

FILED
Court of Appeals
Division I
State of Washington
7/27/2020 4:30 PM

FILED
SUPREME COURT
STATE OF WASHINGTON
7/28/2020
BY SUSAN L. CARLSON
CLERK
S.Ct. NO. 98825-1

NO. 79714-0-I

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

IN RE THE DEPENDENCY OF B.S.,

A minor child.

ON APPEAL FROM THE SUPERIOR COURT OF THE STATE OF
WASHINGTON FOR SNOHOMISH COUNTY

PETITION FOR REVIEW

[*Treated as motion for discretionary review. See letter dated 7-28-20.](#)

JAN TRASEN
Attorney for Petitioner

WASHINGTON APPELLATE PROJECT
1511 Third Avenue, Suite 610
Seattle, WA 98101
(206) 587-2711

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I. IDENTITY OF PETITIONER

Petitioner Sharrah W. is the mother of B.S., who was placed in foster care a few days after his birth.

II. COURT OF APPEALS DECISION

Ms. W. seeks review of the Court of Appeals decision affirming the order of dependency, in which the court found it was “bound by the findings” related to a previous termination case involving older siblings due to collateral estoppel. On December 30, 2019, the Court of Appeals Commissioner affirmed the Snohomish County order (Appendix A), and on July 1, 2020, the Court of Appeals denied Ms. W.’s motion to modify (Appendix B). This motion is based upon RAP 13.4(b)(1).

III. ISSUES PRESENTED

1. A parent has a fundamental liberty interest in the care, custody and control of her child. To establish a dependency under RCW 13.34.030(6)(c), the State must prove that there is a danger of substantial damage to the specific child at issue. Here, where B.S. was removed in his first few days of life, does it offend due process for the trial court to determine the mother is unfit as a matter of law due to a previous termination case, and is the Court of Appeals decision affirming the order

of dependency in conflict with decisions of this Court? RAP 13.4(b)(1); RAP 13.5A.

2. The doctrine of collateral estoppel has four elements that must be established for its application. Was the doctrine misapplied where the previous proceeding did not share identical issues; there was no final judgment on the merits; and because the application of the doctrine works an injustice? Is the Court of Appeals affirmance thus in conflict with decisions of this Court? RAP 13.4(b)(1).

IV. STATEMENT OF THE CASE

Sharrah W. is the mother of B.S., who is now two years old. CP 19. When B.S. was born, a hold was placed on him by Providence Hospital, and he was not allowed to come home with Ms. W. and B.S.'s father, Andre S.¹ RP 74-75.

When hospital staff voiced concerns about the parents' conduct in the hospital, the Department of Children, Youth, and Families (Department) commenced an investigation, which revealed that Ms. W. had a history with the Department regarding her older children. RP 77-

¹ A dependency was found against B.S.'s father, Andre, at a separate proceeding. CP 43. He does not appeal.

79. The Department filed a dependency petition as to B.S. on April 16, 2018, when the baby was three days old. CP 578-86.

A contested dependency trial was held in January 2019. The Department did not call any witnesses with first-hand knowledge about Ms. W.'s parenting of B.S. RP 73. Nor did the Department present any witnesses from Providence Hospital to explain the reason for the hold on B.S. following his birth. The Department also did not present testimony from Massa Bility, the social worker who drafted and signed the dependency petition in April 2018. CP 585.

The Department only presented testimony of social work supervisor George Nelson, who never attended a single meeting with Ms. W. or observed her parenting. RP 73. The Department also moved to admit findings from a previous order terminating Ms. W.'s parental rights to B.S.'s three older siblings; at the time of the Department's motion, this order was still on appeal. RP 6-9.²

² The previous case is No. 78195-2-I. The termination of parental rights matter as to the older children, S.R.P.W., K.R.T.W., and K.R.-K.W., went to trial in January 2018. The Court of Appeals affirmed the termination order on January 14, 2019, and a motion for reconsideration was denied on March 4, 2019. Ms. W. filed a motion for discretionary review in this Court on April 1, 2019, and review was denied on May 16, 2019 (mandate issued August 2, 2019).

