

86124-2  
NO. 65565-5-1

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**COURT OF APPEALS, DIVISION I  
OF THE STATE OF WASHINGTON**

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DEREK GLADIN,  
Petitioner,

v.

STATE OF WASHINGTON, DEPARTMENT OF SOCIAL AND  
HEALTH SERVICES,  
Respondent,

In re the Dependency of K.S., A Minor Child.

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**RESPONDENT'S BRIEF**

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## I. INTRODUCTION

This appeal involves the welfare of 15-year-old K.S. who was removed from her mother's care on November 23, 2002, at the age of seven. At the time of removal, the father only had visitation rights to K.S., as the mother was the residential parent. K.S. has remained in out-of-home care since her removal. The father was offered numerous services to address deficient parenting skills, including concerns that of K.S. having been sexually abused, and concerns that he could not understand or address K.S.'s severe mental, emotional, and behavioral health issues. The father participated in some services, but he was unable to remedy his parental deficiencies in the seven year period following removal. The father never established a bond with this child. Eventually, the court suspended visitation between K.S. and the father, expecting that the father would work to address K.S.'s severe reactions to the visitation. The father never participated in requested meetings to address these issues and, consequently, has not seen K.S. *at all* in the last two years.

After a trial in April 2010, the trial court terminated the father's parental rights to K.S. The father appeals the trial court's ruling, claiming insufficiency of the evidence, insufficient findings and lack of due process. Substantial evidence in the record supports the trial court's findings. The termination order should be affirmed.

## **II. RESTATEMENT OF THE ISSUES**

1. Did the trial court properly find that the continuation of the parent-child relationship clearly diminishes the child's prospects for early integration in a stable and permanent home?
2. Did the trial court properly find sufficient evidence to support parental unfitness?
3. Did the trial court properly find that termination was in the best interests of the child?
4. Did the trial court appropriately refuse to consider alternative remedies to termination?
5. Is RCW 13.34.190 unconstitutionally vague such that its application is a violation of the father's due process rights?

## **III. COUNTERSTATEMENT OF THE FACTS**

K.S. is a fifteen year old eighth grader with fetal alcohol exposure, attachment disorder, attention deficit hyperactivity disorder (ADHD), post traumatic stress disorder (PTSD), mild mental retardation and a mood disorder. RP 249, 292, 417. At the time of trial, K.S. functioned at a five or six year old level and educationally performed at the level of a special education preschool/kindergarten student. RP 215, 250.

K.S. resides at S.L. Start Children's Home, a specialized group care facility in Spokane, Washington. RP 294. Because K.S. engages in extreme sexual and aggressive behaviors, as well as occasional self-harm, S.L. Start provides one-on-one line-of-sight supervision in the residence at

all times. RP 295, 298-300. K.S. does exhibit positive behaviors, and enjoys discussing animals and coloring. RP 295-296.

The Department removed K.S. from her mother's care in late November, 2002 due to the mother's active drug use and inability to keep the child safe. RP 18, 74. At that time, the father was considered for placement, but was not able to care for K.S. and her special needs. RP 74. K.S. has remained out of either parent's care since that time. RP 491. Prior to removal, the father only cared for K.S. full-time for one brief period in September 2001, when he violated the existing parenting plan and moved the child with him to Seattle. RP 75.

Dependency was established as to the father on August 5, 2003, and a dispositional order was entered on August 29, 2003, following a five day contested fact finding hearing. RP 75-76, Pet. Ex. 3-4. The finding of dependency and disposition were upheld on revision on March 2, 2004.<sup>1</sup> The father appealed to the Court of Appeals, and that court affirmed the dependency finding and the dispositional order requiring him to submit to

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<sup>1</sup> The separate Findings of Fact supporting the dependency orders, Pet. Ex. 2 and 4, were not made part of the record at termination. Additionally, the Order on Motion for Revision of Commissioner's Decision, which affirmed the Dependency Order, is not formally part of this record for review.

a sexual history interview and polygraph, but the Court remanded the issue of restricted visitation.<sup>2</sup>

The dependency court determined that the father “was not capable of adequately caring for K.S.” pursuant to RCW 13.34.030(6)(c). His identified parental deficiencies in 2002-2003 were questionable allegations of sexual abuse between himself and K.S.<sup>3</sup>, a lack of insight regarding the care of K.S., resistance to case management and assistance from the specialists, doctors, service providers and Department and a chaotic, unstable lifestyle that included multiple evictions and inconsistent employment. Pet. Ex. 2-4, CP 113. The dispositional order entered in August 2003 set forth the following service requirements:

1. Comply with the recommendations of the June 21, 2003, psychological evaluation, including a sexual history interview with polygraph;
2. Follow through with the criminal investigation regarding the sexual abuse allegations<sup>4</sup>;

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<sup>2</sup> See the Unpublished Decision in this matter under COA cause number 54052-1-I.

<sup>3</sup> In June of 2002 the father was investigated for sexual abuse allegations against K.S. by the Whatcom County Sheriff's Office. The father declined to participate in a polygraph or interview and no charges were ever filed. The dependency court determined that “based upon the evidence presented, the court cannot find at this time that the father has sexually abused this child or that this is an issue that the court can consider in terms of its decision [on dependency] today.” However, the unresolved nature of the allegations coupled with K.S.'s sexualized behaviors resulted in a dispositional order addressing the concerns by requiring a sexual history interview, as recommended by a completed psychological evaluation.

<sup>4</sup> This requirement was later removed by the agreement of the parties prior to being addressed by the Court of Appeals.

3. Participate in parenting instruction with a one-on-one parent educator;
4. Consult and cooperate with professionals providing services to K.S.;
5. Maintain regular contact with the Department and Guardian ad Litem;
6. Keep the Department and Guardian ad Litem informed of his address and phone number;
7. Demonstrate the ability to maintain safe and stable housing for at least six months;
8. Demonstrate the ability to act in a responsible and reliable manner involving employment or career education;
9. Provide releases of information as requested;
10. Participate in visitation as scheduled and follow visitation rules;
11. Honor all standing no-contact orders; and
12. Demonstrate his ability to support K.S. in maintaining positive relationships with relative and professionals.

RP 78, Pet. Ex. 3.

Prior to the dependency finding, in June 2003, the father completed a substance abuse evaluation with Chambers and Wells. The evaluation did not recommend substance abuse treatment, but did suggest a psychological evaluation due to the father's defensiveness score on the Substance Abuse Subtle Screening Inventory and his behavior during the

evaluation. RP 79. The father also participated in three different domestic violence/anger management assessments; again no treatment was recommended. RP 80.

