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NO. 98825-1

SUPREME COURT OF THE STATE OF WASHINGTON

IN RE DEPENDENCY OF B.S.,

A minor child.

**SUPPLEMENTAL BRIEF OF THE DEPARTMENT OF
CHILDREN, YOUTH, AND FAMILIES**

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I. INTRODUCTION

This child dependency case involves an infant, B.S., who was born less than two months after the juvenile court terminated the mother, S.W.'s, parental rights to her three older children. In the detailed sixteen page termination order, the court, following a five-day trial, found that Ms. W refused nearly all services for two years despite her inability to meet the older children's basic needs. After B.S.'s birth just weeks after Ms. W's rights were terminated as to the older children, hospital staff—without having received any information from the Department of Children, Youth, and Families (the Department) about Ms. W—contacted Child Protective Services out of concern for B.S.'s safety if released to her care.

Following a dependency trial as to the infant B.S., at which Ms. W and four others testified, the juvenile court found B.S. to be a dependent child. Without objection from Ms. W's attorney, the court admitted the prior termination findings as evidence, applied collateral estoppel to them, and treated them as highly relevant but not dispositive. Based on both the termination findings and subsequent evidence regarding Ms. W's inability to adequately understand and provide for B.S.'s needs as an infant child, the court found the elements of the dependency statute to be met by that a preponderance of the evidence.

Ms. W's assertion that the dependency court considered itself bound as a matter of law by the termination findings both misstates the record and misunderstands the law. The dependency court applied collateral estoppel only to the termination court's findings of fact, which it treated as relevant

but not dispositive to the dependency analysis. The law is well settled that (a) collateral estoppel (as opposed to *res judicata*) applies to determinative facts relevant to proceedings involving distinct legal claims, and (b) a parent's history with other children is relevant to the dependency analysis. Ms. W's arguments conflate the doctrines of collateral estoppel and *res judicata* and mischaracterize the dependency court's order.

In determining Ms. W's ability to care for an infant child, the court appropriately considered findings entered mere weeks before the child's birth that attested to her unfitness to parent—in conjunction with additional evidence following B.S.'s birth demonstrating her continued unfitness and lack of understanding of the court's concerns. Applying collateral estoppel to the termination findings falls squarely within the purpose of that doctrine: requiring the parties to re-litigate factual issues already resolved following a full and fair trial (at which the Department was subject to a *higher* burden of proof than a dependency case) is precisely the scenario the collateral estoppel doctrine is intended to prevent.

II. STATEMENT OF THE ISSUE

In conducting a dependency hearing for an infant, did the juvenile court err by applying collateral estoppel to—and treating as relevant, but not dispositive—findings made less than two months before the infant's birth regarding Ms. W's unfitness to parent, where those findings were made following a contested termination trial regarding her older children?

III. STATEMENT OF THE CASE

A. The Findings Underlying the Termination of Ms. W's Parental Rights to Her Three Older Children

The juvenile court terminated Ms. W's parental rights to her three older children—then four, five, and six years old—in a sixteen-page order. At the time, Ms. W was pregnant with B.S. and would give birth less than two months later. Ex. 16, at 1; CP at 41.¹ The termination followed a five-day trial at which both parties were represented by counsel and the court heard testimony from Ms. W and six others. Ex. 16, at 1-2. The court found that Ms. W was “currently unfit to parent” and even if she immediately started services, it would be a “minimum” of 18 months before she could “safely engage in unsupervised visits,” and two years to reunification. *Id.* at 12-13. But even this was unrealistic because “in over two years . . . the mother has made no progress” and it was “very clear beyond the required standard of clear, cogent, and convincing evidence that making any referrals of any kind including re-referring anything and everything that has already been done, is futile.” *Id.*

The termination court reviewed the case history in extensive detail, including the “chronic occurrence” of Ms. W being terminated from services after repeated absences and disengagement, her refusal to complete the ordered drug and alcohol assessment or a single urine analysis (UA) test, and her “intentionally ignor[ing]” service providers because they shared

¹ In addition to B.S. and the three children who were the subject of the termination order, Ms. W has two other children: an older biological child, to whom her parental rights were also terminated in an earlier proceeding and who has since been adopted, and a baby born after B.S. Ex. 16, at 13.

information with the Department. *Id.* at 4, 6. The court reviewed Ms. W’s failure to attend visits with her children and concerns during those she did attend, which required “a lot of assistance.” *Id.* at 5.

