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Supreme Court No. (to be set)
Court of Appeals No. 52350-7-II Consol.

IN THE SUPEME COURT
OF THE STATE OF WASHINGTON

In re the Welfare of

D.H., 1/30/09,
S.T., 9/3/11,
L.L., 8/10/15 &
T.L., 5/22/13,

Minor Children.

MOTION FOR DISCRETIONARY REVIEW
BY THE MOTHER, B.B.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR MASON COUNTY
THE HONORABLE AMBER L. FINLAY, JUDGE

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TABLE OF CONTENTS

I. IDENTITY OF PETITIONER 1

II. COURT OF APPEALS DECISION..... 1

III. ISSUES PRESENTED FOR REVIEW..... 1

IV. STATEMENT OF THE CASE 1

V. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED 7

A. This Court Should Grant Review because the Commissioner Erred by Concluding that the Department's Delay in Providing the Neuropsychological Evaluation was Harmless. 8

B. This Court Should Grant Review because the Commissioner Misinterpreted RCW 13.34.180 by Determining that DBT Group was Not a Reasonably Available Service..... 10

C. This Court Should Grant Review because the Commissioner Erred by Concluding that the State Tailored Parenting Instruction to the Mother's Cognitive Needs and Learning Style. 14

VI. CONCLUSION 16

VII. APPENDIX 17

TABLE OF AUTHORITIES

Cases

In re Dependency of T.L.G.,
126 Wn. App. 181, 108 P.3d 156 (2005)..... 8, 11

In re Dependency of T.R.,
108 Wn. App. 149, 29 P.3d 1275 (2001)..... 15

In re Termination of S.J.,
162 Wn. App. 873, 256 P.3d 470 (2011)..... 8-10, 15

In re Welfare of C.S.,
168 Wn.2d 51, 225 P.3d 953 (2010)..... 12

In re Welfare of H.W.,
92 Wn. App. 420, 961 P.2d 963 (1998)..... 15

Matter of I.M.-M.,
196 Wn. App. 914, 385 P.3d 268 (2016)..... 15

Matter of B.P.,
186 Wn. 2d 292, 376 P.3d 350 (2016)..... 8

State v. Delgado,
148 Wn.2d 723, 63 P.3d 792 (2003)..... 11

State v. Ervin,
169 Wn.2d 815, 239 P.3d 354 (2010)..... 11

State v. Evans,
177 Wn.2d 186, 298 P.3d 724 (2013)..... 11

State v. Sweany,
174 Wn.2d 909, 281 P.3d 305 (2012)..... 11

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Statutes

RCW 13.34.136 12

RCW 13.34.138 13

RCW 13.34.150 13

RCW 13.34.180 ..... 1, 7, 10-13, 16

Other Authority

RAP 13.4 ..... 7, 8, 10, 14, 16

I. IDENTITY OF PETITIONER

The mother, B.B., asks this Court to accept review of the Court of Appeals decision terminating review designated in Part II of this motion.

II. COURT OF APPEALS DECISION

The mother seeks review of the decision of the Court of Appeals Commissioner issued on March 28, 2019. A copy of this decision is attached, see App. at 1-13. The Court of Appeals issued an order denying the mother's motion to modify the Commissioner's decision on May 7, 2019. A copy of this decision is attached, see App. at 14.

III. ISSUES PRESENTED FOR REVIEW

1. Should this Court grant review and reverse when the department inexcusably failed to provide services in a timely manner, contradicting established case law?

2. Should this Court grant review and reverse when the Court of Appeals Commissioner misinterpreted RCW 13.34.180(1)(d) and conflated court-ordered and necessary services?

3. Should this Court grant review and reverse when the department failed to tailor services to the mother's learning disability and cognitive delays, violating published decisions of the Court of Appeals?

IV. STATEMENT OF THE CASE

B.B. is the mother of four children: ten-year-old D.H., seven-year-old S.T., six-year-old T.L., and three-year-old L.L. Ex.s 1-4. Her children were removed from her care in 2015 and found dependent. Ex.s 20-22, 32. For the next three years, B.B. engaged in every service offered to her by the

state. RP at 290. However, the state delayed offering critical mental health services. *See, e.g.*, ex.s 77, 78. Her parental rights were terminated in February 2018. T.L. CP at 214-225.[1]

Throughout the dependency, B.B. dealt with mental health issues. Ex. 78; RP at 75. When the case began, she had debilitating anxiety. RP at 79-80. She had trouble making decisions, problem solving under time constraints, and focusing. Ex. 78; RP at 75, 79. The mother also has Post-Traumatic Stress Disorder (PTSD) from abuse during her own childhood. RP at 78.

After her children were removed, it was the state's responsibility to provide services to the mother. Ex.s 20-22, 32. The department social worker during most of the case was Douglas Willman. RP at 183, 666. The mother engaged in every service offered by Mr. Willman. RP at 290. She also communicated consistently and attended regular visitation with her children. RP at 290-91, 50.

The mother tried to complete services to address her mental health issues, but many of these services were delayed or interrupted. She began individual counseling with Cynthia Dyrnes[2] from July to September 2015,

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[1] The clerk's papers for each child are substantially the same. This motion cites to the clerk's papers for T.L. unless otherwise specified.

[2] Ms. Dyrnes had prior professional contact with the mother. The mother sought grief counseling with Ms. Dyrnes in 2010. RP at 73. Ms. Dyrnes also taught the mother's

but this service lapsed due to insurance issues. Ex. 87; RP at 84. The mother resumed counseling in April 2016 and continued it until trial in March 2018. Ex. 87; RP at 84, 290.

B.B. also participated in a psychological evaluation with Dr. Whitehill in October 2015. Ex. 77. Dr. Whitehill thought the mother may have a cognitive impairment. Ex. 77 at 15-16. He recommended a neuropsychological evaluation to investigate. *Id*. at 17. However, this service was delayed for over a year; Dr. Shepel completed the mother's neuropsychological evaluation in November 2016. Ex. 78.

Dr. Shepel determined that the mother had neurological issues impacting her parenting and a learning disability. RP at 119, 121, 125, 130; Ex. 78 at 15. She recommended additional mental health services, including medication management and a dialectical behavioral therapy (DBT) group. Ex. 78 at 16-17. However, these services were also delayed. The mother began taking prescribed psychotropic medication about a year before the termination trial. RP at 92. She started DBT group in February 2018, one month before trial. RP at 598.

Protective Parenting Group (PPG) class from July 2015 to July 2016. RP at 84. Additionally, Ms. Dyrnes worked with the maternal grandmother in the past. RP at 74.

To address her parenting skills, the mother completed several courses of parenting instruction. She participated in Promoting First Relationships (PFR) in 2015 with Brenda Sullens. RP at 248. She also engaged in Positive Parenting Program (Triple-P) from August 2016 to February 2017 with Noel Villarivera. RP at 195, 197; Ex.s 89-95. Finally, the mother participated in Family Preservation Services (FPS), again with Ms. Sullens, from December 2017 to February 2018, just before trial. RP at 248, 250; Ex. 128.

