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STATE OF WASHINGTON
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SUPREME COURT OF THE STATE OF WASHINGTON

In Re the Dependency of D.L.B., Minor
Child,

STATE OF WASHINGTON,
DEPARTMENT OF SOCIAL AND
HEALTH SERVICES,

Respondent,

v.

EDELYN SAINT-LOUIS,

Appellant.

RESPONDENT'S
RESPONSE TO AMICI
CURIAE
MEMORANDUM

I. INTRODUCTION

Ms. Saint-Louis is the mother of D.L.B., a boy born in 2008. Her parental rights to D.L.B. were terminated on August 26, 2014, following a six day trial. A panel of judges from Division One of the Court of Appeals affirmed the order terminating parental rights. In doing so, the panel engaged in a plain meaning review of RCW 13.34.180(1)(f) and related amendments enacted in the same session law to conclude that the incarcerated parent factors only apply if the parent is incarcerated at the time of the termination hearing. *In the Matter of Dependency of D.L.B.* 188 Wn. App. 905, 916, 355 P.3d 345 (2015). Ms. Saint-Louis was not

incarcerated at the time of the termination trial, so the incarcerated parenting provision in amended RCW 13.34.180(1)(f) was inapplicable to her circumstances. The ruling below is consistent with three other published cases pertaining to the 2013 amendments regarding incarcerated parents. The legislative history surrounding the passage of SHB 1284, presented by *amici*, are not pertinent to a plain meaning review of RCW 13.34.180(1)(f). Nor does the legislative history presented by *amici* contradict that plain language because it consists of generalities, and does not show legislative intent to contradict the plain language of the statute.

Additionally, the new claim by *amici* that Ms. Saint-Louis was determined to be an unfit parent because she was a victim of domestic violence is not supported by the record below. Ms. Saint-Louis had chemical dependency issues and poor parenting skills. The totality of her complex circumstances caused her to be an unfit parent. The arguments provided by *amici* do not provide support for discretionary review.

II. STATEMENT OF THE CASE

The facts set forth in the Department's Answer in Opposition to Motion for Discretionary Review, filed November 17, 2015, are incorporated by reference.

III. AMICI DO NOT DEMONSTRATE THAT THIS CASE WARRANTS FURTHER REVIEW

- A. **The Court of Appeals properly concluded that the incarcerated parent factors only apply if the parent is incarcerated at the time of the termination hearing.**

The *amici* ask this Court to review this case by arguing that the court of appeals decision is inconsistent with legislative intent shown by legislative history. But there is no need to resort to legislative intent because the statute unambiguously applies the new, incarcerated parent factors in RCW 13.34.180(1)(f) only to a parent actually incarcerated at the time of the termination trial and findings. Moreover, the background for the statutory amendments presented by the *amici* does not suggest that the statute should be applied any differently.

The Court of Appeals applied a plain meaning review of RCW 13.34.180(1)(f) and related amendments enacted in the same session law. *D.L.B.* 188 Wn. App. 916. The *amici* do not contradict that plain language argument. Instead, they present background information regarding the Senate floor debate when SHB 1284 was discussed by the Legislature. Amici Memorandum at 2-4. However, review of legislative history is not the first tool to employ when ascertaining legislative intent. *D.L.B.* appropriately concluded that the plain meaning of the statute was discernible from the statute and its surrounding statutes. Because the

meaning of the statute was not susceptible to more than one reasonable interpretation, there was no reason for the reviewing court to “employ tools of statutory construction such as legislative history to interpret the statute.” *Tesoro Ref. & Mktg. Co. v. State, Dep’t of Revenue*, 164 Wn.2d 310, 317, 190 P.3d 28 (2008). In short, the legislative history presented by *amici* is not pertinent to the reviewing court.

The Court of Appeals correctly determined that the language showed that the Legislation targeted individuals incarcerated at the time of their termination of parental rights trial. *D.L.B.* at 908. The alternative interpretation, proposed by *amici*, would result in an absurd application of the statute. Under the proposed interpretation, a parent who is incarcerated early in a two-year dependency, perhaps for just a day, could claim a right to the full considerations that are required for parents who are incarcerated at the time of trial. The considerations set forth in the 2013 amendments were necessary for parents who are imprisoned, but not for parents who are in the community and who are fully able to access services and visits. Individuals such as Ms. Saint-Louis were not the intended beneficiaries of the factors added to RCW 13.34.180(1)(f). Reviewing courts presume the legislature did not intend absurd results. *State v. Eaton*, 168 Wn.2d 476, 480, 229 P.3d 704 (2010).

Moreover, the background provided by *amici* describes only the

general intention of the legislature to address subject of incarcerated parents with various tools. Nothing in those generalized statements shows specific legislative intent or understanding that contradicts the plain statement that the factors for termination apply to the rights of a parent who “is incarcerated.” The *amici*, therefore, have not provided a good reason for this Court to accept review.

