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No. 24098-3-III

COURT OF APPEALS

DIVISION III

OF THE STATE OF WASHINGTON

IN RE THE WELFARE OF:

E.P., a minor

STATE OF WASHINGTON,

Respondent,

vs.

RENEE MICHELLE PRZESPOLEWSKI,

Appellant

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APPEAL FROM THE SUPERIOR COURT  
OF CHELAN COUNTY, JUVENILE DEPARTMENT  
BEFORE THE HONORABLE BART VANDEGRIFT

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BRIEF OF APPELLANT

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A. ASSIGNMENTS OF ERROR

1. The juvenile court erred in terminating Ms. Przespolewski's parental rights without inquiring whether her absence from trial was voluntary. This error violated her due process rights to confront the state's witnesses and present a defense under the Washington Constitution, Article 1, § 3, the Fourteenth Amendment to the United States Constitution, and RCW 13.34.090.
2. The juvenile court erred in granting trial counsel's motion to withdraw from the case violating Ms. Przespolewski's right to counsel in termination proceedings under the Washington Constitution, Article 1, § 3, and the Juvenile Court Act, RCW 13.34.090.
3. The juvenile court erred in denying Ms. Przespolewski's request for a continuance.
4. The juvenile court erred in entering the following findings of fact and conclusions of law:
  - 2.7 The mother of the child has failed to perform parental duties under circumstances showing a substantial lack of regard for parental obligations. (CP 7)
  - 2.11 All services ordered pursuant to RCW 13.34.130, and all necessary services reasonably available,

capable of correcting parental deficiencies within the foreseeable future, were expressly or understandably offered. (CP 7)

2.12 There is little likelihood that conditions will be remedied so that the child can be returned to the mother in the near future. Primary parenting deficiency arises from her abuse of drugs and alcohol. Except for her periods of incarceration, she has not demonstrated an ability to refrain from drug and alcohol abuse. She has failed to follow through numerous times over several years with referral to drug and alcohol programs. No evidence indicates she will enter drug and alcohol treatment in the near future. (CP 7)

2.13 Continuation of the parent-child relationship diminishes the child's prospects for early integration into a stable and permanent home. (CP 8)

2.16 Termination of the mother-child relationship is in the best interests of the child. (CP 8)

3.2 The required elements for termination of the mother's parental rights under RCW 13.34.180(1)(a)-(f) have each been established by clear, cogent, and convincing evidence. (CP 8)

3.3 The parent-child relationship should be terminated pursuant to RCW 13.34.190. (CP 8)

#### B. ISSUES PRESENTED

1. The Juvenile Court Act provides that any party to a parental termination proceeding has the right to counsel, to introduce evidence, to be heard, and to examine witnesses.

RCW 13.34.090(1)(2). In parental termination proceedings, Washington State also provides the full panoply of due process rights under the Washington Constitution, Article 1, § 3, and the Fourteenth Amendment to the U.S. Constitution. By allowing counsel to withdraw, did the juvenile court deny the parent her right to confront the State's witnesses and present a defense?

2. Whether the juvenile court erred in denying Ms. Przespolewski's request for a continuance after she appeared and indicated a desire to continue in services and keep her child.
3. Whether the juvenile court erred in entering findings of fact not supported by sufficient evidence.

### C. STATEMENT OF THE CASE

Renee Przespolewski is the mother of E.P., who was born on July 12, 2004. (CP 6) Because Ms. Przespolewski was incarcerated when E.P. was born, the Department of Social and Health Services (Department) immediately filed a dependency petition alleging no parent capable of adequately caring for the child, and removed him from his mother. (7-14 - 2004 RP 13, 24-25 CP 7, 19) E.P.'s father is unknown. (CP 19,

20, 35) The court entered an agreed order of dependency on September 15, 2004. (CP 17)

For the first four months of the dependency, Ms. Przespolewski was incarcerated. (CP 19) While the record indicates that substance abuse was Ms. Przespolewski's primary challenge, it does not indicate whether she received treatment services in jail. (3-30-05 RP 29, 34) The Department arranged three visits for the mother and child during those four months. (CP 35) Ms. Przespolewski was released from jail in November 2004, but had little contact with DSHS after her release. (CP 19, 20)

On February 11, 2005, DSHS filed a petition for termination of the parent-child relationship alleging "[t]he parents of the child have failed to perform parental duties under circumstances showing a substantial lack of regard for their parental obligations." (CP 34, 35) On February 28, 2005, Ms. Przespolewski was served with a Notice and Summons to appear for the termination hearing scheduled for March 30, 2005. (CP 23-25) The Notice and Summons was left with Ms. Przespolewski's sister. (*Id.*)

On February 23, 2005, trial counsel asked for a continuance of the termination trial scheduled for March 30, 2005, noting that his client had resurfaced and wanted more time to take advantage of the services she was

engaged in. (CP 27) He explained that she intended to engage in drug and alcohol services, had been attending AA and NA meetings, had obtained a sponsor, and arranged a treatment assessment. He concluded that “in every way [Ms. Przespolewski] intends to mother this child.” (CP 31-32) The court denied the request for the continuance. (CP 28-29, 2-23-05 RP 9)

Before trial, Ms. Przespolewski’s attorney moved to withdraw as appointed counsel, explaining that he had lost contact with his client and had “absolutely no idea what her position [was]”. (3-13-05 RP 13, 14, CP 5, 17) The court permitted counsel to withdraw. (3-13-05 RP 15) Ms. Przespolewski failed to appear on the day of trial. The court proceeded to trial without her.

At trial, Gail McDonough, a Department social worker, testified that Ms. Przespolewski’s primary challenge was substance abuse, but that Ms. Przespolewski failed to complete offered services. (3-30-05 RP 29, 32, 34) Ms. McDonough’s testimony was not subject to cross-examination.

The State also called James Fletcher, another social worker, who testified that Ms. Przespolewski contacted him after her release from jail requesting financial and medical assistance. (3-30-05 RP 49-50, 52) Mr. Fletcher referred Ms. Przespolewski to a drug and alcohol program, but

apparently she did not follow through. (3-30-05 RP 53) Ms. Przespolewski contacted him again in February and March of 2005 to renew her application for a treatment program. (3-30-05 RP 55-56) Mr. Fletcher stated it was his "understanding" that Ms. Przespolewski did not keep the appointment for treatment. (3-30-05 RP 56) Mr. Fletcher's testimony was not subject to cross-examination.

Due to the absence of counsel, Ms. Przespolewski did not have the benefit of a defense. No witnesses were called on her behalf. The court did not inquire whether her absence was voluntary. She was not provided the opportunity to testify in person or through deposition. At the conclusion of the hearing, the court found that the Department had proven by clear, cogent, and convincing evidence all of the elements required by RCW 13.34.180, and that termination of Ms. Przespolewski's parental rights was in the best interests of the child. (CP 5, 8, 17, 3-30-05 RP 61) Ms. Przespolewski appeals from the order of termination.

