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COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON  
By \_\_\_\_\_

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NO. 25502-6-III

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION THREE

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In re the Dependency of C.S.,

STATE OF WASHINGTON,

Respondent,

v.

AMY SINGLETON,

Appellant.

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

The Honorable Allen C. Nielson

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APPELLANT'S OPENING BRIEF

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A. SUMMARY OF APPEAL.

Kelly and Amy Singleton are the parents of C.S.<sup>1</sup> Ms. Singleton also has a child, Dakota, with Robert Auxier and that child is not at issue in this appeal. Ms. Singleton's greatest parental deficiencies stemmed from her alcoholism, chemical dependency and mental health issues. Although the State failed to provide all requisite services, Ms. Singleton made great strides on her own. In fact, at the time of this termination hearing, Ms. Singleton had been drug and alcohol free for approximately two years. In addition, Ms. Singleton greatly improved her parental and communication skills, sought and complied with treatment for her mental health issues and improved her reading and writing skills to at least an eighth grade level. Nevertheless, the trial court terminated Ms. Singleton's parental rights due primarily to her lack of training in handling issues related to C.S.'s Attention Deficit Hyperactivity Disorder ("ADHD"), even though testimony showed that Ms. Singleton could learn everything she needed to know regarding ADHD within a reasonable amount of time. Ms. Singleton appeals the termination of her parental rights in C.S.

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<sup>1</sup> At the outset of this termination hearing, the State learned that Kelly Sampson was incarcerated in Missouri. Thus, the State indicated it would properly serve Mr. Sampson with notice of its intent to terminate his parental rights and bring that matter before the court in a subsequent hearing.

B. ASSIGNMENTS OF ERROR.

1. The juvenile court erred in terminating Ms. Singleton's parental relationship with C.S. in the absence of clear, cogent, and convincing evidence proving services were offered or provided that were capable of correcting Ms. Singleton's parental deficiencies.

2. The juvenile court erred in finding the State had proven by clear, cogent, and convincing evidence that there was little likelihood that the conditions would be remedied in the near future so that C.S. could be returned to Ms. Singleton.

3. The juvenile court erred in terminating Ms. Singleton's parental relationship with C.S. in the absence of clear, cogent, and convincing evidence proving continuation of Ms. Singleton's parent-child relationship would diminish C.S.'s prospects for early integration into a stable and permanent home.

4. The juvenile court erred in finding by clear, cogent and convincing evidence that it was in the best interests of C.S. that the parental relationship be terminated.

5. In the absence of substantial evidence in the record, the juvenile court erroneously entered Finding of Fact D.<sup>2</sup>

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<sup>2</sup> CP 41.

6. In the absence of substantial evidence in the record, the juvenile court erroneously entered Finding of Fact I.

7. In the absence of substantial evidence in the record, the juvenile court erroneously entered Finding of Fact K.

8. In the absence of substantial evidence in the record, the juvenile court erroneously entered Finding of Fact M.

9. In the absence of substantial evidence in the record, the juvenile court erroneously entered Finding of Fact O.

10. In the absence of substantial evidence in the record, the juvenile court erroneously entered Finding of Fact P.

11. In the absence of substantial evidence in the record, the juvenile court erroneously entered Finding of Fact Q.

12. In the absence of substantial evidence in the record, and insofar as it could be considered a finding of fact, the juvenile court erroneously entered Conclusion of Law D.

13. In the absence of substantial evidence in the record, and insofar as it could be considered a finding of fact, the juvenile court erroneously entered Conclusion of Law E.

14. In the absence of substantial evidence in the record, and insofar as it could be considered a finding of fact, the juvenile court erroneously entered Conclusion of Law F.

15. In the absence of substantial evidence in the record, and insofar as it could be considered a finding of fact, the juvenile court erroneously entered Conclusion of Law G.

