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SUPREME COURT OF THE STATE OF WASHINGTON

In re the Dependency of J.M.R.

DEPARTMENT OF SOCIAL AND HEALTH SERVICES,

Respondent,

v.

JOHN ROUSSEAU,

Appellant.

RESPONSE TO MOTION FOR DISCRETIONARY REVIEW

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 ORIGINAL

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I. INTRODUCTION

John Rousseau is the biological father of eight-year-old J.M.R., who has been in foster care since April 5, 2007. The father's parental rights to J.M.R. were terminated by court order on April 14, 2009. The order of termination entered by way of a stipulation signed by the father on the second day of a trial on a petition to terminate his parental rights. The Court of Appeals correctly held that the trial court had the authority to accept the father's stipulation to termination of his parental rights where he acted knowingly, intelligently, and voluntarily. That decision does not involve a significant question of law under the state or federal constitution and does not raise an issue of substantial public interest that warrants review by this Court.

II. IDENTITY OF RESPONDENT

The Department of Social and Health Services is the Respondent in this appeal. DSHS asks the Court to deny review of the decision designated in Part III.

III. DECISION BELOW

The Court of Appeals affirmed the order terminating the father's parental rights in a published decision filed April 4, 2011. A copy of the ruling is attached as Appendix A. The father is unable to demonstrate that

review should be granted under RAP 13.4(b) and therefore DSHS asks this Court to deny review.

IV. ISSUES PRESENTED

1. Does a parent suffer prejudice when his direct appeal of a termination of parental rights order is dismissed for failure to perfect it, but in the appeal of a subsequent, separate order the Court of Appeals decides the merits of the issue the parent would have raised in his direct appeal had it not been dismissed?

2. Under RCW 13.34.180, when a parent executes a knowing, intelligent and voluntary stipulation to facts and agrees to an order terminating his parental rights, does the trial court have the authority pursuant to RCW 13.34.180 to accept the stipulation and entry into such an agreed order?

V. STATEMENT OF THE CASE

J.M.R. was born July 12, 2002, and is currently eight years old. CP at 276. The child was removed from his parents' home and placed in protective custody on April 5, 2007; he has not lived with either parent since. Ex. 3. On April 10, 2007, the Department of Social and Health Services (DSHS) filed a petition in Snohomish County Superior Court, Juvenile Division, alleging J.M.R. was a dependent child due to neglect and domestic violence in the family home. CP at 277, 278. On September 6, 2007, following a contested fact-finding hearing, the juvenile court

entered an order as to the father finding that J.M.R. was a dependent child as defined by RCW 13.34.030(6)(b) and (c).¹ Ex. 11. A dispositional order was entered that same date placing the child in foster care and ordering remedial services for the father. *Id.*

On April 16, 2008, DSHS filed a petition to terminate both parents' legal rights to J.M.R. CP at 276. The termination trial was initially set for September 15, 2008, but was continued to October 22, 2008, and then to January 12, 2009. CP at 231-32, 261-62. Trial was continued again from January 12, 2009, to March 23, 2009. CP at 224-225. On March 23, 2009, the father filed a dependency guardianship petition. CP at 173-76. The petition asserted the existence of five of the elements of the termination statute, RCW 13.34.180(1)(a) through (1)(e), but asked that the child's then-current placement be appointed as dependency guardian rather than allowing the child to be adopted. CP at 175.

The termination trial began on April 13, 2009. Immediately prior to the commencement of the trial, the trial court accepted the mother's relinquishment of her parental rights. CP at 132-35. On the afternoon of the second day of trial, the father entered into a stipulation of facts and agreed to an order terminating his parental rights. CP at 136-139. Before

¹ RCW 13.34.030(6)(b) defines a dependent child as a child who "is abused or neglected as defined in chapter 26.44 RCW by a person legally responsible for the care of the child." RCW 13.34.030(6)(c) defines a dependent child as a child who "has no parent, guardian, or custodian capable of adequately caring for the child, such that the child is in circumstances which constitute a danger of substantial damage to the child's psychological or physical development."

accepting the stipulation and agreed order, the trial court conducted a lengthy colloquy with the father. 1RP at 3-10.² After an extensive inquiry, the trial court found that the father entered into the stipulation of facts and agreed order terminating his parental rights knowingly, intelligently, and voluntarily, and that he was not acting under fraud or duress. 1RP at 8-9. The trial court accepted and approved the stipulation and the agreed order terminating the father's parental rights. 1RP at 9.

On May 14, 2009, the father filed a Notice of Appeal seeking review of the order terminating his parental rights as a matter of right pursuant to RAP 2.2(a)(6). CP at 91-95. On May 27, 2009, the Court of Appeals scheduled a hearing on the status of the appeal as the father had not filed proof of service, an order of indigency, a statement of arrangements, or a designation of clerk's papers. Slip Op. at 6-7. At a subsequent hearing on July 10, the father's attorney explained the father planned to file a motion to vacate the stipulation and agreed order. *Id.* at 7. The father was granted additional time to perfect his appeal. *Id.* at 7-8.

On October 8, 2009, the father filed a CR 60 motion with the trial court seeking to withdraw his earlier stipulation and vacate the agreed order that terminated his parental rights. CP at 66-79. The motion was heard on November 18, 2009. 2RP at 1-16. The trial court again found that the father's earlier stipulation was knowing, intelligent, and voluntary,

² References to the Verbatim Report of Proceedings follows the convention used by the father. There are 2 volumes referenced herein as follows: "1RP" for April 14, 2009, and "2RP" for November 18, 2009.

and denied the motion to withdraw the stipulation and vacate the agreed order terminating the father's parental rights. 2RP at 1-16; CP at 19-20.

On December 8, 2009, the Court of Appeals dismissed the father's May 2009 appeal for failure to comply with RAP 18.13A. Slip Op. at 9.

On December 17, 2009, the father filed an appeal of the trial court's order denying his CR 60 motion. CP at 4-7. Although he appealed the order denying his CR 60 motion to vacate the stipulation and agreed order terminating his parental rights, the father argued instead that the trial court lacked the authority to accept his stipulation absent express statutory authority. Brief of Appellant (BOA) at 7-20. The Court of Appeals rejected the father's argument, holding that trial courts have the authority to accept the stipulation of a party and enter a judgment by consent. Slip Op. at 13-15.

