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SUPREME COURT
OF THE STATE OF WASHINGTON

In Re the Welfare of
K.M.M.,
Minor Child,
J.M. (father)
Petitioner/Appellant.

Kitsap County Superior Court
Cause No. 13-7-00084-9
The Honorable Judge Jeanette Dalton

Petitioner's Reply to Amicus

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SUMMARY OF ARGUMENT

Amici Curiae¹ make points suggesting a misunderstanding of the record. Such misunderstandings may have misled amicus CCYJ into supporting the trial court's decision.

Furthermore, the child-centric approach advocated by amicus CCYJ must be harmonized with the U.S. Supreme Court's decisions in *Santosky* and *Troxel*. In addition, courts applying any child-centric approach should strive to understand the reasons underlying a child's stated position, and avoid burdening children with deciding the outcome of a termination case.

Finally, amicus CCYJ's version of a child-centric approach opens the door to termination orders based on a new definition of "unfitness" supported only by the testimony of social workers and counselors who lack expertise.

ARGUMENT

I. THE ARGUMENTS OF AMICI CURIAE ARE BASED ON A MISUNDERSTANDING OF THE RECORD IN THIS CASE.

The briefs of amici curiae include passages suggesting a fundamental misunderstanding of the record in this case, as well as specific misstatements regarding the evidence introduced at trial. Accordingly, a short restatement of critical facts is included here.

Joshua Miller lived with his wife and their two daughters. RP 17. He'd been injured in the military and became addicted to painkillers. RP 465-468, 531. The mother was also addicted to drugs. CP 2. In 2009, the Department took both children, and both parents sought help for their drug

¹ Three amicus briefs have been filed in this case. These include amici curiae Center for Children & Youth Justice, The Mockingbird Society, and the Children and Youth Advocacy Clinic at the University of Washington (hereafter "CCYJ brief"), Dr. Susan Spieker and Dr. Marian S. Harris (hereafter "Spieker brief"), and King County Department of Public Defense (hereafter "DPD brief.")

issues. CP 228, 242. K.M.M. was seven years old when taken from her mother and father in 2009.² CP 105-106. The parents split soon after, and the mother had a child by another man. RP 19.

Since the goal was to keep all three children together, the plan became to return them to their mother, as Mr. Miller was not the natural father of the youngest girl. RP 19. Even so, Mr. Miller pursued services immediately, successfully completing them. While he supported keeping the girls together, at every opportunity he worked to maintain an active parenting role. CP 106, 228, 242, 254, 409, 411, 413, 415, 417, 421, 425, 427, 433.

The mother entered family drug court in 2010 and had several relapses. CP 257, 269; RP 19, 656. The children were returned to her but then reentered foster care at least once. RP 271, 656.

Mr. Miller completed multiple parenting classes, hands-on parenting instruction, mental health counseling, as well as his drug treatment program. CP 106, 228, 242, 254, 409, 411, 413, 415, 417, 421, 425, 427, 433. All of the evidence indicated that Mr. Miller was a consistent, willing, and active service participant. CP 107, 228. The trial court found that he corrected all of his parental deficiencies. CP 106-109.

During the first year of the dependency, K.M.M. appeared to enjoy visits with her father. RP 635. But after attending an adoption party for another foster child, she started claiming that she wanted to be adopted.

² The father's supplemental brief erroneously indicated that K.M.M. was five when placed in foster care. Petitioner's Supp. Brief, p. 4. This was an error; K.M.M. was seven. CP 105.

RP 167-168, 207, 297. In late 2010, K.M.M. began telling her counselor Corey Staton that she wanted to be adopted. RP 76.

By late 2011, K.M.M. began challenging her father at her visits, described by the CASA as “somewhat picking on him.” RP 658. When asked about this, K.M.M. said “I just want it over.” RP 658.

In April or May of 2012, when she was ten years old, K.M.M. refused to visit with her mother, her father, and her sisters. RP 30, 394. Visits with her father never resumed. In December of 2012, the Department attempted a single “natural contact”, and when that failed they took no further action. RP 330.

