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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

Supreme Court No. _____
(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.

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PETITION FOR REVIEW

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A. IDENTITY OF PETITIONER AND RELIEF REQUESTED.

Pursuant to RAP 13.5A, Amy Singleton (Sampey)¹ requests this Court grant discretionary review of the Court of Appeals' unpublished opinion affirming the termination of the parent-child relationship in In re the Welfare of C.S., No. 25502-6-III, slip op. (April 29, 2008). The ruling was filed on April 29, 2008, and is attached as Appendix A to this motion.

B. ISSUES PRESENTED FOR REVIEW.

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, Ms. Singleton contends the State failed to provide necessary family preservation, home support services and consistent visitation services. Did the Court of Appeals err in finding the State proved it offered services capable of correcting Ms. Singleton's parental deficiencies?

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

¹ During the trial, Ms. Singleton was also referred to as "Amy Sampey." For clarity, she will be referred to as Ms. Singleton throughout this petition.

a reasonable amount of time. Did the Court of Appeals err in affirming the premature termination of Ms. Singleton's parental rights she was not allotted sufficient time to cure her deficiencies?

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 Court of Appeals err in finding the State had proven there was little likelihood that Ms. Singleton's parental deficiency would be remedied in the near future?

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 Court of Appeals err in finding the State had proven 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?

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. Did the Court of Appeals err here where the State failed to prove all the required six elements of RCW 13.34.180 and a loving bond exists between the mother and child?

D. STATEMENT OF THE CASE.

Ms. Singleton started using alcohol and drugs at a young age. RP 315. Although she voluntarily entered a rehabilitation program at the age of 16, by 19 years old she began using heroin and taking drugs intravenously. RP 315.

Into this milieu 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, however, that Ms. Singleton abused C.S. RP 12.

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. 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 of difficulty complying 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 took over Ms. Singleton's case from Mr. Schuervincus. RP 11. After Ms. Singleton disclosed she was using drugs, Mr. Block arranged for C.S. to be taken into protective custody and placed again with his maternal grandmother, Ms. Sampey. RP 11, 13.²

Ms. Singleton was then reevaluated by Steve Bradburn, a chemical dependency counselor for Ferry County Community Services. RP 15-16, 177. Ms. Singleton worked with Mr. Bradburn on her domestic violence issues, mental health concerns and outpatient drug and alcohol treatment. RP 16.³ Ms. Singleton was

² 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.

³ 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,

also pregnant with her second child. RP 16.

In January of 2003, Paul Thurik, social worker for DCFS, took over Ms. Singleton's case. 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. Importantly, 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.

Although C.S. was doing well at Ms. Sampey's home at that time, Ms. Sampey and her 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. Edith Vance, the 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,

had abused prescription pain medication. RP 16.

because Ms. Singleton "had done so well," Ms. Vance recommended that the Department pursue reunification efforts with Ms. Singleton and C.S. RP 39-40.

After Ms. Singleton completed the treatment program at Evergreen Manor, she moved into 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 it was "a logistical nightmare to try and get [C.S.] over there on a regular basis." RP 40.⁴ By November of 2003, C.S. began visiting Ms. Singleton and their visits progressed from one day visits to two week visits and C.S. "reacted fine" to the visits. RP 41-42.

In May 2004, Ms. Singleton disclosed she had relapsed again and over the course of the next several months, Ms. Singleton was unsuccessful in various treatment programs. RP 48, 51-53. Finally however, in November of 2004, Ms. Singleton entered Sundown Ranch, an inpatient facility and successfully completed that program and has been clean and sober since

⁴ 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.

November 2, 2004.⁵ RP 55, 270.

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 hearing, was entering the last phase. RP 182, 190. Ms. Singleton also became actively involved with Alcoholics Anonymous ("AA") and Narcotics Anonymous ("NA") and, in addition to regularly attending meetings, 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, and serves as a sponsor for another. RP 141, 287.

Ms. Singleton attended mental health counseling, family counseling and participated in a women's support group. RP 216, 234, 252. Kenneth Hickey, the family counselor who worked with Ms. Singleton and Mr. Auxier, described Ms. Singleton as a "different person." RP 242. Specifically, that her 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

⁵ Ms. Singleton has taken two urinalysis tests each week and all have been negative although 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 she took. RP 66-67, 271.

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.

