedings, deference to the trial

court is “particularly important.” *In re Welfare of Hall*, 99 Wn.2d 842, 849, 664 P.2d 1245 (1983). We defer to the trial court's determinations of witness credibility and the persuasiveness of the evidence, and “its findings will not be disturbed unless clear, cogent, and convincing evidence does not exist in the record.” *In re Dependency of K.R.*, 128 Wn.2d 129, 144, 904 P.2d 1132 (1995). We review de novo whether the court's findings of fact support its conclusions of law. *See In re Dependency of Schermer*, 161 Wn.2d 927, 940, 169 P.3d 452 (2007).

In re Parental Rights to K.M.M., 186 Wn.2d 466, 479, 379 P.3d 75 (2016).

B. THERE IS SUBSTANTIAL EVIDENCE TO SUPPORT THE TRIAL COURT’S FINDING OF FACT THAT M.T. FAILED TO EXERCISE HIS PARENTING RIGHTS.

On review, unchallenged findings of fact are verities on appeal as long as they are supported by substantial evidence. *In re Estate of Jones*, 152 Wn.2d 1, 8, 93 P.2d 147 (2004). See also, *In re Marriage of Katare*, 175 Wn.2d 23, 35, 283 P.3d 546 (2012). “Substantial evidence is that which is sufficient evidence is that which is sufficient to persuade a fair-minded person of the truth of the matter asserted.” *Id.* at 35.

It is undisputed that K.T. is now eight years old and has had no contact with her biological father M.T. since she was four or five months old. CP 15, 270.

Further, both C.M. and E.M. testified that M.T. has **not**:
expressed love and affection for K.T.;
expressed personal concern over K.T.’s health, education and
general well-being;

supplied K.T. the necessary food, clothing and medical care;
supplied K.T. an adequate domicile; and,
furnished K.T. social and religious guidance to the child. CP 132-
133.

M.T. appears to totally ignore the trial court's Decision and Order on Mandate signed and filed by the trial court on May 17, 2017 in response to the remand order. In its Decision and Order on Mandate, the trial court made the following findings, in part, and in no particular order:

1. "For most of this time, Petitioner's [C.M.] 2010 Parenting Plan action remained pending but was already dismissed when on October 31, 2012, Respondent [M.T.] mailed a letter to Petitioner stating, in part, 'I told my lawyer to drop any pursuit of rights to our daughter, and I accept that if you don't feel that I should be in her life, then I will have to live with that.' RP 135. **In this regard Respondent made manifest what had been true for a long time: he was not going to attempt to be a parent for this child.**" CP 93. Emphasis added.
2. "Except for a very nominal and isolated attempt to send some funds to Petitioner in late 2012, Respondent only provided financial support when compelled to do so and did not take action to resume regular child support when Petitioner was no

longer receiving public assistance funds.” CP 95.

3. “Respondent showed no interest in being a parent to Kaylee from the beginning. He resented how it would impact his plans for his life. He resented the financial burden of supporting a child. He resented the emotional claim he was support to have for his daughter.” CP 95.
4. “Respondent asserts that his nearly complete lack of fulfilling parental obligations is the product of Petitioner’s desire to control K.T. and punish him. The evidence demonstrates he wanted to have as little as possible to do with Petitioner and K.T. He was the one to first cut off communication; he criticized Petitioner for trying to be “peachy” and make things work; he was disinterested in the ultrasound images of K.T. in utero; he was personally and gratuitously abusive to Petitioner. In sum, he was angry and erratic in his conduct.” CP 95.
5. “As he [M.T.] put it himself at one point, ‘[t]he way I feel right now, I don’t even want to see you ‘cause I’m scared of myself right now.’ In sum, he presented Petitioner with an unreliable, disinterested, unpleasant and even scary and potentially dangerous partner for raising their child.” CP 95.
6. “The court finds and concludes by clear, cogent and convincing

evidence that Respondent's failure to perform parental duties showed a substantial lack of regard for his or her parental obligations given the circumstances of this case." CP 96.