Mr. Miller asked to be able to talk to K.M.M.’s counselor, so he could understand the issues and provide his perspective. Counselor Staton did not wish to speak with him, since she had been told by the Department that reunification was not imminent. RP 25-26, 69.

Mr. Miller requested family therapy. RP 500. The court appointed Tom Sherry, a counselor, to make visit recommendations, but review of his testimony reveals that he never considered unifying K.M.M. with her father. RP 225-230, 236-238, 247. He believed that “reunification should not be pursued” because K.M.M. was in “a good placement for her.” RP 266-267. He also testified that if his “natural contact” idea did not succeed, that K.M.M. and her counselor would need to work on the issues that K.M.M. had relating to her biological family. RP 268. But that did not happen, and Staton never addressed repairing the relationship or the reasons behind K.M.M.’s position with K.M.M. RP 117, 118, 137.

The trial court found that K.M.M.'s relationship problem with her biological family stemmed not from her family home environment, but came about instead "following removal from her parents and after suffering inappropriate corporal punishment with resulting emotional trauma during the five months of her initial foster home placement." CP 107. The court also found that her position was taken "through no fault of the father" and it was "not due to any of [the father's] deficits." CP 4, 5. Even counselor Staton testified that K.M.M.'s fear of losing her foster family was "not from neglect or trauma or anything like that". RP 93.³ In the end, although the court terminated Mr. Miller's parental rights, it found that Mr. Miller "never posed a risk of abuse to [K.M.M.]." CP 107.⁴

II. THE CHILD-CENTRIC APPROACH SUPPORTS OVERTURNING THE TERMINATION ORDER.

- A. Any child-centric approach must exist in harmony with U.S. Supreme Court precedent.

Amicus CCYJ argues in favor of what it calls a "child-centric" approach when considering the rights of children in dependency and termination proceedings. CCYJ brief, pp. 3-7. According to amicus CCYJ, the child-centric approach makes "the child's interests... paramount in all decisions, and in all cases of conflicting rights." CCYJ brief, p. 3.

³ Without citation to the record, amicus CCYJ incorrectly alleges that K.M.M.'s problems resulted "first from a neglectful home environment..." CCYJ brief, p. 1. This is simply not true. The court found otherwise, and no evidence suggested she had "delays and an inability to develop secure attachments" stemming from life with her parents. CCYJ brief, p. 1.

⁴ There was initially an allegation that there was also abuse in the home. That allegation was determined to be unfounded. RP 36; CP 107.

Amicus CCYJ's formulation of a child-centric approach may conflict with well-established principles of federal constitutional law.

First, the federal constitution requires courts to presume that fit parents act in the best interest of their children. *Troxel v. Granville*, 530 U.S. 57, 68, 120 S. Ct. 2054, 2061, 147 L. Ed. 2d 49 (2000).⁵ Any approach that purports to prioritize a child's interests over a fit parent's (allegedly) conflicting interests violates this constitutional imperative.

Second, fit parents and their children "share a vital interest in preventing erroneous termination of their natural relationship." *Santosky v. Kramer*, 455 U.S. 745, 760, 102 S. Ct. 1388, 1398, 71 L. Ed. 2d 599 (1982). Regarding the threat of termination, the interests of fit parents and their children coincide. *Id.* This constitutional principle also seems to be in tension with amicus CCYJ's version of a child-centric approach, which presumes that fit parents and their children can have conflicting interests.

However, the child-centric approach is easily harmonized with these rules. Under *Troxel* and *Santosky*, a fit parent who resists termination necessarily does so in the best interests of his or her child, even if the child believes termination is in her best interest. The child-centric approach thus favors giving effect to a fit parent's wishes. There is no conflict between the child's actual interests and the fit parent's interests. *Troxel* and *Santosky* require courts to presume that a child such as K.M.M. is taking a position at odds with her own best interests. This does not require the

⁵ See also *In re Custody of B.M.H.*, 179 Wn.2d 224, 260, 315 P.3d 470, 487 (2013); *In re Welfare of C.S.*, 168 Wn.2d 51, 55, 225 P.3d 953, 954 (2010).

court to ignore or disrespect the child's stated position. Instead, the court must treat the child with respect, without allowing her wishes to control the outcome of the case.