Marty King, the psychologist/clinical director for Ferry County Counseling Services and Ms. Singleton’s mental health counselor, testified Ms. Singleton’s mental health issues also greatly improved.⁶ RP 252-53. 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 with Oppositional Defiant Disorder (“ODD”) and ADHD. RP 96-97. At the time, C.S. was living with Ms. Porter who 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, C.S.’s behavior had recently improved and his prognosis was good because he was taking medication. RP 97.

Ms. Singleton and Mr. Auxier indicated they would be willing to learn everything Ms. Porter learned in order to handle any issues that might be related to C.S.'s ADHD. RP 206, 327-28.

Other relevant facts are detailed in the Court of Appeals opinion and are incorporated herein by reference. Slip op at 1-9.

D. DECISION OF THE COURT OF APPEALS

The Court of Appeals affirmed the trial court's termination order, ruling that Ms. Singleton was provided all services reasonably necessary to correct her parental deficiencies and that continuation of the parent-child relationship diminished C.S.'s prospects for integration into a stable and permanent home. Slip op. at 19. App. A.

E. ARGUMENT.

Ms. Singleton requests this Court accept review of the Court of Appeals decision under RAP 13.5A(a)(3), which governs motions for discretionary review of Court of Appeals decisions on accelerated review that relate only to termination of parental rights as provided in RAP 18.13(e). Under RAP 13.5A, this Court applies RAP 13.4(b) "petition for review" considerations to determine

⁶ 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.

whether acceptance of review will be granted. RAP 13.4(b)

provides:

A petition for review will be accepted by the Supreme Court only: (1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or (2) If the decision of the Court of Appeals is in conflict with another decision of the Court of Appeals; or (3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

Ms. Singleton seeks review in this Court because the Court of Appeals opinion is in conflict with other Court of Appeals decisions, raises issues of substantial public interest, and presents significant questions of law under the State and federal constitutions. RAP 13.4(b)(2)-(4).

1. THE COURT OF APPEALS ERRED IN FINDING THAT THE STATE TIMELY PROVIDED NECESSARY SERVICES TAILORED TO ADDRESS MS. SINGLETON'S SPECIFIC NEEDS

The record compels the conclusion that Ms. Singleton would have benefited immeasurably from family preservation and home support services. RP 28. Nevertheless, 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 wrestled with various mental health issues. RP18.

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 had 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).

The failure to provide Ms. Singleton with 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.

Ms. Singleton contends that the Court of Appeals sidestepped the governmental failure to provide these crucial services by noting her lengthy history of chemical dependency

treatment. Slip op at 12-13. Ms. Singleton in fact completed programs at Evergreen Manor and Sundown Ranch, as well as resolving potential mental health concerns. Home support and family preservation services were, therefore, the key to resolving the only remaining hurdles to her caring for her C.S. Contrary to the Court of Appeals opinion, she "had addressed her substance abuse problem" and the only remaining deficiency was in the skills to care for C.S. at home. The home support and family preservation services necessary and reasonably available to that end.

Accordingly, the Court of Appeals erred in affirming the termination of Ms. Singleton's parental rights without allowing her sufficient time to benefit from the 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, the opinion of the Court of Appeals is in conflict with other decisions of the Court of Appeals cited and presents issues of substantial public importance. Review is warranted and reversal is ultimately required.

2. THE COURT OF APPEALS ERRED IN FINDING THE STATE PROVED THERE WAS LITTLE LIKELIHOOD MS. SINGLETON'S DEFICIENCIES WOULD BE REMEDIED.

Ms. Singleton's parental deficiencies were primarily drug abuse and possible mental health issues, however, the trial 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. Nevertheless, the court determined that Ms. Singleton was not capable of caring for C.S. because of his ADHD. *Id.* Ms. Singleton contends this was not supported by evidence and was, therefore, in error.

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. Mr. Ray explained that he 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.

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).

Ms. Singleton contends 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.'s ADHD. The Court of Appeals opinion specifically acknowledges the testimony of Mr. Hickey that he believed Ms. Singleton and Mr. Auxier could parent C.S. Slip op at 15-16. The potential challenges to their parenting C.S. which were described by Ms. Vance, and upon which the Court of Appeals relied, are ones that could have been addressed by the very family preservation and home support services complained of above. The Court of Appeals opinion affirming termination is, therefore, contrary to the decisions cited and presents issues of significant public importance.