Ms. W. objected to the admission of the findings and the petition from the previous termination, but the court admitted 16 exhibits from the previous case. RP 7-9; Ex. 1-16.

At the conclusion of the trial, the court stated that “but for the fact that you have some findings from this termination case,” the court would not have found a dependency. RP 139. The court believed it was bound by the previous findings, although it stated that “absent those findings, there is no way there would be sufficient evidence in this case for the court to find a dependency.” RP 143 (emphasis added).

Ms. W. appealed the trial court’s order of dependency. On December 30, 2019, the Court of Appeals Commissioner affirmed the trial court’s order (Appendix A). On July 1, 2020, the Court denied Ms. W.’s motion to modify (Appendix B). Ms. W. seeks this Court’s review. RAP 13.4(b)(1).

V. ARGUMENT

This Court should grant review where a Court of Appeals decision is in conflict with a decision of this Court. RAP 13.4(b)(1).

This Court should grant review, as the Court of Appeals decision is in conflict with decisions of this Court. RAP 13.4(b)(1).

1. The Court of Appeals decision offends due process and, as such, is in conflict with decisions of this Court.

As discussed in the opening brief, it is well established that parents are entitled to due process in dependency proceedings. E.g., In re Welfare of Luscier, 84 Wn.2d 135, 137, 524 P.2d 906 (1974); In re Myricks, 85 Wn.2d 252, 533 P.2d 841 (1975).

A child is dependent if he or she: (1) has been abandoned; (2) has been abused or neglected by a person responsible for his or her care, or (3) has no parent or guardian capable of caring for him or her such that the child's current circumstances constitute a risk or substantial damage to the child psychologically or physically. RCW 13.34.030(6). In re Dependency of Schermer, 161 Wn.2d 927, 943, 169 P.3d 452 (2007). A trial court's findings of fact entered following a dependency hearing must be supported by substantial evidence in the record, and must, in turn, support the trial court's conclusions. In re Dependency of C.B., 79 Wn. App. 686, 692, 904 P.2d 1171 (1995), review denied, 128 Wn.2d 1023 (1996).

A finding of dependency requires proof of present parental deficiencies. In re the Matter of the Welfare of Walker, 43 Wn.2d 710, 715, 263 P.2d 956 (1953). In Walker, the Court noted, “an existing ability or capacity of parents to adequately and properly care for their children is inconsistent with the status of dependency.” Id.; see also In re the Welfare of Watson, 25 Wn. App. 508, 512-13, 610 P.2d 367 (1979).

2. Without the improperly admitted evidence concerning the older siblings, “there [was] no way there would be sufficient evidence” for a dependency as to B.S., as the trial court said.

Although it is accurate that a trial court may consider prior parenting history, a finding of dependency must be based on proof of a parent’s *present* inability to care for her children. Walker, 43 Wn.2d at 715; Watson, 25 Wn. App. at 512-13. Accordingly, the Department had to prove Ms. W. was *presently* unable to adequately care for her baby son, “such that the child is in circumstances which constitute a danger of substantial damage to [his] psychological or physical development.” RCW 13.34.030(6)(c); accord In re Dependency of Brown, 149 Wn.2d 836, 72 P.3d 757 (2003).

The trial court admitted that it relied on termination findings from a separate proceeding, regarding different children with completely unrelated needs. CP 44-46. The court also conceded that “but for” these previous findings, the court would not have found B.S. dependent. RP 139. This reliance on findings from a separate proceeding – particularly one which was not final – violates due process.

The court’s discretion at a dependency proceeding “does not permit juvenile courts to disregard evidence rules, especially where the deprivation of parental rights is involved.” In re Welfare of X.T., 174 Wn. App. 733, 738, 300 P.3d 824 (2013) (reversing dependency order for lack of substantial competent evidence). As in X.T., without the improperly admitted findings from the previous termination case and improper and uncorroborated hearsay testimony offered by the Department, the Department presented “scant evidence” B.S. was a dependent child. Id. at 739.

3. The application of collateral estoppel was improper and should be reviewed by this Court.

The trial court’s incorrect determination that it was bound by the previous termination court’s findings due to collateral estoppel was

affirmed by the Court of Appeals. CP 44; Appendix A. This should be reviewed by this Court.