**C. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR.**

1. RCW 13.34.180(d) requires the State to prove by clear, cogent, and convincing evidence that it offered or provided Ms. Singleton all necessary services capable of correcting her particular parental deficiencies. Here, the State failed to provide necessary family preservation, home support services and consistent visitation services. Did the State prove it offered services capable of correcting Ms. Singleton's parental deficiencies? (Assignments of Error 1, 5, 6, 11 and 12)

2. The trial court terminated Ms. Singleton's parental rights due primarily to her lack of training in handling issues related to C.S.'s ADHD even though testimony showed that Ms. Singleton could learn everything she needed to know regarding ADHD within a reasonable amount of time. Was termination of Ms. Singleton's parental rights premature because Ms. Singleton was not allotted sufficient time to cure her deficiencies? (Assignments of Error 2, 6, 8 and 13)

3. RCW 13.34.180(e) requires the State to prove by clear, cogent, and convincing evidence that there is little likelihood that conditions will be remedied so that the child can be returned to the parent in the near future. The record supports a finding that Ms. Singleton was no longer a drug addict and made real progress in addressing her parental deficiencies and mental health challenges. Did the State prove there was little likelihood that Ms. Singleton's parental deficiency would be remedied in the near future?

(Assignments of Error 2, 6, 10, 13 and 14)

4. RCW 13.34.180(f) requires the State to prove by clear, cogent, and convincing evidence that the parent's relationship with the child will diminish the child's prospects for early integration into a stable and permanent home. Here, testimony showed that Ms. Singleton and Mr. Auxier had a stable home and that C.S. wanted to live with them. Did the State prove that Ms. Singleton's relationship with C.S. prevented his integration into a permanent and stable home and that termination would facilitate C.S.' integration into such a home? (Assignments of Error 3, 7, 8, 9, 10, 11 and 14)

5. Where the State proves each of the elements of RCW 13.34.180, the court then considers whether termination is in the

child's best interests. Where the State fails to prove all the required six elements of RCW 13.34.180 and a loving bond exists between the mother and child, has the State met the requirements of proving termination is in the child's best interests? (Assignments of Error 4 and 15)

D. STATEMENT OF THE CASE.

Amy Singleton<sup>3</sup> started using alcohol at the age of 10 and marijuana at the age of 12. RP 315. When she was 15 years old, she first tried methamphetamines. RP 315. Ms. Singleton voluntarily entered a rehabilitation program at the age of 16, but by 19 years old, she began using heroin and taking drugs intravenously. RP 315.

C.S. was born to Amy and Kelly Singleton on October 5, 1999. RP 2, 12. In July of 2001, Child Protective Services ("CPS") conducted an investigation into allegations regarding drug use and domestic violence between Ms. Singleton and Mr. Auxier. RP 10, 12-13. There were no allegations that Ms. Singleton abused C.S. RP 12.

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<sup>3</sup> During the termination hearing, Ms. Singleton was, at times, referred to by her maiden name of Sampey. For purposes of this brief, she is referred to exclusively as Singleton.

As part of this investigation, Ms. Singleton began working with Steve Schuervincus, a social worker with the Department of Social and Health Services' ("DSHS") Division of Children and Family Services ("DCFS"). RP 10. Mr. Schuervincus identified drug abuse, domestic violence and possible mental illness problems with Ms. Singleton. RP 10. Accordingly, Ms. Singleton entered Isabella House, an in-patient drug and alcohol treatment facility for women in Spokane. RP 17. During this treatment, C.S. was placed with Ms. Singleton, however, she was eventually terminated from that program because she could not comply with the facility's non-smoking policy. RP 17, 315.

In December of 2001, Ms. Singleton entered Pioneer West in Sedro Wooley, another in-patient drug and alcohol treatment facility. RP 17-18. During this time, C.S. stayed with Ms. Singleton's mother, Linda Sampey. RP 315-16. Ms. Singleton successfully completed the treatment program at Pioneer West, but relapsed shortly thereafter. RP 18, 316.

In June of 2002, Tony Block, a social worker with DCFS, took over Ms. Singleton's case from Mr. Schuervincus. RP 11. Ms. Singleton disclosed to Mr. Block that she was using drugs intravenously. RP 11. Accordingly, Mr. Block arranged for C.S. to

be taken into protective custody and placed again with his maternal grandmother, Ms. Sampey. RP 11, 13. On November 5, 2002, an Order of Dependency related to C.S. was entered by the court. RP 12. An Order of Disposition of Dependency was entered by the court on November 19, 2002. RP 12.

