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SUPREME COURT OF THE STATE OF WASHINGTON

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IN RE THE DEPENDENCY OF K.D.S.

DEREK GLADIN,

Appellant,

v.

STATE OF WASHINGTON, DEPARTMENT OF SOCIAL AND  
HEALTH SERVICES

Respondent.

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RESPONDENT'S ADDITIONAL BRIEFING

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ORIGINAL

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## I. INTRODUCTION

On March 2, 2012, Respondent filed a motion to strike portions of the Petitioner's supplemental brief because the Petitioner raised a new issue, not raised in its motion for discretionary review. On May 17, 2012, the Court denied the motion to strike and granted the Respondent permission to file an additional brief addressing the issue raised in Petitioner's supplemental brief.

## II. RESTATEMENT OF THE NEW ISSUE

Is the trial court's finding that continuation of the parent child relationship clearly diminishes K.D.S.'s prospects for early integration into a stable and permanent home supported by substantial evidence in the record that meets the clear, cogent and convincing standard?

## III. ARGUMENT

### A. The Standard Of Review

The trial court correctly found that RCW 13.34.180(1)(f) was supported by clear, cogent and convincing evidence. The trial court's findings of fact must be upheld if they are supported by substantial evidence in the record. *In re Dependency of K.S.C.*, 137 Wn.2d 918, 925, 976 P.2d 113, (1999). Substantial evidence is evidence in sufficient quantity to persuade a fair-minded, rational person of the truth of the declared premise. *World Wide Video, Inc, v. City of Tukwila*, 117 Wn.2d

382, 387, 816 P.2d 18 (1991). The reviewing court may not decide the credibility of witnesses or weigh the evidence, even if it disagrees with the trial court in either regard. *In re Sego*, 82 Wn.2d 736, 740, 513 P.2d 831 (1973). “The trial judge has the advantage of having the witnesses before him or her, and deference to the findings is of particular importance in deprivation proceedings.” *K.S.C.*, 137 Wn.2d at 925; citing *In re K.R.*, 128 Wn.2d 129, 141, 904 P.2d 1132 (1995).

**B. The Parent Child Relationship Diminished K.D.S’s Ability To Integrate Into Her Stable And Permanent Home At S. L. Start, Or Be Considered For Adoption**

As discussed in the respondent’s supplemental brief, the trial court found that there is a modest chance that termination will allow K.D.S. to be adopted.<sup>1</sup> Even if there were no prospect for adoption, however, substantial evidence supports the trial court’s finding that continuing K.D.S.’s psychologically and physically damaging relationship with her father diminished her prospects of integration into her home at S.L. Start.

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<sup>1</sup> Finding of Fact 2.14 states: “Kayla is not currently in an adoptive home. Terminating Mr. Gladin’s parental rights would increase Kayla’s chances for finding a permanent home and would allow the Department to have more adoptive options available. More families are willing to adopt when a child is legally free. Although the chances of finding a stable and permanent home for Kayla are small, continuation of the parent-child relationship clearly diminishes the child’s prospects for early integration into a stable and permanent home. The continuation of the status quo is not in the child’s best interests and a resolution is needed as to who will be this child’s permanent caretaker. The child’s needs for permanence and stability, must, at this point in time, be accorded priority over the rights of the biological parents in order to foster the early integration of the child into a stable and permanent home as quickly as possible.” CP 8

Petitioner argues that “as a first step in considering RCW 13.34.180(1)(f), the trial court must assess whether the State has proved that the child has *legitimate* prospects for a *more* stable and permanent home.” Supp. Br. Pet’r at 12, (emphasis added). The Petitioner’s argument asks the Court to add language to the statute. In reality, RCW 13.34.180(f) requires the trial court to consider whether “continuation of the parent and child relationship clearly diminishes the child’s prospects for early integration into a stable and permanent home.” The statute does not require a *more* stable and permanent home be identified at the time of termination.

The Petitioner contends that a “stable and permanent” home means only an “adoptive home,” a proposition squarely rejected by this Court in *In re J.E.*, 99 Wn.2d 210, 212, 660 P.2d 758 (1983).<sup>2</sup> The Court held that long term foster care by the State for a developmentally disabled child constitutes a stable and permanent home for the purposes of RCW 13.34.180(6), and that a father’s parental rights may be terminated to facilitate such care.<sup>3</sup> *Id.* The Court specifically noted that RCW 13.34.180 “makes no reference to ‘adoptive home’”. Had the Legislature intended termination only in those cases where the child would be

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<sup>2</sup> See Court of Appeals Commissioner’s Ruling at 9.

<sup>3</sup> RCW 13.34.180(1)(f) was formerly codified as RCW 13.34.180(6). Laws of 2000, ch. 122, § 25.

adopted, it could have so provided by substituting that term for the words 'stable and permanent home.'" *Id.* at 214. The Court further found that the State had established that the continuation of the parent-child relationship created feelings of insecurity and instability in the child and stated, "Under such circumstances, termination was proper regardless of the child's adoptability." *Id.*

**C. After Seven Years Of Dependency, Substantial Evidence Demonstrates That The Parent Child Relationship Diminished K.D.S.'s Ability To Integrate Into A Stable And Permanent Home**

The trial court separately and correctly found the facts establish RCW 13.34.180(1)(f) in Finding of Fact 2.14. CP 8. This finding is supported by clear, cogent and convincing evidence in the record.

