

No. 91757-4

NO. 45809-8-II

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**COURT OF APPEALS FOR DIVISION II  
STATE OF WASHINGTON**

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IN RE THE WELFARE OF

K.M.M,

MINOR CHILD,

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ON APPEAL FROM THE SUPERIOR COURT OF THE STATE OF  
WASHINGTON FOR KITSAP COUNTY  
THE HONORABLE JEANETTE DALTON

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**BRIEF OF RESPONDENT**

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## **I. INTRODUCTION**

This is an appeal from an action terminating the parent-child relationship between the minor child, K.M.M, and the father, J.M. The father challenges the court's findings and the sufficiency of the evidence that resulted in the termination of his parental rights. The child, K.M.M., testified in support of the termination of parental rights and has refused to have contact with the father, despite on-going efforts by the Department of Social and Health Services (hereinafter Department) to have such contact occur. The Department responds that the termination of parental rights is properly supported by the evidence, and thus, the trial court's ruling should be affirmed.

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

RCW 13.34.180(1) requires proof of six factors by clear, cogent, and convincing evidence in order to terminate the parental rights of a parent. On appeal, the father raises the following issues:

1. Whether there is sufficient evidence to support the trial court's findings that the father is an unfit parent due to the absence of an attachment bond, that there is no parent-child relationship present?
2. Whether there is sufficient evidence to support the trial court's findings that all necessary services capable of correcting the parental deficits and reuniting the child were offered/provided to the father?

### **III. RESTATEMENT OF THE CASE**

#### **A. Procedural History.**

The Department of Social and Health Services (Department) filed a dependency petition on K.M.M. and her younger sibling, K.M., in 2009. CP 58. The parents had substance abuse issues and domestic violence issues. CP 58-59. The Department subsequently filed a dependency petition on the mother's other child, K.C., born later on. CP 60. These two children, K.M. and K.C. were later returned to the mother. CP 61. K.M.M. refused to have contact with her parents. CP 61. The Department filed a termination of parental rights petition on K.M.M. and a contested termination trial as to the father was heard in October to December 2013. RP 1. The child testified at the termination trial. RP 281. After hearing all the evidence, the court entered Findings of Fact, Conclusions of Law and Orders Terminating the father's parental rights to the child. The father appealed the trial court's order of termination. The mother relinquished her parental rights.

### **IV. FACTUAL HISTORY**

J.M. is the father of two children, K.M.M, and K.M. CP 58. The mother, D.C., subsequently had another child, K.C. born in 2010. CP 60. K.M was placed into protective custody by law enforcement in February 2009. CP 58. The parents had substance abuse and domestic violence issues. CP 58-59. As a result, the Department filed dependency petitions

on both K.M., and K.M.M. in February 2009. CP 58. K.M.M. was then age 6, while K.M. was less than a year old. CP 58.

K.M.M. had significant issues when she came into care. She had a history of alleged physical abuse as well as neglect. RP 64. K.M.M. had attachment issues and she was not able to rely on adults to meet her needs. RP 64. K.M.M. had emotional, social, and intellectual delays. RP 66. She was also parentified, attempting to care for her younger sibling, K.M., when she came into care. RP 64.

K.M.M. began individual therapy with Corey Staton to address these issues in September 2009. RP 63. Ms. Staton testified that K.M.M. had to learn how to have secure attachments. RP 66. The foster parents, as her day to day caretakers, were involved in some of this individual therapy for the child. RP 68. Ms. Staton noted that the biological parents would be involved when a transition home occurred, as they would then become the caretakers for the child. RP 69. She has worked with both foster parents and biological parents on transition home plans in the past. RP 128. Ms. Staton, in the child's therapy sessions, was not working with the child on training any specific attachment, but rather that the child needed to learn how to rely on adults in general. RP 71. K.M.M. needed to learn how to trust in general. RP 73. As the therapist testified, developing a secure attachment to the foster parents makes it easier for the

child to attach to the biological parents. RP 139-140. A child can have multiple attachments. RP 142.

Tom Sherry, another experienced therapist, agreed with this approach. A child who has developed the ability to attach would be able to attach to others; the child has learned to attach to others. RP 267, 268.

Services were offered to address the parental deficits of the mother and the father. CP 58-62. The parties entered agreed factual stipulations on this case addressing some of the past events, service referrals, and the parents' participation in these services. CP 58-62.

