

NO. 47903-6-II

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

In re the Welfare of:

J.B. Jr.,

Minor Child.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR KITSAP COUNTY
THE HONORABLE JENNIFER FORBES

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I. INTRODUCTION

After unsuccessfully attempting to have the parents resolve their drug addictions so minor child J.B. Jr. could be returned to their care, the Department of Social and Health Services (Department) filed a termination petition on the mother and the father, seeking that the child be adopted by his current foster placement. The paternal grandfather, A.B., and his wife, S.B., however wanted to be appointed legal guardians for the child. The parents filed such a RCW 13.36 guardianship on behalf of these relatives, rather than having the child returned to their care. The Department attempted to work with the grandparents to resolve their own issues concerning their prior involvement in dependency actions on S.B.'s own children, their own criminal histories and domestic violence issues, and their actions enabling the parents' ongoing addictions. The Department was unsuccessful in its efforts. As a result, the parties conducted a combined dependency guardianship and termination trial. The trial court properly granted the Department's termination petition and denied the request to appoint A.B. and S.B. as guardians for the child, concluding that a termination and adoption by the current foster home, rather than a guardianship with the grandparents, was in the child's best interests. The father appeals.

II. STATEMENT OF THE ISSUES

1. Under the doctrine of invited error, a party cannot appeal the trial court's review of Judicial Information System (JIS) information prior to the effective date of RCW 2.28.280, specifically authorizing such court use, when that party agreed that such JIS information could be used, and because such information was already before the court through prior testimony, any such review is harmless error.
2. A party may not maintain a claim for an appearance of fairness violation by the trial court in the absence of any objective evidence to support such a claim.
3. Substantial evidence supports 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 under RCW 13.34.180(1)(f).
4. Substantial evidence supports the trial court's findings that termination of parental rights, and not either a guardianship in general, or a guardianship with S.B. and A.B., was in the child's best interest.

III. STATEMENT OF THE CASE

The parents of J.B. Jr., a minor child born on November 12, 2012, are K.B., the mother, and J.B., the father. Ex. 1, 2. The parents were using methamphetamines and heroin while residing with the paternal grandfather, A.B., and his wife, S.B. RP 41, 369. The mother had the child with her when she was arrested in late 2013. RP 41. The child was taken into protective custody by law enforcement. RP 43-44. As a result, the Department filed a dependency petition on the child. RP 43.

The parents agreed to the dependency in late 2013. Ex. 1, 2. The dependency court placed J.B. Jr. with maternal relatives. RP 40; Ex. 1, 2. Both the father and mother were court ordered to participate in substance abuse treatment and random UAs. Ex. 3, 4. The father failed to participate in any treatment or to provide any UAs during this dependency. RP 80. The mother did attend inpatient treatment in the summer of 2014. RP 47. However, K.B. failed to participate in any subsequent treatment or random UAs. RP 80. The parents only visited very sporadically with the child during the entire dependency. RP 75, 97.

In June 2014, the maternal relatives could no longer care for J.B. Jr. RP 72. Friends of these relatives, who were both licensed foster parents and already familiar with J.B. Jr., stepped forward to be a placement resource for the child. RP 72-73. The dependency court amended the child's placement to these known individuals in June 2014. Ex. 6. The child has remained there ever since. RP 126. These foster parents have undergone the homestudy process and are qualified to adopt the child. RP 126, 226. J.B. Jr. needs ongoing services thorough Holly Ridge to address his behaviors. RP 127, 299. The foster parents have ensured that all of J.B. Jr.'s individual therapeutic needs are being addressed through these services. RP 127, 300.

S.B., the paternal grandfather's wife, had previously been involved in dependency actions concerning her own children. Exs. 10-20. The paternal grandfather, A.B., was with S.B. when her children became dependent. RP 354. A.B. participated in the Department's approval and waiver process as part of S.B.'s children returning to her care. RP 319.¹

After the mother completed inpatient treatment, A.B. and S.B. permitted both the mother and father to move back into their home. RP 340-41, 444. S.B. hoped that both the mother and father would stay sober, although she admitted that the father had yet to enter any type of treatment program. RP 444.