As the court found, Ms. W completed a psychological evaluation (after two prior providers refused to work with her, due to her absences and “behavior in [the doctor’s] office”) and was diagnosed with posttraumatic stress disorder with dissociative symptoms, a personality disorder, and borderline intellectual functioning. *Id.* at 7-8. The psychologist, Dr. Swing, recommended that Ms. W first engage in “any kind” of trauma-informed general counseling to address basic issues, then start specific therapy to address her trauma. *Id.* at 8. But although the Department offered counseling, Ms. W refused it. *Id.* at 9. Of the other services recommended by Dr. Swing, the Department “repeatedly” offered mental health treatment and job training, but Ms. W “refuse[d] to go,” and the Department could not provide parent-child interaction therapy because of her failure to attend visitation. *Id.* at 8-10. In fact, the court found that “no provider would accept to contract such services under the circumstances presented.” *Id.* at 8.²

² The Court of Appeals affirmed the termination order in January 2019. *In re Dependency of S.R.P.W.*, 7 Wn. App. 2d 1012, 2019 WL 181996 (Jan. 14, 2019) (unpublished). Ms. W’s motion for reconsideration was denied on March 4, 2019. She sought discretionary review in this Court, which was denied (Case No. 97034-3).

B. The Evidence Presented at B.S.’s Dependency Hearing Regarding Ms. W’s Continued Failure to Engage in Services

Ms. W gave birth to infant boy B.S. less than two months after the termination order.³ Without having received any information from the Department regarding Ms. W, hospital staff placed a medical hold on B.S. and contacted Child Protective Services based on their imminent concerns for the newborn’s safety if released to her care, including her seeming “out of it” and asking about security protocols and what would happen if she took the baby’s bracelet off. RP at 75, 125-26; CP at 121. Two days later, the Department filed a dependency petition and the court subsequently placed B.S. in shelter care. CP at 43, 452-53.

At the shelter care hearing, the court ordered Ms. W to provide random UAs; she provided one that was positive for opiates, and although she testified this was due to prescribed medication, she did not provide additional evidence supporting this. CP at 45, 454; RP at 27-28, 85-89. In November 2018, the court changed visitation from unsupervised to supervised until Ms. W could provide multiple clean UAs, meet with the guardian ad litem, and engage in recommended services. CP at 122, 162-63. She did not meet any of these conditions. CP at 122.

The court held a dependency trial on January 23, 2019. The Department called Ms. W, social worker Victoria Metcalf, and supervisor George Nelson as witnesses. RP at 2-3. Ms. W called her sister, as well as the aunt of one of her older sons. *Id.* Ms. W testified that she did not

³ The dependency court found B.S. dependent as to his father under RCW 13.34.030(6)(c) on November 1, 2018. CP 43.

understand why either B.S. or the three older children had been removed from her care, or why the court changed her visits to supervised. RP at 18, 33. She had not completed any parenting classes since B.S.'s birth, and she acknowledged that she does not trust professionals to whom the Department refers her. RP at 25-26, 39. She reported, for the first time, that she was seeing a counselor, but had not told the Department this or signed a release for the Department to speak to him. RP at 18-20. She was not engaged in mental health treatment other than counseling. RP at 21-22. Ms. W acknowledged testing positive for opiates shortly after B.S.'s birth, but said it was because of pain medication; she claimed she had taken another UA that came back clean, but refused further tests. RP at 26-28.