Collateral estoppel applies only where a prior proceeding: 1) involved the identical issue; 2) resulted in a final judgment on the merits; 3) involved the same party; and 4) will not work an injustice as applied. In re Moi, 184 Wn.2d 575, 580, 360 P.3d 811 (2015). Other than involving identical parties, none of the remaining three criteria are met.

First, the issues or elements in a termination trial are not identical to those in a dependency; the two proceedings are based upon two entirely different statutes. Compare RCW 13.34.180 and RCW 13.34.030(6)(c). The Court of Appeals determined the “more demanding” requirements under the termination, compared with the dependency statute, resolved this criterion. Appendix A at 12. But even if this Court accepts this reasoning, the inquiry does not end there.

The issues adjudicated in the two trials here involved different issues – indeed, the two cases involved different children altogether. It is important to recall that the statutes in Title 13 are child-specific. Matter of K.M.M., 186 Wn.2d 466, 490, 379 P.3d 75 (2016) (when considering parental fitness, courts consider a parent’s capabilities to parent “the particular child given the child's specific, individual

needs”). The older three children involved in Ms. W.’s previous termination case had “many special needs.” In re Matter of the Dependency of S.R.P.W., 7 Wn. App.2d 1012, 2019 WL 181996 *7 (2019).³ There was no evidence presented at this trial that B.S. had special needs or that Ms. W. was incapable of parenting him. Rather, the evidence showed Ms. W. was appropriate with B.S. during visits, both in the community and supervised, and there was no evidence of substantial risk to this entirely separate child. RP 56-62.

Our courts strictly construe the requirement that collateral estoppel only applies to those issues which “were actually and necessarily litigated” in the prior action. Henderson v. Bardahl International Corp., 72 Wn.2d 109, 118, 431 P.2d 961 (1967). Because there was no identity of issues, the court erred when it applied collateral estoppel, and the Court of Appeals affirmance is in conflict with decisions of this Court. RAP 13.4(b)(1).

Second, the prior adjudication was not a final judgment on the merits at the time the Superior Court applied collateral estoppel. See Moi, 184 Wn.2d at 580. At the time of the dependency trial in January

³ This opinion has no precedential value and is cited solely to assist the Court. GR 14.1.

2019, the previous termination trial was still on appeal. In re S.R.P.W., 7 Wn. App.2d 1012, at *6. The Court of Appeals issued an unpublished opinion affirming the order of termination on January 14, 2019. Id. Ms. W. moved for reconsideration of the Court’s opinion on February 1st. That motion was denied on March 4th. Ms. W. moved for discretionary review in this Court on April 1, 2019. See Dependency of S.R.P.W., No. 97034-3. This Court denied review on May 16, 2019, and the mandate issued on August 2, 2019, when the case became final.

The Superior Court applied collateral estoppel to the previous termination findings on February 8, 2019, when that order would not become a final judgment on the merits for almost six more months – until the Supreme Court denied review and the mandate issued in August. The Court of Appeals determined that the order terminating Ms. W.’s rights “was sufficiently final to be accorded conclusive effect.” Appendix at 12. The court erred by applying the collateral estoppel doctrine.

Third, a court errs when it applies collateral estoppel where it works an injustice. See Moi, 184 Wn.2d at 580. Not only was the prior termination of parental rights case still on appeal, but the issue on

appeal was whether the Department had accommodated Ms. W.'s cognitive disabilities and special needs when it provided parenting services. In re S.P.R.W., 7 Wn. App.2d 1012 (2019). Ms. W. testified at this dependency trial about the ways in which her life had improved since the previous trial regarding her older children, including her maintaining an apartment and attending counseling. RP 18-19. She also described how she was “never given a chance” to parent B.S. “because my previous kids got terminated.” RP 18.

The trial court found that “absent those [previous] findings, there is no way there would be sufficient evidence in this case for the court to find a dependency.” RP 143. For this reason, and because the criteria required for the proper application of collateral estoppel were not met, violating due process, the Court of Appeals affirmance of the order of dependency should be reviewed by this Court. RAP 13.4(b)(1).

