

RECEIVED  
SUPREME COURT  
STATE OF WASHINGTON  
Jul 16, 2015, 9:40 am  
BY RONALD R. CARPENTER  
CLERK

E

NO. 91757-4

RECEIVED BY E-MAIL

h/h

---

SUPREME COURT OF THE STATE OF WASHINGTON

---

IN RE THE WELFARE OF

K.M.M.,

MINOR CHILD,

---

ON APPEAL FROM THE WASHINGTON STATE COURT OF  
APPEALS, DIVISION II

---

ANSWER TO MOTION FOR DISCRETIONARY REVIEW

---

ROBERT W. FERGUSON  
Attorney General

PETER E. KAY  
Assistant Attorney General  
WSBA#24331  
PO Box 2317  
Tacoma, WA 98401  
(253) 593-5243

 ORIGINAL

TABLE OF CONTENTS

I. INTRODUCTION.....1

II. RESTATEMENT OF THE ISSUES .....1

III. RESTATEMENT OF THE CASE.....2

IV. REASONS WHY REVIEW SHOULD BE DENIED .....8

A. The Court of Appeals Properly Ruled 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. ....8

1. The Court of Appeals Ruling Follows the *A.B.* Decision.....9

2. The Father’s Narrow Reading of *In re A.B.* is Unsound and Does Not Present a Conflict Warranting Review.....12

B. The Court of Appeals Properly Ruled that Substantial Evidence Supports the Finding That All Necessary Services Capable of Correcting the Father’s Deficits Were Offered and/or Provided to Him.....14

1. Neither Family Therapy nor Reunification Therapy Could Remedy the Situation Between Child and Parent.....14

2. K.M.M. Participated in Individual Therapy to Address Her Own Issues From When She Came into Care.....18

V. CONCLUSION .....20

**TABLE OF AUTHORITIES**

**Cases**

*In re Aschauer*, 93 Wn.2d 689, 611 P.2d 1245 (1980)..... 10, 11

*In re C.S.*, 168 Wn.2d 51, 225 P.3d 953 (2010)..... 15

*In re Custody of B.M.H.*, 179 Wn.2d 224, 315 P.3d 470 (2013). ..... 10, 11

*In re Welfare of A.B.*, 168 Wn.2d 908, 232 P.3d 1104 (2010)..... 1, 9, 12

*In re Welfare of A.B. (A.B. II)*, 181 Wn. App. 45, 323 P.3d 1062 (2014)10, 11, 13

**Statutes**

RCW 13.34.020. .... 10

RCW 13.34.180(1)(e) ..... 12

RCW 13.34.180(1)(e)(ii). .... 12

RCW 13.34.180(1)(e)(iii). .... 12

**Other Authorities**

*Unfit*, Black’s Law Dictionary 1530 (6th ed. 1990) ..... 13

## I. INTRODUCTION

This appeal involves K.M.M., an eleven year-old girl who has been in foster care for over six years. This is a motion for discretionary review from an action terminating the parent-child relationship between the minor child, K.M.M., and the father, J.M. The father challenges the appellate court's ruling 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 Court of Appeals decision is consistent with this Court's decision in *A.B.*, and the Court correctly concluded that the termination of the father's parental rights was supported by substantial evidence. *In re Welfare of A.B.*, 168 Wn.2d 908, 232 P.3d 1104 (2010). Thus, the motion for discretionary review should be denied.

## II. RESTATEMENT OF THE ISSUES

The father raises the following issues:

1. Whether the Court of Appeals properly held that 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 and that there is no parent-child relationship present?

2. Whether the Court of Appeals properly held that 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 or provided to the father?

### III. RESTATEMENT OF THE CASE

J.M. is the father of two young girls, K.M.M. and K.M., with the mother, D.C. CP 58. Both parents had substance abuse and domestic violence issues that caused the Department to file dependency petitions in February 2009 on K.M.M., then six years old, and K.M., less than a year old. CP 58. The mother, D.C., subsequently had another child, K.C., born in 2010, by a different father. CP 60.