George Nelson, a Department supervisor who had worked on Ms. W's cases for over two years, testified that since the court entered the termination order eleven months earlier, she had made no progress. RP at 78-79. She continued to have little to no insight into her own deficiencies, remained reluctant to cooperate with the Department or engage in services, and her life continued to be characterized by "underlying chaos." RP at 77-80. She had not addressed her trauma to the point where she would be able to function as a parent, maintain structure and stability, and meet her own basic needs, let alone those of her children, "especially with a newborn." RP at 79-83. Her parental deficiencies prevented her from putting B.S.'s needs "before hers or her relationships," and from reading cues and responding in a developmentally appropriate way to B.S. RP at 83.

As for providing services, Nelson testified that Ms. W was not willing to complete UA tests, did not engage in parent education or support programs, and did not provide information to the Department. On Ms. W's request, the Department could only communicate with her in writing, and not on the telephone. RP at 93. After one parent education program was not the right fit (as Ms. W testified), the Department referred her to two alternatives. RP at 85; Exs. 18-20. Ms. W refused to participate unless her visitation with B.S. was expanded, which the dependency court had already denied. RP at 92. Visit notes were concerning: supervised visits went poorly, and B.S. cried a lot and was difficult to soothe, despite Ms. W's testimony that he rarely cried. RP at 80-82.

Nelson reported that the Department referred Ms. W to seven UA tests and she submitted only one, which was positive for opiates, and the Department never received documentation for a clean UA (despite Ms. W's testimony that she submitted one) or a prescription that would have accounted for the positive result. RP at 85-89; Ex. 17. Although the court ordered follow-up UAs multiple times, Ms. W did not complete any after the positive result, despite the Department moving the UAs to a location that was more convenient for her. RP at 90-91.

Social worker Victoria Metcalf testified about her observations transporting B.S. to unsupervised visits, including that his diaper was wet and leaking through his clothes at the end of multiple visits, and that Ms. W stumbled out of the car on one visit with an abnormal gait. RP at 60-63. She also observed that Ms. W and B.S.'s father usually arrived to the visits by

car and then drove around with B.S. in the car, despite Ms. W's testimony that neither of them had valid driver's licenses or insurance. RP at 34, 58-59. She testified that the car smelled of marijuana on one occasion. RP at 61.

Ms. W called two witnesses: her sister, who testified about her brief time as a placement for B.S., and another relative, who testified about her observation that Ms. W was a "pretty good parent." RP at 98-117. The court also considered the GAL's report, which recommended that B.S. remain in his foster placement, where he was "thriving." CP at 119, 125. The GAL noted that Ms. W was unwilling to meet with her and had not provided contact information or responded to her requests to meet. CP at 124-25.

C. The Juvenile Court Found B.S. to Be a Dependent Child

Following the dependency trial, the court found B.S. to be a dependent child. In its oral ruling, the court applied collateral estoppel to certain findings made in the termination order based on the "unique circumstances" of that order having been entered shortly before B.S.'s birth, and Ms. W failing to engage in remedial services during her pregnancy. RP at 139-40. The court found that the period prior to B.S.'s birth was relevant to determining whether a newborn child was at risk in Ms. W's care, and that the findings were admissible, non-hearsay evidence. RP at 140. The court highlighted the "striking" finding in the termination order that it would take two years or more for Ms. W to correct deficiencies even if she actually engaged in services, noting that "the evidence is at least sufficient to establish that she did not." RP at 140.

The court ruled that by a preponderance of the evidence, Ms. W continued to have the same issues during the dependency case that she had when the termination order was entered, including mental health issues, substance abuse, and lack of understanding of appropriate parental functions, and “has not addressed them.” RP at 143. She therefore “continues to represent the same threat to this child’s safety and welfare.” RP at 143. The court found that after the Department filed the dependency petition as to B.S., the Department made referrals—for UAs, including considerable efforts to come up with times and locations that would work, and parenting education—but Ms. W did not follow through, indicating that her parental deficiencies persisted. RP at 140-43. While the court found that Ms. W was in counseling, she presented no evidence that she had resolved the deficiencies that the Department had proven (and Dr. Swing had emphasized that she needed more focused therapy). RP at 142.