In August 2014, the mother attended a Local Indian Child Welfare Advisory Committee (LICWAC) meeting. RP 51. These meetings are held by local tribal officials while the native status of a case is still under determination. RP 51. The mother attended this August 2014 meeting with S.B. and A.B. RP 52. She was very drowsy and kept drifting off. RP 51. The social worker and the Guardian ad Litem requested the mother complete a UA, and S.B. and A.B. indicated that they would drive

¹ RCW 13.34.138(2)(b) requires that, in situations in which dependent children are being returned home, other adults in the home undergo background checks and participate in any necessary services to ensure the safety of the child. Since A.B. resided with S.B., he was subject to this statutory provision regarding the return of S.B.'s children to her care.

her there. RP 53. The mother never followed through with this UA.
RP 53.

The mother and father both attended the subsequent LICWAC meeting in September 2014 with S.B. and A.B. RP 69-70. Both parents were requested to complete UAs. RP 71. S.B. and A.B. again maintained that they would ensure the parents completed the UAs. RP 71. The parents never completed them. RP 53. At this same meeting, A.B. and S.B. provided the Department with criminal background checks as part of the placement process. RP 490-91. They were requesting placement of J.B. Jr. RP 101, 192. It was subsequently established that the child is not native, is not subject to the Indian Child Welfare Act (ICWA), and thus the LICWAC meetings ended. RP 142-43.

In order to be considered for placement, an individual has to complete a criminal background check. RP 102. If there is a criminal history present, the individual has to obtain copies of police and court documents, as well as provide a detailed explanation of what happened, what the person did to resolve any such incidents, and the steps taken to ensure that other future incidents do not occur. RP 102, 193. A detailed homestudy is also conducted on the person, including addressing any prior CPS history. RP 103-04, 193. A person would also have to address how they have remedied any CPS history, and why such events will not happen

again. RP 105, 193. The Department cannot prepare this personal narrative for a prospective placement. RP 197. S.B. and A.B. never responded to the Department's requests for these personal statements addressing their prior criminal and CPS involvement and what they have done to ensure issues do not reoccur. RP 115-16, 491-92. S.B. admitted that she never provided these written statements to the Department. RP 447.

At some point in 2014, A.B. and S.B. apparently had domestic violence issues between themselves and separated for a period of time. RP 119, 343. S.B. obtained an anti-harassment order from the Mason County court as to A.B. RP 374. She admitted that there was no actual violence between the two of them at the time. RP 375. But, to obtain this order, S.B. made allegations against A.B. RP 364-65. S.B. testified that the court facilitator informed her that she had to have some allegations in her petition or the court would deny her request for the order. RP 375.

A.B. and S.B. are also pursuing a custody action in Mason County as to another grandchild, "A." RP 349, 379. This action was done by agreement with that child's mother. RP 380. A.B. and S.B. told her that she needed to sign "A." over to them. RP 379. Because it was an agreed matter, there was no Guardian ad Litem involved in that Mason County custody proceeding. RP 476.

S.B. requested that the Department do a walk-through of their home, located in Mason County, for purpose of placing J.B. Jr. with them. RP 160, 199. Because the Department was concerned that the parents may also be living at this residence, the home visit would be unannounced. RP 199. Departmental supervisor Lisa Sinnett, Departmental intern Lindsey Phillips, and the Guardian ad Litem Jessy Baker went to the grandparents' home on December 8, 2014. RP 161, 200, 292.

They encountered a cluttered home. RP 161, 200, 292. There were dirty diapers on the floor and an unknown male asleep in one room. RP 161-62, 233, 292-93. A strong odor of urine was present in the home. RP 161, 201, 293. S.B. and A.B. had their child, A., residing in their home. Her bed was overturned and her mattress was not in her room; instead, it was in another room. RP 203.

S.B.'s older child, M.V., has certain restrictions as a result of his prior sexual issues. RP 122, 292, 455. He is to have an alarm on his door. RP 122, 213-14, 292. S.B. maintained, during this home visit, that the alarm was present and functional. RP 214. However, it was not pointed at his door, nor was it operating. RP 214, 292. S.B. later testified that the alarm had been working the night before and that the batteries had died. RP 478-79. A.B., however, testified that such any alarms were not actually required for M.V. RP 334.

S.B. testified that she did not have any concerns about this December 8, 2014 home visit by Departmental social workers and the Guardian ad Litem. RP 484. However, she also testified that she took pictures of the home that evening to record its condition. RP 484. At trial, S.B. introduced photographs of her home. Exs. 22-29. However, S.B. repeatedly changed her testimony as to when these pictures were actually taken. RP 394, 398, 399-400, 480. Further, although some pictures were allegedly taken late on December 8, 2014 there is daylight outside and there is no evidence of the Christmas items the social workers and Guardian ad Litem encountered at their home visit. *See* RP 89, 161, 201, 400-01, 421-22.