Dr. Evan Freedman completed the psychological evaluation of the father on June 21, 2003. RP 206. Pet Ex. 13. The father's I.Q. score placed him in the low average range of intellectual functioning, and Dr. Freedman opined that the father would have greater difficulty retaining information necessary to perform some tasks in parenting K.S., leading to more frequent errors and difficulty processing complex information. RP 208-209. Dr. Freedman also stated that the father was not aware of the impact of his behaviors on himself and others, which would inhibit the father's ability to see his own challenges and seek out support for his deficiencies. This inhibition would also diminish the father's ability to interact effectively with the variety of medical, mental health, and education professionals needed to meet his daughter's special needs. RP 210, 222.

In his evaluation, Dr. Freedman diagnosed the father with a personality disorder NOS with paranoid, antisocial and borderline personality traits. RP 220-223. According to Dr. Freedman, the father's cognitive deficits and personality disorder were "not going to change". *Id.* The psychologist further indicated that K.S. did not relate to her father as a

parenting figure. RP 217-218. This lack of attachment, combined with the father's antisocial traits, the possibility of sexual abuse, K.S.'s significant developmental disabilities and extreme vulnerability, resulted in a poor prognosis for change, even with services. RP 217-218, 221-23, 230. Dr. Freedman estimated that a return of K.S. to the father would place the child at "moderate to high risk." At the conclusion of the evaluation, Dr. Freedman recommended the father complete a sexual history interview and polygraph, anger management and basic and specialized parenting instruction. RP 78, 81, 224-225. These recommendations were adopted by the court in the dispositional order. Pet. Ex. 3, RP 78.

Between 2003 and 2005, the father participated in parenting classes including 1-2-3 Magic and individualized parent coaching offered by Ms. Amy Glasser. RP 77, 81. Throughout her instruction, Ms. Glasser observed the father's inability to grasp the severity of K.S.'s significant cognitive and emotional deficits. *Id.* The father continued to insist that K.S. grasped concepts that she did not understand. RP 184-185. Ms. Glasser was concerned that he did not fully understand the level of K.S.'s severe special needs and would not be able to anticipate K.S.'s needs or to respond safely and appropriately to her frustrations and behavioral issues. RP 188, Pet. Ex. 12. Ms. Glasser ended her instruction after 14 or 15

sessions without noting a resolution of the father's parenting deficiencies, but believing that she had done "the best she could." RP 188.

Following his participation in parenting instruction in 2005, the father failed to participate in further services, including the sexual history interview with a polygraph, and did not maintain regular contact with the Department or K.S.'s service providers to work towards reunification. RP 84-87.

Throughout the case, visitation between K.S. and her father was problematic. Whenever K.S. learned that her father was going to visit, she did not react. RP 305. During visits K.S. would not talk with her father and her behaviors escalated; she would only calm down when he left the room. *Id.* K.S.'s behaviors after visits were also volatile, including aggression, biting, scratching, pulling hair, swearing, removal of her clothes and inappropriate sexual behaviors with herself and staff. RP 104, 325.

In December 2008, the father had his last visit with K.S. RP 108, 303. The court then suspended visitation until the parties could meet to develop an approach to visits that would minimize these behaviors. RP 90. The father missed this meeting and was late for the second meeting, such that the therapist and the case manager had left by the time he

arrived. After these two incidents, the father did not reschedule the meeting. RP 101.

Since March 2009, the Department has only received two phone calls from the father. RP 89. These calls focused on his perception of injustices, on the past and demonstrated the father's difficulty addressing the current issues surrounding his daughter. RP 89. During one of those two phone calls, the father did request a visit with K.S., whom he had not seen since December, 2008. RP 89, 101. Ms. Wood, the assigned social worker, instructed the father to obtain a lawyer and make that request to the court, which had previously suspended visitation. RP 90.

S.L. Start is prepared to provide long-term housing and services for K.S. RP 329-30. S.L. Start staff are able to communicate closely with other professionals and providers and are willing to work with K.S. and the Department to transition towards an adoption should such a home be identified. RP 329, 331. Other behaviorally challenged children like K.S. have successfully been placed and adopted from the S.L. Start program. RP 330. It would be more likely for K.S. to be adopted, even though it would be a challenge to find the right fit, than for K.S. to ever be returned to the father's care. RP 107. If K.S.'s legal status were "legally free" it would be easier to identify an adoptive home for her and to work towards placement. RP 107-108.

Because of the eight years K.S. has spent outside the parental home, the lack of regular or unsupervised visitation, the father's failure to complete the sexual history evaluation, K.S.'s extreme special needs and the father's unresolved parental deficiencies, the expert testimony at trial concluded that it was highly unlikely that the father would be able to successfully parent K.S. with any amount of support or treatment. RP 231.

At the conclusion of the termination trial, on April 19, 2010, the court terminated the father's parental rights. RP 546. Written orders were entered on June 8, 2010. The father filed his Notice of Appeal on June 18, 2010.

#### IV. LAW AND ARGUMENT

Parents have a constitutionally protected right to the care, custody, and companionship of their child. *In the Matter of Sumey*, 94 Wn.2d 757, 762, 621 P.2d 108 (1980). However, parents' constitutional rights are not absolute. When a parent's actions, decisions, or inability to act, seriously conflict with the physical or mental health of the child, the parent's rights must be balanced against both the child's right to basic nurture, safety, and physical and mental health, and the State's right and responsibility to intervene to protect the child. RCW 13.34.020; *Krause v. Catholic Cmty. Srvs.*, 47 Wn. App. 734, 743, 737 P.2d 280 (1987). Therefore, the

dominant concern on review should be the safety and welfare of the child. RCW 13.34.020; *In the Matter of Sego*, 82 Wn.2d 736, 738, 513 P.2d 831 (1973).

To this end, a parent does not have unlimited time to correct his deficiencies. The law creates a sense of urgency by requiring that a petition for termination of parental rights be filed whenever the child has been in foster care for fifteen of the past twenty-two months, unless compelling reasons excuse the requirement. RCW 13.34.145(1)(c). The focus on permanency reflects the importance of security and stability in a child's life, as well as a child's need for continuity and permanency in relationships. *See*, Joseph Goldstein, Anna Freud & Albert Solnit, *Beyond the Best Interests of the Child* (2d ed. 1979). Additionally, the law views the passage of time from the child's perspective, not from that of the parent. *In re Dependency of T.R.*, 108 Wn. App. 149, 164-65, 29 P.3d 1275 (2001) (foreseeable future must be viewed from the eyes of the child).

In a termination proceeding, the trial court is afforded broad discretion and its decision is entitled to great deference on review. The findings of the trial court will only be disturbed on appeal if they are not supported by substantial evidence. *In the Matter of H.J.P.*, 114 Wn.2d 522, 532, 789 P.2d 96 (1990). 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 appellate court should rely heavily on the trial court's factual findings. "In proceedings to terminate parental rights, we give particular deference to the trial court's advantage derived from having the witnesses before it." *In re the Dependency of A.M.*, 106 Wn. App. 123, 131, 22 P.3d 828 (2001), citing *In re Aschauer*, 93 Wn.2d 689, 695, 611 P.2d 1245 (1980). When the trial court has weighed conflicting evidence, the reviewing court will not substitute its judgment for that of the trial court, even if it might have resolved the factual dispute differently. *Mairs v. Dep't of Licensing*, 70 Wn. App. 541, 545, 854 P.2d 665 (1993).

