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**SUPREME COURT OF THE STATE OF WASHINGTON**

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In re the Dependency of:

A.L.S.B.,

A Minor Child.

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**DEPARTMENT'S SUPPLEMENTAL BRIEF**

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## I. INTRODUCTION

When A.B. was placed in state care following her birth in October 2001, the Department of Social and Health Services immediately contacted her biological father and began to attempt reconciliation. The father did not participate in his daughter's life for the next year and a half. Over the course of four years, as the father moved in and out of state, the Department coordinated visits and parenting services. Although the father took some positive steps, he undermined his own efforts by committing an assault and multiple acts of domestic violence, entering a relationship that provided an unsafe environment for children, choosing to move out of the state, and failing to complete court ordered domestic violence treatment.

For essentially all of her young life, A.B. has lived with a family member and her half-brother in a foster care placement. She is distressed by visits with her father and has no attachment to him. After four years in foster care, the trial court correctly applied the termination statute, finding her father unfit, and determining that A.B.'s right to stability in a safe and permanent home outweighs her father's right to custody.

The Court should take this opportunity to reaffirm its longstanding decisions that children have rights independent of their parents, and where the rights of a dependent child and those of the parent diverge, the rights of the child should prevail.

## II. STATEMENT OF THE CASE

A.B. was born October 27, 2001, in Yakima. Prior to the birth, her parents lived together in Yakima and Las Vegas, Nevada. Both parents had a long addiction to heroin, as well as other drugs. RP at 78-79. They separated and the mother returned to Yakima in September 2001, when the father was arrested for a drug-related felony in Nevada. RP at 80.

The Department removed the child from the mother's care on October 29, 2001. That same day, the Department telephoned the father and informed him of the shelter care hearing. RP at 76; Ex. 4 (DSHS Individual Service & Safety Plan (ISSP) at 2-3). Although paternity was not yet established, he was provided counsel and the opportunity to visit with the child in Yakima. Ex. 4 (ISSP at 9). However, the father was not allowed to leave Nevada because he was participating in a criminal drug court following a conviction for conspiracy to commit burglary. RP at 71-72, 400-01. He stopped using drugs when the child was two months old, and had his first contact with her more than one year later. RP at 80, 301.

A.B. is now almost seven years old. She has never lived with her father and views him as a stranger. RP at 93-99, 160-61. For A.B., her family is her foster mother – a maternal cousin with whom she has lived since she was three months old – and her little brother, who has now been adopted by her foster mom. The child's attachment to this family is

stable, powerful and profound. CP at 91 (Finding of Fact 1.33), CP at 92 (Finding of Fact 1.35).

A.B.'s father did not begin visiting her until he moved to Yakima in June 2003, when she was 20 months old. RP at 215-17. As she began developing a bond with her father, the Department moved toward placement with him. RP at 216. The father severed that bond after only three months, when he was arrested and convicted of assault of his girlfriend. CP at 89 (Finding of Fact 1.18). Due to his resulting incarceration and immigration detention, he was unavailable to his daughter for four months. RP at 233. While four months may seem a short time to an adult, it is a very substantial period for a two-year-old child. RP at 249-50. Visits resumed when the father's detention ended, but they were extremely difficult for the child from then on. RP at 111-13, 239-41. She reacted negatively to him, refusing his offers of food, not letting him hug or kiss her, and only interacting with him after a long warm-up period with her foster mother or grandmother nearby. RP at 93-94, 96-99, 103, 105-06, 111-14, 153-59, 241-43, 253-58; Exs. 31, 38-54.

The father had more than 100 visits with his daughter. RP at 1758; CP at 91 (Finding of Fact 1.29). In 2004, the juvenile court had a therapist supervise and evaluate numerous visits and, based on her recommendations, determined that visits should be supervised by a

parenting educator. RP at 236, 238-39. The parenting educator worked with the father on methods to improve the father's interactions with A.B. RP at 93-94, 143-46. He also tried to wean A.B. from needing a familiar caregiver with her during the father's visits, but A.B.'s distress was so great that the caregiver remained to limit the trauma to the child. RP at 96-97, 107-08, 110-11, 117.

Meanwhile, during the nearly two years the father lived in Yakima, he married and became a father to a son and a stepson. CP at 89-90. The father's marriage was fraught with violence, including at least three serious domestic violence incidents. RP at 16-17, 28, 36-37, 50-51, 65-71. One altercation occurred in a car, with the father's infant stepson present. RP at 36-37, 51. When his wife was incarcerated for criminal mistreatment of her paraplegic sister, who lived in the couple's home, the father moved with his infant son and stepson back to his mother's home in Las Vegas. RP at 82-83, 192-93, 548-50. His decision to move meant that visits with his daughter were more limited and it raised a new barrier to bonding with her. The father did not visit for four months after his move. CP at 91 (Finding of Fact 1.27). The relationship between A.B. and her father was never restored. CP at 91 (Finding of Fact 1.29).

Although the father claimed he was fit and ready to assume custody of A.B. at the time of the termination trial, the record belies his

claim. To his credit, he addressed his heroin addiction. RP at 79. However, he had not completed court-ordered domestic violence treatment and saw no need to do so, despite two further domestic violence incidents after his assault conviction. RP at 28-30, 36-37, 1763. CP at 88-89 (Findings of Fact 1.18, 1.19 and 1.21). He still lived with and depended on his mother and stepfather, who had legal custody of his young son and stepson and who did “all the work” in caring for them. RP at 192, 456, 547. He had not seen his nine-year old son since that child was one year old. RP at 185-86. The father was able to maintain his sobriety while living with his parents, but had not yet demonstrated an ability to manage his own life, on his own, or to care for the needs of his children by the time of trial. RP at 1731-32. Most importantly, he failed to be present and consistent in the life of his daughter. She simply had no attachment to him at the time of the termination trial. RP at 162-65.

The father heard the expert testimony that it would take considerable efforts over “a very long time” for the child to develop a relationship with him and that placement of the child with him – and the resulting loss of her family – would cause her considerable distress, trauma and harm. RP at 117-18; CP at 91; Ex. 33. Even so, he pushed the court for custody, declining suggestions for an open adoption, which

would have given his daughter the security of remaining with her known family and still enabled him to maintain contact with her.

The trial court conducted the trial in two phases. At the close of the presentation of evidence at a hearing lasting from June 13 to 17, 2005, the trial court deferred ruling in the termination proceeding to give the father additional time to try again to bond with the child, and to engage in services in Las Vegas.<sup>1</sup> RP at 923; CP at 95-96. For the next five months, the father had an opportunity to engage in further services and to visit with A.B. in various locations, observed by various supervisors. During this interim there was no improvement in father-daughter interactions and little progress in services. Ex. 33, 39-53; RP at 1737-40, 1775.

At the close of the second phase of trial on November 25, 2005, the trial court ruled that the required elements for termination had been proved by clear, cogent and convincing evidence. CP at 42. It also found that termination was in the child's best interests. CP at 42. The trial court directed the parties to engage in settlement discussions to see whether an open adoption agreement could be negotiated, and it delayed entry of the order until those discussions could occur. CP at 43. The father rejected

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<sup>1</sup> The mother has never engaged in services and her parental rights were terminated in June 2005. CP at 66-70. She is not a party to this appeal.

any option short of custody and the trial court entered the order terminating the parent-child relationship. CP at 85-94.<sup>2</sup>

### III. ARGUMENT

The father asks this Court to abandon its longstanding interpretations of the statute governing termination proceedings, and its holding that the termination statute satisfies the requirements of the Due Process Clause of the federal constitution. This Court should reject the father's arguments and, once again, hold that the rights of the child are the paramount concern in any dependency or termination proceeding.