On December 8, 2014, at approximately 5:00 p.m., the Guardian ad Litem, requested that law enforcement perform a welfare check on the home. RP 88, 165. Mason County Deputy Chris Mondry arrived about an hour later. RP 88. The grandparents had cleaned up the home that same evening. The next day A.B. showed the Departmental supervisor Ms. Sinnett pictures to prove this. RP 218. Those pictures did not reflect the condition of the home that Ms. Sinnett had observed. RP 218. These pictures alluded to by A.B. were never introduced into evidence. RP 481.

At the time of trial, the Department's last known residence for the mother and father was with A.B. and S.B. RP 98. The parents use the

same P.O. Box as A.B. and S.B. RP 98. The parents were driven to and from court by A.B. and S.B. RP 488-89.

The Department filed a termination petition on J.B. Jr. CP 1-4. The parents responded by filing a RCW 13.36 guardianship petition, requesting that A.B. and S.B. be appointed the guardians of J.B. Jr., rather than have him be returned to their care. CP 340-44, RP 487. In the guardianship petition, the parents alleged the elements of RCW 13.36.030(2) have been established. CP 340-44, RP 487. These legal elements match many of the termination elements under RCW 13.34.180. CP 1-4. As a result, the parties conducted a combined termination and guardianship trial in June 2015.

After hearing all of the evidence, the court granted the termination petition and denied the guardianship petition. The court found that termination of parental rights was in the best interests of the child, and that a guardianship in general, and a guardianship with S.B. and A.B. specifically, was not in the child's best interest. The father appeals.

IV. ARGUMENT

A. Substantial Evidence Standard of Review in Title 13 Matters.

In termination matters under Title 13, the decision of the trial court is entitled to great deference on review, and its findings of fact must be upheld if they are supported by substantial evidence in the record.

In re K.S.C., 137 Wn.2d 918, 925, 976 P.2d 113 (1999). Substantial evidence is evidence in sufficient quantity to persuade a fair-minded, rational person of the truth of the declared premise. *In re C.B.*, 134 Wn. App. 942, 953, 143 P.3d 846 (2006). The trial court in a termination of parental rights proceeding has broad discretion to evaluate evidence in light of the rights and safety of the children. *In re C.B.*, 61 Wn. App. 280, 287, 810 P.2d 518 (1991) (citing *In re Siegfried*, 42 Wn. App. 21, 27, 708 P.2d 402 (1985)).

On appeal, the reviewing court may not decide the credibility of witnesses or weigh the evidence. *In re A.V.D.*, 62 Wn. App. 562, 568, 815 P.2d 277 (1991). Appellate review of the trial court's findings of fact is limited to determining whether they are supported by substantial evidence. *In re C.B.*, 134 Wn. App. at 953. Findings of fact are presumed to be correct, and the party claiming error has the burden of showing that they are not supported by substantial evidence. *Fisher Properties, Inc. v. Arden-Mayfair, Inc.*, 115 Wn.2d 364, 369, 798 P.2d 799 (1990). Further, by claiming insufficiency of the evidence, the appellant admits the truth of the Department's evidence and all inferences that can be reasonably drawn from it. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992); *State v. Madarash*, 116 Wn. App. 500, 509, 66 P.3d 682 (2003).

Unchallenged findings are verities on appeal. *In re Mahaney*, 146 Wn.2d 878, 895, 51 P.3d 776 (2002).

B. The Father Cannot Appeal Alleged Errors That He Created.

The father argues that the trial court improperly relied on RCW 2.28.210 to review Judicial Information System (JIS) information to clarify details that had already been presented before the trial court. A party, however, cannot seek review of an alleged error which the party created. *Davis v. Globe Machine Mfg. Co. Inc.*, 102 Wn.2d 68, 77, 684 P.2d 692 (1984). Under the doctrine of invited error, a party is prevented “from complaining on appeal about an issue it created at trial.” *Bellevue v. Kravik*, 69 Wn. App. 735, 739, 850 P.2d 559 (1993). Such is the case here. Furthermore, any alleged error was harmless.

Both S.B. and A.B. testified that they were seeking custody of another grandchild, A., through a Mason County custody action. RP 324-25, 349, 379. S.B. and A.B. admitted that this was an uncontested custody action. RP 356-57, 380. The court asked A.B. some clarifying questions about this Mason County custody order. RP 356-57.