VI. STANDARD OF REVIEW

A decision by the court of appeals on accelerated review of an order terminating parental rights is subject to review by the Supreme Court only by a motion for discretionary review in accordance with RAP 13.5A. RAP 18.13A(j). The Supreme Court will apply the considerations set out in RAP 13.4(b). RAP 13.5A(b). Discretionary 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 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.

RAP 13.4(b).

The father seeks review under RAP 13.4(b) criteria (3) and (4). As shown below, the issues he raises do not meet any of the criteria. The motion for discretionary review should be denied.

VII. ARGUMENT WHY REVIEW SHOULD BE DENIED

A. The Court Of Appeals Decided The Merits Of The Father's Argument That The Trial Court Lacked Authority To Accept A Stipulation Under The Termination Of Parental Rights Statute.

The father urges this Court to reinstate his direct appeal of the order terminating his parental rights, which the Court of Appeals dismissed in December 2010. Motion for Discretionary Review at 10-18. He argues that the dismissal of his direct appeal denied him effective assistance of counsel and due process of law. *Id.* at 11-13, 17. However, the father candidly admits that if the direct appeal were reinstated, he would not challenge any of the facts contained in the stipulation that support the agreed order terminating his parental rights. *Id.* at 14. Instead, his challenge would be limited to the “the legal authority of the trial court to accept the stipulation in an involuntary termination proceeding.” *Id.*

He does not show that this issue warrants review by this Court pursuant to any of the criteria set forth in RAP 13.4(b).

The father has failed to articulate any facts to show that he has been denied due process or that he was otherwise prejudiced by the dismissal of the appeal of the agreed order terminating his parental rights. Significantly, he fails to even acknowledge that he has been heard on the issue of whether the trial court had authority to accept a stipulation under RCW 13.34.180, and fails to acknowledge or otherwise recognize that he received a decision on the merits of that issue. Given that a significant portion of his motion for discretionary review to this Court is devoted to arguing that the Court of Appeals erred when it ruled a trial court had such authority, his contention that he has not been heard on the issue is specious at best.

The father filed a 30 page opening brief with the Court of Appeals. The majority of that brief is devoted to the argument he raises with this Court, that absent specific statutory authority a trial court cannot accept a stipulation in an involuntary termination of parental rights proceeding. *See* Brief of Appellant (BOA) at 7-20. This is the same issue the father states he would raise if his direct appeal were reinstated. Mot. at 14.³

³ In its decision, the Court of Appeals noted that this issue was raised for the first time on appeal. Slip Op. at 10. Nevertheless, the Court of Appeals proceeded to

However, the Court of Appeals addressed the merits of this argument. Further, it reviewed the issue de novo by analyzing whether the trial court had the authority to accept the stipulation in the first instance and not whether it abused its discretion in doing so. Slip Op. at 10-14.

The Court of Appeals rejected the father's argument, holding that trial courts have the authority to accept the stipulation of a party. Slip Op. at 12-13. It noted, however, that given the nature of the rights at stake, the trial court was required to take particular care to ensure the stipulation was entered into knowingly, intelligently and voluntarily. *Id.* at 13. The Court of Appeals concluded the record established this standard had been met. *Id.* The decision goes on to conclude, "We reject Rousseau's argument that without express statutory authority, the [trial] court could not accept a stipulation to terminate his parental rights entered into knowingly, intelligently, and voluntarily, and affirm." *Id.* at 14.

The father suffered no prejudice when the Court of Appeals dismissed the appeal of the agreed termination order for failure to perfect it. In his appeal of the order denying his CR 60 motion, the father argued that the trial court lacked authority to accept his stipulation and the agreed order terminating his parental rights. The Court of Appeals considered the merits of his argument and applied the same standard of review it would

decide the merits of the claim, presumably because the father challenged the jurisdiction and authority of the trial court. *See* RAP 2.5(a).

have applied had the direct appeal been perfected. The father has been heard on the merits of the issue he would have raised in his direct appeal and has suffered no prejudice. He presents no significant question of constitutional law, and raises no issue of substantial public interest. The motion for discretionary review should be denied.

B. A Trial Court Has Authority To Accept Stipulations And Agreed Orders Terminating Parental Rights Pursuant To RCW 13.34.180.

The father contends that absent specific legislative authority set forth in RCW 13.34.180 and/or RCW 13.34.190, a trial court has no authority to accept a stipulation in a termination of parental rights proceeding. Mot. at 5-9. Absent specific authority to support his position, the father cites to general rules of statutory construction. Mot. at 6-8. He further argues that the stipulation and agreed order of termination he signed really amounted to a voluntary relinquishment pursuant to chapter 26.33 RCW without the waiting period mandated by that statute. *Id.* at 8-9. The father makes no argument or showing as to how these issues mandate review by this court pursuant to RAP 13(b). Regardless, his arguments are without merit.

1. A Trial Court Has Authority To Accept Stipulations And Agreed Orders Provided They Are Entered Into Knowingly, Voluntarily, And Intelligently.

The trial court's general authority to enter orders based on stipulation is well established. "It is well recognized that a judgment may be entered by consent or stipulation of the parties." *Smyth Worldwide Movers, Inc., v. Whitney*, 6 Wn. App. 176, 179, 491 P.2d 1356 (1971), citing *Washington Asphalt Co. v. Harold Kaeser Co.*, 51 Wn.2d 89, 316 P.2d 126 (1957). "The courts look upon stipulations with favor, and, as a rule, will enforce all stipulations of parties or their attorneys for the government of their conduct or the control of their rights in the trial of a cause or the conduct of litigation." *Id.* at 178.

Stipulations are governed by both court rule and statute. The civil rules provide:

No agreement of the parties or attorneys in respect to the proceedings in a cause, the purport of which is disputed, will be regarded by the court unless the same shall have been made and assented to in open court on the record, or entered in the minutes, or unless the evidence thereof shall be in writing and subscribed by the attorneys denying the same.

CR 2A.

Similarly, an attorney has the authority to bind a client in an action by his agreement duly made provided "such agreement or stipulation be made in open court, or in the presence of the clerk, and entered in the minutes by him, or signed by the party against whom the same is alleged, or his attorney." RCW 2.44.010(1).