#### A. **A Parent's Right To Custody Of His Dependent Child Must Be Weighed Against the Rights of the Child**

A biological parent's interest in the care and custody of his children is generally protected by the Due Process Clause of the Fourteenth Amendment of the federal constitution. *See, e.g., In re Custody of Smith*, 137 Wn.2d 1, 13-14, 969 P.2d 21 (1998), *aff'd sub nom., Troxel v. Granville*, 530 U.S. 57, 120 S. Ct. 2054, 147 L. Ed. 2d 49 (2000) (tracing the history and development of the right); *Santosky v. Kramer*, 455 U.S. 745, 753, 102 S. Ct. 1388, 71 L. Ed. 2d 599 (1982); *In re Welfare of Sumey*, 94 Wn.2d 757, 762, 621 P.2d 108 (1980).

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<sup>2</sup> The trial court's findings of fact, conclusions of law and order terminating parental rights is attached as Attachment 1. The court of appeals unpublished decision affirming the termination, *In re Welfare of A.B.*, No. 24923-9-III (Sept. 6, 2007), is attached as Attachment 2.

However, it is equally well established that the right is not absolute. *See, e.g., Lehr v. Robertson*, 463 U.S. 248, 103 S. Ct. 2985, 77 L. Ed. 2d 614 (1983); *In re Sumey*, 94 Wn.2d at 762; *In re Dependency of I.J.S.*, 128 Wn. App. 108, 116, 114 P.3d 1215, *review denied*, 155 Wn.2d 1021 (2005); *In re Dependency of A.V.D.*, 62 Wn. App. 562, 567, 815 P.2d 277 (1991). The State has both a right and obligation as *parens patriae* to intervene to protect the child when the parent's actions or inactions endanger the child's physical or emotional welfare. *In re Sumey*, 94 Wn.2d at 762; *In re A.V.D.*, 62 Wn. App. at 567.

Moreover, in recent years, the scope of the right, and even the continuing validity of the right, has come under new scrutiny, as courts have weighed the parent's right against the child's welfare and needs. *See, e.g., In re Welfare of Aschauer*, 93 Wn.2d 689, 695, 611 P.2d 1245 (1980) (court may not accommodate parents' rights when to do so would ignore the basic needs of the child); *In re Welfare of Becker*, 87 Wn.2d 470, 477, 553 P.2d 1339 (1976) (growing concern for the welfare of the child and the disappearance of the concept of the child as property has led to a gradual modification of the parent's right to custody).

In juvenile dependency and termination actions, the child's rights are defined by statute and take priority over conflicting rights of the parent. RCW 13.34.020; *In re Dependency of J.B.S.*, 123 Wn.2d 1, 863

P.2d 1344 (1993) (child's best interests were primary consideration in deciding whether to change child's placement from his foster family to his biological father, and were paramount consideration to the extent they conflicted with rights of the father). The statute recognizes the important rights of parents, but ultimately focuses on the welfare of the child. It provides that the rights of dependent children include the rights to physical and mental health, safety, and basic nurture, which includes the right to a safe, stable, and permanent home and a speedy resolution of the dependency and termination proceedings. RCW 13.34.020; *In re Dependency of C.R.B.*, 62 Wn. App. 608, 615, 814 P.2d 1197 (1991).

The statute protects these rights in at least three important ways. First, it requires reasonable efforts be made to help the parent correct parenting deficiencies so that, if possible, the child can be returned home. Second, it limits the time a parent has to correct his deficiencies so that the child does not spend the whole of her childhood in foster care, waiting for the parent to act. Third, it mandates that any conflict between the rights of the child and the rights of the parent be resolved in favor of the child.

**B. The Statutes Governing Dependency And Termination Proceedings Adequately Protect Parents' Due Process Rights**

The state proceeds with caution before terminating the parent-child relationship. Prior to filing a petition for termination, the Department files

a dependency action, in which parental deficiencies are identified, and under which the parents are provided services to address and correct those deficiencies so that the child can be returned to the parent. Only if the parent is unable to correct his deficiencies and have the child placed in his care within a reasonable time is a petition for termination filed.

### **1. The Dependency Proceeding**

RCW 13.34 governs both juvenile dependency and termination actions. Although the two proceedings may proceed simultaneously, they are separate actions. Each has a different focus and a different result.

In order to declare a child dependent,<sup>3</sup> the juvenile court must find a parental deficiency, but it need not find parental misconduct or unfitness. *In re Dependency of Schermer*, 161 Wn.2d 927, 943 ¶ 39, 169 P.3d 452 (2007). Where the dependency is based on RCW 13.34.030(5)(c) (no parent capable of adequately caring for the child) – as it was in this case, Ex. 3 – the parental deficiency may be based on a consideration of both the child’s needs and any other circumstances which affect the parent’s ability to respond to those needs. *Schermer*, 162 Wn.2d at 944 ¶ 40.

If a dependency order is entered, the Department must submit a plan to the court, identifying the proposed permanent plan for the child.

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<sup>3</sup> A dependent child is one who (a) has been abandoned, (b) is the victim of abuse or neglect, or (c) has no parent capable of adequately caring for the child, such that the child is in circumstances which constitute a danger of substantial damage to the child’s psychological or physical development. RCW 13.34.030(5).

and specifying what services will be offered to the parents to enable them to resume custody. RCW 13.34.136. A dispositional order includes the services that must be provided by the Department, and engaged in by the parent, to correct the conditions that led to the child's dependent status. RCW 13.34.120, .130 and .136.

At least every six months, the court must review the dependent child's status and determine whether continued judicial oversight is needed. RCW 13.34.138. If the parent has remedied his deficiencies, and the conditions which led to the removal of the child from the parent's custody have been eliminated, the child is returned to the parent and the dependency dismissed. RCW 13.34.138(1). If the child is not returned home, the juvenile court may order the Department to file a petition for termination of parental rights. RCW 13.34.138(2)(d). *In re Dependency of A.W.*, 53 Wn. App. 22, 28, 765 P.2d 307 (1988).

The parent does not have unlimited time to correct his deficiencies. The law creates a sense of urgency by requiring that a petition for termination of parental rights be filed whenever the child has been in foster care for 15 of the past 22 months, unless compelling reasons excuse the requirement.<sup>4</sup> RCW 13.34.145(1)(c).<sup>5</sup>

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<sup>4</sup> In this case, a termination trial was scheduled for July 2003, when the child had been out of home for 20 months, but it was continued when the father moved to

The law's focus on permanency planning reflects the importance to a child of security and stability, and a need for continuity and permanency in relationships. *See*, Joseph Goldstein, Anna Freud & Albert Solnit, *Beyond the Best Interests of the Child* (2d ed. 1979). Additionally, the law views the passage of time from the child's perspective, not the parent's. *In re Dependency of T.R.*, 108 Wn. App. 149, 164-65, 29 P.3d 1275 (2001) (foreseeable future must be viewed from the eyes of the child).