Despite these services, the mother struggled with parenting skills throughout most of the dependency. Visits were challenging. The mother was always prepared for visits and affectionate with her kids. RP at 20, 39, 50, 55, 58-60. However, she had trouble managing her children's extreme behaviors. RP at 21-23, 31, 39, 56. Eventually visits were reduced to two children at a time, supervised at an agency. RP at 294-95. The mother and her children were loving and bonded to each other. RP at 27, 58, 60, 258, 275, 648.

Although the mother participated in services, she only started making progress once she addressed her mental health issues. According to her therapist, Ms. Dyrnes, medication helped the mother significantly. RP at 91. The mother's brain chemistry improved so that she could function better and apply learned skills. *Id*. The mother's anxiety decreased,

improving her cognitive abilities and mental processing speed. RP at 79, 81. She also showed more insight into the domestic violence perpetrated by the father of T.L. and L.L. RP at 89-90.

Most importantly, the mother's parenting skills improved. RP at 254. Before taking medication, the mother made little to no progress in parenting instruction. RP at 209. After she started taking medication, Ms. Sullens noticed definite improvement in the mother's parenting. RP at 254, 257. The mother made progress with discipline, consistency, dividing her attention, and managing her children's behaviors. RP at 254, 257, 274-75, 258-59, 269. Ms. Sullens had no concerns for child safety during visits. RP at 261, 274. She wanted to expand visits to include all three children[3] and see how the mother did. RP at 257, 261. Ms. Sullens opined that the mother could have unsupervised visits with her children in two to three months. RP at 263-64.

The mother's most recent visit supervisor, Vanessa Malapote, agreed. Ms. Malapote started supervising visits in October 2017. RP at 240. Since that time, she saw the mother make great improvements in her parenting. RP at 641. The mother was better able to manage her children's behaviors and meet their emotional needs. RP at 641, 642-43, 648. Ms.

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[3] D.H. moved to Texas to live with his paternal grandmother in September 2016. Ex. 45.

Malpote noticed this improvement even before the mother started working with Ms. Sullens. RP at 641-42.

The mother only had the opportunity to engage in complete mental health services in February 2018, one month before the termination trial. RP at 598. She benefited greatly from mental health treatment, particularly psychotropic medication. RP at 91. However, just when the mother started getting all of the services she needed, the trial court terminated her parental rights. T.L. CP at 214-225. The mother appealed. T.L. CP at 193.

A Commissioner of the Court of Appeals issued a decision affirming the termination orders on March 28, 2019. App. at 1-2. The Commissioner determined that the state provided the mother with all court-ordered and necessary services, despite delays, by offering some mental health services throughout the dependency. *Id*. at 10-11. The Commissioner also found that DBT group was not a reasonably available service. *Id* at 11. Finally, the Commissioner determined that, although the department did not inform the mother's parenting instruction providers of her cognitive and learning needs, the providers did in fact utilize appropriate techniques. *Id*. at 12. The state thus tailored these services for the mother. *Id*.

B.B. filed a motion to modify the Commissioner's ruling to the Court of Appeals. The Court of Appeals denied her motion on May 7, 2019. App. at 14. The mother seeks review.

V. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

The mother, B.B., respectfully requests that the Washington Supreme Court grant review and reverse the Court of Appeals. This Court grants review under four circumstances:

> (1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or
> (2) If the decision of the Court of Appeals is in conflict with a published decision of the Court of Appeals; or
> (3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or
> (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

RAP 13.4(b). Here, review is appropriate under subsections (1), (2), and (3).

This Court should grant review for three reasons. First, the Court of Appeals Commissioner contradicted decisions of this Court and the Court of Appeals requiring the department to provide services to parents in a timely manner. RAP 13.4(b)(1), (2). Second, this case raises significant questions of law because the Commissioner misinterpreted RCW 13.34.180 and concluded that DBT group, a court-ordered service, was not reasonably available. RAP 13.4(b)(3). Third, this case also contradicts published Court of Appeals decisions concerning the department's duty to tailor services to a parent's individual needs. RAP 13.4(b)(1), (2).

A. This Court Should Grant Review because the Commissioner Erred by Concluding that the Department's Delay in Providing the Neuropsychological Evaluation was Harmless.

The Court of Appeals Commissioner's decision contradicts established case law requiring the department to offer services in a timely manner. The department in this case inexcusably delayed the mother's neuropsychological evaluation for a year. The Commissioner erred by concluding that this delay was harmless. App. at 10-11. This Court should accept review pursuant to RAP 13.4(b)(1) and (2).

During a dependency, the state must identify services that a parent needs and provide those services. *In re Termination of S.J.*, 162 Wn. App. 873, 883, 256 P.3d 470 (2011). The state must offer services in a timely manner, so that the parent has the opportunity to benefit from them. *Id*. at 883-84 (reversing termination because the state failed to timely provide mental health treatment to the mother); *Matter of B.P.*, 186 Wn. 2d 292, 319-20, 376 P.3d 350 (2016) (reversing termination because the state failed to timely provide attachment services to the mother); *In re Dependency of T.L.G.*, 126 Wn. App. 181, 203, 108 P.3d 156 (2005) (reversing termination because of the "protracted delay" in providing mental health evaluations to the parents).

Here, the state delayed the mother's neuropsychological evaluation by a year. This service was recommended in October 2015 but was not

completed until over a year later in November 2016. Ex.s 77, 78. The delay in providing the neuropsychological evaluation was exacerbated by additional delays in providing its recommended services, including medication management and DBT group. RP at 92, 598. Once the mother started benefiting from these services, her parenting improved. RP at 254, 257. Timely providing these services likely would have altered the course of this dependency.

The Court of Appeals examined the department's delay in providing services in *S.J.* The Court reversed termination because the state failed to offer the mother timely services. *S.J.*, 162 Wn. App. at 883-84. The state offered many other services, including parenting education, evaluations, and chemical dependency treatment. *Id*. at 879. However, the state delayed offering mental health services. *Id*. at 881-82. At trial, service providers testified that the mother had not made sufficient progress. *Id*. at 878. However, the Court reversed, holding that the delay in providing services "contributed to the deterioration" of the mother's relationship with her child. *Id*. at 882. Once the mother received adequate mental health services, she started making progress in other services, such as chemical dependency treatment. *Id*.

The Commissioner's decision contradicts the holding in *S.J.* The Commissioner concluded that the delay in providing the neuropsychological evaluation was harmless because "the Department attended to B.B.'s mental health needs from the outset of its involvement." App. at 10. It is true that the mother worked with a mental health professional, Ms. Dyrnes, throughout most of the dependency. Ex. 87; RP at 84, 290. However, Ms. Dyrnes is a licensed mental health counselor, not a psychologist or neuropsychologist. RP at 72. Providing counseling was not equivalent to timely providing a neuropsychological evaluation.