A stipulation entered in compliance with CR 2A and RCW 2.44.010 is binding on the parties. *Baird v. Baird*, 6 Wn. App. 587, 589, 494 P.2d 1387 (1972). Adherence to the procedures set forth in the court rule and the statute ensures that the rights of the parties are protected. There is nothing in CR 2A or RCW 2.44.010—or any other court rule or statute—that limits or prohibits the use of stipulations in termination of parental rights proceedings.

In this case, the stipulation entered by the father complied with all of the provisions of CR 2A and RCW 2.44.010 and were properly accepted by the trial court. The stipulation was made on the record, entered in open court, and signed by both the father and his attorney. CP 136-139; 1RP 13. The trial court questioned the father extensively to make sure his stipulation that the elements of RCW 13.34.180 and RCW 13.34.190 were met was made knowingly, voluntarily, and intelligently and that he had full knowledge of the consequences of the stipulation and the agreed order terminating his parental rights. 1RP 3-10. The trial court fulfilled its obligation to ascertain that the parties and counsel understood the stipulation, and then implemented their agreement. *See Baird* at 589-90.

The trial court had authority under court rule, statute, and established precedent to accept the father's stipulation and to enter an agreed order terminating his parental rights. This case presents no significant question of constitutional law and raises no issue of substantial public interest, and thus review should be denied.

2. The Legislature Did Not Limit The Trial Court's Authority When It Amended The Dependency Fact-Finding Statute In 2001.

The father argues the trial court lacked the authority to accept his stipulation because there is no specific provision in chapter 13.34 RCW that allows it. Mot. at 5-7. The father attempts to distinguish the plain language of CR 2A and RCW 2.44.010 that specifically authorize stipulations by arguing that the rule and statute “must give way to the legislature’s contrary intent.” Mot. at 7. However, he cites to no provision in the termination statutes, RCW 13.34.180 and RCW 13.34.190, that express a contrary legislative intent. Instead, he notes the statute that governs dependency fact-finding hearings contains provisions relating to the process for entry of stipulations and agreed orders. *Id.* Therefore, he argues, because the termination statute does not contain similar provisions the legislature could not have intended to allow stipulations in termination proceedings. *Id.* His argument has no basis in law and is without merit.

The father essentially asks this court to redraft the language of the termination statute. “Courts may not read into a statute matters that are not in it and may not create legislation under the guise of interpreting a statute.” *Kilian*, 147 Wn.2d at 21. That is precisely what the father asks this court to do. There is nothing in the language of RCW 13.34.180 or RCW 13.34.190 that limits a trial court’s ability to accept a stipulation and agreed order. There is nothing in either statute that prevents the parties

from agreeing to settle a termination fact-finding mid-trial or that prevents the trial court from accepting that settlement, which is what happened here. The father advocates for a sweeping limitation on the ability of parties to litigation to settle their disputes. His theory in this case runs contrary to the accepted authority of trial courts and the specific provision of CR 2A and RCW 2.44.010.

Further, the father's argument implicitly presumes a trial court has no authority to accept a stipulation or agreed order in any phase of a dependency proceeding absent specific legislative authorization. This presumption defies logic. There is nothing in the dependency statute, chapter 13.34. RCW, or the juvenile court act, chapter 13.04 RCW, to show that the legislature intended to confer more limited authority on the superior court in juvenile proceedings than in other proceedings within its jurisdiction. It is notable that the father does not argue that the general authority of a superior court to accept stipulations and agreed orders is limited; he only argues that the superior court's authority in juvenile cases is so circumscribed. The father cites no authority for such a proposition, and none exists.

The father's view of the dependency scheme is inconsistent with the express legislative intent in adopting the statute. Dependency proceedings are remedial, non-adversarial proceedings designed to help parents alleviate parental deficiencies and reunify families. *In re Dependency of Schermer*, 161 Wn.2d 927, 943, 169 P.3d 452 (2007). The goal of the dependency process has always been to determine the course of

action that serves the best interests of the child. *In re Ashauer*, 93 Wn.2d 689, 695, 622 P.2d 1245 (1980). Further, children have the right to a speedy resolution of a dependency proceeding. RCW 13.34.020.

Yet, under the father's theory of the statutory scheme, these purposes would be frustrated. It also leads to absurd and strained consequences, a result this Court is bound to avoid. *State v. Hall*, 168 Wn.2d 726, 737, 230 P.3d 1048 (2010); *Kilian v. Atkinson*, 147 Wn.2d 16, 21, 50 P.3d 638 (2002). The rigid application of the statute advocated by the father means the trial court can accept no stipulation or agreed order of the parties in any phase of a dependency proceeding absent specific statutory authorization. There could be no agreement between the parties as to the need for out-of-home placement at a shelter care hearing held pursuant to RCW 13.34.065, no agreement as to the form of orders in dependency review or permanency planning hearings held pursuant to RCW 13.34.138 and RCW 13.34.145, and no agreed orders entered pursuant to the former guardianship dependency statute, RCW 13.34.232. None of these statutes specifically allow for stipulations or the entry of agreed orders. The end result would be more litigation, increased delay, and would frustrate the purposes of the legislature when it adopted the dependency statute.

The amendments to RCW 13.34.110 relied upon by the father in support of his argument did not reflect a significant change in the legal standards for stipulations or agreed orders. In 2001, RCW 13.34.110 was amended to specifically recognize that a parent may waive his right to a

fact-finding by stipulating or agreeing to an order of dependency. Laws of 2001, ch. 332, sec. 7, p. 1694-95. The amendment provided that the stipulation is subject to court approval, that the parent or his attorney must appear before the court, that the court must establish the parent understood the terms of the order and its potential consequences, and that the court establish that the stipulation was entered into knowingly and willingly, and without duress or fraud. *Id.* See also RCW 13.34.110(3). The 2001 amendments to RCW 13.34.110 did not establish new authority for the juvenile court. Instead, they made explicit in RCW 13.34.110 the then-existing requirements for stipulations pursuant to CR 2A and RCW 2.44.010.

Also implicit in the father's argument is a contention that, prior to the 2001 amendment to RCW 13.34.110, a juvenile court had no authority to accept an agreed order of dependency. This is not the case. There are numerous published appellate cases that note in their procedural histories the entry of agreed orders of dependency prior to 2001. See e.g. *In re Dependency of J.S.*, 111 Wn. App. 796, 46 P.3d 273 (2002) (child placed with relative in 2000 following agreed order of dependency); *In re J.W.*, 111 Wn. App. 180, 43 P.3d 1273 (2002) (1999 agreed order of dependency); *In re Welfare of H.S.*, 94 Wn. App. 511, 973 P.2d 474 (1999) (termination proceeding where children were found dependent by agreed order); *In re Dependency of A.C.*, 74 Wn. App. 271, 873 P.2d 525 (1994) (challenge to contested disposition order following entry of agreed order of dependency); *Krause v. Catholic Comm. Services*, 47 Wn. App.

