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DIVISION III
STATE OF WASHINGTON
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NO. 31514-2

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

In Re the Guardianship of A.W., and M. W., Minor Children,

State of Washington
Department of Social and Health Services,
Respondent,

v.

T.P., Mother,

Appellant.

BRIEF OF RESPONDENT

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I. INTRODUCTION

The mother, T.P., appeals from guardianship orders entered as to her children A.W. and M.W. At the time of trial, A.W. and M.W. were nine and twelve years old, respectively.

The mother stipulated to a finding of dependency as to both children on December 8, 2009. This was the second dependency for M.W. After approximately three years and multiple dependency review hearings, the Department of Social and Health Services (hereinafter "Department") petitioned for an Order Appointing Title 13 RCW Guardian for A.W. and M.W. on February 28, 2012. CP 3, 3.¹ The mother contested the guardianships and a hearing was held on November 28, 29, and 30, 2012. Orders appointing a Title 13 RCW guardian were entered on March 28, 2013, as to both children. CP 114, 125. Attachment 1-2. The mother now appeals.

II. RESTATEMENT OF THE ISSUES

- A. **Whether the preponderance standard of evidence to establish a chapter 13.36 RCW guardianship satisfies due process?**
- B. **Whether there is substantial evidence to establish that the guardianship was in the children's best interest rather than adoption or continued reunification efforts with the mother?**
- C. **Whether there is substantial evidence to establish that there is little likelihood that the mother's parental deficiencies can be**

¹ Citations to Clerk's Papers related to A.W. and M.W. shall be separated by a comma.

remedied so that the children could be returned to her care in the near future?

III. COUNTERSTATEMENT OF THE CASE

T.P. is the mother of six children, none of whom are currently in her care.² RP 12. M.W and A.W. are the subjects of this appeal. ³ RP 11-12. M.W. was born October 21, 2000. CP 2. M.W. tested positive for methamphetamines at birth and the Department removed him from his mother's care shortly thereafter. RP 258. The Department filed a dependency petition and the court found M.W. to be dependent. *See Id.* During this initial dependency, the Department offered services to the mother including a psychological evaluation, FPS services, substance abuse treatment and a parenting class. RP 259. The court returned M.W. to the mother's home on October 13, 2001. RP 260. The dependency was dismissed on April 16, 2002. *Id.*

A.W. was born on December 6, 2002. RP 11, CP 1. In September 2009, the mother again came to the Department's attention after an investigation determined that her 13 year old son, W.W. had sexually abused A.W. and M.W and a third sibling, C.W. RP 261. The abuse occurred while A.W. and M.W. were in the mother's care. RP 32. The Department obtained a court order removing A.W., M.W. and C.W. from

² Two of the mother's children are adults.

³ While the child's initials are M.W., the child commonly goes by and is referred to by witnesses throughout the trial court record by first initial J. RP 11-12.

the home on September 17, 2009. On September 21, 2001, a dependency petition was filed on behalf of A.W. and M.W. RP 261; Ex. 1, 11. The mother subsequently gave custody of C.W. to the maternal grandmother. RP12.

The mother agreed to a dependency on A.W. and M.W. and fact-finding orders were entered on December 9, 2009. Ex. 1, 11.⁴ The fact-finding orders included a finding that each child had *Id.* The court also entered disposition orders placing the children in out of home care and requiring the mother to engage in services, including a parenting evaluation, mental health counseling, services through the Sexual Assault Response Center (SARC), a substance abuse assessment and random UAs. Ex. 2, 12. The mother's identified parental deficiencies were a lack of parenting skills, mental health issues, lack of awareness of sexual abuse related to the children and on-going substance abuse issues. RP 261-62.

On March 9, 2010, a transition home to the mother was approved by the Court contingent on the mother's compliance with court ordered services and the Department's case plan. Ex 3, 13. On March 26, 2010, A.W. and M.W. were returned to the mother's care. RP 263. On May 25, 2010, social worker Misty Ovens conducted a home visit and found the

⁴ The dependency orders found that each child was dependent pursuant to RCW 13.34.030(5)(c)—that the children “had 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.” *Id.*

children alone with S.B. RP 264. S.B. was the mother's significant other, who was not permitted to have unsupervised access to the children, pursuant to the safety plan the mother agreed to, because he did not pass a background check. RP 263-64. On September 27, 2010, the Court permitted A.W. and M.W. to continue the in-home placement with the mother. Ex. 5, 15. Despite this, the Court order also made contingency placement arrangements for A.W. and M.W. for while the mother was in jail, which included relative care and foster care.

However, the Department's concerns with the in-home placement with the mother continued to mount. The mother was also arrested for failure to pay fines during the trial return home. RP 13. The children were missing school without a valid excuse. RP 265. The Department discovered that the mother also was allowing W.W. to have frequent contact with A.W. and M.W., despite his prior sexual abuse of the children. *See* RP 13, 266. Ultimately, the Department requested a pick up order and the children were again removed from the mother's care on December 1, 2010. RP 265-66. Since that time, the children have remained out of the mother's care due to her failure to comply with court ordered services and her failure to correct her parental deficiencies. A.W. and M.W.'s dependencies were reviewed by the court on: March 9, 2010, July 13, 2010, September 27, 2010, January 24, 2011, June 21, 2011,

October 11, 2011, April 2, 2012 and October 1, 2012. Ex. 3-10, 13-20. The reviews documented the services offered to the mother, and addressed her compliance with the prior court order, progress, services, visitation, placement and permanent plan. The services included a substance abuse evaluation, a parenting evaluation, individual counseling, a parenting awareness class, Family Preservation Services (FPS), a psychological evaluation, one-on-one parenting, Women's Empowerment, substance abuse services and urinalysis testing. RP 263, 267. Although the mother was provided with a plethora of services, her behavior and parental deficiencies did not improve over the course of the dependency.

On January 24, 2011, the court found that the "mother is not doing what she needs to do to parent--she is in denial of reality." Ex. 6, 16. The court ordered out of home placement, as the mother had not demonstrated sufficient progress and the permanent plan became adoption or third party custody. *Id.*

On June 21, 2011, the mother was not in compliance with the prior court order and was not making any progress towards correcting the problems that necessitated the children's placement in out-of-home care. Ex. 7, 17. The court again ordered out of home placement, as the mother had not demonstrated any progress and the permanent plan became guardianship. *Id.*

On October 11, 2011, the mother was found not in compliance with the court order and not making any progress towards correcting the problems that necessitated the children's placement in out of home care. Ex. 8, 18. The mother was incarcerated part of the review period and attempted to 'beat' her UAs by submitting someone else's urine. *Id.* As a result, the court again ordered out of home placement, as the mother had not demonstrated any progress, and the permanent plan remained guardianship. *Id.*

On April 2, 2012, the mother was found in partial compliance with the prior court order but was found not to be making any progress towards correcting the problems that necessitated the children's placement in out-of-home care. Ex. 9, 19. The court admonished that the "mother needs to demonstrate that she can parent 24/7." *Id.* Accordingly, the court ordered out of home placement and maintained the permanent plan of guardianship.

On October 1, 2012, the court found the mother in partial compliance with the prior court order and making minimal progress. Ex. 10, 20. However, the mother incurred new criminal charges, her attendance was inconsistent in services and she was not in compliance with completing UAs. *Id.* As a result, the children remained in out of home care and the primary plan remained guardianship.

Dr. Naughne Boyd, a licensed clinical psychologist, performed a psychological evaluation on the mother on March 24, 2011. Ex. 26. The mother was diagnosed as having Polysubstance Dependence, Attention Deficit Hyperactivity Disorder and Adjustment Disorder with mixed anxiety and depression. *Id.* at 6. Dr. Boyd concluded:

Her history and evaluation comments suggest problems with reasoning and judgment. She does not seem to think about the ramifications or consequences of her choices.

Id. Dr. Boyd concluded that the mother “would lie in order to get what she wants at the moment...” RP 99. As a parent, the mother admitted to not setting appropriate behavioral boundaries. RP 102. Intellectually, Dr. Boyd believed the mother was capable of understanding what was required to be a good parent, but failed to consistently implement what was needed. RP 102. Dr. Boyd testified that the effect of the mother not regularly attending drug and alcohol treatment would be “unpredictable.” RP 107. Given the history of the mother, Dr. Boyd also testified that if the mother tested positive for methamphetamine in May 2012, “it would not be in the best interest of the children for them to be in her custody or care.” RP 109. The mother tested positive for methamphetamines on May 15, 2012. RP 237-38.

Michelle Leifheit provided Family Preservation Services (FPS) to the mother from March 2, 2010 to July 10, 2010. RP 115-16, 119. FPS

was utilized to assist the mother while the children were being transitioned back to her home and maintaining the placement thereafter. RP 119. Ms. Leifheit's work with the mother included provided parenting education, organization and assisting with accessing resources. RP 116. During FPS services with Ms. Leifheit, the mother demonstrated a "[l]ack of follow through, inconsistency." RP 120. The mother was arrested right when the FPS services ended for a failure to pay fines. RP 121. During that time, the mother was also inconsistent in getting the children to appointments. RP 124. When comparing the mother's scores at the start of FPS to its conclusion, Ms. Leifheit assessed that the mother's scores went down in most domains, which included family safety, family interactions and parental capabilities and environment. RP 125-126.

After FPS services, Ms. Leifheit continued to provide professional services to the mother from September 2010 to December 2010, which was essentially a continuation of FPS services. RP 126-27. During this time, the mother missed appointments. RP 127-128. Ms. Leifheit testified that the missed appointment were due to circumstances that were in the mother's control, including the mother forgetting, double-booking, no-showing and cancelling. RP 127-28. The mother demonstrated a lack of follow through by missing appointments for the children and frequently stating she had run out of gas. RP 128. Under the professional services

contract, the mother's life continued to be "chaotic" with the children missing a lot of school in October 2010. RP 129. Ms. Leifheit testified that M.W. manifested negative behaviors, including hitting, due to the mother's lifestyle. RP 131. The issues identified at the outset of the professional services contract were not remedied at its conclusion in December 2010. RP 132.

At the time of trial, Ms. Leifheit was providing the mother with individual counseling. RP 133. Based upon her knowledge of the case, including a significant period of time working with the mother and family, Ms. Leifheit was not able to provide an opinion regarding whether the mother would be capable of parenting her children in the foreseeable future. RP 368-69. In consideration of the mother's history, Ms. Leifheit testified that the mother "has had a difficult time sustaining changes." RP 371.

From March 2010 to July 2012, Tamara Tanninen, a therapist specializing in parenting, parent-child interactive therapy and counseling, provided the mother with a parent capacity assessment, Women's Empowerment group and individual counseling. RP 193-94, 197. Ms. Tanninen identified abuse and addiction, as well as "the general lifestyle of constant drama..." as barriers to the mother's success. RP 206. The

mother failed to make any significant progress in Ms. Tanninen's services for approximately one year. RP 218.

