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NO. 44868-8-II

**COURT OF APPEALS FOR DIVISION II
STATE OF WASHINGTON**

IN RE THE WELFARE OF

A.B.

MINOR CHILD

ON APPEAL FROM THE SUPERIOR COURT OF THE STATE OF
WASHINGTON FOR KITSAP COUNTY
THE HONORABLE STEVE DIXON

BRIEF OF RESPONDENT

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TABLE OF CONTENTS

I. INTRODUCTION.....1

II. RESTATEMENT OF THE ISSUES.....1

 1. Whether there is sufficient evidence to support the trial court’s findings that all necessary services capable of correcting the parental deficits were offered/provided to the mother?1

 2. Whether there is sufficient evidence to support the trial court’s findings that the mother, and the father, are unfit parents and that there is no likelihood that this child could be returned to either the mother or the father in the near future, given their various unresolved parental deficits?1

 3. Whether there is sufficient evidence to support the trial court’s finding that continuation of the parent child relationship clearly diminishes the child’s prospects for early integration into a permanent and stable home?2

 4. Whether there is sufficient evidence to support the trial court’s finding that termination is in the best interests of the child?2

III. RESTATEMENT OF THE CASE2

 A. Procedural History2

IV. FACTUAL HISTORY3

V. ARGUMENT11

 A. Elements of A Termination Trial.....11

 B. Substantial Evidence Supports The Finding That All Necessary Services Capable of Correcting the Parental Deficits were Offered and/or Provided To The Mother.....12

C.	Substantial Evidence Supports The Finding That The Mother and the Father are Unfit Parents and that there Is Little Likelihood That The Child Can Be Returned To Either Parent In The Near Future.....	14
D.	Substantial Evidence Supports The Findings Concerning the Continuation of the Parent-Child Relationship, and That Termination Is In The Best Interest Of The Child.....	18
VI.	CONCLUSION	20

TABLE OF AUTHORITIES

Cases

<i>In re the Dependency of H.W.</i> , 92 Wn. App. 420, 425, 961 P.2d 963 (1998).....	11
<i>In re A.J.R.</i> , 78 Wn. App. 222, 228, 896 P.2d 1298, review denied 127 Wn.2d 1025 (1995).....	11
<i>In re A.W.</i> , 53 Wn. App. 22, 31, 765 P.2d 307 (1988), review denied, 112 Wn.2d 1017 (1989).....	12
<i>In re Chubb</i> , 112 Wn.2d 719, 729, 773 P.2d 851 (1989).....	12
<i>In re Dependency of A.V.D.</i> , 62 Wn. App. 562, 568, 815 P.2d 277 (1991).....	12
<i>In re Dependency of Ramquist</i> , 52 Wn. App. 854, 861, 765 P.2d 30 (1988), review denied, 116 Wn.2d 1006 (1989).....	13
<i>In re S.V.B.</i> , 75 Wn. App. 762, 768, 880 P.2d 80 (1994).....	11
<i>In re Welfare of A.B.</i> , 168 Wn.2d 908, 919, 232 P.3d 1104 (2010).....	15
<i>Ramquist</i> , 52 Wn. App. at 861.....	14

Statutes

RCW 13.34.030(5).....	11
RCW 13.34.130.....	11
RCW 13.34.136.....	11
RCW 13.34.180.....	11
RCW 13.34.180(1).....	10, 11
RCW 13.34.190.....	11

I. INTRODUCTION

This is an appeal from an action terminating the parent-child relationship between the minor child, A.B, and the father, N.B. and the mother, E.I. Both the mother and the father challenge the sufficiency of the evidence that resulted in the termination of their parental rights. The Department of Social and Health Services (hereinafter Department) responds that the termination of parental rights is properly supported by the evidence, and thus, and the trial court's ruling should be affirmed.