Shortly thereafter, Ms. Singleton was reevaluated by Steve Bradburn, a chemical dependency counselor for Ferry County Community Services. RP 15-16, 177. Although Ms. Singleton did not enter another in-patient treatment facility at that time, she worked with Mr. Bradburn on a three-pronged approach to deal with her domestic violence issues, mental health concerns and outpatient drug and alcohol treatment. RP 16. However, Ms. Singleton disclosed to Mr. Bradburn that she had a relapse with alcohol in December of 2002 and that Mr. Auxier, with whom she was then living, had abused prescription pain medication. RP 16. Ms. Singleton also disclosed that she was pregnant with her second child. RP 16.

In January of 2003, Paul Thurik, social worker for DCFS, took over Ms. Singleton's case from Mr. Block. RP 13. C.S. was approximately two and one-half years old at that time and was still living with his maternal grandmother, Ms. Sampey. RP 13. Mr.

Thurik chose not to provide any psychological evaluation services or family preservation services to Ms. Singleton. RP 18, 28.

However, Ms. Singleton did enter into Evergreen Manor, an inpatient drug and alcohol treatment facility in Everett. RP 20. Mr. Auxier moved to Everett in order to be close to Ms. Singleton while she was in treatment at Evergreen Manor. RP 22.

Although C.S. was doing well at Ms. Sampey's home at that time, Ms. Sampey and her live-in boyfriend, Mike Bloomquist, were having some difficulties because of Mr. Bloomquist's work schedule. RP 14. Mr. Bloomquist's sister, Arlette Porter, obtained a foster care license and C.S. moved into Ms. Porter's home. RP 14-15.

Ms. Singleton was very successful in her treatment program at Evergreen Manor. RP 20, In fact, Edith Vance, a social worker for DCFS who assumed Ms. Singleton's case in July of 2003, said that Ms. Singleton "did extremely well," gave "one hundred and ten percent," "threw herself into" the program and was "really making so much progress." RP 38-39. In all, Ms. Vance said that the report on Ms. Singleton "was just...excellent." RP 39. In fact, because Ms. Singleton "had done so well," Ms. Vance recommended that the Department pursue reunification efforts with

Ms. Singleton and C.S. even though "it was not a popular stance to take" with the other social workers at DCFS. RP 39-40. In fact, Ms. Vance said she "was met with a lot of opposition." Specifically, Ms. Vance testified:

...Amy's reputation preceded her. And the providers here felt that Amy was never going to change and she had been unsuccessful in treatment previously. [Ms. Vance] took the stance that [DSHS] had a responsibility to attempt reunification, that Amy was complying with Court orders at this point, irregardless of what she had done in the past. Of course, [DSHS] still had to take that into consideration, but because she had been successful at Evergreen Manor and she was progressing, [DSHS] had an obligation to try reunification.

In fact, Ms. Vance "saw something very special" in Ms. Singleton and felt that "she would be successful as a parent." RP 40.

After Ms. Singleton successfully completed the treatment program at Evergreen Manor, she moved into Tree of Life, a transitional living program in Everett which provides "wrap around" services. RP 38, 40-41. Ms. Vance attempted to facilitate regular visits between Ms. Singleton and C.S. because the State had not provided "very much" visitation while Ms. Singleton was in Evergreen Manor because the State found it to be "a logistical nightmare to try and get [C.S.] over there on a regular basis." RP

40. In fact, Mr. Thurik testified that "regular visitations did not occur" and "visitations were pretty restricted" because "it was just very difficult for the Department to get C.S. to those visits." RP 31. In November of 2003, C.S. began visiting Ms. Singleton at Tree of Life. RP 41. Their visits progressed from one day visits to two week visits and C.S. "reacted fine" to the visits. RP 41-42.

However, in May of 2004, Ms. Singleton disclosed to her counselor at Tree of Life that she had relapsed. RP 48. Over the course of the next several months, Ms. Singleton was unsuccessful in various treatment programs. RP 51-53. In November of 2004, Ms. Singleton entered Sundown Ranch, an inpatient drug and alcohol facility. RP 55. Ms. Singleton successfully completed that program and has been clean and sober since November 2, 2004. RP 270.