734, 738 n. 2, 737 P.2d 280 (1987), *review denied*, 108 Wn.2d 1035 (1987) (agreed order establishes dependency by more than a preponderance of the evidence); *In re Welfare of Dodge*, 29 Wn. App. 486, 628 P.2d 1343 (1981) (termination proceeding where children were found dependent by agreed order).

The father makes no argument or showing as to how this issue mandates review by this court pursuant to RAP 13(b). The father raises no significant question of constitutional law and presents no issue of substantial public interest. The motion for discretionary review should be denied.

3. The Procedures For Voluntary Relinquishment of Parental Rights Under The Adoption Statute Are Not Applicable To Termination Proceedings Under The Dependency Statute.

The father also argues that a voluntary surrender of parental rights is only possible through the voluntary relinquishment provisions of the adoption statute, chapter 26.33 RCW. Mot. at 6-8. *See* RCW 26.33.080. He contends that the stipulation and agreed order at issue here was really a voluntary relinquishment without the procedural protections afforded by the adoption statute. Mot. at 8. He implicitly argues that the trial court should have refused to accept a stipulation and agreed order under RCW 13.34.180, and should have insisted on a voluntary relinquishment under RCW 26.33.080. *Id.* at 8-9.

The father's argument obscures the different purposes and policies served by the dependency statute and the adoption statute. As noted

above, dependency proceedings are remedial proceedings intended to help parents alleviate parental deficiencies and to keep families intact. *Schermer*, 161 Wn.2d at 943; *In re Dependency of A.W.*, 53 Wn. App. 22, 27-28, 765 P.2d 307 (1988); RCW 13.34.020. Termination of parental rights proceedings under RCW 13.34.180 are instituted when efforts to correct parental deficiencies have failed, the parent is unfit, and reunification within the foreseeable future is not possible. *In re Welfare of A.B.*, 168 Wn.2d 908, 919-20, 232 P.3d 1104 (2010); *A.W.* at 28. While a dependency finding means that the parent has fallen below minimal parenting standards such that remedial intervention is warranted, the standards for termination require a showing that continuing the parent-child relationship would result in harm to the child. *See In re Welfare of C.B.*, 134 Wn. App. 336, 344-45, 139 P.3d 1119 (2006); *In re Dependency of I.J.S.*, 128 Wn. App. 108, 118, 114 P.3d 1215 (2005).

In contrast, the adoption statute, chapter 26.33 RCW, was intended by the legislature to provide stable homes for children and to provide an efficient process for the adoption of children, not the preservation of the family unit. RCW 26.33.010. Thus, unlike the dependency statute, the focus is not on protecting children from abuse or neglect nor on providing remedial services to parents. The adoption statute provides two separate procedures for terminating parental rights, each initiated by the filing of a petition: voluntary termination through relinquishment pursuant to 26.33.080-090, and involuntary termination pursuant to RCW 26.33.100-120. *See also In re Dependency of M.S.*, 156 Wn. App. 907, 913-14, 236

P.3d 214 (2010). Petitions for both procedures may be filed before a child is even born. RCW 26.33.080(3); RCW 26.33.100(3). In either case, a hearing on the petition may not be held sooner than 48 hours following the signing of a consent to adoption or the birth of the child. RCW 26.33.090(1); RCW 26.33.110(1). There is no requirement that current parental unfitness be shown before a parent may voluntarily relinquish parental rights.

Here, the father's stipulation and agreement to termination of his parental rights was taken in the context of a termination proceeding under RCW 13.34.180. After a day-and-a-half of testimony against him, the father decided to concede that the state would prove current parental unfitness and would terminate his parental rights. He made a knowing, intelligent and voluntary decision to stipulate to the facts DSHS would have proved and enter into an agreed order. His decision is all the more reasonable given that prior to trial he filed a petition to have a dependency guardian appointed for J.M.R., thereby conceding five of the elements required for termination, and requested that the child remain placed with the prospective adoptive parent. CP 173-176.

John Rousseau makes no argument or showing as to how this issue mandates review by this court pursuant to RAP 13(b). He raises no significant question of constitutional law and presents no issue of substantial public interest. The motion for discretionary review should be denied.

VIII. CONCLUSION

As the father fails to satisfy any basis for review under RAP 13.4(b), DSHS respectfully requests that the Supreme Court deny his motion for discretionary review.

RESPECTFULLY SUBMITTED this 23rd day of June, 2011.

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APPENDIX A

Court of Appeals Ruling – Published in Part Opinion

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

In the Matter of the Dependency of:
J.M.R., b.d. 07/12/02

A minor child,

JOHN CHARLES ROUSSEAU,

Appellant,

v.

STATE OF WASHINGTON,
DEPARTMENT OF SOCIAL AND
HEALTH SERVICES,

Respondent.

) No. 64711-3-I

) PUBLISHED IN PART OPINION

) FILED: April 4, 2011

Schindler, J. — On the second day of trial, John Charles Rousseau entered into a stipulation to terminate his parental rights to his son J.M.R. After an extensive colloquy, the court found Rousseau's decision was knowing, intelligent, and voluntary, and entered the order terminating Rousseau's parental rights to J.M.R. Rousseau appeals the order denying his CR 60(b) motion to vacate the stipulation and the order terminating his parental rights, arguing that the court did not have the statutory authority to accept the stipulation. We hold that the court had the authority to accept

the stipulation in a termination where the court ensures the parent knowingly, intelligently, and voluntarily enters into a stipulation to terminate parental rights. In the unpublished portion of the opinion we conclude Rousseau cannot establish ineffective assistance of counsel, and affirm.

FACTS

Dependency Petition

J.M.R. was born on July 12, 2002. Angelique Porter is his mother. John Rousseau is his father. Porter and Rousseau have an extensive history of drug abuse and domestic violence. Rousseau used methamphetamine and cocaine for at least 25 years, and has several convictions for domestic violence assault and violations of domestic violence no contact orders. Both Rousseau and Porter have a communicable terminal illness.

