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Supreme Court No. 96842-0

Court of Appeals No. 76675-9-I

SUPREME COURT FOR THE STATE OF WASHINGTON

In Re the Dependency of B.K., a minor child

A.K.,

Respondent,

v.

STATE OF WASHINGTON,
Department of Children, Youth, and Families,

Petitioner.

BRIEF OF COURT APPOINTED SPECIAL ADVOCATE

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I. INTRODUCTION

Janet Belles, Court Appointed Special Advocate (CASA) for B.K., asks this court to affirm the trial court's order of termination of parental rights as to the mother, Ms. K. In doing so, the CASA requests that this Court adopt the federal standard for determining when a litigant's due process right to a fair tribunal is violated, that is, whether the litigant can show such high degree of favoritism or antagonism as to make fair judgment impossible. Applying the federal standard to this case, Ms. K's due process right to a fair tribunal was not violated.

B.K. is four years and six months old. Ex. 6. He is developmentally delayed. RP 330. The dependency proceedings for B.K. began in December 2014 just after his birth. Ex. 6. B.K. was removed from Ms. K. and a dependency petition was filed because the child sustained a blunt force injury to his head. Ex. 6, TFF¹ 2.6. B.K. has not resided in his mother's care since entry of the dispositional order dated March 11, 2015. TFF 2.7, 2.9. B.K. has been cared for in foster care since that time. RP 35.

Ms. Belles had been assigned as the Court Appointed Special Advocates (CASAs) for B.K. since April 2015. RP 626. Ms. Belles had been a CASA since 2012. RP 620.

Ms. Belles, by statute, is a party to this case and is charged with representing the best interests of the child involved in the case, RCW

¹ TFF refers to the Hearing, Findings and Order Regarding Termination of Parent-Child Relationship Re Mother, Ms. K., entered by the trial court March 22, 2017.

13.34.030(11), 13.34.100. Furthermore, the CASA, as guardian ad litem and party, has the right to file briefs. GALR 4(h)(1). Even beyond GALR 4(h)(1), the CASA is authorized to file a brief because she is a party to this case. RAP 10.1(g) (where more than one party is on a side, each party may “file a separate brief and adopt by reference any part of the brief of another”). Given her role in representing the best interests of the child, Ms. Belles recommended that A.K.’s parental rights be terminated. RP 658.

In addition to the CASA’s arguments herein, the CASA adopts the arguments of the State in support of affirming the trial court’s decision to grant the State’s petition for termination. The State details in its brief why this Court should adopt the federal standard for determining when a litigant’s due process right to a fair tribunal is violated.

This brief emphasizes why termination of A.K.’s parental rights is the appropriate legal remedy to ensure the child’s rights under RCW 13.34.020, and how those rights would be severely diminished if the trial court’s decision is not affirmed.

II. FACTS

The CASA adopts the State’s recitation of the facts as stated in the Motion for Discretionary Review and the State’s Supplemental Brief. In addition, Ms. K. did not assign error to trial court’s 50 Findings of Fact. Br. Appellant at 1. On review, unchallenged findings of fact are considered verities. *In re Interest of J.F.*, 109 Wn. App. 718, 722, 37 P.3d 1227 (2001).

III. ARGUMENT

This Court should affirm the trial court's decision terminating the mother's parental rights when undisputed evidence showed that B.K. has lived the majority of his life in legal instability due to his mother's inability to parent him. The continued legal relationship with his mother prevents him from being able to integrate into a stable and permanent home because of the serious nature of her own parental deficits.

A. When B.K.'s right to safety and health conflict with the mother's legal rights, his rights and safety prevails.

RCW 13.34.020 grants B.K. protection of his physical and psychological safety and permanence, a speedy resolution to the proceedings, and "expressly places the rights of the child above the rights of parents." *H.B.H. v. State*, 192 Wn. 2d 154, 164, 429 P.3d 484 (2018).

The *H.B.H.* Court addressed RCW 13.34 as part of a "comprehensive statutory framework to govern the State's role as *parens patriae* in the child welfare system."² *H.B.H.* at 164.

The purpose of Washington's statutory scheme is "to safeguard, protect, and contribute to the welfare of the children of the state." RCW 74.13.010. Consistent with this purpose, the guiding principal of our child welfare system is that "the child's health and safety shall be the paramount concern." RCW 13.34.020. Washington's statutory framework is unique in this regard: it expressly places the rights of the child above the rights of parents. "When the rights of basic nurture, physical and mental health, and safety of the child and

² At the time of the *H.B.H.* decision, the Department of Social and Health Services (D.S.H.S.) was Washington's child welfare agency. The Department of Children, Youth, and Families (DCYF) replaced D.S.H.S. as of July 1, 2018. SECOND ENGROSSED SECOND SUBSTITUTE H.B. 1661, 65th Leg., 3rd Spec. Sess. (Wash. 2017).

the legal rights of the parents are in conflict, the rights and safety of the child should prevail. *Id.*
H.B.H. at 164.