VI. CONCLUSION

For the reasons set forth above, Sharrah W. respectfully requests that this Court grant review under RAP 13.4(b).

DATED this 27th day of July, 2020.

Respectfully submitted,

s/ Jan Trasen

JAN TRASEN (WSBA #41177)
Washington Appellate Project-(91052)
Attorneys for Petitioner

APPENDIX A

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In the Matter of the Dependency of B.S., D.O.B. 04/13/18,)	
)	No. 79714-0-I
A Minor Child.)	
)	COMMISSIONER'S RULING
STATE OF WASHINGTON,)	ACCELERATING REVIEW AND
DEPARTMENT OF CHILDREN,)	AFFIRMING DEPENDENCY
YOUTH, & FAMILIES,)	
)	
Respondent,)	
)	
v.)	
)	
SHARRAH WOOD,)	
)	
Petitioner.)	
_____)	

Sharrah Wood seeks accelerated review of the trial court order finding her son B.S. dependent. For the reasons stated below, review is accelerated and the dependency is affirmed.

B.S., born in April 2018, is the son of Sharrah Wood and Andre Slaughter.^{1,2} Two days after B.S.'s birth, the Department of Children, Youth, and Families³ (Department) received an intake referral from hospital staff based on

¹ On November 18, 2018, the trial court entered an order finding B.S. dependent as to his father. The father is not a party to this appeal; he was present for the mother's dependency trial.

² Except where noted, the mother either did not assign error to the findings of fact or she failed to present argument challenging them. An assignment of error unsupported by argument is waived. In re Welfare of L.N.B.-L., 157 Wn. App. 215, 242, 237 P.3d 944 (2010)

³ The dependency petition was filed by the then-named Department of Social and Health Services.

concerns about the mother's and father's behavior following the birth.⁴ An administrative hold was placed on B.S. for the Department to investigate.⁵ The hospital was unaware of the mother's history with the Department,⁶ which involves four other children who have been the subject of other dependencies.

K.A.W. (born in November 2007) was a dependent child. The mother engaged in no services to remedy her parental deficiencies, resulting in termination of her parental rights. K.A.W. has been adopted.⁷

K.R.T.W. (born in February 2011), S.P.R.W. (born in March 2012), and K.R.-K.W. (born in February 2013) were removed from the mother's care in December 2015 based on alleged parental deficiencies, including chronic neglect, mental health concerns, and lack of supervision, parenting skills, and stable housing. In April 2016, the mother agreed to dependency. The children remained in out-of-home care until the termination trial in January 2018.⁸ During this dependency the Department offered the mother the following services: parenting classes; a psychological evaluation with a parenting component; parent coaching (Family Preservation Services); individual counseling; drug and alcohol evaluation; and random urinalysis (UAs).⁹ The mother partially completed a psychological evaluation. The evaluator provided a report in September 2017

⁴ The concerning behavior included the mother asking for more medication than typical for a caesarean section and security concerns based on the parents' questions about what happened if a child's identification bracelet was removed and the parents left.

⁵ Findings of fact 2.2.18.

⁶ RP 75, 125-26.

⁷ Finding of fact 2.2.6.

⁸ Findings of fact 2.2.7, 2.2.8, 2.2.9.

and diagnosed the mother with posttraumatic stress disorder with dissociative symptoms, other specified personality disorder with mixed personality features, and borderline intellectual functioning. The evaluator reported that the mother has complex trauma resulting from multiple events over the course of her life. The evaluator recommended that the mother engage in counseling to begin addressing basic issues, including learning to identify emotions, form insight, and recognize the impact her behavior has on others. The evaluator also recommended job training through the Department of Vocational Rehabilitation (DVR). The Department offered a referral to DVR, but the mother refused to participate.¹⁰ The evaluator also recommended a domestic violence support group.

In March 2017, the Department filed a petition to terminate the mother's parental rights to K.R.T.W., S.P.R.W., and K.R.-K.W. At the several day termination trial in January 2018, the court heard testimony from the mother, a Department social worker, a child's counselor, a chemical dependency provider, two visitation supervisors, and a psychologist. The court also considered more than 60 exhibits. At the conclusion of the evidence, the court entered more than 200 findings of fact and terminated the mother's parental rights to all three children. The court found that the mother was unfit to parent and that even if she were to actively participate in services and achieve the best possible progress, it

⁹ Finding of fact 2.2.10.