The mother had another child, K.C., during this on-going dependency, by a different father. CP 60. This child was placed with the mother at an in-patient treatment center in Seattle until the mother was unsuccessfully discharged from the in-patient program in February 2011. CP 60. With the mother's unsuccessful discharge from this treatment program, K.C. was then placed in the same foster home as her two half-sisters, K.M.M. and K.M. CP 60.

The parents continued to participate in services to address their parental deficits in 2011 and 2012. CP 60-61. There had not been any issues with visitation between the parents and these children until April 2012. RP 29. In April 2012, K.M.M. started having issues with attending visits with mother and the father. RP 30. The child was appointed

counsel to represent her as a result of her position. RP 31. The social worker at the time, Christopher Richardson, had never seen this before; a child drawing a line in the sand, and refusing to visit with her parents. RP 54.

The parties explored a variety of means to have visitation resume. Corey Staton, the child's therapist, consulted with a psychiatrist over this issue. RP 49, 81, 83. The parties, however, had meetings and came up with alternative solutions. RP 30-31, 83. As a result of these efforts, the court entered an order, in early July 2012, directing that a family therapist, Tom Sherry, should render an opinion on how visitation can occur, after consultation with all of the parties. Ex. 15, CP 338-39.

Tom Sherry met with all of the parties, including K.M.M. CP 225. The child, however, refused to participate in visits. RP 226-27, 237. Mr. Sherry opined that her decision should be respected. Otherwise, she would not matter, as it is tied to her sense of self. RP 272. As the child's therapist, Corey Staton noted, it is the child herself that determines where the child is at, in terms of issues, life stages, and opinions/beliefs. RP 128-29. Mr. Sherry opined that to force the child to visit with the father would be harmful and detrimental to the child. RP 272.

As a result of direct contact between the child and the parents not being possible, Tom Sherry developed a contact plan centered on the

siblings. RP 238. Mr. Sherry reasoned that if sibling contact and relationships were maintained, once the siblings were returned to the mother, and the return home went well for those children, K.M.M might warm to the idea of herself having contact with her parents. RP 238.

The plan provided that once the siblings were placed with the mother, and established with the mother, then both the mother and K.M.M. would be present at the picking up and dropping off of the other children when visitation would occur between the siblings. RP 239-241. The father would then subsequently become involved and would be present at these child exchanges for sibling visitation purposes. RP 241. The idea was that K.M.M. would be open and willing to interact with her parents as the sibling came and went and interacted with the parents, as part of sibling visitation with K.M.M. RP 238. Tom Sherry, however, did not believe that it was realistic that the child would want to go back to her parents. RP 238. Instead, Tom Sherry recommended that K.M.M. stay with the foster parents. RP 247-48.

Tom Sherry also recommended some limited family therapy, but it would not be for purposes of reunification. RP 243. Instead, the family therapy would be assisting everyone in working through the different relationships, K.M.M. remaining with the foster parents, and the other two

children being placed with the mother. RP 242-43, 246. This therapy was to support all of the children in their respective placements. RP 243.

The parties then attempted to implement this plan. K.C. and K.M. were placed in the mother's care in October 2012. CP 61. The social worker, the guardian ad litem, and the child's therapist all worked with K.M.M. to prepare her for the incidental contact with the mother, around the sibling visitation. RP 321-323. There were two such contacts in November 2012 between the mother and K.M.M. RP 325-26.

In December 2012, the father was then introduced to such incidental contacts with the child, surrounding sibling visitation. RP 326. Ms. Pattie Pritchard, who then was the social worker on the case, did preparation work with the father, both on the phone and in person for this first incidental contact visit. RP 326, 364, 365. The father agreed with the plan. RP 327. The social worker, the guardian ad litem, and the child's therapist all worked with K.M.M. to prepare her for the contact with the father, around the sibling visitation. RP 328. However, the father did not comply with his portion of the plan.

At the first incidental contact visit, the father opened the door of the van, tried to talk to K.M.M. and put his hands on her. RP 328-29. K.M.M. was very upset by these events. RP 289, 329. Ms. Pritchard testified that the father lacked insight and empathy for the child as a result.

RP 334. He did not understand the trauma he had caused the child as a result of his actions. RP 330. Tom Sherry, in his work developing the visitation contacts plan, testified that the father does not have a good understanding of attachments. RP 236. K.M.M. refused to see the parents after this. RP 312. K.M.M. also has since refused to see her siblings, and will not participate in any form of family therapy. RP 392, 401, 450. Mr. Sherry also noted that if these sibling contacts did not go well, one could not force K.M.M. to participate in them. RP 247. In early 2013, the mother relapsed, and she and the two other children went to reside at a Seattle in-patient treatment program. CP 62. K.M.M. stopped visiting with her sisters soon after that. RP 392, 401.