Substantial evidence supports these findings. Not only did the testimony of witness support said findings and conclusion, but also the *exhibits admitted at trial* and referenced by the trial court in its Decision and Order on Mandate, which M.T. did not include as part of the record for this Court to review. The party seeking review has the burden of perfecting the record so that this court has before it all of the evidence relevant to the issue. RAP 9.2 and 9.6. *Allemeier v. University of Washington*, 542 Wn. App. 465, 472-473, 712 P.2d 306 (1985). M.T. failed to designate any of the exhibits admitted at trial which contain some of the most important evidence supporting the trial court's findings, conclusions and ultimate decision in this matter. CP 330-331. The trial court extensively references exhibits 1, 2, 5 and 6 throughout its Decision and Order on Mandate. CP 90, 91, 92 and 94.

The courthouse doors have been open to M.T. since he returned from overseas and he took no action to enforce his parental rights or to establish visitation. CP 306.

There are many, many service members who exercise parental rights through the court system even when overseas and utilize Skype for

daily/weekly contact with their children and generally they have two weeks of R & R and 30 days of paid leave each year. Further, they pay child support.

The above certainly constitutes “evidence is that which is sufficient evidence is that which is sufficient to persuade a fair-minded person of the truth of the matter asserted.” *Katare* at 35.

C. THE TRIAL COURT DID NOT ERR IN DETERMINING THAT CLEAR COGENT AND CONVINCING EVIDENCE EXISTED TO TERMINATE M.T.'S PARENTAL RIGHTS AND ALLOW E.M. TO ADOPT K.T.

Natural parents possess a fundamental liberty interest in the care, custody, and management of their children, and this interest is protected by the Fourteenth Amendment. *In re Matter of H.J.P.*, 114 Wn.2d 522, 526, 789 P.2d 96 (1990). But protection against state interference with the parent-child relationship is not absolute. *In re Welfare of Sumei*, 94 Wn.2d 757, 762, 621 P.2d 108 (1980). As *parens patriae*, the State may intervene to protect a child when a parent's actions or inactions endanger the child's emotional or physical welfare. *Id.* Upon a sufficient showing, the State may terminate the parent-child relationship in order to vindicate this interest. *In re Dependency of U.S.*, 128 Wn. App. 108, 116–18, 114 P.3d 1215 (2005). Parental rights can be terminated consistent with due process where there is clear, cogent, and convincing evidence that the parents are

“unfit” to raise their own children. See, *In re the Interest of Infant Child Skinner*, 97 Wn. App. 108, 114–15, 982 P.2d 670 (1997); *In re Adoption of McGee*, 86 Wn. App. 471, 477–78, 937 P.2d 622 (1997); *H.J.P.*, 114 Wn.2d at 527–31. Termination must be based on present parental unfitness. *Id.* at 530–31.

The Court's authority to terminate the parental rights of a biological parent in an adoption action comes from RCW 26.33.120(1), which provides as follows:

(1) Except in the case of an Indian child and his or her parent, the parent-child relationship of a parent may be terminated upon a showing by clear, cogent, and convincing evidence that it is in the best interest of the child to terminate the relationship and that the parent has failed to perform parental duties under circumstances showing a substantial lack of regard for his or her parental obligations and is withholding consent to adoption contrary to the best interest of the child.

RCW 26.33.120(1) (Emphasis added).

The standard of "clear, cogent, and convincing evidence," has been defined as evidence which shows the ultimate fact at issue to be "highly probable." *In re Dependency of K.R.*, 128 Wn.2d 129, 141, 904 P.2d 1132 (1995). By using the clear, cogent, and convincing standard, the legislature has recognized a parent's fundamental right to parent his or her child; however, when the rights of parents and the welfare of children

conflict, the best interests of the children must prevail. *In re the Interest of Pawling*, 101 Wn.2d 392, 399, 679 P.2d 916 (1984). (Emphasis added).