Following its oral ruling, the court held a dispositional hearing, RP at 147, and then entered written findings of fact and conclusions of law that had been submitted as an agreed proposed order by all parties. CP at 58-62 (emails from parties). The findings reflected the court’s application of collateral estoppel in its oral ruling, but Ms. W’s attorney did not object to the court’s use of the doctrine and specifically agreed to entry of the findings. CP at 43-44, 58. The Court of Appeals affirmed the order and denied Ms. W’s motion to modify. Pet. for Review (Pet.), App. A, B.

IV. ARGUMENT

A. Ms. W Waived Her Challenge to the Application of Collateral Estoppel by Failing to Object to It

Ms. W has waived her challenge to the dependency court's application of collateral estoppel by failing to object to it. *See* RAP 2.5(a). Following the dependency court's oral ruling, all three parties—Ms. W, the Department, and the GAL—agreed to a proposed order that specifically reflected the court's application of collateral estoppel, and Ms. W's attorney failed to raise any objection. CP at 58-62 (emails from parties). This was fully consistent with Ms. W's previous acknowledgment during the trial that the court was entitled to admit, and rely on, previous court findings (despite successfully objecting to other evidence, such as facts from the dependency petition). RP at 6-8.⁴ Following the oral ruling, Ms. W could have objected to the application of collateral estoppel at the dispositional hearing, via a motion, or through submission of an alternative proposed order, but she did

⁴ Ms. W's petition for review claims that she "objected to the admission of the findings and the petition from the previous termination," citing RP 7-9 (Pet. at 4). In fact, the cited record pages demonstrate the opposite. Ms. W's attorney objected to the court's consideration of permanency review orders and did not mention the termination findings; the court responded that facts from previous dependency petitions might not be admissible for the truth of the matter, but "actual orders, where findings were made . . . because the Court actually had some contested hearing . . . , would be" admissible, and Ms. W's attorney *agreed* with that, responding: "Correct. And I agree with that for a dependency order" (the termination order, again, was not discussed) but "[i]t's just the subsequent permanency planning review orders, those specific findings I would ask the Court not necessarily take into consideration." RP at 8. The court admitted the exhibits subject to further specific objections, but noted that petitions "don't establish anything other than these were filed and these were the allegations made." RP at 8. Ms. W's attempt on appeal to characterize this exchange as Ms. W "objecting" to the admission of the termination findings is flatly contradicted by the record,

not do so—instead affirmatively agreeing to a proposed order applying collateral estoppel.

This appeal does not fall under any of the three exceptions to RAP 2.5(a), which prevents a party from raising claimed errors for the first time in an appellate court. Insofar as Ms. W may claim that it was a “manifest error affecting a constitutional right,” *see* RAP 2.5(a)(3), she has not shown that “the outcome likely would have been different, but for the error.” *State v. Jones*, 117 Wn. App. 221, 232, 70 P.3d 171 (2003). To the contrary, even if the trial court had not applied collateral estoppel, the outcome would have been the same. The court would still have been fully entitled to rely on the termination findings as highly relevant but not dispositive evidence. Although Ms. W’s petition refers to the findings as “improperly admitted,” Pet. at 7, she fails to provide any authority for that assertion. As a court record, the termination findings are assumed to be admissible under statutory law. *See* RCW 5.44.010 (“[t]he records and proceedings of any court . . . are admissible in evidence in all cases in this state”). In addition, the Legislature has directed that “[t]he court in a fact-finding hearing may consider the history of past involvement of child protective services . . . with the family for the purpose of establishing a pattern of conduct, behavior, or inaction with regard to the health, safety, or welfare of the child on the part of the child’s parent . . . or . . . that reasonable efforts have been made by the department to prevent or eliminate the need for removal of the child from the child’s home.” RCW 13.34.110(2).