Medical professionals—not courts, lawyers, or social workers—were in the best position to assess the mother's mental health needs and recommend services. Dr. Whitehill recommended a neuropsychological evaluation. Ex. 77 at 17. The Commissioner erred by concluding that providing a different service was sufficient to satisfy the department's duty provide this evaluation in a timely manner. App. at 10-11. This Court should grant review and reverse the Commissioner's ruling.

B. This Court Should Grant Review because the Commissioner Misinterpreted RCW 13.34.180 by Determining that DBT Group was Not a Reasonably Available Service.

This Court should also grant review pursuant to RAP 13.4(b)(3) because the Commissioner misinterpreted RCW 13.34.180, the statute governing termination of parental rights. On appeal, the mother argued that

the state failed to provide DBT group, a court-ordered service. The Commissioner disagreed, concluding that DBT group was not a reasonably available service for the mother. App. at 11.

The Commissioner erred because DBT group was a court-ordered service, not a necessary service. Thus, per RCW 13.34.180(1)(d), the department had an obligation to provide this service regardless of whether it was "reasonably available." If the department could not provide this service, the proper statutory remedy was to file a motion to amend the service plan before the juvenile court.

Appellate courts review issues of statutory interpretation de novo. *State v. Evans*, 177 Wn.2d 186, 191, 298 P.3d 724 (2013). The purpose of statutory interpretation is "to determine and give effect to the intent of the legislature." *State v. Sweany*, 174 Wn.2d 909, 914, 281 P.3d 305 (2012). When possible, courts derive legislative intent solely from the statute's plain language. *State v. Ervin*, 169 Wn.2d 815, 820, 239 P.3d 354 (2010). Plain language that is not ambiguous does not require construction. *State v. Delgado*, 148 Wn.2d 723, 727, 63 P.3d 792 (2003).

Here, the language of RCW 13.34.180(1)(d) is not ambiguous. The department must provide two categories of services to parents in dependencies: (1) court-ordered services and (2) necessary services. RCW 13.34.180(1)(d); *see also T.L.G.*, 126 Wn. App. at 200. These services are

described separately, using different language. To terminate parental rights, the department must prove:

> That the services ordered under RCW 13.34.136 have been expressly and understandably offered or provided ***and*** all necessary services, ***reasonably available***, capable of correcting the parental deficiencies within the foreseeable future have been expressly and understandably offered or provided.

RCW 13.34.180(1)(d) (emphasis added). A service is "necessary" if it is needed to address a condition that precludes reunification of the parent and child. *In re Welfare of C.S.*, 168 Wn.2d 51, 56 n.3, 225 P.3d 953 (2010).

The phrase "reasonably available" only modifies necessary services; it does not apply to court-ordered services. RCW 13.34.180(1)(d). In other words, the department must expressly and understandably offer or provide all court-ordered services. *Id*. It must also expressly and understandably offer or provide all necessary services—even if they were not court ordered—that are reasonably available and capable of correcting identified parental deficiencies within the foreseeable future. *Id*.

This statutory scheme reflects deference to the juvenile court. If the juvenile court orders a service, that service must be provided per RCW 13.34.180. The department cannot decide on its own that a court-ordered service is unnecessary, or unavailable, or incapable of correcting a parent's deficiencies within the foreseeable future—RCW 13.34.180(1)(d) leaves

that decision to the juvenile court. If the department cannot provide a court-ordered service during a dependency, it can bring a motion in the juvenile court to change a parent's service plan. RCW 13.34.150. Alternatively, the department can ask to alter court-ordered services at a dependency review hearing. RCW 13.34.138(2)(c)(iv).

Here, DBT group was a court-ordered service for the mother. The juvenile court specifically ordered the mother to "engage in [a] neuropsychological evaluation & *follow recommendations*." Ex. 37 at 10 (emphasis added). Dr. Shepel completed the mother's neuropsychological evaluation and recommended DBT group, among other services. Ex. 78 at 16-17. The department thus had an obligation to provide DBT group to the mother—regardless of whether it determined that this service was "reasonably available"—or else bring this issue up with the juvenile court during the dependency. *See* RCWs 13.34.150, .180(1)(d).

The Commissioner erred by failing to treat DBT group as a court-ordered service per RCW 13.34.180(1)(d). App. at 11. Specifically, the Commissioner erred by treating DBT group like a necessary service and concluding that it was not reasonably available. *Id*. This Court should grant review and reverse the termination orders.

C. This Court Should Grant Review because the Commissioner Erred by Concluding that the State Tailored Parenting Instruction to the Mother's Cognitive Needs and Learning Style.

Finally, the Court of Appeals Commissioner's decision contradicts published case law requiring the department to tailor services to a parent's individual needs. The department failed to tailor the mother's parenting services to her learning disability and cognitive needs. The Commissioner erred by concluding that the mother's instructors provided "specialized treatment of B.B." App. at 12. This Court should accept review pursuant to RAP 13.4(b)(2).

The Commissioner concluded that the state tailored parenting instruction to meet the mother's needs. App. at 12. The Commissioner recognized that the department did not inform the mother's two parenting instructors—Mr. Villarivera and Ms. Sullens—of her "specific cognitive impairment." *Id*. However, the Commissioner determined that this error was harmless because "both instructors had already been doing what the neuropsychological evaluation recommended," including using repetition and one-on-one instruction. *Id*. The Commissioner erred because, although they may have attempted these techniques, there was no evidence in the record that the parenting instructors were trained to work with persons with cognitive delays.

The state must tailor services offered to the individual parent's needs. *In re Dependency of T.R.*, 108 Wn. App. 149, 161, 29 P.3d 1275 (2001). If a parent has co-occurring problems, the state must provide integrated services to address those problems. *S.J.*, 162 Wn. App. at 882 (reversing termination where the department failed to integrate services to address the mother's co-occurring mental health and substance abuse issues); *In re Welfare of H.W.*, 92 Wn. App. 420, 426, 961 P.2d 963 (1998) (reversing termination where the department failed to integrate services to address the mother's developmental disability).

In order to tailor services to a parent's mental health needs, the department must ensure that providers are informed of, and trained to address, those needs. *Matter of I.M.-M.*, 196 Wn. App. 914, 922, 385 P.3d 268 (2016). For example, in *I.M.-M.*, the Court of Appeals reversed a termination order because the department did not tailor the mother's chemical dependency treatment to her mental health needs. *Id*. The Court concluded that "none of [the mother's] service providers testified they were trained to work with cognitively disabled persons." *Id*.

Here, the Commissioner's decision contradicts the holding in *I.M.-M.* because neither of the mother's parenting instruction providers testified that they were trained to work with persons with cognitive issues or learning disabilities. Providers may attempt to use appropriate techniques, but

success depends on having the skills and training to correctly apply these techniques. These was no evidence presented to establish that Ms. Sullens and Mr. Villarivera had these skills or this training. This Court should grant review and reverse because the state failed to tailor services by using properly trained providers.

VI. CONCLUSION

B.B, the mother, respectfully requests that the Washington Supreme Court grant review and reverse the Court of Appeals decision upholding the orders terminating her parental rights. This case raises significant questions of law because the trial court misinterpreted RCW 13.34.180 and concluded that a court-ordered service was not reasonably available. RAP 13.4(b)(3). This case also contradicts decisions of this Court and the Court of Appeals concerning the timely provision of services and the duty to tailor services to a parent's individual needs. RAP 13.4(b)(1), (2). This Court should grant review and reverse.