A.W. and M.W. also received services during the dependency, including counseling and a neuropsychological evaluation. RP 262. Dr. Peter Stewart performed a diagnostic evaluation on A.W. RP 71. Dr. Stewart diagnosed A.W. with Cognitive Disorder Not Otherwise Specified and Adjustment Disorder. RP 74. Dr. Stewart testified that the Adjustment Disorder was concerning to him, as A.W.'s behaviors seemed to change with different settings. Dr. Stewart's opined that A.W. needs a "structured, nurturing, consistent" environment. RP 78.

M.W. was also evaluated by Dr. Stewart. RP 64. M.W. was diagnosed with Mood Disorder Not Otherwise Specified and Oppositional Defiant Disorder. RP 66. Dr. Stewart opined that M.W. would benefit from an environment that is "structured, it's consistent, it's routine and nurturing..." RP 68. Ms. Leifheit provided individual counseling to M.W. from October 2010 to June 2011 and also opined that M.W. needed structure and routine to succeed. RP 130-31.

Ms. Leifheit testified that the mother did not provide the children with structure, routine and consistency while both were in the mother's care. RP 131-32. Social Worker Ovens confirmed that the mother demonstrated over three years her inability to consistently parent the

children safely and provide the environment needed by both children. RP 275-76, 286.

The mother's chaotic lifestyle and criminal activities continued through the dependency and up to the date of the trial. At the time of trial, the mother had two felony charges pending for possession of a controlled substance. RP 15. On January 24, 2012, the mother had six active warrants for her arrest and Officer Doug Doss, during a search incident to arrest, found a glass smoking device consistent with smoking narcotics on the mother's person. RP 229-30. The Washington State Crime Lab tested residue on the device and determined it to be methamphetamine. RP 231. The mother was arrested and taken to jail. *Id.* On May 15, 2012, the mother tested positive for methamphetamines during jail work crew. RP 237-38. Corporal Eman Rodrick discovered pills on the mother's person at the time of the incident, which were later identified as Adderall. RP 243, 225. The jail nurse was unable to verify a valid prescription for the pills. RP 225-26.

After A.W. and M.W. were in a dependency, W.W. was placed with the mother.⁵ RP 282-84. After the mother was arrested in May 2012,

⁵ Initially, W.W. was in a JRA facility and was placed with the maternal grandfather upon release. RP 282-83. However, due to the mother and the maternal grandfather allowing W.W. to have contact with A.W. and M.W. while A.W. and M.W. were in the mother's care, W.W. was put back in the JRA facility on probation violations.

the Department intervened on W.W.'s behalf. RP 284; Ex. 21. The mother agreed to a dependency on W.W. on August 29, 2012. Ex 22.

At trial, Social Worker Ovens testified that the mother's engagement in services has been "sporadic and inconsistent." RP 276.

Ms. Ovens estimated that the mother has been arrested at least ten to fifteen times over the course of the dependency. RP 273. She stated:

[The mother]'s biggest barrier is herself. She's been given an amount of services I don't believe, in my ten years, I've seen any other client be given this amount of services and chances. Some of the best providers that we have worked with for a substantial length of time. There is something within [the mother] that she can't overcome in order to make right decisions on a consistent basis that will allow her to stay free and consistently parent her children.

RP 288 Ms. Ovens testified that a guardianship is in the best interest of A.W. and M.W. based upon the mother's failure to demonstrate the ability to safely care for her children and the children's need for stability. RP 286. Ms. Ovens testified that the proposed guardians "historically and currently" worked with the mother to do what is in the best interests of A.W. and M.W. RP 287.

The mother testified to having a history of domestic violence with S.B. RP 17. Despite a valid No Contact Order, the mother testified to having contact with S.B. on November 19, 2012. RP 18. Additionally, on

RP 283. W.W. had a failed placement with his father in Oregon and additional probation violations before subsequently being placed with the mother. RP 283-84.

November 19, 2012, a neighbor obtained a temporary protection order against the mother for harassment. RP 17. The mother was contacted by the police regarding the order during the week of the guardianship trial. RP 357.

The mother admitted to being an addict, a methamphetamine user and having mental health disorders. RP 27. The mother was diagnosed as being dependent on amphetamines. Ex. 27. She admitted to not being in compliance with her drug and alcohol treatment over the last year. RP 36. The mother missed a significant amount of her intensive outpatient treatment. Ex. 24-25. The June 2012 status report from Somerset Counseling for substance abuse services reflects that six of the mother's absences were due to being in jail. Ex. 25.

At the time of trial, the mother was attempting to qualify for Drug Court. RP 44. While the mother hoped to qualify for Drug Court, there was no evidence to suggest she would actually be admitted to the program and, if that were to occur, when it would happen.⁶ *See* RP 44-46, 342. Additionally, the mother's lack of compliance in the dependency process raised doubts about the mother's likelihood of success in Drug Court, if she were to be admitted, as non-compliance would result in incarceration. RP 297-98.

(b) All parties agree to entry of the guardianship order and the proposed guardian is qualified, appropriate, and capable of performing the duties of guardian under RCW 13.36.050; or

(c)(i) The child has been found to be a dependent child under RCW 13.34.030;

(c)(ii) A dispositional order has been entered pursuant to RCW 13.34.030;

(c)(iii) At the time of the hearing on the guardianship petition, the child has or will have been removed from the custody of the parent for at least six consecutive months following a finding of dependency under RCW 13.34.030;

(c)(iv) The services ordered under RCW 13.34.130 and RCW 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;

(c)(v) There is little likelihood that conditions will be remedied so that the child can be returned to the parent in the near future; and

(c)(vi) The proposed guardian has signed a statement acknowledging the guardian's rights and responsibilities toward the child and affirming the guardian's understanding and acceptance that the guardianship is a commitment to provide care for the child until the child reaches age eighteen.

RCW 13.36.040.

A guardianship is recognized as a permanent plan for children found to be dependent. RCW 13.36.010.

The mother admitted that she “just act[s] on impulse, without thinking.” RP 43. She admitted to a lack of stability since being involved with the Department. RP 43. Significantly, the mother also admitted she was not ready to have A.W. and M.W. placed in her home at the time of trial. RP 334. The mother estimated that she needed three additional months time, but this prediction was not supported by any professional service provider. RP 355.

After three years of Department supervision, a guardianship order was entered on A.W. and M.W. The guardianship orders allowed for on-going contact between the mother and the children. Attachments 1-2. The mother appeals the appointment of guardians for A.W. and M.W.

IV. ARGUMENT

A. The Elements Of A Chapter 13.36 RCW Guardianship

A trial court may enter an order appointing a guardian if the Department proves the statutory elements of RCW 13.36.040(2)(a)-(c) by a preponderance of the evidence. RCW 13.36.040. These statutory elements are:

- (a) The court finds by a preponderance of the evidence that it is in the child’s best interests to establish a guardianship rather than to terminate the parent-child relationship and proceed with adoption, or to continue efforts to return custody of the child to the parent and;

The elements of a chapter 13.36 guardianship are very similar to those that must be proven to terminate parental rights. *See* RCW 13.34.180(1)(a-f). However, the burden of proof in a termination of parental rights case is clear, cogent and convincing evidence. RCW 13.34.180. Importantly, a guardianship does not terminate the parent-child relationship, rather it maintains the relationship and allows for on-going contact between the parent and child. *See* 13.36.050.

B. Standard of Review

The trial court in a termination of parental rights proceeding has broad discretion to evaluate evidence in light of the rights and safety of the children. *In re Dependency of C.B.*, 61 Wn. App. 280, 287, 810 P.2d 518 (1991). In a guardianship proceeding, the trial court should also be given broad discretion to evaluate the evidence in this manner. Where the parent's interests conflict with the children's rights to basic nurture, physical health, mental health, and safety, the rights of the children prevail. RCW 13.34.020; *In re Sego*, 82 Wn.2d 736, 738, 513 P.2d 831 (1973).

The decision of the trial court is entitled to great deference on review and its 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 104 (1991). The reviewing court may not

decide the credibility of witnesses or weigh the evidence. *In re A.V.D.*, 62 Wn. App. 562, 568, 815 P.2d 277 (1991). Substantial evidence is evidence in sufficient quantity to persuade a fair-minded, rational person of the truth of the declared premise. *Worldwide Video v. Tukwila*, 117 Wn.2d 382, 387, 816 P.2d 18 (1991). In this case, the trial court properly applied the preponderance of the evidence standard as the burden of proof.

When a trial court has weighed conflicting evidence, appellate review of the trial court's findings of fact is limited to determining whether they are supported by substantial evidence and 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). Findings of fact are presumed to be correct and the party claiming error has the burden of showing that they are not supported by substantial evidence. *Fisher Properties v. Arden-Mayfair*, 115 Wn.2d 364, 369, 798 P.2d 799 (1990). Further, by claiming insufficiency of the evidence, the mother admits the truth of the Department's evidence and all inferences that can be reasonably drawn from it. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992); *State v. Madarash*, 116 Wn. App. 500, 509, 66 P.3d 682 (2003).

Statutes are presumed to be constitutional. *In re Dependency of K.R.*, 128 Wn.2d 129, 142, 904 P.2d 1132 (1995). The challenging party has the burden to prove otherwise beyond a reasonable doubt. *In re Dependency of C.B.*, 79 Wn. App. 686, 689, 904 P.2d 1171 (1995), *review denied*, 128 Wn.2d 1023 (1996).

On appeal, the mother assigns error to Findings of Fact 2.7; 2.7(E); 2.7(E)(v); 2.7(E)(vii); 2.7(E)(viii); 2.7(E)(ix); 2.7(E)(xvi); 2.7(xviii); and 2.8(e). App. Br. 6. The remaining findings are unchallenged and are therefore verities on appeal. *In re Mahaney*, 146 Wn.2d 878, 895, 51 P.3d 776 (2002).

As shall be seen below, a guardianship under chapter 13.36 RCW satisfies due process and the disputed Findings of Fact are clearly supported by substantial evidence.

C. The Preponderance Standard Of Evidence Used In The Establishment Of The Guardianships Satisfies Due Process.

Pursuant to RCW 13.36.040(2)(a), the elements of a guardianship must be proven by a preponderance of the evidence. The mother argues that the preponderance of the evidence standard violates her right to due process. App. Br. 23-24. The mother's position is incorrect, as it misconstrues the statute, process and purpose.

Prior to 2010, guardianships for dependent children were known as “dependency guardianships” and were governed by former RCW 13.34.231. Former RCW 13.34.231 required that the burden of proof for a dependency guardianship was the preponderance of the evidence. This evidentiary standard was found to comport with due process by the Court of Appeals in *In re F.S.*, 81 Wn. App. 264, 913 P.2d 844 (1996), review denied, 130 Wash.2d 1002, 925 P.2d 988 (1996). In 2010, the Legislature enacted a new guardianship option for dependent children, now codified in RCW 13.36. SHB 2680, Chapter 272, Laws of 2010, 61st Legislature, 2010 Regular Session.⁷

The key components of the prior statute that were found to meet due process were carried over by the legislature to the new statute. Contrary to the mother’s argument, guardianship for a dependent child pursuant to RCW 13.36 is no more akin to termination of parental rights than the prior statute. Both statutes contain the key components which *F.S.* court determined distinguish a guardianship for a dependent child from a termination of parental rights: “Guardianship is not permanent, nor is it irreversible, and it does not sever all rights of the parent in a child.” *F.S.*, 81 Wn. App. at 269

⁷ The new guardianship option, codified at RCW chapter 13.36, replaced the former “dependency guardianship” statute, RCW 13.34.230 to RCW 13.34.236.