D. ARGUMENT

1. THE COURT'S GRANTING OF COUNSEL'S MOTION TO WITHDRAW AND FAILURE TO INQUIRE WHETHER MS. PRZESPOLEWSKI'S ABSENCE WAS VOLUNTARY DENIED HER THE RIGHT TO CONFRONT THE STATE'S WITNESSES AND TO THE ASSISTANCE OF COUNSEL UNDER THE WASHINGTON CONSTITUTION, ARTICLE 1, SEC. 3; THE FOURTEENTH AMENDMENT, AND RCW 13.34.090. 1

RCW 13.34.180(1) governs the termination of parental rights and sets forth six factors the State must allege and prove in a termination hearing:

- (a) That the child has been found to be a dependent child;
- (b) That the court has entered a dispositional order pursuant to RCW 13.34.130
- (c) That the child has been removed at 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;
- (d) That services ordered under RCW 13.34.136 have been expressly and understandably offered or provided and all necessary services, reasonably capable of correcting parental deficiencies within the foreseeable future have been expressly and understandably offered or provided;
- (e) That there is little likelihood that conditions will be remedied so that the child can be returned to the parent in the near future.
- ...
- (f) That continuation of the parent and child relationship clearly diminishes that child's prospects for early integration into a stable and permanent home.

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1 Although not raised below, the issues in this case are of constitutional magnitude, and therefore may be raised for the first time on appeal. RAP 2.5(a).

A court may enter an order terminating the parent-child relationship when it finds that these six requisite allegations are supported by clear, cogent and convincing evidence. RCW 13.34.190(1); *In re Welfare of Hall*, 99 Wn.2d 842, 849, 664 P.2d 1245 (1983). Additionally, the trial court must also find by a preponderance of the evidence that termination is in the best interests of the child. RCW 13.34.190(2).

“Termination of parental rights can be ordered only after the statutory factors are proved by a required standard of proof at a fact-finding hearing in which the parent is afforded the right to be represented by counsel, to introduce evidence, to be heard, and to examine witnesses.” *In re T.R.*, 108 Wn. App. 149, 158, 29 P.3d 1275 (2001) (citing RCW 13.34.090(1) (emphasis added). Accordingly, a court asked to terminate parental rights should employ great care. *In re Welfare of H.S.*, 94 Wn. App. 511, 530, 973 P.2d 474 (1999), *cert. denied*, 529 U.S. 1108 (2000).

The United States Supreme Court has declared it “plain beyond the need for multiple citation” that a natural parent’s right to “the companionship, care, custody, and management of his or her children” is an interest more precious than any property right. *Santosky v. Kramer*, 455 U.S. 745, 758, 102 S. Ct. 1388, 71 L. Ed. 2d 599 (1982) (citations

omitted). The court noted that a decision to terminate parental rights is final and irrevocable: "Few forms of state action are both so severe and irreversible." *Santosky*, 455 U.S. at 759.

When the State initiates a parental rights termination proceeding, it seeks not merely to infringe that fundamental liberty interest, but to *end* it. 'If the State prevails, it will have worked a unique kind of deprivation . . . A parent's interest in the accuracy and justice of the decision to terminate his or her parental status is, therefore, a commanding one.'

*Id.*

Due to these significant interests, Washington State provides the full panoply of due process rights guaranteed under the Washington Constitution, Article 1, § 3, and the Fourteenth Amendment to the U.S. Constitution. *In re Moseley*, 34 Wn. App. 179, 660 P.2d 315 (1983); *In re the Dependency of J.H.*, 117 Wn.2d 460, 473-74, 815 P.2d 1380 (1991).

Parental interests are also protected by statute. The Washington State Juvenile Court Act provides in relevant part:

(1) Any party has a right to be represented by an attorney in all proceedings under this chapter, to introduce evidence, to be heard in his or her own behalf, to examine witnesses, to receive a decision based solely on the evidence adduced at the hearing, and to an unbiased fact-finder.

(2) At all stages of a proceeding in which a child is alleged to be dependent, the child's parent, guardian, or legal custodian has the right to be represented by counsel,

and if indigent, to have counsel appointed for him or her by the court. RCW 13.34.090(1)(2). Unless waived in court, counsel shall be provided to the child's parent, guardian, or legal custodian, if such person (a) has appeared in the proceeding *or* requested the court to appoint counsel.

RCW 13.34.090(1) and (2)

However, parental interests are not absolute: "The nature of the process due in parental rights termination proceedings turns on a balancing of the 'three distinct factors': (1) the parent's interest, (2) the risk of error created by the procedures, and (3) the State's interest. *Santosky*, 455 U.S. at 754; *In re the Dependency of J.W.*, 90 Wn. App. 47, 49, 953 P.2d 104, review denied, 136 Wn.2d 1021, 969 P.2d 1063 (1988); *In re Harris*, 98 Wn.2d 276, 285, 654 P.2d 109 (1982); see *Mathews v. Eldridge*, 424 U.S. 319, 335, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976)).

#### Parent's Interest

Every parent has a fundamental liberty interest in maintaining the parent-child relationship with his or her children free from interference by the State. *In re Luscier*, 84 Wn.2d 135, 524 P.2d 906 (1974). Preservation of the family unit is a fundamental constitutional right protected by the Fourteenth Amendment and the Washington Constitution. *In re Darrow*, 32 Wn. App. 803, 806, 649 P.2d 858 (1982); *Santosky*, 455 U.S. at 753. The essential right to procreate and to raise children was

acknowledged in *Skinner v. Oklahoma*, 316 U.S. 535, 542, 62 S. Ct. 1110, 1113, 86 L. Ed. 2d 1655 (1942), to be among “the basic civil rights of man.”

Washington zealously protects family relationships. Long ago, the Supreme Court in *In re Hudson*, 13 Wn.2d 673, 678, 685, 126 P.2d 765 (1942), stated that a parent’s interest in the custody and control of minor children was a ‘sacred’ right and recognized at common law. The right of a parent to their child has been characterized as “more precious to many people than the right of life itself.” *In re Gibson*, 4 Wn. App 372, 379, 483 P.2d 131 (1971). The *Luscier* court declared:

Child deprivation hearings, in particular, have been the subject of close scrutiny and this court, on many occasions, has carefully scrutinized deprivation hearings to assure that the interested parties have been accorded the procedural fairness required by due process of law. *There can be no doubt that the full panoply of due process safeguards applies to deprivation hearings.*

*In re Luscier*, 84 Wn.2d at 136-137 (citations omitted) (emphasis added).

Further, the parental interest is inextricably linked to the child’s best interests. The Supreme Court has emphasized that the child has an interest in *preventing the erroneous termination of his relationship with his parents*. *Santosky*, 45 U.S. at 765 (“the parents and the child share an interest in avoiding erroneous termination”). Some states presume that the

best interests of children are served by their parents. *See e.g., In re Christina T.*, 590 P.2d 189 (Okla. 1979). It is with the significance of these rights in mind, that we evaluate the remaining factors.

Risk of error: The risk of error in a case where a parent is not present for the hearing or represented by counsel is significant:

In a deprivation hearing, a parent without the assistance of counsel does not confront pro se a similarly situated party litigant, but the highly skilled representatives of the State. Not surprisingly, it has been established, in one jurisdiction, that the presence of legal counsel in child deprivation hearings results in a significantly lower percentage of court findings against the parent.