In this case, the court correctly applied the clear, cogent and convincing evidence standard as the burden of proof. This standard is satisfied if the ultimate facts in issue are shown by the evidence to be highly probable. *In re the Dependency of K.S.C.*, 137 Wn.2d 918, 925, 976 P.2d 113 (1999).

The following statutory elements are necessary to terminate parental rights:

- 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. A parent's failure to substantially improve parental deficiencies within twelve months following entry of the dispositional order shall give rise to a rebuttable presumption 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 presumption shall not arise unless the petitioner makes a showing that all necessary services reasonably capable of correcting the parental deficiencies within the foreseeable future have been clearly offered or provided. . . .
- f) That continuation of the parent and child relationship clearly diminishes the child's prospects for early integration into a stable and permanent home.

RCW 13.34.180(1)(a)-(f). Once these elements are proven, RCW 13.34.190(2) requires that termination must be shown to be in the child's best interests. The burden of proof for the best interest element is a

preponderance of the evidence. *In re A.V.D.*, 62 Wn. App. 562, 571, 815 P.2d 277 (1991).

The father assigns error to the entirety of findings of fact 2.13, 2.14, 2.15 and corresponding conclusion of law 3.4<sup>5</sup>. However, the

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<sup>5</sup> Challenged Findings of Fact:

FF 2.13: Given the more than seven (7) years of services offered or provided, there is little likelihood that the conditions will be remedied so that the child could be returned to the mother or father in the near future. The father has not made significant improvement in the seven years of the dependency action, let alone in the twelve months since dispositional orders were entered. He has not completed all of the court-ordered services, most importantly the sexual history interview with polygraph exam, which was determined to be a necessary service. Mr. Gladin has struggled and continues to struggle with understanding his daughter's disability, which impacts his ability to parent her. [K.S.]'s emotional and behavioral difficulties themselves make it extremely challenging for Mr. Gladin to parent safely and effectively. Mr. Gladin's psychological diagnoses of personality disorders and a low IQ are not likely to change over his lifetime, and make it more difficult to Mr. Gladin to parent his child. It is highly unlikely that Mr. Gladin will be able to parent his child with any period of services or treatment, let alone in the near future. While Mr. Gladin has stated he will do anything to parent his child and desires to do so, this statement is not borne out by his actions.

2.14 [K.S.] is not currently in an adoptive home. Terminating Mr. Gladin's parental rights would increase [K.S.]'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 [K.S.] 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.

2.15 Termination of the parent-child relationship is in the best interest of the child to allow adoption planning to begin and to foster the creation of a stable and permanent placement for the child. The dependency action has been in existence for over seven years. Finding

father's arguments focus only on the trial court's determination that continuation of the parent child relationship clearly diminishes the child's prospects for early integration into a stable and permanent home and that termination of parental rights is in the best interests of K.S. RCW 13.34.180(1)(f); RCW 13.34.190(2). Because the father has failed to brief or argue issues relating to elements (a)-(e) of RCW 13.34.180, any challenges to those elements are deemed abandoned. *State v. Wood*, 89 Wn.2d 97, 99, 569 P.2d 1148 (1977), *overruled on other grounds, Amunrud v. Board of Appeals*, 158 Wn.2d 208, 143 P.3d 571 (2006); *Lassila v. Wenatchee*, 89 Wn.2d 804, 809, 576 P.2d 54 (1978). *See also In Re J.C.*, 130 Wn.2d 418, 426-427, 924 P.2d 21 (1996). In particular relating to RCW 13.34.180(1)(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, the father concedes in his brief that he has only "assigned error to finding of fact 2.13 to the extent the finding may be read by this Court to conclude that appellant is incapable of parenting his daughter in any capacity." Br. Appellant at 18, fn. 13. Because he concedes that this finding is not challenged except as to whether the father might be able to parent in any

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a permanent and stable home for [K.S.] is in her best interest, and this is more likely to happen if parental rights are terminated.

Challenged Conclusion of Law:

3.4: The requirements of RCW 13.34.180(a)-(f) and RCW 13.34.190(2) have been established by clear, cogent and convincing evidence.

capacity, and fails to brief or argue any other points, the trial court's finding that "[g]iven the more than seven (7) years of services offered or provided, there is little likelihood that the conditions will be remedied so that the child could be returned to the mother or father in the near future" is therefore a verity on appeal. *In re Mahaney*, 146 Wn.2d 878, 895, 51 P.3d 776 (2002).

Each of the trial court's findings of fact are supported by substantial evidence and the law as applied to the evidence supports the court's ultimate conclusion to terminate the father's parental rights. The termination order should be upheld.

**A. There is Substantial Evidence to Support the Trial Court's Finding that Continuation of the Parent-Child Relationship Clearly Diminished the Child's Prospects For Early Integration Into a Stable and Permanent Home.**

The father argues that the state must prove there is a "tangible chance that K.S.'s circumstances would change as a result of the termination." Br. Appellant at 12. This argument is incorrect. It wrongly places the emphasis on finding a stable and permanent home, rather than the ongoing harm actually caused by the parent-child relationship and its detrimental impact on K.S.'s *chances* for integration into a stable and permanent home. *In re K.S.C.*, 137 Wn.2d 918, 927, 976 P.2d 113 (1999).

RCW 13.34.180(1)(f) emphasizes a limited time frame for establishing permanency for a child by use of the phrase “early integration” into a stable and permanent home. This element focuses on the “parent/child relationship and whether it impeded the child’s prospects for integration, not what constitutes a stable and permanent home.” RCW 13.34.180(1)(f). The state need not prove that such a home is available at the time of termination. *In re K.S.C.*, 137 Wn.2d at 927-929.

Further, a finding that continuation of the parent-child relationship diminishes the child’s prospects for early integration into a stable and permanent home necessarily follows from an adequate showing that there is little likelihood that conditions will be remedied so that the child can be returned home in the near future. *In re Dependency of J.C.*, 130 Wn.2d 418, 427, 924 P.2d 21 (1996).