The first five elements of RCW 13.36.040(2)(c) are very similar to the elements in RCW 13.34.231.⁸ The mother is correct that there are also some differences between the two statutes, however, these differences do not make a 13.36 guardianship more akin to a termination than the former statute which was found to comport with due process. Rather, they remove the state's involvement from the lives of the guardian, child and parents and provide means for modification and/or termination of the guardianship that are more liberal than under the former statute.

1. Fundamental Fairness

The fundamental fairness test is used to evaluate the process required in proceedings related to the parent-child relationship. *Santosky v. Kramer*, 455 U.S. 745, 754, 102 S.Ct. 1388, 1395, 71 L.Ed.2d 599(1982); *In re Key*, 119 Wn.2d 600, 836 P.2d 200(1992) *cert. denied*, 507 U.S. 927, 113, S.Ct. 1302, 122 L.Ed.2d 691 (1993); *In Re Dependency of F.S.*, 81

⁸ The first five elements of RCW 13.34.231 (2008) are:

- (1) The child has been found to be dependent under RCW 13.34.030(2);
- (2) A dispositional order has been entered pursuant to RCW 13.34.130;
- (3) The child has 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(2);
- (4) The services ordered under RCW 13.34.130 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;
- (5) There is little likelihood that conditions will be remedied so that the child can be returned to the parent in the near future

Wn. App. at 266-67. The court examines three factors to determine fundamental fairness:

- (1) [T]he private interest affected by the proceedings;
- (2) [T]he risk of error created by the State's chose procedure; and
- (3) [T]he countervailing government interest supporting the use of the challenged procedure.

F.S., 81 Wn.App. at 267; *Santosky v. Kramer*, 455 U.S. 745, 754 (1982). The preponderance standard of evidence used in the RCW 13.36 guardianship statute satisfies due process under the fundamental fairness test.

a. The Private Interest Affected by the Proceeding

Just as in all proceedings relating to dependent children, the private interest affected in a RCW 13.36 guardianship proceeding is the relationship between the parent and child. Contrary to the mother's argument, the impact of a 13.36 guardianship order on the relationship is not tantamount to termination of parental rights. *See F.S.*, 81 Wn.App. 269. A guardianship leaves the parent-child relationship intact and, in fact, was specifically enacted by the legislature to create a permanency option for dependent children in foster care, short of termination of parental rights. In enacting RCW 13.36, the legislature stated:

The legislature finds that a guardianship is an appropriate permanent plan for a child who has found to be dependent under chapter 13.34 RCW and who cannot be safely reunified with his or her parents. The legislature is

concerned that parents not be pressured by the department into agreeing to the entry of a guardianship when further services would increase the chances that the child could be reunified with his or her parents. The legislature intends to create a separate guardianship chapter to establish permanency for children in foster care through appointment of a guardian and dismissal of the dependency.

RCW 13.36.010.

Under a RCW 13.36 guardianship, many parent's rights go unaltered. The guardianship statute does not infringe upon a parent's right to consent to the child's adoption, the right to consent to the child's marriage, and the right to provide financial, medical or other support for the child. *See* 13.36.050. The child's inheritance rights also remain intact in a RCW 13.36 guardianship. *See Id.*

Conversely, a termination of parental rights results in the following:

[A]ll rights, powers, privileges, immunities, duties, and obligations, including any rights to custody, control, visitation or support existing between the child and parent shall be severed and terminated...

RCW 13.34.200. By the plain terms of the termination statute, the parent loses all rights to the child in a termination action and none are retained. *Id.* The parent is not entitled to have any contact or visitation with the child after the termination of parental rights and does not provide the parent with any mechanism to seek or obtain such contact.

In contrast, a RCW 13.36 guardianship order is required to specify “an appropriate frequency and type of contact” between the child and parent. RCW 13.36.050(1)(6). Additionally, the RCW 13.36 guardianship framework provides a parent with the opportunity to modify and/or terminate the guardianship after the entry of such an order. RCW 13.36.060; 13.36.070. These are mechanisms that are unavailable to a parent whose parental rights have been terminated.⁹

For modification, a parent or guardian is permitted to petition the court. RCW 13.36.060(1). If the court finds adequate cause¹⁰ for the modification, a hearing is held “on an order to show cause why the requested modification should not be granted.” RCW 13.36.060(2). A parent is no longer required to show a “substantial change” by a preponderance of the evidence for a modification under the new statute. *Compare* RCW 13.34.233(2)(2008) *to* RCW 13.36.060. But rather, the standard set forth in RCW 13.36.060 is similar to the standard found in a parental custody action under RCW 26.09.260. A parent is not limited by what visitation terms may be sought in a RCW 13.36 guardianship

⁹ Pursuant to RCW 13.34.215, a child may petition the court for reinstatement of the parental rights.

¹⁰ This term has been defined by case law in the residential modification context as “(a)t the very minimum, ‘adequate cause’ means evidence sufficient to support a finding on each fact that the movant must prove in order to modify; otherwise a movant could harass a non-movant by obtaining a useless hearing.” *In re Marriage of Lemke*, 120 Wn. App. 536, 540, 85 P.3d 966 (2004).

modification proceeding. In other words, nothing prevents the parents from petitioning the court for a modification allowing contact with the child seven days a week. *See* RCW 13.36.060.

The mother also argues a parent's ability to terminate a guardianship has been narrowed under RCW 13.36.070. App. Br. 30-31. This is incorrect, under the former statute, RCW 13.34.233(2) any party was able to seek a termination of the guardianship and any party can do the same pursuant to RCW 13.36.070. Under chapter 13.36 RCW, there are two ways in which a guardianship may be terminated. *See* RCW 13.36.070. First, the guardianship may be terminated upon a showing of the following:

. . . that a substantial change has occurred in the circumstances of the child or the guardian and that termination of the guardianship is necessary to serve the best interests of the child.

RCW 13.36.070(2). The mother points out that the termination can only be accomplished if there is a substantial change in circumstance of the guardian or the child. App. Br. 32. However, the parent is not the focus of the chapter 13.36 RCW guardianship, but rather the child and the child's best interests. *See* 13.36.010; and 13.36.040(2)(a). The purpose of the statute is to provide permanency, short of termination, for children who cannot safely return home.

The second way a chapter 13.36 guardianship may be terminated is set forth in RCW 13.36.070(a)-(c). This section provides:

The court may terminate a guardianship on the agreement of the guardian, the child, if the child is age twelve or older, and a parent seeking the regain custody of the child if the court finds by a preponderance of the evidence and on the basis of facts that have arise since the guardianship was established that:

(a) The parent has successfully corrected the parenting deficiencies identified by the court in the dependency action, and the circumstances of the parent have changed to such a degree that returning the child to the custody of the parent no longer creates a risk of harm to the child's health, welfare, and safety;

(b) The child, if age twelve years or older, agrees to termination of the guardianship and the return of custody to the parent; and

(c) Termination of the guardianship and return of custody of the child to the parent is in the child's best interests.

RCW 13.36.070(a)-(c). A termination of a RCW 13.36 guardianship results in the child being returned home to the parent and no further court involvement. Under the former dependency guardianship statute, a termination resulted in the child still remaining a dependent and either being returned to the parent or to out of home care. *See* RCW 13.34.233(2). Now, a parent has two ways in which to terminate a RCW 13.36 guardianship, as well as a means to modify the terms of the

guardianship. Such remedies are not available to a parent whose rights have terminated.

The RCW 13.36 guardianship statute remains distinct from a termination action. A termination severs all parental rights in the child. The RCW 13.36 guardianship does not deprive a parent of all rights in the child. The RCW 13.36 guardianship also requires that visitation frequency be specified, allowing the parent and child to maintain a relationship. The guardianship order is also not permanent, as the statute allows parents to seek modification and termination. Therefore, the private interest in a RCW 13.36 guardianship is not tantamount to the private interest in a termination action.

b. Risk of Error

The risk of error in using the preponderance of the evidence standard in a RCW 13.36 guardianship proceeding is also diminished when compared to the risk of error in termination proceedings. When evaluating the risk of error, the court in *F.S.* examined a parent's ability to modify or terminate the guardianship and whether the guardianship automatically results in termination. *F.S.*, 81 Wn. App at 270.

There is a vast difference between the effects of the entry of a termination order as opposed to a RCW 13.36 guardianship order. This difference equates to less risk of error. The termination permanently

severs all legal relationship between the parent and child. Under the guardianship, the parent maintains parental rights. She maintains a legal right to request that the original visitation order be modified. RCW 13.36.060. She maintains the ability to terminate the guardianship and have the child returned to her care. RCW 13.36.070. If there is a change in the circumstances of the guardian, the court has the ability to terminate the guardianship. *Id.* Once a modification or termination of the guardianship is sought, the court becomes involved in the decision to change or eliminate the guardianship. *See Id.* This extra ability to review also reduces the risk of error.

A RCW 13.36 guardianship remains significantly different from a termination proceeding. As a result, the risk of error in utilizing the preponderance standard in a RCW 13.36 guardianship is not nearly as substantial as the risk involved in a termination proceeding.

c. Countervailing Governmental Interest

The governmental interest supporting the use of the preponderance standard in guardianships is “permanence for the child without terminating the parental rights.” *F.S.*, 81 Wn.App. at 270. A RCW 13.36 guardianship provides permanency for children in foster care. RCW 13.36.010. A child has a right to permanency. RCW 13.34.020. When the rights of the child and the rights of the parent are in conflict, the rights of the child prevail.

RCW 13.34.020. A guardianship is not meant to provide a parent with extra time to obtain custody in the future.¹¹ A guardianship order protects the health, safety and welfare of the child, while still maintaining familial relations. *See* RCW 13.36.050. This governmental interest in providing permanence to the child while maintaining familial relationship supports the preponderance standard in the RCW 13.36 guardianship proceedings.

The mother also argues that due process is implicated by the dismissal of the dependency once the guardianship is established. App. Br. 30. Under RCW 13.36.010, the intent of the legislature was to create permanency for children through both a guardian and dismissal of the dependency. A guardian appointed under chapter 13.36 RCW is not appointed for the purpose of providing supervisory assistance to the court.¹² RCW 13.36.020(4) ; *See* RCW 13.36.010. Similarly, the supervising agency is no longer involved once the dependency is dismissed. RCW 13.36.050(5). Since the supervising agency is no longer involved and the child is no longer in a dependency, greater permanency is achieved for a child.

¹¹ *See Dependency of A.C.*, 123 Wn.App. 244, 251, 98 P.3d 89 (2004) indicating that “[i]n 1994, the legislature amended the statute so guardianship is not, in fact, for the purpose of providing a parent more time to resume custody.”

¹² A guardian under chapter 13.36 does not serve the exact function of a “dependency guardian.” A “dependency guardian” under RCW 13.34, was appointed “for the purpose of assisting the court in supervising the dependency.” RCW 13.36.020(4).

