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In Re the Welfare of E.P.

ANSWER TO MOTION FOR ACCELERATED REVIEW

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I. ISSUES

A. Whether the mother received a full panoply of due process protections?

B. Whether the trial court committed no abuse of discretion in denying the mother's motion to continue the termination trial?

C. Whether the trial court's findings are supported by substantial evidence and establish the necessary elements for termination on a highly probable basis?

II. STATEMENT OF THE CASE

A. PRELIMINARY STATEMENT.

The mother, Renee Przespolewski,[1] appeals from the Chelan County Superior Court decision terminating her parental rights as to her son, E.P. E.P. was found to be dependent, pursuant to Chapter 13.34 RCW, on September 15, 2004. Ex. 2. The State of Washington, Department of Social and Health Services[2] subsequently petitioned to terminate the mother's parental rights and a hearing was held March 30, 2005. RP (3-30-05) at 13. The mother did not appear at the termination trial. *Id.* The trial court heard testimony from two witnesses, considered the Guardian ad Litem report and, on April 13, 2005, entered an order terminating the mother's parental rights. CP at 12-16.

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[1] Ms. Przespolewski will be referred to as "the mother" throughout this answer.
[2] The agency will be referred to as "the Department" throughout this answer.

B. STATEMENT OF FACTS.

In May 2004, the Department received a referral indicating the mother was pregnant and due to deliver her baby in July 2004. Ex. 1. The mother was incarcerated and not scheduled for release until September 2004. Ex. 1. The mother's pregnancy was high risk-based, in part, upon her use of drugs throughout her pregnancy. Ex. 1. Her drugs of choice included marijuana, cocaine, and heroin. Ex. 1. The mother's untreated drug addiction posed an extremely high risk of abuse and neglect of an infant. Ex. 1.

E.P. was born July 12, 2004, and was removed from the mother's care at birth. Ex. 1; RP (3-30-05) at 23. An Agreed Order of Dependency was entered September 15, 2004, finding the infant dependent on the basis that there was no parent capable of adequately caring for him, such that he was in circumstances constituting a danger of substantial damage to his physical or psychological development. Ex. 2. The court adopted the allegations of the Dependency Petition, set forth in Exhibit 1, as findings of fact. Ex. 2.[3]

The mother was ordered to participate in random urinalysis testing, a drug and alcohol evaluation and treatment, an anger management evaluation

[3] At the termination trial, Gail McDonough, the Department social worker assigned to the case, testified the Dependency Petition allegations were true and correct to the best of her knowledge. RP (3-30-05) at 25.

and treatment, a psychological evaluation and treatment, and parenting education. Ex. 3; RP (3-30-05) at 28-29. The services were offered and provided in an attempt to remedy the mother's identified parenting deficiencies including her extensive history of drug abuse and addiction, her problem with impulse control, and her antisocial personality disorder. RP (3-30-05) at 29. The mother's long history of drug and alcohol abuse began at age 14. RP (3-30-05) at 30. Though she entered treatment two or three times, the mother never completed substance abuse treatment. RP (3-30-05 at 30. Each time, the mother aborted treatment relatively quickly. RP (3-30-05) at 30.

Following E.P.'s birth in July 2004, the mother remained incarcerated until her release on November 11, 2004. RP (3-30-05) at 31. On November 12, 2004, the mother relapsed using alcohol, methamphetamine, and heroin. RP (3-30-05) at 31. On November 16, 2004, the mother telephoned her Department social worker, but she had no contact whatsoever after that time. RP (3-30-05) at 31.

The mother participated in a psychological evaluation while she was incarcerated. RP (3-30-05) at 34. The evaluator recommended the mother participate in substance abuse treatment, concluding her primary issue to be her polysubstance abuse and heroin dependency. RP (3-30-05) at 34.

Following her release from jail in November 2004, the mother failed to participate in services to remedy her parental deficiencies. She did not participate in random urinalysis testing. RP (3-30-05) at 32. She did not abstain from the use of drugs and alcohol, and she did not participate in a drug and alcohol evaluation. RP (3-30-05) at 32. In November 2004, the mother contacted her community services social worker and he gave her a referral for a substance abuse assessment and treatment plan. RP (3-30-05) at 52. The mother failed to participate in the scheduled evaluation. RP (3-30-05) at 53. She did not participate in an anger management evaluation or parenting education. RP (3-30-05) at 32, 35. The mother moved from home to home, unable to maintain a stable residence. RP (3-30-05) at 35.