¹⁰ Findings of fact 2.2.11, 2.2.12, 2.2.13.

would take two years to reunify with the children. The court also found that the mother has a profound distrust of the Department and she would not work toward fixing things.¹¹ This court affirmed the termination on appeal, rejecting the mother's arguments that the Department failed to accommodate her disability and provide appropriate services. Among other things, the court noted evidence that the mother was terminated from parenting classes due to too many absences, she was uncooperative in completing a psychological evaluation, she attended only a limited number of mental health/counseling sessions despite multiple referrals, she refused to work with parenting coaches, she did not complete UAs or a drug/alcohol evaluation, she did not follow up with housing referrals, and she was unaware of the children's many special needs.¹²

B.S. was born just two months after the entry of the order terminating the mother's parental rights. As noted above, B.S. was removed from the parents' care two days after birth based on an administrative hold. The Department determined that the parents were not capable of parenting B.S. and filed a dependency petition the following day (April 16, 2018) under RCW 13.34.030(6)(c) (no parent capable of providing adequate care such that the child is in circumstances constituting a danger of substantial damage to the child's psychological or physical development). B.S. remained in out-of-home care for

¹¹ Finding of fact 2.2.14.

¹² In re Dep. of S.R.P.W., 7 Wn. App. 1012 (January 14, 2019). No. 78195-3-I, 2019 WL 181996.

the next eight months leading up to the dependency trial, which took place on January 23, 2019.¹³

At trial, the court heard testimony from the mother; Victoria Metcalf, a Department social worker who transported B.S. to and from visits; George Nelson, a Department social worker who supervised the assigned social worker; the mother's sister, who was a placement for B.S. for a short period of time; and a relative of the mother. The court also considered a report of the guardian ad litem. The mother testified that she was prepared to have B.S. go home with her immediately and that she did not know why her other children were no longer in her care. She recalled participating in a psychological evaluation but did not recall what the evaluator recommended. She recalled the shelter care hearing but did not recall agreeing to services. Her first UA shortly after B.S.'s birth was positive for pain medication after her caesarean section. She provided one clean UA and thought no additional ones were warranted. She testified that she had been participating in counseling with Ashley Flowers at Compass Health twice a month and that it had been helping her to have a more positive attitude about some things. She had not signed a release but was willing to do so. She had taken no mental health medications in the last year. She had twice weekly two-hour visits. She testified that B.S. did not cry much during visits. She testified that she was willing to have a parenting coach at her home.

¹³ The dependency trial was continued several times for reasons outside the control of the mother or the Department, resulting in an unusually long time between filing the petition and trial. Finding

Nelson, the social worker supervisor, had seen the mother with B.S. for brief periods but had not formally observed a visit. He testified that B.S. cried during most of the visits and sometimes refused bottles, but B.S. did not show these concerns in the foster home, where he was easily soothed. Nelson testified about the services offered to the mother, the limited extent to which she had participated, and her parental deficiencies.

The court admitted as exhibits the findings and conclusions from the prior termination and ruled that collateral estoppel applies, reasoning that the findings and conclusions are not hearsay and were the product of a contested fact finding where the parties introduced evidence consistent with the rules of evidence and had the opportunity for cross-examination.¹⁴

Regarding UAs, the court found that the mother was ordered to provide UAs; that the Department made multiple referrals and made considerable efforts to offer UAs at times and locations convenient for the mother; that the mother provided one UA shortly after B.S.'s birth, which was positive for opiates; that the mother reported the result was from prescribed pain medication, but she did not provide documentation of a prescription; and that other than the one positive UA and possibly a second clean UA, despite the Department's referrals and the court order, the mother provided no other UAs.¹⁵

of fact 2.2.25.

¹⁴ Finding of fact 2.2.15, 2.2.16.

¹⁵ Findings of fact 2.2.26, 2.2.27, 2.2.28, 2.2.29, 2.2.30, 2.2.31, 2.2.32.