Child Protective Services (CPS) began receiving reports of neglect of J.M.R. by his parents in 2004. In September 2005, J.M.R.'s maternal grandmother in California filed a petition to be appointed the guardian of J.M.R. and his two half brothers. But after the court granted her guardianship petition, the grandmother immediately returned three-year-old J.M.R. to his parents.

In March 2006, CPS received a referral expressing concern about J.M.R.'s well-being and unsanitary conditions in the home. The referral states that Rousseau was taken to the hospital by the paramedics due to confusion. The referral describes the unsanitary condition of the apartment and concern that even though three-year-old J.M.R. had bronchitis, his parents continued to smoke in his presence.

Cigarette butts were everywhere, spilling out of ashtrays and all over the

floor. . . . Piles of garbage and dirty clothes made it difficult for paramedics to maneuver through the apartment. Bedroom doors were difficult to open due to all the stuff piled around. Old food was on the floor and coffee table. Unsanitary items were within easy reach of [J.M.R.]

On April 5, 2007, at the conclusion of a hearing on Parker's request for a no contact order against Rousseau, a Snohomish County Superior Court Commissioner ordered CPS to place J.M.R. in protective care. Porter testified at the hearing that Rousseau assaulted her, choked her, and threatened to kill her.

On April 10, the Washington State Department of Social and Health Services (DSHS) filed a dependency petition. The petition alleged J.M.R. was abused or neglected and has no parent or guardian capable of adequately caring for him. The petition states that Porter and Rousseau had only sporadically parented J.M.R. and the maternal grandmother would not "ever parent [J.M.R.] herself." Rousseau was represented by appointed counsel at the initial shelter care hearing on April 10. The same attorney represented Rousseau throughout the proceedings.

An order of dependency as to Porter was entered on July 10. At the fact-finding hearing on September 6, the court found J.M.R. dependent as to Rousseau. The order states, in pertinent part:

The father has not consistently parented the child, or provided for the child's needs. The father has acknowledged that he has a life-threatening illness for which he is frequently hospitalized. He is not available to be a placement resource for the child by his own admission. The child's legal guardian has indicated that she is too old to care for the child.

The disposition orders required DSHS to offer services to Porter and Rousseau. The court ordered Rousseau to obtain domestic violence and drug treatment assessments and follow all treatment recommendations.¹

Petition to Terminate Parental Rights

On April 16, 2008, DSHS filed a petition to terminate the parental rights of Porter and Rousseau. DSHS alleged that all necessary services capable of correcting parental deficiencies in the foreseeable future were offered but the parents failed to meaningfully engage in services or substantially address their parental deficiencies. The termination trial was initially scheduled for March 23, 2009, but at Rousseau's request the court continued the trial to April 13.

On March 23, Rousseau filed a dependency guardianship petition. In the dependency guardianship petition Rousseau admits DSHS had offered all services capable of correcting his parental deficiencies and there was "little likelihood that conditions will be remedied so the child can be returned" in the foreseeable future. The petition states, in pertinent part:

- (a) The child has been found to be a dependent child under RCW 13.34.030.
- (b) A dispositional plan has been entered pursuant to RCW 13.34.130.
- (c) 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 under RCW 13.34.030.
- (d) The services ordered under RCW 13.34.030 and 13.34.136 have been offered or provided and all necessary services reasonably available, capable of correcting the parental deficiencies within the foreseeable future have been offered or provided by a preponderance of the evidence related to the child's dependency case.
- (e) There is little likelihood that conditions will be remedied so the child can be returned to the parents in the near future by a preponderance of the evidence related to the child's dependency case.
- (f) A guardianship rather than termination of the parent-child relationship or continuation of the child's current dependent status

¹ The court also ordered random urinalysis and parenting classes.

would be in the best interest of the child.

At the time of the trial on April 13, J.M.R. was six-years-old and he had been living with the same foster family for more than a year. At the beginning of trial, Porter agreed to relinquish her parental rights to J.M.R. and agreed to an open adoption agreement with the foster parents that allowed her two visits a year with J.M.R.

On the first day of trial, the court heard testimony from Porter, Rousseau, and his drug treatment provider. The next morning, DSHS presented the testimony of a domestic violence treatment provider and the DSHS visitation supervisor. Following a recess to discuss settlement, Rousseau agreed to enter into a stipulation and order voluntarily terminating his parental rights to J.M.R. In exchange, DSHS and the adoptive parents agreed to an open adoption agreement that allowed Rousseau four visits a year.

After the stipulation was prepared, Rousseau insisted on striking the phrase: "[A]ll of my parental rights to [J.M.R.] be permanently terminated," and inserted: "[J.M.R.] be placed with the family where he is currently living permanently." Thereafter, Rousseau signed and dated the stipulation. The stipulation provides, in pertinent part:

3. The court has found [J.M.R.] to be dependent pursuant to RCW 13.34.030(5), and the court has entered a Dispositional Order pursuant to RCW 13.34.130 which was filed on September 6, 2007.

4. [J.M.R.] has been removed from my custody for a period of at least six months pursuant to a finding of dependency under RCW 13.34.030(5).

5. The services ordered under RCW 13.34.136 have been expressly and understandably offered or provided to me and all necessary services, reasonably available, capable of correcting my parental deficiencies within the foreseeable future have been expressly and understandably offered or provided to me.

6. There is little likelihood that conditions will be remedied so that the child can be returned to me in the near future.

7. Continuation of the parent and child relationship clearly diminishes the child's prospects of early integration into a stable and permanent home.

8. I realize that it is in the best interest of the above-named child that [J.M.R.] be placed with the family where he is currently living permanently.

9. I understand that the legal effect of this voluntary termination of my parental rights to the above-named child will be to divest me of all legal rights and obligations with respect to the child except for past due child support obligations. I also understand that the child will be freed from all legal obligations with respect to me, and shall be, for all legal purposes, the child, legal heir, and lawful issue of the adoptive parents, entitled to all rights and privileges, including the right of inheritance, the right to take under testamentary disposition and subject to all obligations of a child of such adoptive parents as if born to such adoptive parents.

