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The slip opinion that begins on the next page is for a published opinion, and it has since been revised for publication in the printed official reports. The official text of the court’s opinion is found in the advance sheets and the bound volumes of the official reports. Also, an electronic version (intended to mirror the language found in the official reports) of the revised opinion can be found, free of charge, at this website: <https://www.lexisnexis.com/clients/wareports>.

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In the Office of the Clerk of Court
WA State Court of Appeals, Division III

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

In the Matter of the Dependency of)
)
R.L.L.)
)
)
) OPINION PUBLISHED IN PART

STAAB, J. — In these consolidated appeals, we consider the superior court’s shelter care order and subsequent dependency order pertaining to K.H.¹ and her infant R.L.L. In the published portion of this decision, we hold that the superior court erred in considering facts outside the record when determining the credibility of evidence presented at the shelter care hearing. In the unpublished portion of the opinion we affirm the trial court’s order of dependency. Since the dependency has been ordered and affirmed, the shelter care order becomes moot.

SHELTER CARE HEARING

1. BACKGROUND

On April 13, 2022, the Mother gave birth to R.L.L. At the time of R.L.L.’s birth, the Mother was involved in a five-year dependency case pertaining to her older child,

¹ For clarity reasons, I will refer to K.H. as the Mother to distinguish her from her oldest son, K.J.H.

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K.J.H., based on findings of lack of supervision, substance abuse, and mental health issues that made her unavailable to parent R.L.L. The Mother was ordered to complete services including substance abuse and mental health services, random drug testing, parenting classes, and safe and stable housing. At the time of R.L.L.'s birth, the Mother had not remedied her primary deficiency concerning substance abuse and was not in compliance with treatment or testing.

The Department of Children, Youth and Families filed a dependency action pertaining to R.L.L. before the child left the hospital. The Department alleged that the Mother had "untreated mental health concerns, historical concerns that include exposing her children to unsafe adults and unsafe situations, lack of supervision, and Substance Use Disorder (SUD) (Methamphetamines) leading to neglect of her children." Clerk's Papers (CP) at 3. The Department further alleged there was no parent capable of providing adequate care to R.L.L. and sought out-of-home placement and supervised visits for the parents.

On April 20, the court held a shelter care hearing. The Mother and "presumed" father appeared and were represented by counsel. The social worker assigned to K.J.H.'s dependency case testified that the Mother had not remediated the deficiencies identified in the K.J.H. dependency. The social worker provided details of the numerous times the Mother started treatment and the progress she made before the treatment files were closed for lack of engagement and relapse. The last time the Mother engaged in treatment was

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September 2021. Despite being ordered to provide drug testing, the only known UA² provided by the Mother during her pregnancy with R.L.L. was a negative test early in the pregnancy.

When the social worker became aware that the Mother was pregnant with R.L.L., he made several unsuccessful attempts to contact the Mother. The Mother cancelled all scheduled appointments with the social worker during her pregnancy. Two months prior to R.L.L.'s birth, the social worker made an unannounced visit and was able to contact the Mother at her apartment. During this visit, the Mother would not allow the social worker into her home and refused a request for a cheek swab to check for substance use.

The social worker acknowledged that when he visited the Mother and R.L.L. in the hospital the week prior to the April 20, 2022 shelter care hearing, the Mother was breastfeeding and the social worker did not note any apparent concerns. The social worker also spoke with the Mother's physicians and attending nurses who told the social worker that they did not have any concerns about the Mother or R.L.L. who was healthy at birth. They advised that the Mother had received consistent prenatal care during her pregnancy. The social worker also relayed that the Mother's urine and the child's umbilical cord were tested for substances and both returned negative. One of the hospital

² Urinalysis.

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physicians told the social worker that the umbilical cord test window for substances was approximately 20 weeks.

The social worker also testified that the presumed father was also not an available parent due to unresolved deficiencies in a prior dependency, a history of substance use and domestic violence, and a founded finding of sexual abuse of his stepdaughter from a prior marriage. The Mother testified that she was no longer in a romantic relationship with the presumed father.

The social worker testified that he believed that releasing R.L.L. to the Mother would present a serious threat of substantial harm to the child because of the Mother's inability to stay clean and sober for any protracted period of time. The social worker noted that when she was using, the Mother failed to properly supervise K.J.H. and would expose him to unsafe situations.