While the mother was incarcerated, the Department facilitated three supervised visits between E.P. and his mother. RP (3-30-05) at 37. No visitation occurred after the mother's release from jail on November 11, 2004. RP (3-30-05) at 39. Following the mother's release, the social worker made arrangements to schedule weekly visitation. RP (3-30-05) at 38. However, on November 16, 2004, the morning of the first scheduled visit after her release, the mother contacted the social worker and indicated she had used heroin, and was a "mess." RP (3-30-05) at 38. The visit was canceled and the social worker never heard from the mother again. RP (3-30-05) at 38-39.

The Department social worker assigned to E.P.'s case had twenty years of prior experience as a mental health therapist. RP (3-30-05) at 19. She concluded the mother was not capable of meeting the child's physical and emotional needs. RP (3-30-05) at 40-41. The mother's parental deficiencies remained consistent and unchanged, and she made no progress toward remedying her problems. RP (3-30-05) at 40. The mother's drug addiction and participation in the "drug lifestyle" often resulted in the mother being homeless and associating with people who were unsafe. RP (3-30-05) at 41. The center of the mother's life appeared to be her drug addiction, not the child's needs. RP (3-30-05) at 41.

The Department filed a termination of parental rights petition because the mother had no contact with the child and the social worker found she had no way to help the mother correct her parental deficiencies. RP (3-30-05) at 40. The child needed permanency, and the social worker "needed to move forward with [E.P.'s] life." RP (3-30-05) at 40.

At trial, E.P. was less than a year old and the social worker concluded the "near future" for a child of his age was three to six months. RP (3-30-05) at 42. Given the mother's addiction to heroin, her long history of drug abuse, and her unwillingness to engage in treatment services, the social worker concluded the mother's prospects for remedying conditions in the near future were very remote. RP (3-30-05) at p. 41-42. E.P. had

been in out of home care all his life. RP (3-30-05) at 42. His prospects for early integration into a stable and permanent home would be delayed, probably for a significant period of time, if termination of parental rights did not occur. RP (3-30-05) at 42.

Due to the mother's addiction, her poor physical health, and her tendency to become easily angered and verbally abusive, the social worker concluded it was in the child's best interests to have no contact with his mother. RP (3-30-05) at 44. E.P.'s court appointed guardian ad litem concluded the mother "expressed by her conduct an intent to forego parental rights or responsibilities." CP at 21. The guardian ad litem concluded there was no likelihood of change based upon the mother's chronic drug and alcohol use, her lack of contact with the child, and her failure to take advantage of offered services. CP at 22. Because the mother had no relationship with E.P., the guardian ad litem concluded termination of parental rights was in the child's best interests. CP at 22.

III. ARGUMENT

A. The mother was provided a full panoply of due process protections.

"No person shall be deprived of life, liberty, or property without due process of law." Const. art. 1, §, 3. The courts have long recognized that a biological parent has a fundamental liberty interest in the care,

custody and management of his or her child. *Santosky v. Kramer*, 455 U.S. 745, 753, 102 S. Ct. 1388, 71 L. Ed. 2d 599 (1982); *In re Luscier*, 84 Wn.2d 135, 524 P.2d 906 (1974). However, that fundamental right is not absolute. *In re Young*, 24 Wn. App. 392, 395, 600 P.2d 1312 (1979), *review denied*, 93 Wn.2d 1005 (1980). The Department has both a right and an obligation to intervene to protect the child when a parent's action or inaction endangers a child's physical or emotional welfare. *See* RCW 13.34.020; *In re Sumey*, 94 Wn.2d 757, 762, 621 P.2d 108 (1980). "It is with the welfare of the children in mind that the rights of the parent are examined." *In re Sego*, 82 Wn.2d 736, 738, 513 P.2d 831 (1973).

In a termination of parental rights proceeding, a parent has a constitutional right to procedural due process. *In re Myricks*, 85 Wn.2d 252, 253-54, 533 P.2d 841 (1975). The essential requirements of procedural due process include notice, time to prepare and respond to charges, and an opportunity for a hearing. *Id.*

The nature of the process due in a termination proceeding requires a balancing of three factors. *Lassiter v. Dep't. of Social Services*, 452 U.S. 18, 101 S.Ct. 2153, 68 L.Ed.2d 640 (1981). The three factors include: (1) the parent's interest, (2) the risk of error created by the procedures, and (3) the state's interest. *Mathews v. Eldridge*, 424 U.S. 319, 335, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976). The parent's interest is a fundamental liberty

interest in the care and custody of her children. *Santosky*, 455 U.S. 745. The risk of error considers whether the risk created by use of the challenged procedure is fairly allocated. *Id.* at 761. Finally, the state's interest is two-fold: a *parens patriae* interest in promoting the child's welfare and best interests and an administrative interest in reducing the burden and cost of such proceeding. *Id.* at 766. When using this balancing test to evaluate each claim the mother raises, it is clear her due process rights were adequately protected and her challenges must fail.