Regarding parenting education, the court found that the Department referred the mother to parenting classes; that the mother attempted to attend but learned the class was intended for older children; that the Department then referred the mother for individualized, one-on-one parenting instruction (Project Safecare) during visitation; that the mother refused to participate unless the length of her visits was expanded; that the mother brought a motion to expand visits, which the trial court denied; and that the mother never engaged in parenting education.¹⁶

Regarding counseling and mental health treatment, the court found that the mother completed none of the services recommended by the evaluator; that prior to trial the mother had not informed the court, the Department, or the GAL that she was attending counseling; that the mother had not signed a release to permit the Department or GAL to obtain information about the counseling; that the mother signed a release for the GAL at the conclusion of the trial; that no information was provided to the court that any work the mother completed with Flowers had any impact on her parental deficiencies.¹⁷

Regarding the mother's living arrangements, the court found that the mother continues to be in a relationship with B.S.'s father; that the court previously found he is not a capable parent for B.S.; that the mother testified they moved into an apartment the prior month; that she had not reported this to the

¹⁶ Findings of fact 2.2.34, 2.2.35, 2.2.36, 2.2.37, 2.2.38.

¹⁷ Findings of fact 2.2.39, 2.2.40, 2.2.41, 2.2.42, 2.2.43, 2.2.44.

Department; that the mother did not know her address or the cost of rent; and that the Department had not inspected the home to assess its suitability.¹⁸

Regarding visitation, the court found that the mother visited B.S. consistently during the dependency. From April to November 2018, i.e. from B.S.'s birth to two months before trial, the parents had unsupervised visitation, but in November 2018 the court ordered that visitation be modified to supervised to protect the child's health, safety, and welfare. ("The parents' failure to comply with court orders, including but not limited to UAs, combined with the failure to cooperate and demonstrate good parenting skills, makes supervision necessary. Visitation may not be increased/liberalized until (1) mother provides 7 clean UAs (2) mother meets with AGAL (3) mother engages in all recommended services.")¹⁹

The court entered the following challenged findings:

2.2.21 The Department did not have the opportunity to offer services to the family between [B.S.'s] birth on April 13, 2018, and [B.S.'s] removal from the parents' care via administrative hold on April 15, 2018.

2.2.22 The services that the Department offered during the prior dependency, which were offered during the year prior to [B.S.'s] birth and while the mother was pregnant with [B.S.], constitute part of the reasonable efforts made to prevent the removal of [B.S.].

2.2.23 Had the mother taken advantage of the services offered during the prior dependency, those services could have addressed the deficiencies in

¹⁸ Findings of fact 2.2.50, 2.2.51. The court also found that that the mother does not work and that her sources of income are SSI, public benefits, and the father's SSI. Findings of fact 2.2.52, 2.2.53.

¹⁹ CP 162-63

that case, and also would have remedied deficiencies regarding the new child to be born.

...

2.2.45 The Department made reasonable efforts to prevent or eliminate the need for removal of the child from the child's home, but those efforts were unsuccessful.

2.2.46 The mother remains unable to adequately understand the child's needs and care for them.

2.2.47 The mother continues to have the same issues that she had at the January 2018 termination trial. She has not addressed them. She presents the same threat to this child's safety and welfare.

2.2.48 The mother has not demonstrated a capacity to meet [B.S.'s] basic needs.

2.2.49 The mother's parental deficiencies remain mental health, possible substance abuse, and lack of understanding of appropriate parental functions and how to care for the child.

...

2.2.56 The child has no parent . . . capable of adequately caring for the child, such that the child is in circumstances which constitute a danger of substantial damage to the child's psychological or physical development.

The mother appeals the finding of dependency; she does not separately appeal the disposition. A dependency is a preliminary proceeding that does not permanently deprive a parent of rights.²⁰ Dependency proceedings are designed to protect children from abuse and neglect, help parents alleviate problems that led to State intervention, and reunite families if appropriate.²¹ To find a child

²⁰ In re Welfare of Key, 119 Wn.2d 600, 609, 836 P.2d 200 (1992).