- B. A child-centric approach should not become an underhanded way of considering the child's best interests prior to a determination of parental unfitness.

Amicus CCYJ's version of a child-centric approach conflicts with *Troxel* and *Santosky*. Amicus CCYJ argues that a termination court's parental fitness determination should be made "in context of [the] particular parent-child relationship." CCYJ brief, p. 8. In fact, amicus CCYJ seeks to conflate the best interest inquiry with the fitness inquiry, in violation of *Santosky*. CCYJ brief, pp. 8-13.

Once characteristics of the child are integrated into the fitness inquiry, it becomes impossible to separate fitness from best interests. *Santosky* forbids this. The problem is illustrated by one exchange between the trial judge and the child's counselor, which has been misused and quoted out of context throughout the appellate proceedings in this case:

THE COURT: ...[W]hich would be in her best interests: Repairing the relationship with her bio-dad, returning there, or continuing with her foster family?

THE WITNESS [Cory Staton]: At this point in time, continuing with her foster family.

THE COURT: And what is your basis for that?

THE WITNESS: Because that is where she has identified herself that that is where she is at in her life. She has a very secure attachment with them. That is who she is identifying as her family at this point in her life. It's really damaging to lose a really secure attachment at this age that she is at.

RP 140.

The court's question relates to K.M.M.'s best interests, not Mr. Miller's fitness as her father. RP 140.⁶

A change in how fitness is determined will affect proceedings in other contexts besides termination. Parental fitness is implicated in divorce cases, nonparental custody cases, guardianships, and private adoptions.⁷

Amicus CCYJ also argues that the trial court's fitness determination "is greatly benefited by considering the child's own opinion." CCYJ brief, p. 10. This is a potentially disastrous suggestion.

Children should not be expected to opine on the fitness of their own parents. A court that listens to a child's opinion when making a fitness determination places that child in an untenable position detrimental to their well-being. A child who says "I hate you" to a parent should not have to grow up knowing that such a statement had profound and life-changing consequences for the parent, child, siblings, and extended family.

The legislature allows courts to consider a mature child's reasoned and independent preferences as to residential schedule. RCW

⁶ Furthermore, when quoted out of context, the counselor's words give the false impression that placing K.M.M. with her father would cause damage. CCYJ brief, pp. 19-20. There is no suggestion that K.M.M. will lose her "really secure attachment" to her foster parents, even if she were ultimately placed with her father.

⁷ For example, a third party may not petition for custody over the objection of a fit parent, absent "actual detriment" to the child. RCW 26.10.032; *see B.M.H.*, 179 Wn.2d at 235. Currently, "[f]acts that merely support a finding that nonparental custody is in the 'best interests of the child' are insufficient to establish adequate cause" under the actual detriment standard. *Id.*, at 237. However, if a fitness determination may rest on characteristics of the child (or the parent-child relationship), the "actual detriment" standard will cease to meaningfully exist. Under amicus CCYJ's version of a child-centric approach, any parent can be deemed unfit for reasons unrelated to the parent's characteristics.

26.09.187(3)(a)(vi). It has not tasked children with opining on their parents' deficiencies.⁸

Santosky and *Troxel* both require courts to consider the qualities of a parent in determining fitness. The qualities of a child and any problems in the parent-child relationship must be reserved for the question of the child's best interests.

C. Amicus CCYJ's conclusion rests on a misunderstanding of the record and a failure to appreciate the possible reasons for K.M.M.'s stated position.

A true child-centric approach supports reversal in this case. Amicus CCYJ's contrary conclusion⁹ stems from an incomplete or erroneous understanding of the record. In addition, amicus CCYJ purports to examine "the factors at issue from K.M.M.'s perspective,"¹⁰ but fails to understand her stated desire (to be adopted) in the context of the overall problems created by the Department in this case.

