

FILED
COURT OF APPEALS
DIVISION II
2018 SEP 10 PM 3:55
STATE OF WASHINGTON
BY CLD
DEPUTY

No. 51523-7-II

Court of Appeals, Division II
of the State of Washington

In re Guardianship of Andrea Faye Wilkins,

v.

Judy Vrabel (Mother)

Appellant.

Pierce County Cause No. 17-4-00943-4

The Honorable Judge David Johnson

APPELLANT'S OPENING BRIEF

Judy Vrabel
Judy Vrabel

P.O. Box 1112

Milton, WA 98354

TABLE OF CONTENTS

ASSIGNMENTS OF ERROR

Assignments of Error

- No. 1 Pg. 1
No. 2 Pg. 3

Issues Pertaining to Assignments of Error

- No. 1 Pg. 1
No. 2 Pg. 3

STATEMENT OF THE CASE

- ARGUMENT Pg. 1
CONCLUSION Pg. 10

STATEMENT OF THE CASE

On 22 May 2017, Mrs. Vrabel filed a petition for appointment of guardian of her daughter, Andrea Faye Wilkins, in Pierce County Superior Court, under case no: 17-4-00943-4. On the same day the court appointed Guardian Ad Litem, Dolores Sarandos. Then on August 4, 2017, Mrs. Vrabel's other daughter, Jody Stack, filed a petition for appointment of guardian. As a result of the guardian ad litem failing to file her report in a timely manner, Mrs. Vrabel filed a complaint against Dolores Sarandos. On December 5, 2017, the guardian ad litem filed her response. On December 21, 2017, the court heard argument on this case and appointed guardianship to Mrs. Vrabel's daughter, Jody Stack, then entered a judgment against Mrs. Vrabel in the amount of \$6,408.00. The court became frustrated with Mrs. Vrabel in her many attempt(s) to defend herself and address her concerns about her daughter while acknowledging she was not represented by counsel. The court also ignored Mrs. Vrabel's basic constitutional and civil rights, to include due process of law. The final order and findings of the court failed to show termination of Mrs. Vrabel's parental rights furthered her daughter's best interests and failed to establish the six factors listed in RCW 13.34.180. This in itself should sustain Mrs. Vrabel's rights in regards to parent-child relationship afforded her by the 5th, 9th, and 14 Amendments, this timely appeal follows.

ASSIGNMENT OF ERRORS AND ARGUMENT:

1. **The Court erred in entering the Order of December 21, 2017, by terminating Mrs. Vrabel parental rights.**

ISSUES PERTAINING TO ASSIGNMENT OF ERROR

THE COURT VIOLATED DUE PROCESS BY TERMINATING MRS. VRABEL'S PARENTAL RIGHTS WHEN SHE IS CURRENTLY FIT TO PARENT.

Constitutional issues are reviewed de novo. Dellen Wood Products, Inc. v. Washington State Dep't of Labor & Indus., Wn. App. 319 P.3d 847, 859 (2014). 6 B. Termination in this case is directly foreclosed by the Supreme Court's decision in In re Welfare of A.B. Due process