K.M.M. had significant delays when removed from her parents' care. She had emotional, social, and intellectual delays. RP 66. She had problems attaching to, and relying on, adults to meet her needs. RP 64, 66. K.M.M. was also parentified, in that, at six years old, she was attempting to take care of her one-year-old sister, K.M., and make sure that her siblings' needs were met. RP 64. K.M.M. was also a victim of physical abuse and neglect. RP 64.

K.M.M. began individual therapy with Cory Staton to address these issues in September 2009. RP 63. Ms. Staton testified that K.M.M. needed to learn how to develop secure attachments. RP 66. The foster parents, as her day-to-day caretakers, were involved in some of K.M.M.'s

individual therapy. RP 68. The plan was for the biological parents to then become involved in this therapy when the child was transitioned home and they became her primary caregivers. RP 69. In the child's therapy sessions, Ms. Staton was not working with K.M.M. on developing any specific attachment, but rather on learning how to rely on adults in general. RP 71. Developing a secure attachment to the foster parents would make it easier for K.M.M. to attach to her parents. RP 139-140. A child can have multiple attachments. RP 142. Tom Sherry, another experienced therapist who later evaluated K.M.M., agreed with this approach, RP 267, 268.

The Department offered remedial services to both parents to address their deficits, and they participated in those services in 2011 and 2012. CP 58-62. The mother's other child, K.C.<sup>1</sup>, had been placed with the mother at an in-patient treatment center in Seattle until the mother was unsuccessfully discharged from this program in February 2011. CP 60. K.C. was then placed in the same foster home as her two older half-sisters, K.M.M. and K.M. CP 60. There were no issues with visitation between the parents and these children until April 2012. RP 29. In April 2012, K.M.M., age nine, began to resist participating in visits with her parents. RP 30. The child was appointed an attorney to represent her. RP 31.

---

<sup>1</sup> K.C. was born on 2010 after the dependency commenced on K.M.M. and K.M.

Ms. Stanton, the child's therapist, consulted with a psychiatrist over this issue. RP 49, 81, 83. The parties held meetings to explore a variety of ways to resume visits and came up with alternative solutions, including seeking an outside expert to address this issue. RP 30-31, 83. As a result of this agreement, the dependency court, in July 2012, ordered that a family therapist, Tom Sherry, consult with all of the parties and recommend the best way to resume visits. Ex. 15, CP 338-39.

Mr. Sherry met with all of the parties, including K.M.M. CP 225; RP 226-27, 237. Mr. Sherry opined that it would be harmful and detrimental to K.M.M. to force her to visit with her parents. RP 272. He concluded that her decision not to visit her parents was tied to her sense of self, and needed to be respected. RP 272. As a result, Mr. Sherry developed a parent-child contact plan in which the parents would have incidental contact with K.M.M. during scheduled sibling visits between the children. RP 238. If the sibling contact and relationships were maintained, and K.M. and K.C. were then successfully returned to the mother, K.M.M. might be open to resuming contact with her parents. RP 238.

The plan provided that, once the siblings were placed with the mother, 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 children. 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 siblings came and went as part of the sibling visitation with K.M.M. RP 238. Mr. Sherry, however, did not believe that it was realistic that K.M.M. would want to go back to her parents. RP 238. Instead, Mr. Sherry recommended that K.M.M. remain with the foster parents. RP 247-48.

Mr. Sherry also recommended some limited family therapy, but it was not for the purpose of reunification. RP 243. Instead, the family therapy would support the children in their different placements, in which K.M.M. remained with her foster parents and the other two children would be placed with the mother. RP 242-43, 246.

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

Then, in December 2012, the father was introduced to these incidental contacts with K.M.M. during sibling visits. RP 326. Social worker Pattie Pritchard prepared the father for his first incidental contact visit. RP 326, 364, 365. The social worker, the guardian ad litem, and the child's therapist also prepared K.M.M. for the contact as well. RP 328. However, the father did not comply with his portion of the plan.