II. RESTATEMENT OF THE ISSUES

RCW 13.34.180(1) requires proof of six factors by clear, cogent, and convincing evidence in order to terminate the parental rights of a parent. On appeal, the parents raise the following issues:

- 1. Whether there is sufficient evidence to support the trial court's findings that all necessary services capable of correcting the parental deficits were offered/provided to the mother?**
- 2. Whether there is sufficient evidence to support the trial court's findings that the mother, and the father, are unfit parents and that there is no likelihood that this child could be returned to either the mother or the father in the near future, given their various unresolved parental deficits?**

3. **Whether there is sufficient evidence to support the trial court's finding that continuation of the parent child relationship clearly diminishes the child's prospects for early integration into a permanent and stable home?**
4. **Whether there is sufficient evidence to support the trial court's finding that termination is in the best interests of the child?**

III. RESTATEMENT OF THE CASE

A. Procedural History.

The Department of Social and Health Services (Department) filed a dependency petition on A.B., the minor child of the mother, E.I and the father, N.B. in May 2011. Ex. 1. II RP 5. The Department also filed a dependency petition on the mother's other child, J.G. at the same time. Ex. 1, II RP 5. After a contested dependency trial, the juvenile court found both children to be dependent children and entered dispositional orders, detailing the services that the parents were to comply with. Ex. 1, 2, and 3. The Department filed a termination of parental rights petition on A.B., and a contested termination trial was heard in April 2013. 1 RP 1. After hearing all the evidence, the court entered Findings of Fact, Conclusions of Law and Orders Terminating the mother's parental rights and the father's parental rights to the child. Both the mother and the father appealed the trial court's order of termination.

IV. FACTUAL HISTORY

E.I. is the mother of two children, A.B. and J.G. II RP 5-6. N.B. is the father of A.B. only, born February 11, 2011. II RP 6, Ex. 1. J.G., the half-sibling, is older, having been born on December 16, 2008. Ex. 1. The Department became involved with this family in May 2011, when A.B. was approximately four months old. II RP 6, Ex. 1. While in the care of E.I. and N.B., J.G.'s medical needs were neglected. Ex. 1. That child was also suffering from emotional abuse while the care of E.I. and N.B. Ex. 1. N.B. was an untreated violent felon who had failed to complete anger management and substance abuse treatment ordered by the criminal court. Ex. 1. The mother was not able to protect either child from N.B. Ex. 1. When social workers and law enforcement arrived to pick up the children, N.B. "squared off" against law enforcement, while holding 4 month old A.B. Ex. 1. Both parents believed that N.B.'s actions were appropriate. Ex. 1. The Dependency court found that this demonstrated profound lack of insight by both parents into appropriate and safe behavior. Ex. 1. The Department filed dependency petitions on these two children and they were removed from the care of the parents. Dispositional orders were entered detailing the services that E.I. and N.B. were to participate in. Ex. 2, 3. J.G. was subsequently placed in the care of his father, and that dependency was

dismissed. II RP 6. Based on the parenting plan, the mother has supervised visits with J.G. II RP 45.

As part of the dependency, the mother participated in parenting classes. II RP 9. Lisa Sinnett, the Departmental social worker on the case, became concerned about the mother's inability to understand simple directions. II RP 10, 14. She had to be very specific with E.I. II RP 14. As a result, the Department requested, and the court ordered, that the mother participate in a neuropsychological evaluation and parenting assessment. II RP 9. Ex. 4.

Dr. Majovski is a licensed psychologist and performed the neuropsychological evaluation and parenting assessment on the mother in early 2012. I RP 5, 11. Although the mother could read at approximately the 9th grade level, her IQ testing scored in the lower 2%. I RP 14-16. Dr. Majovski also performed testing on mother's problem-solving skills, insight and judgment. II RP 17-18. On the Symbol Digit Modalities test, the mother scored lower than the 1st percentile. I RP 19. Dr. Majovski opined that the mother's problem solving skills were severely impacted, that she would not be able to anticipate danger, handle multiple tasks, or be able to redirect a child. I RP 20-21.

Dr. Majovski diagnosed the mother with a cognitive impairment and an impaired IQ in the lower 2nd percent. I RP 24-25. The mother's

parental deficits included limited insight, judgment, and decision-making. I RP 27. E. I. is not able to multi-task, assimilate and retain a lot of information, or use information to reach productive solutions. RP 27. Dr. Majovski testified that the mother would not be able to parent the child; she would need another person to parent the child. I RP 28. He did not recommend any services to address the mother's parental deficits because her intellectual impairment is not going to improve or change. I RP 28. The mother's abilities have pretty much "crystalized" where they are and, as a result, were not likely to change. I RP 29. Dr. Majovski testified that there were no services that could improve her cognitive performance, problem solving and decision making skills. I RP 29.