Under a child-centric approach, the Department and the trial court should have listened to K.M.M.'s signals much earlier than when she testified at the termination trial. Furthermore, a child-centric approach requires a true understanding of the issues underlying a child's statements, especially when the child is young. Here, the system ignored K.M.M.'s initial cries for help and services. Later in the process, her statements were taken

⁸ This is not to say a court should ever disregard a child's perspective. Courts must be respectful, but must not burden a child by considering her opinions on her parent's fitness.

⁹ See CCYJ brief, p. 20.

¹⁰ See CCYJ brief, p. 7.

at face value, without exploring what lay beneath.

1. Reversal of the termination order does not require K.M.M. to lose her secure attachment to the foster family.

Nothing in the record suggests that K.M.M. is at risk for losing her secure attachment to her foster parents. Indeed, it is likely that K.M.M. will continue to reside with her foster parents even if the termination order is reversed. This could be accomplished through means more permanent than a long-term dependency: the parties could agree to a dependency guardianship under RCW 13.36, a nonparental custody order under RCW 26.10, or some other legal arrangement that provides K.M.M. with the permanency she needs.

Amicus CCYJ appears to support termination in part due to Staton's testimony that K.M.M. would be damaged by losing a secure attachment to her foster parents. CCYJ brief, p. 20. This misunderstands the record and legal options available.

K.M.M. can maintain her secure attachment relationships whether or not her legal relationship with Mr. Miller is severed. Allowing the relationship to remain intact will open the possibility that she can renew the secure attachment that she once had with her father, in addition to any other secure attachments she has. Reversal of the termination will not result in loss of K.M.M.'s secure attachment with her foster family.

2. K.M.M.'s stated position was likely influenced by the CASA's interference with Mr. Miller's attempt to protect her from abuse in foster care.

Amicus CCYJ recognizes the impact of “a harmful first foster care placement,”¹¹ but neglects to take into consideration how K.M.M. responded to the abuse she suffered at her first foster home.

K.M.M. reported her abuse to a trusted adult—her father. RP 477, 480. This strongly suggests that Mr. Miller was K.M.M.’s primary attachment figure when the Department placed her into an abusive home. The father responded appropriately, by bringing his concerns to the CASA, who was charged with representing K.M.M.’s best interests.

When Mr. Miller took this step, the CASA threatened him with prosecution for making a false report. RP 477, 480. This prevented Mr. Miller from protecting his daughter. K.M.M. later told her second foster parents, who were able to take action. RP 40.

In other words, “the system” erroneously taught K.M.M. she couldn’t rely on her father for protection, but that she could rely on her (second) foster parents. Given these circumstances, K.M.M.’s developing attachment to these foster parents was entirely understandable; however, it was based (in part) on misinformation stemming from CASA’s inappropriate threat. Had Mr. Miller been allowed to protect his daughter, K.M.M. might have maintained her close relationship with her father.

The Department should have provided therapy and other services to repair the damage and restore K.M.M.’s trust in her father. Nothing in the record suggests that it would be too late, even now, to explain to

¹¹ CCYJ brief, p. 1.

K.M.M. how her father's efforts to protect her were thwarted.

A child-centric approach would not favor terminating the relationship between K.M.M. and her dad, because she developed a false idea about his interest in protecting her from harm. The court and the Department should not have allowed K.M.M. to grow up with the misapprehension that her father didn't care about the abuse she suffered in foster care. Instead, the Department and the court should have taken steps to ensure that K.M.M. understands her father's commitment to her well-being.

3. K.M.M.'s stated position was likely influenced by the Department's failure to recognize her early and consistent signals that she needed services to maintain her relationship with her father.

Amicus CCYJ fails to address K.M.M.'s position in the context of the Department's failure to provide bonding or reunification services. The lack of help for this family at a "critical juncture" likely had a major impact on K.M.M.'s stated position at the termination trial. CP 107-108.

K.M.M. first mentioned adoption in 2010, when she was only eight years old and had been in foster care about a year. RP 76. This was after she was abused in her first foster home, asked her father to help, and then was rescued by her second foster home.¹² RP 40, 477, 480; CP 107-108. Her counselor did not ask about her desire to be adopted, and no services were provided to ensure that the parent-child bond remained intact.

¹² Furthermore, at some point K.M.M. attended an adoption party, which likely influenced her desire to be adopted herself. RP 167-168, 207.