~~The court engaged in an extensive inquiry on the record with Rousseau to~~
ensure he was entering into the stipulation knowingly, intelligently, voluntarily, and without duress. At the conclusion of the colloquy, the court found that Rousseau entered into the stipulation to terminate his parental rights "freely, knowingly, intelligently and voluntarily." The April 15 order terminating Rousseau's parental rights also states:

The court having reviewed and accepted the foregoing Stipulation and finding that the Stipulation for termination of the parental rights of John Michael Rousseau in and to [J.M.R.] was executed by him voluntarily and not under fraud or duress.

First Appeal and Motion to Vacate

On May 14, Rousseau filed a notice of appeal of the "Stipulation and Order on Termination of Parent-Child Relationship Regarding Father" entered on April 15. On May 27, this court scheduled a hearing on the status of the appeal because Rousseau

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had not filed proof of service, an order of indigency, a statement of arrangements, or a designation of clerk's papers.

At the hearing on July 10, Rousseau's attorney explained that Rousseau planned to file a CR60(b) motion to vacate the stipulation and order of termination to be heard by the trial court. The commissioner's ruling states that "[i]n these unusual circumstances additional time should be allowed especially to obtain a decision on the pending motion to vacate," and ordered the motion "set over . . . to allow appellant to pursue his pending motion to vacate in the trial court and obtain a formal ruling on his pending motion for an order of indigency."

On October 8, Rousseau filed the CR 60(b) motion to withdraw his stipulation and vacate the order terminating parental rights. In support, Rousseau and his attorney submitted declarations. In his declaration, Rousseau said that he was confused and did not understand the consequences of entering into the stipulation. Rousseau also states that he was coerced into signing the stipulation and discussed filing an appeal with his attorney.

I began to understand what I had done and I talked to my attorney and told him that the State did not have the right to take my son and that I did not understand that I was giving up my rights to him voluntarily. I told him that I felt coerced into signing the documents and we discussed appealing the stipulation.

The attorney states in his declaration that Rousseau should have entered into a voluntary relinquishment rather than a stipulation to terminate parental rights.

Following an October 21 hearing in this court on the status of the pending appeal, the commissioner ruled that "[i]n view of [counsel's] explanation, counsel shall

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have until November 18, 2009 to file the proof of service, an order of indigency or the filing fee, a designation of clerk's papers, and a statement of arrangements. If these steps are not accomplished by November 18, the appeal may be dismissed."

On November 18, the trial court heard argument on Rousseau's motion to vacate the stipulation and order terminating parental rights under CR 60(b)(3), (4), and (11).² Rousseau argued that his health had improved over the six months since trial, that DSHS had not followed through with the open adoption agreement, and that DSHS convinced him to sign the stipulation. DSHS argued that Rousseau could not show he was entitled to withdraw his stipulation based on newly discovered evidence, misrepresentation or misconduct of DSHS, or extraordinary circumstances. DSHS pointed out that Rousseau's long-term prognosis had not changed since the time of trial, that the later dispute between Rousseau and DSHS over visitation did not establish misconduct or misrepresentation, and that Rousseau understood the consequences of entering into the stipulation.

The court denied the motion to vacate. The court ruled that Rousseau entered into the stipulation to terminate his parental rights knowingly, intelligently, and voluntarily. The court explained:

From the standpoint of Mr. Rousseau, when I was going through the colloquy with him, he did indicate that he was afraid to lose his parental rights and he didn't want to lose complete contact with his son. I went through the colloquy with him over and over and over again so I would be assured that he was making that decision knowingly,

² CR 60(b)(3) authorizes a court to vacate a judgment on the basis of newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under rule 59(b). Go2Net, Inc. v. C I Host, Inc., 115 Wn. App. 73, 88, 60 P.3d 1245 (2003). CR 60(b)(4) provides for relief from a judgment if fraud, misrepresentation or other misconduct by an adverse party prevented the moving party from "fully and fairly presenting its case or defense." Lindgren v. Lindgren, 58 Wn. App. 588, 596, 794 P.2d 526 (1990). CR 60(b)(11) is confined to extraordinary circumstances that are substantial deviations from a prescribed rule. In re Marriage of Furrow, 115 Wn. App. 661, 673-74, 63 P.3d 821 (2003).

intelligently and voluntarily. Now, whenever he raised a question, I basically took a step back to assure myself that he understood what the issue was and that he was making his choice voluntarily. . . . [I]t is clear to me that at no time did Mr. Rousseau ever indicate any confusion, any coercion, any duress, any claim that somehow you provided him with improper counsel in relation to the case. It's not there.[³]

The written order denying Rousseau's motion to withdraw his stipulation and to vacate the order terminating his parental rights under CR 60(b) specifically states, "Based on the court's review of colloquy and State's argument the court finds that Mr. Rousseau's stipulation was knowing, intelligent, and voluntary." At the conclusion of the hearing, the trial court agreed to sign an order of indigency and waiver of the fee for appeal.

~~On December 8, this court dismissed Rousseau's appeal of the stipulation and order terminating parental rights because Rousseau did not comply with the requirements to proceed with the appeal, including filing the order of indigency.~~

On December 17, Rousseau filed a notice of appeal of the order denying his CR 60(b) motion to withdraw his stipulation and vacate the order terminating parental rights.

ANALYSIS

Rousseau only appeals the order denying his CR 60(b) motion to withdraw the stipulation and vacate the order terminating his parental rights. But Rousseau does not argue that the trial court abused its discretion in denying the CR 60(b) motion to

³ The court also disagreed that Rousseau's counsel provided ineffective assistance. The court stated:

It's clear that you feel bad in relation to what the result was in this case and you're partially blaming yourself, which, frankly, I think that a blame on yourself is misguided. I don't think that you did anything inappropriate in this case.

withdraw and vacate the order terminating his parental rights.⁴ Nor does Rousseau assign error to the finding that he entered into the stipulation knowingly, intelligently, and voluntarily.⁵ Instead, for the first time on appeal, Rousseau asserts that the trial court did not have the authority to accept a stipulation to terminate parental rights. Based on the statutory requirements under RCW 13.34.110(3) that are necessary in order to accept a stipulation in a dependency fact-finding, Rousseau argues the court could not accept a stipulation to terminate parental rights under former RCW 13.34.180 (2001)⁶ and former RCW 13.34.190 (2000).⁷

RCW 13.34.110 addresses the procedure for determining whether a child is dependent. In 2001, the legislature amended RCW 13.34.110 to include requirements necessary in order to accept a parent's stipulation to an agreed order of dependency.⁸