K.M.M. testified at the trial. RP 281-82. In her testimony, K.M.M. consistently referred to the biological parents by their first names, and referred to the foster parents as her parents. See i.e. RP 282, 284-85, 303. She does not trust her biological parents. RP 287. She does not want to visit with J.M or the mother, D.C. RP 288. She instead wants to be adopted by her current foster parents. RP 303. K.M.M. no longer wants to have contact with K.M., last visiting in May 2013. RP 392.

After hearing all of the evidence, the trial court entered findings and an order terminating the parental rights of the father. The court found that all of the court ordered services had been expressly and

understandably offered/provided to the father. FOF IX, CP 107; FOF XIII, CP 108. The court also found that reunification services are not capable of resolving this case. FOF IX. CP 107.

The court found that the father has remedied his own individual deficits, fully complying with substance abuse, domestic violence, and hands on parenting classes. FOF XIV, CP 109. Although the father's personal deficits (substance abuse, domestic violence, etc) have been corrected, the father and the child no longer have a parent-child relationship. FOF X., CP 107.

The court also found that there was no likelihood that conditions could be remedied so that the child could be returned to her father. FOF XIV, CP 108. The court found that the child's psyche got to the point where she would no longer tolerate or engage in visits with her parents. FOF XII., CP 108. The court found that the parent-child relationship, the attachment bond, no longer exists between K.M.M. and J.M. The court also found that this bond, this relationship, cannot be repaired. FOF XV, CP 109. K.M.M. has taken the strong position that she will not engage with her parents and does not want to be a part of the family. FOF XIX, CP 110. The court found that Corey Staton and Tom Sherry were experienced therapists and the most credible witnesses on issues

concerning the child and her therapeutic needs. FOF XVIII, CP 110. The father appeals the trial court's ruling.

## V. ARGUMENT

### A. Elements Of A Termination Trial.

A trial court may terminate parental rights if it finds that the six elements of RCW 13.34.180 have been proven by clear, cogent, and convincing evidence. *In re S.V.B.*, 75 Wn. App. 762, 768, 880 P.2d 80 (1994). Additionally, the court must also find by a preponderance of the evidence that termination is in the child's best interest. RCW 13.34.190; *In re A.J.R.*, 78 Wn. App. 222, 228, 896 P.2d 1298, *review denied* 127 Wn.2d 1025 (1995). The State must prove these six elements of RCW 13.34.180 by clear, cogent, and convincing evidence before the trial court is permitted to evaluate the best interests of the child element. *In re the Dependency of H.W.*, 92 Wn. App. 420, 425, 961 P.2d 963 (1998). The Supreme Court has held that in order to terminate parental rights, the trial court must also make a finding that a parent is currently unfit to parent the child. *In re Welfare of A.B.*, 168 Wn.2d 908, 919, 232 P.3d 1104 (2010). Such a finding can be explicitly, or implicitly, made by the trial court. *Id.* at 920.

In reviewing a termination of parental rights, the trial court is "afforded broad discretion and its decision is entitled to great deference on review." *In re A.W.*, 53 Wn. App. 22, 31, 765 P.2d 307 (1988), *review*

*denied*, 112 Wn.2d 1017 (1989). The findings of the trial court will not be disturbed on appeal if they are supported by substantial evidence. *In re Chubb*, 112 Wn.2d 719, 729, 773 P.2d 851 (1989). If substantial evidence exists, the appellate court must uphold the trial court's findings. *In re Dependency of A.V.D.*, 62 Wn. App. 562, 568, 815 P.2d 277 (1991). In this case, the trial court properly applied the law to the facts presented at trial and terminated the parental rights of the father.

**B. The Trial Court Found That the Father is an Unfit Parent Due to the Absence of Any Parent-Child Relationship, a Relationship That Cannot be Repaired, and Substantial Evidence Supports These Findings.**

The father first contends that the trial court failed to find that he is an unfit parent. The trial court, however, properly applied the law and found that J.M., due to the absence of any attachment bond and any relationship with this child, could not parent this particular child. The court, in so ruling, found that J.M. was an unfit parent with regards to this particular child, both expressly and implicitly.

The Supreme Court has held that in order to terminate parental rights, the court must make a finding that a parent is currently unfit to parent the child. *In re Welfare of A.B.*, 168 Wn.2d 908, 919, 232 P.3d 1104 (2010). Such a finding can be explicitly, or implicitly, made by the trial court. *Id.* at 920. A finding can be implied if, and only if, all the

facts and circumstances in the record clearly demonstrate that the omitted finding was actually intended, and thus made by the trial court. *Id.* at 921.