RESPECTFULLY SUBMITTED this 6th day of June, 2019.

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VII. APPENDIX

Court of Appeals Commissioner Order Affirming Orders Terminating Parental Rights
March 28, 2019 1-13

Court of Appeals Order Denying Motion to Modify Commissioner's Order
May 7, 2019 14

RCW 13.34.138
Accessed June 6, 2019 15-17

RCW 13.34.150
Accessed June 6, 2019 18

RCW 13.34.180
Accessed June 6, 2019 19-21

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

IN THE MATTER OF THE WELFARE OF: D.H., S.T., L.L., and T.L., Minor children.	Consol. Nos. 52350-7-II 52360-4-II 52370-1-II 52380-9-II RULING AFFIRMING ORDERS TERMINATING PARENTAL RIGHTS

FILED
COURT OF APPEALS
DIVISION II
2019 MAR 28 AM 11:06
STATE OF WASHINGTON
BY DEPUTY

B.B., the mother of D.H., born in 2009, S.T., born in 2011, L.L. born in 2015, and T.L., born in 2013, appeals the juvenile court's orders terminating her parental rights to all four children.[1] B.B. argues the Department of Social and Health Services (Department)[2] failed to prove it offered or provided her all necessary services reasonably available and capable of correcting her parenting deficiencies in the foreseeable future.

[1] The juvenile court also terminated the parental right s of J.T., S.T.'s father, and J.L., L.L. and T.L's father. They are not parties to this appeal. D.H.'s father is deceased.

[2] In July 2018, child welfare functions were transferred to the Department of Children, Youth and Families.

This court considered B.B.'s appeal on an accelerated basis under RAP 18.13A and affirms the juvenile court.

FACTS

Background

In June 2015, the Department filed dependency petitions for all D.H., S.T., and T.L. and the juvenile court placed the three children into state custody due to concerns of domestic violence and unsanitary living conditions. B.B. agreed to a finding of dependency as to all three children on July 23, 2015. L.L. was born on August 10, 2015. Two days later, the Department filed a dependency petition and took L.L. into state custody. B.B. agreed to a finding of dependency for L.L. on September 24, 2015.

B.B.'s parental deficiencies consisted of mental health, parenting skills, and domestic violence. B.B. agreed to participate in the following services: (1) psychological evaluation; (2) parenting education; (3) mental health treatment: individual counseling.[3]

Mental Health

Douglas Willman, B.B.'s social worker indicated B.B.'s mental health issues were a priority for the Department. Prior to establishment of the dependency, the Department referred B.B. to Dr. Mark Whitehill for a psychological evaluation. Dr. Whitehill issued his report in October 2015. He concluded B.B. had cognitive capability, but a deficit as to her willingness or motivation to effectively parent. He recommended a neuropsychological

[3] B.B. was eventually also required to complete "DV [domestic violence] evaluation & support." S.T. Exhibit (Ex.) 40 at 10.

evaluation to further evaluate the dissonance. B.B. completed a neuropsychological evaluation approximately a year later in October 2016.

In the meantime, B.B. engaged in individual mental health counseling with Cynthia Dyrnes from July through September of 2015 and again from April 2016 through the termination trial.[4] A lapse in insurance accounted for the eight-month break in treatment. Dyrnes primarily engaged B.B. in Cognitive Behavioral Therapy (CBT). The purpose CBT was reduction of B.B.'s stress and anxiety in addition to improvement of her concentration and organizational capabilities. When B.B. feels anxious, her cognitive level drops and she is unable to function. B.B.'s symptoms primarily stem from post-traumatic stress disorder (PTSD). Dyrnes testified that a "1 to 10 [point] scale" is used to "help people understand where they are in their anxiety," and that after nearly two years of therapy, B.B.'s anxiety level had "improved from a 6 to 7 average range where she was at the beginning of our work together, and she now is somewhere in the 3 to 5 range." RP Mar. 7, 2018 at 79-80.

The Department originally referred B.B. for a neuropsychological evaluation on February 12, 2016, approximately four months after Dr. Whitehill's recommendation. The Department attributed this initial delay to a change in assigned social worker. The record does not explain why this exam was not completed. On June 22, 2016, the Department referred B.B. to Dr. Tatyana Shepel for a neuropsychological evaluation scheduled to occur a week later. The appointment conflicted with visitation, and, on the advice of her

[4] B.B. had a preexisting professional relationship with Dyrnes. B.B. engaged in grief counseling with Dyrnes in 2010. Dyrnes also taught B.B.'s Protective Parenting Group (PPG) Class from July 2015 through July 2016.

attorney, B.B. chose to attend the visitation. The Department submitted a third referral on July 19, 2016.

B.B. completed the neuropsychological evaluation in October 2016 and Dr. Shepel issued her report on November 13, 2016. Dr. Shepel opined B.B. was cognitively capable of understanding complex concepts such as the developmental needs of her children, but that she may struggle to employ her knowledge in real life situations. Dr. Shepel noted that B.B. minimized the severity of her case and denied the Department's concerns. She was extremely anxious during the exam. B.B.'s inability to control her anxiety was her primary impairment. Dr. Shepel recommended B.B. engage in Dialectical Behavioral Therapy (DBT), a psychiatric evaluation to determine appropriate medication to stabilize her emotional functioning, and individual parenting skills training including one-on-one assistance.

Dyrnes referred B.B. for psychiatric treatment in late 2016. Dyrnes also coordinated with B.B.'s Behavioral Health Resources team to assess and manage appropriate medication for B.B. Dyrnes testified that B.B. began taking her anti-depressant and PTSD medication for approximately year before the trial. She estimated B.B. had been operating at her full medicated potential for nine months by the commencement of trial.

The Department also referred B.B. to Behavioral Health Resources for DBT. At the time, Behavioral Health Resources did not have a qualified therapist able to provide DBT. Social worker Doug Williams explored all other providers in the area and determined none were available. B.B. was told as soon as a therapist became available, Behavioral Health Resources would ensure she received treatment without further referral

from the Department. In February 2018, DBT became available at Behavioral Health Resources and B.B. engaged in the service.

Parenting

Based on Dr. Shepel's recommendation and B.B.'s parenting skills deficiency, the Department offered B.B. several parenting classes. B.B. engaged in the Positive Parenting Program (Triple P) parenting instruction class with Noel Villarivera. The Triple P curriculum consists of small digestible sections and Villarivera worked one-on-one with B.B. every week to assist her in making her way through it. When B.B. became overwhelmed, Villarivera intervened to coach her. He would repeat instructions several times during the course of a lesson. Triple P is a 10 week program, but instructors provide additional classes to students who benefit repetition and review. B.B. engaged in 18 weeks of Triple P.