As amended, RCW 13.34.110 provides, in pertinent part:

(3)(a) The parent, guardian, or legal custodian of the child may waive his or her right to a fact-finding hearing by stipulating or agreeing to the entry of an order of dependency establishing that the child is dependent within the meaning of RCW 13.34.030. The parent, guardian, or legal custodian may also stipulate or agree to an order of disposition pursuant to RCW 13.34.130 at the same time. Any stipulated or agreed order of dependency or disposition must be signed by the parent,

⁴ We review a court's decision under CR 60(b) for abuse of discretion. In re Marriage of Tang, 57 Wn. App. 648, 653, 789 P.2d 118 (1990). We will not overturn the decision unless the trial court exercised its discretion on untenable grounds or for untenable reasons. Tang, 57 Wn. App. at 653. An appeal from the denial of a CR 60(b) motion is not a substitute for an appeal and is limited to the propriety of the denial, not the impropriety of the underlying order. Bjurstrom v. Campbell, 27 Wn. App. 449, 450-51, 618 P.2d 533 (1980).

⁵ Unchallenged findings of fact are considered verities on appeal. In re Dependency of C.M., 118 Wn. App. 643, 649, 78 P.3d 191 (2003); Cowiche Canyon Conservancy v. Bosley, 118 Wn.2d 801, 808, 828 P.2d 549 (1992).

⁶ The legislature amended RCW 13.34.180 twice in 2009, each without reference to the other. Laws of 2009, chapter 477, section 5 inserted subsection (1)(e)(iii). Laws of 2009, chapter 520, section 34 inserted a reference to the supervising agency to subsection (1).

⁷ The legislature amended RCW 13.34.190 in 2010 by adding a new subsection and renumbering the statute. Laws of 2010, ch. 288, § 2.

⁸ The Senate "Final Bill Report" states that the changes to RCW 13.34.110 were made because "[d]ue process requirements must be met when entering stipulated or agreed orders of dependency." Final B. Rep. on Engrossed Substitute S.B. 5413, 57th Leg., Reg. Sess. (Wash. 2001).

guardian, or legal custodian and his or her attorney, unless the parent, guardian, or legal custodian has waived his or her right to an attorney in open court, and by the petitioner and the attorney, guardian ad litem, or court-appointed special advocate for the child, if any. . . .

(b) Entry of any stipulated or agreed order of dependency or disposition is subject to approval by the court. . . .

(c) Prior to the entry of any stipulated or agreed order of dependency, the parent, guardian, or legal custodian of the child and his or her attorney must appear before the court and the court within available resources must inquire and establish on the record that:

(i) The parent, guardian, or legal custodian understands the terms of the order or orders he or she has signed, including his or her responsibility to participate in remedial services as provided in any disposition order;

(ii) The parent, guardian, or legal custodian understands that entry of the order starts a process that could result in the filing of a petition to terminate his or her relationship with the child within the time frames required by state and federal law if he or she fails to comply with the terms of the dependency or disposition orders or fails to substantially remedy the problems that necessitated the child's placement in out-of-home care;

(iii) The parent, guardian, or legal custodian understands that the entry of the stipulated or agreed order of dependency is an admission that the child is dependent within the meaning of RCW 13.34.030 and shall have the same legal effect as a finding by the court that the child is dependent by at least a preponderance of the evidence, and that the parent, guardian, or legal custodian shall not have the right in any subsequent proceeding for termination of parental rights or dependency guardianship pursuant to this chapter or nonparental custody pursuant to chapter 26.10 RCW to challenge or dispute the fact that the child was found to be dependent; and

(iv) The parent, guardian, or legal custodian knowingly and willingly stipulated and agreed to and signed the order or orders, without duress, and without misrepresentation or fraud by any other party.

It is well established that a parent has a fundamental liberty and property interest in the care and custody of their child. U.S. Const. amend. V, XIV; Wash. Const. art. I, § 3; Santosky v. Kramer, 455 U.S. 745, 753, 102 S. Ct. 1388, 71 L. Ed. 2d 599 (1982); In re Custody of Smith, 137 Wn.2d 1, 27, 969 P.2d 21 (1998). Accordingly, in order to terminate a parent-child relationship, DSHS must establish the six statutory

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elements

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set forth in former RCW 13.34.180(1) by clear, cogent, and convincing evidence.⁹ If DSHS proves the six statutory elements, the court must also consider whether termination is in the best interest of the child. Former RCW 13.34.190(1)(a), (2). Whether termination is in the best interest of the child must be shown by a preponderance of the evidence. In re Dependency of A.M., 106 Wn. App. 123, 131, 22 P.3d 828 (2001).

Rousseau claims that without express statutory authority as provided in RCW 13.34.110 for entry of an order of dependency, the court does not have the authority to accept a stipulation to terminate parental rights under former RCW 13.34.180 and .190. We disagree.

Courts have the authority to accept the stipulation of a party and enter a judgment by consent. State v. Parra, 122 Wn.2d 590, 601, 859 P.2d 1231 (1993). Stipulations are favored by courts and will be enforced absent good cause is shown to the contrary. Parra, 122 Wn.2d at 601; see also In re Det. of Scott, 150 Wn. App. 414, 426, 208 P.3d 1211 (2009) (affirming stipulation to civil commitment); In re Welfare of M.G., 148 Wn. App. 781, 791, 201 P.3d 354 (2009) (affirming stipulation to agreed

⁹ Under former RCW 13.34.180(1), DSHS must establish:

- (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 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;
- (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 and permanent home.

dependency order).

However, because termination of parental rights implicates a fundamental liberty interest in the care and custody of their child, we hold that due process requires the court ensure that a parent's stipulation to terminate parental rights is entered into knowingly, intelligently, and voluntarily. In an analogous case, we held that because "civil commitment is a significant deprivation of liberty," due process requires that the decision to enter into a stipulation must be knowing, intelligent, and voluntary. Scott, 150 Wn. App. at 426. In deciding whether the trial court abused its discretion in denying the motion to withdraw the stipulation, the court looked to criminal case law and emphasized the "strong public interest in the enforcement of plea agreements when they are voluntarily and intelligently made." Scott, 150 Wn. App. at 426. In determining the stipulation is knowingly, intelligently, and voluntarily made, the court looks to the totality of the circumstances and can grant the motion to withdraw the stipulation "whenever it appears that the withdrawal is necessary to correct a manifest injustice." Scott, 150 Wn. App. at 426 (quoting CrR 4.2(f)). The party challenging the stipulation bears the burden of proving manifest injustice. Scott, 150 Wn. App. at 426-27. Because the record established that Scott knowingly, intelligently, and voluntarily entered into the stipulation, we held that the court did not abuse its discretion in denying the motion to withdraw the stipulation and vacate the order of civil commitment. Scott, 150 Wn. App. at 427.