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

RCW 13.34.180(f) requires the State 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 inevitable 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 this case, the continuation of C.S.'s relationship with his mother did not clearly diminished his prospects of integration into a stable home. At the time of the termination hearing, Ms. Singleton was drug and alcohol free for approximately two years. Numerous witnesses agreed that she had turned her life around and was in a stable, caring home. There was no evidence that C.S. was uncomfortable with his mother and at the time of the termination hearing, C.S. indicated he wanted to go live with his mother and

Mr. Auxier. Finally, Ms. Porter acknowledged 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. RP 166, 169-70.

By contrast, the State presented no evidence 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. THE COURT OF APPEALS ERRED IN FINDING TERMINATION WAS IN C.S.'S BEST INTERESTS.

If the requirements of RCW 13.34.180 are met, the court 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 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. The requirements of RCW 13.34.180 and .190 have not been met in the case at bar. Accordingly, the conclusion that termination was in C.S.'s best

interest cannot stand. RCW 13.34.190(3); *In re Churape, supra*.

The question 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 secondary:

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).

Ms. Singleton overcame her chemical dependency problem. She also overcame the mental health problems with which she had previously struggled. She was willing and able to learn everything necessary to handle issues related to C.S.'s ADHD. Nevertheless, the trial and appellate court looked past this compelling evidence and the statutory mandate to preserve the

family unit. The finding that termination was in C.S.'s best interest was erroneous and should have been reversed.

F. CONCLUSION.

For the reasons stated herein, Ms. Singleton (Sampey) requests this Court accept review of his appeal pursuant to RAP 13.4(b), reverse the termination order.

Respectfully submitted this 29th day of May 2008.



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disorder, obsessive compulsive disorder, sensory integration disorder and asthma.

In July 2001, Child Protective Services began an investigation due to concerns about Ms. Singleton's drug use, domestic violence issues and mental health issues. In November, Ms. Singleton and C.S. were sent to an in-patient drug and alcohol treatment program at the Isabella House. Ms. Singleton did not follow facility rules and was asked to leave. In December, Ms. Singleton was asked by her social worker to begin another in-patient treatment program at Pioneer West. Ms. Singleton successfully completed the program but admitted to her social worker that she used drugs after completion of the program.

In 2002, Ms. Singleton told her social worker that she was using drugs intravenously. C.S. was placed into protective custody and a dependency petition was filed by the State. On November 5, 2002, an agreed dependency order was entered finding that C.S. was abused or neglected. The disposition order required Ms. Singleton to address her drug use problem, participate in drug and alcohol treatment and random urinalysis monitoring, undergo psychological testing and participate in aftercare following treatment. C.S. was placed with Ms. Singleton's mother, Linda Sampey and her partner, Mike Bloomquist, pursuant to

the disposition order. Ms. Singleton was given regular visitation with C.S. during this time.

In 2003, Ms. Sampey and Mr. Bloomquist encountered problems related to having C.S. in their home. C.S. was then placed with Mr. Bloomquist's sister, Arlette Porter. In March, Ms. Singleton, who was pregnant with her second child, D.A., entered in-patient treatment at Evergreen Manor in Everett. Regular visitation sessions did not occur between Ms. Singleton and C.S. while she was at Evergreen Manor. However, because Ms. Singleton was making significant improvements in her treatment, the State planned to transition C.S. back to his mother.

In August, Ms. Singleton completed her treatment at Evergreen Manor. In September, she moved into an apartment at Tree of Life, a transitional living complex in Everett for its 18-month program. In November, Ms. Singleton had her first visit with C.S. Ms. Singleton's social worker, Edith Vance, transported C.S. between Everett and Ferry County for the visitation sessions. Over the course of the next four months, C.S. would visit Ms. Singleton for periods of up to two weeks.

On May 13, 2004, Ms. Singleton disclosed to her counselor at Tree of Life that she had been using crack cocaine for several months. The counselor

recommended that Ms. Singleton enter an in-patient treatment program at Prosperity House. On June 4, Ms. Singleton was admitted to the facility. She left the next day. Ms. Singleton told Ms. Vance that she wanted to go back to Evergreen Manor.

On June 10, Ms. Vance was notified that Ms. Singleton had an admission date of June 26 at Evergreen Manor. Ms. Singleton was to participate in an outpatient program in the interim. Ms. Singleton neither participated in the outpatient program nor attended the meetings.