Therefore, a guardianship allows the child to have permanency without severing the parental rights of the parent. The governmental interest in the preponderance standard of proof for RCW 13.36 guardianships is significant because it maintains the child's familial relationship while achieving permanency for children in foster care who cannot return to the care of their parents. *See* RCW 13.36.010.

2. Due Process Is Satisfied

As examined above, there is a decreased private interest in a RCW 13.36 guardianship relative to a termination, a reduced risk of error and a significant governmental interest in the preponderance standard of evidence. The mother has failed to show that chapter 13.36 RCW is unconstitutional beyond a reasonable doubt. As a result, the preponderance standard of evidence satisfies due process in RCW 13.36 guardianship proceedings.

D. Substantial Evidence Supports The Trial Court's Finding That The Guardianships Were In The Children's Best Interests, Rather Than Termination Or Continuing Reunification Efforts.

In order for a chapter 13.36 guardianship to be established, the court must find that a guardianship is in the child's best interest rather than termination or continued efforts to reunify with the parent. RCW 13.36.040. Here, substantial evidence supports the trial court's finding.

First, social worker Misty Ovens testified that a guardianship was in the children's best interest. RP 286. Despite the children needing stability, the mother had failed to show over three years that she could safely parent the children. *Id.* This was the second time a dependency was established on M.W. RP 258. The children have remained in out of home care by court order since December 1, 2010. RP 265-66. The court has consistently held review hearings to review the mother's compliance and progress, and has continuously entered orders placing the children in out of home care since January 24, 2011. *See* Ex 6, 16.

Additionally, Dr. Boyd indicated that that a return home would not be in the children's best interest if the mother tested positive for methamphetamines in May 2012. RP 109. The record shows that on May 15, 2012, the mother tested positive for methamphetamine while on work crew. RP 237-238. The same day, she was found with non-prescribed amphetamine pills. RP 225-26, 243. Earlier, in January of 2012, the mother found with a glass pipe containing methamphetamine residue on it. RP 231. The mother also admitted to primarily being out of compliance with her drug and alcohol treatment for the last year. RP 36.

While the mother argues that her compliance with drug and alcohol treatment evidences a life change, the mother missed a significant number sessions of her drug and alcohol treatment. Ex. 24-25. The mother's

failure to consistently attend drug and alcohol treatment did not show a focus on her sobriety or commitment to effectively parent her children. RP 272-73. Dr. Boyd testified that a lack of participation in drug and alcohol treatment would have an “unpredictable” effect on the mother’s parenting. The status reports from May 2012 and June 2012 indicate that the mother missed six out of fourteen session one month and nine out of fifteen sessions the following month. Ex. 24, 25. Over three years, the mother also had failed to consistently engage in services. RP 272.

The mother also argues that the evidence was insufficient with regard to the specific guardianship placement being in children’s best interest. The statute does not call for such a determination, rather chapter 13.36 RCW requires a finding that a guardianship is in the child’s best interest rather than adoption or continued reunification efforts with the parent. RCW 13.36.040(2)(a). Nevertheless, Ms. Ovens testified that the proposed guardians had historically and currently were working with the mother to do what was in the best interests of the children. RP 287. At the time of trial, the proposed guardians were already working with the mother to arrange a special birthday visit for A.W. RP 287. The guardianship orders entered also allow the mother to have contact and visits with the children. Attachment 1-2.

The proposed guardians also signed a statement acknowledging their willingness to care for the children as outlined in RCW 13.36.040(c)(vi). CP 17-20, 19-22. Additionally, the mother failed to assign error to the findings of fact 2.11, which indicates that the guardians are qualified, appropriate and capable of being the children's guardian. CP 124, 125. This finding is a verity on appeal. *See In re Mahaney*, 146 Wn.2d at 895.

After nearly three years in a dependency, the children were in need of permanency and stability and mother, over that time, demonstrated an inability to provide this to her children. All of the evidence submitted, including testimony and exhibits, as well as the opinion of the social worker, support the trial court's finding that a guardianship was in the children's best interest rather than adoption or continued reunification efforts with the mother.

E. Substantial Evidence Supports The Trial Court's Finding That There Was Little Likelihood That The Children Could be Returned Home In The Near Future.

Pursuant to RCW 13.36.040(c)(v), the State is required to prove that there is little likelihood that the conditions will be remedied so that a child can be returned to the parent in the near future. The focus of this factor is whether parental deficiencies have been corrected. *In re Dependency of T.R.* 108 Wn.App. 149, 165, 29 P.3d 1275 (2001).

The mother argues that Michelle Leifheit's testimony establishes that this element was unsupported. However, when asked whether the mother could parent the children in the near future, Ms. Leifheit was not willing or able to provide an opinion or estimation. RP 368-67. At trial, the mother admitted to not being ready to parent the children. RP 334. Ms. Leifheit also testified that the mother having recent contact with S.B. would be concerning to her. RP 133. The mother testified that this was a domestic violence relationship and she had a valid no contact order, yet she had contact with him the month of trial. RP 17-18. This further evidenced the mother's poor judgment.

Concerning a positive test for methamphetamine in May 2012, Dr. Boyd stated the following:

...But, yeah, that would make me feel very leery about the possibility that she's ever gonna be able to provide the stability and the protection and supervision and be able to be alert enough to understand her individual children's needs and how to meet them.

RP 109. In May 2012, the mother tested positive for methamphetamine while on work crew. RP 237-238. The mother had two felony charges pending for possession of a controlled substance at the time of trial. RP 15. This further evidenced the mother's instability and inability to provide a safe and stable environment to the children in the near future. Ms. Ovens also opined that there was little likelihood that the mother's parental

deficiencies would be remedied so the children could be returned home in the near future based upon her review of the mother's case history, including her history of participation in services, as well as the mother's legal troubles. RP 288-89.

The evidence submitted, including testimony and exhibits, as well as the opinions of Ms. Leifheit, Dr. Boyd and Ms. Ovens, and even the mother's testimony regarding her lack of preparedness, support the trial court's finding that there is little likelihood that the children could be safely returned to the mother in the near future.

V. CONCLUSION

For the reasons stated above, the Department respectfully asks the court to affirm the orders appointing Title 13 RCW Guardians entered on March 28, 2013, as to A.W. and M.W.

RESPECTFULLY SUBMITTED this 14th day of November, 2013.

ROBERT W. FERGUSON
Attorney General



CAITLIN O. FLEMING
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Regional Services Division
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ATTACHMENT 1

JOSIE DELVIN
BENTON COUNTY CLERK

MAR 18 2013

FILED

**SUPERIOR COURT OF WASHINGTON
COUNTY OF BENTON
JUVENILE COURT**

Guardianship of:

A [REDACTED] W [REDACTED]

DOB: 12/06/2002

No: 12-7-00092-7

**Findings and Conclusions re Petition
for Order Appointing Title 13 RCW
Guardian
(FNFCL)
Clerk's Action Required 2.13**

I. Basis

- 1.1 **Petition:** Misty Ovens filed a petition seeking appointment of a guardian in this case.
- 1.2 **Appearance:** The following persons appeared at the hearing:
- | | |
|---|---|
| <input checked="" type="checkbox"/> Child | <input checked="" type="checkbox"/> Child's Lawyer |
| <input checked="" type="checkbox"/> Mother | <input checked="" type="checkbox"/> Mother's Lawyer |
| <input type="checkbox"/> Father | <input type="checkbox"/> Father's Lawyer |
| <input type="checkbox"/> Guardian or Legal Custodian | <input type="checkbox"/> Guardian's or Legal Custodian's Lawyer |
| <input type="checkbox"/> Child's GAL/CASA | <input type="checkbox"/> GAL/CASA's Lawyer |
| <input checked="" type="checkbox"/> DSHS/Supervising Agency Worker | <input checked="" type="checkbox"/> Agency's Lawyer |
| <input type="checkbox"/> Tribal Representative | <input checked="" type="checkbox"/> Proposed Title 13 RCW Guardians |
| <input type="checkbox"/> Interpreter for: <input type="checkbox"/> mother <input type="checkbox"/> father | <input type="checkbox"/> |
| Other _____ | <input type="checkbox"/> other _____ |
- the mother father agreed to entry of the order and waived his/her right to notice of the hearing.
- 1.3 **Basis:** The court heard testimony The parties submitted an agreed order.

II. FINDINGS OF FACT

- 2.1 **Notice:** The following have received adequate notice of these proceedings as required by Laws of 2010, ch. 272 § 3:
- The mother father guardian or legal custodian DSHS/Supervising Agency child the child's lawyer or guardian ad litem proposed Title 13 RCW guardian.
- The child is 12 or older and was notified that he/she may request a lawyer.

ALW

F/C Re PT for OR Appointing
Dependency Guardian (FNFCL)
WPF JU 14.0300 (06/2010) – Laws of
2010, ch. 272, §§ 4, 11

1

ATTORNEY GENERAL OF WASHIN
Regional Services Division
8127 W. Klamath Court, Suite
Kennewick, WA 99336-2607
(509) 734-7285

ATTACHMENT 1

2.2 Child's Indian status

- The child is not a member of or eligible for membership in an Indian tribe and the Indian Child Welfare Act, 25 U.S.C. § 1901 et seq. does not apply to the proceedings.
- The child is a member of or eligible for membership in an Indian tribe and the Indian Child Welfare Act, 25 U.S.C. § 1901 et seq. does apply to the proceedings.
 - The proposed guardian(s) fall within the placement preferences specified in 25 U.S.C. 1915(b) or (c); **Or**
 - The proposed guardian(s) does (do) not fall within the placement preferences of 25 U.S.C. 1915, but there is good cause to continue placement with the proposed guardian(s) because _____, **And**
 - The child's tribe has been notified of this proceeding by registered mail received at least 15 days prior to the hearing.
 - Pursuant to 25 U.S.C. §1912(d), active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the break-up of the Indian family, and these efforts have been unsuccessful.
 - Pursuant to 25 U.S.C. §1912(f), the court finds by clear and convincing evidence, including the testimony of a qualified expert witness, that continued custody of the child by the parent(s) or Indian custodian is likely to result in serious emotional or physical damage to the child.

2.3 Service Members' Relief Acts

Mother:

- The federal Service Members Civil Relief Act of 2003, 50 U.S.C. § 501, et seq. the Washington Service Members Civil Relief Act, chapter 38.42 RCW **does not** apply to the mother in this proceeding.
- The federal Service Members Civil Relief Act of 2003, 50 U.S.C. § 501, et seq. the Washington Service Members Civil Relief Act, chapter 38.42 RCW does apply to the mother in this proceeding. The requirements of the act(s) have been met as follows:

Father:

- The federal Service Members Civil Relief Act of 2003, 50 U.S.C. § 501, et seq. the Washington Service Members Civil Relief Act, chapter 38.42 RCW **does not** apply to the father in this proceeding.
- The federal Service Members Civil Relief Act of 2003, 50 U.S.C. § 501, et seq. the Washington Service Members Civil Relief Act, chapter 38.42 RCW does apply to the father in this proceeding. The requirements of the act(s) have been met as follows:

2.4 A [REDACTED] W [REDACTED] was born on December 6, 2002 and is a dependent child in Benton County.

2.5 The child's mother, T [REDACTED] P [REDACTED], currently resides at 83206 W. Weidle Road, Space #13, West Richland, Washington 99353, Telephone No. (509) 572-6999.