prohibits a state from severing a parent-child relationship unless the state proves that the parent is currently unfit. In re Welfare of A.B., 168 Wn.2d 908, 918, 232 P.3d 1104 (2010) (citing Santosky v. Kramer, 455 U.S. 745, 760, 102 S. Ct. 1388, 71 L.Ed.2d 599 1982)); U.S. Const. Amend. XIV. The state must prove parental unfitness by a standard of proof "equal to or greater than clear, cogent, and convincing evidence." Id. In A.B., the trial court terminated a father's parental rights based on a finding of "profound and intractable" problems in the bond between the father and child. The father raised this issue below in his written closing argument. The closing arguments were not included in the court file but the father is in the process of attempting to add them to the record on appeal. In any event, this issue constitutes manifest error affecting a constitutional right, which may be raised for the first time on appeal. RAP 2.5(a)(3). 11 father and child. Id. at 922. The problems, however, were not the fault of the father who had made "heroic" efforts to have meaningful visits with his child. Id. Termination in that case violated due process because the superior court did not find current parental unfitness and the Supreme Court could not infer the finding from the record.' Id. at 924-25. The same is true in this case. The court's findings established that the mother is a fit mother. The court found that the rupture in the mother's relationship with her daughter was not due to any parental deficiency. Given the court's finding that the mother is currently fit, the termination order cannot stand. A.B., 168 Wn.2d at 924-25. The court violated Mrs. Vrabel's right to due process by terminating her parental rights without finding that she was currently unfit to parent. A.B., 168 Wn.2d at 918. The termination order must be reversed. Id. 7 If the trial court fails to make an explicit finding of parental unfitness, an appellate court may infer such a finding "if — but only if — all the facts and circumstances in the record... clearly demonstrate that the omitted finding was actually intended, and thus made, by the court." A.B., 168 Wn.2d at 921.

2. THE COURT PRESENTED INSUFFICIENT EVIDENCE TO TERMINATE MRS. VRABEL' S PARENTAL RIGHTS.

An order terminating parental rights is reviewed for substantial evidence. In re Welfare of C.B., 134 Wn. App. 942, 952 -53, 143 P. 3d 846 2006) (C.B. I). Substantial evidence is " evidence sufficient to persuade a fair- minded rational person of the truth of the declared premise." Id. The substantial evidence analysis varies based on the burden of proof at trial. In re Dependency of C.B., 61 Wn. App. 280, 283, 810 P.2d 518 (1991) (C.B. II). In a termination case, the state must prove the factors at RCW 13. 34. 180(1) by clear, cogent, and convincing evidence. A.B., 168 Wn.2d at 911. To meet this burden, the state must show that a fact is " highly probable." C.B. I, 134 Wn. App. at 952. B. The department did not offer Mrs. Vrabel any service(s), and failed to provide services necessary for reunification. Before terminating parental rights, the court must find by clear, cogent, and convincing evidence: That the services ordered under RCW 13. 34. 136 have been expressly and understandably offered and provided and all necessary services, reasonably available, capable of correcting the parental deficiencies within the foreseeable future have been expressly and understandably offered or provided; RCW 13. 34. 180(1)(d).

To meet its statutory burden, the state must show that it has tailored the offered services to meet a parent' s individual needs. In re S.J., 162 Wn. App. 873, 881, 256 P. 3d 470 (2011), reconsideration denied Sept. 21, 2011). Here, the department failed to offer Mrs. Vrabel anything? The state has not met its statutory burden. RCW 13. 34. 180(1)(d). 1. The department never offered Mrs. Vrabel court - ordered interactive family therapy with her daughter. The court misconstrued RCW 13. 34. 180(1)(d), which looks to the past, not the future. See e.g. S.J., 162 Wn. App. 873. In S.J., the court reversed a termination order because department had failed to offer attachment and bonding therapy to parent at the time when it would have helped repair her relationship with her child. Id. Reversal was required even though an expert opined that

such services were unlikely to repair the relationship within the near future at the time of trial. Id. The state fails to offer all necessary services if it did not offer a critical service at a time when it would have permitted reunification. Id. Whether the service could have corrected K.M.M.'s refusal to see her 15 parents at the time of trial is not relevant. The court's finding must be vacated. The department never offered this family court-ordered interactive therapy services. These services could have remedied the rupture in the relationship between the mother and child. The order terminating Mrs. Vrabel's parental rights is unsupported by substantial evidence and must be reversed. S.J., 162 Wn. App. at 884. It is fundamentally unfair to place the burden on the parent to repair damage to the parent-child attachment that occurs while a child is in state care. S.J., 162 Wn. App. at 884. The state does not meet its burden under RCW 13.34.180(1)(d) if the department provides the foster parents with services that successfully permit them to care for a child but does not offer the parents the same opportunity. In re Welfare of C.S., 168 Wn.2d 51, 55-56, 225 P.3d 953 (2010). C.S. involved a child with special needs. Id. The department provided the foster mother training to help her deal with the child's behavioral problems and other needs. The training permitted her to successfully care for the child. Id. Because the department never offered C.S.'s mother that same training, the Supreme Court reversed a termination order based on the department's failure to offer her all necessary services. Id. at 56-57. time of trial must be vacated. 17 The court did not offer the father all necessary services. RCW 13.34.180(1)(d). The order terminating his parental rights must be reversed. C.S., 168 Wn.2d at 57. 3. The department failed to facilitate the parent-child bond through regular visitation. The termination statute defines "remedial services" as "those services defined in the federal adoption and safe families act as time-limited family reunification services." RCW 13.34.025(2)(a). Federal law was amended in 2011 to expand "time limited family reunification services" to include