In addition, since that time, Ms. Singleton has taken two urinalysis tests each week and all have been negative.<sup>4</sup> RP 66, 271. Ms. Singleton has also worked with Amy Bradburn, a chemical dependency counselor with Ferry County Community Services, on a regular basis and, at the time of this termination

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<sup>4</sup> One urinalysis was determined to have been affected by a poppy seed muffin Ms. Singleton ate and another was affected by Thera-flu medication that Ms. Singleton took. RP 66-67, 271.

hearing, had completed IOP, Phase 1, Phase 2, Phase 3 of their outpatient program and was entering the last phase, Phase 3B. RP 182, 190. Ms. Singleton also became very actively involved with Alcoholics Anonymous ("AA") and Narcotics Anonymous ("NA") and, in addition to regularly attending meetings, she helped set up for meetings, assisted with outside events and served as secretary and treasurer for her AA group. RP 190-91. Ms. Singleton also works closely with her sponsor, Jackie Michaelson, and serves as a sponsor for Darby Moore. RP 141, 287.

Ms. Singleton also attended mental health counseling, family counseling and participated in a women's support group. RP 216, 234, 252. Kenneth Hickey, the family counselor at Ferry County Community Services who worked with Ms. Singleton and Mr. Auxier, described Ms. Singleton as a "different person." RP 242. Specifically, Mr. Hickey said Ms. Singleton's level of anxiety and insecurities have decreased "tremendously." RP 242. He also described Ms. Singleton and Mr. Auxier as a consistent, "healthy couple" who have a stable home environment and are the "poster children" for healthy families. RP 235-36, 243. Those who have seen Ms. Singleton interact with C.S. and other children say that she is patient and creative. RP 128-29, 290. In fact, Ms. Vance

said Ms. Singleton has “shocked people” by how well she is doing.

RP 62.

According to Marty King, the psychologist/clinical director for Ferry County Counseling Services and Ms. Singleton’s mental health counselor, Ms. Singleton’s mental health issues also greatly improved. RP 252-53. Specifically, Ms. King said Ms. Singleton was of average intelligence, read at least at eighth grade level, interacted well with others, could multi-task, could control her impulses and was no longer bi-polar. RP 257-60, 266. In fact, Ms. King reported the psychological assessment which had previously been conducted by Dr. Lewis no longer accurately described Ms. Singleton. RP 256-60.

While Ms. Singleton was working hard to overcome her problems, C.S. was diagnosed by his therapist, Kenneth Ray, with Oppositional Defiant Disorder (“ODD”) and ADHD. RP 96-97. At the time, C.S. was living with Ms. Porter. RP 160. Ms. Porter described C.S. as being “very high maintenance” and said he had an in-home day care provider because he had been discharged from at least two daycare facilities. RP 113, 160. However, Mr. Ray said C.S.’ behavior had recently improved and that his prognosis was good because he was taking medication. RP 97.

Mr. Ray testified that he worked with Ms. Porter to teach her how to measure and handle C.S.'s behavior and that a parent with limited skills, such as those Ms. Singleton possessed, would be able to handle C.S. RP 99-100, 105-06. Moreover, Ms. Singleton and Mr. Auxier indicated they would be willing to work with Mr. Ray and learn everything Ms. Porter learned in order to handle any issues that might be related to C.S.'s ADHD. RP 206, 327-28.

E. ARGUMENT.

1. THE STATE FAILED TO PROVIDE SERVICES REASONABLY AVAILABLE CAPABLE OF CORRECTING MS. SINGLETON'S PARENTAL DEFICIENCIES.

"The family entity is the core element upon which modern civilization is founded." *Custody of Smith*, 137 Wn.2d 1, 15, 969 P.2d 21 (1998), *aff'd*, *Troxel v. Granville*, 530 U.S. 57, 120 S.Ct. 2054, 147 L.Ed.2d 49 (2000). A biological parent has a fundamental liberty interest in the care, custody and control of his or her child. *Santosky v. Kramer*, 455 U.S. 745, 753, 102 S.Ct. 1388, 71 L.Ed.2d 599 (1982); *In re Sumey*, 94 Wn.2d 757, 762, 621 P.2d 108 (1980). "This primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition." *Troxel*, 120 S.Ct. at 2060 (citing *Wisconsin v.*

*Yoder*, 406 U.S. 205, 232, 92 S.Ct. 1526, 32 L.Ed.2d 15 (1972)). Intervention by the State into the life of the family, including the removal of the child from the home and termination of parental rights, implicates "the most essential aspect of family privacy . . . the right of the family to remain together without coercive interference of the awesome power of the State." *Duchenese v. Sugerman*, 566 F.2d 817, 825 (9th Cir. 1977).