In this case, the father did not even meet his daughter until she was 16 months old and did not begin visits until she was 20 months old, despite the fact that he had the opportunity to visit from the time she was three months old. Ex. 4. When he did make himself available for visits, they were immediately scheduled and the Department worked toward a plan of placing the child with him. This was not possible, however, because of the father's criminal problems, his failure to address his anger control issues, the lengthy interruptions to his efforts to build a

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Yakima and began visits with A.B. The termination petition was withdrawn when the father re-engaged in services and visitation after his incarceration. RP at 236-37.

<sup>5</sup> Washington law parallels the federal Adoption and Safe Families Act of 1997 requirements in this regard. Pub. L. No. 105-89, 111 Stat. 2117, amending 42 U.S.C. § 675(5)(E). Additionally, in 2008, the legislature reinforced this requirement by amending RCW 13.34.136 and .145 and requiring the juvenile court in a permanency planning hearing to order the Department to file a petition seeking termination of parental rights if the child has been in out-of-home care for 15 of the last 22 months, unless the court makes a good cause exception. Laws of 2008, ch. 152 §§ 2, 3. The amendment was intended "to encourage a greater focus on children's developmental needs and to promote closer adherence to timeliness standards in the resolution of dependency cases." Laws of 2008, ch. 152 § 1.

relationship with his daughter, and the resulting intractable problems encountered in the visits. Consequently the dependency court never placed the child in her father's care. The father never challenged or appealed any order in the dependency, and the Department ultimately filed a termination petition.

## **2. The Termination Proceeding**

A termination action is a separate and parallel proceeding to the dependency action. As in the dependency, the parent has a right to notice, counsel, and an opportunity for a hearing. RCW 13.34.090. Additionally, there is an enhanced burden of proof to further protect the parent's substantive due process right to custody of his child. RCW 13.34.190(1)(a).

In the termination, the Department must prove six statutory elements. RCW 13.34.180(1).<sup>6</sup> Proof of these six factors by clear, cogent and convincing evidence establishes that the parent is unfit. *In re*

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<sup>6</sup> The elements are (1) the child has been found dependent; (2) a dispositional order has been entered; (3) the child has been in foster care for at least six months; (4) all necessary services, reasonably available, capable of correcting the parental deficiencies within the foreseeable future have been expressly and understandably offered or provided; (5) there is little likelihood that conditions will be remedied so that the child can be returned to the parent in the near future (parent's failure to substantially improve parental deficiencies within 12 months of entry of the dispositional order gives rise to a presumption that there is little likelihood conditions will be remedied so that the child can be returned to the parent in the near future); and (6) continuation of the parent and child relationship clearly diminishes the child's prospects for early integration into a stable and permanent home.

*Dependency of K.R.*, 128 Wn.2d 129, 141-42, 904 P.2d 1132 (1995); *In re Dependency of A.S.*, 101 Wn. App. 60, 70-71, 6 P.3d 11 (2000).

Moreover, establishing that the child is dependent and that it is unlikely conditions can be remedied so the child can be returned to the parent in the near future, RCW 13.34.180(1)(e), is the equivalent of finding that continuing the parent's relationship places the child in a position of harm. *In re I.J.S.*, 128 Wn. App. at 118 ¶ 26.

The court weighs the interests of the child against the interests of the parent only if the six factors are proved. *In re I.J.S.* 128 Wn. App. at 118 ¶ 25. At that point, the trial court must find that termination is in the child's best interest. RCW 13.34.190(2). Here the trial court determined each of the six factors was proved by clear, cogent and convincing evidence. Under the statute and case law, the father was deemed unfit. The trial court then found that termination of parental rights was in A.B.'s best interests, and it properly terminated the father's rights.

**C. The Father's Request To Add To The Elements Necessary To Prove A Termination Of Parental Rights Would Require Amending The Statute and Overruling Existing Precedent**

The father asks this court to hold that "absent proof of a current parental deficiency, consideration of the statutory factors set forth in RCW 13.34.180(1) . . . violates due process." Motion at 2.

This Court resolved this issue over a decade ago when it rejected a claim that due process requires an explicit finding of current parental unfitness, as a threshold determination or a judicial finding, in termination proceedings. *In re K.R.*, 128 Wn.2d at 141-42. This Court held:

The statute does not require relitigation of the dependency determination. Further, no explicit finding of current parental unfitness is required. However, if the state proves the allegations set out [in RCW 13.34.180(1)], an implicit finding of current parental unfitness has been made. Because the termination statute requires proof by clear, cogent and convincing evidence, which necessarily and implicitly includes evidence of current parental unfitness, it comports with the constitutional due process requirement that unfitness be established by clear, cogent and convincing evidence.

*Id.* at 141-42; *see also In re Dependency of J.C.*, 130 Wn.2d 418, 428, 924 P.2d 21 (1996). To accept the father's proposed addition to the statute, the Court would have to judicially amend the statute and overrule existing precedent. Not only is such a decision unwarranted, it is not necessary to protect the rights of parents and dependent children.

The current statutory scheme governing juvenile dependency and termination proceedings requires a finding of parental deficiency in the dependency action. *See, e.g., In re Dependency of T.L.G.*, 126 Wn. App. 181, 198, 108 P.3d 156 (2005) (parental deficiencies should be identified in dependency proceeding); *In re Interest of S.G.*, 140 Wn. App. 461, 468 ¶ 19, 166 P.2d 802 (2007) (termination statute assumes finding of parental

deficiency has been made in the dependency). A termination petition is filed only if the parental deficiencies identified in the dependency order are not corrected.

The termination statute “does not require relitigation of the dependency determination.” *In re K.R.*, 128 Wn.2d at 141. This Court has often stated that it will not amend a statute unless the statute violates a constitutional principle. *Millay v. Cam*, 135 Wn.2d 193, 203, 955 P.2d 791 (1998); *In re Pers. Restraint of Quackenbush*, 142 Wn.2d 928, 935, 16 P.3d 638 (2001). Because the Court has found this statute to be constitutional with respect to this specific question, it should reject the father’s argument. This Court should not add a new, redundant requirement to the statute.

Additionally, as this Court has consistently held, overruling precedent “requires a clear showing that an established rule is incorrect and harmful before it is abandoned.” *Riehl v. Foodmaker, Inc.*, 152 Wn.2d 138, 147, 94 P.3d 930 (2004). No such showing has been made in this case. Nor could it be made.

First, the holding of *K.R.* is correct. The father asserts that the failure to prove current parental unfitness as a preliminary finding in a termination action results in a due process violation. He has provided no analysis of this claim and fails to acknowledge this Court’s decisions

rejecting his position. A parent's right to the care and custody of his child is adequately protected in a termination proceeding, if the state is required to prove unfitness of the parent by clear, cogent and convincing evidence. *Santosky*, 455 U.S. at 769. Proof that a child is dependent because of her parents' deficiencies, that the state has offered services to correct the deficiencies, and that it is unlikely that conditions can be remedied so that the child can return home within the foreseeable future necessarily demonstrate that the parent is not fit and that the parent-child relationship harms or potentially will harm the child. *In re J.C.*, 130 Wn.2d at 428; *In re I.J.S.*, 128 Wn. App. at 118. *In re K.R.* correctly determined that proof of the statutory factors is proof of parental unfitness.