The focus in the parental unfitness issue is on whether the parent “at the time of trial, is currently unfit to parent *the* child.” *A.B.*, 168 Wn.2d at 908 (*emphasis added*).<sup>1</sup> The *A.B.* court, in the majority opinion, noted that given the conflicting nature of the findings in that particular case, it was impossible to discern that the trial court actually found that the *A.B.* father “was currently unfit to parent *his daughter*.” *A.B.*, 168 Wn.2d at 922 (*emphasis added*). The dissent, in *A.B.*, noted the inability for that father and that daughter to forge the emotional attachments necessary for that child’s well-being, in spite of many sincere efforts. *A.B.*, 168 Wn.2d at 935 (Chambers, dissenting). The dissent contended this inability to forge necessary emotional attachments rendered that father unfit to parent *that particular child*. *Id.* (*emphasis added*). Thus, the focus of parental fitness, as detailed in both the majority and the dissenting opinions, has to be on the particular parent and the particular child at issue, not on a generic child in a general abstract manner.

Division Two of the Court of Appeals also recently clarified the nature of the parental unfitness issue in another decision also entitled, *A.B.*

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<sup>1</sup> The *A.B.* court held that “a parent has a constitutional due process right not to have his or her relationship with a natural child terminated in the absence of a trial court finding of fact that he or she is currently unfit to parent *the* child.” *A.B.* 168 Wn.2d at 920 (*emphasis added*).

See *In re the Welfare of A.B.*, --- Wn.2d ---, 323 P.2d 1062 (2014). Division Two held that to meet its burden to prove current parental unfitness, the Department was required to prove that the parent could not provide the child with “*basic nurturance, health, or safety*” *A.B.*, 323 P.2d at 1071 (*emphasis added*). Division Two cited the legislative declaration, RCW 13.34.020, in support of this proposition. *Id.* This legislative declaration notes that health is not just physical health, but also mental health. RCW 13.34.020. Furthermore, the legislative declaration notes that when the rights of *basic nurturance, physical and mental health, and safety* of the child and the legal rights of the parents are in conflict, the rights and safety of the child shall prevail. RCW 13.34.020 (*emphasis added*). This supports the principle that the court must view issues from the perspective of the particular parent and the particular child, the particular parent-child relationship, not in the abstract sense.<sup>2</sup>

The Supreme Court’s decision in *In re the Welfare of C.S.*, 168 Wn. 2d 51, 225 P.3d 953 (2010) further supports this reasoning. The court in that decision was not concerned with how a particular “deficit” or “condition” was labelled, but rather were services offered to address the “deficit” or “condition.” In the C.S. decision, the court noted that services should address not only individual “parental deficits” but also “conditions”

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<sup>2</sup> Some parents, however, may have deficits so profound that they are rendered unfit to care for any child. See RCW 13.34.180(1)(e)(i) and (ii).

preventing reunification, regardless of how the issue is labelled. *C.S.*, 168 Wn. 2d at 56, fn. 3. Thus, it is not the label attached to the problem that is the important issue, but rather the underlying problem.

Here, the court explicitly found that the father, although he had remedied his own individual parental deficits of substance abuse and domestic violence in general, in the abstract sense, he remained an unfit parent with regards to K.M.M. specifically. The trial court found that there is an “absence of the relationship”, and that the parent-child relationship, the attachment bond, no longer exists between these two individuals. FOF X, CP 107; FOF XIV, CP 108; FOF XV, CP 109; FOF XVIII, CP 109-10. The court found that the child’s “psyche got to the point where she would no longer tolerate or engage in visits with her biological parents.” FOF XII; CP 108. She has taken the “strong position that she will not engage with her parents.” FOF XV, CP 109.

Parental unfitness does not just relate to the individual parent. Instead, it involves the parent and the relationship, or lack thereof, with the specific child. For example, the failure of a parent to have contact with a child creates a rebuttable presumption that there is little likelihood that conditions will be remedied so that the child can be returned home. RCW 13.34.180(1)(e)(iii). This goes to the lack of a parent-child

relationship, rather than an individual issue such as substance abuse or mental illness.<sup>3</sup>