1. The trial court properly permitted the mother's attorney to withdraw because the attorney was unable to effectively or ethically represent her.

At all stages of a termination of parental rights proceeding, a party has a right to be represented by an attorney. RCW 13.34.090(1). However, because of the mother's inaction, her attorney was unable to effectively represent her at trial and withdrawal was appropriate.

In *In re Dependency of A.G.*, 93 Wn. App. 268, 968 P.2d 424 (1999), the Department filed a termination petition, served the mother by substitute service and publication, and the mother failed to appear at trial. On the day of trial, counsel for the mother asked to withdraw as her court-appointed attorney because he had not been in contact with her for some time, despite diligent efforts to reach her. *Id.* at 274. The trial court granted the motion to withdraw and the Department proceeded with a

hearing on the merits, presenting the testimony of the Department social worker. *Id.* at 275. The social worker testified she spoke with the mother after the termination petition was filed, and the mother indicated she did not want her parental rights terminated and intended to comply with the court orders. *Id.* at 275. After hearing testimony, the court entered an order terminating the mother's parental rights. *Id.* at 275. The mother appealed arguing her due process rights were violated when her attorney was allowed to withdraw at the beginning of the termination trial. *Id* at 278. The court disagreed, noting the mother's inaction caused her attorney to conclude he was unable to represent her effectively or ethically at the termination trial. *Id.* at 278.

In this case, even if the attorney appointed for the mother assumed the mother wanted to contest the proceedings, her conduct would appear to indicate that may not be the case. *See In re Welfare of Parzino*, 22 Wn. App. 88, 587 P.2d 201 (1978). The mother's attorney filed a notice of intent to withdraw in January 2004. RP (3-30-05) at 13. The attorney subsequently located the mother through contact with the child's grandmother. RP (3-30-05) at 14. The attorney sent two letters to the mother at the grandmother's address, believing the mother remained in contact with the grandmother. RP (3-30-05) at 14. The letters were not returned, and the grandmother contacted the attorney several times to

provide status reports on the mother. RP (3-30-05) at 14. A month before the termination trial, the mother's attorney lost contact with his client. RP (2-23-05) at 9. The mother made no effort to contact her attorney, and the attorney told the court he had "absolutely no idea what her position is relative [to the termination of parental rights proceeding]." RP (3-30-05) at 14. The trial court found the attorney could not adequately represent the mother's interests due to her failure to communicate with him. CP at 13. The trial court granted the attorney's motion to withdraw and the case proceeding to trial on the merits. RP (3-31-05) at 15.

Central to the attorney-client relationship is the client's right to reject or accept her attorney's advice, and the attorney cannot represent the client's interests in her absence. *Parzino,* 22 Wn. App. at 90. In this case, the mother's attorney found himself in a position where whatever choice he made might be at odds with his client's wishes. RP (3-31-05) at 14-15.

Because of the mother's inaction and absence, her attorney was unable to represent her interests. The trial court committed no error in allowing the attorney to withdraw.

2. By her conduct, the mother waived her right to an attorney.

At all stages of a termination proceeding, a parent is entitled to be represented by an attorney unless this right is waived in court. RCW

13.34.090(2); *In re Dependency of Grove*, 127 Wn.2d 221, 232, 897 P.2d 1252 (1995). If a parent wishes to forego an attorney, the waiver of the right to counsel must be expressed on the record and knowingly and voluntarily made. *In re G.E.*, 116 Wn. App. 323, 333, 65 P.3d 1219 (2003). This standard is similar to the waiver applicable to criminal proceedings. *Id.*

In a criminal case, a defendant may waive his or her right to counsel (1) by voluntarily relinquishing the right, (2) by conduct, or (3) by forfeiture through dilatory conduct. *City of Tacoma v. Bishop*, 82 Wn. App. 850, 859, 920 P.2d 214 (1996). In the *G.E.* case, the court determined the process used for waiving an attorney in a criminal case should guide the review of whether a parent waived an attorney in a termination case. *G.E.*, 116 Wn. App. at 334.