RCW 26.33.120 has withstood constitutional challenges because the requirement of clear, cogent, and convincing evidence has been found to satisfy the requirements of due process and equal protection. *In re Matter of H.J.P.*, 114 Wn.2d 522, 531, 789 P.2d 96 (1990). The 1984 adoption of RCW 26.33.120 replaced the prior standard, by simply requiring that a parent's neglect of her children be established, as opposed to a requirement that the neglect be established along with the intent to neglect. *Id.* at 528. In the new statute, the legislature made a point to remove terms such as "deserted," "abandoned" and, most importantly, "willful." *Id.* at 528.

Termination of the parental rights under RCW 26.33.120, requires a two-step process where first the Court must find that it has jurisdictional authority over the biological parent, and second the Court must find that termination is in the best interests of the child. *Id.* at 531.

Since *H.J.P.* was decided, *Skinner* and *McGee* have reiterated that a finding of parental unfitness based on a parent's "substantial lack of regard for his or her parental obligations" is sufficient to support

termination of that parent's rights. *Skinner*, 97 Wn. App. at 108; *McGee*, 86 Wn. App. at 476.

D. THE COURT SHOULD LOOK TO M.T.'S PAST PERFORMANCE OF PARENTAL DUTIES WHEN DETERMINING THE JURISDICTIONAL ELEMENT OF THE ANALYSIS, AS OPPOSED TO HIS CAPABILITIES AT TIME OF TRIAL.

M.T. argues that his parental fitness should be measured at the time of trial, as opposed to a review of his past parental performance.

Courts most commonly address the issue of termination of parental rights in the context of dependency actions, which are initiated by the State under RCW Title 13. Specifically, RCW 13.34.180 requires that remedial services be offered to any parent who may be subject to a termination petition and that the parent be given the opportunity to come into compliance and avoid termination. Thus, in a dependency action, it is the parent's fitness at time of trial, rather than at time of filing, that is measured and determined. However, there are no remedial services required or even mentioned in RCW Chapter 26.33. In fact, the operative language at play in termination hearings under the adoption statutes indicate that a parent's past performance of parental obligations should be measured, as opposed to that parent's present ability to perform parental obligations.

RCW 26.33.120(1) specifically instructs a Court to determine if "the parent has failed to perform parental duties...." The statutory language calls for an historical examination of the parent's performance of parental duties, rather than a review of a parent's ability *contemporaneous with trial*. Thus, a correct application of the law will prevent an otherwise habitually unfit parent from briefly becoming fit solely for the purposes of trial, which would result in a failure to overcome the jurisdictional threshold set forth in the statute. That parent then would be free to resume his or her historical pattern of unfitness. At the same time, a correct application of the second prong of the analysis, the best interests of the child test, allows a parent who has become fit to argue that he or she should be allowed to reunite with the children.

A comparison of the legislative intent driving the respective chapters also will provide insight as to the differing standards to be applied:

The legislature declares that the family unit is a fundamental resource of American life which should be nurtured. Toward the continuance of this principle, the legislature declares that the family unit should remain intact unless a child's right to conditions of basic nurture, health, or safety is jeopardized. When the rights of basic nurture, physical and mental health, and safety of the child and the legal rights of the parents are in conflict, the rights and safety of the child should prevail. In making reasonable efforts under this chapter, the child's health and safety shall be the paramount concern. The right of a child to basic

nurturing includes the right to a safe, stable, and permanent home and a speedy resolution of any proceeding under this chapter.

RCW 13.34.020.

The legislature finds that the purpose of adoption is to provide stable homes for children. Adoptions should be handled efficiently, but the rights of all parties must be protected. The guiding principle must be determining what is in the best interest of the child. It is the intent of the legislature that this chapter be used only as a means for placing children in adoptive homes and not as a means for parents to avoid responsibility for their children unless the department, an agency, or a prospective adoptive parent is willing to assume the responsibility for the child.

RCW 26.33.010.