Here, the father is an unfit parent because he cannot provide basic nurturance to this child; the parent-child relationship, the attachment bond, cannot be repaired. FOF XV, CP 109; FOF XVIII, CP 109-10. The father is also an unfit parent because he cannot provide the child with basic *mental* health. See RCW 13.34.020; *A.B.*, 323 P.2d at 1071. The trial court explicitly found that “to attempt reunification therapy would be detrimental to [K.M.M.], causing great harm to her.” FOF XV., CP 109. The child’s psyche has gotten “to the point where she would no longer tolerate or engage in visits with her biological parents.” FOF XII, CP 108. As a result, the trial expressly found that this father could not parent this particular child; that he was unfit parent with regards to K.M.M. specifically, not with regards to any generic child in the abstract sense. The Supreme Court, in *A.B.*, ruled that this is the proper focus in the parental unfitness issue; whether the parent “at the time of trial, is currently unfit to parent *the* child.” *A.B.*, 168 Wn.2d at 908 (*emphasis added*). The trial court expressly ruled so here.

The appellate court can also imply that a finding of current unfitness was made by the trial court. A finding can be implied if, and

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<sup>3</sup> The rebuttal presumptions under RCW 13.34.180(1)(e) are not exclusive. Thus a parent could have psychological incapacity issues that contribute to the parent’s lack of contact with the child, as well as render that parent unfit in general. See RCW 13.34.180(1)(e)(ii).

only if all the facts and circumstances in the record clearly demonstrate that the omitted finding was actually intended, and thus made by the trial court. *A.B.* 168 Wn. 2d. at 921. Here, the trial court found that there is an “absence of the relationship”, and that “the parent-child relationship, the attachment bond, no longer exists *between these two individuals*”. FOF X. CP 107; FOF XIV, CP 108. (*emphasis added*) The court did not find this as to a father and a daughter, but rather between two individuals, who do not have any attachment or relationship. It is implied that a person cannot be a fit parent and cannot have a parent-child relationship if there is no parent-child relationship, no existing attachment. One cannot parent a complete stranger. One cannot provide basic nurturance or provide for basic mental health to a complete stranger. See RCW 13.34.020.

Rather than just being two strangers here, the father and the child, and having no parent-child relationship, the trial court specifically found that any type of parent-child relationship between J.M. and K.M.M. would be negative and detrimental to the child. The trial court found that the child’s “psyche got to the point where she would no longer tolerate or engage in visits with her biological parents.” FOF XII; CP 108. She has taken the “strong position that she will not engage with her parents.” FOF XV, CP 109. Thus, one cannot provide basic nurturance or provide for basic mental health to someone who is actively resisting any type of

parent-child relationship. See RCW 13.34.020. One cannot be a fit parent to such a child.

A finding can be implied if, and only if all the facts and circumstances in the record clearly demonstrate that the omitted finding was actually intended, and thus made by the trial court. *In re A.B.*, 168 Wn.2d at 920. Such is the case here. K.M.M has refused to have any contact with either of her parents since May 2012. RP 30. Previously, there had not been any issues with visits. RP 29. In April 2012, the child started having issues with attending visitation. RP 30. The child has been appointed counsel as a result of her position. RP 31. Mr. Richardson, the social worker, had never seen this before, that a child drew a line in the sand regarding parental contact. RP 54.

As a result, the parties explored a variety of means to have visitation resume. Corey Staton, the child's therapist, had consults with a psychiatrist over this issue. RP 49, 81, 83. The parties, however, had meetings and came up with alternative solutions. RP 30-31, 83. The court subsequently entered an order directing that a family therapist, Tom Sherry, should render an opinion on how visitation can occur, after consultation with all of the parties. Ex. 15, CP 338-39.

Tom Sherry met with all of the parties, including K.M.M. CP 225. The child, however, refused to participate in visits. RP 226-27. Mr.

Sherry opined that her decision should be respected. Otherwise she would not matter, as it is tied to her sense of self. RP 272. As the child's therapist, Corey Staton noted, it is the child herself that determines where she is at. RP 128-29. To force the child to visit with the father would be harmful and detrimental to the child, according to Tom Sherry. RP 272.

As a result of direct contact between the child and the parents not being possible, Tom Sherry developed a contact plan centered on the siblings. RP 238. Mr. Sherry reasoned that if sibling contact and relationships were maintained, once the siblings were returned to the mother, and the return home went well for those children, K.M.M. might warm to the idea of having contact with her parents. RP 238.