Contrary to the father’s argument, the Supreme Court did not abandon its decision in *In re J.C.* “sub silentio” in *In re K.S.C.* The mother’s main contention in *K.S.C.* was that the child had long integrated in to a guardianship and that guardianship was not a permanent and stable home sufficient to justify termination. *In re K.S.C.*, 137 Wn.2d at 118. She further argued that guardianship was an alternative to termination that must be imposed as an alternative to termination. Although the father correctly notes that *K.S.C.* does not make mention of the *J.C.* decision, it

did not overrule *J.C.*; it addressed a different set of challenges and issues. In fact, *In re J.C.*'s holding that the finding under RCW 13.34.180(1)(f) "necessarily follows from an adequate showing" that there is little likelihood that conditions will be remedied so that the children could be returned to the parent in the near future has been cited with authority by this court in the recent published decision *In re P.P.T.*, 155 Wn. App. 257, 268, 229 P.3d 818 (2010), citing *In re J.C.*, 130 Wn.2d at 426.

The record before the trial court contains strong evidence that not only were the father's deficiencies harmful to K.S., but that the relationship itself put the child at risk. First, the father has failed to challenge Finding of Fact 2.12. This finding is therefore a verity on appeal. *In re Mahaney*, 146 Wn.2d at 895. Finding of Fact 2.12 establishes the multitude of services offered to the father, including one-on-one parenting instruction that focused on the child's special needs and how the father could improve his parenting to address those special needs. CP 6. It establishes that the father was ordered to complete a sexual history interview with polygraph exam that was never completed. CP 7. It establishes that the father was invited to meetings with the child's therapist and case manager at her residential facility to "discuss his child's problems, learn how best to work with his child, learn her treatment and schooling, and discuss appropriate behavior during visitation." CP 7.

Most importantly, the unchallenged finding establishes that “[d]espite the offering and provision of these services, there has been little improvement in parental functioning.” CP 7.

Second, witnesses before the trial court repeatedly testified to the father’s parental deficiencies and their negative impact upon K.S. The father’s low cognitive abilities, defensiveness, and inability to comprehend and respond appropriately to the severity of K.S.’s issues were underscored by Dr. Freedman, the social worker, and the Guardian ad Litem. RP 208, 432. Ms. Glasser, a primary parenting instructor, observed that the father was unable to grasp the severity of K.S.’s cognitive and emotional deficits. RP 77, 81. During parenting instruction, the father continued to insist that K.S. grasped concepts that she did not understand. RP 184-188. Ms. Glasser remained concerned that because the father failed to understand K.S.’s needs, he would be unable to anticipate them or to respond safely and appropriately to her frustrations and behavioral issues. RP 188. Pet. Ex. 12.

Social Worker Sharon Wood testified that even after seven years of services, the father continued to demonstrate a lack of understanding of K.S.’s disabilities and her needs. Dr. Freedman and the Guardian ad Litem also noted specific concerns that the father would be unable to advocate for K.S. or work appropriately with professionals around her

needs due to his defensive and volatile nature and tendency toward paranoia, distrust of case workers and difficulty accepting and following through with feedback. RP 221, 433-434.

K.S.'s developmental and behavioral needs were so great that she was unable to function in relative care, specialized foster care or standard group care. She suffered from fetal alcohol exposure, attachment disorder, ADHD, PTSD, mild mental retardation and a mood disorder. RP 249, 292, 417. At age fifteen, she functioned at a five or six year old level and was at the educational level of a preschool or kindergarten student. RP 215, 250.

K.S.'s behaviors were exacerbated and her placements destabilized by contact with her father. In fact, before, during and after both telephonic visits and in-person visits with her father, K.S. responded negatively. Before visits, she showed no reaction to the knowledge that her father would be visiting. RP 305. During visits, K.S. refused to speak to her father and her behaviors escalated. She would only calm down when her father left the room. RP 305. Her behavior after visits was especially volatile, including aggression, biting, scratching, pulling hair, swearing, removal of her clothing, and inappropriate sexual behaviors with herself and staff. RP 104, 325.

After more than five years of being in the dependency, K.S. was finally transferred to S.L. Start, a specialized group care facility in Spokane. RP 290. The on-staff professionals at S.L. Start have created a specialized program for K.S. that has resulted in fewer episodes and the de-escalation of her violent and aggressive behaviors; episodes that had previously been triggered by visiting her father. RP 305. S.L. Start staff are willing and able to work with K.S., the Department and other professionals to transition K.S. toward adoption, should a home be identified. RP 329, 331. Other behaviorally challenged children like K.S. have been successfully placed and adopted after treatment in the S.L. Start program. RP 330. S.L. Start is also prepared to provide long-term housing and services for K.S. if that is what her needs demand. RP 329-330. At last, K.S. has the appropriate structure and stability, supervision, and professional services to address her heightened needs. K.S.'s father has not visited her at the S.L. Start home in over a year, but fortunately K.S. has had the constant attention and supervision of staff at S.L. Start that have chosen and have been specially trained to care for K.S.

As pointed out by the father, the trial court noted in its oral ruling that K.S.'s chances of finding a permanent home might improve by five percent if the father's parental rights were terminated. Br. Appellant at 13. What the father failed to note is that K.S. has no possibility finding a

permanent home unless the father's rights are terminated because the existing legal relationship is an insurmountable obstacle to the child ever being adopted. See *In re P.P.T.*, 155 Wn. App. at 269. The five percent increase found by the trial court represents a 500 percent improvement for K.S.'s chances of permanence over the status quo.

Under RCW 13.34.180(1)(f), the trial court is only required to find that the continuation of the parent and child relationship clearly diminishes that child's prospects for early integration into a stable and permanent home. RCW 13.34.180(b). The statute does not specify "adoptive home." If this had been the legislature's intent it could have substituted the term "adoptive" for "stable and permanent." *In re the Dependency of J.E.*, 99 Wn.2d 210, 214, 660 P.2d 758 (1983).

*J.E.* involved a child with both behavioral disorders and delayed development similar to K.S. The Court denied the appellant's invitation to construe 'stable and permanent home' to mean adoptive home. *In re the Dependency of J.E.*, 99 Wn.2d at 214. The *J.E.* 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(b), such that the father's rights may be terminated to facilitate such care." *In re the Dependency of J.E.*, 99 Wn.2d at 211. Considering the impact of the *J.E.*'s interactions with his father (feelings of insecurity and instability),

the Court felt that termination was proper regardless of the child's adoptability. *In re the Dependency of J.E.*, 99 Wn.2d at 215. Like J.E., the impact of K.S. after interactions with her father is also significant, repeatedly leading to extreme escalation in her physical, verbal, and sexually aggressive behaviors. RP 325. Thus, regardless of whether K.S. is adopted, as in *J.E.*, the trial court correctly held that termination of the parent-child relationship was appropriate due to the impact harm caused to K.S. by the ongoing relationship and the instability it created.