*In re Luscier.*, 84 Wn.2d at 137; *see also; In re C.R.B.*, 62 Wn. App. 608, 615, 814 P.2d 1197 (1991).

The risk of error is the central problem in this case. Here, in the absence of both trial counsel and Ms. Przespolewski, the court considered one-sided evidence and then terminated the mother's parental rights. Without cross-examination of witnesses or the presentation of a defense, the risk of error was high.

*In re M.S.*, 98 Wn. App. 91, 988 P.2d 488 (1999) provides some guidance regarding the risk of error factor. In *M.S.*, Robert Mattson, the appellant father, was incarcerated at the time of his termination trial, and denied the right to testify personally or telephonically. *M.S.*, 98 Wn. App. at 92. The State presented its case, and Mr. Mattson's attorney adopted

the guardian ad litem's testimony as the father's testimony. *Id.* at 93. Mr. Mattson argued on appeal that he was denied his procedural due process rights when the court terminated his parental rights without giving him the opportunity to testify by telephone.

Division one of this court found that the risk of error created by the procedure was minimal because (1) the father agreed to the factual findings of the court; (2) trial counsel cross-examined witnesses and presented evidence; and (3) the court gave Mr. Mattson the opportunity to present evidence through an affidavit. *Id.* at 95. Unlike Mr. Mattson, Ms. Przespolewski did not have the assistance of counsel, did not have the opportunity to cross-examine witnesses, and was not given an opportunity to present evidence. By allowing counsel to withdraw and denying her request for a continuance, the court effectively stripped Ms. Przespolewski of all due process safeguards. Given the one-sided nature of the hearing, the risk of error was unconscionably high.

*Luscier* cites a 1968 study<sup>2</sup>, (dated at this point, but certainly still relevant) that discusses the inequities of lack of counsel in child deprivation hearings:

Since there is no evidence indicating that the average respondent who can retain counsel is better or less neglectful than one who cannot, the conclusion seems

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<sup>2</sup> *Child Neglect: Due Process for the Parent*, 70 Colum. L. Rev. 465, 476 (1970).

inescapable that a significant number of cases against unrepresented parents result in findings of neglect solely because of the absence of counsel. In other words, assuming a basic faith in the adversary system as a method of bringing the truth to light, a significant number of neglect findings (followed in many cases by taking of the child from his parents) against unrepresented indigents are probably erroneous. It would be hard to think of a system of a law which works more to the oppression of the poor than the denial of appointed counsel to indigents in neglect proceedings.

*In re Luscier*, 84 Wn.2d at 137-138.

#### State's Interest

The State has two interests in a termination procedure: an interest in preserving and promoting the welfare of the child, and an administrative interest in a speedy resolution to secure a permanent placement for the child. *In re M.S.*, 98 Wn. App at 94; *see also* RCW 13.34.020 (“The right of a child to basic nurturing includes the right to a safe, stable, and permanent home and a speedy resolution of any proceeding under this chapter.”)

In *M.S.*, for example, the court found that it was not in the best interests of the children to wait for eight months until their father was released from prison. *In re M.S.*, 98 Wn. App. at 94. In contrast, in this case, it is unclear how a brief delay to locate the mother or ensure counsel would have unduly impaired the State's interest in a speedy resolution or a stable placement for the child.

Balancing the *Eldridge* factors leads to one conclusion: Ms. Przespolewski was denied her due process rights to a fair termination hearing. Without the assistance of counsel, the risk of error was unconscionably high. This risk of error, even if remote, not only denied the mother her due process rights, it seriously compromised the best interests of the child: how could the court ensure a proper termination of the child's right to his family relationships if *any* possibility of error existed. Here, the necessary procedural safeguards were simply not in place. Accordingly, a balancing of three factors shows that neither the mother's nor her child's rights were properly protected.

Having established that Ms. Przespolewski has the right to a full opportunity to defend in a fair hearing while represented by counsel, the question is whether she waived these rights. First, as already cited, RCW 13.34.090 requires appointment of counsel in termination cases "unless waived in court." RCW 13.34.090(2).

While the right to counsel and due process guaranteed under RCW 13.34.090 mirrors that found under the constitutional right to due process, the statute is different in one fundamental aspect. As the highlighted portion of the statute quoted above reveals, the legislature not only requires the appointment of counsel for indigents in termination cases, it also requires that any waiver of that right be made "in court."

Thus, the legislature has forbidden any “implied” waiver of counsel through conduct outside the court. This is a significant departure from the constitutional right to appointment of counsel, which can be implicitly waived by conduct outside the court. *See State v. Mollich*, 132 Wn.2d 80, 936 P.2d 408 (1997).

Given the statutory mandate, the court in *In re the Welfare of G.E.*, 116 Wn. App. 326, 333-334, 65 P.3d 1219 (2003), held that a waiver of the right to counsel in termination proceedings must be expressed directly on the record and knowingly and voluntarily made - “similar to the waiver of counsel applicable in criminal proceedings.” *G.E.*, 116 Wn. App. at 334.

The court then identified three ways defendants may waive their right to counsel: (1) voluntarily relinquish the right; (2) relinquish by conduct; or (3) forfeit it through extremely dilatory conduct. *Id.*, citing *Tacoma v. Bishop*, 82 Wn. App. 850, 859, 920 P.2d 214 (1996). Relinquishment is usually indicated by an affirmative, verbal request. *Id.* For the request to be valid, the court must ensure that the defendant is aware of the risk of self-representation. *Id.* In this case, Ms. Przespolewski neither asked to proceed pro se, nor did the court advise her of the risks of doing so.

If a defendant engages in dilatory tactics or hinders a proceeding, a court may find that the defendant waived his right to counsel by conduct. *Id.* Failure to appear may constitute waiver of counsel. *Id.* at 335. However, it is well settled in this state that “[w]hen an attorney makes a formal appearance for a defendant, it is the defendant who appears, and not the attorney.” *In re C.R.B.*, 62 Wn. App. at 617 quoting *Tiffin v. Hendricks*, 44 Wn.2d 837, 843, 271 P.2d 683 (1954).

*C.R.B.* is instructive. In that case, the appellant’s mother failed to appear for the termination hearing, and the court subsequently terminated her parental rights by default. *In re C.R.B.*, 62 Wn. App. at 612. On appeal, she argued that the default judgment violated her due process rights. *Id.* at 614. After balancing the *Eldridge* factors, the court reversed the judgment, holding that the mother was entitled to a full hearing on the merits:

We agree that a child’s right to a stable home cannot be put on hold interminably because a parent is absent from the courtroom and had failed to contact his or her attorney. We thus hold that a parent’s failure to respond to notices and summons of a proceeding to terminate parental rights, in itself, does not preclude the State from obtaining a judgment permanently terminating that parent’s right to the care and custody of his or her child. *However, we conclude that a hearing on the merits of the case is necessary to satisfy due process requirements. RCW 13.34.180 and .190 set forth specific procedural requirements that must be followed in order to terminate parental rights, including*

establishing particular factual matters . . . the State may not circumvent these requirements.