B. Ms. Saint-Louis’s complicated history included chemical dependency issues and poor parenting skills.

Nothing in *D.L.B.* indicates that the opinion would be used to argue that being a victim of domestic violence, standing alone, is a parenting deficiency justifying termination of parental rights. The sentences focused upon by *amici*, when read in their entirety, referenced the overall circumstances presented, including Ms. Saint-Louis’s chemical dependency issues:

In all, by the time of the termination trial, Saint-Louis continued to have unresolved domestic violence issues, and potential chemical dependency issues. As the evidence reflected, these uncorrected parenting deficiencies made Saint-Louis a serious risk to D.L.B. and prevented her from being able to provide D.L.B. with his basic needs.

D.L.B. at 922.

Not only do the sentences cited by *amici* not stand for the proposition claimed, these few sentences also do not reflect the complexity of the issues or the wealth of evidence presented at the six day

termination trial. Ms. Saint-Louis had a complicated history of significant victimization, but she also had a history of dependence on alcohol, cannabis and cocaine, and she had a poor parenting history. RP at 61; Ex. 15, CP 353. At the time of trial, Ms. Saint-Louis claimed she had been clean from drugs and alcohol since May 2013, but she still had not completed the 90 days of consistent, not missed, clean urinalysis samples. CP at 353 (Finding of Fact 2.11). Based on the positive urinalysis test result for alcohol on May 2013, her social worker recommended that she enroll in a relapse prevention program. RP 62, 276-77. Ms. Saint-Louis did not begin the relapse program until the end of July 2014, the week before the termination trial began. RP 277.

The facts supporting dependency of D.L.B. referred concerns that Ms. Saint-Louis had perpetrated physical abuse on D.L.B. CP 349 (FF 2.4(1)). At the termination trial, psychologist Steve Tutty that he had completed a psychological evaluation of Ms. Saint-Louis. Ex. 16; CP 352 (Finding of Fact 2.9). His evaluation was based on the results of a testing session, a clinical interview, a parent-child observation, and review of collateral evidence. RP 541, 545. Ms. Saint-Louis' testing scores caused serious concerns about her ability to safely and appropriately parent a child. She scored 394 on the Child Abuse Potential Inventory (CAPI) test. Ex. 16. Scores over 166 are considered clinically significant and

predictive of abuse. A score of 215 is the "cut-off" score. Ex. 16. Dr. Tutty testified that her test scores placed "her at a very high risk for child abuse and neglect." RP at 557.

Ms. Saint-Louis also did not complete the Incredible Years program, a service designed to increase her parenting skills, despite several opportunities to do so. CP at 353 (Finding of Fact 2.12); Exs. 18 (December 2012 referral), 19 (January 2013), 20 (May 2013). She started, but did not complete the program the first time she enrolled, and she restarted the program again just before the termination trial. RP 395-96, 281-82, 284. In summary, D.L.B. was not removed from Ms. Saint-Louis's care solely due to her victimization by a domestic violence perpetrator, and the lower court's decision is not precedent for such removal to occur in other cases.

The Department acknowledges that a mother has not abused or neglected her child simply because she is a victim of domestic violence. The Department further acknowledges that a child should not be removed from the care of a non-offending parent solely because the parent is a victim of domestic violence. D.L.B. was removed from parental care due the mother's chemical dependency and concerns of physical abuse of D.L.B. by his mother. Additionally, he had been exposed to domestic violence. RP at 31, 177; Ex. 17 at 2.

IV. CONCLUSION

Based upon the argument set forth above and in the Department's Answer in Opposition to Motion for Discretionary Review, the Department requests the Motion for Discretionary Review be denied.

RESPECTFULLY SUBMITTED this 24th day of December, 2015.

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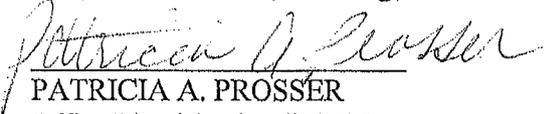
I, Patricia A. Prosser, declare as follows:

I am a Legal Secretary employed by the Washington State Attorney General's Office. On the 24th day of December, 2015, I served a copy of a **Respondent's Response to Amici Curiae Memorandum; and Declaration of Service By E-mail** to:

1. Richard W. Lechich, Washington Appellate Project, wapofficemail@washapp.org; and richard@washapp.org; and
2. April Rivera, Dependency CASA Program, casa.group@kingcounty.gov; and april.rivera@kingcounty.gov

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

DATED this 24th day of December, 2015 at Seattle, Washington.



PATRICIA A. PROSSER
Office Identification #91016
Legal Secretary