Additionally, in *In re P.P.T.*, the court of appeals determined that the trial court erred in refusing to terminate parental rights when "it mistakenly focused on what it believed constituted a stable and permanent home. . . rather than the continued effect of [the father's] legal relationship with the children on their prospects for adoption." *In re P.P.T.*, 155 Wn. App. at 268-269. It is the combination of K.S.'s stabilizing behavior (partly because of her decreased contact with her father) plus the termination of her relationship with him that will even give her a chance to stabilize and perhaps formally be adopted and fully integrated into a stable and permanent home. *In re P.P.T.*, 155 Wn. App. at 258, 268. The trial court's finding that continuation of the parent-child relationship clearly hindered K.S.'s prospects for early integration into a stable and permanent home is supported by substantial evidence and should be upheld.

**B. The Record Supports that the Trial Court Intended to Make a Finding of Current Parental Unfitness or Implicitly Made Such a Finding.**

The father argues that the court erred in failing to make a finding—either express or implicit—that he was currently unfit to parent K.S. His argument as to this issue misrepresents the record below, ignores the clear meaning of the court’s findings of fact, and misconstrues the Washington Supreme Court’s recent holding in *In re Welfare of A.B.*, 168 Wn.2d 908, 232 P.3d 1104 (2010).

Previously, in *In re the Dependency of K.R.*, 128 Wn.2d 129, 141-42, 904 P.2d 1132 (1995), the Supreme Court held a trial court did not need to make an explicit finding of current parental unfitness, because that finding was implied whenever the statutory elements of RCW 13.34.180 were met. In *A.B.*, the Court recently held a finding of current parental unfitness cannot *always* be implied from the statutory findings. The father appears to argue that in the absence of a finding that specifically references current parental unfitness, any termination decision of the trial court must be reversed on appeal.

The Supreme Court’s decision in *A.B.* does not support the father’s position. The Court analyzed the issue as follows:

Accordingly, we conclude that when an appellate court is faced with a record that omits an explicit finding of current parental unfitness, the appellate

court can imply or infer the omitted finding if – but only if – all the facts and circumstances in the record (including but not limited to any boiler plate findings that parrot RCW 13.34.180) clearly demonstrate that the omitted finding was actually intended, and thus made, by the trial court. To hold otherwise would be illogical, and it would permit trial and appellate courts easily to sidestep the due process requirement that a judgment terminating parental rights be grounded on an actual (as opposed to a fictional) finding of current parental unfitness.

*In re the Welfare of A.B.*, 168 Wn.2d at 921. Where there is no express finding of current parental unfitness, such a finding can be implied or inferred if all of the facts and circumstances in the record clearly demonstrate that the omitted finding was actually intended, and thus made, by the trial court. *In re the Welfare of A.B.*, 168 Wn.2d at 921. Here, the trial court entered unambiguous findings to support its conclusion that the father's parenting deficiencies impeded his present ability to adequately care for K.S.

The facts in *A.B.* are readily distinguishable from this case. *A.B.* was removed from her mother's custody at birth due to the mother's prenatal drug use. By the time of the termination trial, the father had addressed his substance abuse and criminal problems, divorced his wife (ending a dysfunctional relationship), and was raising two other children. Unfortunately, there was a period of four months early in the dependency

case when the father was unable to visit A.B. due to his incarceration. His lengthy absence damaged the bond the father and child had been developing. After visitation resumed, A.B. remained uncomfortable with him. The trial court did not find the father had any parental deficiencies other than the child's ongoing resistance towards him.

In sharp contrast, this case presents the type of situation the Court alluded to in *A.B.*, in which current parental unfitness clearly can be inferred. Although the trial court did not make an explicit finding that the father was "currently unfit to parent," the trial court made many specific findings that the father had current parental deficiencies preventing the child's placement in his care at that time or in the child's near future. RP 539-541, CP 6, 7. The trial court found that the father refused to comply with the court ordered sexual history evaluation and that the father's statements that he would do anything required of him to remedy his deficiencies including cooperating with the department and taking additional parenting classes were not proven by his actions. RP 539. The court held that "actions speak louder than words and words are flowing here, but the actions in the past years haven't been there." *Id.*

The trial record is abundantly clear that at the time of termination, the father continued to have significant parental deficiencies preventing the child's placement in his care. None of the witnesses testified they

believed that the father was currently fit to parent the child or likely to be able to reunify in the near future. The social worker, Ms. Wood, testified that after seven years of the dependency the father continued to demonstrate a lack of understanding of K.S.'s disabilities and her needs. RP 108-109. Thus, she did not believe the father's deficiencies could be remedied, let alone in the next six months to a year. *Id.*

Similarly, Dr. Freedman felt at the time of his initial psychological evaluation and parenting assessment that the father's prognosis for change was poor, for the father's deficiencies included, among others, cognitive deficits and a personality disorder NOS, with paranoid, antisocial and borderline personality traits, all of which were "not going to change." RP 220-223, Pet. Ex. 13. At trial he testified that given K.S.'s high level of need and the variety of the father's deficiencies that he thought it was "highly unlikely that he is going to be able to be successful with parenting her within any period of support or treatment." RP 231.

Dr. Freedman noted that the father's deficiencies directly impacted his parenting. RP 221. He focused on the father's history, noting his "tendency towards paranoia, a distrust of case workers, a refusal to or difficulty at times listening to feedback or complying with the recommendations of those with whom he interacts relative to this case." *Id.* More specifically, the doctor stated that the father's characteristics

“are likely to impair his ability to see his own challenges and difficulties and seek out necessary support for those deficiencies. [As a result,] [t]hey will undermine his awareness and insight into his own challenges and the way his behavior or emotions affect” himself or others. RP 222.

The fact that at the termination trial the father still had not completed the sexual history interview or polygraph as court ordered underscored the doctor’s and other witnesses concern for pedophilic proclivities or other sexual deviancies. *Id.* Finally, the child’s Guardian ad Litem, Ms. Hillman also testified that the father was unfit to care for his daughter. RP 433. The Guardian ad Litem was especially concerned with the father’s pervasive belief that everyone was exaggerating K.S. needs and behaviors, his inability to advocate for K.S. due to his defensive and volatile nature, and the father’s virtual isolation due to the lack of family and community support. RP 433-434.

The father remained unable to place care and concern for K.S.’s ahead of his pride and parental deficiencies. Although he completed several parenting classes, he was never allowed to have unsupervised visits with K.S. RP 230. After K.S.’s move to S.L. Start, visitation was completely terminated when the father failed to attend a meeting with the staff and K.S.’s therapist. RP 100-101. Though given the opportunity by S.L. Start to reinstate visitation, he was unable to make his relationship

with his daughter a priority, and failed to do so. *Id.* The record clearly reflects that the trial court intended to make a finding of current parental unfitness; consistent with this Court's holding in *A.B.* Further, the facts and circumstances of this case, as reflected in the record below, clearly demonstrate that the required finding was made by the trial court. At a minimum, Findings of Fact 2.12 and 2.13 constitute an implicit finding by the trial court that the father was unfit to parent K.S. at the time it entered its order terminating his parental rights. In this regard, and with the elements of RCW 13.34.180 amply supported by substantial evidence, this Court may imply the existence of a finding of current parental unfitness.