*Id.* at 616 (citations omitted) (emphasis added)

The court reasoned that because controversies should be determined on their merits rather than by default, appearance requirements should be liberally construed. *Id.* Finding the mother had communicated her intention of contesting the termination to her attorney only two months earlier, and her attorney appeared in court, the court found that she had “appeared”. *Id.* at 617.

Similarly, in this case, Ms. Przespolewski had recently told her counsel that she wished to engage in services and contest the termination of her parental rights. (CP 27, 31-32) Counsel appeared on the day of trial to withdraw from the case. Applying the reasoning of *C.R.B.*, Ms. Przespolewski appeared for trial through counsel. Consequently, she did not waive her right to counsel by conduct.

Finally, in some circumstances, a defendant may forfeit her right to counsel. A defendant’s conduct resulting in forfeiture must be more severe than conduct sufficient to warrant waiver by conduct – such conduct must be “extremely dilatory”. *In re G.E.*, 116 Wn. App. at 337. “A defendant who is abusive toward his attorney may forfeit his right to counsel.” *In re G.E.*, 116 Wn. App. at 337 (citing *United States v.*

*McLeod*, 53 F.3d 322, 325 (11<sup>th</sup> Cir. 1995). Nothing in the record suggests any conduct justifying forfeiture of Ms. Przespolewski's right to counsel. To conclude, the record does not support any determination that Ms. Przespolewski waived her right to counsel in the termination proceeding through relinquishment, conduct, or forfeiture.<sup>3</sup>

Further, Ms. Przespolewski was not only denied her right to counsel, she was denied a fair opportunity to be heard and defend. *In re Martin*, 3 Wn. App. 405, 476 P.2d 134 (1970); *In re Mosley*, 34 Wn. App. 179, 184, 660 P.2d 315 (1983) (child deprivation hearings should be closely scrutinized and the reviewing court should "assure that the interested parties have been accorded the procedural fairness required by due process of law.") "The trial court should assure that the parent is afforded a full and fair opportunity to present evidence or rebut evidence presented against him." *In re Darrow*, 32 Wn. App. at 808.

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<sup>3</sup> It is worth remembering why the right to counsel is so fundamental in termination cases. The Washington Supreme Court has held:

*As the result of a child deprivation proceeding, a child may be deprived of the comfort and association of its parents and be committed to the care of an institution. Surely, the reasoning of Argersinger [criminal case], which requires the appointment of counsel if there is the possibility of even a 1-day jail sentence, must also extend to a proceeding where a parent may be deprived of a child forever . . . We therefore join the Supreme Courts of Maine, Nebraska, New York, Oregon, and Pennsylvania in holding that appointment of counsel is constitutionally required in permanent deprivation proceedings. In re Luscier, 84 Wn.2d at 138-139 (citations omitted) (emphasis added).*

*Darrow* explains the process that is due in parental termination proceedings. In that case, the appellant father was incarcerated and not allowed to be present at the termination trial. *Darrow*, 32 Wn. App. at 806. After the court deprived him of his parental rights, he argued that he was denied the right to be heard and confront witnesses. *Id.* at 805.

The court found that the father's due process rights were not violated because he had been provided counsel and the opportunity to present a deposition to the court: "The right to appear *personally* and defend is not guaranteed by due process so long as the prisoner was afforded an opportunity to defend through counsel and by deposition or similar evidentiary techniques." *Id.* at 808.

Unlike Mr. *Darrow*, Ms. *Przespolewski* was denied *all* opportunity to defend herself in a fair hearing: she had no counsel to defend her or cross-examine the State's witnesses, and she had no opportunity to present a case either through personal testimony, witnesses, or deposition. The court could have protected Ms. *Przespolewski*'s due process rights by denying counsel's motion to withdraw and granting a brief continuance to locate her. *See Darrow*, 32 Wn. App. at 808 (granting a continuance is one means of assuring the parent's right to defend in parental termination proceedings). Instead, the court considered one-sided evidence from the State and effectively entered a default order of termination against her.

Further, as discussed above, the *G.E.* court found that due process rights in termination cases are similar to those in criminal cases. *G.E.*, 116 Wn. App. at 334. In criminal cases, a defendant has a constitutional right to be present at trial. U.S. Const. amend. VI and XIV, Wash. Const. art. I, § 3 and 22; *State v. Thomson*, 123 Wn.2d 877, 880, 872 P.2d 1097 (1994). This right is fundamental. See *Rushen v. Spain*, 464 U.S. 114, 117, 104 S. Ct. 453, 78 L. Ed. 2d 267 (1983). A defendant may waive this right, but the waiver must be knowing and voluntary. *Thompson*, 123 Wn.2d at 880.

*Thompson* adopted a three part test to determine the voluntariness of a defendant's absence:

The trial court will "(1)[make] sufficient inquiry into the circumstances of a defendant's disappearance to justify a finding whether the absence was voluntary, (2) [make] a preliminary finding of voluntariness (when justified), and (3) [afford] the defendant an adequate opportunity to explain his absence when he is returned to custody . . ."

*Thompson*, 123 Wn.2d at 881 (quoting *State v. Washington*, 34 Wn. App. 410, 414, 661 P.2d 605 (1983)) Unless the trial court determines that the circumstances justify a renewed finding of voluntary absence, the court must declare a mistrial. *State v. Garza*, 150 Wn.2d 360, 77 P.3d 347 (2003).

In this case, the court failed to make any significant inquiry into

Ms. Przespolewski's absence. Instead, it refused to grant a continuance, allowed counsel to withdraw, and then terminated her parental rights.

These due process violations render it impossible to adequately evaluate the sufficiency of the evidence. The State's burden of proof is strict: it must prove its case by clear, cogent, and convincing evidence. *In re Sego*, 82 Wn.2d 736, 739, 513 P.2d 831 (1973) Such evidence must be more substantial than that required under a preponderance of the evidence standard. *In re Sego*, 82 Wn.2d at 736. In fact, the ultimate fact in issue must be shown by evidence to be "highly probable". *Id.*

How is this court to review the "facts" under the "highly probable" standard when the State's evidence and witnesses were not subject to the scrutiny and examination of trial counsel? How can this court fairly evaluate an irrevocable parental termination decision when the parent has not been provided an opportunity to present evidence, and the trial court has failed to inquire whether her absence was voluntary?

As already discussed, the risk of error in a proceeding lacking procedural due process is significant. While the State provided some evidence that Ms. Przespolewski had not availed herself of much needed drug treatment, such evidence is inherently unreliable without undergoing the rigors of the adversarial process. Accordingly, Ms. Przespolewski asserts that insufficient evidence supports the above challenged findings

and conclusions. (See Assignments of Error at pp. 1-2)

Finally, the court's finding regarding the overriding interest here - the best interests of the child - is insufficiently specific. Required findings must be sufficiently specific to permit meaningful review. *In re LaBelle*, 107 Wn.2d 196, 218, 728 P.2d 138 (1986). At a minimum, the findings should indicate the factual basis for the ultimate conclusions. *Id.* Here, the court merely parroted the statutory language, finding "termination of the mother-child relationship is in the best interests of the child." (CP 8) It cited no facts to support this contention. Given that Ms. Przespolewski was denied a fair hearing, it would be serious error to conclude that the child's best interests were served.