Second, the Court will not overrule its precedent unless the challenged decision causes harm. *Riehl*, 152 Wn.2d at 147. The *K.R.* decision does not cause harm. Rather, it recognizes that the termination statute affirmatively protects both the parent's and the child's rights. It prevents the state from terminating a parent's rights unless the parent is found unfit. Yet it also is cognizant of the right of the child to a speedy resolution of the dependency proceeding.

The Court should abide by its precedent and reject the invitation to edit the termination statute by adding additional, unnecessary elements.

**D. The Evidence Showed That The Father Was Unfit To Parent A.B. And Her Interests Were Best Served By Termination**

The trial court correctly found that “all necessary services, reasonably available, capable of correcting the parental deficiencies within the foreseeable future” were offered or provided to A.B.’s father and that there was “little likelihood that conditions will be remedied so that the child can be returned to the parent in the near future.” These conclusions resulted in an implicit finding of parental unfitness.

The father attempts to align the facts and circumstances of his case with those of the parents in *In re Welfare of Churape*, 43 Wn. App. 634, 719 P.2d 127 (1986), *In re S.G.*, 140 Wn. App. 461, and *In re T.L.G.*, 126 Wn. App. 181. In each of these cases, the lack of a relationship between the parent and child was of concern to the trial court. In each case, the court of appeals reversed a termination order because the Department had not proved that the parent had an identified parental deficiency that could not be remedied so that the child could return to the parent in the near future. That is not the case here.

In both *In re S.G.* and *T.L.G.*, the court of appeals held that the Department failed to identify a parenting deficiency in the underlying dependency action. Without that identification, the provision of appropriate services, a factor under the termination statute, could not be

proved. RCW 13.34.180(1)(d). Unlike the parents in these cases, the father of A.B. did have parental deficiencies that were identified in the dependency proceeding. Moreover, he was offered services to correct these deficiencies, but was unable to remedy them before the termination trial and, even with additional time and services, was unlikely to do so within the child's foreseeable future. *In re S.G.* and *T.L.G.* are inapposite.

In *In re Churape*, deportation and transportation problems impacted the father's relationship with his children. Two years after the children were found dependant, a petition for termination was filed. At the trial, a Department counselor testified that despite the obstacles, the father managed to visit his children once or twice each month, obtained housing and steady employment, and acquired a supportive spouse who would assist in raising the children. The court of appeals remanded the case to determine whether the father's problems could be remedied. *Churape*, 43 Wn. App. at 638-40. *Churape* was decided before major amendments to federal and state child welfare law changed the focus of dependency proceedings from reunification to permanency for children and limited the time that a parent has to remedy his deficiencies.<sup>7</sup>

In stark contrast, in this case the trial court took particular care to ensure that no other services would lead to a relationship between A.B.

---

<sup>7</sup> Adoption and Safe Families Act, 42 U.S.C. § 675(5)(E); RCW 13.34.020, .138.

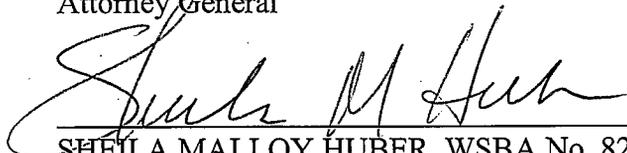
and her father within a foreseeable time. The attachment problems were so profoundly intractable that it would take years to resolve them and transition A.B. to the father's care. The trial court had ample basis to find that there was little likelihood the father would remedy this condition in A.B.'s near future. A child cannot wait indefinitely for conditions to change. *In re T.R.*, 108 Wn. App. at 164-66.

#### IV. CONCLUSION

The state provided A.B.'s father with services and extensive time and opportunities to develop a relationship with his daughter. Even with the support provided, he did not reach a point where A.B. could be placed in his care. She should not have to wait any longer. This little girl has a right to emotional well being, permanency, and resolution of this proceeding. The decisions of the trial court and the court of appeals should be affirmed.

RESPECTFULLY SUBMITTED this 16<sup>th</sup> day of May, 2008.

ROBERT M. MCKENNA  
Attorney General



SHEILA MALLOY HUBER, WSBA No. 8244  
Senior Counsel

MIRIAM ROSENBAUM, WSBA No. 29796  
Assistant Attorney General

MICHAEL SHINN, WSBA No. 22329  
Senior Assistant Attorney General

# APPENDIX

## APPLICABLE STATUTES

### **RCW 13.34.020 - Legislative declaration of family unit as resource to be nurtured — Rights of child**

The legislature declares that the family unit is a fundamental resource of American life which should be nurtured. Toward the continuance of this principle, the legislature declares that the family unit should remain intact unless a child's right to conditions of basic nurture, health, or safety is jeopardized. When the rights of basic nurture, physical and mental health, and safety of the child and the legal rights of the parents are in conflict, the rights and safety of the child should prevail. In making reasonable efforts under this chapter, the child's health and safety shall be the paramount concern. 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 13.34.090 Rights under chapter proceedings**

(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. 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 and (b) is financially unable to obtain counsel because of indigency.

(3) If a party to an action under this chapter is represented by counsel, no order shall be provided to that party for his or her signature without prior notice and provision of the order to counsel.

(4) Copies of department of social and health services or supervising agency records to which parents have legal access pursuant to chapter 13.50 RCW shall be given to the child's parent, guardian, legal custodian, or his or her legal counsel, prior to any shelter care hearing and within fifteen days after the department or supervising agency receives a written request for such records from the parent, guardian, legal custodian, or his or her legal counsel. These records shall be provided to the child's parents, guardian, legal custodian, or legal counsel a reasonable period of time prior to the shelter care hearing in order to allow an opportunity to review the records prior to the hearing. These records shall be legible and shall be provided at no expense to the parents, guardian, legal custodian, or his or her counsel. When the records are served on legal counsel, legal counsel shall have the opportunity to review the records with the parents and shall review the records with the parents prior to the shelter care hearing.

### **RCW 13.34.136 Permanency plan of care (PART)**

(1) A permanency plan shall be developed no later than sixty days from the time the supervising agency assumes responsibility for providing services, including placing the child, or at the time of a hearing under RCW 13.34.130, whichever occurs first. The permanency planning process continues until a permanency planning goal is achieved or dependency is dismissed. The planning process shall include reasonable efforts to return the child to the parent's home.

...

(3) Permanency planning goals should be achieved at the earliest possible date, preferably before the child has been in out-of-home care for fifteen months. In cases where parental rights have been terminated, the child is legally free for adoption, and adoption has been identified as the primary permanency planning goal, it shall be a goal to complete the adoption within six months following entry of the termination order. ...

### **RCW 13.34.138 Review hearings (PART)**

(1) Except for children whose cases are reviewed by a citizen review board under chapter 13.70 RCW, the status of all children found to be dependent shall be reviewed by the court at least every six months from the beginning date of the placement episode or the date dependency is established, whichever is first. The purpose of the hearing shall be to review the progress of the parties and determine whether court supervision should continue.

(a) The initial review hearing shall be an in-court review and shall be set six months from the beginning date of the placement episode or no more than ninety days from the entry of the disposition order, whichever comes first. The requirements for the initial review hearing, including the in-court review requirement, shall be accomplished within existing resources.