**C. There is Substantial Evidence in the Record to Support that the Termination of the Father's Parental Rights Is in the Best Interests of the Child.**

Once the trial court finds that each element of RCW 13.34.180(1) has been proven by clear, cogent and convincing evidence, it must then decide whether, by a preponderance of the evidence, termination is in the best interests of the child under RCW 13.34.180(1). RCW 13.34.180; RCW 13.34.190; *In re Dependency of T.R.*, 108 Wn. App. at 166-67; *In A.V.D.*, 62 Wn. App. at 571.

In parental termination proceedings, the paramount consideration is the welfare of the child. *In re Russell*, 70 Wn.2d 451, 423 P.2d 640 (1967); *In re K.S.C.*, 137 Wn.2d at 925. When a parent has been unable to

progress over a lengthy period of time, a court is “fully justified” in finding termination is in the best interests of the child rather than “leaving [the child] in limbo of foster care for an indefinite period while [the parent] sought to rehabilitate himself.” *In re T.R.*, 108 Wn. App. at 167, quoting *In re A.W.*, 53 Wn. App. at 23.

If the court determines that termination is not in the child’s best interest, it cannot enter an order terminating parental rights even though the parent has been determined to be unfit through a showing of clear, cogent and convincing evidence of the RCW 13.34.180(1) elements. *In re Dependency of Ramquist*, 52 Wn. App. 854, 860, 756 P.2d 30 (1988), *rev. denied*, 112 Wn.2d 1006 (1989); *In re K.R.*, 128 Wn.2d at 141-142. Conversely, if the parent has not been determined to be unfit under RCW 13.34.180(1), the court may not terminate parental rights regardless of the outcome of the best interest analysis under RCW 13.34.190. In other words, the best interest analysis under RCW 13.34.190 is not a component of the parental unfitness analysis under RCW 13.34.180(1).

Children have a fundamental right to a safe, stable, and permanent home. RCW 13.34.020; *In re Welfare of H.S.*, 94 Wn. App. 511, 530, 973 P.2d 474 (1999). They also have a right to speedy resolution of the dependency and termination proceedings. RCW 13.34.020. *In re the Welfare of H.S.*, 94 Wn. App. at 530; *In re Welfare of Angelo H.*, 124 Wn.

App. 578, 590, 102 P.3d 822 (2004). When a parent, such as the father, fails to rehabilitate himself over a lengthy dependency, the court is fully justified in finding that termination of parental rights is in the children's best interest. *In re Dependency of T.R.*, 108 Wn. App. at 166-67. This is especially true where, as here, the prospects for reunification are just a theoretical possibility. *In re Welfare of C.B.*, 134 Wn. App. 942, 958-59, 143 P.3d 846 (2006).

Here, there is substantial evidence to support the trial court's findings that the Department proved the elements of RCW 13.34.180(1) and current parental unfitness by clear, cogent and convincing evidence. The evidence also support's the trial court's findings that termination is in the child's best interest. K.S.'s father had seven years to develop a positive and healthy relationship with his child, to learn adequate and appropriate parenting and life skills, to learn how to address his own developmental and cognitive challenges, create a stable and safe home, participate in the sexual history interview and polygraph, and rally the necessary community of professional and lay support. Because of the father's own actions, or inactions, he was unable to reach a point where K.S. would be safe in his care. K.S.'s extreme developmental and behavioral needs required 24 hour specialized care. The state's witnesses at trial uniformly testified that the father would never be able to meet her

needs. Further, at the time of trial, the father had not even visited K.S. in over a year. During this time, her behavior began to stabilize, where previously, her behaviors worsened after every visit with her father.

Substantial evidence supports the trial court's finding that the Department proved by a preponderance of the evidence that termination of the father's parental rights is in the best interest of K.S.

**D. The Trial Court Appropriately Refused To Consider Alternative Remedies to Termination**

The father argues that the court has the discretion to grant either 1) a dependency guardianship utilizing S.L. Start as the guardian or 2) create a conditional order where the court makes the findings of termination of parental rights, but withholds entry of the order until the State can identify an adoptive parent for K.S. Br. Appellant at 22-23. The father claims this would have been an appropriate use of the trial court's equitable powers and that the trial court abused its discretion by failing to order one of these remedies. Contrary to the father's plea, neither of these options was available to the trial court; the only matter before the court was a petition to terminate the parent child relationship under RCW 13.34.180 and .190.

A trial court only abuses its discretion if its ruling is manifestly unreasonable, or if its ruling is exercised on untenable grounds or for untenable reasons. *E.g., State v. Rohrich*, 149 Wn.2d 647, 654,

71 P.3d 638 (2003); *In re Marriage of Kovacs*, 121 Wn.2d 795, 801, 854 P.2d 629 (1993).

A court's decision is manifestly unreasonable if it is outside the range of acceptable choices, given the facts and the applicable legal standard; it is based in untenable grounds if the factual findings are unsupported by the record; it is based on untenable reasons if it is based on an incorrect standard or the facts do not meet the requirements of the correct standard.

*In re Marriage of Littlefield*, 133 Wn.2d 39, 47, 940 P.2d 1362 (1997). Stated differently, “[a]n abuse of discretion occurs only when no reasonable person would take the view adopted by the trial court.” *State v. Castellanos*, 132 Wn.2d 94, 97, 935 P.2d 1353 (1997); *In re Guardianship of Johnson*, 112 Wn. App. 384, 388, 48 P.3d 1029 (2002). Judicial discretion includes “a sound judgment exercised with regard to what is right under the circumstances and without doing so arbitrarily and capriciously.” *State ex rel. Carroll v. Junker*, 79 Wn.2d 12, 26, 482 P.2d 775 (1971), citing *State ex rel. Clark v. Hogan*, 49 Wn.2d 457, 303 P.2d 290 (1956).

In this case, it is incongruous to state that the trial court acted outside the range of acceptable choices given the facts and the legal standard. The trial court ruled on the only petition before it, the petition to terminate parental rights, and found by the appropriate statutory standards that the father's parental rights should be terminated. The court's inquiry

can and should end here. The father cites no legal authority in support of his proposition that trial courts are required to use equitable powers to fashion creative, non-statutory remedies so that certain parents will not be subject to the termination of their parental rights, and in the same brief argues that the courts have been given too much latitude to make a decision on termination under RCW 13.34.190's "best interests" requirement. Additionally, he fails to recognize that our courts have consistently rejected similar alternative remedies arguments. The trial court was not acting arbitrarily and capriciously, and thus not abusing its discretion.

Under established law governing the termination of parental rights, a trial court is not required to consider alternative remedies to termination if such remedies are not appropriately before the court. In the case of *In re Dependency of K.S.C.*, our Supreme Court addressed the issue of whether the court is required to consider guardianship as an alternative to a termination petition when no competing guardianship petition has been filed. In *K.S.C.*, as in the present case, there was no evidence of any petition to create a dependency guardianship, no evidence of any order creating one and no indication that any hearing relating to one has ever been held. *In re the Dependency of K.S.C.*, 137 Wn.2d at 928. In addition, the court found that continuation of the parent-child relationship

was harmful to the child and, therefore, guardianship would not be an appropriate alternative to termination. *In re the Dependency of K.S.C.*, 137 Wn.2d at 932. Ultimately, the court held:

When an order on a petition for termination of parental rights is entered, the question is whether the State has proved the allegations in RCW 13.34.180. Nothing in the statute directs that an assessment must be made of a dependency guardianship under RCW 13.34.231 and .232 as an alternative to termination.

*In re the Dependency of K.S.C.*, 137 Wn.2d at 927.

Thus, when the trial court in this case was faced solely with a petition for termination of parental rights, the court's inquiry was limited to whether the allegations in RCW 13.34.180 are proved by clear, cogent and convincing evidence, and whether termination is in the best interest of the child. RCW 13.34.190; *In re the Dependency of K.S.C.*, 137 Wn.2d at 930. Similar to *K.S.C.*, in this case, the state witnesses testified as to how the parent-child relationship was detrimental to K.S. This was repeatedly manifested in K.S.'s outbursts when she spoke over the phone or visited with her father, as well as through the effect of the father's inability to maintain structure and consistent contact with K.S. Additionally, because the father never completed the court ordered sexual history interview and K.S. continued to act out sexually, concern remains regarding possible abuse. RP 96. Finally, a dependency guardianship would not have been

appropriate in this case because K.S. needs the consistency that is born from a stable home, which in seven years her father could not build. Consequently, a dependency guardianship would not have been appropriate.

More recently, in *In re the Dependency of T.C.C.B.*, 138 Wn. App. 791, 800, 158 P.3d 1251 (2005), the mother argued that the court should consider additional options to termination, including a dependency guardianship or an open adoption. Following the holding in *K.S.C.*, the *T.C.C.B.* court determined that it need not consider the alternative of open adoption or dependency guardianship where there was no pending petition for either proceeding. *In re the Dependency of T.C.C.B.*, 138 Wn. App. at 800. It was actually unclear to the *T.C.C.B.* court how an open adoption was a less restive alternative to termination since adoption presupposes termination of the biological parental rights. *In re the Dependency of T.C.C.B.*, 138 Wn. App. at 800.

Similar to the parents in both *K.S.C.* and *T.C.C.B.*, in the present matter, K.S.'s father did not formally present any alternative remedies to the trial court, not a petition for a dependency guardianship, an open adoption agreement or any other possibility. Therefore, the court simply followed the well settled law and did not abuse its discretion by not considering alternatives to termination.

This issue has been addressed at both the appellate and the Supreme Court level. The trial court has the authority to rule on the petition before it, and in K.S.'s case it was a petition to terminate parental rights. Granting the petition was not manifestly unreasonable because the court acted on the abundance of facts presented at trial which supported the petition. Termination was not untenable in that the court applied the facts appropriately to the termination statute. The trial court had no reason to fashion an "equitable remedy" when an appropriate legal remedy existed. Therefore, the trial court did not abuse its discretion for it acted consistently within the law and the facts.

**E. RCW 13.34.190 is not Vague and Provides Adequate Protections to a Parent's Rights to Due Process of the Law.**

The father argues that the termination order should be reversed because RCW 13.34.190, which requires the trial court to find that termination is in the child's best interest, is void for vagueness and therefore unconstitutionally violates his rights to due process. Br. Appellant at 3-4. The basic premise of the father's argument is that, absent explicit statutory standards to guide the trial court's decision as to best interest, the statute results in ad hoc and arbitrary application. Br. Appellant at 28-35. He cites no authority that specifically addresses this issue in the context of child welfare cases, but instead argues that the

statute does not define the term or otherwise provide guidelines to the court. Br. Appellant, 28-35.<sup>6</sup>

The “void for vagueness” doctrine usually applies to criminal or penal statutes. *See City of Seattle v. Montana*, 129 Wn.2d 583, 596-97, 919 P.2d 1218 (1996). The focus of the void for vagueness doctrine is not the criminal penalty or sentence in a matter, but rather the “exaction of obedience to a rule or standard which was so vague and indefinite as really to be no rule or standard at all.” *Small Co. v. American Sugar Ref. Co.*, 267 U.S. 233, 239, 45 S.Ct. 295, 297, 69 L.Ed. 589 (1925). “Vagueness” may refer to either the fact that a law is without “sufficient definiteness” in which ordinary people can understand and follow the law or if it does not provide “ascertainable standards of guilt” to protect an individual from arbitrary enforcement. *City of Seattle v. Montana*, 129 Wn.2d at 596-597.

When the constitutionality of a statute is challenged, the statute is presumed to be constitutional and the challenging party has the burden to establish the statute’s unconstitutionality beyond a reasonable doubt. *In re the Dependency of I.J.S.*, 128 Wn. App. 108, 115-116, 114 P.3d 1215, *review denied*, 155 Wn.2d 1021 (2005). The court’s focus when addressing constitutional facial challenges is whether the statute’s

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<sup>6</sup> Because the father has not briefed the required factors identified in *State v. Gunwall*, 106 Wn.2d 54, 720 P.2d 808 (1986), for determining whether an independent analysis of the Washington Constitution is proper, this Court should analyze only the federal constitution. *Guimont v. Clarke*, 121 Wn.2d 586, 604, 854 P.2d 1 (1993).

language violates the constitution, not whether the statute would be unconstitutional “as applied” to the facts of a particular case. *Tunstall v. Bergeson*, 141 Wn.2d 201, 221, 5 P.3d 691 (2000), citing *In re Detention of Turay*, 139 Wn.2d 379, 417 n.27, 986 P.2d 790 (1999). A facial challenge must be rejected unless “no set of circumstances in which the statute can constitutionally be applied.” *In re the Dependency of I.J.S.*, 128 Wn. App. at 108; *Tunstall v. Bergeson*, 141 Wn.2d at 201. If the term “best interest” were more precisely defined, “the result may well be an inflexibility that deterred rather than promoted the pursuit of the child’s best interest.” *In re Aschauer*, 93 Wn.2d at 698 n.5, (vagueness challenge to the terms “proper parental care” and “proper maintenance”).