Clearly both chapters focus on the welfare of children, first and foremost. However, the former (RCW 13.34) places an emphasis on maintaining the family unit unless to do so would cause harm to children, whereas the latter (RCW 26.33) places an emphasis on providing stable homes for children. This is an important distinction.

Furthermore, RCW 26.33.110(1) does not allow a Court to terminate parental rights until at least 48 hours after the child's birth, yet RCW 26.33.100(3) does allow for the filing of a Petition to Terminate Parental Rights prior to the birth of the child. Clearly the statutes contemplate an historical analysis of a parent's performance of parental obligations. Case law also supports the idea that *past performance* is the

key in the jurisdictional analysis.

In re Adoption of Infant McGee is a Division I Court of Appeals case in which the Court terminated the parental rights of a father who was exercising visitation with his children at the time the case went to trial. 86 Wn. App. 471, 937 P.2d 622 (1997). The trial court declined to terminate the father's parental rights after finding that, at time of trial, the father was exercising visitation with the children and the visits seemed to be going well. *Id.* at 476. The Court of Appeals, in overruling the trial court and terminating the father's parental rights, found that the trial court failed to look at the father's performance of parental functions with respect to an earlier born child who was not the subject of the termination action as well as the father's conduct during his relationship with the mother of the child at issue (father abused drugs and was abusive to the mother). *Id.* at 478. The Court of Appeals reasoned, "Clearly, the statute contemplates that a court may consider a parent's past behavior in determining whether the circumstances under which the parent failed to perform parental duties show a substantial lack of regard for parental obligations." *Id.* at 478. The parallel with the case at bar is evident.

In re the Welfare of Sego is a Supreme Court case involving the termination of a father's parental rights for his two young children. 82

Wn.2d 736, 513 P.2d 831 (1973). The father, who had initially presented with a serious drinking problem, had been incarcerated for killing the children's mother. *Id.* at 740. While in prison, prior to the termination hearing, the father had undergone counseling and therapy, regularly attended Alcoholics Anonymous, regularly attended bible classes, had taken classes certifying him as a machinist and made himself eligible for a minimal security facility and early release. *Id.* at 742. At the termination hearing the trial court concluded:

Mr. Sego [father] has the strongest of all rights known to the law in his claim for his blood children. He presents a very sympathetic and appealing picture as one who has attempted with all his strength to rehabilitate himself, cure his unfortunate habits, and overcome his past rash behavior. He indicated a deep love and concern for his children, and a real desire to reunite with him.

Id. at 745. Despite this conclusion, the trial court terminated the father's parental rights and the Supreme Court affirmed the termination. *Id.* 744.

By affirming the termination, the Supreme Court made it clear that an historical analysis of a parent's performance of parental obligations supersedes a parent's present ability. In making its decision regarding K.T., the trial court properly considered M.T.'s past performance, rather than his present ability, when determining the jurisdictional component of the termination test.

E. BASED ON HIS COMPLETE FAILURE TO PERFORM HIS PARENTAL DUTIES, THE TRIAL COURT HAD JURISDICTION OVER M.T. AND HIS PARENTAL RIGHTS.

Parental unfitness is established when the parent has failed to perform his parental duties in a manner demonstrating a lack of regard for his parental obligations, which include: "(1) Express love and affection for the child; (2) express personal concern over the health, education and general well-being of the child; (3) the duty to supply the necessary food, clothing, and medical care; (4) the duty to provide an adequate domicile; and (5) the duty to furnish social and religious guidance." *Id.* at 531.

M.T.'s performance of such parental obligations during the operative time period can be analyzed as follows:

(1) M.T. completely failed to express love and affection for the children.

M.T. has not had any contact of any kind with the child since July 2010. RP 48.

M.T. argues that his military service and C.M. prevented him from performing his parental obligations.