S.B. and A.B. also both testified that S.B. had obtained an anti-harassment order against A.B. in 2014. RP 347-48, 364-65, 374. The two had separated for a period of time. RP 343, 374. The Departmental social workers were aware this had occurred, and testified to this

separation between A.B. and S.B. as well. RP 119, 240-41. The court also asked clarifying questions to A.B. about this anti-harassment order. RP 364-65.

Upon the conclusion of that day's testimony, the trial court then raised the issue of new legislation that would permit the court to review the Judicial Information System on proposed child placements. RP 424. The court indicated that it had not reviewed this JIS information, and instead provided the JIS information to the parties to review so they could be fully informed about any further inquiries the following day. RP 424-25. The mother had already admitted exhibit 34 into evidence, a letter detailing much of the criminal history concerning S.B. and A.B. contained in the JIS report. RP 260, 263, 435; Ex. 34.

The following day, the proceedings began with the court informing all of the parties that it had been referring to RCW 2.28.210 ("Substitute House Bill 2371") at the conclusion of the previous day's testimony.² The

² RCW 2.28.210 provides, in part, that "(1) Before granting an order under any of the following titles of the laws of the state of Washington, the court may consult the judicial information system [J.I.S.] or any related databases, if available, to determine criminal history or the pendency of other proceedings involving the parties:

...
(e) Granting any relief in a juvenile proceeding under Title 13 RCW

...
(2) In the event that the court consults such a database, the court shall disclose that fact to the parties and shall disclose any particular matters

court noted that this statute would become effective on July 24, 2015. RP 431. The court asked the parties to comment on this statute and its effects. Both opposing counsel were aware that the statute had not yet gone into effect. RP 431-32. Mother's counsel did not object to the court reviewing the JIS information, requesting only that the parties be able to address any issues raised and to rehabilitate witnesses. RP 438. Father's counsel indicated that he was in agreement with the court reviewing the JIS information as long as the parties had the opportunity to provide context through cross-examination and rehabilitation testimony. RP 434. Father's counsel also stated "I realize that much of that type of information has already been presented in this trial." RP 434. The court responded that with regards to the 2014 domestic violence type incident between S.B. and A.B., it would be helpful to see what exactly happened in terms of any court proceedings. RP 435. Father's counsel then asked only for the ability to recall A.B. to clarify any matters. RP 437. Father's counsel did not subsequently recall A.B. during the rest of the case. The

relied upon by the court in rendering the decision. A copy of the document relied upon must be filed, as a confidential document, within the court file, with any confidential contact information such as addresses, phone numbers, or other information that might disclose the location or whereabouts of any person redacted from the document or documents." RCW 2.28.210.

parents both explicitly agreed to the court reviewing the JIS report. Accordingly, any alleged error was invited error by the father and mother.

Furthermore, any such alleged error would constitute harmless error. On appeal, the father asks that the matter be remanded for a new trial. Appellant's Br. at 40. However, it is undisputed that RCW 2.28.210 is now in effect. The criminal histories of both A.B. and S.B. had already been entered into the record. Ex. 34. A.B. and S.B. had already testified about their separation and the two other court proceedings. With regard to the JIS report, there were not any new matters which were not already contained in the trial record, as noted by father's counsel. RP 434. In any remand situation, the trial court judge could engage in the exact same process that occurred in this trial – review of the JIS information on the proposed guardians, including the anti-harassment order and the non-parental custody action concerning another minor child. Copies of this JIS information would again be provided to all of the parties. Furthermore, the parties would elicit the exact same testimony that had already been presented at the trial – the events concerning the 2014 separation and anti-harassment order and also the Mason County custody action. Because the father is unable to demonstrate how a remand would result in any different judicial action, or outcome, any alleged error is harmless.

C. The Father Fails to Demonstrate an Appearance of Fairness Claim.

The father next offers an unsupported contention that the trial court violated the appearance of fairness doctrine in its ruling. Appellant Br. at 41-45. In order to assert a claim under the appearance of fairness doctrine, the appellant must produce evidence of a judge's actual or potential bias. *State v. Post*, 118 Wn.2d 596, 618-19, 826 P.2d 172 (1992); *see also In re Dependency of O.J.*, 88 Wn. App. 690, 697-98, 947 P.2d 252 (1997). The test for determining whether the judge's impartiality might be reasonably questioned is an objective one reviewed de novo. *Tatham v. Rogers*, 170 Wn. App. 76, 95, 283 P.3d 583 (2012). Here, the father cannot produce any evidence of the judge's actual or potential bias during either the evidentiary portion, or the ruling portion of the hearing.