At the father's first incidental contact visit in December 2012, he opened the door of the van, tried to talk to K.M.M., and put his hands on her, while she was attempting to hide from him. RP 328-29. K.M.M. was very upset by these events. RP 289, 329. He did not understand the trauma he had caused the child as a result of his actions. RP 330. Ms. Pritchard testified that the father lacked insight into and empathy for the child. RP 334. K.M.M. refused to see the parents after this event. 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 the sibling contacts did not go well, no one could force K.M.M. to participate in them. RP 247. Lisa Sinnett, a Department social worker, testified that the Department is not permitted to use physical force, lies, or tricks to get children to participate in visitation. RP 448.

K.M.M. testified at trial. RP 281-82. In her testimony, K.M.M. consistently referred to J.M. and D.C. by their first names, and referred to

the foster parents as her parents. *See, e.g.*, RP 282, 284-85, 303. She does not trust her biological parents and does not want to visit with them. RP 287-88. She instead wants to be adopted by the foster parents. RP 303.

After hearing all of the evidence, the trial court entered findings and an order terminating the parental rights of the father.<sup>2</sup> The court found that all of the court-ordered services had been expressly and understandably offered or 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 trial court also found that the father has remedied his individual deficits, and complied with substance abuse and domestic violence treatment, as well as hands on parenting classes. FOF XIV, CP 109. However, the trial court also found that the father and the child no longer have a parent-child relationship. FOF X, CP 107. The trial court found that “because the attachment bond no longer exists, [J.M.] *is currently unable to parent* [K.M.M.]” CP 112 (emphasis added). In explaining the father’s current parental unfitness, the trial court found that the child’s psyche reached 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

---

<sup>2</sup> The mother, D.C., chose to relinquish her parental rights and, thus, she is not a party to this appeal. K.C. and K.M. remain in her care.

between K.M.M. and J.M., and also found that it cannot now be repaired. FOF XV, CP 109. To attempt to repair this absent bond would cause great harm to the child. FOF X; CP 107; FOF XV, CP 109. The court found that Cory Staton and Tom Sherry were experienced therapists and the most credible witnesses on issues concerning K.M.M. and her therapeutic needs. FOF XVIII, CP 110. The Court of Appeals affirmed.

#### **IV. REASONS WHY REVIEW SHOULD BE DENIED**

##### **A. The Court of Appeals Properly Ruled 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 seeks discretionary review of the Court of Appeals ruling that the trial court properly found J.M. to be an unfit parent with regards to K.M.M. The Court of Appeals properly applied the law and ruled that J.M., due to the absence of any attachment bond and any relationship with this child, could not parent this particular child and therefore, is an unfit parent as to K.M.M. These findings, established by clear, cogent, and convincing evidence, show that he is “unfit” as defined by state law. The ruling is consistent with the decisions of this Court, and does not involve an issue of substantial public interest. The father’s motion, therefore, should be denied.

**1. The Court of Appeals Ruling Follows the *A.B.* Decision.**

To terminate parental rights, the trial 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). This finding can be explicitly, or implicitly, made. *Id.* at 920. A finding can be inferred if, and only if, all the facts and circumstances in the record demonstrate the omitted finding was actually intended, and thus impliedly made by the court. *Id.* at 921.

Determining parental unfitness focuses on whether the parent “at the time of trial, is currently unfit to parent *the* child” who is before the court. *A.B.*, 168 Wn.2d at 908 (emphasis added).<sup>3</sup> The *A.B.* majority opinion noted that given the conflicting nature of the findings in that particular case, it was impossible to discern that the trial court had actually found that the father “was currently unfit to parent *his daughter.*” *A.B.*, 168 Wn.2d at 922 (emphasis added). The dissent, in *A.B.*, similarly 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, J., dissenting). The dissent contended this inability to forge necessary emotional attachments rendered that father unfit to parent *that particular child.* *Id.* (emphasis added).