This argument is in opposite to the case of *Infant Child Skinner*, 97 Wn. App. 108, 982 P.2d 670 (1999), a father opposing termination of his parental rights argued that he had been denied the opportunity to express

love and affection toward his child because he was incarcerated at the time and the mother cut off contact with him. The trial court found that the father "took no initiative, and did nothing personally, to directly or indirectly provide" for the mother and "had sent no gift, present, card or money" to either the mother or the child. *Id.* At 121. The appellate court rejected the father's argument and upheld the termination of the father's parental rights. *Id.* at 123.

The Court in the *Skinner* case found that a parent cannot use the excuse of lacking or denied opportunities to perform parental obligations when that parent decides to "yield to the slightest of obstacles," and fails to use what resources *are* at his or her disposal to support a child. *Id.* at 122. In other words, even if a parent cannot perform parental obligations to the extent he or she desires, that parent still has an obligation to do everything she can to parent the children; *simply giving up is not an acceptable response. See e.g. Skinner, 97 Wn. App 108.*

M.T.'s failure to make efforts to show K.T. love and affection is far more egregious than the failings of the father in the *Skinner* case. The father in the *Skinner* case was incarcerated when his parental rights were terminated; M.T. on the other hand, was fully capable of taking action to demonstrate love and affection to K.T. He simply chose not to do so. At

any point since July 2010, M.T. could have chosen to exercise his parental rights in a variety of manners as stated above. He chose to do none of these things and instead chose to have no contact of any kind with K.T. since July 2010.

(2) M.T. completely failed to express personal concern over the health, education and general well-being of the child.

Since abandoning K.T. in 2010, M.T. completely failed to perform the parental obligation of expressing personal concern over the K.T.'s education, health and general well-being. Analysis of this element of the test shows M.T.'s clear lack of regard for her parental obligations.

(3) M.T. failed to supply the necessary food, clothing, and medical care.

M.T. failed to perform the third parental obligation of the analysis.

Case law clearly demonstrates that the simple payment of child support will not prevent termination. The cases of *Adoption of McGee* and *Matter of H.J.P.*, directly contradict M.L.W.'s position. In each of these cases, the parent had *voluntarily* made child support payments and still had their parental rights terminated. The parent in the *Adoption of McGee* case voluntarily made multiple large child support payments; nevertheless, the Court terminated her parental rights. 86 Wn. App. at 475. Similarly, the biological parent in *Matter of H.J.P.* made voluntary payments of child

support and yet his parental rights were terminated by the Court. 114 Wn.2d at 524. M.L.W.'s theory that somehow the State's collection efforts prove adequate support of the children is fictitious. Furthermore, M.L.W.'s payment of support for the children does not even rise to the level of the support provided by the biological parents in the *Adoption of McGee* and *Matter of H.J.P.* cases. In those cases, the parents paid support *willingly and voluntarily*.

Once again, M.T. cannot argue that he has fulfilled the third parental obligation. Analysis of this element favors termination of M.T.'s parental rights.

(4) M.T. failed in his duty to provide an adequate domicile for the child.

M.T. failed to provide K.T. with any type domicile since her birth in March 2010. K.T. has never been taken to a location that was M.T.'s residence, so once again it is hard to contemplate a scenario where M.T. has satisfied the fourth parental obligation.

Because M.T. failed to even attempt to satisfy this obligation, analysis of this element clearly favors termination of M.T.'s parental rights.

(5) M.T. failed in her duty to furnish social and religious guidance.

Due to M.T.'s complete failure to have any contact with K.T., C.M. and E.M. were solely responsible for furnishing K.T. with all social and religious guidance for the past almost six years. RP 48. Not having had direct or indirect contact with K.T. since July 2010, it cannot be said that M.T. has in any way fulfilled his duty of furnishing K.T. with social and religious guidance during this time.

Once again, M.T.'s complete absence from K.T.'s life leaves him no room to argue that he has in any way fulfilled the fifth parental obligation. Analysis of this element clearly favors termination of M.T.'s parental rights.

Based on an analysis of M.T.'s performance of his parental obligations, the trial court properly found that it had the necessary jurisdictional authority over M.T., allowing for the termination of his parental rights in the event termination would serve the best interest of K.T.