The Mother called H.P., the current guardian of the Mother's older child K.J.H. The guardian testified that she met the Mother and K.J.H. when she was K.J.H.'s special education kindergarten teacher six years earlier. The guardian testified that she has a bachelor's degree in child studies and psychology. Prior to becoming a teacher, she had worked for Catholic Charities providing training for different parenting programs. She then returned to school to get her teaching degree and earned a master's degree in special education. At the time of the shelter care hearing, she was the director for a charity and an instructor for an early childhood education program.

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The guardian testified that she maintained a good relationship with the Mother. During the Mother's pregnancy, the guardian visited with the Mother approximately two times a month. She had visited the Mother's home the night before R.L.L. was born and found it appropriately furnished for a new born baby. She did not see any evidence of a male living or staying in the apartment. During and after R.L.L.'s birth, the guardian spent a significant amount of time with the Mother and R.L.L. She testified that the Mother bonded with R.L.L. immediately. The guardian opined that separating the Mother from R.L.L. would interrupt the bonding and be detrimental to R.L.L.'s development.

The Mother also testified at the shelter care hearing. She indicated that she received prenatal care throughout the pregnancy and had been feeding and caring for R.L.L. since she was born. The Mother testified that she had completed 24 weeks of parenting classes during K.J.H.'s dependency and was sober and doing well. With respect to K.J.H., the Mother testified that she was supporting the guardianship because K.J.H. had bonded with his guardian, was doing well in school, and the guardian was maintaining a healthy relationship with the Mother.

The Mother explained that on the day the social worker showed up unannounced she was on her way to meet her son, and since she had just eaten she believed that she would have to wait before taking the swab test. In addition, the Mother indicated that she was not participating in services ordered by the dependency because she was supporting

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the guardianship and believed the dependency was coming to an end. The Mother acknowledged her diagnosis of posttraumatic stress syndrome, generalized anxiety disorder, borderline personality disorder, and substance use disorder. The Mother testified that she would do whatever it took to keep R.L.L.

At the conclusion of the hearing, the court entered a shelter care order removing R.L.L. from the Mother's care. On the record, the court indicated its concerns about the presumed father and expressed doubt on whether the Mother would resume a relationship with the presumed father, noting that even though the Mother testified they were no longer in a relationship, "everybody says that. You know, this is not the first time I've heard this. I mean it happens all the time." Report of Proceedings (RP) (Apr. 20, 2022) at 112.

Although the court believed the Mother was clean and sober at the time of the hearing, the court also recognized that the Mother had two other children who were not in her care. With respect to the Mother's substance use, the court expressed its skepticism of the umbilical cord testing based on testimony in another case:

There was testimony by [the social worker] about the umbilical cord. I want to say this. I recall some medical testimony previously that that doesn't mean that there was not methamphetamine use or drug use. I mean it doesn't. I mean I've—it's an indicator that maybe that's the case, but I've also heard medical testimony that that doesn't always mean, you know, that—that they weren't using. So, I'm just—I'm not saying that I think that I'm just saying that I'm not sure that that's like a solid proof. At least not

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to me it's not, because we didn't have any medical providers testify about that.

RP (Apr. 20, 2022) at 113.

Additionally, the court relied on testimony from a prior hearing in the dependency with K.J.H., to indicate its concerns about the veracity of K.J.H.'s guardian and former kindergarten teacher, who advocated strongly for the Mother:

[T]he other issue is [the guardian] testifies for you and I think it's so great that she's your advocate, but I remember her pushing, pushing, pushing for you to have [K.J.H.] and you were actively using back then. So, I think that she's very emotionally involved in this case. I think she cares deeply about you. And I think she's a great advocate for you, but I'm just—I don't know. You know, I'm not sure how much that weight really goes. I mean she clearly has a lot of education when it comes to children and I appreciate all of that, but yeah. I'm just not 100% confident about that.

RP (Apr. 20, 2022) at 113.

Finally, the court indicated that the Mother had been unable to comply with services in the prior dependency, and this failure to comply left the court with doubts on the Mother's ability to comply with services in R.L.L.'s dependency. While acknowledging the difficulty presented by the evidence, ultimately the court expressed doubt that the Mother would stay away from the presumed father, would stay clean and sober, and would keep R.L.L. safe.

We granted discretionary review of the April 20, 2022 shelter care order and requested the parties brief whether and to what extent during a shelter care hearing a

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judge may take judicial notice of facts outside of the record and/or rely on the judge's own memory from a prior proceeding.³ This appeal of the shelter care order was consolidated with the Mother's direct appeal of the order of dependency.

2. ANALYSIS

We granted discretionary review of the court's shelter care order issued on April 20, 2022. The Mother contends that the superior court erred by considering evidence outside the record and by considering facts pertaining to the dependency of her other child, K.J.H. The State concedes that the court erred in considering some evidence outside the record, but argues that because a dependency had been established, the shelter care order is moot. We agree that the court erred in considering outside evidence, but we also agree that the issue is moot in light of our decision below on the dependency order.

During a fact-finding hearing, judges may take notice of undisputable facts and may apply their own common sense based on experience, but judges cannot consider evidence outside the record. For example, judges may take judicial notice of some adjudicative facts when they are "not subject to reasonable dispute." ER 201(b). Such

³ The Mother has sought discretionary review of the superior court's shelter care order from April 2022. The Mother subsequently filed two additional notices of discretionary review seeking review of a June 17, 2022 order authorizing continued shelter care, and a July 13, 2022 order regarding visitation. Ultimately, we granted discretionary review of the shelter care order and denied discretionary review of the other two orders.

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facts may include facts that are generally known within the trial court's jurisdiction or facts capable of accurate determination by a reliable source. ER 201(b)(1), (2).

In addition, we expect that judges will bring to the bench their common sense, which can be informed by the work that they do. *See Fernando v. Nieswandt*, 87 Wn. App. 103, 109, 940 P.2d 1380 (1997). This commonsense experience can manifest as generalized understandings of how and why things happen. As the Supreme Court noted:

Our judiciary benefits from and relies upon judges who have studied and become learned in the law and whose personal experiences have taught them a practical understanding of the world we live in and how people live, work, and interact with the world around them.

We do not believe the legislature intended that judges leave their knowledge and understanding of the world behind and enter the courtroom with blank minds. Judges are not expected to leave their common sense behind. Nor do we believe the legislature expected judges to hold hearings on whether fire is hot or water is wet. We prize judges for their knowledge, most of which is obtained outside of the courtroom.

State v. Grayson, 154 Wn.2d 333, 339, 111 P.3d 1183 (2005).

On the other hand, judges may not consider evidence outside the record to support particular findings on issues in dispute. Extrinsic evidence is improper because it is “not subject to objection, cross examination, explanation, or rebuttal.” *See Breckenridge v. Valley Gen. Hosp.*, 150 Wn.2d 197, 199 n.3, 75 P.3d 944 (2003) (holding that it is jury misconduct for jurors to interject extrinsic evidence in jury deliberations). The difference between relying on facts within common or undisputed knowledge and relying on

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evidence outside the record often comes down to the level of generalization and the facts in dispute. *See Grayson*, 154 Wn.2d at 340.

A. Expert medical testimony from another case

The Mother contends the court erred by relying on evidence outside the record to conclude that her sobriety was fragile. While the trial court agreed that the Mother was currently sober, it discounted the umbilical cord test based on testimony from an unknown prior case. We agree that the court erred in considering testimony from a different case.

Under ER 201, a court may take judicial notice of court records. *Vandercook v. Reece*, 120 Wn. App. 647, 651, 86 P.3d 206 (2004). This is because the fact a record exists is not subject to reasonable dispute as opposed to the truth of the contents. *Id.* However, this reasoning does not extend to a judge's memory of oral testimony from another case, "the accuracy and contents of which *are* subject to reasonable dispute." *Id.* If this was the case, the judge would be required to testify as a witness, which he or she cannot do in a proceeding they are overseeing. *Id.* at 652.

Here, the court vaguely recalled testimony about umbilical cord testing from a prior unrelated case and considered this evidence in determining what weight to place on the umbilical cord testing in the Mother's case. The veracity of umbilical cord testing is not common knowledge and in this case it was disputed. The prior testimony was not introduced in this case and not subject to questioning and cross-examination by the

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parties. Thus, the testimony was evidence outside the record and it was error for the judge to consider it.

B. Witness testimony from prior dependency case

Next, the Mother contends the trial court erred by relying on the prior testimony of K.J.H.’s proposed guardian. The Mother points out that the judge presiding at her shelter care hearing for R.L.L. was not the same judge who entered the order of dependency for K.J.H.

At the shelter care hearing, the court noted that it remembered the guardian “pushing, pushing, pushing” for the Mother to have K.J.H. back despite the Mother actively using back then. RP (Apr. 20, 2022) at 113. The trial court further noted her emotional involvement:

So, I think that she’s very emotionally involved in this case. I think she cares deeply about you. And I think she’s a great advocate for you, but I’m just—I don’t know. You know, I’m not sure how much that weight really goes. I mean she clearly has a lot of education when it comes to children and I appreciate all of that, but yeah. I’m just not 100% confident about that.

RP (Apr. 20, 2022) at 113.

The court erred by considering the guardian’s testimony from a prior proceeding. Similar to the outside testimony on umbilical cord testing, the prior testimony of the guardian was specific to a contested fact and not presented by the parties or subject to testing in the adversarial process. When deciding one case, a court cannot “take judicial

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notice of records of other independent and separate judicial proceedings even though they are between the same parties.” *In re Adoption of B.T.*, 150 Wn.2d 409, 415, 78 P.3d 634 (2003) (quoting *Swak v. Dep’t of Labor & Indus.*, 40 Wn.2d 51, 54, 240 P.2d 560 (1952)).

C. Evidence of Mother’s lack of compliance in K.J.H.’s dependency

The Mother contends the court erred by referencing her prior participation in services for her dependency proceeding with her son, K.J.H. She argues that the court in R.L.L.’s dependency case is precluded from considering facts established in another dependency case. On this issue, we disagree with the Mother.

The evidence of the Mother’s history of parenting K.J.H. was properly admitted during the hearing. The social worker provided details of the case file and his interactions with the Mother for the last two years. He testified about his efforts to contact the Mother and the Mother’s unwillingness to meet with him during her pregnancy. The social worker testified that when he showed up at the Mother’s house unannounced she refused to let him in or provide an oral swab. He also testified that drug use affects a parent’s ability to make rational decisions and that the Mother had exposed her children to unsafe situations and a lack of supervision while using drugs.

The social worker’s testimony was relevant and subject to cross-examination by the Mother. The court did not, as the Mother claims, simply take judicial notice of findings made in her other case.

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D. Mootness

Despite our finding that the trial court improperly considered extraneous evidence, the State is correct that we cannot provide relief because the issue is moot. “A case is moot when the appellate court can no longer provide effective relief.” *In re Dependency of L.C.S.*, 200 Wn.2d 91, 98, 514 P.3d 644 (2022). Generally, we will not review a case that is moot. *Id.* at 99. Shelter care only determines where the child will reside while the dependency petition is being adjudicated. RCW 13.34.065(1)(a). Once a child is found dependent, or not dependent, the shelter care order ceases to operate. Therefore, once a dependency is established, the shelter care order is moot.

Here, the shelter care order is moot because a dependency has been established. Still, we exercise our discretion to address the evidentiary issue raised in this case because it “is a matter of continuing and substantial public interest.” *L.C.S.*, 200 Wn.2d at 99. Shelter care decisions are generally ephemeral in nature with dramatic impact on substantial rights. Thus, we take this opportunity to provide guidance on evidentiary issues that may arise during a shelter care hearing.

A majority of the panel having determined that only the foregoing portion of this opinion will be printed in the Washington Appellate Reports and that the remainder, having no precedential value, shall be filed for public record pursuant to RCW 2.06.040, it is so ordered.

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DEPENDENCY HEARING

1. BACKGROUND

In September 2022, the court held a contested fact-finding hearing on the dependency petition. Much of the evidence presented at the dependency hearing revolved around the Mother's history with substance abuse and failure to complete court ordered services and remedy deficiencies in the dependency of K.J.H.

A. Substance Abuse Diagnosis

The Department produced evidence that the Mother was diagnosed with both methamphetamine dependence-severe as well as alcohol dependence-severe in August 2017. In February 2020 she was again diagnosed with methamphetamine dependence-severe and alcohol dependence-severe. A third evaluation in July 2021 diagnosed her with methamphetamine dependence-severe and alcohol dependence-mild.

B. Court Ordered Treatment

The Department also introduced evidence that the Mother struggled to complete treatment ordered in both the dependencies of K.J.H. and R.L.L. A substance abuse professional with The Center, testified that the Mother engaged in treatment but did not complete the program and was discharged in November 2018. In February 2020 after reporting daily methamphetamine use and completing another substance abuse evaluation, her file was closed shortly thereafter in April 2020 for lack of engagement. The Mother later reengaged in treatment at The Center, but struggled to remain

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compliant, resulting in her file being closed again in September 2020. In November 2020 she entered in-patient treatment, which she successfully completed but when she entered outpatient treatment she was non-compliant beginning in March 2021. She entered in-patient treatment again in June 2021 but left early that same month.