---

<sup>3</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).

Thus, both the majority and the dissent agreed that the focus of determining parental fitness is on whether the particular parent is fit to parent the particular child at issue.

The Court has never held that parental unfitness should be assessed in a vacuum or in the abstract; it must relate to the specific parent-child relationship at issue. As a result, a parent's unfitness, and a trial court's ruling on the issue, may take many different forms. A parent can be unfit if the parent lacks the necessary capacity for giving parental care. *In re Aschauer*, 93 Wn.2d 689, 694, 611 P.2d 1245 (1980). A parent can also be unfit if the parent cannot meet a child's basic needs. *In re Custody of B.M.H.*, 179 Wn.2d 224, 235-36, 315 P.3d 470 (2013). The Department may prove current parental unfitness by showing that the parent could not provide the child with "basic nurturance, health, or safety." *In re Welfare of A.B. (A.B. II)*, 181 Wn. App. 45, 61, 323 P.3d 1062 (2014) (emphasis added); RCW 13.34.020. Under RCW 13.34.020, "health" as contemplated here includes both physical and mental health.

The Court of Appeals, in holding that the trial court found the father to be an unfit parent with regards to K.M.M., directly applied the ruling in *A.B.* and this Court's other cases. The trial court found, and substantial evidence supports, that "because the attachment bond no longer exists, [J.M.] is currently unable to parent [K.M.M.]." CP 112 (emphasis

added). The trial court further 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. The child has taken the “strong position that she will not engage with her parents.” FOF XV, CP 109. The trial court also 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. Finally, to attempt to repair this absent bond would cause great harm to the child. FOF X; CP 107; FOF XV, CP 109. The father, here, due to the lack of a bond, the lack of any parent-child relationship, is unable to provide the child with “basic nurturance, health, or safety.” *See A.B. II*, 181 Wn. App. at 61. Therefore, he is an unfit parent for K.M.M.

As the Court of Appeals decision correctly notes, there is no meaningful distinction between a parent who is unable to parent a child, unable to meet that child’s needs including basic nurturance, and a finding that a parent cannot meet the child’s needs. Opinion at page 29-30; *Aschauer*, 93 Wn.2d at 694 (a parent is unfit if she lacks the necessary capacity for giving parental care); *B.M.H.*, 179 Wn.2d at 235-36 (a parent is unfit if she cannot meet a child’s basic needs). This ruling presents no

conflict with *A.B.* Where findings demonstrate a current inability to parent a child as defined by the statute, such findings satisfy *A.B.* and prior cases.

**2. The Father's Narrow Reading of *In re A.B.* is Unsound and Does Not Present a Conflict Warranting Review.**

The Legislature has determined that parental unfitness encompasses more than just the parent's individual personal deficits. Unfitness encompasses many things, including the absence of a parent and child relationship due to a parent's lengthy failure to provide for a child's basic needs. For example, under the termination statute, the failure of a parent to maintain 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). Thus, the Legislature considered that the lack of a parent-child relationship, and not just a parent's individual deficits, may contribute to the termination of a parent's rights.<sup>4</sup>

The father, however, argues that a termination can only be ordered when a parent is "at fault." *See* Motion at 11. This is incorrect. First, it is not called for by "unfit" which Black's Law Dictionary defines as

Unsuitable; incompetent; not adapted or qualified for a particular use or service; having no fitness. As applied to

---

<sup>4</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 a child, as well as render the parent unfit to care for any child. *See* RCW 13.34.180(1)(e)(ii).

relation of rational parent to their child, word 'unfit' usually, *though not necessarily* imports something of moral delinquency, but *unsuitability for any reason*, apart from moral defects, *may render a parent unfit for custody.*

*Unfit*, Black's Law Dictionary 1530 (6th ed. 1990) (emphasis added).