(b) The initial review hearing may be a permanency planning hearing when necessary to meet the time frames set forth in RCW 13.34.145 (1)(a) or 13.34.134.

(2)(a) A child shall not be returned home at the review hearing unless the court finds that a reason for removal as set forth in RCW 13.34.130 no longer exists. The parents, guardian, or legal custodian shall report to the court the efforts they have made to correct the conditions which led to removal. If a child is returned, casework supervision shall continue for a period of six months, at which time there shall be a hearing on the need for continued intervention. ...

### **RCW 13.34.180 Order terminating parent and child relationship (PART)**

(1) A petition seeking termination of a parent and child relationship may be filed in juvenile court by any party to the dependency proceedings concerning that child. Such petition shall conform to the requirements of RCW 13.34.040, shall be served upon the parties as provided in RCW 13.34.070(8), and shall allege all of the following unless subsection (2) or (3) of this section applies:

- (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 or will, at the time of the hearing, have been removed from the custody of the parent for a period of at least six months pursuant to a finding

- of dependency;
- (d) That the services ordered under RCW 13.34.136 have been expressly and understandably offered or provided and all necessary services, reasonably available, capable of correcting the parental deficiencies within the foreseeable future have been expressly and understandably offered or provided;
  - (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. A parent's failure to substantially improve parental deficiencies within twelve months following entry of the dispositional order shall give rise to a rebuttable presumption that there is little likelihood that conditions will be remedied so that the child can be returned to the parent in the near future. The presumption shall not arise unless the petitioner makes a showing that all necessary services reasonably capable of correcting the parental deficiencies within the foreseeable future have been clearly offered or provided. . . . and
  - (f) That continuation of the parent and child relationship clearly diminishes the child's prospects for early integration into a stable and permanent home. . . .

**RCW 13.34.190 Order terminating parent and child relationship — Findings.**

After hearings pursuant to RCW 13.34.110 or 13.34.130, the court may enter an order terminating all parental rights to a child only if the court finds that:

(1)(a) The allegations contained in the petition as provided in RCW 13.34.180(1) are established by clear, cogent, and convincing evidence; or

(b) The provisions of RCW 13.34.180(1) (a), (b), (e), and (f) are established beyond a reasonable doubt and if so, then RCW 13.34.180(1) (c) and (d) may be waived. When an infant has been abandoned, as defined in RCW 13.34.030, and the abandonment has been proved beyond a reasonable doubt, then RCW 13.34.180(1) (c) and (d) may be waived; or

(c) The allegation under RCW 13.34.180(2) is established beyond a reasonable doubt. In determining whether RCW 13.34.180(1) (e) and (f) are established beyond a reasonable doubt, the court shall consider whether one or more of the aggravated circumstances listed in RCW 13.34.132 exist; or

(d) The allegation under RCW 13.34.180(3) is established beyond a reasonable doubt; and

(2) Such an order is in the best interests of the child.

# ATTACHMENT 1

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FILED

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KIM R. EASON  
EX OFFICIO CLERK OF  
SUPERIOR COURT  
YAKIMA, WASHINGTON

SUPERIOR COURT OF WASHINGTON FOR COUNTY OF YAKIMA  
JUVENILE DIVISION

In re the Welfare of:

ANGELIQUE LIZETTE SALAS BRIGGS

DOB: 10/27/01

A person under the age of eighteen years.

NO. 04-7-00643-8

FINDINGS OF FACT,  
CONCLUSIONS OF LAW, AND  
ORDER OF TERMINATION RE:  
FATHER  
(Clerk's Action Required)

THIS MATTER having come on regularly for hearing on June 13-17, 2005 and November 16-22, 2005 before the undersigned Judge of the above-entitled court upon the Petition for Termination of the Parent-Child Relationship filed herein by the Department of Social and Health Services (hereinafter DSHS), DSHS appearing by and through its social worker, Amy Marshall and its attorneys, Rob McKenna, Attorney General, and Kimberly A. Loran, Assistant Attorney General, the guardian ad litem, Keith Gilbertson appearing, and the mother of the above-named child not appearing and the court having previously entered an order terminating her parental rights, and Rogelio Salas-Orozco, the father of the above-named child, appearing personally and being represented by Holly Hermon and Sonia Rodriguez of Morales and Rodriguez P.S., and the court having heard the testimony of Amy Marshall, Rose Roberson, Steve Bergland, Tawnya Wright, Rogelio Salas-Orozco, Martha Burns, Julie Doshier, Edelmira Orozco-Rocke, Larry Rocke, James Sluder, Alton Jack Cathey, Dr. Kathy Lanthorn, Paget Gunnier, Samuel Gonzalez, Trina Luna, having heard the recommendations of the guardian ad litem, and having reviewed the files, exhibits,

SCANNED

1 and records herein and being otherwise fully advised in the premises, the court now makes the  
2 following:

3 I. FINDINGS OF FACT

4 1.1 The minor child in this proceeding is Angelique Lizette Salas Briggs. Angelique  
5 Lizette Salas Briggs was born on October 27, 2001 and currently resides in Yakima County  
6 pursuant to a dispositional order of this court.

7 1.2 The mother of the above-named child is Jessica L. Briggs. Her parental rights were  
8 terminated by order entered on July 8, 2005.

9 1.3 The father of the above-named minor child is Rogelio Salas-Orozco. He was  
10 personally served with the termination petition and notice of hearing, and appeared at the hearing.  
11 He was represented by his attorneys Holly Hermon and Sonia Rodriguez of Morales Rodriguez P.S.

12 1.4 The guardian ad litem is Keith Gilbertson, whose business address is 1728 Jerome  
13 Avenue, Yakima, Washington. Mr. Gilbertson also served as the child's guardian ad litem in the  
14 dependency case since July 2002.

15 1.5 The Indian Child Welfare Act, 25 U.S.C. § 1901 et seq., does not apply to this  
16 proceeding.

17 1.6 The Soldiers and Sailors Relief Act of 1940, 50 U.S.C. § 501 et seq., does not apply  
18 to this proceeding.

19 1.7 At the time of the child's birth on October 27, 2001, tests at the hospital indicated  
20 the presence of cocaine in the child's system. A referral was made to DSHS. On October 29, 2001,  
21 the Yakima Police Department took the child into protective custody and placed her in the care of  
22 DSHS. The child was then placed into a licensed foster home pending more information on a  
23 relative placement.

24 1.8 At the time the child was placed into protective custody, the mother was arrested  
25 and incarcerated for unrelated outstanding warrants. The father was residing in Las Vegas, Nevada  
26 with his mother and step-father, the Rocke's. The father was notified of the shelter care hearing.

1           1.9     On February 4, 2002, an order was entered in Juvenile Court for Yakima County  
2 finding Angelique Lizette Salas Briggs dependent pursuant to RCW 13.34.030. An order of  
3 Disposition was entered on that same date, placing Angelique Lizette Salas Briggs in out of home  
4 care. She has remained in out of home placement since that date.

5           1.10    The child was placed with Trina Luna, a maternal cousin, in February 2002 and has  
6 resided there since. Trina Luna has been determined by the court to be a maternal blood relative of  
7 the child. Also present in Ms. Luna's home is Darren, a half-brother of Angelique. Darren is now  
8 three years of age and has lived with Ms. Luna since birth and she has adopted him.