Here, as in Scott, the record establishes that Rousseau knowingly, intelligently, and voluntarily entered into the stipulation to terminate his parental rights. The trial

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court engaged in an extensive inquiry to ensure Rousseau was entering into the stipulation knowingly, intelligently, and voluntarily, and entered an explicit finding. In the order, the court explicitly finds that Rousseau entered into the stipulation knowingly, intelligently, and voluntarily, and Rousseau does not challenge the finding on appeal.

In addition, Rousseau cannot show prejudice. In M.G., we held that even though the court did not comply with the requirements of RCW 13.34.110, the parent could not withdraw the stipulation under CR 60(b) without showing actual prejudice to entry of an order of dependency. M.G., 148 Wn. App. at 791. In M.G., the court held that the failure to conduct a colloquy with the mother as required by RCW 13.34.110(3)(c) was not a reason to set aside the agreed order. In reaching that conclusion, the court pointed to the fact that the mother was represented by counsel and “appeared to be aware and engaged” in the process, and she could not show “actual prejudice.” M.G., 148 Wn. App. at 791.

Likewise, here the record shows that Rousseau actively engaged in the decision to enter into the stipulation and had ample opportunity to discuss the decision with his attorney before agreeing to do so. The attorney told the court:

I went over it with my client. It was a difficult decision. I feel that he is making this decision and that he understands the decision that he's making at this time to sign the agreement and the stipulation.

We reject Rousseau's argument that without express statutory authority, the court could not accept a stipulation to terminate parental rights entered into knowingly, intelligently, and voluntarily, and affirm.¹⁰

¹⁰ Nonetheless, to ensure compliance with due process, the legislature should amend former RCW 13.34.180 to specifically address the due process requirements for accepting a stipulation to terminate parental rights.

Because the remainder of this opinion has no precedential value, the panel has determined it should not be published in accordance with RCW 2.06.040.

Ineffective Assistance

In an attempt to reinstate his previously abandoned appeal, Rousseau argues the trial court violated his right to due process by refusing to sign an order of indigency, and he received ineffective assistance of counsel because his attorney failed to perfect the record in his first appeal.

Rousseau filed an appeal of the stipulation and agreed order terminating his parental rights on May 14, 2009. At the request of Rousseau's attorney, we granted several continuances to allow Rousseau to pursue his CR 60(b) motion to vacate the stipulation and perfect the record. The first notation ruling states:

Counsel for Mr. Rousseau appeared and explained that a motion to vacate is set for argument in the trial court on August 21, 2009. He has also filed a request for an order of indigency in the trial court but does not yet have a formal ruling on that request. It appears that this appeal involves Mr. Rousseau's challenge to the termination entered upon his stipulation approved by the trial court. In these unusual circumstances additional time should be allowed especially to obtain a decision on the pending motion to vacate.

At the November 18 hearing before the trial court on Rousseau's CR 60(b) motion, Rousseau's attorney told the court that the appeal was pending and he had an additional 18 days to take action on the appeal. At the conclusion of the hearing, the court agreed to sign an order of indigency.¹¹ On December 8, we dismissed the first

¹¹ The court stated:

I know you have consistently requested me to sign documents in relation to waiving the fee for appeal previously. There were, from my perspective, no issues to appeal. Now there is. So if you want to present those documents, I'll sign a waiver in relation to costs related to appeal.

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appeal because Rousseau did not perfect the record. On December 17, Rousseau filed this appeal challenging the order denying his CR 60(b) motion to vacate and withdraw his stipulation to terminate his parental rights. On January 29, 2010, this court issued a mandate on the first appeal. After the mandate issued, Rousseau did not file a petition for review or a motion to recall the mandate.

Rousseau cannot show the trial court violated his right to due process by failing to sign an order of indigency. The record shows that after the court denied Rousseau's motion to vacate the stipulation on November 18, the judge signed an order of indigency and that Rousseau had time to perfect the appeal. Instead, after the first appeal was dismissed Rousseau filed an appeal of the CR 60(b) decision. Accordingly, Rousseau cannot establish a claim for ineffective assistance of counsel for failure to perfect the record in the first appeal.

Rousseau had a right to effective legal representation. In re Welfare of J.M., 130 Wn. App. 912, 922, 125 P.3d 245 (2005). To establish ineffective assistance of counsel, Rousseau must show deficient performance and resulting prejudice. In re Dependency of S.M.H., 128 Wn. App. 45, 61, 115 P.3d 990 (2005). Counsel's performance is deficient if it falls "below an objective standard of reasonableness based on consideration of all of the circumstances." S.M.H., 128 Wn. App. at 61 (quoting State v. Thomas, 109 Wn.2d 222, 226, 743 P.2d 816 (1987)). There is a strong presumption of effective representation of counsel, and the defendant has the burden to show that based on the record, there are no legitimate strategic or tactical reasons for the challenged conduct. State v. McFarland, 127 Wn.2d 322, 335-36, 899

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P.2d 1251 (1995). If counsel's conduct can be characterized as legitimate trial strategy, it cannot provide a basis for a claim of ineffective assistance of counsel.

State v. Aho, 137 Wn.2d 736, 745, 975 P.2d 512 (1999).

Here, the decision to abandon the appeal of the stipulation and order terminating parental rights can be characterized as a legitimate strategic decision because appellate review of a stipulation is circumscribed. "Relief from a stipulation may be had only in the trial court." Med. Consultants Nw., Inc. v. State, 89 Wn. App. 39, 44, 947 P.2d 784 (1997) (quoting State ex rel. Carroll v. Gatter, 43 Wn.2d 153, 155, 260 P.2d 360 (1953)); Baird v. Baird, 6 Wn. App. 587, 589, 494 P.2d 1387 (1972) ("Only if fraud, mistake, misunderstanding or lack of jurisdiction is shown will a judgment by consent be reviewed on appeal.").

We affirm.

WE CONCUR:

