

NO. 74424-1-I

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**COURT OF APPEALS, DIVISION I  
OF THE STATE OF WASHINGTON**

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In re N.U., K.U., and D.R., minor children  
STATE OF WASHINGTON,

Respondent,

v.

AMANDA RULE,

Appellant.

FILED  
Sep 06, 2016  
Court of Appeals  
Division I  
State of Washington

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**SUPPLEMENTAL BRIEF**

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## I. SUPPLEMENTAL ASSIGNMENTS OF ERROR

### A. **Due Process Was Not Violated Because the Court Did Not Base Its Decision to Terminate the Mother's Parental Rights on the Children's Refusal to Visit with Their Mother**

The Appellant argues that the mother was not notified prior to trial that her children's desire not to visit or reunite with her was a parental deficiency that she needed to remedy. Appellant Reply at 13. Thus, the Appellant asserts that when she did not rectify this unknown parental deficiency, her rights could not be terminated because of it. *Id.* At no point in the findings of fact does the court state that if the mother had changed her children's desire not to see her, termination would not be appropriate. The court merely states that it takes into account the desires of the children in its decision, but it never cites the children's desire not to visit their mother when talking about services the mother did not complete or parental deficiencies the mother did not remedy. FF. 2.44, 2.452.58, 2.61.

In fact, the court specifically says that the dependency case has not been resolved as quickly as the children deserve because the mother did not "address or remedy her lifelong drug addiction and mental health issues." FF. 2.65. The children's desire to not visit with their

mother was simply a result of her ongoing parental deficiencies that made her appear to her children as untrustworthy. 2 RP 236.

This case is distinguishable from *Matter of B.P. v. H.O.*, \_\_\_ Wn.2d \_\_\_, 2016 WL 4054928 at \* 3 (2016) because in *B.P. v. H.O.* the mother had corrected all of her parental deficiencies and termination of parental rights was based upon the child's lack of attachment to her. *Matter of B.P. v. H.O.*, \_\_\_ Wn.2d \_\_\_, 2016 WL 4054928 at \* 3 (2016). Consequently, attachment services were necessary services. In this case on the other hand, the mother's methamphetamine addiction had not been corrected, and the mother was "at the infancy of her recovery." FF 2.40. Termination of parental rights were not based upon the mother's attachment to her children.

Since the mother's consistency problems had involved her parental deficiencies, specifically chemical dependency, she most likely would need to be making consistent progress with the required services that addressed those deficiencies before she would appear to her children as sufficiently consistent for attachment services. 1RP 111, 114. Such progress had yet to happen. FF 2.22, 2.44., RP 353-354, 403. *B.P. v. H.O.* is further distinguished because in *B.P. v. H.O.*, the Department failed to offer a service that could be immediately provided, not a service that relied upon a yet realized condition that might or might not come about.

Appellant Reply at 13-14, *Matter of B.P. v. H.O.*, \_\_\_ Wn.2d \_\_\_, 2016 WL 4054928 at \* 6 (2016).

**B. The Appellant’s Additionally Disputed Findings of Fact are Supported by Clear, Cogent and Convincing Evidence Presented at Trial**

Clear, cogent, and convincing evidence exists when the ultimate fact in issue is shown to be “highly probable.” *In re 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 testimony at trial established that all of the additionally contested findings of fact are “highly probable”.

Due to the mother's extensive history of methamphetamine addiction, being 90 days sober indicates that the mother is at the infancy of her recovery. The mother has been down this path many times in the past, only to relapse and then lie about the relapse to her providers, assessment providers, social workers, and case managers. FF 2.40, CP 647.

At trial, the mother testified that she had a long history of methamphetamine addiction, beginning when she was 11. FF 2.12. She testified that she had relapsed several times before and during the dependency proceeding. FF. 2.14, 2.30, 1 RP 54. Likewise, social worker Estrada stated that the mother had lied multiple times about her relapse and continually stated that the positive UA results were not hers. 2 RP 237, 257. In 2015, the mother provided the Valley Cities intake worker a narrative about her chemical dependency history that did not match with

her sworn statements at trial. FF 2.27. She also did not disclose her true addiction history to the Hope Place treatment facility when she was admitted in 2012. FF 2.18, Ex. 41. Lastly, the mother confessed that she had lied many times to chemical dependency providers in the past concerning what was really going on in her life. 4 RP 474.

Ms. Rule's inability to make measureable progress in the past forty-two months of this dependency, clearly demonstrates there can be little expectation that she will complete her services, including all necessary counseling, within the next six months. FF 2.49, CP 648.

At trial, there was testimony that the mother had made some efforts to engage in her ordered services over the life of the dependency, but at the time of trial she was still at the beginning of the process. FF 2.22, 2.44, 3 RP 353-354, 403. She has displayed a pattern of unpredictably, beginning services and then failing to finish them. FF 2.16. The mother testified that the thing that had changed for her was that she was internally motivated to improve herself for her children. 1 RP 46, 2 RP 474. But she could not articulate how that difference would actually bring about her success in completing services. 4 RP 474.

Even 42 months after entry of the dispositional order, the mother was just beginning to take the initial steps to address her parental deficiencies and no testimony was presented that the mother's deficiencies had independently greatly improved while she failed to engage in services

throughout the life of the dependency. FF 2.22, 2.44., 3 RP 353-354, 403.

D.R. has vocally expressed a strong desire not to return to her mother. K.U. is somewhat neutral, but has expressed fear of his mother. C.U. is too young to express a clear opinion, but does know that he wants to be with his older sister and brother. The wishes of the children have been taken into consideration by the court. FF 2.59, CP 649.

At trial, there was sworn testimony from social worker Estrada that these statements were made by the children. 2 RP 236. Social worker Watson also testified that she conveyed to the mother that the children did not wish to visit with her, but that she would continue to ask them if they had changed their mind. 2 RP 304. Social worker Watson also testified that she worked with the mother in helping her craft letters to her children. 2 RP 304-306. There was no evidence presented at trial to contradict this testimony by both social workers.

Social Worker Vilma Estrada set up in person visits between the mother and the children in July 2015, but the children refused to go to the visits. FF 2.60, CP 649.

The mother testified that right after the children returned from Virginia, she had one visit with them at the DSHS office and was scheduled to have a subsequent visit, but that she failed to appear. 1 RP 85, 112. Social worker Estrada testified that the children did not want to attend visits with their mother after she neglected to appear, and in fact, visits did not occur again. 2 RP 240. The children refusing to visit with

their mother comports with social worker Watson's trial testimony of working with the mother to compose letters to reintroduce her to the children when they did not want to see her in person. 2 RP 304-306.

## II. CONCLUSION

For all the reasons above and those stated in the previous response, the Department respectfully requests that the trial court's order terminating the mother's parental rights be affirmed.

RESPECTFULLY SUBMITTED this 6<sup>th</sup> day of September, 2016.

  
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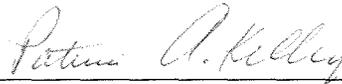
## CERTIFICATE OF SERVICE

The undersigned certifies under the penalty of perjury under the laws of the State of Washington that on the below date, the original documents to which this Declaration is affixed/attached, was filed in the Court of Appeals, Division One, under Case No. 74424-1-I, and a true copy was e-mailed or otherwise caused to be delivered to the following attorneys or party/parties of record at the e-mail addresses as listed below:

1. David Donnan, Washington Appellate Project, [wapofficemail@washapp.org](mailto:wapofficemail@washapp.org) and [david@washapp.org](mailto:david@washapp.org)
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I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 6<sup>th</sup> day of September, 2016, at Seattle, WA.

  
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