The parties implemented this plan. However, the father did not comply with the plan. Ms. Pritchard had done preparation work with the father, both on the phone and in person, and with the child. However, J.M. opened the door of the van, tried to talk to K.M.M. and put his hands on her, instead of following the agreed plan. RP 328-29. K.M.M. was very upset by these events at the first incidental contact visit with the father. RP 289, 329. She refused to see the parents after this. RP 312. K.M.M. also has since refused to see her siblings, and will not participate in any form of family therapy. RP 392, 401, 450. In her testimony, K.M.M. consistently referred to the biological parents by their first names,

and referred to the foster parents as her parents. *See i.e.* RP 282, 284-85, 303. All the facts and circumstances in the record clearly demonstrate that the omitted finding was actually intended, was implied by the detailed findings actually entered, and thus made by the trial court. *In re A.B.* 168 Wn. 2d. at 921. The child has no attachment bond, and there is no parent-child relationship present between K.M.M. and J.M. Accordingly, he cannot be a fit parent for a child with whom there is no parent-child relationship and no attachment bond of any sort.

**C. Substantial Evidence Supports the Finding That All Necessary Services Capable of Correcting the Parental Deficits Were Offered and/or Provided to the Father.**

The father next contends that the trial court erred in finding that all necessary services, capable of correcting the parental deficits, were offered or provided. He maintains that the Department failed to offer him family therapy; bonding and attachment service; and continued visitation, after the child refused to attend such visitation. Substantial evidence, however, supports the trial court's detailed findings on this issue that all necessary services capable of reuniting K.M.M. with the father within the foreseeable future have been offered or provided in this case. FOF XIII, CP 108. The trial court also found that there is no service that is capable of correcting the now severed parent-child relationship, the now severed attachment bond; that there is no reasonable probability that reunification

therapy, or any other kind of therapy, can remedy the situation within the foreseeable future. FOF XIII, XIV, CP 108. Substantial evidence supports these, and other applicable findings, made by the trial court.

**1. Substantial Evidence Supports the Trial Court's Findings That an Evaluation on the Issue of Family Therapy Was Performed and There Was no Probability That Reunification Therapy Could Remedy the Situation Between Child and Parent.**

Substantial evidence supports the trial court's findings that an evaluation on the issue of family therapy was performed and there was no probability that reunification therapy could remedy the situation.

The trial court found that no one had a crystal ball in this case. FOF XI, 107. Mr. Richardson had never had a case in which a child drew a line in the sand and refused to continue visitation. RP 54. Visitation had been going fine in the spring of 2012. RP 29. There were issues starting in April 2012 that the parties then worked to address. RP 30. The child, however, then began to refuse to attend visits all together in May 2012. The parties attempted a variety of approaches to address this refusal, investigating a psychiatric consult and seeking outside opinions. RP 81-82, Ex. 13, CP 323.

The trial court properly found that the dependency court ordered Tom Sherry to perform an evaluation on the issue of reunification therapy to address this issue, the child's refusal to attend visits. FOF XIII, CP 108.

The Dependency court had ordered, in the summer of 2012, that a family therapist, Tom Sherry perform an evaluation on the appropriateness of visitation, and how such visitation can occur. Ex. 13 CP 323; Ex 36, CP 434-37, RP 358. Tom Sherry, performed such an evaluation, meeting with all of the parties, including the child and the parents. RP 228. Mr. Sherry determined that family therapy, as part of a reunification process, could not occur here. RP 243. The child did not want to participate in visits, and her decisions should be respected. RP 237, 272. Instead, he developed a plan for maintaining sibling relationships and that through these sibling relationships, K.M.M. might warm to the idea of having contact with her parents. RP 238. The parties attempted the sibling contact plan, but the father did not comply with the plan. RP 289, 329. K.M.M. refused to see the parents after this. RP 312. The court subsequently suspended further visitation due to the harm to the child. RP 289, 329, Ex. 14, CP 333. To force the child to visit with the father would be harmful and detrimental to the child, according to Tom Sherry. RP 272. Mr. Sherry opined that her decision should be respected. Otherwise she would not matter, as it is tied to her sense of self. RP 272. As the child's therapist, Corey Staton noted, it is the child herself that determines where she is at. RP 128-29. "Where the record establishes that the offer of services would be futile, the trial court can make a finding that the

Department has offered all reasonable services.” *In re C.S.* 168 Wn.2d at 56 fn.2. Such is the case here. Thus, substantial evidence supports the trial court’s findings that there was no reasonable probability that reunification therapy, or any other kind of therapy, can remedy the situation in the foreseeable future. FOF XIII., CP 108; FOF XIV, CP 108.