Further, as shown above, there is no basis in case law to formulate the conclusion that a parent must be "at fault" for a court to order termination. Rather, a parent's rights may be terminated when the State proves by clear, cogent and convincing evidence that they cannot meet their children's basic needs. *A.B. II*, 181 Wn. App. at 61.

The issue at trial was not whether J.M. continued to be involved in substance abuse or domestic violence. Instead, the trial court properly focused on whether he could provide K.M.M. with basic nurturance, health, and safety. He was not able to do this at the start of the case, due to his substance abuse, domestic violence, and parental neglect issues, as the child was both parentified and suffered from significant social, emotional, and developmental delays, as well as attachment issues. FOF XI, CP 107. Nor could he parent K.M.M. nearly four years later, when he had no parental relationship with her, and there was no prospect for creating such a relationship. FOFX, CP 107, FOF XIV, CP 108.

The motion asserts an error and claims a conflict by ignoring how the Court of Appeals and the trial court both distinguished the father's

own individual deficits from his on-going inability to provide basic nurturance to this child based on the absence of a parent-child relationship. Although the father may have remedied some of his individual deficits, he remains an unfit parent to K.M.M., despite nearly four years of this dependency, because he cannot provide her with basic nurturance, health, or safety. The Court of Appeals ruling does not conflict with this Court's rulings under *A.B.*, nor does it raise an issue of substantial public interest.

**B. The Court of Appeals Properly Ruled that Substantial Evidence Supports the Finding That All Necessary Services Capable of Correcting the Father's Deficits Were Offered and/or Provided to Him.**

The father also argues that substantial evidence does not support the trial court finding that all necessary services, capable of correcting his deficits, were offered or provided. He maintains that the Department failed to offer him family therapy and bonding and attachment services. The Court of Appeals correctly concluded that the trial court's findings in regard to services were supported by substantial evidence. As a result, these fact-specific determinations do not give rise to an issue of substantial public interest such that review is warranted.

**1. Neither Family Therapy nor Reunification Therapy Could Remedy the Situation Between Child and Parent.**

Substantial evidence supports the trial court's findings that there was no probability that reunification therapy could remedy the lack of a

parent-child relationship between the father and K.M.M. Based on the agreement of all parties, Tom Sherry, a family therapist, performed a court-ordered evaluation regarding the appropriateness of parent-child visitation and how it could occur. Ex. 13 CP 323; Ex 36, CP 434-37, RP 358. Mr. Sherry concluded that family therapy, as part of a reunification process, could not occur. RP 243. K.M.M. did not want to participate in visits and her decisions needed to be respected in order to avoid harm to her. RP 237, 272. Instead, Mr. Sherry developed a plan for incidental contact during sibling visits, and thereby K.M.M. might warm to the idea of having further contact with her parents. RP 238. The parties attempted this sibling contact plan, but the father did not comply with the plan. Instead, he caused great trauma to the child. RP 289, 300, 329. As a result, K.M.M. refused to see her parents again. RP 289, 329, 312. To force K.M.M. to visit with the father would be harmful and detrimental to the child. RP 272. Therefore, the trial court suspended further visits due to the harm the father had caused to the child. RP 289, 329, Ex. 14, CP 333.

“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 51, 56 n.2, 225 P.3d 953 (2010). Such is the case here. Substantial evidence supports the findings that there was no reasonable probability that reunification therapy, or any

other kind of therapy, could remedy the lack of a parent-child relationship in the foreseeable future. FOF XIII, CP 108; FOF XIV, CP 108.

Next, the father incorrectly argues that family therapy was ordered by the dependency court in December 2012 for purposes of reunifying the father with K.M.M. *See* Motion at 14. This argument is not supported by the evidence. Tom Sherry recommended that once K.M.M.'s siblings were successfully reunified with their mother, family therapy could be appropriate, RP 245-46. But the purpose of this therapy was to support the children's sibling relationships, and their various placements – the siblings with the mother, and K.M.M. with her foster parents. RP 246. This service was not designed to reunify the child with a parent, but instead to support the children in their respective placements. RP 243.