Linda West works as a parent-child therapist, providing hands on parenting instruction. I RP 53-54. She began working with the mother in September 2012, focusing on issues of child development, meeting the child's needs and being protective of the child. I RP 55. Ms. West would work with the mother twice a week – one session to practice parenting skills and the second session to have the mother apply those skills. I RP 60. At the conclusion of her work with the mother in January 2013, Ms. West did not believe that the mother could care for the child. I RP 66. According to Ms. West, E.I. interacted with the child as more of a playmate. I RP 63. She did not understand child development, nor could

the mother understand the structure and routine that a young child needed. I RP 65. Ms. West opined that the mother did not have the decision-making and problem solving skills necessary to care for the child. I RP 66. She further testified that, despite her work with the mother, E.I. would be overwhelmed trying to provide the appropriate structure for the child. I RP 67. According to Ms. West, it would take time for the mother to be able to eventually live on her own, let alone even attempt to care for the child. I RP 68-69. It would have taken the mother even longer before she would really understand even some of the basics of child rearing. I RP 68.

The social worker, Lisa Sinnett, testified that in the visits that she has observed, the mother cannot read cues, is not able to redirect the child, and does not understand child development. II RP 33. The Guardian ad Litem, Susan Kuehl, testified that in her interactions with the mother, E.I. could not make decisions and could not perceive the needs of the child. II RP 139.

With regards to the father, he was court ordered to participate in substance abuse and domestic violence treatment, in addition to other services, Ex. 3. Ms. Sinnett, however, did not hear from the father until December 2011, when he indicated that he was ready to engage in services. I RP 15. The father had one visit in June 2011, then visited with

the child once in September 2011, and then did not visit with A.B. again until December 2011. I RP 17.

In early 2012, N.B. began participating in substance abuse, domestic violence services and parenting classes. I RP 23. He however, stopped attending visits, and participating in services, in May 2012. II RP 25-26. N.B. did visit with the child in July and August 2012, but stopped visiting in August 2012, when the parents separated. I RP 27-28. Ms. Sinnett has had no contact from the father since September 2012. I RP 28. She attempted to call him, but his phone would not accept the calls. I RP 28. He has not visited with his child since August 2012. II RP 28. The child does not ask about his father. II RP 40. The social worker had observed the father become angry and either would then become irate or disengage from conversations. II RP 42.

Ms. Sinnett did learn that the father was briefly in the Kitsap County jail in December 2012. II RP 38. She next learned that N.B. had entered a year long substance abuse program in Oregon in early 2013. II RP 38. This surprised Ms. Sinnett as services had been available to the father locally. II RP 39. Since the father entered the Oregon program, he has not requested any visits with the child. II RP 39. According to the head of this program, Russ Johnson, N.B. is in a year long in-patient treatment program. II RP 99-100. The father has not left the facility since arriving in

January, 2013. II RP Any visitors he has must be approved in advance. II RP 102. There is no on sight domestic violence program for the father there. II RP 107.

The father admitted that his drug of choice is methamphetamines. II RP 109. He admitted that he stopped visiting his child, and stopped attending services, because he was using methamphetamines every day. II RP 113-114, 117. Once he began using again, he stopped doing everything else. II RP 117. After his release from the Kitsap jail in early January 2013, he went directly to this year long in-patient treatment program in Oregon. II RP 121.

At the time of the termination trial, the child had been out of the parent's care for twenty months, since he was four months old. II RP 35. The child was not in a permanent adoptive home. II RP 140. Paternal relatives are being looked at as a possible home for the child, but nothing is specific at this point. II RP 50. Maternal relatives had not followed through with the adoptive process. II RP 50. The GAL testified that the child is at a crucial stage in his life, and needs a permanent home in which he can develop strong and healthy attachments to his adult caretakers. II RP 140. The child remains waiting for the parents to be able to parent him. II RP 139. Neither parent is able to care for the child currently, and termination is in the child's best interest, according to the social worker

and guardian ad litem. I RP 43, II RP 140. The mother cannot parent the child, nor meet his needs. I RP 43, II RP 140. The father has not addressed his own going substance abuse and domestic violence parental deficits and is not functioning as a parent to the child. I RP 43, II RP 140.

After hearing all of the evidence, the trial court entered findings and an order terminating the parental rights of the mother and the father. The court found that all of the court ordered services had been expressly and understandably offered/provided to the mother and the father. FOF VII, CP 56. With regards to the mother, the court found that the mother has neurological and cognitive deficits that cannot be cured through therapy. FOF IX, CP 57. The court also ruled that there are no other services that can be offered to the mother to assist her, because her deficits cannot be changed. FOF IX, CP 57.