However, the fundamental right is not absolute, as the State has a right and obligation as *parens patriae* to intervene to protect a child when a parent's actions or inactions endanger the child's physical or emotional welfare. *Sumey*, 94 Wn.2d at 762. The State's purported goal in dependency matters is to nurture the family unit and do all it can to see the unit remains intact "unless a child's right to conditions of basic nurture, health, or safety is jeopardized." RCW 13.34.020; *In re Ramquist*, 52 Wn. App. 854, 861-62, 765 P.2d 30 (1988).

To prevail in a petition to terminate parental rights, the State must prove:

- (a) That the child has been found to be a dependent child;
- (b) That the court has entered a dispositional order pursuant to RCW 13.34.130;
- (c) That the child has been removed or will, at the time of the hearing, have been removed from the custody of the

- parent for a period of at least six months pursuant to a finding of dependency;
- (d) That services ordered under RCW 13.34.136 have been expressly and understandably offered or 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;
  - (e) That there is little likelihood that conditions will be remedied so that the child can be returned to the parent in the near future...; and
  - (f) That continuation of the parent and child relationship clearly diminishes the child's prospects for early integration into a stable permanent home.

RCW 13.34.180(1). Each of the foregoing elements must be proven by clear, cogent, and convincing evidence. RCW 13.34.190(2); *In re S.V.B.*, 75 Wn. App. 762, 768, 880 P.2d 80 (1994). Once these elements are proven, the State must also establish that termination is in the best interests of the child. RCW 13.34.190(2); *In re Hall*, 99 Wn.2d 842, 848-49, 664 P.2d 1245 (1983).

On November 5, 2002 an Order of Dependency related to C.S. was entered by the court and an Order of Disposition of Dependency was entered by the court on November 19, 2002. Thus, the first three factors of RCW 13.34.180 have been satisfied. However, the State failed to establish the three remaining factors by clear, cogent, and convincing evidence. Nor did the State prove

termination was in the best interests of the child. The trial court therefore erred in terminating Ms. Singleton's parental rights.

a. DCFS had an affirmative duty to determine Ms. Singleton's needs and offer or provide services tailored to address those needs. The State was obliged to provide services to Ms. Singleton specifically designed to correct her parenting deficiencies. *In re P.D.*, 58 Wn. App. 18, 29, 792 P.2d 159, review denied, 115 Wn.2d 1019 (1990). The primary purpose of a dependency proceeding is to allow courts to order remedial measures to preserve and mend family ties, and to alleviate the problems which prompted the State's initial intervention. *Krause v. Catholic Comm'ty Serv.*, 47 Wn. App. 734, 744, 737 P.2d 280, review denied, 108 Wn.2d 1035 (1987). The State has an affirmative duty to provide "all necessary services, reasonably available, capable of correcting the parental deficiencies within the foreseeable future." RCW 13.34.234(4).

b. The Department failed to provide consistent visitation services as it is obligated to do. Visitation is the right of a family during a dependency proceeding. The Legislature has directed dependency courts to keep families together unless a child's right to basic nurture, health, or safety is in jeopardy. RCW

13.34.020; see also, *In re Welfare of Churape*, 43 Wn. App. 634, 639, 719 P.2d 127 (1986). An essential part of this mandate is providing families with early, consistent, and frequent visitation. RCW 13.34.136(1)(b)(ii). Visits provide a healthy environment in which parents and children can strengthen their familial relationships. Visits enhance a child's well-being, give parents an opportunity to develop or expand their parental competence, and provide caseworkers with the opportunity to accurately assess family relationships and make informed decisions regarding reunification.