2.6 The child's father, T [REDACTED] F [REDACTED] currently resides at unknown (previously defaulted) Telephone No. unknown.

2.7 Guardianship is is not in the best interests of the child, rather than termination of the

parent-child relationship and proceeding with adoption, or continuation of efforts to return custody of the child to the parents based upon the following facts:

On July 30, 2012, testimony was taken of Teresa Pofahl (social worker) and the father was defaulted.

On November 28, 29, and 30, 2012, a contested guardianship trial was held as to the mother. The Department presented the following witnesses: T [REDACTED] F [REDACTED] (mother), Dr. Peter Stewart (youth psychologist), Dr. Naughne Boyd (clinical psychologist), Michelle Leifheit (mental health counselor/FPS provider), Vicki Roeder (visit supervisor), Pamela Coleman (chemical dependency professional), Dan Trapp (chemical dependency professional), Doug Doss (officer), Eman Rodrick (work crew program officer), Blanca Coleman (jail nurse), Tami Tanninen (therapist/counselor), and Misty Ovens (social worker).

The mother testified on her own behalf, and presented additional testimony from Michelle Leifheit. Exhibits 1 through 27 were admitted.

There is a preponderance of evidence to establish the allegations of the petition for guardianship and RCW 13.36.040. The findings are as follows:

- A) **The child was found to be dependent pursuant to RCW 13.34.030.**
 - i. On December 8, 2009, a fact finding order was entered as to the mother. Ex. 1. The mother stipulated to a finding of a dependency.
 - ii. The court finds and the parties agree that the testimony supports the fact that the child has been found to be dependent.
- B) **The court entered dispositional orders pursuant to RCW 13.34.130.**
 - i. On December 8, 2009, a disposition order was entered as to the mother. Ex. 2. The mother agreed to the dispositional order.
 - ii. The court finds and the parties agree that the testimony supports the fact that a dispositional order has been entered as to this child.
- C) **The child has been removed from the custody of the parents for a period of at least six consecutive months following a finding of dependency under RCW 13.34.030.**
 - i. The child has been out of the home for more than six months. Ex. 1-10.
 - ii. The mother did have placement early on in the dependency, but Review Orders dated January 24, 2011, June 21, 2011, October 11, 2011, April 2, 2012, and October 1, 2012 reflect out of home care for the child. Ex. 6-10.
 - iii. The court finds and the parties agree that the testimony supports the fact that the child has been removed from the family home for at least 6 months.
- D) **Services ordered under RCW 13.34.130 and .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.**
 - i. The services ordered at disposition for the mother were:
 - a. Shall engage in parenting evaluation and will follow through with recommendations.
 - b. Shall engage in mental health counseling services with 100% attendance.
 1. Shall obtain and maintain a safe and stable living environment.
 2. Once mother obtains a safe and stable living environment, Mother shall install alarms on all bedroom doors and windows of her home.
 3. Once mother obtains a safe and stable living environment and installs the necessary alarms, mother shall engage in FPS services.
 - c. Shall not reside with anybody without approval from the assigned social worker.
 - d. Shall engage in services through SARC with 100% compliance.
 - e. Shall maintain a steady and legal source of income.
 - f. Shall engage in a substance abuse assessment with 100% compliance.
 - g. Shall sign all requested released of information within 24 hours of the request.
 - h. Notify the assigned social worker of any changes in contact information (address

- and/or phone number) within 24 hours of the change.
- i. Shall submit to random UA's within 4 hours of the Department's request. Failure to submit to a UA will result in a positive result.
 - j. Shall comply with criminal obligations.
- ii. The services were discussed and reviewed at Review Hearings on March 9, 2010, July 13, 2010, September 27, 2010, January 24, 2011, June 21, 2011, October 11, 2011, April 2, 2011 and October 1, 2012. Ex. 1-10.
 - iii. On January 24, 2011, the court found that the "mother is not doing what she needs to do to parent—she is in denial of reality." Ex. 6.
 - iv. On June 21, 2011, the court found that the mother had not complied with the court ordered services or made any progress, as she notably needed to engage in individual counseling, engage in services with SARC, and comply with criminal obligations. Ex. 7.
 - v. On October 11, 2011, the court found that the mother had not complied with the court ordered services or made any progress, as she notably was not compliant with mental health counseling, had not maintained a safe and stable living environment, had not engaged in any services through SARC, had not informed the Department of where she was living, had not complied with her all her criminal obligations, had not submitted her own urine for UA's, and had not engaged in medication management. The Mother had not visited the child frequently, as she had been incarcerated for part of the review period. Ex. 18. The child was ordered to remain in foster care. Ex. 8.
 - vi. On April 2, 2012, the court found the Mother in partial compliance with the court ordered services but that she had not made any progress with her services. Ex. 9. The court noted that the "Mother needs to demonstrate that she can parent 24/7." Ex. 9. The child was ordered to remain in foster care. Ex. 9.
 - vii. On October 1, 2012, the court found the Mother in partial compliance and making partial progress. Ex. 10. The court noted that the Mother incurred new criminal charges during the review period and was not in compliance with completing her UAs. Ex. 10. The child was ordered to remain in foster care. Ex. 10.
 - viii. The mother knew that she needed to participate in services and demonstrate progress in order for the child and the child's sibling to be returned to her. The mother was aware that services were available to her if she wanted to do them. The mother knew she could initiate and/access services by contacting the social worker and she knew how to contact the social worker.
 - ix. The court finds and the parties agree that the testimony supports the fact that services 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.
- E) **There is little likelihood that conditions will be remedied so that the child can be returned to the parents in the near future.**
- i. The mother has 6 children, none of whom are currently in her care.
 - ii. The mother previously had a dependency in 2000 due to drug usage, which was eventually dismissed. The current dependency began in 2009 when her son W / sexually molested the child.
 - iii. The mother admits that her parental deficiencies have not been adequately rectified so that the child can be returned home. The mother is not capable at this time of parenting the child.
 - iv. During the dependency, the child was placed back in the mother's care only to be subsequently removed because the mother allowed contact between the child and W on multiple occasions. There was a safety plan in place, but the mother did not follow through with it and left the child in a vulnerable situation with an unapproved supervisor. The child also missed school and service appointments during the in-home period with the mother.
 - v. The child has remained in foster care due to several incarcerations of the mother for unpaid fines, drug use and possession. There is a pending felony charge for possession of methamphetamine that occurred in May 2012. She may face a lengthy period of incarceration.

- vi. The mother has had an abusive relationship with Steve Bollinger. Despite a "No Contact" order against him, she had contact with Mr. Bollinger in November 2012.
- vii. The mother has missed many substance abuse treatment sessions over the course of the dependency. *See e.g.* Ex. 24-25. The mother has done both in-patient and out-patient treatment for drug abuse but has difficulty maintaining her sobriety. The mother has failed to demonstrate any long term sobriety since the case began in 2009.
- viii. Counselor/Family Preservation Services Provider Michelle Leifheit testified that the mother knows what she need to do, but does not follow through. Ms. Leifheit also indicated that the mother engages in "magical thinking" because she believes that merely wishing for thing to be alright, they will be. For example, the mother had her power and water shut off for non-payment, but if she had acted in a timely manner the situation could have been avoided. Ms. Leifheit also testified that the mother's inconsistency and chaotic lifestyle were barriers to the mother's success in services. At the conclusion of Ms. Leifheit's services, the issues identified at the outset of her services were not rectified.
- ix. The mother's lifestyle is chaotic. The mother has missed service appointments for herself and for the child.
- x. Counselor and Individual Parenting Instructor Tammy Tanninen testified that she identified problems with the mother and set goals to alleviate the problems, but the mother failed to follow through with the actions necessary to achieve the goals. Ms. Tanninen provided a parenting capacity assessment to the mother, Women's Empowerment group, and counseling. During Ms. Tanninen's services, the mother had a difficult time taking responsibility for her own actions. Ms. Tanninen testified that the mother withheld information during services and was not consistent in her reporting.
- xi. Officer Doug Doss testified that in January 2012 the mother was arrested on outstanding warrants. Officer Doss found a pipe on the mother person that had residue on it at the time of arrest. The residue was later determined to be methamphetamine.
- xii. Officer Eman Rodrick testified that he supervised the mother on work crew in May 2012. The mother did a "quick test" Urine Analysis that was positive for methamphetamine. The mother was found to have pills on her person. Jail Nurse Blanca Coleman testified that pills were confirmed to be a controlled substance, not available without a prescription. Ms. Coleman attempted to verify whether the mother had a valid prescription, but could not find any evidence to support that the mother had a valid prescription for the controlled substance.
- xiii. Social Worker Misty Ovens testified regarding the mother's history with the Department. The Department provided a plethora of services to the mother, including a psychological evaluation, in-patient drug/alcohol treatment, intensive out-patient treatment, parenting services, mental health services, services through SARC (sexual assault response center), urine analysis tests, family preservation services, individual counseling, bus passes and women's empowerment. Additionally, Ms. Ovens facilitated/offered the mother assistance in obtaining housing, adequate transportation and medical coverage, and addressing court fines. Ms. Ovens met in-person, called and sent letters to the mother on numerous occasions in order to encourage her participation in services. Ms. Ovens testified that over the course of the dependency the mother was arrested or put in jail approximately 10-15 times. Ms. Ovens testified that the mother is her own barrier to the child being returned to her care.
- xiv. In May 2012, W. came to the Department's attention while in his mother's care. The mother was not providing adequate supervision which resulted in a dependency petition being filed. *See* Ex. 21. The mother agreed to a dependency as to (W.) on August 29, 2012. Ex. 22. The mother agreed that W. had no parent, guardian or custodian capable of adequately caring for him, such that he was in circumstances which constituted a danger of substantial damage to his psychological or physical development. Ex. 22.
- xv. Psychologist Dr. Naughne Boyd performed a psychological evaluation on the mother in April 2011. Ex. 26. Dr. Boyd testified that the mother had demonstrated poor judgment regarding the child's safety (i.e. who could have access to the children) and did not think

about the consequences of her decisions. She testified that her prognosis for the mother would change to low/guarded if the mother had not engaged in services on a consistent basis. In her opinion, it would not be in the child's best interest to be returned to the mother's care or custody if the mother relapsed given her history.

- xvi. The mother admitted that her inability to adequately parent the child are due to many unresolved issues in her life, including her addiction to meth, mental health issues, the dependency, criminal charges, her relationship with Steve Bollinger and her son W
 - xvii. Dr. Stewart administered a psychological evaluation on the child. In his opinion, the child needs structure, consistency and routine.
 - xviii. Based upon the extensive history of the mother with substance abuse, poor judgment, incarcerations, length of time of this case, the mother's chaotic lifestyle, which continues even though multiple appropriate services have been offered and/or provided and her failure to remedy her parental deficiencies, the mother has failed to demonstrate any change in behavior or parenting ability and that behavior continues to the date of the hearing. There is little likelihood that conditions will be remedied such that this child could be safely returned to the mother's care in the near future.
- F) The proposed guardian signed a statement acknowledging the guardian's rights and responsibilities toward the child and affirming the guardian's understanding and acceptance that the guardianship is a commitment to provide care for the child until the child reaches age 18.**
- i. The court finds and the parties agree that the Guardians are willing and able to care for the child

2.8 Basis for Establishing Guardianship

There is no basis to establish a guardianship.