"[s]ervices and activities designed to facilitate access to and visitation of children by parents and siblings." 42 U.S. C. § 629a a)(7). 11 The department must " encourage the maximum parent and child... contact." RCW 13. 34. 136(1)(b)(ii). The legislature has found that e[ar]ly, consistent, and frequent visitation is crucial for maintaining parent -child relationships and making it possible for parents and children 10 The " remedial services" in RCW 13. 34.025 are equivalent to the services required in RCW 13. 34. 180 (1)(d). Both refer to the services ordered by the court during a dependency with the goal of correcting parental deficiencies so the child can return home. RCW 13. 34.025; RCW 13. 34. 180(1)(d). A statute incorporating a portion of another statute should be interpreted to include subsequent amendments to the referenced statute, absent a clear expression of contrary legislative intent. State v. Billie, 132 Wn.2d 484, 492, 939 P.2d 691 (1997). to safely reunify." Id. Numerous studies support that finding and have demonstrated that: Regular frequent visitation increases the likelihood of successful reunification, reduces time in out -of -home care, promotes healthy attachment, and reduces the negative effects of separation for the child and the parent. Smariga, Margaret, Visitation with Infants and Toddlers in Foster Care: What Judges and Attorneys Need to Know, American Bar Association Center on Children and the Law (July 2007) (Appendix A); see also Weintraub, Amber, Information Packet: Parent -Child Visiting, National Resource Center for Family- Centered Practice and Permanency Planning April 2008) (Appendix B) (collecting studies showing that frequent visits are associated with shorter out -of -home placements, more successful reunifications, and better adjustment for children). Visitation during dependency is not just a service but a right. RCW 13. 34. 136(2)(b)(ii).² A court may only restrict visitation upon a showing that visits would harm the child' s health, safety, or welfare. RCW 13. 34. 136(2)(b)(ii)(C); In re Dependency of Tyler L., 150 Wn. App. 800, 804, 208 P. 3d 1287 (2009); In re Dependency of T.L.G., 139 Wn. App. 1, 14, 156 P. 3d 222 (2007). 12

Division I has held visitation is not a service under RCW 13. 34. 180(1)(d). In re Dependency of T.H., 139 Wn. App. 784, 162 P. 3d 1141 (2007). Because of the recent developments in federal law, however, this court should not follow Division I' s conclusion in T.H.. 19 Here, the department asked a specialist named Tom Sherry to provide a recommendation about what to do when K.M.M. began refusing to attend visits with her parents. RP 239 -43, 320. Sherry told the social worker that he may not be the right person to make that determination. RP 342. But the department contracted with him to do it anyway. CP 435. Sherry recommended that the department facilitate " natural contact" between the K.M.M. and her father. RP 239 -43. The social worker only attempted one such contact, which she discontinued after the father attempted to engage with his daughter. RP 326 -29. Notably, the social worker had provided the father with very little preparation regarding her expectations for the incident. RP 366, 523 -24. After the single " natural contact," the department ceased all efforts to facilitate visitation between K.M.M. and her father. Instead, the department asked the court to discontinue visits altogether. RP 330. The department never made any efforts to reinstate visits after that. RP 365. The social worker testified that she based the request to suspend visits on K.M.M.' s therapist' s recommendation. RP 349 -50. But K.M.M.' s therapist testified that she never provided such a recommendation and that doing so was not part of her role. RP 120, 136 -37. 13 13 The court found that K.M.M.' s therapist was one of the most credible witnesses at trial. RP 719. 20 The department did not offer the father adequate "[s]ervices and activities designed to facilitate" visitation. 42 U.S. C. § 629a (a)(7). The department' s failure permitted K.M.M. to withdraw further, from both her father and from her sisters as well. The court' s finding that the department offered the father all necessary services must be vacated. The department did not offer the father all services necessary to reunite his family. 13. 34.