The father then incorrectly argues that family therapy, for purposes of reunification with the child, was ordered by the court in December 2012. *See Appellant’s brief at p.14.* This argument is not supported by the evidence. Instead, Tom Sherry recommended that once the other children went home, and new relationships were established, family therapy could be appropriate. RP 245-46. Such possible family therapy could address the new role relationships, with the other children being with the mother, and seeing the father, and K.M.M. remaining with the foster parents. RP 246. This family therapy could assist everyone in being able to work through the different relationships, and to preserve the sibling relationship between K.M.M. and the other children. RP 246. This service was not designed to reunify the child with either parent, but instead to support the children in their respective different placements. RP 243.

The father was ordered, in December 2012, to participate in this service, to support the child in her foster placement and in her on-going

relationship with the sibling, K.M., placed with the mother. Ex 14, CP 332. At that point in time, K.M.M. was no longer willing to see her parents and the court had already ordered these parent-child contacts to stop. RP 330. The court, in the December 2012 review order again, reiterated the order that contact between the K.M.M. and both the mother and the father remained suspended. Ex. 14, CP 334. However, the court also ordered once a month contact between K.M.M. and the other kids. Ex. 14, CP 333. The other two children were already placed with the mother. CP 61. Thus, any family therapy ordered would have been in the context of supporting the new placement relationship and the sibling relationships between the children, as recommended by Tom Sherry. It was not a service designed to reunify the child with the father, but rather support the child who was choosing to remain out of the parents' care.

However, Mr. Sherry also noted that if these sibling contacts did not go well, one could not force K.M.M. to participate in them. RP 247. The mother and the other two siblings went to a Seattle in-patient treatment program in early 2013 due to her relapsing. CP 62. K.M.M. stopped visiting with her sisters soon after that. RP 392, 401. Thus, the basis for any such family therapy, to support the existing sibling relationships and the placement relationships, including K.M.M not being in the home of either parent, no longer existed. Such a service, designed

to support only the sibling relationship, would have been futile, since visits were no longer occurring.

The trial court did note that therapy in 2011 might have been to some benefit, but that is not a definitive finding. See FOF XII, CP 108. The court also found that no one had a crystal ball in this case. FOF XI, CP 107. Nor does this finding override the trial court's definitive findings detailed. At that time, in 2011, the mother had been terminated unsuccessfully from an in-patient treatment program and her youngest child came to live with K.M.M. and K.M. in the same foster home. CP 60. At the same time, the father was involved in the Safe Care Program, but he did not have a home in which the children could be returned home to. CP 60. Furthermore, the visitation issue with regards to K.M.M. did not develop until a year later, in May 2012. FOF XI, CP 107-108. The social worker had never seen this before, a child drawing a line in the sand, and refusing all parental contact. Once the issue did develop, however, all of the parties acted to address the child's refusal to participate in visitation through a variety of approaches, including the evaluation and assessment by Tom Sherry. These efforts, however, were unsuccessful, because of the father's actions in response to the plan developed by Tom Sherry. Here, the Department has continually attempted to seek solutions to

address the issue of the parent-child relationship, once that issue arose.

There was no failure to provide services present in this case.

**2. Substantial Evidence Supports the Trial Court's Findings That the Child Needed Individual Therapy; That Her Therapy Addressed her Ability to Form Any Attachments; and That All Services Reasonably Available, Capable of Reuniting the Child with Her Father Within the Foreseeable Future, Have Been Offered or Provided in this Case.**

The father next argues that the Department failed to offer the father bonding and attachment services. *See Appellant's brief at Page 16.* The trial court, however, properly found that the child needed to participate in individual therapy to address her issues and to facilitate her development of secure attachments. FOF XI, CP 107. The trial court also properly found that the child's ability to form any attachments was evidence of the healing she was undergoing and that she was developing the ability to attach to others. FOF XI, CP 107. There is no evidence to support the father's contention that bonding and attachment services were a necessary service for the father, and substantial evidence to support the trial court's findings.

The trial court found that the individual counseling was for the child to address her own issues. FOF XI, CP 107. K.M.M. had significant issues when she came into care. She had a history of alleged physical abuse as well as neglect. RP 64. K.M.M. had attachment issues and she

was not able to rely on adults to meet her needs. RP 64. K.M.M. had emotional, social and intellectual delays. RP 66. She was also parentified, attempting to care for her younger sibling, K.M., when she came into care. RP 64. K.M.M. began individual therapy with Corey Staton to address these issues in September 2009. RP 63.