9           1.11    Angelique Lizette Salas Briggs has been out of her parent's home for over six  
10 months pursuant to the finding of dependency. She has never resided with her father.

11          1.12    The parents were never married. The father underwent genetic paternity testing. On  
12 June 25, 2002 the results of the testing indicated he was the biological father of the child. An order  
13 of paternity was subsequently entered.

14          1.13    DSHS has had contact with the father commencing in October 2001 and has  
15 continued to have contact with him ever since. The father had his first visit with the child on  
16 February 25, 2003 when the child was 16 months of age. On June 11, 2003, the father re-located  
17 from Las Vegas, Nevada to Yakima, Washington. A visitation schedule with the father was begun  
18 on June 13, 2003 and has continued, with several interruptions, since then. The father has  
19 participated in a variety of services since February 2002 both in Yakima, Washington and Las  
20 Vegas, Nevada. The father re-located back to Las Vegas, Nevada in March 2005.

21          1.14    All services ordered under RCW 13.34.136 have been offered or provided and all  
22 necessary services, reasonably available, capable of correcting the parental deficiencies within the  
23 foreseeable future have been offered or provided to the father in an express and understandable  
24 manner, including but not limited to the following: drug/alcohol evaluation and treatment, random  
25 UAs, home study, paternity testing, parent assessment and education, domestic violence assessment  
26 and counseling, and casework services.

1 1.15 There is considerable evidence in the record that DSHS has made reasonable efforts  
2 to provide and offer appropriate services to the father. These efforts have been made despite the  
3 logistical problems related to the father's circumstances and within the context of the child's need  
4 for permanence. The Court does not share the father's view that DSHS ignored his concerns and  
5 his family's right to participate, or otherwise unreasonably delay the process of paternity testing.

6 1.16 At the time of DSHS' initial involvement, the father was involved in a felony drug  
7 court program in Las Vegas, Nevada. He successfully completed that program in 2003. While he  
8 was involved in that program, he was unable to physically re-locate to Washington State. He has  
9 been clean and sober since December 2001.

10 1.17 In July 2003, the father participated in a parenting assessment through Personal  
11 Parenting and Assessment Services. He continued to participate in that program until February  
12 2005, when he re-located back to Las Vegas, Nevada. Steve Bergland was the primary parent  
13 educator who worked with the father. Over the two years that Mr. Bergland worked with the father  
14 he did see improvement in the father's parenting abilities, but still had concerns about the lack of a  
15 bond and father-child relationship.

16 1.18 The father plead guilty to fourth degree assault in late 2003 following a September  
17 2003 arrest. The victim of the assault was Christina Scott, his girlfriend at that time.

18 1.19 The father participated in a domestic violence assessment with Rose Roberson in  
19 March 2003. Initially, Ms. Roberson recommended a 20-week program, which the father began  
20 that same month. In the 10<sup>th</sup> week of the program, the father acknowledged to Ms. Roberson an  
21 incident that had happened between he and Christina Scott. Based upon this information, Ms.  
22 Roberson modified his program to a 52-week program. The father stopped attending that program  
23 when he returned to Las Vegas, Nevada.

24 1.20 In July 2005, the father obtained a new domestic violence assessment in Las Vegas,  
25 Nevada, which recommended a 26-week batterer's program. It is uncertain what information (or  
26 how much) he shared with his new evaluator regarding his past involvement in the domestic

1 violence program in Washington State. He started the batterer's program in late September 2005,  
2 but has not yet completed the program.

3 1.21 The father testified that he does not believe he needs domestic violence treatment.

4 1.22 The father's life has been very complicated in the last four years. His basic  
5 residence and family support has always been in Las Vegas, Nevada, where he now lives with his  
6 mother and step-father. He has indicated from the very beginning a strong desire to have custody of  
7 the child and to also have his own family involved in her life. He moved back and forth from Las  
8 Vegas, Nevada to Yakima, Washington in an attempt to cover a wide variety of legal and personal  
9 responsibilities. However, certain legal troubles in Las Vegas, Nevada and Yakima, Washington,  
10 as well as financial difficulties, have hampered his ability to successfully complete all treatment  
11 recommendations and to maintain consistent and meaningful contact with the child. Despite these  
12 circumstances, he has demonstrated a sincere and conscientious commitment in this case regarding  
13 his child.

14 1.23 The father has been able to maintain steady employment since he returned to Las  
15 Vegas, Nevada in March 2005.

16 1.24 The father married Christina Scott in Yakima, Washington on May 8, 2004. The  
17 marriage was dissolved in Las Vegas, Nevada on August 21, 2005. One child was born to Ms.  
18 Scott and the father named Aksel Jahmeel Salas, born on January 1, 2005. The Decree of Divorce  
19 provided for joint custody, but the primary residential placement has been and continues to be with  
20 the father in Las Vegas. Further, Ms. Scott and the father agreed that the child should be placed on  
21 a temporary basis with the father's mother and step-father as guardians. That guardianship is still  
22 legally in place.

23 1.25 The father's relationship with Christina Scott has been dysfunctional and unhealthy.  
24 There have been reports of domestic violence between them and Ms. Scott has a substance abuse  
25 problem. According to the father, Ms. Scott continues to abuse drugs. In February 2005, Ms. Scott  
26 was convicted of criminal mistreatment as a result of the care she was providing to her disabled

1 sister. This mistreatment happened while Ms. Scott and her sister were residing in the father's  
2 home before he left to return to Las Vegas, Nevada. The father continues to have limited contact  
3 with Ms. Scott.

4 1.26 Christina Scott is also the mother of Geovany Isaak Salas, born on March 11, 2004.  
5 The natural father is unknown. Mr. Salas-Orozco currently has custody of this child pursuant to a  
6 Yakama Indian Nation dependency order.

7 1.27 The father began a regular visitation schedule in June 2003, when the child was 20  
8 months of age. He visited weekly and sometimes twice weekly. Initially, in 2003, the father began  
9 to develop a positive relationship with the child. By September 2003, the DSHS plan was to  
10 increase the father's visitation and move towards a placement in his home in Yakima, Washington.  
11 This plan was interrupted, however, by the father's incarceration for an assault pertaining to  
12 Christina Scott and a subsequent immigration hold, which kept him incarcerated for several  
13 months. His visitation did not resume until February 2004 after he was released. Since his  
14 visitation resumed in early 2004, his relationship with his child has not been the same. The father  
15 visited weekly from February 2004 until February 2005 when he re-located back to Las Vegas,  
16 Nevada. After he moved, he did not visit the child for four months, but then returned to visiting the  
17 child approximately every 2 weeks from July 2005 until November 2005.

18 1.28 The trial record in this case was accomplished in two stages. At the end of the first  
19 stage in June 2005, the Court was not satisfied that DSHS had identified and addressed all  
20 necessary issues relating to the father-child relationship. The Court made some suggestions in that  
21 regard. This led to the second stage of the trial in November 2005 at which time all parties  
22 supplemented the record.