The trial court heard testimony from the social worker and guardian ad litem that termination of parental rights was necessary to allow K.D.S. to integrate into a stable and permanent home. RP 108-109, 435-436. It heard testimony that S.L. Start can be K.D.S.'s stable and permanent home; but also that her prospects for adoption are increased if parental rights are terminated. The S.L. Start Behavior Support Coordinator testified that S.L. Start is able to provide care for K.D.S. as long as she needs it. RP 329. The Department Social worker testified that S.L. Start would like to be a long term placement for her. RP 118. Three

experts testified that adoption was an option for K.D.S.. RP 106-107, 190-192, 330-331. Although they would like her to stay, S.L. Start has experience transitioning similarly disabled teen from S.L. Start to an adoptive home, and would be able to transition K.D.S. into an adoptive home should one become available. RP 329.

Compelling evidence before the trial court proved that the ongoing legal relationship with Mr. Gladin was devastating to K.D.S.'s physical and emotional health and threatened her long term placement at S.L. Start. Mr. Gladin has a severe personality disorder and unresolved sexual deviancy issues that seven years of services have failed to correct. F.F. 2.12, CP 6-7.<sup>4</sup> He stopped participating in services in March 2005, but continued to have supervised visitation. RP 86. He has never complied with the court ordered sexual history interview, despite the fact that the Court of Appeals upheld the trial court's order requiring the evaluation. RP 29, 539.

K.D.S.'s violent, sexually reactive behavior was unmanageable either in foster care or with her grandparents. K.D.S was placed in a residential group home from June 2005 to June 2008, but her behavior did not stabilize. Group care staff reported that K.D.S.'s behaviors escalated after visits with Mr. Gladin. CP 35. During her time in the group home,

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<sup>4</sup> F.F. 2.12 is uncontested by Mr. Gladin.

her behavior became so extreme that K.D.S. required therapeutic holds by staff several times a day for 20-40 minutes each. RP 272.

As the testimony at trial demonstrates, the continuation of the parent child relationship would be severely detrimental. Following a visit with Mr. Gladin in June, 2008, K.D.S. attempted to jump out of a second story window and was psychiatrically hospitalized. RP 119. From there, she went for a few days to her grandparents, but was hospitalized again. RP 370, 389. As she left psychiatric care in August 2008, she was moved to S.L. Start.

Mr. Gladin was still allowed twice monthly supervised visits. During his first visit at S.L. Start, K.D.S.'s behavior escalated into pacing, yelling, swearing, and putting herself in staff's personal space—all her precursors to violent, explosive behavior. RP 320, 325. The supervisor had to ask Mr. Gladin to step out of the room, but K.D.S. could not calm down and the visit was terminated. RP 320. K.D.S. was hospitalized for six weeks after her first month at S.L. Start. Shortly after her release, she had another visit with Mr. Gladin. Her behavior escalated again during this visit and according to testimony, Mr. Gladin "just sat there". RP 305. Staff again had to intervene and ask Mr. Gladin to leave. *Id.* K.D.S was hospitalized for a fourth time following this visit. RP 309.

K.D.S. had several additional 72 hour psychiatric admissions in the fall of 2008. RP 300. S.L. Start staff testified regarding the extreme behaviors exhibited by K.D.S. following visitations with Mr. Gladin during that time frame. This included hitting, biting, scratching, verbal threats, head banging, exposing herself, grabbing staff's crotches or breasts, and asking to be sexually touched. RP 326. S.L. Start could not attempt to prepare K.D.S. prior to the visits because Mr. Gladin did not always appear, or would appear late or on a different day than scheduled. *Id.* His lack of consistency contributed to her physical and sexual reactions to his visits. RP 326.

In late 2008, S.L. Start staff requested that Mr. Gladin meet with them before any additional visits to establish expectations and guidelines about how visits were to occur. RP 328-329. Mr. Gladin failed to attend the first meeting and was so late to the second that the therapist and case manager left. RP 101. He never rescheduled. In March, 2009, the dependency court suspended Mr. Gladin's visits and ordered that he not be on the premises or near the child's placement without Department and placement approval.<sup>5</sup> Ex. 6, 4/20/09 Review Hearing Order at 15 and 18.

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<sup>5</sup> The dependency court suspended the visits because they were detrimental to K.D.S. RP 101, 116. Pursuant to RCW 13.34.136, visitation may only be denied if the court determines it is necessary to protect the child's health, safety or welfare.

Testimony before the trial court established that between March, 2009, and June, 2010, when K.D.S. had no contact with Mr. Gladin, her behavior improved and began to stabilize. Her teacher testified that during the 2009-2010 school year, her physical escalations went from five to six per day down to zero. RP 257. As of June, 2010, she had not physically escalated at school in three months. *Id.* S.L. Start staff testified that when K.D.S. came there she was physically escalating two to five times per day and now she has some days without any problem behavior at all. RP 298.

The trial court heard extensive evidence that the ongoing relationship with Mr. Gladin was harmful to and created extreme instability in K.D.S. "Under such circumstances, termination was proper, regardless of the child's adoptability." *In re J.E.*, 99 Wn.2d at 214; *In re J.W.*, 90 Wn. App. 417, 430, 953 P.2d 104 (1998)

#### IV. Conclusion

The trial court terminating parental rights is supported by substantial evidence and should be affirmed.

RESPECTFULLY SUBMITTED this 29th day of May, 2012.

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I certify under penalty of perjury under the laws of the state of  
Washington that the foregoing is true and correct.

DATED this 29th day of May, 2012, at Bellingham, Washington.

  
Marie A. Marantette  
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Attached is the Respondent's Additional Briefing In Re The Dependency of K.D.S.—Derek Gladin, Appellant v. State of Washington Department of Social and Health Services, Case No. 86124-2.

<<GLADIN V. DSHS--RESP ADDTL BRIEFING--5-29-12.pdf>>

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