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Supreme Court No. 81720-1
(Court of Appeals No. 25502-6-III)

IN THE SUPREME COURT FOR THE STATE OF WASHINGTON

In re the Welfare of C.S.

STATE OF WASHINGTON,

Respondent,

v.

AMY SINGLETON

Petitioner.

ANSWER TO PETITION FOR REVIEW

ORIGINAL - FILED BY E-MAIL ATTACHMENT

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STATEMENT OF CASE

In the case before us, the child, C.S., was born on October 5, 1999, to the Petitioner and Kelly Singleton. A Dependency Petition was filed on September 5, 2002, alleging that the child had been abused and neglected. Both the Petitioner and father were present at the Shelter Care Hearing, but soon thereafter the father absented himself from the dependency action and was not located again until shortly before the Termination Fact-Finding that began on July 18, 2006.

Throughout the dependency the main obstacle to the reunification of the family was the Petitioner's substance abuse. Numerous services and treatments were offered to the Petitioner but she was unable to effectively begin to remedy her substance abuse until one year prior to the filing of this Termination action. The Petitioner was also diagnosed as suffering from mild Post Traumatic Stress Disorder, Borderline Personality Disorder, depression and anxiety. At the time of the Termination Hearing, the Petitioner was in the process of applying for SSI for her inability to deal with unexpected and unpredictable day-to-day events. She did not yet have her GED or driver's license. She resided with Robert Auxier who had a long standing chemical dependency

problem for which he has undergone treatment, but he continued to use.

Mr. Auxier and the Petitioner have another younger child in the home, but neither had any training or experience with ADHD children.

The child, C.S., suffers from Attention Deficient Hyperactivity Disorder (ADHD), Oppositional Defiant Disorder (ADD), Obsessive Compulsive Disorder, Sensory Integration Disorder and Asthma. At the time of the Termination Hearing C.S. had been living with his foster mother, Arlette Porter, for about three-and-a-half years. Ms. Porter has been educated and trained in dealing with C.S.'s special needs and has provided a nurturing home for C.S. and would continue to do so.

The State's position was that the requirements of RCW 13.34.180(1) have been met:

- (1) C.S. was found to be a dependent child;
- (2) The Court entered a dispositional order;
- (3) C.S. had been removed from the parent's custody for at least six months (actually forty-six months) pursuant to the dependency;
- (4) Services ordered under RCW 13.34.136 were offered and provided; further all necessary services, reasonably

available, capable of correcting the parental deficiencies within the foreseeable future have been expressly and understandably offered and provided;

- (5) The dispositional order was entered on November 5, 2002, and the mother had failed to substantially improve her parental deficiencies within twelve months, thereby giving rise to the rebuttable presumption that there was little likelihood that the deficiencies could be remedied so C.S. could be returned to his mother in the near future; and
- (6) The continuation of the parent-child relationship clearly diminishes C.S.'s prospects of integration into a stable and permanent home.

The Trial Court found that given C.S.'s special needs, the Petitioner had failed to rebut the presumption that there is little likelihood that the conditions could be remedied so the child could be returned to his mother in the near future. The Trial Court found that the Petitioner failed to show that she has the patience, presence of mind, skills, experience, time in the day, and availability to care for C.S. given the child's special needs. She failed to show that her household and lifestyle have the

stability and predictability required for C.S.'s well-being. The Trial Court further found that Robert Auxier, the Petitioner's boyfriend, works full-time and his continued sobriety and reliability remains a concern. Lastly, the Trial Court found that as it is unlikely that C.S. could be returned to the Petitioner in the near future, not to terminate the mother's parental rights would only prolong integration into the foster home, and the foster parent indicated she would adopt C.S. (Conclusions of Law p.10)

The Trial Court found that by clear, cogent and convincing evidence the termination of the Petitioner's parental rights was in the best interest of C.S. The termination would also allow Arlette Porter to adopt C.S., and provide the stability, continuity and full-time care the child requires in view of his medical and psychological needs. (Conclusions of Law p.11)

DECISION OF THE COURT OF APPEALS

The Petitioner then appealed this decision to the Court of Appeals. On April 29, 2008, Division Three in a unpublished opinion, affirmed the Trial Court.

ARGUMENT

A trial court may terminate parental rights if the State proves the elements of RCW 13.34.180 (1) by clear, cogent and convincing evidence.

RCW 13.34.190 (1). “Clear, cogent and convincing” means highly probable. In re Dependency of K.R., 128 Wn.2d 129, 904 P.2d 1132 (1995). Additionally, the trial court must find by a preponderance of the evidence that termination is in the best interest of the child. RCW 13.34.190(2).

The court’s factual findings under RCW 13.34.180(1) must be upheld if supported by substantial evidence from which a rational trier of fact could find the necessary facts by clear, cogent and convincing evidence. In re Dependency of C.B., 61 Wn. App. 280, 810 P.2d 518 (1991). Because only the trial court has the opportunity to hear the testimony and observe the witnesses, its decision is entitled to deference and the appellate court will not judge the credibility of witnesses or weigh the evidence. In re Dependency of A.V.D., 62 Wn. App. 562, 815 P.2d 277 (1991).

The State further responds that the Petitioner’s request for review

be denied as the decision of the Court of Appeals does not present a conflict with other decisions of the Court of Appeals or Supreme Court, neither does it raise a significant Constitutional question nor an issue of substantial public interest per RAP 13.4(b).

1. THE STATE PROVIDED THE NECESSARY SERVICES TO ADDRESS THE PETITIONER'S SPECIFIC NEEDS

The Petitioner contends that the State failed to timely provide services reasonably available, capable of correcting the mother's parental deficiencies. However, the record clearly establishes that the State did offer and provide such services to Ms. Singleton.

Under RCW 13.34.180(1)(d), the State is obligated to offer or provide services that are capable of correcting parental deficiencies within the foreseeable future. But even where the State "inexcusably fails" to offer services to a willing parent, termination will still be deemed appropriate if the services "would not have remedied the parent's deficiencies in the foreseeable future, which depends on the age of the child." In re Dependency of T.R., 108 Wn. App. 149, 29 P.3d 1275 (2001). Where the record establishes that the offer of services would be futile, the trial court can make a finding that the State ha offered all reasonable services. In re Welfare of Ferguson, 32 Wn. App. 865, 650

P.2d 1118 (1982).

In the case before us the Petitioner's parenting deficiencies centered around her problems of drug abuse, domestic violence and mental health issues, which manifested themselves in the child, C.S., being abused and neglected while in her custody. [RP 10-12 and 329-331] The Court noted that the State was not able to effectively offer family preservation services or home support services due to the Petitioner's overriding substance abuse. [Findings of Fact p. 3]

The Court in In re the Dependency of T.R., 108 Wn. App. 146, 29 P.3d 1275 (2001), held that the State is not required to provide a particular service to a parent if there is not evidence that the service would improve the parent's ability to function as a parent. It went on to state that when a parent is unwilling or unable to make use of the services provided by the State to improve parenting skills, the State is not required to offer still other services that might be helpful.

The testimony at the Fact-Finding disclosed the mother's long history of substance abuse; starting at age ten, marijuana at age twelve, and then moving on to harder drugs, including methamphetamine, cocaine and heroin. She repeatedly failed at all treatment efforts provided her from

2001 through 2004. In its Findings of Fact, subsection D, the Court recounted the treatment services offered to Ms. Singleton:

“The following services have been offered by the State to correct parental deficiencies: caseworker supervision; chemical dependency inpatient treatment at Isabella House from November to December 2001; chemical dependency inpatient treatment at Pioneer Center North; chemical dependency inpatient treatment at Evergreen Manner from March, 2003 to August, 2003, followed by transitional housing at the Tree of Life August, 2003 to May, 2004; chemical dependency inpatient treatment at Prosperity House June, 2004; chemical dependency treatment at Sundown Ranch for 28 days in November, 2004, with intensive outpatient after care at Ferry County Community Services from November, 2004 to present; visitation with Colton when his mother was in treatment, and supervised visitation with Colton at her own home.

These services were all expressly and understandably offered and provided by the caseworkers. The State did not offer family preservation or home support services, due to her overriding substance abuse problem.”

Given the nature and extent of the Petitioner’s substance abuse, there were no further services that could have reasonably been offered that bore a likelihood of correcting her parental deficiencies within the foreseeable future.

2. THE STATE PROVED THAT THERE WAS LITTLE LIKELIHOOD THE PETITIONER’S PARENTAL DEFICIENCIES WOULD BE REMEDIED IN THE NEAR FUTURE

The Petitioner further contends that the parental deficiencies which necessitated the removal of C.S. from her care were the direct result of her history of drug abuse and mental health issues, and that she had successfully rebutted the presumption that there was little likelihood that these conditions would be remedied in the near future. The State submits that the Petitioner did present evidence of her strides toward personal rehabilitation, but the evidence also presented that the noted parental deficiencies were far from being remedied in the near future, especially in regards to the needs of C.S.

Testimony taken at trial showed that the Petitioner left school in the ninth grade, she had been abusing alcohol and drugs since she was ten years old, she had a history of domestic violence, and that she continued to reside with a boyfriend who continued to use drugs. She was diagnosed as being overwhelmed by the complexity of circumstances, as having difficulty making well thought through responses and decisions in response to new or novel situations or tasks and as having difficulty processing and thinking flexibly, to the point where she is at risk for her own emotional stability. [RP 223-226]

It was also during the time that the Petitioner was making progress

with her life that Kenneth Ray, a clinical and counseling psychologist, diagnosed C.S. with ADD and ADHD. Mr. Ray testified that he had taught Arlette Porter, C.S.'s foster mother, how to care for C.S. and manage his ADHD; but he had not worked with the Petitioner regarding C.S.'s special needs. [RP 113-117]

The Trial Court found that Ms. Porter had consistently and effectively met the child's needs and provided a nurturing environment. Ms. Porter made herself available full-time to meet the daily needs of C.S. She organized her life so that she was always only a phone call away when C.S. required her, and would check with his teachers on a daily basis, as there were almost daily issues. [Findings of Fact p. 7]

Mr. Ray testified that if a parent has the capacity to learn how to care for a child with ADH, he could facilitate the learning process; but he felt that it would be very challenging to teach a parent with the educational and emotional problems of the Petitioner. Mr. Ray also testified that a parent who has difficulty processing and thinking flexibly could create a significant risk for C.S.'s prognosis. He stated he believed it was in C.S.'s best interest to remain with Ms. Porter. [RP 108-111]

The Trial Court found that there was little likelihood that the

Petitioner's parental deficiencies would be remedied so that C.S. could return in the near future. That the Petitioner had not shown "the patience, presence of mind, skills, experience, time in a day, and availability to care" for the child, given his special needs. The Court also found that the Petitioner's home and lifestyle lacked the stability and predictability required for C.S.'s well-being. The Court further noted the amount of time the Petitioner required each week for her own counseling and self-help sessions, and the questionable sobriety and reliability of her boyfriend, Robert Auxier. [Conclusions of Law p. 10]

The Petitioner's parental deficiencies grew out of a lifetime. Substance abuse, emotional and mental health issues and domestic violence all played their part in the problems she faced at the time of the termination hearing. The State recognizes that at the time of trial the Petitioner had made progress at correcting her parental deficiencies. She was still in counseling, she was still taking classes. She was unemployed and had no transportation or driver's license to allow her to respond to C.S. when he needed her. Further, she was also in the process of applying for SSI based on her inability to deal with unexpected, unpredictable day-to-day events (the same type of events that were to be expected on a

daily basis with C.S.'s ADHD behavioral issues). There is no evidence that the Petitioner's parental deficiencies could be remedied in the near future.