The Department also referred B.B. to two separate parenting classes, Promoting First Relationships and Family Preservation Services, with Brenda Sullens. B.B. engaged in Promoting First Relationships at the beginning of the dependency in 2015 and Family Preservation Services from December 2017 through February 28, 2018. In both classes, Sullens provided B.B. parenting coaching and support during visitation. Sullens instructed B.B. on her children's developmental and social-emotional needs and would model skills both during their one-on-one sessions and during visitation.

Even upon completion of Family Preservation Services in February 2018, at which point Sullens believed B.B. had the tools needed to parent, B.B. struggled to control her children's behavior and was unable to apply and follow through with disciplinary techniques. Sullens testified that in a best case scenario, it would be at least a year for

B.B. to remedy her parental deficiencies such that the Department could return the children to her care.

B.B.'s three eldest children struggle with behavioral issues. T.L. has a behavioral Individual Education Plan (IEP) at pre-school. He is an angry child with a quick temper. When triggered, T.L. will hit or kick objects or people and run out of the classroom. He needs a lot of monitoring to ensure his safety and that of those around him.

D.H. displayed behavior similar to T.L. Prior to his relative placement, the Department placed D.H. in a behavior rehabilitation foster home to account for his severe behavioral issues. Teachers and administrators often asked him to leave school early due to unsafe behavior. He would try to run off, damage property and act aggressively towards caregivers.

S.T.'s issues are more social and emotionally oriented. She is emotionally fragile and will cry with little provocation. She also seeks adult attention and lacks safe boundaries or a sense of "stranger danger." 2 Report of Proceedings (RP) Mar. 8, 2018 307.

Throughout the case, visitation between B.B. and her children was generally loud, stressful, and extremely chaotic. B.B. struggled to control her children. Supervisors had to take special precautions, such as closing exterior doors for B.B. to ensure the children's safety during visits. T.L. would regularly run out of the visitation room. In spring of 2017, the Department briefly moved visits to the local McDonald's play area. B.B. was unable to control her children in this environment and visitation resumed at the visitation facility. The Department also divided visits between the children to make visits less traumatic for the children and allow B.B. more flexibility in applying lessons she learned in parenting

education. S.T. and L.L. visited on Tuesdays and T.L. and L.L. visited on Wednesdays. B.B. visited with D.H. twice a week via Skype. Visitation remained overwhelming for B.B. despite the reduction number of children per visit. B.B. continued to rely on supervisors and parenting instructors to manage the children and visits were chaotic up to the termination trial.

Termination

At the end of the termination trial, the juvenile court found that termination of B.B.'s parental rights was in the best interests of the children and later entered findings of fact, conclusions of law and orders terminating her parental rights to the children.

ANALYSIS

The juvenile court may order termination of a parent's rights as to his or her child if the Department establishes the six elements in former RCW 13.34.180(1)(a) through (f) (2013) by clear, cogent, and convincing evidence. RCW 13.34.190(1)(a)(i). Clear, cogent and convincing evidence exists when the ultimate fact at issue is shown to be "highly probable." *In re the Welfare of Sego*, 82 Wn.2d 736, 739, 513 P.2d 831 (1973) (quoting *Supove v. Densmoor*, 225 Or. 365, 372, 358 P.2d 510 (1961)). The Department also must prove by a preponderance of the evidence that termination of parental rights is in the child's best interests. RCW 13.34.190(1)(b).

Because the juvenile court has the advantage of observing the witnesses, deference to the court is particularly important in termination proceedings. *In re the Welfare of Aschauer*, 93 Wn.2d 689, 695, 611 P.2d 1245 (1980); *In re Dependency of K.R.*, 128 Wn.2d 129, 144, 904 P.2d 1132 (1995). This court limits its analysis to whether substantial evidence supports the juvenile court's findings. *Sego*, 82 Wn.2d at 739.

Substantial evidence is evidence sufficient to persuade a fair-minded rational person of the truth of the declared premise. *Bering v. SHARE,* 106 Wn.2d 212, 220, 721 P.2d 918 (1986), *cert. dismissed,* 479 U.S. 1050 (1987). This court does not review credibility determinations or weigh the evidence. *Sego*, 82 Wn.2d at 739-40.

B.B. challenges the following Findings of Fact:[5]

> 3.4 The services ordered to the mother under 13.34.136 have been expressly and understandably offered or provided, and all necessary services, reasonably available, capable of correcting her parental deficiencies within the foreseeable future have been expressly and understandably offered or provided. This conclusion is based upon the following findings:
>
> . . . .
>
> 3.4.4 In subsequent Court orders, [B.B.'s] court ordered services were modified to include a neuropsychological evaluation and domestic violence victims treatment services.
>
> 3.4.5 The court finds all necessary services were offered to the mother, [B.B.] expressly and understandably.
>
> 3.4.6 The court finds all necessary services capable of correcting the mother's parental deficiencies in the foreseeable future were offered.
>
> . . . .
>
> 3.4.13 Dr. Whitehill recommended the mother engage in a neuropsychological evaluation, despite determining [B.B.] does not have a cognitive impairment but rather a deficiency in willingness to parent. Dr. Whitehill also recommended parenting education and in home parenting coaching should the children be returned to [B.B.'s] home.
>
> . . . .
>
> 3.4.17 The lapse in time of one year between the psychological evaluation and the neuropsychological evaluation did not significantly

[5] The juvenile court entered one set of termination orders for each child, four altogether. Each order enumerates findings of fact and conclusions of law. However, the numbers assigned to the findings differ in each order. The numbers provided here are from S.T.'s termination order.

B.B. also challenges findings of fact involving an alleged domestic violence incident and the juvenile court's interpretation of foreseeable future. However, B.B. does not brief these issues. "An assignment of error which is not argued in the brief is deemed to have been abandoned." *Spino v. Department of Labor & Indus.,* 1 Wn. App. 730, 732, 463 P.2d 256, 258 (1969), *review denied*, 77 Wn.2d 962 (1970).

> impact [B.B.'s] ability to correct her parental deficiencies because she was engaged in mental health services and parenting education during that time.
>
> . . . .
>
> 3.4.23 In December 2017, [B.B.] began a hands on parenting class with Ms. Sullens. The Court finds Ms. Sullens to be a credible witness. At this point, [B.B.] had begun taking medication and was engaging in DBT therapy. [B.B.] made progress but still struggled with consistency in implementing parenting techniques. [B.B.] relied on the visitation supervisor for help in parenting but did not recognize that she was doing so. Ms. Sullens testified that [B.B.] still has significant improvement to make before she could safely and appropriately parent the children.
>
> . . . .
>
> 3.5.5 During the dependency [B.B.] was offered many services to address the safety issues, including mental health treatment since April 2016, and parenting education -- Triple P, PPG [Positive Parenting Group] and parenting instruction with Brenda Sullens, and medication to address mental health issues, which she has been on for approximately one year.
>
> . . . .
>
> 3.5.14 Despite the parenting instruction that [B.B.] has engaged in she is not able to implement the parenting skills she has learned when parenting her children.
>
> 3.5.15 The improvement in the visits is due to the reduction in number of children present at the visits from four children to two children.
>
> . . . .
>
> 3.5.20 Although the mother participated in and completed a number of services, including parenting education, she has not remedied her parental deficiencies. The mother was unable to retain and apply the information she learned and did not make significant progress in correcting her parental deficiencies. [B.B.] was unable to meet the children's needs even in the controlled environment of supervised visitation, and even when visits were reduced to one child at a time.
>
> . . . .
>
> 3.7.1 The court finds the mother, [B.B.] . . ., [is] unable to provide for her children's emotional or physical needs and that is unlikely to change in the near future.