In early 2011, K.M.M. told her CASA that she just wanted the case to be over. RP 658. She also began giving her father a difficult time during visits. RP 658. K.M.M.'s counselor did not explore her reasons for treating her father this way. No services were provided to ensure that the parent-child bond remained intact.

In early 2012, K.M.M. began resisting visits, not only with her father, but also with her sisters and mother. RP 30, 394. Her counselor did not address this with her. No services were provided to repair her relationship with her father. By May, K.M.M. began actually refusing to visit. Family therapy was not provided; no other services were even attempted until December of 2012—a full seven months after she stopped visiting. At that time, the disastrous “natural contact” took place.¹³ RP 330, 341, 355, 439. Following this single failed effort, the Department provided no additional services to repair the bond between Mr. Miller and his daughter.

K.M.M.'s stated position at termination was shaped by the Department's failure to provide services. The relationship problem first surfaced in 2010, became more prominent in 2011, and solidified into a refusal to visit in May of 2012. K.M.M. was never provided any counseling to explore the issue—indeed, her counselor never addressed her reasons to cut off from her biological family. RP 117-118, 137.

Amicus Spieker notes the importance of allowing children in foster care an opportunity to “maintain the attachment relationship” with their

¹³ When the father tried to hug his crying daughter, she resisted. RP 329, 336, 523-524.

biological family. Spieker brief, p. 10. The primary service to achieve this goal is visitation. Spieker brief, pp. 11-12.

In this case, visitation ceased when K.M.M. was only 10, after she'd been giving distress signals for two years. RP 30, 76, 167-168, 207, 297, 394, 658. Instead of immediately addressing the problem, the Department allowed this family to languish for months without any visits or services to assist them. In the end, the only attempt the Department made toward resuming visits was the failed natural contact in December of 2012. Tom Sherry expected K.M.M.'s counselor to follow up after that failure; the counselor was never told of this expectation. RP 137, 268.

There are resources available to understand a child's resistance to visitation. *See, e.g.,* Garber, *Conceptualizing Visitation Resistance and Refusal in the Context of Parental Conflict, Separation, and Divorce*, 45 Fam. Ct. Rev. 588 (2007). There are interventions that can help when a child draws "a line in the sand." RP 34, 40; *See, e.g.,* Warshak, *Parental Alienation: Overview, Management, Intervention, and Practice Tips*, 28 J. Am. Acad. Matrim. Law. 181 (2015); Friedlander and Walters, *When a Child Rejects a Parent: Tailoring the Intervention to Fit the Problem*, 48 Fam. Ct. Rev. 98 (2010); Johnston and Goldman, *Outcomes of Family Counseling Interventions with Children who Resist Visitation: an Addendum to Friedlander and Walters*, 48 Fam. Ct. Rev. 112 (2010).

Instead of providing the robust intervention needed, the Department did nothing. This allowed K.M.M. to solidify her position, which appeared entrenched by the time of the termination trial.

A child-centric approach would have recognized that K.M.M. was giving distress signals about her relationship with her father, starting in 2010. Had the Department and the court taken a child-centric view of the case, both would have ensured that K.M.M. (and Mr. Miller) received the services they needed to keep their relationship intact.

At termination, a child-centric approach would have explored the reasons underlying K.M.M.'s refusal to visit her father and her sisters. Instead of trying to understand K.M.M.'s needs, the Department and the court gave in to her stated desires, empowering her to decide the case rather than allowing her to remain a child.

4. K.M.M.'s stated position was likely influenced by the Department's refusal to provide Mr. Miller with the bonding services given to the foster parents, and by an adoption party for one of her foster siblings.

Amicus CCYJ fails to address the Department's provision of bonding services to the foster family and the denial of such services to Mr. Miller. This disparity artificially strengthened the bond between K.M.M. and her foster parents while artificially weakening her bond with her father.

Starting in 2009, the foster parents were allowed to participate in family therapy with K.M.M. They were told to hold K.M.M., rock her, and treat her like a much younger child. RP 99-102; CP 107.