F. THE TRIAL COURT DID NOT ERR IN CONCLUDING THAT TERMINATION OF M.T.'S PARENTAL RIGHTS, THEREBY ALLOWING E.M. TO ADOPT K.T., IS IN THE CHILD'S BEST INTERESTS.

The K.T. children have been fully integrated into the C.M. and E.M.'s household since she was 1 year of age, which now includes two younger siblings. RP 33. K.T. has bonded to E.M. and he has become her

de facto parent. K.T. is smart, well-adjusted and has all of her physical and psychological needs met. The trial testimony of C.M. and E.M.'s indicates that K.T.'s needs would be best served by termination of M.T.'s parental rights and the adoption of K.T. by E.M.

This case is exactly the type of case for which the adoption laws were designed. The very first sentence of the very first statute governing adoptions in the State of Washington states: "The legislature finds that the purpose of adoption is to provide *stable homes for children.*" RCW 26.33.010. Here, C.M. and E.M. have been providing K.T. with this stable home since she was a year old. Meanwhile, M.T. has failed to make any effort to have any part in K.T.'s life since completely abandoning her in July 2010. RP 48.

The second prong of the termination analysis in this case is analogous to the second prong analysis in the case of *In re Pawling*, 101 Wn.2d 392. In the *Pawling* case, the 10 year old child at issue was living with his mother following his father's incarceration. *Id.* at 393. When the case went to trial, the father was approximately one year away from being released from prison, at which point he desired to be reintroduced into the child's life. *Id.* at 393. The trial court used the father's incarceration to establish the jurisdictional component of the termination test. *Id.* at 395.

The trial court then examined the best interests of the child component and found that termination was appropriate because the child had been fully integrated into the mother's new family, had come to call his mother's new husband "dad," and treated him as his father. *Id.* at 394. The Washington Supreme Court affirmed the termination, reasoning that *termination was in the best interests of the child because his mother and her new husband had become the child's "psychological parents," and upsetting this relationship would harm the child.* *Id.* at 401. In the present case, the trial court made two unchallenged findings of fact, which are analogous to those found in the *Pawling* case; namely, the trial court found that K.T. has been integrated into her new family and that K.T. does not know M.T.

The Court also should consider future possibilities when resolving the best interests of the child analysis in this case. It is a very well settled that Washington law favors custodial continuity. *In re Marriage of Payne*, 82 Wn. App. 147, 916 P.2d 968 (1996). With respect to K.T., custodial continuity would be accomplished by ensuring she remain with her biological mother and her psychological father. E.M. has become the psychological father to K.T. and she deserves this relationship to be protected. The Court should consider the possibility that C.M. could pass

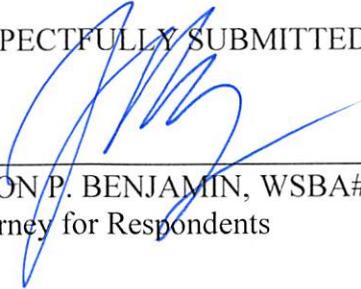
away while K.T. is still dependent and how this circumstance would impact K.T. By allowing the termination to stand, the Court will ensure that K.T. enjoys the custodial continuity the law finds to be so very important for children.

IV. CONCLUSION

For the foregoing reasons, the trial court should be affirmed.

Dated this 6th day of July, 2018.

RESPECTFULLY SUBMITTED,



JASON P. BENJAMIN, WSBA#25133
Attorney for Respondents

CERTIFICATE OF SERVICE

I certify that on the 6th day of July, 2018, I caused a true and correct copy of this Brief of Respondents to be served on the following in the manner indicated below:

Counsel for Appellant

Lila J. Silverstein
Attorney at Law
Washington Appellate Project
701 Melbourne Tower
1511 Third Avenue
Seattle, WA 98101
wapofficemail@washapp.org

E-SERVICE VIA COA PORTAL

DATED this 6th day of July, 2018, at Tacoma, Washington.



Alysia Ishaque

BENJAMIN & HEALY

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