S.T. Clerk's Papers (CP) at 197-205.

First, B.B. argues the Department did not provide all reasonably available, necessary services as required under former RCW 13.34.180(1)(d) because of the Department's delay in providing a referral for a neuropsychological evaluation a year after recommended. Under former RCW 13.34.180(1)(d), the Department must prove "[t]hat

the services ordered under RCW 13.34.136 have been expressly and understandably offered or provided and all necessary services, reasonably available, capable of correcting the parental deficiencies within the foreseeable future have been expressly and understandably offered or provided." In determining whether the Department met its burden, the juvenile court may consider "any service received, from whatever source, bearing on the potential correction of parental deficiencies." *In re Dependency of D.A.*, 124 Wn. App. 644, 651-52, 102 P.3d 847 (2004), *review denied*, 154 Wn.2d 1030 (2005).

B.B. relies on *In re the Termination of S.J.*, 162 Wn. App. 873, 876, 256 P.3d 470 (2011), in which this court reversed a termination order based on the Department's failure to provide a mother with timely mental health services. *S.J.* held the Department's sequential approach to addressing the mother's parental deficiencies—*i.e.*, first substance abuse and then mental health--while knowing mother suffered from a mental illness "contributed to the deterioration" of the mother's relationship with her child. *S.J.*, 162 Wn. App. at 882. B.B. argues that the delay in her neuropsychological evaluation similarly stymied her from making real progress. But *S.J.* is distinguishable from B.B.'s situation. B.B. first engaged in mental health services in July 2015 with Dyrnes, prior to the establishment of the dependency.[6] Dyrnes later read Dr. Shepel's report and as of December 2017, devised a plan to incorporate his recommendations into her treatment of B.B. B.B. had 15 months between completion of the neuropsychological evaluation and the termination trial to benefit from the service. Unlike the mother in *S.J.*, the Department attended to B.B.'s mental health needs from the outset of its involvement.

[6] There was a lapse in mental health treatment during a loss of insurance coverage.

Also unlike the mother in *S.J.,* B.B.'s the Department did not condition the neuropsychological evaluation on completion of another service related to a distinct but co-occurring parental deficiency.

B.B. similarly argues the delay in receipt DBT and psychotropic medication unfairly hindered her progress. The Department responds that DBT was not a reasonably available service. As soon as the service became available, in February 2018, B.B. engaged in it. Dyrnes, B.B.'s therapist, assisted in managing B.B.'s medication regimen. As soon as she received Dr. Shepel's report, she worked with Behavioral Health Resources to implement Dr. Shepel's recommendations, including medication for B.B.'s PTSD. B.B. did not challenge the juvenile court's finding she had been taking the medication for approximately a year prior to the termination trial. And despite this medication, the chaotic visits with her children continued. This court concludes substantial evidence supports the juvenile court's finding the Department satisfied its burden in providing all necessary and reasonably available services to B.B.

Second, B.B. argues the Department failed to tailor services to her needs because there is no evidence the Department informed her providers of her mental health issues or learning disabilities. B.B. relies on *Matter of I.M.-M.,* 196 Wn. App. 914, 385 P.3d 268 (2016), in which the Department became very early on in the dependency that the mother had cognitive impairment that would impact her capacity to address her parental deficiencies, but did not inform her service providers. *I.M.-M.,* 196 Wn. App. at 917. The Department never offered tailored services or referred the mother to the Department's developmental disabilities administration. *I.M.-M.,* 196 Wn. App. at 917. For those

reasons, this court reversed the order terminating the mother's parental rights. *I.M.-M.*, 196 Wn. App. at 917.

Unlike the mother in *I.M.-M.*, the Department fully investigated B.B.'s mental health issues and cognitive capabilities. The services offered to address B.B.'s parenting deficiency were programs tailored to B.B.'s need. Both parenting instructors, Villarivera and Sullens, testified as to their specialized treatment of B.B. While it does not appear that the Department informed the instructors of B.B.'s specific cognitive impairment, both instructors had already been doing what the neuropsychological evaluation recommended: one-on-one instruction involving simple instructions, repetition, role-modeling, and review. Substantial evidence supports the juvenile court's findings that the Department-provided parenting education services were tailored to meet B.B.'s needs.

CONCLUSION

Substantial evidence supports the juvenile court's findings of fact. The court's findings of fact support its conclusions of law that the required elements for termination of parental rights under former RCW 13.34.180(1)(a) through (f) have been established by clear, cogent, and convincing evidence and that termination of B.B.'s parental rights is in the best interests of the children. Accordingly, it is hereby

ORDERED that the juvenile court's orders terminating B.B.'s parental rights to D.H., S.T., L.L., and T.L. are affirmed.

DATED this 28th day of March, 2019.

E B Schmidt

Eric B. Schmidt
Court Commissioner

cc: Stephanie Taplin
James M. Richardson, III
Hon. Amber L. Finlay

Filed
Washington State
Court of Appeals
Division Two

May 7, 2019

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

In the Matter of the Welfare of D.H., S.T., L.L., and T.L., Minor Children.	Cons. Nos. 52350-7-II 52360-4-II 52370-1-II 52380-9-II ORDER DENYING MOTION TO MODIFY

Appellant mother, B.B., filed a motion to modify a commissioner's March 28, 2019 ruling in this matter. After consideration, this court denies appellant mother's motion. Accordingly, it is

SO ORDERED.

PANEL: Jj. Worswick , Sutton, Glasgow

FOR THE COURT:

PRESIDING JUDGE

RCW 13.34.138

Review hearings—Findings—Duties of parties involved—In-home placement requirements—Housing assistance.

*** CHANGE IN 2019 *** (SEE 1900.SL) ***

(1) The status of all children found to be dependent shall be reviewed by the court at least every six months from the beginning date of the placement episode or the date dependency is established, whichever is first. The purpose of the hearing shall be to review the progress of the parties and determine whether court supervision should continue.

(a) The initial review hearing shall be an in-court review and shall be set six months from the beginning date of the placement episode or no more than ninety days from the entry of the disposition order, whichever comes first. The requirements for the initial review hearing, including the in-court review requirement, shall be accomplished within existing resources.

(b) The initial review hearing may be a permanency planning hearing when necessary to meet the time frames set forth in RCW 13.34.145(1)(a) or 13.34.134.

(2)(a) A child shall not be returned home at the review hearing unless the court finds that a reason for removal as set forth in RCW 13.34.130 no longer exists. The parents, guardian, or legal custodian shall report to the court the efforts they have made to correct the conditions which led to removal. If a child is returned, casework supervision by the department shall continue for a period of six months, at which time there shall be a hearing on the need for continued intervention.