Instead, the father makes an unsupported claim that the trial court's ruling was "unnecessarily harsh and exhibited her personal animosity towards the grandparents." Appellant's Br. at 44. But, he fails to demonstrate how this ruling violates the appearance of fairness doctrine. Here, A.B. and S.B. both admitted that S.B. obtained a domestic violence/anti-harassment order, but there was, in fact, no violence occurring between them. RP 364-65, 374-75, 465, 473. This action, obtaining the court order, S.B. did under penalty of perjury. RP 473.

S.B. also repeatedly changed her story of when she took the photographs entered into evidence, from immediately after the social workers left her home in December 2014 to sometime in April 2015. RP 397-98, 480. S.B. maintained that she knew that she had to have an alarm for M.V.'s door, but maintained that the battery had died the night before the social workers' home visit. RP 455, 478. S.B. and A.B. maintained that they attempted to have the parents participate in services. RP 350-51, 408. But neither parent attended the UAs requested at the August 2014 LICWAC meeting, a meeting which A.B. and S.B. both drove the parents to. RP 70-71. S.B. also permitted the parents to move back into her home, hoping that they would stay clean, even though she knew that the father had failed to attend treatment. RP 444. The court simply did not find S.B.'s testimony to be credible. FOF VII, CP 96. The trial court determines credibility. *In re A.V.D.*, 62 Wn. App. at 568. The court's findings reflect the testimony presented on these issues. FOF VII, CP 96-97.

The father is unable to offer a single example of the "personal animosity" he claims the judge exhibited in rendering the ruling. Instead, the mere fact that one side did not prevail does not establish that the trial court was not impartial or was exhibiting personal animosity.

The father is also unable to offer a single example of the "unnecessarily aggressive" questioning he claims the judge exhibited during

the trial. Appellant's Br. at 44. Instead, the judge's questions merely sought clarification of testimony already presented to the court: the 2014 court order; when S.B. actually took the photographs entered into evidence; services S.B. had completed during her own dependency actions; and why she had not submitted any personal statements requested by the Department in accordance with its approval process. RP 473-85. The problem was that S.B. kept changing her testimony, not the substance of the judge's questions. See RP 480-81, 482-83, 484. The father has failed to provide any evidence of bias, such that the judge's impartiality might reasonably be questioned. His contention on appeal should be denied.

D. Substantial Evidence Supports the Trial Court's Findings Regarding the "Continuation" Element of the Termination Statute.

The father next argues that the trial court erred in finding that element "f" of the termination statute, the continuation of the parent-child relationship element, had been established. Substantial evidence supports the trial court's findings on this legal element.

Element (f) of the termination statute requires the trial court to find that continuance of the parent-child relationship clearly diminishes the child's prospects for early integration into a stable and permanent home. RCW 13.34.180(1)(f). The Department can prove this element in one of two ways. *In re Welfare of R.H.*, 176 Wn. App. 419, 428, 309

P.3d 620 (2013). The Department can prove that prospects for a permanent home exist, but the parent-child relationship prevents the child from obtaining that placement. *Id.* Such is the case here.

The trial court concluded that the child is in a potential adoptive home, and that the parent-child relationship prevents the child from obtaining this adoptive placement. FOF VII, CP 97. Substantial evidence supports this finding. As long as a child is in foster care, that child's living situation will by definition remain temporary. *See In re A.V.D.*, 62 Wn. App. at 569. A child will not have a permanent home until the parents resume custody, a guardianship is established, or the parental rights are terminated and the child is adopted. *See Id.* The parents have admitted that they cannot care for the child and that he should not be returned to their care, through the filing of the guardianship petition. CP 340-44, RP 487. The court concluded that a guardianship was not in the child's best interest, and specifically denied the parents' request to appoint A.B. and S.B. as the child's guardians. FOF VII, CP 96; FOF VIII, CP 98; COL IV, CP 99; COL III, CP 358.

The only option for a permanent, safe, and stable home for the child is by an adoption. FOF VII, CP 97. Such a potential adoptive home will not be able to adopt the child as long as the parents retain their parental rights. FOF VII, CP 97. The Department has established, and the trial court

properly held, that element (f) has been established. *See R.H.*, 176 Wn. App. at 428. Substantial evidence supports the trial court's decision. The father's contention is without merit.