180(1)(d). The order terminating his parental rights must be reversed. C.S., 168 Wn.2d at 57. CONCLUSION

The court violated due process by terminating the Mrs. Vrabel's parental rights even though she was fit to parent her daughter at the time of the hearing on December 21, 2017. The department failed to offer Mrs. Vrabel any services, all of which are necessary to maintain the bond between mother and daughter. The order terminating the Mrs. Vrabel' s parental rights must be reversed. Another issue is that no trial/hearing was ever held to establish any grounds for Involuntary Termination of Parental Rights. The Trial Court, in its ruling denies Mrs. Vrabel her Parental Rights without any factual evidence or proper Due Process of Law as defined by the following: RCW 13.34.180 Order terminating parent and child relationship—Petition—Filing—Allegations

which states in part:

1. You have the right to a fact-finding hearing before a judge.

2. You have the right to have a lawyer represent you at the hearing. A lawyer can look at the files in your case, talk to the department of social and health services or the supervising agency and other agencies, tell you about the law, help you understand your rights, and help you at hearings.

If you cannot afford a lawyer, the court will appoint one to represent you.

3. At the hearing, you have the right to speak on your own behalf, to introduce evidence, to examine

witnesses, and to receive a decision based solely on the evidence presented to the judge. You should be present at this hearing. Further cases that define Parental rights are as follows:

"Right of parents to the care, custody and to nurture their children is of such character that it cannot be denied without violating those fundamental principles of liberty and justice which lie at the base of all our civil and political institutions, **AND SUCH RIGHT IS A FUNDAMENTAL RIGHT PROTECTED BY THIS AMENDMENT AND AMENDMENTS 5, 9, and 14.**" **DOE V. IRWIN, 441 f. SUPP. 1247, U.S. DISTRICT COURT OF MICHIGAN (1977).** **"THE LIBERTY INTEREST AND THE INTEGRITY OF THE FAMILY encompass an interest in RETAINING CUSTODY OF ONE'S CHILDREN and, thus a**

**STATE MAY NOT INTERFERE WITH A PARENT'S
CUSTODIAL RIGHT ABSENT
DUE PROCESS PROTECTIONS."**

Langton v. Maloney, 527 F.Supp. 538 (U.S. dist. Ct. Connecticut -1981). "Even when blood relationships are strained, parents retain vital interest in preventing irretrievable destruction of their family life; if anything, persons faced with forced dissolution of their parental rights have more critical need for procedural protections than do those resisting state intervention into on-going family affairs." Santosky v. Kramer, 102 S. Ct. 1388, 455 U.S. 745 (1982) Parents have a fundamental constitutionally protected interest in continuity of legal bond with their children. Matter of Delaney, 617 P.2d 886, Oklahoma (1980) Parent's interest in custody of her children is liberty interest which has received considerable constitutional protection; parent who is deprived of custody of his or her child, even though temporarily, suffers thereby grievous loss and such loss deserves extensive due process protection. In Interest of Cooper, 621 P.2d 437, 5 Kansas App. Div. 2d 584 (1980). "Father enjoys the right to associate with his children which is guaranteed by this amendment (1st) as incorporated in Amendment 14, or which is embodied in the concept of 'liberty' as that word is used in the due process clause of 14th Amendment and equal protection clause of 14th." Mabra v. Schmidt. 356 F. Supp. 620 (U.S. District Q. Wisconsin 1973). The United States Supreme Court noted that a parent's right to "the companionship, care, custody and management of his or her children" is an interest "far more precious" than any property right. Mav V. Anderson. 345 U.S. 528, 533; 73 S. Ct. 840, 843 (1952) that the parent-child relationship is constitutionally protected liberty interest (see Declaration of Independence — life, liberty and pursuit of happiness and 14th Amendment of U.S. Constitution — No state can deprive any person of life, liberty or property without due process of law nor deny any person the equal protection of the laws). Kelson v. Springfield, 767 F.2d. 651 (U.S. Ct. App. 9th Circuit 1985)." The parent-child relationship is a liberty interest protected by the Due Process Clause of the