K.M.M. and her biological parents did not receive family therapy, and the father received no advice on how to interact with her. When he tried to hold K.M.M. in his lap (just as the foster parents were instructed),

a visitation supervisor stopped him and told him he was acting inappropriately. RP 510.

Furthermore, the Department failed to provide the reunification services requested by the father. K.M.M.'s counselor refused to speak with Mr. Miller about his daughter, apparently because the Department indicated they were not working toward reunification. The counselor and K.M.M. never even addressed the child's reasons for refusing visits with her father and her sisters. RP 25-26, 69, 117-118.

In addition, the Department failed to follow up after the only service provided by Tom Sherry proved a failure. Sherry hoped that K.M.M.'s counselor would suggest other options for re-establishing the parent-child relationship, but apparently never communicated this hope to the counselor. The Department did not make any other efforts. RP 117-118, 137, 268.

Finally, K.M.M. attended an adoption party, held when her foster parents adopted one of her foster siblings. RP 167-168, 207. It is likely that this happy event influenced K.M.M.'s perception of her future. Any child in her circumstances, having suffered abuse at the hands of one foster family, would form a desire to be adopted by her new foster family.

A child-centric approach would not take K.M.M.'s stated position at face value without exploring the reasons for it. In this case, the Department artificially strengthened K.M.M.'s relationship with her foster parents while improperly weakening her bond with her father.

The child-centric approach for which amicus CCYJ advocates should require courts to look behind any child's stated desires. The Department and the court here should have attempted to discern the reasons underlying K.M.M.'s distressed relationship with her father. Instead, like the child's counselor, both the court and the Department gave up on understanding K.M.M.

D. Under a child-centered approach, young children should not be burdened with the responsibility of deciding life issues.

Amicus CCYJ does not suggest that courts should place responsibility for deciding weighty issues on children. CCYJ brief, pp. 1-2 (describing what it means to be child-centered). This is consistent with Washington law, which does not grant un-emancipated children decision-making authority, even when their parents disagree with each other. For example, in making residential provisions, a court need only *consider* the "wishes of a child who is sufficiently mature to express reasoned and independent preferences as to his or her residential schedule." RCW 26.09.187(3)(a)(vi).

This principle is also expressed in materials provided to parents facing custody decisions:

Can children decide where they want to live? In Washington, adults decide where children will live. A court may consider a child's wishes only if the child is old enough and mature enough. There is no magic age for a child to be mature enough to state his or her choice. Generally, courts do not want children to be involved in these decisions.

Washington Courts, *Family Law Handbook – Understanding the legal implications of Marriage and Divorce in Washington State*.¹⁴

This approach is also consistent with social science research. Children are harmed by estrangement from a parent, even when the children themselves refuse to see the parent during childhood. Baker, *The Long-Term Effects of Parental Alienation on Adult Children: A Qualitative Research Study*, *The American Journal of Family Therapy*, Vol. 33, Issue 4, pp. 289-302 (2005).¹⁵

When a child expresses a preference (or draws a “line in the sand”), the court should be respectful, but this should not mean allowing the child to control the outcome of a case. Here, K.M.M. was only ten years old when adults gave in to her refusal to see her father. No one asked her why. No services were provided to help heal the relationship.

As a consequence, K.M.M.’s position solidified. The problem might easily have been resolved if addressed early. Instead, it calcified into an obstacle to reunification. Although standard family therapy might well have been sufficient when K.M.M. first gave signals about her distress and need for permanency, something more would have been required at the time of trial.¹⁶

¹⁴ Available at <https://www.courts.wa.gov/newsinfo/content/pdf/FLHBMarriageEdition.pdf>, accessed May 9, 2016.

¹⁵ Available at <http://www.tandfonline.com/doi/abs/10.1080/01926180590962129>, accessed May 11, 2016.

¹⁶ Presumably, even more robust services will be required now that K.M.M. is a teenager. The father, the Department, and the trial court will face challenges that were not present when K.M.M. was eight and began talking about adoption. But any increased difficulties
(continued)

The court should not have given K.M.M. the responsibility for deciding the future of her legal relationship with her father. Mr. Miller is a fit parent, and his rights should not have been permanently terminated.