On June 14, Ms. Singleton was arrested for a domestic violence incident involving her boyfriend, Bob Auxier. On July 1, Ms. Vance was notified that Ms. Singleton did not show up for admission at Evergreen Manor. Ms. Singleton was given an extension for admission to Evergreen Manor until July 3.

On July 5, Ms. Singleton arrived at Evergreen Manor. She left the facility the next day. In November, Ms. Singleton entered a 28-day treatment program at Sundown Ranch. She completed the program and began an outpatient program with Ferry County Community Services. Ms. Singleton then requested that a third-party custody action be initiated for C.S. with Ms. Porter.

In February 2005, the State initiated the third-party custody action. On May 2, Ms. Singleton informed Ms. Vance that she would not sign the paperwork,

because she wanted C.S. returned to her. On December 2, the State filed the termination petition.

On July 18, 2006, the termination trial commenced. The State first called social worker Paul Thurik to testify. Mr. Thurik testified that he was Ms. Singleton's social worker between January and March 2003. He said that his primary concern at the time he began working with Ms. Singleton was to get her into an in-patient treatment program, because she was pregnant and had not yet adequately addressed her substance abuse problem. Mr. Thurik said that he did not believe it was appropriate to offer her a psychological evaluation at that time, because he was not aware to what extent she was involved in drugs.

Mr. Thurik said that visitation sessions between C.S. and Ms. Singleton occurred regularly until she entered Evergreen Manor. He said that while Ms. Singleton was at Evergreen, visitation sessions were restricted at the facility and it was difficult for the State to get C.S. to those visits. He said that it was his goal for Ms. Singleton to eventually get into a facility where she could have C.S. with her.

Ms. Vance then testified. She said she became Ms. Singleton's social worker in July 2003. She said that she supported reunification between Ms. Singleton and C.S., and believed that Ms. Singleton could be a successful parent

if she could maintain her sobriety. Ms. Vance said it was a "logistical nightmare" getting C.S. to visit his mother while at Evergreen, but that visitation sessions were much easier to facilitate at Ms. Singleton's apartment at Tree of Life. Report of Proceedings (RP) at 40. She said that C.S. visited Ms. Singleton at Tree of Life for up to two weeks at a time and that C.S. reacted fine to the visits.

Ms. Vance testified that after Ms. Singleton completed her treatment at Sundown Ranch, Ms. Singleton said that what had caused her last relapse was having both of her children with her. Ms. Singleton told Ms. Vance that C.S. was a high maintenance child. Ms. Vance said that this realization that Ms. Singleton could not handle both of her children resulted in her request that the State establish third-party custody for C.S. with Ms. Porter.

Ms. Vance said that she believed that Ms. Singleton was capable of providing for her children's physical needs, but that she did not believe that Ms. Singleton had the necessary skills to care for C.S.'s psychological and mental health needs. Ms. Vance said that C.S. had been kicked out of two daycare facilities and that he would strike out at teachers and other children. She said that a lot of variables went into managing C.S.'s behavior and that he needed constant supervision, direction and attention. Ms. Vance said she did not think that any amount of training would give Ms. Singleton the strength she needed to

cope with C.S.'s behavioral problems. She said that she had attempted to reunify Ms. Singleton and C.S. but that Ms. Singleton became severely stressed by having both of her children, which resulted in a total relapse with drugs and alcohol.

Clinical and counseling psychotherapist Kenneth Ray testified that he diagnosed C.S. with ADHD. He testified that he worked with Ms. Porter on management techniques for C.S. and how to measure his behavior. He said that Ms. Porter was very stable and that there was a good attachment between Ms. Porter and C.S. He said that attachment and stability were important for C.S. He also said that C.S.'s ADHD could present a considerable challenge for a parent whose emotional and cognitive capacity is overwhelmed by his behavioral problems. He said that it was in C.S.'s best interest to remain with Ms. Porter. He said that living with Ms. Porter has been a positive experience for C.S. and that he had progressed and improved significantly since he had been with her.

After the State rested, Ms. Singleton called chemical dependency counselor, Steve Bradburn, to testify. Mr. Bradburn testified that he was a dependency counselor for both Mr. Auxier and Ms. Singleton. He said that Mr. Auxier had a drug relapse two times in 2006, and that his relapse potential was

“moderate.” RP at 181. He said that Mr. Auxier was attending meetings and participating in joint sessions with Ms. Singleton.