A certified chemical dependency counselor at New Path who diagnosed the Mother with methamphetamine dependence in July 2021, testified regarding her struggle with completing treatment. The Mother began intensive outpatient treatment in August 2021 and the counselors lost contact with her in September 2021. Several calls were made to reengage her in treatment over the next few months. In January 2022, she was discharged from treatment at New Path for lack of engagement and no contact. The Mother completed another substance abuse assessment in May 2022 and began treatment again in June 2022 although she canceled three sessions during that month and had to reschedule another.

Similar to his testimony at the shelter care hearing, the assigned social worker testified about his attempts to bring the Mother into compliance with the services ordered in both dependencies. The social worker testified that when he found out the Mother was pregnant with R.L.L., he encouraged the Mother to complete services and offered re-referrals for services. The social worker testified he was worried about the baby and made several unsuccessful attempts to reach the Mother by phone and unannounced visits

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to her home. In February 2022, he was finally able to contact the Mother, but she would not allow him to enter her home and refused to provide a cheek swab.

The social worker also testified regarding the Mother's pattern of initial engagement followed by relapse and a lack of compliance with treatment in K.J.H.'s dependency. A review in that dependency was held in November 2017, and at that point, she was non-compliant with chemical dependency treatment and random UAs. Additionally, he believed she had a positive UA during that time. K.J.H. was removed from her care because she had a positive drug test and there were concerns with her not following through with her drug treatment. After a review hearing in April 2018, the Mother was compliant before providing another positive UA in May. The Mother then began to comply with services, but she was not clean for over six months. In November 2019 the court ordered her to comply with substance abuse treatment and to provide timely UAs. The following year, in January 2020, she was compliant with parenting classes but non-compliant with all other court ordered services. That same year, in both May and October 2020, she was non-compliant with mental health, chemical dependency treatment, and random drug testing.

C. Urinalysis Tests

Testimony also indicated that the Mother was inconsistent with providing required UAs following R.L.L.'s birth. She initially provided a clean UA when R.L.L. was born and four additional clean UAs in April 2022. The Mother provided five clean UAs in

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May 2022, but missed six requested UAs that same month. In June 2022, she provided seven clean UAs, but tested positive for methamphetamine on June 29, 2022. The Mother denied using methamphetamine.

A certifying scientist provider at Cordant Health Solutions, testified regarding this positive UA. On the form provided to the Mother, there is a spot for either the donor or collector to list medications they are currently taking. The provider testified that there were not any prescribed or unprescribed medications listed. The provider was unable to determine how much methamphetamine was used to provide this positive result, but that it was used at some point within one to four or five days prior to when the specimen was collected. Additionally, she testified that there were very few over-the-counter drugs that would test positive for methamphetamine, but that these were compound specific results. Based on the results, she concluded “there was absolutely methamphetamine, I mean, it’s very highly likely that there was methamphetamine use.” RP (July 27, 2022) at 100.

D. Outcome

Based on the evidence, the court found R.L.L. dependent pursuant to RCW 13.34.030(6)(c) that 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.” CP at 572. The court concluded that “[t]he Mother is chemically dependent on methamphetamine as determined by her substance abuse providers.” CP at 573. Additionally, it noted that the

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Mother “used methamphetamine recently immediately prior to or on June 29, 2022, as evidenced by her positive [UA].” CP at 573. The court concluded that the Mother cannot safely parent when she is abusing substances and is at a high risk to neglect R.L.L. due to methamphetamine use, also evidenced by her dependency with K.J.H.

2. ANALYSIS

The Mother also appealed the trial court’s dependency order entered after a contested fact-finding hearing. The court found that no parent was capable of adequately caring for R.L.L. and concluded that R.L.L. was dependent. In her appeal, the Mother assigns error to several of the court’s findings and conclusions.

When a dependency proceeding is initiated, the State is required to prove, by a preponderance of the evidence, that the child meets the statutory definition of a dependent child. *In re Welfare of Ca.R.*, 191 Wn. App. 601, 608, 365 P.3d 186 (2015). Relevant here, Washington defines a “dependent child” as a child who “[h]as 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.” RCW 13.34.030(6)(c).