The court also found that both the mother and the father were unfit parents and that there was little likelihood that conditions could be remedied in the near future. FOF X, CP 57. The court found that the father does not have a relationship with the child, and has not visited with the child for eight months, at the time of trial, in early April 2013. FOF X, CP 57. He also had not visited with the child for significant periods at other points in the case. FOF X, CP 57. The father has long term substance abuse, criminal and domestic violence/anger issues, and had

only just begun a year long drug treatment program. FOF X, CP 57. He had not started the year long domestic violence program, at the time of the trial. FOF X, CP 57.

The trial court found that the mother has neurological and cognitive deficits that do not allow her to parent the child. FOF X, CP 57. The court found that these permanent neurological and cognitive deficits prevent her from making intuitive judgments, from understanding child development, from perceiving subtle dangers that impact children, and from communicating effectively with the child. FOF X, CP 57. The child needs a permanent home and the mother cannot parent the child as a result of her deficits. FOF XIII, CP 58.

The court also found that termination was in the best interests of the child. FOF XIV, CP 58. The child needs parents who can care for him and the mother cannot. FOF XIV, CP 58. The child, currently age 2 at the time of the trial, had been out of the care of his parents since he was four months old, and it was not appropriate to wait for the father to get his act together either. FOF XIV, CP 58. The father and the mother both appealed the trial court's ruling.

V. ARGUMENT

A. Elements of A Termination Trial.

A trial court may terminate parental rights if it finds that the six elements of RCW 13.34.180 have been proven by clear, cogent, and convincing evidence. *In re S.V.B.*, 75 Wn. App. 762, 768, 880 P.2d 80 (1994). Additionally, the court must also find, by a preponderance of the evidence, that termination is in the child's best interest. RCW 13.34.190; *In re A.J.R.*, 78 Wn. App. 222, 228, 896 P.2d 1298, review denied 127 Wn.2d 1025 (1995). The State must prove these six elements of RCW 13.34.180 by clear, cogent, and convincing evidence before the trial court is permitted to evaluate the best interests of the child element. *In re the Dependency of H.W.*, 92 Wn. App. 420, 425, 961 P.2d 963 (1998).

The six statutory factors of RCW 13.34.180 are:

1. That the child has been found to be a dependent child under RCW 13.34.030(5); and
2. That the court has entered a dispositional order pursuant to RCW 13.34.130; and
3. That the child has been removed or will, at the time of the hearing, have been removed from the custody of the parent for a period of at least six months pursuant to a finding of dependency under RCW 13.34.030(5); and
4. That the services ordered under RCW 13.34.136 have been expressly and understandably offered or provided, and all necessary services, reasonably available, capable of correcting the parental deficiencies within the foreseeable

future have been expressly and understandably offered or provided; and

5. That there is little likelihood that conditions will be remedied so that the child can be returned in the near future; and
6. That continuation of the parent-child relationship clearly diminishes the child's prospects for early integration into a stable and permanent home.

In reviewing a termination of parental rights, the trial court is "afforded broad discretion and its decision is entitled to great deference on review." *In re A.W.*, 53 Wn. App. 22, 31, 765 P.2d 307 (1988), *review denied*, 112 Wn.2d 1017 (1989). The findings of the trial court will not be disturbed on appeal if they are supported by substantial evidence. *In re Chubb*, 112 Wn.2d 719, 729, 773 P.2d 851 (1989)). If substantial evidence exists, the appellate court must uphold the trial court's findings. *In re Dependency of A.V.D.*, 62 Wn. App. 562, 568, 815 P.2d 277 (1991). In this case, the trial court properly applied the law to the facts presented at trial and terminated the parental rights.

B. Substantial Evidence Supports The Finding That All Necessary Services Capable of Correcting the Parental Deficits were Offered and/or Provided To The Mother.

The mother first contends that the trial court erred in finding that all necessary services, capable of correcting her parental deficits, were offered or provided to her. She maintains that the Department failed to offer her additional hands-on parenting services. Substantial evidence,

however, supports the trial court's detailed findings on this issue. Furthermore, case law provides that a parent's failure to take advantage of services provided by the State, excused the State from offering additional, beneficial services. *In re Dependency of Ramquist*, 52 Wn. App. 854, 861, 765 P.2d 30 (1988), *review denied*, 116 Wn.2d 1006 (1989).