Mr. Bradburn then testified that Ms. Singleton’s treatment was going well and that her prognosis for recovery was good.² He said that Ms. Singleton was occupying herself with activities that did not involve drugs and alcohol. He said that he believed that all of his clients were trainable and could be good parents of children with ADHD but that it was difficult to train someone who had just recently started recovering from drugs and alcohol to do something different. He said that parents must be given at least a year or a couple of years and sometimes longer to be “trained” to work with ADHD children. RP at 184-85.

Ms. Singleton also testified. Ms. Singleton said that if C.S. got “wound up” during visitation sessions, she would do relaxation techniques with him and try to get him to focus. RP at 327. She said that she would get an in-home care

² Ms. Singleton also called Ferry County Counseling case manager, Ronald Casebeer, counselor Kenneth Hickey, and Clinical Director of Ferry County Counseling, Marty King to testify. These witnesses testified that Ms. Singleton was doing well in her treatment and that they had seen improvement in her over the last one and one-half years.

provider to care for C.S. if he were returned to her and she would get whatever training she needed to care for C.S.

The court then requested that C.S.'s guardian ad litem, Valerie McIntyre, be called to testify. Ms. McIntyre testified that reunification with Ms. Singleton was not in C.S.'s best interest. Ms. McIntyre said that C.S.'s behavior could be "very wild" at times and that Ms. Singleton would need a lot of training with C.S. RP at 340. She said that C.S. needed stability and that he needed to stay with Ms. Porter where he had a stable home and structure. Ms. McIntyre said she was concerned with how Ms. Singleton could care for C.S. in addition to continuing her own therapy and treatment.

At the conclusion of the trial, the court found that Ms. Singleton had not shown that she had the "patience, presence of mind, skills, experience, time in a day, and availability" to care for C.S. given his ADHD. Clerk's Papers at 47. The court also found that Ms. Singleton had not shown that her household and lifestyle had the stability and predictability required for C.S.'s well-being, because of the fact that she was required to devote a number of hours each week for her own counseling and self-help sessions. The court also stated that Mr. Auxier's continued sobriety and reliability were a concern. The court concluded the

evidence supported terminating Ms. Singleton's parental rights. This appeal follows.

ANALYSIS

Ms. Singleton contends the court erred by terminating her parental rights. She argues the court's findings of fact were unsupported by the evidence.

Parents have a fundamental right to the care and custody of their children, and a trial court asked to interfere with that right should employ great care. *In re Welfare of H.S.*, 94 Wn. App. 511, 530, 973 P.2d 474 (1999), *cert. denied*, 529 U.S. 1108 (2000). RCW 13.34.180(1) governs the termination of parental rights and sets forth six factors the State must allege and prove in a termination hearing:

- [1] That the child has been found to be a dependant child;
- [2] That the court has entered a dispositional order pursuant to RCW 13.34.130;
- [3] 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;
- [4] That the 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;
- [5] That there is little likelihood that conditions will be remedied so that the child can be returned to the parent in the near future. . . .

[6] That continuation of the parent and child relationship clearly diminishes that child's prospects for early integration into a stable and permanent home.

A 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, 141, 904 P.2d 1132 (1995). Additionally, the trial court must also find by a preponderance of the evidence that termination is in the best interests 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, 286, 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 this court will not judge the credibility of the witnesses or weigh the evidence. *In re Dependency of A.V.D.*, 62 Wn. App. 562, 568, 815 P.2d 277 (1991).

Ms. Singleton first challenges the trial court's findings under RCW 13.34.180(1)(d) that the State provided all services reasonably necessary to correct her parental deficiencies. She first argues (1) that the State had an

affirmative duty to determine her needs and offer her services to address those needs; and (2) that the State should have offered her a psychological assessment and family preservation or home support services.

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, 164, 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 has offered all reasonable services. *In re Welfare of Ferguson*, 32 Wn. App. 865, 869-70, 650 P.2d 1118 (1982), *rev’d on other grounds*, 98 Wn.2d 589, 656 P.2d 503 (1983).

Here, the testimony at trial established that the State offered Ms. Singleton numerous services to address her drug and alcohol problems. Between 2001 and 2004, Ms. Singleton was under the supervision of social workers and was offered chemical dependency treatment at the following facilities: Isabella House, Pioneer West, Evergreen Manor, Tree of Life, and Prosperity House.