²¹ Key, 119 Wn.2d at 609; In re Interest of J.F., 109 Wn. App. 718, 728, 37 P.3d 1227 (2001); In re Dep. of A.W., 53 Wn. App. 22, 27, 765 P.2d 307 (1988).

dependent, the State must prove by a preponderance of the evidence that the child meets one of the statutory definitions of dependency.²² In considering a sufficiency of the evidence challenge to a finding of dependency, the reviewing court determines whether substantial evidence supports the court's findings of fact and whether the findings support the conclusions of law. Evidence is substantial if, viewed in the light most favorable to the State, a rational trier of fact could find the facts in question by a preponderance of the evidence.²³ Clear, cogent, and convincing evidence exists when the ultimate fact at issue is "highly probable."²⁴ The deference paid to the trial judge's advantage in seeing and hearing the witnesses is particularly important in this context,²⁵ and this court does not reweigh the evidence or evaluate the witnesses' credibility.²⁶

The mother's primary argument is that the trial court erred in giving collateral estoppel effect to the findings of fact and conclusions of law from the prior termination trial.²⁷ Collateral estoppel bars relitigation of issues actually

²² Key, 119 Wn.2d at 612. RCW 13.34.030(6) provides:

"Dependent child" means any child who:

- (a) Has been abandoned;
- (b) Is abused or neglected as defined in chapter 26.44 RCW by a person legally responsible for the care of the child;
- (c) Has no parent, guardian, or custodian capable of adequately caring for the child, such that the child is in circumstances which constitute a danger of substantial damage to the child's psychological or physical development[.]

²³ In re Dep. of M.P., 76 Wn. App. 87, 90–91, 882 P.2d 1180 (1994).

²⁴ In re Dep. of K.S.C., 137 Wn.2d 918, 925, 976 P.2d 113 (1999).

²⁵ See In re Welfare of Aschauer, 93 Wn.2d 689, 695, 611 P.2d 1245 (1980) (termination of parental rights).

²⁶ M.P., 76 Wn. App. at 91.

²⁷ The mother argues that applying collateral estoppel violated due process. Because she provides no constitutional analysis, the court need not consider the argument. King Co. Dept. of

litigated in a prior proceeding. The question is whether the party to be estopped had a full and fair opportunity to litigate the issue. The answer turns on four considerations: whether the identical issue was decided in the prior action; whether the earlier action resulted in a final judgment on the merits; whether the party against whom estoppel is asserted was a party to the earlier proceeding; and whether application of the doctrine will work an injustice.²⁸

The mother argues that only the “same parties” criteria is met. She argues that the issues are different because the dependency and termination statutes are not identical and different children are involved, noting that unlike the children in the prior termination, B.S. has no special needs. She also argues that at the time of trial there was no final judgment on the merits in the prior proceeding because the termination appeal was pending. She argues that due to these factors, applying collateral estoppel constitutes an injustice. The mother also argues that the Department failed to meet its burden at the dependency trial because there were no witnesses from the hospital, the social worker who filed the dependency petition did not testify, the social worker who did testify had no meetings with the mother and did not observe visits, and there was no direct evidence from visitation supervisors. She argues that proof of current unfitness is required and that without the findings from the prior case, the evidence was

Adult and Juvenile Detention v. Parmelee, 162 Wn. App. 337, 353, 254 P.3d 927 (2011) (court declined to address due process argument unsupported by considered argument).

²⁸ In re Dep. of H.S., 188 Wn. App. 654, 660, 356 P.3d 202 (2015).

insufficient. She relies on her testimony about ways she had improved her life and ability to parent since the previous trial, including attending counseling and finding an apartment.

These arguments fail. At trial, when the Department moved to admit exhibits from the prior proceeding, the mother objected only to findings in the permanency planning and dependency review orders and specifically did not object to findings made by agreement or after a contested hearing. The findings relied on by the trial court were either agreed or the result of a contested hearing. Although the dependency and termination statutes require the Department to prove different factors with different standards of proof, the requirements for termination were more demanding, and as the trial court found, the mother had a full and fair opportunity to contest the Department's proof in the termination proceeding. The order terminating the mother's parental rights in the prior action was sufficiently final to be accorded conclusive effect.²⁹ Moreover, the factual issues regarding the mother's parental deficiencies and the Department's efforts are essentially the same.