The court ordered the father to participate in family therapy, in December 2012, in order to support K.M.M. in her foster placement and to help maintain her on-going relationship with her sibling, K.M. Ex. 14, CP 332. At that time, K.M.M. was no longer willing to see her parents and the court had already suspended visitation between K.M.M. and her parents. RP 330. In the December 2012 review order, the dependency court reiterated its order that contact between K.M.M. and her parents should remain suspended. Ex. 14, CP 334. However, the court did order monthly contact between K.M.M. and her siblings, who were with the mother. Ex.

14; CP 333, 61. Any family therapy ordered by the court was, thus, to support sibling relationships, not to reunify the child with the parent.

In light of this record, the Court of Appeals correctly concluded that while the trial court may have speculated that family therapy in 2011 might have been of some benefit, that speculation is not supported by the evidence. See FOF XII, CP 108. At that time, in 2011, the mother had been unsuccessfully discharged from an in-patient treatment program and her youngest child, K.C., had come to live with K.M.M. and K.M. in the same foster home. CP 60. At the same time, the father was still involved in his own services and did not have a home to which the children could be returned. CP 60. Furthermore, it was not until a year later, in May 2012, that K.M.M. actually began to refuse visits with her parents. FOF XI, CP 107-108. The trial court found that no one had a crystal ball in this case. FOF XI, CP 107. Once K.M.M.'s visitation issue did develop, all parties acted to address the child's refusal to participate in visitation through a variety of approaches, including the evaluation and assessment by Mr. Sherry. However, these efforts were unsuccessful, because of the father's failure to follow the plan for parent-child contact.

The trial court's findings are supported by substantial evidence, and these fact-specific determinations do not rise to the level of an issue of substantial public interest warranting discretionary review.

**2. K.M.M. Participated in Individual Therapy to Address Her Own Issues From When She Came into Care.**

The father next argues that the Department failed to offer the father bonding and attachment services, claiming that this service was offered to the foster parents, but not to him. *See* Motion at 17-18. The Court of Appeals correctly concluded that substantial evidence supported the trial court's findings that K.M.M. had participated in her own individual therapy to address her own issues from when she came into care, not that the foster parents were offered any bonding and attachment services. FOF XI, CP 107. Therefore, this fact-specific determination does not rise to an issue of substantial public interest such that review should be granted.

The trial court found that K.M.M.'s individual counseling with Cory Staton was ordered to help the child address her own needs. FOF XI, CP 107. K.M.M. had significant unmet issues when she entered foster care in 2009. She had problems attaching to adults and could not rely on adults to meet her needs. RP 64. She had emotional, social and intellectual delays when she was removed from her parents. RP 64, 66. K.M.M. was also a parentified child, in that she attempted to care for her one-year-old sister, K.M. RP 64. K.M.M. began individual therapy with Ms. Staton to address these issues in September 2009. RP 63.

Ms. Staton testified that K.M.M. had to learn how to develop secure attachments. RP 66. The foster parents, as her day-to-day caretakers, were involved in some of this individual therapy. RP 68. The biological parents would then become involved in the child's treatment if a transition home occurred because they would have become the child's caregivers. RP 69. During K.M.M.'s individual therapy, the therapist was not helping the child develop any specific attachment, but rather she was working to help K.M.M. learn how to rely on adults in general. RP 71. Both Ms. Stanton and Mr. Sherry testified that if a child could develop a secure attachment to the foster parents, this would have made it easier for the child to attach to the biological parents. RP 139-140, 267, 268. The trial court found that Ms. Staton and Mr. Sherry were the most credible witnesses on issues concerning the child and her on-going therapeutic needs. FOF XVIII, CP 110.

K.M.M. participated in her individual therapy to address her own needs, and not to learn to attach to a particular person. Her 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. The father, however, continued to lack insight into her needs and lacked empathy for K.M.M., causing her trauma during the incidental contact plan. RP 289, 329-330, 334, 396-97.