Here, the termination findings were centrally relevant to the primary issue before the court: whether Ms. W was “capable of adequately caring for the child,” RCW 13.34.030(6)(c), particularly as they reflected her ability to parent while pregnant with B.S. and therefore—as the dependency court found—were relevant to her ability to care for a newborn child. And the additional evidence submitted at the dependency trial only reaffirmed the termination findings, including Ms. W’s testimony that she had no understanding of why her children were removed from her care and the evidence demonstrating that she continued to refuse to engage in remedial services or cooperate with the Department. Further, the dependency court did not apply collateral estoppel until its oral ruling, meaning that Ms. W did in fact submit evidence during the dependency trial that may have been intended to rebut the termination findings; specifically, her testimony that she did not understand why they were entered and her relative’s testimony that she was a “pretty good parent” during that time. But she did not submit any evidence dealing with the termination court’s specific findings regarding her parental deficiencies. RP at 18, 110.

At bottom, whether it applied collateral estoppel or not, the dependency court was entitled to admit the termination findings as highly relevant but not dispositive evidence, and no evidence submitted at the termination trial called those findings into question—nor did the court indicate, at any time during the trial prior to its oral ruling, that Ms. W would be prevented from attempting to challenge those findings if she wanted to do so. There was no manifest error.

B. The Dependency Court Properly Applied Collateral Estoppel to the Findings of Fact That Had Been Made in the Termination Proceeding

Even if this Court considers Ms. W's arguments raised for the first time on appeal, the court properly applied collateral estoppel to findings in the termination proceeding for the older children. This is a question of law reviewed de novo. *Schibel v. Eymann*, 189 Wn.2d 93, 98, 399 P.3d 1129 (2017). Collateral estoppel promotes judicial economy, preserves resources entailed in repetitive litigation, and provides for finality in adjudications. *Christensen v. Grant Cnty. Hosp. Dist. 1*, 152 Wn.2d 299, 306, 96 P.3d 957 (2004) (citing *Reninger v. Dep't of Corr.*, 134 Wn.2d 437, 449, 951 P.2d 782 (1998); Philip A. Trautman, *Claim and Issue Preclusion in Civil Litigation in Washington*, 60 Wash. L. Rev. 805, 806 (1985)). It applies to "determinative facts" that were actually litigated and necessarily and finally determined in the earlier proceeding, and for which the party against whom the doctrine is asserted had a full and fair opportunity to litigate in that proceeding. *Christensen*, 152 Wn.2d at 306-07.

All of the requirements for collateral estoppel to apply were met here. As Ms. W acknowledges (Pet. at 8), the parties to both proceedings are identical. The other three elements are also met: (1) the factual findings in the earlier proceeding are identical to those in the later proceeding; (2) the earlier proceeding ended with a final judgment on the merits; and (3) applying collateral estoppel would not be an injustice. *Schibel*, 189 Wn.2d at 99. Ms. W had a full and fair opportunity to litigate specific and

highly relevant factual matters in the termination case, and cannot continue to re-litigate those matters indefinitely.

1. The dependency court applied collateral estoppel only to factual findings relevant to B.S.’s dependency

Collateral estoppel applies to “determinative facts” as well as legal issues, *Christensen*, 152 Wn.2d at 306, and here the dependency court applied collateral estoppel only to factual findings relevant to the dependency proceeding: namely, that—as of February 2018, just before B.S.’s birth—Ms. W was unfit to parent, would not work towards fixing her deficiencies, and even if she did, it would take at least two years for her to safely parent. Ex. 16; CP at 43-44.

As an initial matter, Ms. W’s contention that collateral estoppel cannot apply to findings of fact from the termination case because termination and dependency have different legal elements (Pet. at 8-9) confuses collateral estoppel—which does not require that the legal claims involved in the two proceedings be identical—with the distinct doctrine of res judicata. While res judicata is “intended to prevent relitigation of an entire cause of action,” collateral estoppel is “intended to prevent retrial of one or more of the crucial issues *or determinative facts* determined in previous litigation.” *Christensen*, 152 Wn.2d at 306 (emphasis added) (quoting *Luisi Truck Lines, Inc. v. Utils. & Transp. Comm’n*, 72 Wn.2d 887, 894, 435 P.2d 654 (1967)). Attacking collateral estoppel on the grounds that the prior proceeding could not decide the ultimate claim at issue in the second proceeding “confuse[s] claim and issue preclusion.” *Id.* at 320.