#### E. CONCLUSION

If anything, persons faced with forced dissolution of their parental rights have a more critical need for procedural protections than do those resisting State intervention into ongoing family affairs. When the State moves to destroy weakened familial bonds, it must provide the parents with fundamentally fair procedures. *Santosky*, 455 U.S. at 753-754.

In view of the violation of Ms. Przespolewski's due process rights under constitutional and statutory law, the trial court erred when it found that sufficient evidence supported termination of her parental rights. It also erred in denying her request for a continuance and allowing trial

counsel to withdraw. Such constitutional violations are presumed prejudicial.

Termination of parental rights is a final and irrevocable result. The trial court permitted the total abandonment of all procedural safeguards for the mother and child's basic familial rights. As a result, this court must reverse and remand for a new hearing, and appoint new counsel.

DATED this 29<sup>th</sup> day of September, 2005.

Respectfully submitted,

GEMBERLING DOORIS & LADICH, P.S.

  
Maurina Ladich #24338

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON,

DIVISION III

STATE OF WASHINGTON,	)	
	)	
Respondent,	)	No. 24098-3-III
	)	
vs.	)	CERTIFICATE
	)	OF MAILING
RENEE MICHELLE PRZESPOLEWSKI,	)	
	)	
Appellant.	)	

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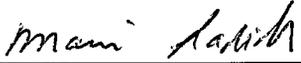
I certify under penalty of perjury under the laws of the State of Washington that on September 29, 2005, I mailed copies of Appellant's Brief in this matter to:

David Wayne Coe  
Attorney at Law  
Offc of Attorney General  
18 S Mission St Ste 300  
Wenatchee WA 98801-2203

and

Rene Michelle Przespolewski  
9 N Franklin Ave # 9  
Wenatchee WA 98801

Signed at Spokane, Washington on September 29, 2005.

  
Maurina Ladich #24338  
Attorney for Appellant

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF CHELAN  
JUVENILE DIVISION

In re the Dependency of:  
  
ELIJAH LEE JOSEPH  
PRZESPOLEWSKI,  
  
D.O.B.: 7/12/04.

NO. 05-7-00036-1  
  
FINDINGS OF FACT, CONCLUSIONS  
OF LAW AND ORDER OF  
TERMINATION OF PARENT-CHILD  
RELATIONSHIP

1. HEARING

- 1.1 Date: March 30, 2005.
- 1.2 Notice of Hearing.

The mother of the child was personally served on February 28, 2005. An Affidavit of Service has been filed.

1.3 Appearances.

The following persons appeared:  
Ann McIntosh, AAG, Attorney for the Department  
Gail McDonough, Department caseworker  
Kori Kinsman, CASA Guardian ad litem

The mother's attorney, N. Smith Hagopian, appeared and asked the court to allow him to withdraw as the mother's attorney, based on the fact that he had been unable to communicate with her. He advised the court of his numerous and varied attempts to contact the mother. He further advised the court that he could not appropriately represent the mother's position because he could

FINDINGS OF FACT, CONCLUSIONS  
OF LAW AND ORDER OF  
TERMINATION OF PARENT-CHILD  
RELATIONSHIP

OFFICE OF THE ATTORNEY GENERAL  
18 South Mission, Suite 300  
Wenatchee, WA 98801  
(509) 664-6385

1 not determine her position. The court found that Mr. Hagopian could not adequately represent the  
2 mother's interests due to her failure to communicate with him. The court allowed Mr. Hagopian  
3 to withdraw.

4 1.4 Evidence Presented The court considered the records and files herein, testimony  
5 from Gail McDonough and James Fletcher, the Guardian ad Litem report dated March 24, 2005,  
6 and Exhibits 1-4.

7 **II. FINDINGS**

8 On the basis of the above described clear, cogent and convincing evidence, the court finds:

9 2.1 Petitioner. The petitioning party, Gail McDonough, is a caseworker for the  
10 Department of Social and Health Services whose business address is P.O. Box 3088, Wenatchee,  
11 Washington, 98807.

12 2.2 Child. The child involved herein is the son of the mother described below, and is  
13 at this time 8 months of age, having been born on July 12, 2004, in the city of Wenatchee, county  
14 of Chelan, state of Washington. The child is currently a resident of Douglas County, Washington.

15 2.3 Mother. The child's mother is Rene Michelle Bowman Przespolewski, who was  
16 born April 1, 1962, and therefore is not a minor. The mother's current or last known address is 9  
17 N. Franklin Street, Wenatchee, Washington 98801.

18 2.4 Biological Father. The child's biological father is unknown. DNA testing  
19 revealed that the presumed father is not the biological father.

20 2.5 Child's Guardian Ad Litem. Kori Kinsman, whose address is P.O. Box 2027,  
21 Wenatchee, WA 98807, is serving as the child's Guardian ad Litem.

22 2.6 Applicable Federal Law.

23 (A) The Indian Child Welfare Act, 25 U.S.C. Sec. 1901 et seq. does not apply  
24 to this proceeding.

1 (B) The Servicemembers Civil Relief Act, 50 U.S.C. app 501, et seq. does not  
2 apply to this proceeding.

3 2.7 The mother of the child, Rene Przespolewski, has failed to perform parental duties  
4 under circumstances showing a substantial lack of regard for her parental obligations and is  
5 withholding consent to termination of the parent-child relationship and adoption.

6 2.8 Dependency. The child was found to be a dependent child on September 15,  
7 2004.

8 2.9 Disposition Order. A disposition order was entered by the court concerning the  
9 child on September 15, 2004.

10 2.10 Removal from Parent's Custody. The child was removed from the custody of his  
11 parents on July 12, 2004, pursuant to RCW 13.34.060.

12 2.11 Services were Expressly or Understandably Offered or Provided. All services  
13 ordered pursuant to RCW 13.34.130, and all necessary services reasonably available, capable of  
14 correcting the parental deficiencies within the foreseeable future, were expressly or  
15 understandably offered or provided. These services included:

- 16 • Psychological evaluation administered on 10/21/04;
- 17 • Drug and alcohol assessment and treatment on numerous occasions  
beginning before the child's birth;
- 18 • Parenting skills education
- Visitation with her child during her incarceration.

19 2.12 Potential for Remedial Action. There is little likelihood that conditions will be  
20 remedied so that the child can be returned to the mother in the near future. The mother's primary  
21 parenting deficiency arises from her abuse of drugs and alcohol. Except for her periods of  
22 incarceration, she has not demonstrated an ability to refrain from drug and alcohol abuse. She has  
23 failed to follow through numerous times over several years with referral to drug and alcohol  
24 treatment programs. No evidence indicates she will enter drug and alcohol treatment in the near  
25 future.

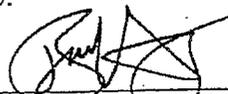


1 | privileges, immunities, duties, and obligations between one another as provided by law, except  
2 | past due support obligations owed by the parent with respect to the child.