In this case, the mother waived her right to an attorney by her conduct. Despite knowing the date and time of the termination trial, she failed to appear at trial in response to the summons. She failed to maintain contact with her attorney.

This was not a default proceeding with testimony merely parroting the statutory elements, held to be a violation of due process in *In re C.R.B.*, 62 Wn. App. 608, 814 P.2d 1197 (1991). This case proceeded to a trial on the merits. The mother was afforded full and fair opportunity to

be heard at the termination trial. A parent must take reasonable and timely steps to exercise her right to be heard. *In re Dependency of M.S.*, 98 Wn. App. 91, 92, 988 P.2d 488 (1999). Here, the mother failed to do so.

Though the mother's interests are significant, the "child's right to a stable home cannot be put on hold interminably because a parent is absent from the courtroom and has failed to contact his or her attorney." *C.R.B.*, 62 Wn. App. at 616. A parent's failure to respond to a notice and summons does not preclude the Department from obtaining an order permanently terminating parental rights, however a hearing on the merits is necessary to satisfy due process requirements. *Id.* By her conduct in this case, the mother waived her right to an attorney. The trial on the merits satisfied due process requirements.

3. The court was not required to inquire whether the mother's absence from trial was voluntary.

"In criminal prosecutions, the accused shall have the right to appear and defend in person...." Const. art. 1, § 22 (emphasis added). This constitutional right to appear and defend in a criminal matter does not have a parallel in a termination of parental rights proceeding. The mother offers no authority extending the right to a termination case. No such explicit right is set forth in RCW 13.34.090. In a termination matter, the parent has an opportunity to be heard in her own behalf. RCW

13.34.090(1). However, a termination trial may proceed in the parent's absence. *In re A.G.*, 93 Wn. App. at 275-8.

The court had no obligation to inquire whether the mother's absence was voluntary. The mother was served by substitute service with a notice and summons for the termination hearing and was given actual notice of the hearing date when she appeared for a hearing in court. CP at 25-26; RP (2-23-05) at 10. When the mother failed to appear at the termination trial, the Department satisfied due process requirements by proceeding with a hearing on the merits. C.R.B., 62 Wn. App. at 616. The hearing on the merits balanced the mother's interests, the Department's interests, and fairly allocated risks. The mother was not denied due process.

B. The court did not abuse its discretion in denying the mother's motion to continue the trial date.

The court's denial of the mother's motion to continue is reviewed for abuse of discretion. *In re Welfare of Angelo H.*, 124 Wn. App. 578, 590, 102 P.3d 822 (2004), *review denied*, 154 Wn.2d 1028 (2005). One month prior to trial, the mother's attorney requested additional time for the mother to begin to participate in and comply with services. CP at 31-32.

Given the mother had participated in few services, had not seen her child for over four months, and had failed to make any real attempt to

correct her parental deficiencies, additional time would serve no purpose but to unnecessarily delay the child's right to a stable and permanent home. Despite the court's denial of the motion, the mother was not precluded from engaging in services. Nevertheless, consistent with her past behavior, the mother did nothing.

A child has a right to safe, stable, and permanent home and a speedy resolution of a termination proceeding. RCW 13.34.020. When the rights the child and the parent conflict, the rights and safety of the child should prevail. *Id.* In this case, the rights of the child prevailed. The trial court did not abuse its discretion in denying the mother's continuance motion.

C. The Department has proven all elements necessary for termination of the mother's parental rights.

1. The first three elements of RCW 13.34.180(1) are not challenged and become verities on appeal.

E.P. was found dependent pursuant to RCW 13.34.030[4], a dispositional order was entered pursuant to RCW 13.34.130[5], and the child had been removed from the mother's home for more than six months[6], satisfying the first three elements of RCW 13.34.180(1). Exs. 2, 3; RP (3-30-05) at 42. As the mother has not challenged these findings on appeal,

[4] RCW 13.34.180(1)(a)
[5] RCW 13.34.180(1)(b)
[6] RCW 13.34.180(1)(c)

they are considered verities. *Campbell v. DSHS*, 150 Wn.2d 881, 888, 83 P.3d 999 (2004).

2. The mother failed to perform parental duties under circumstances showing a substantial lack of regard for parental obligations.

The mother was incarcerated from the child's birth in July 2004 until November 11, 2004. RP (3-30-05) at 31. On November 12, 2004, the mother relapsed using alcohol, methamphetamine, and heroin. RP (3-30-05) at 31. The mother contacted the Department social worker on November 16, 2004, and had no contact after that time. RP (3-30-05) at 31.