While the termination court could not have decided the dependency petition as to B.S., it properly “decided . . . fact[s] common to” both claims. *Id.*

Contrary to Ms. W’s unsupported contention (Pet. at 3), the dependency court *did not* decide “as a matter of law” (words that appear nowhere in the court’s oral or written findings) that she was unfit to parent B.S. based on the termination findings. Nor should entry of termination findings be dispositive when a dependency petition is brought regarding another child. Rather, the dependency court treated the termination findings as highly relevant—but not dispositive—to the dependency analysis, and found by a preponderance of the evidence—including evidence relating to the period following B.S.’s birth and pertaining to B.S. specifically—that she was unfit to parent her infant son. RP at 143. This new evidence included Ms. W’s lack of understanding of why B.S. was removed from her care, failure to complete any parenting classes since B.S.’s birth, positive and unexplained test for opiates directly following B.S.’s birth, failure to complete any subsequent UAs, driving with B.S. without a valid license or insurance, smoking marijuana in the car on the way to visit B.S., failure to change B.S.’s wet diaper on multiple visits, even when it soaked through his clothes, inability to put B.S.’s needs “before hers or her relationships,” inability to “read cues and respond in a developmentally appropriate way,” and lack of life structure, as especially important for a newborn. RP at 18, 25-28, 34, 58-59, 60-62, 64, 78-79, 83.⁵

⁵ While Ms. W emphasizes her testimony at the dependency trial about her life since the dependency petition, including her participation in counseling (Pet. at 10-11), she

The dependency court's treatment of the termination findings as highly relevant is correct under the law and justified by the specific facts of this case. First, as Ms. W acknowledges (Pet. at 6), the law is well settled that parenting history is relevant to the dependency analysis of whether a parent is incapable of "adequately caring for the child, such that the child is in . . . danger of substantial damage to . . . psychological or physical development," RCW 13.34.030(6)(c), and that danger may be based on the parent's prior interaction with other children. RCW 13.34.110(2); *In re Welfare of Frederiksen*, 25 Wn. App. 726, 732-33, 610 P.2d 371 (1979). In *Frederiksen*, the court affirmed a dependency finding regarding an infant taken from her mother's care at birth, despite the mother's argument that the petition should be dismissed because there was no evidence as to her parenting of the infant specifically. *Id.* at 732. The court held that the mother's treatment of her older children, proven in prior cases, provided sufficient basis for the dependency because "at the moment of birth [the infant] was in the legal custody of a mother who . . . had already damaged her two older children by neglect and failure to meet their physical, mental and emotional needs" and "when [the infant] was born to such a mother she faced a clear and present danger of suffering the same damage . . . as had already been suffered by her brother and sister." *Id.* at 733. Parenting history

ignores that the dependency court took that testimony into account but found by a preponderance of the evidence that she remained unfit to parent, noting specifically that her participation in counseling without any further information did not show that she resolved the deficiencies that the Department had proven (and Dr. Swing had emphasized that she needed more focused therapy). RP at 142.

has also long been considered relevant in the related context of a termination of parental rights proceeding. *See, e.g., In re Welfare of Ross*, 45 Wn.2d 654, 657, 277 P.2d 335 (1954); *In re Dependency of P.D.*, 58 Wn. App. 18, 27-28, 792 P.2d 159 (1990). As this Court has acknowledged, the same facts will often support a dependency and a termination proceeding, despite the differing legal standards. *In re Dependency of K.R.*, 128 Wn.2d 129, 142, 904 P.2d 1132 (1995) (Department not required to “reprove the facts supporting the dependency by clear, cogent, and convincing evidence” to terminate a parent’s rights).

Second, the facts of this case establish the relevance of the termination findings, entered weeks before B.S.’s birth, to the question of whether Ms. W was capable of adequately caring for B.S., an infant child. The termination findings—contrary to Ms. W’s claim (Pet. at 8-9)—were not limited to her ability to care for special needs children, with no relevance to her ability to parent a newborn. To the contrary, they addressed Ms. W’s unfitness to parent due to her lack of stability or structure, inability to create a positive environment for the children, lack of awareness of her behavior, limited patience or frustration tolerance, and “tendency to blame things on others, which impacts her ability to take ownership of things which . . . impacts her willingness to learn something different or more effective.” Ex. 16, at 3, 5, 7-8.