The only program she was able to complete during this time, however, was at Evergreen Manor. In 2004, Ms. Singleton was offered in-patient treatment at Sundown Ranch. She completed that program, which the State followed with intensive outpatient counseling by Ferry County Counseling Services. At the time of trial, Ms. Singleton was still participating in these services with Ferry County Counseling.

In February 2004, the State also offered Ms. Singleton a psychological assessment. Ms. Vance testified at trial that Ms. Singleton was not offered an assessment prior to that date, because they were waiting until she was "chemically free" and her mind was "completely clean and cleared up." RP at 50. Ms. Singleton, however, was never offered family preservation or home support services because the State believed that such services would be futile. Mr. Bradburn testified that such services were designed to address parenting skills and skills directed at maintaining a home. He said that such services are offered only when children are at risk for placement or the State is anticipating reunification with parents within 30 days. Ms. Singleton was not offered this service, because she had not addressed her substance abuse problem adequately and reunification was not imminent. Based on the record, there was substantial evidence that the State offered her services to address her needs.

Ms. Singleton also argues that the State failed to provide her with consistent visitation services. Specifically, she refers to Mr. Bradburn and Ms. Vance's testimony that visitation sessions did not occur regularly between Ms. Singleton and C.S. because of "logistical nightmares" and Chemical Dependency Professional, Sarah Bradburn's testimony that three out of six visits were cancelled in 2005.

Generally, "[t]he agency shall encourage the maximum parent and child . . . contact possible, when it is in the best interest of the child, including regular visitation." RCW 13.34.136(1)(b)(ii). Visitation, however, may be limited or denied "if the court determines that such limitation or denial is necessary to protect the child's health, safety, or welfare." *Id.*

Here, according to the record, the only period during which regular visitation sessions did not occur between Ms. Singleton and C.S. was during the time she was in treatment at Evergreen Manor. Mr. Bradburn testified that visitation sessions were restricted at the facility and it was difficult to get C.S. to those visits. Likewise, Ms. Vance testified that it was difficult to get C.S. to Evergreen Manor on a regular basis. However, once Ms. Singleton completed the program at Evergreen Manor and moved into transitional housing at Tree of Life, Ms. Vance testified that it was much easier to facilitate visitation sessions.

Ms. Vance testified that she took C.S. back and forth between Everett and Ferry County to visit Ms. Singleton. She said that the duration of the visits progressed from one overnight to two weeks at a time. Visitation sessions between Ms. Singleton and C.S. then continued into 2005. In fact, Ms. Singleton even testified at trial as to the techniques she used to calm C.S. during visitation sessions and what she did to prepare him to go back to Ms. Porter's home. Although Ms. Bradburn testified that three visits were cancelled in 2005, there is nothing in the record to indicate that the State failed to provide Ms. Singleton with consistent visitation services. The evidence was substantial that Ms. Singleton was offered adequate visitation with C.S.

Ms. Singleton next challenges the court's finding under RCW 13:34.180(1)(e) that there was little likelihood that conditions would be remedied so that C.S. could be returned to her in the near future. She argues that the court's finding that she was not capable of caring for C.S. due to his ADHD diagnosis was unsupported by the evidence, because Mr. Ray testified at trial that she could learn everything necessary regarding ADHD and handle raising C.S.

But at trial, the only testimony presented that specifically indicated that Ms. Singleton could adequately care for C.S. came from Mr. Hickey. Mr. Hickey

testified that he believed that Ms. Singleton and Mr. Auxier could be adequate parents and that they should have the opportunity to do so. He said, however, that he had only seen C.S. in passing when he was with Ms. Singleton and that he was not in any position to make a recommendation as to whether C.S. should stay with his foster parent or go to Ms. Singleton.

Mr. Ray testified that in order to determine whether a parent who had been diagnosed as being "overwhelmed by the complexity of circumstances" would be able to raise C.S., he would have to know more about the parent and to what extent their diagnosis interferes with their ability to raise the child. RP at 108. Mr. Ray said that if the parent had the capacity to learn, he would facilitate the learning process, but that he believed that such a situation would be very challenging and difficult for the parent. He also testified that a parent who has difficulty processing and thinking flexibly could create a significant risk for C.S.'s prognosis and that a parent who is not currently abusing drugs but lives with a partner who does, would not be a good person to provide parenting to a child like C.S.

Mr. Ray said that placing C.S. in an environment that might change the value system that he is familiar with could put him at risk. He said he believed that it was in C.S.'s best interest to remain with Ms. Porter. He said it had been a

positive experience for C.S. to be in Ms. Porter's home and that he had progressed and improved considerably while there.