The dependency guardian and DSHS/Supervising Agency agree that the court should convert the dependency guardianship entered on _____ [date] in _____ [cause number] under chapter 13.34 RCW into a guardianship under Chapter 13.____ RCW.

Or

All parties to the dependency agree to entry of the guardianship order and the proposed guardian is qualified, appropriate, and capable of performing the duties of guardian under Laws of 2010, ch. 272, §5.

Or

The following apply:

- (a) The child was found to be dependent pursuant to RCW 13.34.030 on December 8, 2009 as to the mother and January 5, 2010 as to the father.

All previous paragraphs are fully incorporated herein.

- (b) The court entered dispositional orders pursuant to RCW 13.34.130 on December 8, 2009 as to the mother and January 5, 2010 as to the father in Cause No. 09-7-00446-9

All previous paragraphs are fully incorporated herein.

- (c). The child has been removed from the custody of the parents for a period of at least six consecutive months following a finding of dependency under RCW 13.34.030.

All previous paragraphs are fully incorporated herein.

- (d) Services ordered under RCW 13.34.130 and .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.

All previous paragraphs are fully incorporated herein.

- (e) There is little likelihood that conditions will be remedied so that the child can be returned to the parents in the near future.
All previous paragraphs are fully incorporated herein.

- (f) The proposed guardian signed a statement acknowledging the guardian's rights and responsibilities toward the child and affirming the guardian's understanding and acceptance that the guardianship is a commitment to provide care for the child until the child reaches age 18.

All previous paragraphs are fully incorporated herein.

2.9 Exceptional Circumstances when the Child Has no Legal Parent

Does not apply.

The child has no legal parent. The following exceptional circumstances support the establishment of the guardianship:

- the child has special needs and a suitable guardian is willing to accept custody and able to meet the needs of the child to an extent unlikely to be achieved through adoption.
- the proposed guardian has demonstrated a commitment to provide for the long-term care of the child and:
- is a relative of the child;
 - has been a long-term caregiver for the child and has acted as a parent figure to the child and is viewed by the child as a parent figure; or
 - the child's family has identified the proposed guardian as the preferred guardian, and, if the child is age 12 years or older, the child also has identified the proposed guardian as the preferred guardian.
- Other:

2.10 Visitation

Contact between the child and the child's mother; the child's father; the child's siblings, namely M. [REDACTED], is in the child's best interests, as follows:

W [REDACTED] (E [REDACTED]): Visits at the sole discretion of the Guardians, in consultation with the child's therapist.

M [REDACTED]: Child is placed with sibling.

Mother:

1. If the mother is incarcerated, the following condition(s) apply:

- a. The mother may submit a letter to the child one (1) time per month subject to review by

the Guardian(s). The letter shall be sent to the P.O. Box or mailing address designated by the Guardian(s). The mother shall address the envelope to the Guardian(s). The mother shall not write about the legal status of the Guardianship or make disparaging comments about the Guardian(s). If the mother fails to comply with the frequency and conditions of letter writing to the child in a month, the Guardian(s) shall be under no obligation to share the letters received in that month with the child.

b. Other contact may be added at the sole discretion of the Guardian(s).

c. *The child may send pictures + letters to the mother, subject to review by the Guardians.*

2. If the mother is not incarcerated, the following condition(s) apply:

a. The mother shall have a minimum of six (6) visits per year. Each visit shall be a minimum of three hours in length. Each visit shall be subject to the following conditions:

- i. The Guardians shall have sole discretion of the conditions under which a visit shall take place, including but not limited to the location, the need for supervision, the level of supervision, who may be present and who may transport the child to the visit.
- ii. Each visit shall occur on the first Friday of every other month beginning in *April*.
- iii. The mother must travel to the area where the child is residing. The Guardians shall be under no obligation to transport the child to the area where the mother is residing.
- iv. If supervision is deemed appropriate by the Guardians, the Guardians have sole discretion to designate the provider for visit supervision.
- v. All supervision costs shall be paid for by the mother.
- vi. The mother must do a urinalysis test demonstrating she is drug and alcohol free prior to a visit. The urinalysis test shall occur within one (1) week of the scheduled visit. The results shall be provided to the Guardians prior to the visit. If the urinalysis results indicate that the mother is not clean or did not provide her own specimen (i.e. a substitute specimen), then the visit shall be cancelled and will not be made up.
- vii. If the mother appears intoxicated or under the influence of drugs, the visit supervisor shall have the authority to end the visit. The terminated visit shall not be made up.
- viii. If the mother engages in any inappropriate conversation with the child, including but not limited to, making disparaging remarks about the Guardian(s) and/or the legal status of the guardianship, the visit supervisor shall have the authority to end the visit. The terminated visit shall not be made up.
- ix. The mother shall not provide any gifts to the child at the visit, unless approved by the Guardian(s) prior to the visit.
- x. The child shall not be forced or compelled to attend a visit with the mother. If the child chooses not to attend, the visit shall not be made up.
- xi. Additional visits and/or other contact may be added at the sole discretion of the Guardian(s).

- b. The mother must confirm each visit in writing at least two (2) weeks prior to the visit. The mother shall provide the written confirmation to the Guardians at a P.O. Box or mailing address designated by the Guardian(s).
- c. The Guardian(s) shall be under no obligation to provide further visitation, if the mother does any of the following on two (2) occasions during one (1) calendar year:
- (i) Confirms a visit and then fails to attend a visit, or
 - (ii) Provides a dirty urinalysis or substituted specimen urinalysis, and/or
 - (iii) Otherwise fails to confirm a visit.

Contact between the child and the child's mother; the child's father; the child's siblings, namely _____, is not in the child's best interests and should be restricted because:

Father: Father has not been involved with child. No visits, unless otherwise agreed to by the Guardians.

Other:

2.11 JENNIFER AND STEVEN DAVIES [name(s)] is (are) qualified, appropriate, and capable of performing the duties of guardian under Laws of 2010, ch. 272, § 5 and meet(s) the minimum requirements to care for children as established by DSHS under RCW 74.15.030.

2.12 **Need and Scope of Continued Court Oversight**

- There is no need for further court oversight.
 There is a need for continued court oversight as follows:

2.13 This guardianship will expire on its own terms on the child's 18th birthday, 12/6/2020.

III. Conclusions of Law

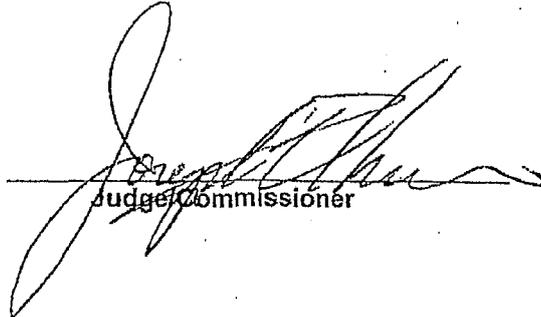
- The court has jurisdiction over the child, the parents and subject matter of this action.
 Unless otherwise indicated, the above findings have been proved by a preponderance of the evidence.

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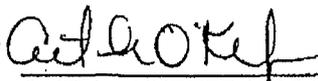
- A Title 13 RCW guardianship should not be established under Laws of 2010, ch. 272 § 5.
- A Title 13 RCW guardianship should be established under Laws of 2010, ch. 272 § 5.
- The dependency guardianship under _____ [cause number] should be converted into a guardianship under chapter 13, _____ RCW.
- The dependency in 09-7-00446-9 [cause number] should be dismissed.

Dated this 17 day of March, 2013.

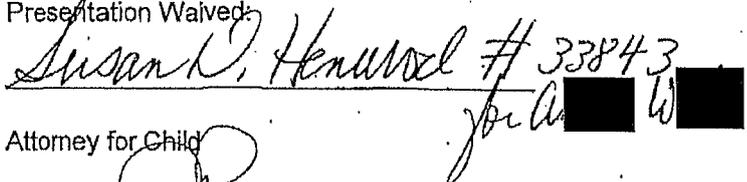

 Judge/Commissioner

ROBERT W. FERGUSON
 Attorney General

Presented by:


 CAITLIN O'KEEFE, WSBA# 44053
 Assistant Attorney General

Copy Received; Approved for Entry; Notice of Presentation Waived.

 # 33843
 Susan D. Henwood # 33843
 Attorney for Child

Child

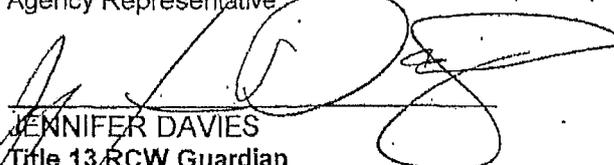
T _____ P _____
 Pro Se, Advised of Right to Counsel

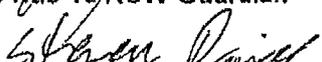
JARED PAULSEN, WSBA# 32791
 Attorney for Mother

T _____ F _____
 Pro Se, Advised of Right to Counsel

Attorney for Father


 MISTY OVENS
 Agency Representative


 JENNIFER DAVIES
 Title 13 RCW Guardian


 STEVEN DAVIES
 Title 13 RCW Guardian

ATTACHMENT 2

JOSIE DELVIN
BENTON COUNTY CLERK

MAR 18 2013

FILED

SUPERIOR COURT OF WASHINGTON
COUNTY OF BENTON
JUVENILE COURT

Guardianship of:

M [REDACTED] W [REDACTED]

DOB: 10/21/2000

No: 12-7-00093-5

Findings and Conclusions re Petition
for Order Appointing Title 13 RCW
Guardian
(FNFLC)
Clerk's Action Required 2.13

I. Basis

1.1 **Petition:** Misty Ovens filed a petition seeking appointment of a guardian(s) in this case.

1.2 **Appearance:** The following persons appeared at the hearing:

<input type="checkbox"/> Child	<input checked="" type="checkbox"/> Child's Lawyer
<input checked="" type="checkbox"/> Mother	<input checked="" type="checkbox"/> Mother's Lawyer
<input type="checkbox"/> Father	<input type="checkbox"/> Father's Lawyer
<input type="checkbox"/> Guardian or Legal Custodian	<input type="checkbox"/> Guardian's or Legal Custodian's Lawyer
<input type="checkbox"/> Child's GAL/CASA	<input type="checkbox"/> GAL/CASA's Lawyer
<input checked="" type="checkbox"/> DSHS/Supervising Agency Worker	<input checked="" type="checkbox"/> Agency's Lawyer
<input type="checkbox"/> Tribal Representative	<input checked="" type="checkbox"/> Proposed Title 13 RCW Guardians
<input type="checkbox"/> Interpreter for <input type="checkbox"/> mother <input type="checkbox"/> father	<input type="checkbox"/>

Other _____

other _____

the mother father agreed to entry of the order and waived his/her right to notice of the hearing.

1.3 **Basis:** The court heard testimony The parties submitted an agreed order.