23 1.29 After reviewing the record, including a very intense evaluation of the testimony of  
24 the witnesses, the Court continues to have concerns regarding numerous issues connected to the  
25 visitation. The father has had over 100 visits, including many where his mother was also present.  
26 Other visitation also included a parent educator. The father and his family have made almost heroic

1 efforts to participate in these visits and to try and make them meaningful, but despite their efforts  
2 the visitation has not established a close attachment between the father and child.

3 1.30 Specifically, the Court is concerned about the location of the visits, the participation  
4 of the caretakers, certain behaviors of the child during the visits, lack of affectionate physical  
5 contact between the father and child during the visits; sharing of food during visits, utilization of  
6 toys, books and other activities during visits, and comments made by the child during the visits.

7 1.31 Numerous professionals have participated in or otherwise observed the visits and  
8 several have expressed bewilderment at the wall that seems to exist between the father and his  
9 family and the child. DSHS' witnesses and the GAL have concluded that it is too late to continue  
10 to try and break down the wall because of the child's need for permanency. The father's witnesses  
11 maintain that the wall is easily breached by immediately transitioning the child to the father's  
12 custody and the natural family environment of his home in Las Vegas. The Court has concluded  
13 that the problems in this regard are profound and intractable and will need considerable long-term  
14 efforts to be resolved. These problems are not the fault of DSHS or the result of DSHS' failure to  
15 provide reasonable services. They may be the result of subtle changes in the child's relationship  
16 with her caretaker and her original status as a drug-affected newborn.

17 1.32 There is little likelihood that conditions will be remedied so that the child can be  
18 returned to or placed with her father in the near future. Despite the 100 visits and parent education  
19 provided to the father over the past three years, the problems with the father-child relationship will  
20 still take long-term efforts to change. It will take years of transition and work with the child.

21 1.33 The child is currently 4 years of age. The child's caretaker, Trina Luna, and the  
22 caretaker's immediate family have been the central and dominant part of the child's life. The  
23 child's attachment to them is profound and exclusive. This attachment with them may change in  
24 the next few years as the child develops more contacts with the outside world at school, at play, and  
25 in the larger community. During this transition, there is a likelihood that the child's bonds with her  
26

1 caretaker will soften and evolve and the child may be more open and accepting of a relationship  
2 with her father. Hopefully that relationship will be fostered on an informal basis.

3 1.34 The child has been living with her current caretaker virtually all of her life, for  
4 almost 4 years. She is fully integrated into that home, which has been demonstrated to be a stable  
5 home. Ms. Luna has also demonstrated a commitment to the child and a desire to adopt her. There  
6 is currently no legal designation of a permanent home for the child and the continuation of the  
7 father-child relationship does in fact prevent the continuation of a stable home and the  
8 establishment of a permanent home with the caretaker at the earliest possible time. Thus,  
9 continuation of the parent-child relationship clearly diminishes the child's prospects for integration  
10 into a stable and permanent home. The child knows who the father is, but a significant relationship  
11 has not developed. The father and his family do not recognize Ms. Luna as a legitimate family  
12 member. Because of the belief of the father and his family, they will continue to fight for the child  
13 which will interfere with her ability to achieve and maintain permanency. A permanent setting for  
14 the child cannot be established until the father's rights have been terminated.

15 1.35 Based upon the foregoing findings of fact, termination of the father's parental rights  
16 is in Angelique Lizette Salas Briggs' best interests. The child has established a stable and powerful  
17 bond with her caretaker, Trina Luna, and her half-brother, Darren. Ms. Luna has done a fine job of  
18 caring for her and nurturing the child through some very difficult life stages. It would not be in the  
19 best interests of the child to remove her from Ms. Luna's home at this time or in the near future.  
20 The father's on-going relationship with the child will conflict with her permanency because of his  
21 perpetual challenge to the legitimacy of the placement with Ms. Luna. Termination of parental  
22 rights rather than a guardianship is in Angelique Lizette Salas Briggs best interest.

23 1.36 The guardian ad litem recommends that the parent-child relationship be terminated.

## 24 II. CONCLUSIONS OF LAW

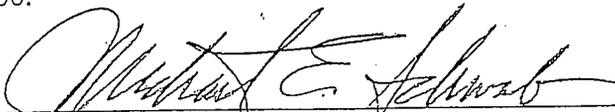
25 2.1 The court has jurisdiction over the parties and subject matter herein.



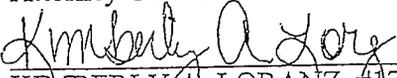
1 3.2 IT IS FURTHER ORDERED that the Washington State Department of Social and  
2 Health Services is hereby granted permanent legal custody of the above-named child with the right  
3 to place such child in a prospective adoptive home, the power to consent to the adoption of said  
4 child, and the power to place said child in temporary care and authorize any needed medical care,  
5 dental care or evaluations of said child until the adoption is finalized.

6 3.3 That this matter is set for a review hearing on the 20th day of July at 9:00 a.m.,  
7 under the dependency cause number 01-7-00116-0, unless the child is earlier adopted. The review  
8 hearing scheduled for July 19, 2006 is hereby stricken.

9 DATED this 3/17 day of March, 2006.

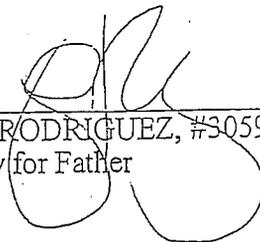
10   
11 JUDGE MICHAEL E. SCHWAB

12 Presented by:  
13 ROB MCKENNA  
14 Attorney General

14   
15 KIMBERLY A. LORANZ, #17430  
16 Assistant Attorney General

16 Approved, Notice of Presentation  
17 Waived:

17   
18 KEITH GILBERTSON  
19 Guardian ad litem

18   
SONIA RODRIGUEZ, #30595  
Attorney for Father

20 SW: Amy Marshall, Yakima DCFS

21 CERTIFICATE OF SERVICE

21 I certify to be true under penalty of perjury under the laws of the State of Washington that I sent via email or fax a  
22 copy of this order to the persons/parties listed below in the manner indicated on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_  
at Yakima, Washington.

- 23  GAL (email/FAX)  
24  Father/attorney (email/FAX)  
25  Social Worker (email/FAX)  
26  Other \_\_\_\_\_ (email/FAX)

Signature

# ATTACHMENT 2

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

In re Welfare of:	)	No. 24923-9-III
	)	
A.B.,	)	
	)	
A Minor Child.	)	
	)	
ROGELIO SALAS,	)	
	)	Division Three
Appellant,	)	
	)	
v.	)	
	)	
DEPARTMENT OF SOCIAL AND	)	
HEALTH SERVICES,	)	
	)	
Respondent.	)	UNPUBLISHED OPINION

Stephens, J —Rogelio Salas appeals the trial court’s termination of his parental rights. He contends the termination order violated his constitutionally protected interest in the care and custody of his child and that the court’s findings on the required statutory factors were unsupported by the evidence. We affirm.

**FACTS**

Mr. Salas is the father of A.B, born October 27, 2001, in Yakima,

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Washington. At the time of A.B.'s birth, Mr. Salas had ended his relationship with A.B.'s mother and was living in Las Vegas, Nevada, with his mother and step-father and participating in a felony drug court program. On October 29, police took A.B. into protective custody and placed her in the care of a social worker after hospital testing indicated the presence of cocaine in her system. The Department of Social and Health Services (Department) called Mr. Salas to inform him that A.B. had been placed in state care. The next day, a dependency petition was filed by the Department.