3 |         4.2     The Washington State Department of Social and Health Services is granted legal  
4 | custody of the child, including the authority to:

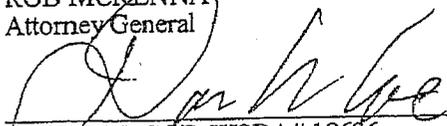
- 5 |             (A)    place the child with a prospective adoptive parent;  
6 |             (B)    consent to any necessary medical, dental or other health care or evaluation;  
7 |             (C)    at its discretion, undertake all other matters normally required of the parent  
8 | of a child.

9 |         DATED this 13 day of April, 2005.

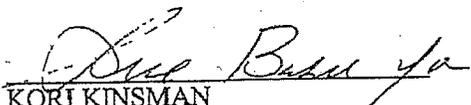
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11 | JUDGE/COURT COMMISSIONER

12 | Presented by:

13 | ROB MCKENNA  
14 | Attorney General

15 |   
16 | DAVID W. COE, WSBA# 18636  
17 | Assistant Attorney General

17 | APPROVED FOR ENTRY

18 |   
19 | KORI KINSMAN  
20 | Guardian ad litem

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF CHELAN  
JUVENILE DIVISION

In re the Dependency of:

NO. 04-7-00151-2

ELIJAH PRZESPOLEWSKI,

REVIEW HEARING ORDER  
 PERMANENCY PLANNING  
REVIEW ORDER

D.O.B.: 7/12/04.

Clerk's Action Required. Paragraph 3.1,  
3.10

I. HEARING

1.1 A review hearing was held on January 12, 2005.

1.2 Persons appearing at the hearing were:

- |                                     |                             |                                     |  |
|-------------------------------------|-----------------------------|-------------------------------------|--|
| <input type="checkbox"/>            | Child                       | <input type="checkbox"/>            | Child's Lawyer/                              |
| <input type="checkbox"/>            | Mother                      | <input checked="" type="checkbox"/> | Mother's Lawyer/Hagopian                     |
| <input type="checkbox"/>            | Father                      | <input checked="" type="checkbox"/> | Father's Lawyer/Hagopian                     |
| <input type="checkbox"/>            | Legal Guardian or Custodian | <input type="checkbox"/>            | Legal Guardian's or Custodian's Lawyer       |
| <input checked="" type="checkbox"/> | Child's GAL/Kinsman         | <input type="checkbox"/>            | GAL's Lawyer                                 |
| <input checked="" type="checkbox"/> | Agency Worker/McDonough     | <input checked="" type="checkbox"/> | Agency's Lawyer/Coe                          |
| <input type="checkbox"/>            | Probation Counselor         | <input type="checkbox"/>            | * Other <i>term "father" as used in this</i> |

1.3 Testimony was taken from N.A.

*order refers to Lonnie Przespolewski  
who is not the biological but  
adoptive parent of the child.*

1.4 The court considered the file and record herein, statements from counsel, the  
caseworker's report of December 17, 2004, and Guardian ad litem report dated December 6,  
2004, and :

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

II. FINDINGS

The Court FINDS that:

2.1 Indian status:

- The child is Indian as defined in 25 U.S.C. 1903(4).
- The child is not Indian as defined in 25 U.S.C. 1903(4).
- It has not been determined whether the child is Indian as defined in 25 U.S.C. 1903(4).

2.2 Indian Child (to be completed if the child is removed from the home):

- Based upon clear, cogent and convincing evidence, including the testimony or affidavit of a qualified expert witness, continued custody of the child by the  mother  father  Indian custodian is likely to result in serious physical or emotional harm to the child.
- Active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the break-up of the Indian family, but these efforts have been unsuccessful.

2.3  Pursuant to RCW 13.34.030, the child was found to be dependent as to the mother on September 15, 2004. The child was found to be dependent as to the father on September 15, 2004.

2.4 The child is currently placed in  parental care since  out-of-home care under the custody and supervision of DCFS. The child has resided in out-of-home placement since July 13, 2004.

2.5 The agency plan  is not contested  is contested by \_\_\_\_\_

2.6  The mother has complied with the following court-ordered services:  
Completed psychological evaluation

The mother has not complied with the following court-ordered services:  
Maintaining contact with department caseworker; submit to random UAs; refraining from using illegal substances; submit to drug/alcohol evaluation; regular visitation; participate in parenting education

The father has complied with the following court-ordered services:  
Completed psychological evaluation

The father has not complied with the following court-ordered services:  
Maintaining contact with department caseworker; submit to random UAs; refraining from using illegal substances; submit to drug/alcohol evaluation; regular visitation; participate in parenting education

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- The child has complied with the following court-ordered services:  
All.
- The child has not complied with the following court-ordered services:  
\_\_\_\_\_  
\_\_\_\_\_

2.7 The agency  has  has not offered or provided the court -ordered services.

2.8 Court supervision  should  should not continue.

2.9  The child has been residing in  licensed care  relative care. A reason for removal of the child as set forth in RCW 13.34.130(2):

- no longer exists and the child should be returned home.
- still exists and it would be contrary to the child's welfare to return home.

- (a) Reasonable services  have  have not been provided or offered to the parties to facilitate reunion.
- (b) The child  has  has not been placed in the least restrictive setting appropriate to the child's needs. Consideration  has  has not been given to placement with the child's relatives.
- (c) There  is  is not a continuing need for out-of-home placement. The placement recommended by the supervising agency  is  is not appropriate.
- (d) The mother  has  has not made progress during the preceding review period toward correcting the problems that necessitated the child's placement in out-of-home care.

Comments: Incarcerated; following release 11-12-04, no contact  
 The father  has  has not made progress during the preceding review period toward correcting the problems that necessitated the child's placement in out-of-home care.

- (e) Visitation has occurred with mother  as scheduled  sporadically  never  other currently canceled; 3 times in jail  
 Lack of mother's visitation is the result of  lack of parent's effort  parent's incarceration  geographical distance  court order  other \_\_\_\_\_  
 Visitation has occurred with father  as scheduled  sporadically  never  other currently canceled  
 Lack of father's visitation is the result of  lack of parent's effort  parent's incarceration  geographical distance  court order  other \_\_\_\_\_

- (f) Additional services, not previously ordered,  are  are not needed to facilitate the return of the child to the parents.
- (g) The projected date for the child's return home or the implementation of another permanent plan of care is July 2005

1 2.10  In the previous review period, the permanent plan of care in effect for the child  
 has been:  
 2 Primary: Alternative:  
 3  [ ] Return of the child to the home of the [ ] mother [ ] father  
 [ ] guardian or [ ] legal custodian;  
 4 [ ]  Adoption;  
 [ ] [ ] Permanent Legal Custody pursuant to chapter 26.10 RCW or the  
 5 equivalent laws of another state or a federally recognized Indian  
 tribe;  
 6 [ ] [ ] Guardianship;  
 [ ] [ ] Long term [ ] relative or [ ] foster care with a written  
 7 agreement;  
 [ ] [ ] Independent living.