The mother failed to participate in nearly all services offered to help remedy her parental deficiencies. She did not participate in random urinalysis testing, she did not abstain from the use of drugs and alcohol, she did not participate in a drug and alcohol evaluation, she failed to participate in an anger management evaluation and she did not participate in parenting classes. RP (3-30-05) at 32, 35. The mother was unable to maintain a stable residence, moving from home to home. RP (3-30-05) at 35.

The mother failed to maintain contact with her infant child. Despite the social worker's attempts to make visitation arrangements, the mother did not participate in any visitation with E.P. following her release from jail on November 11, 2004. RP (3-30-05) at 39.

The Department social worker explained a primary attachment figure was important for a young child. RP (3-30-05) at 22. E.P. needed someone he could count on day after day and week after week. RP (3-30-05) at 22. Clearly, the mother was not this person. Substantial evidence supports the finding of fact that the mother failed to perform parental duties under circumstances showing a substantial lack of disregard for her parental obligations.

3. The Department offered or provided all necessary, reasonably available services.

In a termination case, the Department is required to prove it has offered or provided "all necessary services, reasonably available, capable of correcting the parental deficiencies within the foreseeable future. . . ." RCW 13.34.180(1)(d). The state is not required to provide services if a parent is unable to benefit from the services. *In re P.D.*, 58 Wn.App. 18, 26-27, 792 P.2d 159, *review denied*, 115 Wn.2d 1019 (1990). Similarly, the Department is not required to provide services which are not reasonably available. *See* RCW 13.34.180(1)(d). The Department is only required to offer or provide services capable of correcting parental deficiencies in the near future. *P.D.*, 58 Wn. App. at 26-27.

The Department offered the mother a multitude of services including a drug and alcohol evaluation and treatment, an anger

management evaluation and treatment, a psychological evaluation, and parenting education. RP (3-30-05) at pp. 31-35. The Department offered the services in an attempt to remedy the mother's serious parenting deficiencies. The mother took no meaningful action to comply with the court's order, and she suggests no additional services which could have been offered or provided. The Department fulfilled and exceeded its obligation in this case.

In determining whether a parent is likely to benefit from services, the court may consider whether any appreciable progress has been made and whether the parent has been involved in services. *In re Yetter*, 22 Wn. App. 304, 308, 589 P.2d 815, *review denied*, 92 Wn.2d 1011 (1979); *In re Kier*, 21 Wn. App. 836, 840, 587 P.2d 592 (1978). Despite the panoply of services offered, the mother made no progress and was unable to remedy her deficiencies.

There is no evidence to suggest additional services will remedy the mother's parental deficiencies in the foreseeable future. Substantial evidence supported the trial court's finding that clear, cogent and convincing evidence established that all services reasonably available, capable of correcting the mother's parental deficiencies within the foreseeable future were offered or provided.

4. There is little likelihood that conditions will be remedied in the near future.

The termination statute requires the Department establish "there is little likelihood that conditions will be remedied so that the child can be returned to the parents in the near future." RCW 13.34.180(1)(e). In determining the likelihood of remediation or change in the near future, the court must give paramount consideration to the best interests of the child, including the child's need for permanence and stability. *In re Ferguson*, 32 Wn. App. 865, 873, 650 P.2d 1118 (1982). The period of time which constitutes the foreseeable future depends in part on the age of the child. *In re A.W.*, 53 Wn. App. 22, 32, 765 P.2d 307 (1988), *review denied*, 112 Wn.2d 1017 (1989). In the *A.W. case*, the court observed, "although 1 year may not be a long time for an adult decisionmaker, for a young child it may seem like forever." *Id.*

The mother continued to exhibit behaviors consistent with her identified parental deficiencies, and she failed to make an effort to remedy her parental deficiencies. When a parent had an adequate time in which to rehabilitate herself but failed to do so, the court may consider the failure when determining whether to terminate the parent-child relationship. *In re Kier*, 21 Wn. App. at 836. Sufficient evidence to support an order of termination is the same as finding the parent "unfit." *Krause v. Catholic*

Community Servs., 47 Wn. App. 734, 742, 737 P.2d 280, *review denied*, 108 Wn.2d 1035 (1987). *See In re J.C.*, 130 Wn.2d 418, 914 P.2d 21 (1996). Here, the mother made no progress in addressing her parental deficiencies. The nature of her severe substance abuse problem offered a very poor prognosis, and there was no evidence to indicate she was capable of changing in the near future.