Recent studies demonstrate that visiting frequency is a strong predictor of reunification – stronger than parental problems with substance abuse or mental illness. See, e.g., Sonya J. Leathers, *Parental Visiting and Family Reunification: Could Inclusive Practice Make a Difference?*, 81 CHILD WELFARE 595 (July 2002). One study found that reunification is ten times more likely when the family participates in regular visits. Inger P. Davis, John Landsverk, Rae Newton, & William Ganger, *Parental Visiting and Foster Care Reunification*, 18 CHILD. & YOUTH SERV. REV. 363, 375 (1996); see also, David Fanshel & Eugene Shinn, *Children In*

*Foster Care: A Longitudinal Investigation* 98 (1978) (noting a “striking” correlation between visitation and reunification).

Washington’s Dependency and Termination Equal Justice Committee, led by Washington Supreme Court Justice Bobbe Bridge, noted such findings and recommended significant changes in how courts and the department approach dependency visitation. *Dependency and Termination Equal Justice Committee Report*, Dec. 2003, at 19. The Committee’s recommendations prompted the 2004 Legislature to modify visitation statutes, placing more emphasis on the family’s right to visitation as a means for reunification. RCW 13.34.136(1)(b)(ii). The new statute went into effect June 10, 2004.

The amendments provide, in relevant part,

Visitation is the right of the family, including the child and the parent, in cases in which visitation is in the best interest of the child. Early, consistent, and frequent visitation is crucial for maintaining parent-child relationships and making it possible for parents and children to safely reunify. The agency shall encourage the maximum parent and child and sibling contact possible, when it is in the best interest of the child, including regular visitation and participation by the parents in the care of the child while the child is in placement. Visitation shall not be limited as a sanction for a parent’s failure to comply with court orders or services where the health, safety, or welfare of the child is not at risk as a result of the visitation. Visitation may be limited or denied only if the court determines that such limitation or denial is necessary to protect the child’s health, safety, or welfare.

The court and the agency should rely upon community resources, relatives, foster parents, and other appropriate persons to provide transportation and supervision for visitation to the extent that such resources are available, and appropriate, and the child's safety would not be compromised.

RCW 13.34.136(1)(b)(ii)(as amended).

Thus, visitation may only be limited or denied if the court determines it is necessary to protect the dependant child's health, safety, or welfare. *Id.* Visitation may not be limited as a sanction for a parent's failure to comply with court orders or services. *Id.* Even when a termination proceeding is pending, courts may not restrict visitation -- visitation remains the right of the family up until a termination order is entered. *In re Dependency of A.V.D.*, 62 Wn. App. 562, 572-73, 815 P.2d 277 (1991); *In re Welfare of Hauser*, 15 Wn. App. 231, 236, 548 P.2d 333 (1976).

In the instant case, the Department failed to provide consistent visitation because, as Ms. Vance testified, it was "a logistical nightmare to try and get [C.S.] over there on a regular basis." RP 40. In fact, Mr. Thurik testified that "regular visitations did not occur" and "visitations were pretty restricted" because "it was just very difficult for the Department to get C.S. to those visits." RP 31. In October of 2005, Ms. Singleton's chemical dependency

counselor, Ms. Bradburn, wrote a letter concerning the inconsistency of visitation between Ms. Singleton and C.S. RP 271-72. In fact, Ms. Bradburn noted that, during a six-week period, three out of six visits were cancelled. RP 272. Regardless, the Department admittedly failed to provide consistent visitation between Ms. Singleton and C.S.

c. The Department failed to provide a psychological assessment, family preservation services or home support services. In the present case, Ms. Singleton could have benefited from family preservation and home support services. In fact, Mr. Thurik testified that such services can be very beneficial in cases in which reunification is being attempted. RP 28. Regardless, the Department chose not to provide Ms. Singleton with those services. RP 18, 28. In addition, Mr. Thurik decided not to pursue a psychological evaluation of Ms. Singleton even though she had previously struggled with various mental health issues. RP18.

d. The Department's failure to provide services requires reversal. The Department's failure to provide Ms. Singleton with consistent visitation and the services needed to address her underlying parental deficiency set Ms. Singleton up for failure. The trial court's findings and conclusions that all services were offered

or provided capable of correcting Ms. Singleton's parental deficiencies are not supported by the record and must be stricken. CP 41. In fact, the Court noted in its oral ruling that this finding "might be contested." RP 363.