It is well established that the mother's past parenting history is relevant to the finding of dependency.³⁰ Although the mother had started counseling, she

²⁹ See H.S., 188 Wn. App. at 661.

³⁰ See In re Welfare of Frederiksen, 25 Wn. App. 726, 610 P.2d 371 (1979) (evidence of parental deficiencies that resulted in harm to siblings and of remedial services offered relevant at fact-finding trial regarding child removed at birth); In re Welfare of Ross, 45 Wn.2d 654, 657, 277 P.2d 335 (1954) (entire record of parenthood is open to investigation and inquiry in termination of parental rights fact-finding

testified that it was helping her have a more positive attitude about some things; she neither testified nor provided any evidence that the counseling was related to her parenting skills or mental health diagnoses, and the trial court found there was no evidence the counseling had any impact on her parenting abilities. It was undisputed that as a young infant, B.S. was vulnerable and needed at least adequate basic care.³¹ “A dependency finding need not be based on proof of actual harm but can rely instead on a danger of harm.”³²

Many of the key findings are unchallenged, and the challenged findings are supported by substantial evidence. And given the mother’s history of parental deficiencies leading to termination of her parental rights to four children, her demonstrated lack of insight into this history, concerns around visitations that led the court to change it from unsupervised to supervised, and the mother’s past and ongoing failure to participate in services directed to assess and address her parental deficiencies, the trial court’s finding that B.S. is dependent under RCW 13.34.030(6)(c) is amply supported by the record.

³¹ Finding of fact 2.2.54.

³² In re Welfare of X.T., 174 Wn. App. 733, 737, 300 P.3d 824 (2013); In re Dep. of Schermer, 161 Wn.2d 927, 944, 169 P.3d 452 (2007).

No. 79714-0-1 / 14

Therefore, it is

ORDERED that review is accelerated and the dependency is affirmed.

DONE this 30th day of December, 2019.

Mary S. Neal

Court Commissioner

APPENDIX B

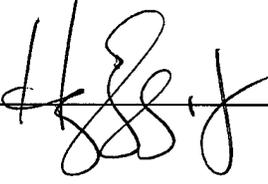
THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

In the Matter of the Dependency of:)	
)	No. 79714-0-I
B.S.,)	
D.O.B. 04/13/2018,)	
)	ORDER DENYING
Minor child.)	MOTION TO MODIFY
)	
SHARRAH WOOD,)	
)	
Appellant,)	
)	
v.)	
)	
STATE OF WASHINGTON,)	
DEPARTMENT OF CHILDREN,)	
YOUTH, AND FAMILIES,)	
)	
Respondent.)	
_____)	

Appellant, Sharrah Wood, has moved to modify the commissioner's December 30, 2019 ruling affirming the trial court's dependency and disposition orders. The State of Washington, Department of Children, Youth, and Families has filed an answer. We have considered the motion under RAP 17.7 and have determined that it should be denied. Now, therefore, it is

No. 79714-0-1/2

ORDERED that the motion to modify is denied.

 _____

 _____  _____

DECLARATION OF FILING AND MAILING OR DELIVERY

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the below date, a true copy of the **Petition for Review** was filed in the **Washington State Supreme Court** under **COA No. 79714-0-I**, and a true copy was mailed with first-class postage prepaid or otherwise caused to be delivered to the following attorney(s) or party/parties of record at their regular office or residence address as listed on ACORDS:

- respondent Rachel King, AAG
[Sara.King@atg.wa.gov]
Office of the Attorney General
[evefax@atg.wa.gov]
- appellant
- Richard Wogsland - Attorney for other party
[rwogsland@gmail.com]



MARIA ANA ARRANZA RILEY, Legal Assistant
Washington Appellate Project

Date: July 27, 2020

WASHINGTON APPELLATE PROJECT

July 27, 2020 - 4:30 PM

Transmittal Information

Filed with Court: Court of Appeals Division I
Appellate Court Case Number: 79714-0
Appellate Court Case Title: In re the Dependency of: B.S.; Sharrah Viola Wood, App. v. State of WA., DCYF, Res.
Superior Court Case Number: 18-7-00490-6

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