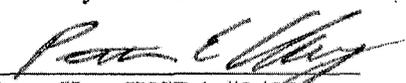
Thus, the trial court's findings that all services reasonably available, capable of reuniting the child with her father within the foreseeable future, have been offered or provided in this case, are supported by substantial evidence. FOF XII, CP 108.

#### V. CONCLUSION

The Court of Appeals properly ruled that substantial evidence supports the trial court's detailed findings in this case. The Court's ruling that this father was an unfit parent because he was unable to parent this child, based on the lack of an attachment and the lack of a parent-child relationship, does not conflict with decisions of the Supreme Court. Nor does the ruling raise an issue of substantial public interest. Accordingly, the father's motion for discretionary review should be denied.

RESPECTFULLY SUBMITTED this 16 day of July, 2015.

ROBERT FERGUSON  
Attorney General

  
Peter Kay, WSBA #24331  
Assistant Attorney General

**DECLARATION OF MAILING**

I, AMANDA KAPPELMAN, declare under penalty of perjury under the laws of the state of Washington that the following is true and correct:

On July 16, 2015 I caused a true and correct copy of the Respondent's Answer to Motion for Discretionary Review to be served as indicated below:

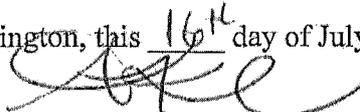
Original via E-Mail to: Washington State Supreme Court Clerk  
supreme@courts.wa.gov

Copy via E-mail & U.S. Mail: Jodi R. Backlund  
Manek R. Mistry  
Skylar T. Brett  
Backlund & Mistry  
PO Box 6490  
Olympia WA 98507

Eric J. Nielsen  
Dana M. Nelson  
Nielsen Broman & Koch PLLC  
1908 E Madison St  
Seattle WA 98122

Jennifer L. Dobson  
Attorney at Law  
PO Box 15980  
Seattle WA 98115

SIGNED in Tacoma, Washington, this 16<sup>th</sup> day of July, 2015.



---

AMANDA KAPPELMAN  
Legal Assistant to  
PETER E. KAY  
Assistant Attorney General  
1250 Pacific Avenue, Suite 105  
PO Box 2317  
Tacoma, WA 98401  
(253) 593-5243

## OFFICE RECEPTIONIST, CLERK

---

**To:** Kappelman, Amanda (ATG)  
**Cc:** nielsene@nwattorney.net; nelsond@nwattorney.net; dobsonlaw@comcast.net; backlundmistry@gmail.com; backlundmistry1@gmail.com; backlundmistry2@gmail.com; Kay, Peter (ATG)  
**Subject:** RE: No. 91757-4 - In re the Welfare of: K.M.M. Answer to Motion for Discretionary Review

Received 7-16-15

Supreme Court Clerk's Office

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

**From:** Kappelman, Amanda (ATG) [mailto:AmandaK@ATG.WA.GOV]  
**Sent:** Thursday, July 16, 2015 9:36 AM  
**To:** OFFICE RECEPTIONIST, CLERK  
**Cc:** nielsene@nwattorney.net; nelsond@nwattorney.net; dobsonlaw@comcast.net; backlundmistry@gmail.com; backlundmistry1@gmail.com; backlundmistry2@gmail.com; Kay, Peter (ATG)  
**Subject:** No. 91757-4 - In re the Welfare of: K.M.M. Answer to Motion for Discretionary Review

Good morning all,

Attached please find our Answer to Motion for Discretionary Review. A hard copy will follow to opposing counsel only.

Thank you and have a great day!

Amanda Kappelman  
Legal Assistant, Social and Health Services  
Office of the Attorney General  
PO Box 2317  
Tacoma WA 98401  
MS: WT-31  
Phone: (253) 593-6100  
Fax: (253) 593-2449

*"If you light a lamp for another, your own way will be lit.." Nichiren*