Accordingly, the court erred in terminating Ms. Singleton's parental rights without allowing her sufficient time to benefit from these services the Department was required to provide.

*Dependency of H.W.*, 92 Wn. App. 420, 430, 961 P.2d 963 (1998)(holding termination of parental rights was premature when the Department failed to offer or provide essential services).

Thus, reversal is required.

2. THE STATE FAILED TO PROVE THERE WAS LITTLE LIKELIHOOD THAT MS. SINGLETON'S DEFICIENCIES WOULD BE REMEDIED.

a. The State must show present parental deficiencies have not or will not be remedied in the near future. In proving there is little likelihood that conditions will be remedied so a child can be returned to the parent, the State must show by clear, cogent and convincing evidence that, at the time of the fact-finding hearing, there were parental deficiencies that were unlikely to be cured in the near future, i.e., proof of present parental unfitness. RCW

13.34.180(e); *Krause*, 47 Wn. App. at 742-43; *In re H.J.P.*, 114 Wn.2d 522, 530, 789 P.2d 96 (1990).

b. The State failed to show by clear, cogent and convincing evidence that Ms. Singleton had not or could not remedy her parental deficiencies. In the case at bar, Ms. Singleton's parental deficiencies were primarily drug abuse and possible mental health issues. In its Conclusions of Law, however, the court rightly found that Ms. Singleton had rebutted "the presumption that there is little likelihood that conditions would be remedied" with respect to her drug abuse and her "psychological incapacity and mental deficiencies." CP 41, Conclusion of Law E. However, the court determined that Ms. Singleton was not capable of caring for C.S. because of his ADHD. *Id.* This not supported by evidence and was, therefore, in error.

Specifically, C.S.'s therapist, Mr. Ray, testified C.S.'s behavior had improved and that his prognosis was good since he had begun taking medication for his ADHD. RP 97. Moreover, Mr. Ray said he had taught Ms. Porter how to handle C.S.'s ADHD by working with her and providing her reading material on ADHD. RP 99-100. More importantly, Mr. Ray said a parent with limited skills, such as those Ms. Singleton possessed, would be able to learn

everything necessary regarding ADHD and handle C.S. RP 105-06. Finally, Ms. Singleton and Mr. Auxier said they were willing to work with Mr. Ray and learn everything Ms. Porter learned in order to handle any issues related to C.S.'s ADHD. RP 206, 327-28.

The State failed to provide clear, cogent and convincing evidence to the contrary to show Ms. Singleton was incapable of learning to handle C.S.' ADHD. Thus, reversal is required.

3. THE STATE DID NOT PROVE CONTINUATION OF MS. SINGLETON'S RELATIONSHIP WITH HER SON CLEARLY DIMINISHED C.S.'S PROSPECTS FOR EARLY INTEGRATION INTO A STABLE AND PERMANENT HOME.

RCW 13.34.180(f) provides that the State must prove:

[t]hat continuation of the parent and child relationship clearly diminishes the child's prospects for early integration into a stable and permanent home.

This factor reflects the Legislature's recognition that, even in cases where there is little chance the parent will ever be able to resume custody, it is better to maintain the parent-child relationship so long as it does not actually interfere with the permanence and stability of the child's home. The harsh finality of termination, with its potential emotional and mental impact on both the child and the parent should be avoided when possible. See *In re J.D.*, 42 Wn. App. 345, 350, 711 P.2d 368 (1985).

In the instant case, the State did not prove continuation of C.S.' relationship with his mother clearly diminished his prospects of integration into a stable home. As discussed in detail above, at the time of the termination hearing, Ms. Singleton was drug and alcohol free for approximately two years. Virtually every witness agreed that Ms. Singleton had completely turned her life around and was in a stable, caring home. Moreover, there was no evidence that C.S. was uncomfortable with his mother and, in fact, at the time of the termination hearing, C.S. indicated he wanted to go live with his mother and Mr. Auxier. Further, Ms. Porter said C.S. thrived when he was able to be a situation where he could act as a big brother to Ms. Singleton's second child, Dakota. RP 166, 169-70.