Accepting Ms. W’s argument would mean requiring re-litigation of these findings, which had already been litigated in a four-day trial with multiple witnesses, resulting in a detailed sixteen-page order reflecting the

facts as they existed just prior to B.S.’s birth. That result would render the factual findings of a termination trial essentially meaningless in future proceedings, allowing the parties to repeatedly contest the same factual issues—precisely the result collateral estoppel seeks to prevent.

2. The prior proceeding resulted in a final judgment on the merits

The termination trial resulted in a final judgment on the merits, affirmed on appeal prior to entry of the dependency order as to B.S. *In re Dependency of S.R.P.W.*, 7 Wn. App. 2d 1012, 2019 WL 181996, at *6 (Jan. 14, 2019) (unpublished). Contrary to Ms. W’s contention (Pet. at 9-10), her pending motion for reconsideration did not negate the finality of the order. As this Court has held (in a case ignored by Ms. W), “[i]n this state an appeal does not suspend or negate the res judicata or collateral estoppel aspects of a judgment entered after trial in the superior courts”; the judgment becomes final “at the beginning, not the end, of the appellate process[.]” *Nielson By & Through Nielson v. Spanaway Gen. Med. Clinic, Inc.*, 135 Wn.2d 255, 264, 956 P.2d 312 (1998).

3. Applying preclusive effect to the termination findings did not work an injustice

The final element of collateral estoppel is “rooted in procedural unfairness,” *Schibel*, 189 Wn.2d at 102, and the central question is whether the parties to the earlier proceeding “‘received a full and fair hearing on the issue in question.’” *Id.* (quoting *Thompson v. Dep’t of Licensing*, 138 Wn.2d 783, 795-96, 982 P.2d 601 (1999)); *Christensen*, 152 Wn.2d at 309. Neither of the situations in which courts have generally found an injustice

applies here. First, the prior proceeding was not an “informal, expedited hearing with relaxed evidentiary standards.” *See Christensen*, 152 Wn.2d at 309. It was a full trial on the merits during which Ms. W was represented by counsel, took the stand, called witnesses, lodged evidentiary objections, and was afforded all opportunities to be heard consistent with court rules.

Second, no disparity of relief between the proceedings existed such that Ms. W would have been “unlikely to have vigorously litigated the crucial issues in the first forum and so it would be unfair to preclude relitigation of the issues in a second forum.” *Id.* (citing *Reninger*, 134 Wn.2d at 453). To the contrary, the termination findings were central to a proceeding at which Ms. W was facing the ultimate determination of parental rights and had every incentive to vigorously litigate; at the dependency trial, the Department’s burden was lower, the dependency finding does not permanently affect any parental rights, and the Department shared the ultimate goal of reunification between Ms. W and B.S.

In sum, the dependency court appropriately did not require the parties to re-litigate factual findings concerning the circumstances that existed just before B.S.’s birth. Rather, the court appropriately admitted those findings as evidence and treated them as relevant but not dispositive. The court also heard new evidence about events since B.S.’s birth and found by a preponderance of the evidence that the parental deficiencies underlying the termination findings still existed and posed a danger to B.S., an infant child, if he were to be placed in Ms. W’s care. The court’s application of collateral estoppel was fully appropriate.

V. CONCLUSION

For the foregoing reasons, the Department respectfully requests that this Court affirm the decision of the juvenile court finding B.S. to be a dependent child.

RESPECTFULLY SUBMITTED this 15th day of October 2020.

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I hereby certify that on this date I caused the foregoing document to be electronically filed with the Clerk of the Court using the appellate electronic filing system, which will send notification of such filing to all parties of record.

I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 15th day of October, 2020.

s/ Kristin D. Jensen
KRISTIN D. JENSEN
Confidential Secretary

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