E. The Trial Court Properly Held That Termination, Rather Than a Guardianship, Was in the Best Interests of the Child.

The father next argues that the trial court erred in concluding that termination, rather than guardianship, was in the best interests of the child. Instead, he maintains that the court should have ordered a guardianship with the grandparents. Appellant's Br. at 22-25, 37. Substantial evidence, however, supports the court's findings that termination, and not a guardianship, was in the child's best interest.

The guardianship statute, RCW 13.36, requires the trial court to find that a guardianship, rather than termination or continuing efforts to try and reunify the child with the parents, is in the child's best interest. RCW 13.36.040(2)(a). Here, the court specifically ruled that termination was in the child's best interest, and that a guardianship in general, and a guardianship with S.B. and A.B. in particular, was not in his best interest. FOF VII, CP 96; FOF VIII, CP 98; COL IV, CP 99; COL III, CP 358.

As to the parents, neither the mother nor the father has been caring for the child since he was approximately 10 months old. RP 40, 72-73. The parents have failed to address their own substance abuse issues. RP 80-81.

The parents have only been visiting sporadically with the child. RP 75, 96. They remain unfit parents for the child. FOF IV.E, CP 95. Finally, the parents acknowledged that someone else should care for the child, through the guardianship petition. RP 487. As to the child, J.B. Jr. has ongoing developmental needs that are being addressed thorough services with Holly Ridge. RP 127, 299. The foster parents ensure that the child attends these needed services. RP 127, 299.

In order to establish a guardianship, there has to be an identified guardian. *In re Welfare of N.M.*, 184 Wn. App. 665, 338 P.3d 665 (2014). Here, S.B. and A.B. were the only possible identified potential guardians. The court found that such a guardianship was not in the child's best interest. The parents had been using illegal substances while they, and the child, were residing with S.B. and A.B. The parents continued to both live and use while residing with S.B. and A.B. S.B. and A.B. drove the parents to court each day during the trial. S.B. also repeatedly changed her testimony during the trial. *See* RP 453, 482, 484. Thus, the court found that the only option for a permanent, safe, and stable home for the child was by an adoption, which could not occur if the parental rights were to continue. FOF VII, CP 97. Substantial evidence supports the trial court's findings.

The father next contends that the trial court erred in failing to grant the guardianship based on the relative placement preferences contained in

the Indian Child Welfare Act (ICWA). Appellant's Br. at 26. Both federal and state law provide for a placement preference for "Indian Children." RCW 13.34.138; 25 U.S.C. § 1901 et seq. The father, however, concedes that IWCA does not apply to this case. Appellant's Br. at 27. The testimony demonstrated that the case was not an ICWA matter. RP 142, 143. The trial court found that IWCA does not apply to this case. FOF V, CP 95. Unchallenged findings are verities on appeal. *Mahaney*, 146 Wn.2d at 895. The father's contentions are without merit.

V. CONCLUSION

Substantial evidence supports the trial court's findings in this case that termination of parental rights, rather than a guardianship, was in the child's best interests. The trial court also properly found that continuation of the parent-child relationship clearly diminishes the child's prospects for integration into a permanent home. The parents waived any claim with regards to evidence concerning the proposed guardians and any such issue constitutes harmless error. The trial court did not violate the appearance of fairness doctrine. Accordingly, the trial court's Findings of Fact, Conclusions of Law, Order of Termination, and the Denial of the Guardianship should be affirmed.

RESPECTFULLY SUBMITTED this 1st day of March, 2016.

ROBERT FERGUSON
Attorney General



Peter E. Kay, WSBA# 24331
Assistant Attorney General

DECLARATION OF MAILING

I, AMANDA KAPPELMAN, declare under penalty of perjury under the laws of the state of Washington that the following is true and correct:

On March 1, 2016, I caused a true and correct copy of the Brief of Respondent to be filed electronically with the Court of Appeals, Division II, and to be served via email through the Court's electronic filing system as indicated below:

Lise Ellner, Attorney for Appellant
LiseEllnerLaw@comcast.net

SIGNED in Tacoma, Washington, this 1st day of March, 2016.



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WASHINGTON STATE ATTORNEY GENERAL

March 01, 2016 - 2:48 PM

Transmittal Letter

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Brief of Respondent. Hard copy will follow to opposing counsel Lise Ellner.

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