The father’s argument necessarily requires that the court read RCW 13.34.190 in isolation. He states that the statute “permits the trial court to permanently and irrevocably destroy a parent-child relationship if it finds that such an action is in the best interest of the child.” Br. Appellant at 32. This interpretation of the statute is incorrect. The court must read RCW 13.34.190 in conjunction with all of chapter 13.34 RCW, and must read the statute as a whole. *In re Aschauer*, 93 Wn.2d at 697.

The “best interest” standard is not only constitutional, but in keeping with the entire statutory scheme and overall requirement that the child’s rights and interests must prevail when in conflict with the parent’s

rights. See RCW 13.34.020. Termination of parental rights requires that the Department must first establish current parental unfitness and prove all of the elements of RCW 13.34.180(1) by clear, cogent, and convincing evidence. RCW 13.34.190(1)(a). These six elements, which focus on the parent's rights and ability to provide the child with a permanent, safe and stable home, are the loci of the evaluation of the harm or risk of harm to a child posed by continuation of the parent-child relationship. *In re Welfare of C.B.*, 134 Wn. App. at 344-45, *In re Dependency of I.J.S.*, 128 Wn. App. at 117-18. Only after the trial court determines the parents are unfit through the elements of RCW 13.34.180, may the trial court consider whether termination of parental rights is in the child's best interest pursuant to RCW 13.34.190.<sup>7</sup>

Further, the mere fact that a statute does not define a particular term does not satisfy the stringent standard requiring a showing that the statute is unconstitutional beyond a reasonable doubt. *State v. Sullivan*, 143 Wn.2d 162, 184-85, 19 P.3d 1012 (2001) (statute that failed to define "judicial process" not unconstitutionally vague because statute admitted of a "sensible, meaningful and practical interpretation" when taken in context

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<sup>7</sup> If the trial court finds that termination is not in the child's best interest, it cannot enter an order terminating parental rights even though the parent has been determined to be unfit under RCW 13.34.180(1). *In re Dependency of Ramquist*, 52 Wn. App. at 860. Conversely, if the parent has not been determined to be unfit, the court may not terminate parental rights regardless of the outcome of the best interest analysis under RCW 13.34.190.

of the entire statute.). “A statute is void for vagueness if it is framed in terms so vague that persons of common intelligence must necessarily guess at its meaning and differ as to its application.”“ *Haley v. Medical Disciplinary Bd.*, 117 Wn.2d 720, 739, 818 P.2d 1062 (1991), (quoting *Connally v. General Constr. Co.*, 269 U.S. 385, 391, 46 S. Ct. 126, 70 L. Ed. 322 (1926)). However, the Washington Supreme Court has cautioned that “[s]ome measure of vagueness is inherent in the use of language. ‘Condemned to the use of words, we can never expect mathematical certainty from our language.’” *Haley v. Medical Disciplinary Bd.*, 117 Wn.2d at 740, quoting *Grayned v. City of Rockford*, 408 U.S. 104, 110, 92 S. Ct. 229, 433 L. Ed. 2d 222 (1972).

The vagueness doctrine does not demand rigid standards of specificity or absolute agreement as to the meaning of a statute. *A.W.B. Constr., Inc.*, 152 Wn. App. 479, 489, 217 P.3d 349 (2009), citing *City of Spokane v. Douglass*, 115 Wn.2d 171, 179, 795 P.2d 693 (1990). If persons of ordinary intelligence can understand a statute’s meaning, even though there may be some disagreement, the statute is sufficiently definite. *A.W.B. Constr., Inc.*, 152 Wn. App. at 489. As noted above, the concept of “best interest” is not just a factor in termination proceedings, but permeates the entire dependency statute and process. The goal of a

dependency is always to determine the course of action that serves the best interests of the child. *In re Ashauer*, 93 Wn.2d at 695.

Washington courts have applied the “best interest of the child” standard repeatedly without discomfort or concern that the standard was vague or uncertain.<sup>8</sup> Far from rendering the statute impermissibly vague, the use of a “best interest” standard in child welfare cases supports the constitutionality of the statutes by allowing the court to consider whatever individual interests of a child are at issue in any given case, and then craft an order that serves the child’s individual best interest.<sup>9</sup>

The courts have long recognized that a biological parent has a fundamental liberty interest in the care, custody and control of his or her child. *Santosky v. Kramer*, 455 U.S. 745, 752, 102 S. Ct. 1388, 71 L. Ed. 2d 599 (1982). However, that fundamental right is not absolute. *In re Young*, 24 Wn. App. 392, 395, 600 P.2d 1312 (1979). The father has failed to prove beyond a reasonable doubt that RCW 13.34.190 is void for

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<sup>8</sup> *In re Day*, 189 Wn. 368, 65 P.2d 1049 (1937) (when the rights of a parent and child conflict, the rights of the parent must yield to the child’s best interest.); *In re Welfare of Gillespie*, 14 Wn. App. 512, 543 P.2d 249 (1975) (if the parent has not acted responsibly toward the child, it is not in the child’s best interest to be in the parent’s custody); *In re Dependency of I.J.S.*, 128 Wn. App. at 118, *review denied*, 155 Wn.2d 1021 (2005) (termination statute is constitutional because it requires proof of parental unfitness plus a showing that it is in the child’s best interest).

<sup>9</sup> *In re Becker*, 87 Wn.2d 470, 553 P.2d 1339 (1976) (although the statutes and opinions lack specific criteria for establishing “best interest” the complexity of the cases and the need for careful individual treatment requires that each case be considered on the basis of its own facts. *In re Matter of Sego*, 82 Wn.2d at 738; *In re A.V.D.*, 62 Wn. App. 562, 815 P.2d 277 (1991).

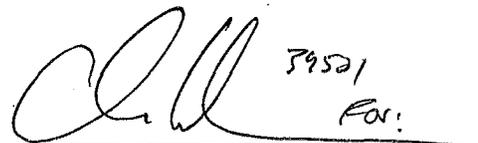
vagueness and is therefore unconstitutional. He has not shown that the trial court's finding termination was in K.S.'s best interest was arbitrary in light of the facts in this record, and therefore has failed to demonstrate any showing that his due process rights were implicated due to RCW 13.34.190.

#### V. CONCLUSION

Substantial evidence supports the trial court's conclusion that the continuation of the parent child relationship clearly diminishes K.S.'s prospects for integration into a permanent and stable home. The court's findings of fact reflect a clear and explicit conclusion that the father is not presently fit to care for K.S. The father's assertions that the court abused its discretion in failing to fashion an equitable remedy and that RCW 13.34.190 is unconstitutional are entirely without merit. The order of the trial court should be affirmed.

Respectfully submitted this 20<sup>th</sup> day of December, 2010.

ROBERT M. MCKENNA  
Attorney General

A handwritten signature in black ink, appearing to read 'S. Trimble', with the number '39521' written above it and 'For:' written below it.

SARAH E. TRIMBLE  
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