14th Amendment." Bell V. City of Milwaukee, 746 F.2d 1205,1242-45 (S.C. Ct. App 7th Circuit 1985).

"No bond is more precious and none should be

more zealously protected by the law as the bond between parent and child." Carsen v. Ehod, 411 F.

Supp. 645, 649 (U.S. District Court Eastern Dist. Virginia 1976). "A parent's right to the

preservation of his relationship with his child derives from the fact that the parent's achievement of a rich and rewarding life is likely to depend significantly on his ability to participate in the rearing of his children. A child's corresponding right to protection from

interference in the relationship deprives form the psychic importance to him of being raised by a

loving, responsible, reliable adult." (Emphasis added) Franz v. United States, 707 F.2d 582, 595-599

(U.S. Ct. App. D.C. Circuit 1983). A parent's right to the custody of his or her children is an element of

"liberty" guaranteed by the Fifth Amendment and Fourteenth Amendment to the Constitution of the United States. Matter of Gentry, 369 N.W.2d.

889, Mich. Appellate Div. (1983) Legislative classifications which distributes benefits and burdens on the basis of gender carry the inherent risk of reinforcing stereotypes about the proper place of women and their need for special protection; thus, even statutes

purportedly designed to compensate for and ameliorate the effects of past discrimination against

women must be carefully tailored. The state cannot be permitted to classify on the basis of sex. Orr

v. Orr, 99 S. Ct. 1102,440 U.S. 268 (1979). The United States Supreme Court held that the "old notion"

that "generally it is the man's primary responsibility to provide a home and its essentials, can no longer justify a statute that discriminates on the basis of

gender. "No longer is the female destined solely for the home and the rearing of the family, and only the male for the marketplace and the world of ideas." Stanton v. Stanton, 421 U.S. 7. 10; 95 S. Ct.

1373, 1376 (1975) Classifications by gender must serve important governmental objectives and must be substantially related to achievement of those objectives. Craig v. Boren, 97 S. Ct. 451;429U.S. 190 (1976).

The Trial Court denies Mrs. Vrabel her right to make major decisions in regards to her daughter.

The Trial Court's "Findings of Fact" are vague, lack legal standing and no factual evidence has ever been produced to support such findings. **See Court's Findings and Facts and Conclusion of Law, hereto attached.** To further this argument I'd like to cite a piece of the case that was decided by the Washington State Supreme Court. (quote)"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."(end quote).

For the state to interject its own opinion on what might be the best custody decision for the child, even when parents disagree, would be an implication on the fundamental rights of parents. Further citing Smith... 16 "It is not within the province of the state to make significant decisions concerning the custody of children merely because it could make a "better" decision." as well as... "For the state to delegate to the parents the authority to raise the child as the parents see fit, except when the state thinks another choice would be better, is to give the parents no authority at all. "You may do whatever you choose, so long as it is what I would choose also" does not constitute a delegation of authority." The Trial Court failed to hear motions presented to the court on several separate occasions which violates Mrs. Vrabel's right to be heard.