The trial court found that all court ordered services, and all services reasonably available, had been offered or provided to the mother. Finding VIII, IX, CP 56-57. The mother has neurological and cognitive deficits that cannot be cured through therapy. FOF IX, CP 57. There are no other services that can assist her, since her deficits cannot be changed. FOF IX, CP 57.

Dr. Majovski opined that the mother's problem solving skills were severely impacted, that she would not be able to anticipate danger, handle multiple tasks, or be able to redirect a child. I RP 20-21. Dr. Majovski testified that the mother is not able to multi-task, assimilate and retain a lot of information, or use information to reach productive solutions. RP 27. Dr. Majovski also testified that there were no services that could improve her cognitive performance or her problem solving and decision making skills. I RP 29.

The Department, however, provided the mother with hands-on parenting to see if there would be any change in the mother's abilities. There was not. Linda West testified that, at the conclusion of her work

with the mother, E.I could not care for the child. I RP 66. Ms. West opined that the mother did not have the decision-making and problem solving skills necessary to care for the child. I RP 66. According to Ms. West, it would take time for the mother to be able to eventually live on her own, let alone even attempt to care for the child. I RP 68-69. It would have taken the mother even longer before she would really understand even some of the basics of child rearing. I RP 68. Therefore, the hand-on parenting services offered to the mother were unable to make any significant change in the mother's deficits. *See Ramquist, 52 Wn. App. at 861.* This testimony further supports the trial court's finding that her deficits cannot be cured through therapy. FOF IX, CP 57.

Substantial evidence supports the trial court's findings that all services, reasonably available, were offered /provided to the mother. The mother's inability to take advantage of these services excused the Department for having to offer additional services to the mother. *Ramquist, 52 Wn. App. at 861.* The trial court did not err.

C. Substantial Evidence Supports The Finding That The Mother and the Father are Unfit Parents and that there Is Little Likelihood That The Child Can Be Returned To Either Parent In The Near Future.

The mother, as well as the father, next contend that the trial court erred in finding that they are both unfit parents and that there was little

likelihood that the child could be returned to either of their care in the near future. Substantial evidence supports the trial court's detailed findings on these issues.

The Supreme Court has held that in order to terminate parental rights, the court must make a finding that a parent is currently unfit to parent the child. *In re Welfare of A.B.*, 168 Wn.2d 908, 919, 232 P.3d 1104 (2010). Such a finding can be explicitly or implicitly made, by the trial court. *Id.* at 920.

Here, the court explicitly found that both the mother and the father remained unfit parent and that there was little likelihood that conditions could be remedied in the near future. FOF X, CP 57. The trial court found that the mother has neurological and cognitive deficits that do not allow her to parent the child. FOF X, CP 57. The court found that these permanent neurological and cognitive deficits prevent her from making intuitive judgments, from understanding child development, from perceiving subtle dangers that impact children, and from communicating effectively with the child. FOF X, CP 57. The court also ruled that there are no other services that can be offered to the mother to assist her, because her deficits cannot be changed. FOF IX, CP 57.

With regards to the father, the court found that N.B. does not have a relationship with the child, and has not visited with the child for eight

months, at the time of the trial in early April 2013. FOF X, CP 57. He also had not visited with the child for significant periods at other points in the case. FOF X, CP 57. The father has long term substance abuse, criminal and domestic violence/anger issues, and had only just begun a year long drug treatment program. FOF X, CP 57. He had not yet even started the year long domestic violence program, at the time of the trial either. FOF X, CP 57. Substantial evidence supports these findings as well.

With regards to the mother, Dr. Majovski testified that E.I.'s problem solving skills were severely impacted, that she would not be able to anticipate danger, handle multiple tasks, or be able to redirect a child. I RP 20-21. Dr. Majovski testified that the mother is not able to multi-task, assimilate and retain a lot of information, or use information to reach productive solutions. Dr. Majovski testified that there were no services that could improve her cognitive performance, problem solving and decision making skills. I RP 29.

The Department, however, attempted to address these deficits by having the mother work with a hands-on parenting instructor, Linda West. Linda West testified that, at the conclusion of her work with the mother, E.I could not care for the child. I RP 66. Ms. West opined that the mother did not have the decision-making and problem solving skills necessary to care for the child. I RP 66. According to Ms. West, it would take time for

the mother to be able to eventually live on her own, let alone even attempt to care for the child. I RP 68-69. It would have taken the mother even longer before she would really understand even some of the basics of child rearing. I RP 68. Substantial evidence supports the trial court's findings that the mother is unfit, that there is little likelihood that conditions will be remedied so that the child could be returned to her care.

Substantial evidence also supports the trial court's findings as to the father on these issues. At the dependency trial in October 2011, the dependency court found that the father had failed to complete substance abuse and anger management services. Ex. 1. The exact same deficits remain for the father at the termination trial in April 2013, more than seventeen months later.

The father needed to engage in services to address his long term substance abuse, criminal involvement, and domestic violence/anger management issues. He began participating in these services in early 2012, but quit. I RP 23. He instead resumed using methamphetamines on a daily basis, ending up being incarcerated in December 2012. I RP 121. The father is currently in a year long in-patient treatment program, and he has yet to even leave the facility at this point in his treatment. II RP 99-100, 104. The father has not yet started his required domestic violence services.

The father has not visited with the child since August 2012, a period of more than eight months at the time of the termination trial. He also missed significant periods of visits prior to that. I RP 17, I RP 25-26. He left the Kitsap jail in early 2013 and went directly to the year long Oregon in-patient center. The child does not ask about the father in his absence. II RP 39-40. The father has had no contact with the social worker, about services or visitation, since the prior summer.

The evidence demonstrates that both the mother and the father are unfit parents based on her permanent neurological and cognitive deficits, that prevent her from being a parent, and his documented parental deficits, including drug addiction, domestic violence/anger, on-going criminal involvement, and his failure to visit, or maintain contact with the child. Thus, substantial evidence supports the trial court's finding that both parents are unfit parents and that there is little likelihood that conditions will be remedied in the near future.

D. Substantial Evidence Supports The Findings Concerning the Continuation of the Parent-Child Relationship, and That Termination Is In The Best Interest Of The Child.

The mother also contends that the evidence does not support the finding concerning continuation of the parent-child relationship or the finding that termination is in the best interests of the child. The child needs parents who can care for him. FOF XIV, CP 58. The child has spent more

than 20 months waiting for the father to get his act together, and cannot wait any longer. FOF XIII, CP 58. The mother cannot parent the child as a result of her deficits. FOF XIII, CP 58. Substantial evidence, however, supports the trial court's finding on these issues.

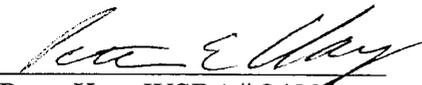
At the time of the termination trial, the child had been out of the parent's care for twenty months, since he was four months old. II RP 35. The child was not in a permanent adoptive home. II RP 140. Paternal relatives are being looked at as a possible home for the child, but nothing is specific at this point. II RP 50. Maternal relatives had not followed through with the adoptive process. II RP 50. The GAL testified that the child is at a crucial stage in his life, and needs a permanent home in which he can develop strong and healthy attachments to his adult caretakers. II RP 140. The child remains waiting for the parents to be able to parent him. II RP 139. Neither parent is able to care for the child currently, and termination is in the child's best interest, according to the social worker and guardian ad litem. I RP 43, II RP 140. The mother cannot parent the child, nor meet his needs. I RP 43, II RP 140. The father has not addressed his own going substance abuse and domestic violence parental deficits and is not functioning as a parent to the child. I RP 43, II RP 140. Accordingly, substantial evidence, therefore, supports the trial court's findings on these issues.

VI. CONCLUSION

Substantial evidence supports the trial court's findings in this case. Accordingly, the trial court's Findings of Fact, Conclusions of Law, and Order of Termination should be affirmed.

RESPECTFULLY SUBMITTED this 24 day of September, 2013.

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STATE OF WASHINGTON

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STATE OF WASHINGTON

In Re the Welfare of:

A.B.

Minor Child

No: 44868-8-II

CERTIFICATE OF
SERVICE

JULIE A. AYLETT certified: I am a citizen of the

United States and competent to be a witness herein. That on

September 24, 2013, I mailed the Brief of Respondent to:

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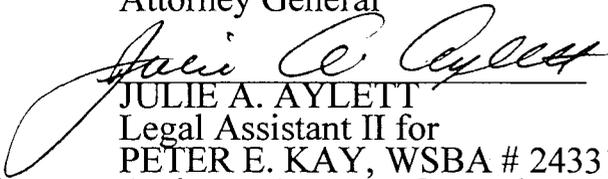
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The original Brief of Respondent was delivered to the Appeals

Court on September 24, 2013.

I certify under penalty of perjury that the foregoing is true
and correct. SUBMITTED this 24th day of September, 2013.

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