III. AMICUS CCYJ'S VERSION OF A CHILD-CENTRIC APPROACH ALLOWS TERMINATION BASED ON A NEW DEFINITION OF UNFITNESS, SUPPORTED BY TESTIMONY FROM WITNESSES WHO LACK EXPERTISE.

Amicus Spieker notes the prevalence of “expert” opinions from those who lack expertise relating to attachment issues. Spieker brief, p. 11. In this case, the Department presented opinion testimony from counselors who had no expertise in attachment, bonding or reunifying families.

The approach amicus CCYJ advocates opens the floodgates to erroneous decisions supported by testimony from counselors and social workers who lack sufficient expertise to give meaningful opinions on the quality of a relationship between parent and child. K.M.M.'s case provides an apt example of the problem.

K.M.M.'s counselor did not know why K.M.M. took a position against visiting her father, mother, and sisters. RP 117-118. As time went on, Staton became increasingly unsure about how to address K.M.M.'s stance. In the summer of 2012, the counselor requested that K.M.M. meet with a psychiatrist to explore her position and any underlying issues. The Department did not pursue this request. RP 78-90, 113.

stem from Departmental failures and delays inhering in the appellate process, and do not provide a reason for terminating the legal relationship between Mr. Miller and K.M.M.

Neither K.M.M.'s counselor nor Sherry had the necessary expertise to understand K.M.M.'s position, or to testify about attachment issues at trial. First, as Dr. Spieker notes, "there is no evidence that the issue between the father and daughter is attachment." Spieker brief, p. 16. Despite this, the Department's "expert" testimony led the court to erroneously refer to "lack of the attachment bond" between K.M.M. and Mr. Miller. CP 109; RP 718, 722.

Second, Staton erroneously implied that K.M.M. could only have one secure attachment (with her foster parents), which could be destroyed by "[r]epairing the relationship with her bio-dad." RP 140.¹⁷ In fact, "[a] child is not limited to one attachment at a time." Spieker brief, p. 15. Once a child is able to form secure attachments, "multiple attachments can occur and they can be secure attachments." Spieker brief, p. 15.

Amicus CCYJ's version of the child-centric approach creates an entirely new avenue for termination based not on actual parental unfitness (as it has been understood to date), but on the quality of the parent-child relationship. The approach envisioned by amicus CCYJ will permit social workers and counselors with no particular expertise to opine that a parent is unfit because of a poor relationship with her or his child. In many cases, that poor relationship could result from (or grow worse from) state interference with the family.

¹⁷ As noted elsewhere, amicus CCYJ quotes K.M.M.'s counselor out of context to incorrectly suggest that the testimony was that repairing the relationship will harm K.M.M. CCYJ brief, p. 20.

The court should decline to expand the definition of fitness to include an examination of the parent-child relationship. The version of a child-centric approach favored by amicus CCYJ unravels the state's obligation to prove unfitness, a due process requirement reaffirmed by this court in *In re Welfare of A.B.*, 168 Wn.2d 908, 232 P.3d 1104 (2010).

A determination of parental fitness must not look to the characteristics of the child or the child's relationships with parents and foster parents. Allowing a court considering termination to determine parental fitness by examining the child's characteristics or relationships conflates the fitness determination with the best interests determination, and opens the floodgates to termination orders based on unsupported "expert" testimony from non-experts.

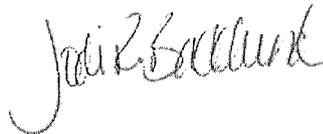
The termination order here must be reversed.

CONCLUSION

The Supreme Court should reverse the termination order and remand the case for further proceedings.

Respectfully submitted on May 13, 2016.

BACKLUND AND MISTRY



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CERTIFICATE OF SERVICE

I certify that on today's date, I performed the following actions:

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I filed the Supplemental Brief electronically (via email) with the Supreme Court.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed at Olympia, Washington on May 13, 2016.



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I have attached for filing our brief in cause number 91757-4 In Re KMM (Petitioner's Reply to Amicus).
Thank you.

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