II. FINDINGS OF FACT

2.1 **Notice:** The following have received adequate notice of these proceedings as required by Laws of 2010, ch. 272 § 3:

The mother father guardian or legal custodian DSHS/Supervising Agency child the child's lawyer or guardian ad litem proposed Title 13 RCW guardian(s).

The child is 12 or older and was notified that he/she may request a lawyer.

F/C Re PT for OR Appointing
Dependency Guardian (FNFLC)
WPF JU 14.0300 (06/2010) – Laws of
2010, ch. 272, §§ 4, 11

1

ATTORNEY GENERAL OF WASH
Regional Services Division
8127 W. Klamath Court, Suf
Kennewick, WA 99336-261
(509) 734-7285

ATTACHMENT 2

2.2 Child's Indian status

- The child is not a member of or eligible for membership in an Indian tribe and the Indian Child Welfare Act, 25 U.S.C. § 1901 et seq. does not apply to the proceedings.
- The child is a member of or eligible for membership in an Indian tribe and the Indian Child Welfare Act, 25 U.S.C. § 1901 et seq. does apply to the proceedings.
 - The proposed guardian(s) fall within the placement preferences specified in 25 U.S.C. 1915(b) or (c); **Or**
 - The proposed guardian(s) does (do) not fall within the placement preferences of 25 U.S.C. 1915, but there is good cause to continue placement with the proposed guardian(s) because _____ **And**
 - The child's tribe has been notified of this proceeding by registered mail received at least 15 days prior to the hearing.
 - Pursuant to 25 U.S.C. §1912(d), active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the break-up of the Indian family, and these efforts have been unsuccessful.
 - Pursuant to 25 U.S.C. §1912(f), the court finds by clear and convincing evidence, including the testimony of a qualified expert witness, that continued custody of the child by the parent(s) or Indian custodian is likely to result in serious emotional or physical damage to the child.

2.3 Service Members' Relief Acts

Mother:

- The federal Service Members Civil Relief Act of 2003, 50 U.S.C. § 501, et seq. the Washington Service Members Civil Relief Act, chapter 38.42 RCW **does not** apply to the mother in this proceeding.
- The federal Service Members Civil Relief Act of 2003, 50 U.S.C. § 501, et seq. the Washington Service Members Civil Relief Act, chapter 38.42 RCW **does apply** to the mother in this proceeding. The requirements of the act(s) have been met as follows:

Father:

- The federal Service Members Civil Relief Act of 2003, 50 U.S.C. § 501, et seq. the Washington Service Members Civil Relief Act, chapter 38.42 RCW **does not** apply to the father in this proceeding.
- The federal Service Members Civil Relief Act of 2003, 50 U.S.C. § 501, et seq. the Washington Service Members Civil Relief Act, chapter 38.42 RCW **does apply** to the father in this proceeding. The requirements of the act(s) have been met as follows:

2.4 M [redacted] W [redacted] was born on October 21, 2000 and is a dependent child in Benton County.

2.5 The child's mother, T [redacted] P [redacted] currently resides at 83206 W. Weidle Road, Space #13, West Richland, Washington 99353, Telephone No. (509) 572-6999

2.6 The child's father, T [redacted] F [redacted] currently resides at unknown (previously defaulted) Telephone No. unknown

2.7 Guardianship is is not in the best interests of the child, rather than termination of the

parent-child relationship and proceeding with adoption, or continuation of efforts to return custody of the child to the parents based upon the following facts:

On July 30, 2012, testimony was taken of Teresa Pofahl (social worker) and the father was defaulted.

On November 28, 29, and 30, 2012, a contested guardianship trial was held as to the mother. The Department presented the following witnesses: T [REDACTED] P [REDACTED] (mother), Dr. Peter Stewart (youth psychologist), Dr. Naughne Boyd (clinical psychologist), Michelle Leifheit (mental health counselor/FPS provider), Vicki Roeder (visit supervisor), Pamela Coleman (chemical dependency professional), Dan Trapp (chemical dependency professional), Doug Doss (officer), Eman Rodrick (work crew program officer), Blanca Coleman (jail nurse), Tami Tanninen (therapist/counselor), and Misty Ovens (social worker).

The mother testified on her own behalf, and presented additional testimony from Michelle Leifheit.

Exhibits 1 through 27 were admitted.

There is a preponderance of evidence to establish the allegations of the petition for guardianship and RCW 13.36.040. The findings are as follows:

- A) The child was found to be dependent pursuant to RCW 13.34.030.**
 - i. On December 8, 2009, a fact finding order was entered as to the mother. Ex. 11. The mother stipulated to a finding of a dependency.
 - ii. The court finds and the parties agree that the testimony supports the fact that the child has been found to be dependent.
- B) The court entered dispositional orders pursuant to RCW 13.34.130.**
 - i. On December 8, 2009, a disposition order was entered as to the mother. Ex. 12. The mother agreed to the dispositional order.
 - ii. The court finds and the parties agree that the testimony supports the fact that a dispositional order has been entered as to this child.
- C) The child has been removed from the custody of the parents for a period of at least six consecutive months following a finding of dependency under RCW 13.34.030.**
 - i. The child has been out of the home for more than six months. Ex. 11-20.
 - ii. The mother did have placement early on in the dependency, but Review Orders dated January 24, 2011, June 21, 2011, October 11, 2011, April 2, 2012, and October 1, 2012 reflect out of home care for the child. Ex. 16-20.
 - iii. The court finds and the parties agree that the testimony supports the fact that the child has been removed from the family home for at least 6 months.
- D) Services ordered under RCW 13.34.130 and .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.**
 - i. The services ordered at disposition for the mother were:
 - a. Shall engage in parenting evaluation and will follow through with recommendations.
 - b. Shall engage in mental health counselling services with 100% attendance.
 - 1. Shall obtain and maintain a safe and stable living environment.
 - 2. Once mother obtains a safe and stable living environment, Mother shall install alarms on all bedroom doors and windows of her home.
 - 3. Once mother obtains a safe and stable living environment and installs the necessary alarms, mother shall engage in FPS services.
 - c. Shall not reside with anybody without approval from the assigned social worker.
 - d. Shall engage in services through SARC with 100% compliance.
 - e. Shall maintain a steady and legal source of income.
 - f. Shall engage in a substance abuse assessment with 100% compliance.
 - g. Shall sign all requested released of information within 24 hours of the request.
 - h. Notify the assigned social worker of any changes in contact information (address

- and/or phone number) within 24 hours of the change.
- i. Shall submit to random UA's within 4 hours of the Department's request. Failure to submit to a UA will result in a positive result.
 - j. Shall comply with criminal obligations.
- ii. The services were discussed and reviewed at Review Hearings on March 9, 2010, July 13, 2010, September 27, 2010, January 24, 2011; June 21, 2011, October 11, 2011, April 2, 2011 and October 1, 2012. Ex. 11-20.
 - iii. On January 24, 2011, the court found that the "mother is not doing what she needs to do to parent—she is in denial of reality." Ex. 16.
 - iv. On June 21, 2011, the court found that the mother had not complied with the court ordered services or made any progress, as she notably needed to engage in individual counseling, engage in services with SARC, and comply with criminal obligations. Ex. 17.
 - v. On October 11, 2011, the court found that the mother had not complied with the court ordered services or made any progress, as she notably was not compliant with mental health counseling, had not maintained a safe and stable living environment, had not engaged in any services through SARC, had not informed the Department of where she was living, had not complied with her all her criminal obligations, had not submitted her own urine for UA's, and had not engaged in medication management. The Mother had not visited the child frequently, as she had been incarcerated for part of the review period. Ex. 18. The child was ordered to remain in foster care. Ex. 18.
 - vi. On April 2, 2012, the court found the Mother in partial compliance with the court ordered services but that she had not made any progress with her services. Ex. 19. The court noted that the "Mother needs to demonstrate that she can parent 24/7." Ex. 19. The child was ordered to remain in foster care. Ex. 19.
 - vii. On October 1, 2012, the court found the Mother in partial compliance and making partial progress. Ex. 20. The court noted that the Mother incurred new criminal charges during the review period and was not in compliance with completing her UAs. Ex. 20. The child was ordered to remain in foster care. Ex. 20.
 - viii. The mother knew that she needed to participate in services and demonstrate progress in order for the child and the child's sibling to be returned to her. The mother was aware that services were available to her if she wanted to do them. The mother knew she could initiate and/access services by contacting the social worker and she knew how to contact the social worker.
 - ix. The court finds and the parties agree that the testimony supports the fact that services 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.
- E) There is little likelihood that conditions will be remedied so that the child can be returned to the parents in the near future.**
- i. The mother has 6 children, none of whom are currently in her care.
 - ii. The mother previously had a dependency in 2000 due to drug usage, which was eventually dismissed. The current dependency began in 2009 when her son W sexually molested the child.
 - iii. The mother admits that her parental deficiencies have not been adequately rectified so that the child can be returned home. The mother is not capable at this time of parenting the child.
 - iv. During the dependency, the child was placed back in the mother's care only to be subsequently removed because the mother allowed contact between the child and W on multiple occasions. There was a safety plan in place, but the mother did not follow through with it and left the child in a vulnerable situation with an unapproved supervisor. The child also missed school and service appointments during the in-home period with the mother.
 - v. The child has remained in foster care due to several incarcerations of the mother for unpaid fines, drug use and possession. There is a pending felony charge for possession of methamphetamine that occurred in May 2012. She may face a lengthy period of incarceration.

- vi. The mother has had an abusive relationship with Steve Bollinger. Despite a "No Contact" order against him, she had contact with Mr. Bollinger in November 2012.
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- xiii. Social Worker Misty Ovens testified regarding the mother's history with the Department. The Department provided a plethora of services to the mother, including a psychological evaluation, in-patient drug/alcohol treatment, intensive out-patient treatment, parenting services, mental health services, services through SARC (sexual assault response center), urine analysis tests, family preservation services, individual counseling, bus passes and women's empowerment. Additionally, Ms. Ovens facilitated/offered the mother assistance in obtaining housing, adequate transportation and medical coverage, and addressing court fines. Ms. Ovens met in-person, called and sent letters to the mother on numerous occasions in order to encourage her participation in services. Ms. Ovens testified that over the course of the dependency the mother was arrested or put in jail approximately 10-15 times. Ms. Ovens testified that the mother is her own barrier to the child being returned to her care.
- xiv. In May 2012, W came to the Department's attention while in his mother's care. The mother was not providing adequate supervision which resulted in a dependency petition being filed. See Ex. 21. The mother agreed to a dependency as to (W) on August 29, 2012. Ex 22. The mother agreed that W had no parent, guardian or custodian capable of adequately caring for him, such that he was in circumstances which constituted a danger of substantial damage to his psychological or physical development. Ex. 22.
- xv. Psychologist Dr. Naughne Boyd performed a psychological evaluation on the mother in April 2011. Ex. 26. Dr. Boyd testified that the mother had demonstrated poor judgment regarding the child's safety (i.e. who could have access to the children) and did not think

about the consequences of her decisions. She testified that her prognosis for the mother would change to low/guarded if the mother had not engaged in services on a consistent basis. In her opinion, it would not be in the child's best interest to be returned to the mother's care or custody if the mother relapsed given her history.