8 2.11  Reasonable efforts  have [ ] have not been made by DSHS to implement  
 and finalize the permanent plan of care for the child:  
 9 *DNL*  
*NSH*  
 For the reasons detailed in the social study (ISSP); and/or  
 10 [ ] Other: \_\_\_\_\_  
 \_\_\_\_\_  
 11 \_\_\_\_\_

12 2.12  The primary permanent plan of care for the child [ ] has  has not been  
 achieved:  
 13 *DNL*  
*NSH*  
 For the reasons detailed in the social study (ISSP); and/or  
 14 [ ] Other: \_\_\_\_\_  
 \_\_\_\_\_  
 15 \_\_\_\_\_

16 2.13 [ ] A termination petition should be filed pursuant to RCW 13.34.138(1)(a).  
 17 [ ] A guardianship petition should be filed.

18 2.14 [ ] The court determined that information and/or records otherwise confidential by  
 statute or by regulation may be discussed in this proceeding as necessary for a  
 19 full and proper determination of issues concerning the health, safety and welfare  
 of the child.

20 **III. ORDER**

21 **IT IS ORDERED:**

22 3.1 [ ] Dependency is dismissed, and the guardian ad litem and/or CASA is discharged.  
 The child remains a dependent child pursuant to RCW 13.34.130.  
 23 3.2 [ ] The child shall return to or remain in [ ] mother's [ ] father's [ ] parent's  
 home upon the following conditions:  
 24 \_\_\_\_\_  
 25 [ ] per agency plan  
 [ ] other \_\_\_\_\_

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3.3  The child shall be placed in or remain in DCFS custody for placement. DCFS is authorized to place the child in  licensed care  relative placement with

3.4  Services shall be offered or provided:  
 as set forth in the Agency Report to Court, which is filed and attached:  
 in its entirety.  
 with the following amendment(s): \_\_\_\_\_

as follows: \_\_\_\_\_

Time deadlines for initiation and/or completion of additional services shall be:  
 as set forth in the report;  
 as follows: \_\_\_\_\_

3.5  The parent and/or child shall authorize releases of information for treatment providers. Reports and evaluations by such providers, including those which might be privileged, shall be filed with the court and distributed to all parties, absent court order limiting such distribution.

3.6  The mother's visitation shall be  supervised  unsupervised.  The court adopts the visitation plan submitted by DCFS as filed and attached to this order.  Other visitation conditions: *mother must contact DCFS and request visitation; visits must be confirmed 24 hours in advance*  
 The father's visitation shall be  supervised  unsupervised.  The court adopts the visitation plan submitted by DCFS as filed and attached to this order.  Other visitation conditions: \_\_\_\_\_

3.7 The person or agency having custody of the child shall have the power to authorize and provide routine medical and dental examination and care and all necessary emergency care.

3.8 PERMANENCY PLANNING HEARING (to be used only as specified in RCW 13.34.145).

The child has resided in the  foster parent's home  relative's home for more than six months and that caretaker has been informed of this permanency planning hearing.

1 [ ] The permanency plan for the child recommended by DSHS is [ ] approved  
2 [ ] modified as follows: \_\_\_\_\_  
3 \_\_\_\_\_

4 The permanency plan for the child shall be:

- 5 Primary: Alternative:  
6 [ ] [ ] Return of the child to the home of the [ ] mother [ ] father  
7 [ ] [ ] [ ] guardian or [ ] legal custodian;  
8 [ ] [ ] Adoption;  
9 [ ] [ ] Permanent Legal Custody pursuant to chapter 26.10 RCW or the  
10 [ ] [ ] equivalent laws of another state or a federally recognized Indian  
11 [ ] [ ] Guardianship;  
12 [ ] [ ] Long term [ ] relative or [ ] foster care with a written  
13 [ ] [ ] agreement;  
14 [ ] [ ] Independent living.
- 15 [ ] A petition for termination of parental rights shall be filed.  
16 [ ] A petition for guardianship shall be filed.  
17 [ ] Dependency is dismissed.

18 3.9 The person or agency having custody of the child shall have full power to authorize and  
19 provide all necessary, routine and emergency medical, dental, or psychological care as  
20 recommended by the child's treating doctor or psychologist.

21 3.10 A review hearing shall be held:  
22 On JUNE 8, 2005, at 9:00 am (permanency planning)  
23 At: Chelan County Superior Court, Chelan County Juvenile Justice Center, 300  
24 Washington Street, Wenatchee, WA 98801.

25 3.11 It is further ordered:  the licensed care provider/relative shall be allowed to travel  
out-of-state with the child for a period not to exceed two weeks after giving prior notice  
to DCFS. The licensed care provider/relative may consent to necessary medical and  
dental treatment during these trips.

3.12 Other March 30, 2005, at 9:00 am, is date  
Scheduled for termination hearing.

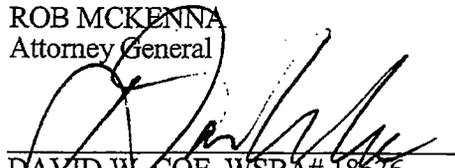
DATED this 12 day of January, 2005.

  
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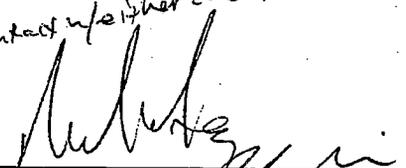
ROB MCKENNA  
Attorney General

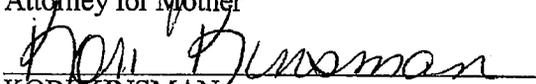
  
DAVID W. COE, WSBA# 18636  
Assistant Attorney General

APPROVED:

*As to Summary - vs contact w/ either client*

  
N. SMITH HAGOPIAN, WSBA# 22609  
Attorney for Mother

  
N. SMITH HAGOPIAN, WSBA# 22609  
Attorney for Father

  
KORI KINSMAN  
Guardian ad Litem

Attorney for Juvenile

**NOTICE**

**A PETITION FOR PERMANENT TERMINATION OF THE PARENT-CHILD RELATIONSHIP MAY BE FILED IF THE CHILD IS PLACED OUT-OF-HOME UNDER AN ORDER OF DEPENDENCY. (RCW 13.34.180.)**

## RECOMMENDATIONS:

**Elijah L.J. Przespolewski, Child:**

1. That the Dependency continue;
2. That Elijah shall continue in his present foster placement until a potentially permanent placement is identified;
3. That if and when Elijah is to be moved to a new placement, a transitional plan be implemented which will minimize undue trauma of loss, and possible reactive attachment disorder;
4. That visitation between Elijah and his mother be conditional upon her having a "clean" urinalysis within the previous 24 hours, and if she meets this condition, visits occur twice weekly for 90 minutes each;
5. That Elijah receive routine and any necessary medical and dental care.