3. CONTINUATION OF THE PARENTAL RELATIONSHIP DIMINISHED THE CHILD'S PROSPECTS FOR EARLY INTEGRATION INTO A STABLE AND PERMANENT HOME

C.S. had been in foster care since September, 2002. At the time of the trial in July, 2006, numerous services had been offered to correct the parental deficiencies and reunite the mother and child. Although the Petitioner had been sober since November, 2004, at the time of the trial she was still working on getting herself healthy.

While the Petitioner was beginning to get healthy, C.S. was diagnosed with ADHD. Testimony at trial stated that for C.S. to progress and improve, he needed stability and a trained, reliable care provider. [RP 99-101]

Steve Bradburn, the Petitioner's substance abuse counselor, testified that he believed that all of his chemically dependent patients were trainable and could be good parents to children with ADHD as they advanced forward in their recovery. However, such training would take at least a year or a couple of years and sometimes longer. [RP 184-185]

Edith Vance, the DCFS caseworker, testified to an attempted reunification of the Petitioner and C.S. The attempt resulted in the Petitioner becoming severely stressed by having both C.S. and his younger half-brother. The Petitioner admitted that this caused her to relapse.[RP 56]

The testimony presented demonstrated that the Petitioner was not able to maintain a parental relationship with C.S. and that C.S. needed a stable and permanent home for his own health. There was no way to gage when in the future the Petitioner may have become healthy and sufficiently trained to properly provide for C.S.'s special needs. But the court found that C.S. had that care and stability in the home with Ms. Porter. To continue the parental relationship for an undetermined time in hopes that the Petitioner could eventually become physically and mentally healthy and provide the type of stable environment that C.S. needed would necessarily diminish his prospects of integration into the stable and permanent home he required.

**4. TERMINATION OF THE PARENT-CHILD
RELATIONSHIP WAS IN C.S.'s BEST INTEREST**

Lastly, the Petitioner contends that the State failed to prove that the best interests of C.S. are served by terminating the parental relationship.

She states that she overcame her chemical dependency and mental health problems, and is capable of learning how to handle C.S.'s ADHD.

The Petitioner has addressed her substance abuse problems, but it is still an on-going issue for her. She still attended almost daily sessions to remain sober. [RP 314-339] Even with this, the Petitioner's abuse counselor, Steve Bradburn, viewed lapses, or relapses, as a normal situation. [RP 179] Further, there is no testimony that the Petitioner overcame her mental health problems. Although she apparently had begun treatment, she applied for SSI because of her mental health issues. Nor was there any evidence that the Petitioner had studied or trained herself in dealing with her son's ADHD or ADD problems. The trial court overlooked none of this.

Testimony was presented that based upon the psychotherapist's knowledge of C.S.'s condition, and the progress made by the child under the care of Ms. Porter, it was in the child's best interest to terminate the parental relationship. Mr. Ray stated that it was very important for C.S. to maintain stability with attachment in his foster family with its support structures. [RP 342] He also testified that he would not recommend placement of a child with C.S.'s problems with a mother who has the

history and psychological diagnosis of the Petitioner. [RP 108-111]

The termination was not based on the fact that Ms. Porter's home may be a better available home for C.S. Here, neither the Petitioner, nor the Petitioner's home, presented a viable option for C.S., according to the recommendations of the child's psychotherapist. Luckily Ms. Porter was available and did commit herself and her home to care for C.S. The child's best interests were served by the termination which allowed for his integration into Ms. Porter's home.

CONCLUSION

In conclusion, the State respectfully submits that the necessary elements for the termination of the parent-child relationship were proved by clear, cogent and convincing evidence, and that the Trial Court found by a preponderance of the evidence presented that the termination was in the child's best interest. Further, that RAP 13.4(b) does not apply to this case and the Petition for Review is properly denied.

Respectfully submitted this 22nd day of January, 2009.

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