Citing to the history of balancing the fundamental rights of the parent with those of the child, the *K.M.M.* court recognized the fundamental right to parent, “is not absolute...[i]t is well established that when parental actions or decisions seriously conflict with the physical or mental health of the child, the State has a *parens patriae* right and responsibility to intervene to protect the child when weighed against the child’s rights and safety, the child’s rights must prevail.” *In the Matter of K.M.M.*, 186 Wn.2d 466, 477, 379 P.3d 75 (2016) (quoting *In re Welfare of Sumey*, 94 Wn.2d 757, 762, 621 P.2d 108 (1980)); *In re Welfare of A.G.*, 155 Wn. App. 578, 229 P.3d 935 (2010); *In re Dependency of A.V.D.*, 62 Wn. App. 562, 567, 815 P.2d 277 (1991).

B.K.’s mother has parental deficits which prevent her from parenting B.K., and those deficits resulted in B.K.’s right to health, safety and permanence being in limbo for two years pending the termination trial. “To borrow sentiments from the Court of Appeals, ‘[n]o child should languish for years in foster care. [K.M.M.] should be freed to move on with her life.’” *K.M.M.* at 495 (quoting *In re Welfare of H.S.*, 94 Wn. App. 511, 530, 973 P.2d 474 (1999)). The alternative to termination is continuation of B.K.’s dependency which has already spanned his entire life. His rights of basic nurture, physical and mental health should prevail and the termination of his mother’s parental rights should be affirmed.

B. Best interests are highly fact-specific and the trial court properly considered relevant factors to determine that it was in B.K.'s best interests to terminate the mother's parental rights.

RCW 13.34.105 and GALR 2(a) impose a duty on the child's CASA to represent the child's best interests. In fulfilling that role, Ms. Belles recommended termination of parental rights because she believed B.K. needs permanency, a caregiver who will consistently meet his medical needs, and a caregiver who will not place him in a risky situation. RP 732.

Best interests have been addressed by Courts in a long line of cases, which have found that the best interest of the child is a highly fact-specific inquiry that cannot be reduced to a mathematical equation. *In re Aschauer's Welfare*, 93 Wn.2d 689, 695, 611 P.2d 1245 (1980); *In re Dependency of J.B.S.*, 123 Wn. 2d 1, 11, 863 P.2d 1344 (1993); *Dep't of Soc. & Health Servs. v. Paulos*, 166 Wn. App. 504, 517, 270 P.3d 607 (2012).

Even if the trial court's questioning of witnesses was imprudent, the trial court is entitled to deference regarding determinations of witness credibility and the persuasiveness of the evidence, and "its findings will not be disturbed unless clear, cogent, and convincing evidence does not exist in the record." *In re Dependency of K.R.*, 128 Wn.2d 129, 144, 904 P.2d 1132 (1995). That is especially true, as noted by the Court of Appeals, Op. at 27, in cases of child safety. See e.g., *In re Adoption of Norbert*, 83 Mass.App.Ct. 542, 546-547, 986 N.E.2d 886 (2013).

The trial court found that Ms. K. failed to learn about B.K.'s medical and developmental needs and that she failed to consistently attend the

medical and therapeutic appointments. TFF 2.29, CP 272. This finding was supported by the evidence presented from the child's multiple medical and therapeutic providers who unequivocally testified that B.K. needed a primary caregiver who will maintain regular involvement in his services and who will ensure that he attends all of his medical appointments so that he will reach developmental milestones until he is eighteen years of age. TFF 2.34, 2.37, 2.38, 2.39, 2.40. Ms. K. was provided the opportunity to attend many medical and therapeutic sessions with B.K.'s providers over the course of the dependency. *Id.* Ms. K. failed to show a track record of attending B.K.'s appointments and failed to take active and diligent role in the developmental and medical care for B.K. RP 431, 433-34.

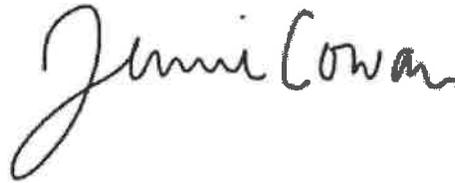
The Department social worker assessed that near future for B.K. would be shorter than six months. RP 433. The evidence supported the trial court's conclusion that there was little likelihood that conditions would be remedied in the near future of B.K. Given B.K.'s special needs, the trial court's Findings of Facts support the elements of termination and it was entirely appropriate for the court to conclude that termination of parental rights was in his best interests.

V. CONCLUSION

The trial court gave great weight to B.K.'s need for permanence, his best interests, and to the evidence that his best chance for permanence is termination of parental rights and adoption. The trial court's decisions should be affirmed. RCW 13.34.020 is clear that the child's right to

permanence should prevail. Almost four years of uncertainty must be put to an end. The trial court's decision to terminate B.K.'s parental rights should stand.

RESPECTFULLY SUBMITTED this 17th Day of May, 2019.

A handwritten signature in cursive script that reads "Jennie Cowan". The signature is written in black ink and is centered on the page.

Jennie Cowan, WSBA # 40323
Attorney for CASA, Janet Belles

KING COUNTY SUPERIOR COURT

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