**Rene Przespolewski, Mother:**

1. That Rene re-establish and maintain regular contact with Department Social Worker;
2. That Rene make telephone calls daily to Department secretarial staff to ask if she is scheduled for a random urinalysis, and if she is, that she submit an observed urine sample to Medlab or The Center by 10:00 AM of the same day;
3. That Rene go The Center daily Mondays through Thursdays to request a drug/alcohol assessment appointment that may become available due to a cancellation or "no-show", and if necessary wait at The Center until an appointment becomes available;
4. That Rene refrain from using mind- and mood-altering substances;
5. That Rene follow through with all recommendations made in her drug/alcohol assessment, in a timely manner;
6. That Rene refrain from any illegal activity;
7. That Rene participate in parenting education approved by DCFS, preferably with emphasis on the effects of parental addictions on children's development;
8. That Rene provide SW accurate, up-to-date information as to her address, telephone number(s), employment, persons residing in or frequenting her home, and individuals over the age of 16 will be required to submit to criminal history background checks;
9. That Rene sign any needed releases of information every 90 days to assess progress and coordinate services;
10. That Rene provide any information she may recall as to who may be Elijah's biological father.

*DM* ~~If Lonnie Przespolewski remains a party to this matter:~~

- ~~1. That Lonnie maintain regular contact with Department Social Worker;~~
- ~~2. That Lonnie telephone the Department secretarial staff daily to ask if he is scheduled for a random UA on that day, and if he is, to submit an observed urine sample at Medlab or The Center by 10 AM of the same day;~~
- ~~3. That Lonnie follow the procedure described above in recommendation 3 for Rene Przespolewski in order to secure a drug/alcohol assessment appointment;~~

## RECOMMENDATIONS

4. That Lonnie refrain from using mind- and mood-altering substances;
5. That Lonnie follow through with all recommendations made in his drug/alcohol assessment;
6. That Lonnie refrain from any illegal activity;
7. That Lonnie participate in parenting education approved by DCFS, preferably with an emphasis on how parental addictions affect children's development;
8. That Lonnie provide SW accurate, up-to-date information as to his address, telephone number(s), employment, persons residing in or frequenting his home, and individuals over the age of 16 will be required to submit to criminal history background checks;
9. That Lonnie sign any needed releases of information every 90 days to assess progress and coordinate services;
10. That Lonnie participate in counseling services approved by DCFS to address his codependence and enabling behaviors.

For anyone claiming paternity of Elijah Przespolewski:

1. That this person cooperate with paternity testing procedures;
2. That this person cooperate with criminal history background check and other routine DCFS investigative procedures;
3. That this person provide SW with accurate, up-to-date information and sign needed releases to obtain information as to his being a possible placement for Elijah, and to develop a service plan, if needed.

pk  
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FILED

JUN 08 2005

SIRI A. WOODS  
CHELAN COUNTY CLERK

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF CHELAN  
JUVENILE DIVISION

In re the Dependency of

NO. 04-7-00151-2

ELIJAH PRZESPOLEWSKI,

PERMANENT WARD REVIEW  
HEARING ORDER  
 PERMANENCY PLANNING

D.O.B.: 7/12/04.

I HEARING

1.1 This matter came on for review hearing on June 8, 2005

1.2 Persons appearing at this hearing were.

- Child
- Foster Mother
- Foster Father
- Other
- AAG/Coe
- Guardian Ad Litem/Kinsman
- Child's Attorney
- Caseworker/McDonough

1.3 Testimony was taken from: N.A.

1.4 The Court considered the caseworker addendum of May 31, 2005, and Guardian ad Litem report dated June 5, 2005, and the records and statements from Caseworker report dated 6-7-04

II FINDINGS

THE COURT FINDS:

2.1 The above-named child was found dependent pursuant to RCW 13.34.030(4) on September 15, 2004

2.2 Parental rights were terminated on April 13, 2005



III ORDER

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IT IS ORDERED THAT

3.1 The child:  
 is dependent  
 is no longer dependent

3.2 The child shall be/continue to be placed in  foster care,  group care,  relative care with \_\_\_\_\_  other \_\_\_\_\_ in the custody of DSHS/DCFS, under the supervision of DSHS, DCFS, under the following conditions:

3.3  That the Agency Plan (attached) as submitted and filed shall be implemented as part of this order of the Court except as amended herein: \_\_\_\_\_

3.4 Among the rights and duties of DCFS as legal custodian is the authority to consent to emergency medical, dental, and surgical care. However, when the legal custodian is not immediately available, the person or entity with whom the child is placed is also authorized to consent to emergency medical, dental, and surgical care.

3.5 The legal custodian shall have authority to consent to the adoption of the child, the marriage of the child, the enlistment of the child in the Armed Forces of the United States, and to consent to such other matters as might normally be required of the parent of the child.

3.6 PERMANENCY PLANNING REVIEW ORDER

The child has resided in the  foster parent's home  relative's home for more than six months and that caretaker has been informed of this permanency planning hearing.

The permanency plan for the child recommended by DSHS is  approved *DMC*  modified as follows: \_\_\_\_\_

The permanency plan for the child shall be:  
Primary.            Alternative:  
                     Return of the child to the home of the  mother  father  
                     guardian or  legal custodian;  
                     Adoption;  
                     Permanent Legal Custody pursuant to chapter 26.10 RCW or the equivalent laws of another state or a federally recognized Indian tribe,

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- Guardianship;
- Long term  relative or  foster care with a written agreement,
- Independent living

- A petition for termination of parental rights shall be filed.
- A petition for guardianship shall be filed
- Dependency is dismissed.

3.7 HEARINGS

The next permanent ward review hearing shall be held on December 14, 2005 at 9:00 a.m. at the Chelan County Superior Court, Chelan County Juvenile Justice Center, 300 Washington Street, Wenatchee, WA 98801.

3.8 IT IS FURTHER ORDERED:

- The foster parents shall be allowed to travel out-of-state with the child for a period not to exceed two weeks after giving prior notice to the Department. The foster parents may consent to necessary medical and dental treatment during these trips.

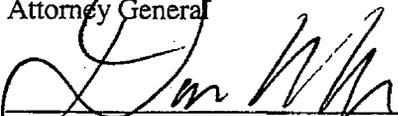
3.9 OTHER

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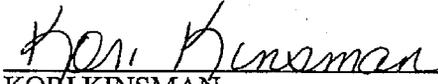
DATED this 8 day of June, 2005.

  
\_\_\_\_\_  
JUDGE COURT COMMISSIONER

Presented by:  
ROB MCKENNA  
Attorney General

  
\_\_\_\_\_  
DAVID W. COE, WSBA# 18636  
Assistant Attorney General

Approved by:

  
\_\_\_\_\_  
KORI KINSMAN  
Guardian Ad Litem

**RECOMMENDATIONS:**

Elijah L J Przespolewski, Child

- 1 That the Dependency continue;
- 2 That Elijah continue in his present adoptive placement until the adoption may be finalized;
- 3 That Elijah's routine and necessary medical and dental care be scheduled by his adoptive parents

Rene Przespolewski, Mother:

Parental Rights Terminated. 3/30/05

For anyone claiming paternity of Elijah Przespolewski.

1. That this person cooperate with paternity testing procedures,
2. That this person cooperate with criminal history background check and other routine DCFS investigative procedures;
- 3 That this person provide SW with accurate, up-to-date information and sign needed releases to obtain information as to his being a possible placement for Elijah, and to develop a service plan, if needed