- xvi. The mother admitted that her inability to adequately parent the child are due to many unresolved issues in her life, including her addiction to meth, mental health issues, the dependency, criminal charges, her relationship with Steve Bollinger and her son W
 - xvii. Dr. Stewart administered a psychological evaluation on the child. In his opinion, the child needs structure, consistency and routine.
 - xviii. Based upon the extensive history of the mother with substance abuse, poor judgment, incarcerations, length of time of this case, the mother's chaotic lifestyle, which continues even though multiple appropriate services have been offered and/or provided and her failure to remedy her parental deficiencies, the mother has failed to demonstrate any change in behavior or parenting ability and that behavior continues to the date of the hearing. There is little likelihood that conditions will be remedied such that this child could be safely returned to the mother's care in the near future.
- F) **The proposed guardian signed a statement acknowledging the guardian's rights and responsibilities toward the child and affirming the guardian's understanding and acceptance that the guardianship is a commitment to provide care for the child until the child reaches age 18.**
- i. The court finds and the parties agree that the Guardians are willing and able to care for the child

2.8 Basis for Establishing Guardianship

- There is no basis to establish a guardianship.
 - The dependency guardian and DSHS/Supervising Agency agree that the court should convert the dependency guardianship entered on _____ [date] in _____ [cause number] under chapter 13.34 RCW into a guardianship under Chapter 13, ___ RCW.
- Or
- All parties to the dependency agree to entry of the guardianship order and the proposed guardian is qualified, appropriate, and capable of performing the duties of guardian under Laws of 2010, ch. 272, §5.
- Or
- The following apply:
 - The following apply:
 - (a) The child was found to be dependent pursuant to RCW 13.34.030 on December 8, 2009 as to the mother and January 5, 2010 as to the father.

All previous paragraphs are fully incorporated herein.
 - (b) The court entered dispositional orders pursuant to RCW 13.34.130 on December 8, 2009 as to the mother and January 5, 2010 as to the father in Cause No. 09-7-00446-9

All previous paragraphs are fully incorporated herein.
 - (c) The child has been removed from the custody of the parents for a period of at least six consecutive months following a finding of dependency under RCW 13.34.030.

All previous paragraphs are fully incorporated herein.

- (d) Services ordered under RCW 13.34.130 and 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.

All previous paragraphs are fully incorporated herein.

- (e) There is little likelihood that conditions will be remedied so that the child can be returned to the parents in the near future.
All previous paragraphs are fully incorporated herein.

- (f) The proposed guardian signed a statement acknowledging the guardian's rights and responsibilities toward the child and affirming the guardian's understanding and acceptance that the guardianship is a commitment to provide care for the child until the child reaches age 18.

All previous paragraphs are fully incorporated herein.

2.9 Exceptional Circumstances when the Child Has no Legal Parent

- Does not apply.
 The child has no legal parent. The following exceptional circumstances support the establishment of the guardianship:

- the child has special needs and a suitable guardian is willing to accept custody and able to meet the needs of the child to an extent unlikely to be achieved through adoption.
- the proposed guardian has demonstrated a commitment to provide for the long-term care of the child and:
- is a relative of the child;
 - has been a long-term caregiver for the child and has acted as a parent figure to the child and is viewed by the child as a parent figure; or
 - the child's family has identified the proposed guardian as the preferred guardian, and, if the child is age 12 years or older, the child also has identified the proposed guardian as the preferred guardian.

- Other:

2.10 Visitation

- Contact between the child and the child's mother; the child's father; the child's siblings, namely A [REDACTED], is in the child's best interests; as follows:

evic

W [REDACTED]: Visits at the sole discretion of the Guardians, in consultation with the child's therapist.

A [REDACTED]: Child is placed with sibling.

Mother:

1. If the mother is incarcerated, the following condition(s) apply:

- a. The mother may submit a letter to the child one (1) time per month subject to review by

the Guardian(s). The letter shall be sent to the P.O. Box or mailing address designated by the Guardian(s). The mother shall address the envelope to the Guardian(s). The mother shall not write about the legal status of the Guardianship or make disparaging comments about the Guardian(s). If the mother fails to comply with the frequency and conditions of letter writing to the child in a month, the Guardian(s) shall be under no obligation to share the letters received in that month with the child.

b. Other contact may be added at the sole discretion of the Guardian(s).

The child may send pictures & letters to the mother, subject to review by the Guardians.

2. If the mother is not incarcerated, the following condition(s) apply:

a. The mother shall have a minimum of six (6) visits per year. Each visit shall be a minimum of three hours in length. Each visit shall be subject to the following conditions:

- i. The Guardians shall have sole discretion of the conditions under which a visit shall take place, including but not limited to the location, the need for supervision, the level of supervision, who may be present and who may transport the child to the visit.
- ii. Each visit shall occur on the first Friday of every other month beginning in April.
- iii. The mother must travel to the area where the child is residing. The Guardians shall be under no obligation to transport the child to the area where the mother is residing.
- iv. If supervision is deemed appropriate by the Guardians, the Guardians have sole discretion to designate the provider for visit supervision.
- v. All supervision costs shall be paid for by the mother.
- vi. The mother must do a urinalysis test demonstrating she is drug and alcohol free prior to a visit. The urinalysis test shall occur within one (1) week of the scheduled visit. The results shall be provided to the Guardians prior to the visit. If the urinalysis results indicate that the mother is not clean or did not provide her own specimen (i.e. a substitute specimen), then the visit shall be cancelled and will not be made up.
- vii. If the mother appears intoxicated or under the influence of drugs, the visit supervisor shall have the authority to end the visit. The terminated visit shall not be made up.
- viii. If the mother engages in any inappropriate conversation with the child, including but not limited to, making disparaging remarks about the Guardian(s) and/or the legal status of the guardianship, the visit supervisor shall have the authority to end the visit. The terminated visit shall not be made up.
- ix. The mother shall not provide any gifts to the child at the visit, unless approved by the Guardian(s) prior to the visit.
- x. The child shall not be forced or compelled to attend a visit with the mother. If the child chooses not to attend, the visit shall not be made up.
- xi. Additional visits and/or other contact may be added at the sole discretion of the Guardian(s).

- b. The mother must confirm each visit in writing at least two (2) weeks prior to the visit. The mother shall provide the written confirmation to the Guardians at a P.O. Box or mailing address designated by the Guardian(s).
- c. The Guardian(s) shall be under no obligation to provide further visitation, if the mother does any of the following on two (2) occasions during one (1) calendar year:
- (i) Confirms a visit and then fails to attend a visit, or
 - (ii) Provides a dirty urinalysis or substituted specimen urinalysis, and/or
 - (iii) Otherwise fails to confirm a visit.

Contact between the child and the child's mother; the child's father; the child's siblings, namely _____, is not in the child's best interests and should be restricted because:

Father: Father has not been involved with child. No visits, unless otherwise agreed to by the Guardians.

Other:

2.11 JENNIFER AND STEVEN DAVIES [name(s)] is (are) qualified, appropriate, and capable of performing the duties of guardian under Laws of 2010, ch. 272, § 5 and meet(s) the minimum requirements to care for children as established by DSHS under RCW 74.15.030.

2.12 **Need and Scope of Continued Court Oversight**

- There is no need for further court oversight.
 There is a need for continued court oversight as follows:

2.13 This guardianship will expire on its own terms on the child's 18th birthday, 10/21/2018.

III. Conclusions of Law

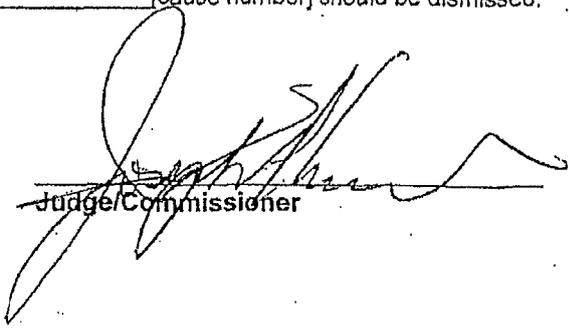
- The court has jurisdiction over the child, the parents and subject matter of this action.
 Unless otherwise indicated, the above findings have been proved by a preponderance of the evidence.

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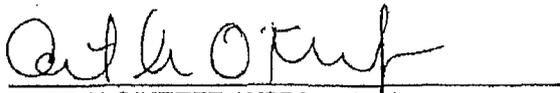
- A Title 13 RCW guardianship should not be established under Laws of 2010, ch. 272 § 5.
- A Title 13 RCW guardianship should be established under Laws of 2010, ch. 272 § 5.
- The dependency guardianship under _____ [cause number] should be converted into a guardianship under chapter 13, ___ RCW.
- The dependency in 09-7-00445-1 [cause number] should be dismissed.

Dated this 18 day of March, 2013.


 Judge/Commissioner

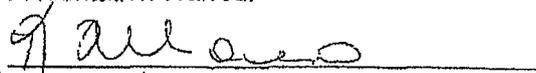
ROBERT W. FERGUSON
 Attorney General

Presented by:

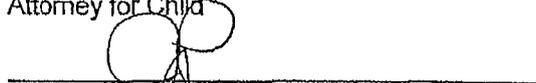

 CAITLIN O'KEEFE, WSBA# 44053
 Assistant Attorney General

Copy Received; Approved for Entry; Notice of Presentation Waived.

M [REDACTED] J [REDACTED] W [REDACTED]
 Child

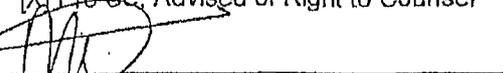

 KATHLEEN MORENO, WSBA#15725
 Attorney for Child

T [REDACTED] P [REDACTED]
 Pro Se, Advised of Right to Counsel


 JARED PAULSEN, WSBA# 32791
 Attorney for Mother

T [REDACTED] F [REDACTED]
 Pro Se, Advised of Right to Counsel

 Attorney for Father


 MISTY OVENS
 Agency Representative


 JENNIFER DAVIES
 Title 13 RCW Guardian


 STEVEN DAVIES
 Title 13 RCW Guardian

FILED

NOV 18 2013

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

NO. 31514-2

COURT OF APPEALS FOR DIVISION III
STATE OF WASHINGTON

In Re the Guardianship of:

A.W., and M. W.,
Minor Children,

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

v.

T.P., MOTHER,
Appellant.

DECLARATION
OF MAILING

I, Teri Salo, declare as follows:

That I am now and was at all times hereinafter mentioned a citizen of the United States and of the State of Washington, over the age of majority and not a party to this action.

On November 14, 2013, I filed and served the Department's Response to Motion for Accelerated Review in the above entitled matter by depositing the same in the United States Mail, postage thereon prepaid, addressed as follows:

ORIGINAL TO:

RENEE S. TOWNSLEY, CLERK/ADMINISTRATOR
COURT OF APPEALS, DIVISION III
500 N. CEDAR STREET
SPOKANE WA 99201

COPY TO:

DANA M. NELSON
NIELSEN, BROMAN & KOCH, PLLC
1908 E. MADISON STREET
SEATTLE WA 98122

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 14th day of November, 2013.



TERI SALO
Legal Assistant for
CAITLIN D. O'KEEFE
Assistant Attorney General
KENRSD OFC ID#91012