When evaluating evidence to determine whether a child is dependent, a trial court has broad discretion and flexibility to reach ““a decision that recognizes both the welfare of the child and parental rights.”” *In re Welfare of Ca.R.*, 191 Wn. App. at 608 (internal quotation marks omitted) (quoting *In re Dependency of Schermer*, 161 Wn.2d 927, 952,

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169 P.3d 452 (2007)). At a dependency fact-finding, the court may consider “the history of past involvement [with] child protective services or law enforcement agencies 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 . . . for the purpose of establishing that reasonable efforts have been made by the department to prevent or eliminate the need for removal.” RCW 13.34.110(2).

We consider first “whether substantial evidence supports the trial court’s findings.” *See Ca.R.*, 191 Wn. App. at 608 (quoting *Schermer*, 161 Wn.2d at 940). “Substantial evidence exists if, when viewing the evidence in the light most favorable to the prevailing party, a rational trier of fact could find the fact more likely than not to be true.” *In re Welfare of X.T.*, 174 Wn. App. 733, 737, 300 P.3d 824 (2013). However, “we do not reweigh evidence or reassess witness credibility.” *Ca.R.*, 191 Wn. App. 609. Unchallenged findings of fact will be treated as verities on appeal. *Endicott v. Saul*, 142 Wn. App. 899, 909, 176 P.3d 560 (2008).

The Mother assigns error to seven specific findings of fact and what she characterizes as twelve conclusions of law entered in the dependency order. However, other than identifying the challenged findings by number, the Mother fails to provide argument in her briefing that the challenged findings were not supported by substantial evidence. Instead, she focuses on favorable evidence, arguing that she has been clean for

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a year and that there is a reasonable explanation to show her recent positive UA for methamphetamine was a false positive.

The challenged findings pertain to the Mother's ongoing struggle with a substance use disorder. The court found that the Mother has a long history of methamphetamine use, and has been diagnosed multiple times with substance use disorder. Her continued use of methamphetamine impacts her ability to set appropriate priorities and safely parent her children. The Mother's methamphetamine use caused her to neglect K.J.H. and the Mother has not completed treatment or stayed sober long enough to remediate the risk of parenting while under the influence of methamphetamine. In particular, following the shelter care order the Mother missed six requested UAs in May 2022, provided seven clean UAs in June, and one positive UA on June 29, 2022.

The testimony also indicated that the Mother had been diagnosed with substance use disorder three times and started treatment at least six times since 2018 with varying degrees of success: once in 2018, three times in 2020, and twice in 2021. In December 2020 she successfully completed inpatient treatment but was non-compliant with outpatient treatment beginning in March 2021. Otherwise, the Mother was unable to finish any treatment course. Even when she complied with required drug testing, the Mother was unable to provide negative drug tests for more than a few consecutive months.

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Substantial evidence supports the court’s findings. While the Mother testified that she had been sober for a year, she acknowledged that she was not in compliance with testing or treatment requirements in K.J.H.’s dependency during that time. And though the Mother testified that she was not using methamphetamine, the evidence of missed and positive UAs supports the trial court’s finding that the Mother was using methamphetamine.

The Mother contends the trial court erred by concluding that R.L.L. is dependent because evidence at the fact-finding hearing established that she is currently capable of caring for her daughter.

Dependencies based on RCW 13.34.030(6)(c) do not require a finding that a parent is unfit; instead, they allow “consideration of both a child’s special needs and any limitations or other circumstances that affect a parent’s ability to respond to those needs.” *Ca.R.*, 191 Wn. App. at 608. Additionally, this type of finding “need not be based on proof of actual harm,” but instead can rely on a danger of harm to the child.” *In re Welfare of A.B.*, 181 Wn. App. 45, 60, 323 P.3d 1062 (2014).

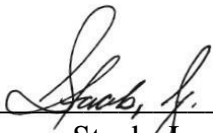
The trial court found that the Mother has a long history of drug use and failure to comply with treatment, that she fails to provide a safe environment when she is using methamphetamine, and that she is currently using methamphetamine. Moreover, the Mother’s current use was part of a pattern of short periods of sobriety followed by

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relapse. These findings are sufficient to support the court's conclusion that R.L.L. is dependent.

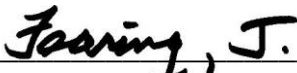
Placing R.L.L. with the Mother would put R.L.L. in circumstances that constitute a risk of substantial danger to her psychological or physical development, satisfying RCW 13.34.030(6)(c). Thus, the court's conclusion that R.L.L. is dependent because she lacks a parent capable of caring for her is supported by the findings.

We affirm the trial court's order of dependency.



Staab, J.

WE CONCUR:



Fearing, C.J.



Cooney, J.