CONCLUSION

Mrs. Vrabel prays this Court will reverse/dismiss the ruling of Pierce County Superior Court in regards to the Judgement and Order dated December 21, 2017, with extreme prejudice. Mrs. Vrabel would also ask that sole physical/legal custody of Andrea Wilkins be awarded to her. The final form of relief requested is financial. Through this arduous process it has cost Mrs. Vrabel a great deal of time off work and various legal fees as follows: filing of appeal \$290, Transcript \$120, Designation of clerks papers \$120, legal aid \$2,240 and loss of time at work. The total of all items considered will be submitted at a later date.

Respectfully submitted,

Mrs. Judy Vrabel, pro se

P.O. Box 1112

Milton, WA 98354-1112

JV

Court of Appeals, Division II of the State of Washington

FILED
COURT OF APPEALS
DIVISION II
2018 SEP 10 PM 3:5
STATE OF WASHINGTON
BY: CLD
DEPUTY

~~State of Washington, County of Pierce~~

In re: Guardianship of Andrea F. Wilkins

Petitioner/s (person/s who started this case): _____

And Respondent/s (other party/parties): Judy Vrabel

No. 51523-7-II

Proof of Mailing or Hand Delivery
(for documents after Summons and Petition)
(AFSR)

Proof of Mailing or Hand Delivery (for documents after Summons and Petition)

Warning! Do not use this form to prove you mailed or delivered a Summons, Petition, Order to Go to Court, or any kind of Restraining Order. For those documents, use Proof of Personal Service (FL All Family 101), or if you have court permission to serve by mail, use Proof of Service by Mail (FL All Family 107).

I declare:

1. I am (check one): the Petitioner the Respondent (name): Judy Vrabel
and am competent to be a witness in this case.

2. On (date): 9/10/2018, I served copies of the documents listed in 3 below to
(name of party or lawyer served): _____ by:

mail (check all that apply): first class certified other Jody Stack
2909 Dale Lane E. Fife, WA 98424
mailing address city state zip

email to (address): _____
(only if allowed by agreement, order, or your county's Local Court Rule)

fax to (number): _____
(only if allowed by agreement, order, or your county's Local Court Rule)

Hand delivery at (time): _____ a.m. p.m. to this address:
_____ street address city state zip

I left the documents (check one):

- with the party or lawyer named above.
- at his/her office with the clerk or other person in charge.
- at his/her office in a conspicuous place because no one was in charge.
- with (name): _____, at the address listed in court documents where the party agreed to receive legal papers for this case.
- (For a party or lawyer who has no office or whose office is closed) at his/her home with (name): _____, a person of suitable age and discretion who lives in the same home.

3. List all documents you served (check all that apply):

(The most common documents are listed below. Check only those documents that were served. Use the "Other" boxes to write in the title of each document you served that is not already listed.)

<input type="checkbox"/> Notice of Hearing _____	<input type="checkbox"/> Notice Re Military Dependent
<input type="checkbox"/> Motion for Temporary Family Law Order <input type="checkbox"/> and Restraining Order	<input type="checkbox"/> Sealed Financial Documents
<input type="checkbox"/> Proposed Temporary Family Law Order	<input type="checkbox"/> Financial Declaration
<input type="checkbox"/> Proposed Parenting Plan	<input type="checkbox"/> Declaration of: _____
<input type="checkbox"/> Proposed Child Support Order	<input type="checkbox"/> Declaration of: _____
<input type="checkbox"/> Proposed Child Support Worksheets	<input type="checkbox"/> Declaration of: _____
<input type="checkbox"/> Other: Note of Issue Pro Se Uncontested Dissolution Docket _____	<input type="checkbox"/> Other: _____
<input checked="" type="checkbox"/> Other: <u>Appellants Opening Brief</u>	<input type="checkbox"/> Other: _____
<input type="checkbox"/> Other: _____	<input type="checkbox"/> Other: _____

4. Other: _____

I declare under penalty of perjury under the laws of the state of Washington that the statements on this form are true.

Signed at (city and state): _____

Date: 9/10/2018

Judy Vrabel
Signature of server

JUDY VRABEL
Print or type name of server