The State presented no evidence whatsoever that a change in stability would occur if the court allowed more time for Ms. Singleton to obtain any additional training that may have helped her address C.S.'s ADHD. Accordingly, the State failed to prove by clear, cogent, and convincing evidence that Ms. Singleton's relationship with her son would prevent C.S.' integration into a stable and permanent home.

#### 4. TERMINATION WAS NOT IN C.S.'S BEST INTERESTS.

If the requirements of RCW 13.34.180 are met, the trial court then considers if termination of the parent-child relationship is in the best interests of the child. RCW 13.34.190(3); *In re Churape*, 43 Wn. App. 634, 719 P.2d 127 (1983). The court here rightly acknowledged that the standard of proof on this issue was clear, cogent and convincing evidence. CP 41; Conclusion of Law G; see *Dependency of A.V.D.*, 62 Wn.App. at 571 (holding that when a trial court relies on its findings that termination of parental rights would be in the child's best interest in order to support one of the six findings required by RCW 13.34.180, then the requirement of RCW 13.34.190 that the termination must be in the best interest of the child must be proven by clear, cogent and convincing evidence rather than a preponderance of evidence). As discussed above, the requirements of RCW 13.34.180 and .190 have not been met in the case at bar. Accordingly, the trial court's conclusion that termination was in C.S.'s best interest cannot stand. RCW 13.34.190(3); *In re Churape*, 43 Wn. App. 634.

The issue is whether termination of the parent-child relationship is in the child's best interests; where to place the child

should its parents' rights be terminated is a secondary consideration:

The fact that these children have been in foster homes and have developed ties to their foster parents cannot be the controlling consideration, particularly in light of the need to avoid long-term foster care. Although, as time passes, the task becomes more difficult, the trial court may find that a bond developed between these children and their [parent] and can grow to replace that which now exists between the children and their foster parents.

*In re Churape*, 43 Wn. App. at 639-40. Parental rights cannot be terminated simply because a better home may be available elsewhere. *In re Moseley*, 34 Wn. App. 179, 186, 660 P.2d 315, review denied, 99 Wn.2d 1018 (1983); see also *M. v. C.M.*, 215 Neb. 383, 338 N.W.2d 764, 768 (1983); *In the Interest of E.A.*, 638 P.2d 278, 285 (Colo. 1982).

Here, Ms. Singleton proved she had overcome her drug and alcohol abuse problem. She also overcame the mental health problems with which she had previously struggled. Moreover, testimony showed that Ms. Singleton was willing and able to learn everything necessary to handle any issues related to C.S.'s ADHD. Regardless, the trial court ignored this evidence and the statutory mandate to preserve the family unit. The trial court's finding that

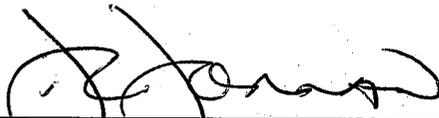
termination was in C.S.'s best interest was erroneous and must be reversed.

F. CONCLUSION.

The trial court prematurely terminated Ms. Singleton's parental rights. Insufficient evidence was presented to support the court's conclusions: 1) all services reasonably necessary to correct parental deficiencies had been offered or provided; 2) there was little likelihood of remedying existing deficiencies; 3) continuation of the relationship clearly diminished C.S.' prospects for early integration into a permanent home, and 4) termination was in the child's best interests. Ms. Singleton respectfully requests that this Court reverse the trial court's order granting termination.

DATED this 12<sup>th</sup> day of March 2007.

Respectfully submitted,



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Attorneys for Appellant

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR FERRY COUNTY

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IN RE C.S.	)	
DSHS – STATE OF WASHINGTON,	)	
	)	NO. 25502-6-III
PETITIONER,	)	
	)	
AMY SINGLETON,	)	
	)	
APPELLANT.	)	

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**DECLARATION OF SERVICE**

I, MARIA ARRANZA RILEY, DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOLLOWING IS TRUE AND CORRECT:

THAT ON THE 12th DAY OF MARCH, 2007, A COPY OF THE **APPELLANT'S OPENING BRIEF** WAS SERVED ON THE PARTIES DESIGNATED BELOW BY DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

- AMY SINGLETON  
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**SIGNED** IN SEATTLE, WASHINGTON, THIS 12TH DAY OF MARCH, 2007

x *Ann Joyce*

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