Ms. Staton testified that K.M.M. had to learn how to have secure attachments. RP 66. The foster parents, as her day to day caretakers, were involved in some of this individual therapy for the child. RP 68. Ms. Staton noted that the biological parents would be involved when a transition home occurred as they would then become the caretakers for the child. RP 69. She has worked with both foster parents and biological parents on transition home plans in the past. RP 128. Ms. Staton, in the child's therapy sessions, was not working with the child on training any specific attachment, but rather that the child needed to learn how to rely on adults in general. RP 71. K.M.M. needed to learn how to trust in general. RP 73. As the therapist testified, developing a secure attachment to the foster parents makes it easier for the child to attach to the biological parents. RP 139-140. A child can have multiple attachments. RP 142.

Tom Sherry, another experienced therapist, agreed with this approach. A child who has developed the ability to attach would be able to attach to others; the child has learned to attach to others. RP 267, 268.

The court found both therapists, Corey Staton and Tom Sherry, to be very experienced therapists and the most credible witnesses on issues of the child and her therapeutic needs. FOF XVIII, CP 110.

There is no evidence that bonding or attachment services were provided to the child or the foster parents. Instead, the child participated in ongoing individual therapy to address her own individual issues. K.M.M.'s therapy would make it easier for her to attach to her biological parents, contrary to the father's contention, in addition to addressing her own issues caused by the biological parents. Instead, the father continues to lack insight into her needs and lack empathy for the child. RP 330, 334, 396-97. Thus, the trial court's findings that all services reasonably available, capable of reuniting the child with her father within the foreseeable future, have been offered or provided in this case, is supported by substantial evidence. FOF XII, CP 108.

### **3. Visitation Was Properly Restricted to Protect the Child's Health, Safety and Welfare**

The father next argues that the Department failed to provide him with visitation. *See Appellant's brief at 18.*<sup>4</sup> Visitation occurred on this case for three years, from 2009 until May 2012. However, the dependency court suspended the father's visitation to protect the child's

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<sup>4</sup> In support of this argument, the father attaches document, "Visitation with Infants and Toddler in Foster Care". K.M.M. is 11 years old, has an attorney and testified at trial that she was very scared the last time she saw him. RP 282, 289.

health, safety and welfare. The trial court found that continued contact with the parents would be detrimental to the child, causing her great harm. FOF XV, CP 109. She would suffer emotional derailment of her progress and any such attempt [at contact] would likely compromise her ability to establish other social and emotional stages necessary for her development. FOF XV, CP 109. Her psyche got to the point where the child would no longer tolerate or engage in visits with her parents. FOF XII, CP 108. Substantial evidence supports these findings.

The trial court properly found that as a result of the child refusing to attend visits, the dependency court ordered Tom Sherry to perform an evaluation. Ex. 13, CP 323. Tom Sherry met with all of the parties, including K.M.M. CP 225. The child however refused to participate in visits. RP 226-27. Mr. Sherry opined that her decision should be respected. Otherwise she would not matter, as it is tied to her sense of self. RP 272. As the child's therapist, Corey Staton noted, it is the child herself that determines where she is at. RP 128-29. To force the child to visit with the father would be harmful and detrimental to the child, according to Tom Sherry. RP 272. The child was very upset by the father's actions at the first incidental contacts visits in December 2012. RP 289, 329. As a result, the dependency court properly ordered that visitation be suspended to protect the child's health, safety and welfare.

RP 389, Ex. 14, CP 334; Ex. 15 CP 345-46. RCW 13.34.136(2)(b)(ii) provides that visitation can be limited or denied to protect the health, safety, or welfare of a child; *In re Dependency of T.L.G.*, 139 Wn. App 1, 14, 156 P.3d 222 (2007). Furthermore, visitation, although provided for three years here, until the child refused to further attend, is not a service under RCW 13.34.180(1)(d). *In re Dependency of T.H.*, 139 Wn. App. 784, 792, 162 P.2d 1141(2007). Once the child began refusing to participate in visitation, the parties attempted a variety of approaches in an attempt to resume visitation. Those efforts, due to the actions of the father, and resulting decisions by the child, proved unsuccessful. Substantial evidence supports the trial court's findings on the issue of visitation.

## VI. CONCLUSION

Substantial evidence supports the trial court's findings in this case. The trial court found, based on the lack of an attachment, the lack of a parent-child relationship, that this father could not parent this particular child. The father is thus an unfit parent; he has current parental unfitness. Accordingly, the trial court's Findings of Fact, Conclusions of Law, and Order of Termination should be affirmed.

RESPECTFULLY SUBMITTED this 20<sup>th</sup> day of June, 2014.

Robert Ferguson  
Attorney General

  
Peter Kay  
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# WASHINGTON STATE ATTORNEY GENERAL

**June 20, 2014 - 10:54 AM**

## Transmittal Letter

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