(b) Prior to the child returning home, the department must complete the following:

(i) Identify all adults residing in the home and conduct background checks on those persons;

(ii) Identify any persons who may act as a caregiver for the child in addition to the parent with whom the child is being placed and determine whether such persons are in need of any services in order to ensure the safety of the child, regardless of whether such persons are a party to the dependency. The department may recommend to the court and the court may order that placement of the child in the parent's home be contingent on or delayed based on the need for such persons to engage in or complete services to ensure the safety of the child prior to placement. If services are recommended for the caregiver, and the caregiver fails to engage in or follow through with the recommended services, the department must promptly notify the court; and

(iii) Notify the parent with whom the child is being placed that he or she has an ongoing duty to notify the department of all persons who reside in the home or who may act as a caregiver for the child both prior to the placement of the child in the home and subsequent to the placement of the child in the home as long as the court retains jurisdiction of the dependency proceeding or the department is providing or monitoring either remedial services to the parent or services to ensure the safety of the child to any caregivers.

Caregivers may be required to engage in services under this subsection solely for the purpose of ensuring the present and future safety of a child who is a ward of the court. This subsection does not grant party status to any individual not already a party to the dependency proceeding, create an entitlement to services or a duty on the part of the department to provide services, or create judicial authority to order the provision of services to any person other than for the express purposes of this section or RCW 13.34.025 or if the services are unavailable or unsuitable or the person is not eligible for such services.

(c) If the child is not returned home, the court shall establish in writing:

(i) Whether the department is making reasonable efforts to provide services to the family and eliminate the need for placement of the child. If additional services, including housing assistance, are needed to facilitate the return of the child to the child's parents, the court shall order that reasonable services be offered specifying such services;

(ii) Whether there has been compliance with the case plan by the child, the child's parents, and the agency supervising the placement;

(iii) Whether progress has been made toward correcting the problems that necessitated the child's placement in out-of-home care;

(iv) Whether the services set forth in the case plan and the responsibilities of the parties need to be clarified or modified due to the availability of additional information or changed circumstances;

(v) Whether there is a continuing need for placement;

(vi) Whether a parent's homelessness or lack of suitable housing is a significant factor delaying permanency for the child by preventing the return of the child to the home of the child's parent and whether housing assistance should be provided by the department;

(vii) Whether the child is in an appropriate placement which adequately meets all physical, emotional, and educational needs;

(viii) Whether preference has been given to placement with the child's relatives if such placement is in the child's best interests;

(ix) Whether both in-state and, where appropriate, out-of-state placements have been considered;

(x) Whether the parents have visited the child and any reasons why visitation has not occurred or has been infrequent;

(xi) Whether terms of visitation need to be modified;

(xii) Whether the court-approved long-term permanent plan for the child remains the best plan for the child;

(xiii) Whether any additional court orders need to be made to move the case toward permanency; and

(xiv) The projected date by which the child will be returned home or other permanent plan of care will be implemented.

(d) The court at the review hearing may order that a petition seeking termination of the parent and child relationship be filed.

(3)(a) In any case in which the court orders that a dependent child may be returned to or remain in the child's home, the in-home placement shall be contingent upon the following:

(i) The compliance of the parents with court orders related to the care and supervision of the child, including compliance with the department's case plan; and

(ii) The continued participation of the parents, if applicable, in available substance abuse or mental health treatment if substance abuse or mental illness was a contributing factor to the removal of the child.

(b) The following may be grounds for removal of the child from the home, subject to review by the court:

(i) Noncompliance by the parents with the department's case plan or court order;

(ii) The parent's inability, unwillingness, or failure to participate in available services or treatment for themselves or the child, including substance abuse treatment if a parent's substance abuse was a contributing factor to the abuse or neglect; or

(iii) The failure of the parents to successfully and substantially complete available services or treatment for themselves or the child, including substance abuse treatment if a parent's substance abuse was a contributing factor to the abuse or neglect.

(c) In a pending dependency case in which the court orders that a dependent child may be returned home and that child is later removed from the home, the court shall hold a review hearing within thirty days from the date of removal to determine whether the permanency plan should be changed, a termination petition should be filed, or other action is warranted. The best interests of the child shall be the court's primary consideration in the review hearing.

(4) The court's authority to order housing assistance under this chapter is: (a) Limited to cases in which a parent's homelessness or lack of suitable housing is a significant factor delaying permanency for the child and housing assistance would aid the parent in providing an appropriate home for the child; and (b) subject to the availability of funds appropriated for this specific purpose. Nothing in this chapter shall

be construed to create an entitlement to housing assistance nor to create judicial authority to order the provision of such assistance to any person or family if the assistance or funding are unavailable or the child or family are not eligible for such assistance.

(5) The court shall consider the child's relationship with siblings in accordance with RCW **13.34.130**(6).

[**2018 c 284 § 14.** Prior: **2009 c 520 § 29; 2009 c 491 § 3; 2009 c 397 § 4; 2009 c 152 § 1;** prior: **2007 c 413 § 8; 2007 c 410 § 1; 2005 c 512 § 3; 2003 c 227 § 5; 2001 c 332 § 5; 2000 c 122 § 19.**]

NOTES:

Severability—2007 c 413: See note following RCW **13.34.215**.

Short title—2007 c 410: "This act may be known and cited as Sirita's law." [**2007 c 410 § 9.**]

Finding—Intent—Effective date—Short title—2005 c 512: See notes following RCW **26.44.100**.

Intent—2003 c 227: See note following RCW **13.34.130**.

RCW 13.34.150

Modification of orders.

Any order made by the court in the case of a dependent child may be changed, modified, or set aside, only upon a showing of a change in circumstance or as provided in RCW **13.34.120**.

[**1993 c 412 § 9; 1990 c 246 § 6; 1977 ex.s. c 291 § 43; 1913 c 160 § 15;** RRS § 1987-15. Formerly RCW **13.04.150**.]

NOTES:

Severability—1990 c 246: See note following RCW **13.34.060**.

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW **13.04.005**.

RCW 13.34.180

Order terminating parent and child relationship—Petition—Filing—Allegations.