Moreover, Ms. Vance testified that although Ms. Singleton was capable of providing for her children's physical needs, she did not believe that Ms. Singleton was able to care for C.S.'s psychological and mental health needs. Ms. Vance said she did not think that any amount of training would give Ms. Singleton the strength to cope with C.S.'s behavioral issues. She said that C.S. was doing better on his medication, but that he demanded constant supervision, redirection and attention. She said that when combined with a parent trying to deal with their own issues, such a situation spelled disaster and that she did not want C.S. to have to endure another removal from her home. Based on the testimony at trial, there was little likelihood that the conditions would be remedied so that C.S. could be returned to Ms. Singleton in the near future.

Ms. Singleton next challenges the trial court's finding under RCW 13.34.180(1)(f) that the continuation of the parent and child relationship clearly diminishes the child's prospects for early integration into a stable and permanent home. She argues that she has been sober since November 2004 and that the testimony at trial established that she now had a stable and caring home. She also argues that the State presented no evidence that a change in stability would

occur if she was given more time to obtain additional training to help her address C.S.'s ADHD.

But according to the record, C.S. had been in foster care since 2002 and that in order for him to continue to progress and improve, he needed stability. Although Mr. Bradburn 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, such training would take at least a year or a couple of years and sometimes longer.

Moreover, the State's attempted reunification between Ms. Singleton and C.S. resulted in Ms. Singleton becoming severely stressed by having both of her children. Ms. Singleton admitted when she began outpatient treatment with Ferry County Community Services that what caused her to relapse was having both C.S. and D.A. with her. Based on this evidence, there was substantial evidence to support the trial court's finding.

Ms. Singleton next contends that the State failed to prove that termination of parental rights was in C.S.'s best interests. Although no specific factors are involved in a best interest determination, "each case must be decided on its own facts and circumstances." *A.V.D.*, 62 Wn. App. at 572.

Here, a review of the record discloses that substantial evidence supported the finding that termination was in C.S.'s best interest. Ms. Vance, Mr. Ray and C.S.'s guardian ad litem all stated that it was in C.S.'s best interest to sever his relationship with Ms. Singleton so that he could remain with Ms. Porter and the stable support structure she had created for him. The court thus did not err in finding that termination was in C.S.'s best interests.

CONCLUSION

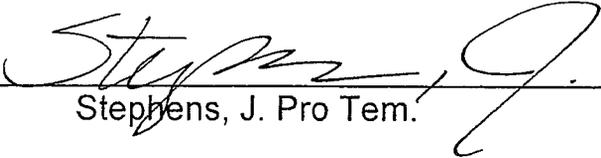
We conclude that the court's finding that Ms. Singleton was provided all services reasonably necessary to correct her parental deficiencies and that continuation of the parent-child relationship diminished C.S.'s prospects of integration into a stable and permanent home were supported by substantial evidence at trial. Based on the evidence presented, the trial court did not err in concluding that termination was in C.S.'s best interests.

Affirmed.

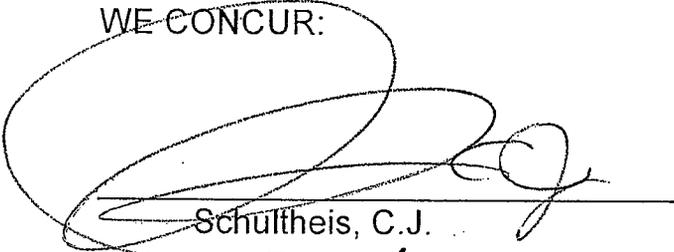
A majority of the panel has determined this opinion will not be printed in

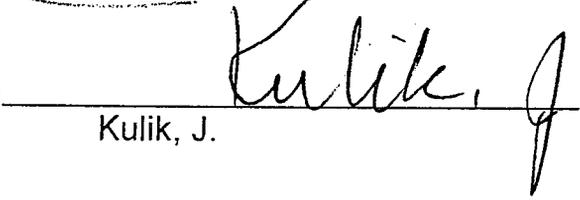
No. 25502-6-III
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the Washington Appellate Reports, but it will be filed for public record
pursuant to RCW 2.06.040.


Stephens, J. Pro Tem.

WE CONCUR:


Schultheis, C.J.


Kulik, J.