In *In re Aschauer*, the court recognized the need for stability and permanency in the lives of a young child:

> To postpone [the children's] access to stability in the hope that the mother will be able to correct deep-seated emotional problems and assume the obligations of parenthood, when all the evidence shows that she lacks the capacity to do so, is to ignore the desperate needs of the children.

93 Wn.2d 689, 694-95, 611 P.2d 1245 (1980).

Based upon the services offered and provided, the mother's lack of progress, her failure to remedy her parental deficiencies, and her poor prognosis for rehabilitation, substantial evidence supports the trial court finding that clear, cogent and convincing evidence established there is little likelihood conditions will be remedied so the child can be returned to the mother in the near future.

5. Continuation of the parent and child relationship clearly diminishes the child's prospects for early integration into a stable and permanent home.

RCW 13.34.180(1)(f) requires the Department prove continuation of the parent-child relationship diminishes the child's prospects for early integration into a stable, permanent home. The finding necessarily follows from an adequate showing of RCW 13.34.180(1)(e). *In re J.C.*, 130 Wn.2d at 427.

Essentially, the mother abandoned her child. She failed to visit, failed to meaningfully engage in services, and failed to participate in the hearing on the petition to terminate parental rights. E.P. is entitled to a permanent home within a reasonable amount of time. "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." RCW 13.34.020.

E.P. must be legally free to be adopted and have a permanent stable home. The mother was unable to provide her child the stability and permanency he so desperately needed, and her continued presence in his life denied him the ability to bond and attach with a permanent family. Substantial evidence supports the trial court's determination that clear, cogent and convincing evidence established that continuation of the parent-child relationship diminishes the child's prospects for early integration into a permanent home.

6. Termination is in the child's best interests.

A biological parent does not have an absolute right to the custody and care of her child. *In re Hagen*, 21 Wn. App. 169, 175, 584 P.2d 446 (1978). In deprivation proceedings, the paramount consideration is the child's welfare. *In re Russell*, 70 Wn.2d 451, 455, 423 P.2d 640, *cert. denied*, 389 U.S. 874 (1967). The trial court is accorded broad discretion to determine the best interests of the child and its decision will receive great deference on review. *In re Dependency of K.S.C.*, 137 Wn.2d 918, 925, 976 P.2d 113 (1999).

The mother was incapable of making the requisite changes to correct her parental deficiencies. E.P. has a right to a permanent home that is physically and emotionally stable. It has long been recognized that a child's moral, intellectual and material welfare is the court's primary concern. *In re Lybbert*, 75 Wn.2d 671, 674, 453 P.2d 650 (1969); *In re Sego*, 82 Wn.2d at 738. If a parent has not demonstrated the ability to act responsibly toward her child, it is not in the child's best interest to be in the parent's custody, and termination is appropriate. *See In re Gillespie*, 14 Wn. App. 512, 519, 543 P.2d 249 (1975).

As the court noted in *In re Young*:

> Although termination of a parent-child relationship is a harsh and painful procedure to invoke...it bears repeating that the interest of the child must be paramount. . . . Children are our only true

> natural resource, and we cannot afford to gamble needlessly with their future.

24 Wn. App. 392, 397-398, 600 P.2d 1312, (1979), *review denied*, 93 Wn.2d 1005 (1980).

The child requires stability and permanency. Because the mother is unable to meet E.P.'s needs, her parental rights must give way to the child's best interests. Substantial evidence supports the trial court's finding of fact and conclusion of law that termination of parental rights was in the child's best interests.

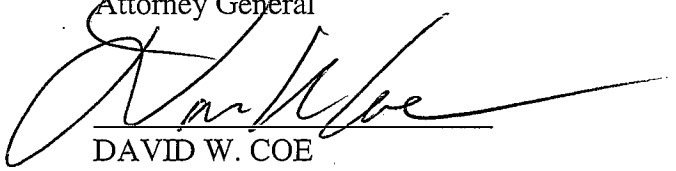
IV. CONCLUSION

The mother was afforded a trial on the merits and was provided all due process protections to which she was entitled. The trial court did not commit an abuse of discretion in denying her motion to continue the termination trial. Substantial evidence supports the trial court's findings of facts and conclusions of law that the Department proved, by clear, cogent and convincing evidence, all the elements necessary to terminate the parent-child relationship between the mother and her children.

Termination of parental rights is in the child's best interests. Accordingly, the trial court decision should be affirmed.

RESPECTFULLY SUBMITTED this 28th day of October, 2005.

ROB MCKENNA
Attorney General



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