(1) A petition seeking termination of a parent and child relationship may be filed in juvenile court by any party to the dependency proceedings concerning that child. Such petition shall conform to the requirements of RCW **13.34.040**, shall be served upon the parties as provided in RCW **13.34.070**(8), and shall allege all of the following unless subsection (3) or (4) of this section applies:

(a) That the child has been found to be a dependent child;

(b) That the court has entered a dispositional order pursuant to RCW **13.34.130**;

(c) That the child has been removed or will, at the time of the hearing, have been removed from the custody of the parent for a period of at least six months pursuant to a finding of dependency;

(d) That the services ordered under RCW **13.34.136** have been expressly and understandably offered or provided and all necessary services, reasonably available, capable of correcting the parental deficiencies within the foreseeable future have been expressly and understandably offered or provided;

(e) That there is little likelihood that conditions will be remedied so that the child can be returned to the parent in the near future. A parent's failure to substantially improve parental deficiencies within twelve months following entry of the dispositional order shall give rise to a rebuttable presumption that there is little likelihood that conditions will be remedied so that the child can be returned to the parent in the near future. The presumption shall not arise unless the petitioner makes a showing that all necessary services reasonably capable of correcting the parental deficiencies within the foreseeable future have been clearly offered or provided. In determining whether the conditions will be remedied the court may consider, but is not limited to, the following factors:

(i) Use of intoxicating or controlled substances so as to render the parent incapable of providing proper care for the child for extended periods of time or for periods of time that present a risk of imminent harm to the child, and documented unwillingness of the parent to receive and complete treatment or documented multiple failed treatment attempts;

(ii) Psychological incapacity or mental deficiency of the parent that is so severe and chronic as to render the parent incapable of providing proper care for the child for extended periods of time or for periods of time that present a risk of imminent harm to the child, and documented unwillingness of the parent to receive and complete treatment or documentation that there is no treatment that can render the parent capable of providing proper care for the child in the near future; or

(iii) Failure of the parent to have contact with the child for an extended period of time after the filing of the dependency petition if the parent was provided an opportunity to have a relationship with the child by the department or the court and received documented notice of the potential consequences of this failure, except that the actual inability of a parent to have visitation with the child including, but not limited to, mitigating circumstances such as a parent's current or prior incarceration or service in the military does not in and of itself constitute failure to have contact with the child; and

(f) That continuation of the parent and child relationship clearly diminishes the child's prospects for early integration into a stable and permanent home. If the parent is incarcerated, the court shall consider whether a parent maintains a meaningful role in his or her child's life based on factors identified in RCW **13.34.145**(5)(b); whether the department made reasonable efforts as defined in this chapter; and whether particular barriers existed as described in RCW **13.34.145**(5)(b) including, but not limited to, delays or barriers experienced in keeping the agency apprised of his or her location and in accessing visitation or other meaningful contact with the child.

(2) As evidence of rebuttal to any presumption established pursuant to subsection (1)(e) of this section, the court may consider the particular constraints of a parent's current or prior incarceration. Such evidence may include, but is not limited to, delays or barriers a parent may experience in keeping the agency apprised of his or her location and in accessing visitation or other meaningful contact with the child.

(3) In lieu of the allegations in subsection (1) of this section, the petition may allege that the child was found under such circumstances that the whereabouts of the child's parent are unknown and no person has acknowledged paternity or maternity and requested custody of the child within two months after the child was found.

(4) In lieu of the allegations in subsection (1)(b) through (f) of this section, the petition may allege that the parent has been convicted of:

(a) Murder in the first degree, murder in the second degree, or homicide by abuse as defined in chapter **9A.32** RCW against another child of the parent;

(b) Manslaughter in the first degree or manslaughter in the second degree, as defined in chapter **9A.32** RCW against another child of the parent;

(c) Attempting, conspiring, or soliciting another to commit one or more of the crimes listed in (a) or (b) of this subsection; or

(d) Assault in the first or second degree, as defined in chapter **9A.36** RCW, against the surviving child or another child of the parent.

(5) When a parent has been sentenced to a long-term incarceration and has maintained a meaningful role in the child's life considering the factors provided in RCW **13.34.145**(5)(b), and it is in the best interest of the child, the department should consider a permanent placement that allows the parent to maintain a relationship with his or her child, such as, but not limited to, a guardianship pursuant to chapter **13.36** RCW.

(6) Notice of rights shall be served upon the parent, guardian, or legal custodian with the petition and shall be in substantially the following form:

"NOTICE

A petition for termination of parental rights has been filed against you. You have important legal rights and you must take steps to protect your interests. This petition could result in permanent loss of your parental rights.

1. You have the right to a fact-finding hearing before a judge.

2. You have the right to have a lawyer represent you at the hearing. A lawyer can look at the files in your case, talk to the department of children, youth, and families or other agencies, tell you about the law, help you understand your rights, and help you at hearings. If you cannot afford a lawyer, the court will appoint one to represent you. To get a court-appointed lawyer you must contact: __(explain local procedure)__.

3. At the hearing, you have the right to speak on your own behalf, to introduce evidence, to examine witnesses, and to receive a decision based solely on the evidence presented to the judge.

You should be present at this hearing.

You may call __(insert agency)__ for more information about your child. The agency's name and telephone number are __(insert name and telephone number)__."

[**2018 c 284 § 20;** (2018 c 284 § 19 expired July 1, 2018); **2017 3rd sp.s. c 6 § 308; 2013 c 173 § 4.** Prior: **2009 c 520 § 34; 2009 c 477 § 5; 2001 c 332 § 4; 2000 c 122 § 25; 1998 c 314 § 4; 1997 c 280 § 2;** prior: **1993 c 412 § 2; 1993 c 358 § 3; 1990 c 246 § 7; 1988 c 201 § 2; 1987 c 524 § 6; 1979 c 155 § 47; 1977 ex.s. c 291 § 46.**]

NOTES:

Effective date—2018 c 284 §§ 3, 8, 13, 20, 33, 36, and 67: See note following RCW **13.34.030**.

Expiration date—2018 c 284 §§ 2, 7, 12, 19, 32, 35, and 66: See note following RCW **13.34.030**.

Effective date—2017 3rd sp.s. c 6 §§ 102, 104-115, 201-227, 301-337, 401-419, 501-513, 801-803, and 805-822: See note following RCW **43.216.025**.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW **43.216.908**.

Findings—Intent—2009 c 477: See note following RCW **13.34.062**.

Severability—1990 c 246: See note following RCW **13.34.060**.

Effective date—Severability—1979 c 155: See notes following RCW **13.04.011**.

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW **13.04.005**.

Supreme Court No. (to be set)
No. 52350-7-II Consol.

CERTIFICATE OF SERVICE

I, Stephanie Taplin, declare under penalty of perjury under the laws of the State of Washington that the following is true and correct to the best of my knowledge:

On June 6, 2019, I electronically filed a true and correct copy of the **Motion for Discretionary Review to the Washington Supreme Court by the Mother, B.B.**, via the Washington State Appellate Courts' Secure Portal to the Washington Court of Appeals, Division II. I also served said document, including the appendix, as indicated below:

Karen Small Assistant Attorney General P.O. Box 40124 Olympia, WA 98504-0124	(X) via U.S. mail (X) via email to: Karens7@atg.wa.gov

SIGNED in Port Orchard, Washington, this 6th day of June, 2019.

STEPHANIE TAPLIN
WSBA No. 47850
Attorney for Appellant, B.B.

NEWBRY LAW OFFICE

June 06, 2019 - 10:56 AM

Transmittal Information

Filed with Court:	Court of Appeals Division II
Appellate Court Case Number:	52350-7
Appellate Court Case Title:	Welfare of D.H., S.T., L.L. & T.L.
Superior Court Case Number:	16-7-00211-2

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