On February 4, 2002, dependency orders were entered. The disposition order required A.B.'s mother to participate in services to correct her drug/alcohol and parenting issues so that she could be reunited with A.B. She failed to participate in services for any length of time. A final order was later entered terminating her parental rights to A.B.

Mr. Salas was required to submit to drug/alcohol evaluation and comply with a home study. He was also asked to comply with Nevada drug court services and visit A.B. as often as he could. The Department rejected Mr. Salas's request that A.B. be placed in his care at his mother's home in Las Vegas, and instead placed A.B. with a maternal relative in Yakima.

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On February 25, 2003, Mr. Salas had his first visit with A.B. when she was 16 months old. On June 11, Mr. Salas relocated to Yakima, Washington. Mr. Salas met with Department social worker, Amy Marshall, and requested that services be offered immediately. Ms. Marshall referred Mr. Salas for random urinalysis testing and a parenting assessment. A supervised visitation schedule with A.B. was also started.

In July, Mr. Salas and A.B. met with parent educator, Andres Soto, for a parenting assessment. Mr. Soto found that based on his meetings with A.B., he believed that A.B. was suffering painful emotions in dealing with the separation from her caregiver during visits. He thus recommended that A.B. and Mr. Salas receive counseling and that some of the visits be monitored by a child therapist.

Although the initial visitation sessions were extremely difficult for A.B., A.B. began to stabilize and establish a positive relationship with Mr. Salas. By September, the Department planned to increase visitation and move towards placement of A.B. in Mr. Salas's home. Mr. Salas had been participating in services and had completed three parenting classes.

On September 16, unsupervised visitation was scheduled to start. Mr. Salas, however, did not show up for the visit, because he had been arrested for a

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domestic violence incident involving his then-girlfriend. Mr. Salas pleaded guilty to fourth degree assault and was incarcerated for several months. Visitation with A.B. did not resume until February 2004.

In early 2004, the Department referred Mr. Salas for parenting and domestic violence assessments. Parent educator, Steve Bergland, was assigned to work with Mr. Salas and A.B. Mr. Bergland provided Mr. Salas with parenting education and observed visitation sessions. Visitation, however, was very difficult for A.B. A.B. did not want to take part in the visits and Mr. Bergland had a difficult time getting A.B. to interact with Mr. Salas. A.B. did not want to leave her caregiver's side during the visits. A.B. would respond negatively to Mr. Salas and would come to the visits unhappy.

Mr. Salas was also assigned to mental health counselor, Rose Roberson, for a domestic violence assessment. Ms. Roberson conducted a personality assessment and domestic violence inventory on Mr. Salas. Ms. Roberson recommended that Mr. Salas participate in a 20-week anger management program and Mr. Salas immediately started the program. In the 10th week of the program, Mr. Salas informed Ms. Roberson of the domestic violence incident involving his girlfriend. Mr. Salas's program was then modified to a 52-week

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program.

On May 8, 2004, Mr. Salas married. Mr. Salas and his wife separated later that summer. For the next several months, Mr. Salas continued to participate in his parenting classes, visitation sessions with A.B. and the anger management program. Despite several visitation sessions, there was very little progress in A.B.'s interaction with Mr. Salas. A.B. was still unhappy at the visits and did not want to take part in the sessions. There was also no improvement in A.B.'s ability to accept Mr. Salas.

On September 13, the Department filed a termination petition. On November 22, Keith Gilbertson was appointed by the court to serve as A.B.'s guardian ad litem.

On January 1, 2005, Mr. Salas and his wife had a son, A.S. In February, Mr. Salas's wife was convicted of criminal mistreatment as a result of the care she was providing to her disabled sister while she and Mr. Salas were living together. That same month, Mr. Salas was suspended from his anger management program after he stopped attending classes. On February 7, Mr. Salas informed Mr. Bergland that he was moving back to Las Vegas. Mr. Bergland told Mr. Salas that he would keep his file open in case he came back so

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that visitation with A.B. could continue. On February 25, Mr. Salas did not attend his scheduled visitation session. His file was later closed.

On March 8, Mr. Salas called Ms. Marshall to inform her that he was considering a move back to Las Vegas. Mr. Salas told Ms. Marshall that he wanted to visit with A.B. before he left. Later that day, Ms. Marshall was informed that Mr. Salas had already moved to Las Vegas. No visitation was coordinated.

In May, Mr. Salas called Ms. Marshall to set up visitation with A.B. A visitation session was scheduled for May 20. At the visit, A.B. ignored Mr. Salas. A.B. refused to open the gifts Mr. Salas brought for her. She would not touch the toys and refused food offered to her by Mr. Salas.

Ms. Marshall called the Nevada Department of Child and Family Services and forwarded to Mr. Salas the names of agencies providing parenting and domestic violence education services, as he had not yet started participation in court-ordered services in Las Vegas. Ms. Marshall, however, did not receive any further communication from Mr. Salas on whether he had engaged in services in Las Vegas.

On June 13, 2005, the termination trial commenced. The Department first called Ms. Roberson to testify. Ms. Roberson testified that Mr. Salas's progress

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in the anger management program was "average" and that he was still in need of domestic violence treatment. Report of Proceedings (RP) at 35. Ms. Roberson said she would not recommend returning the child to Mr. Salas.

Mr. Salas testified that he made a request with Las Vegas social services at the time A.B. was born to investigate his home situation, but that request was denied because paternity had not yet been established. He said that he went through the steps to get paternity established and then requested another home study, but that request was also denied because he was involved in drug court. He said visitation was hampered by the caregiver and her mother participating in his visitation sessions with A.B., because A.B. would constantly interact with them.

Mr. Salas testified that he made efforts to follow through with Ms. Marshall's recommendations for services in Nevada. He said that he was participating in Alcoholics Anonymous meetings and trying to stay away from people who use drugs. Mr. Salas said that his son with his wife, as well as her other child, were both living with him in Nevada and that he had given his parents temporary custody of the children because of financial problems. He said it was his desire to have A.B. move to Las Vegas.

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Mr. Bergland testified that the biggest problem between Mr. Salas and A.B. concerned their bonding and attachment. He said that even though he saw improvement with Mr. Salas, there was no improvement with A.B. He said that the visits were traumatic for A.B. and that after one year, she still did not want to participate in the visits. Mr. Bergland said that it would take a considerable length of time before A.B. would be comfortable with Mr. Salas and that Mr. Salas still needed work on setting boundaries for her.

Mr. Bergland said that he had concerns with Mr. Salas's past history of drug abuse and violence and that he had major concerns for the safety of A.B. He also said that he would have major concerns about placing A.B. in Mr. Salas's care. Mr. Bergland testified that it was in A.B.'s long term best interest to keep her with the caregiver. He said that A.B. needed stability and had a strong bond with her caregiver. He said he did not recommend increasing visitation with Mr. Salas as that was not in A.B.'s best interest.

Ms. Marshall testified that A.B. needed consistency and stability. She said that there were consistencies in Mr. Salas's progress, but then he suddenly moved to Las Vegas. She opined that Mr. Salas was not a stable parent. Ms. Marshall said that A.B. did not progress after one year of consistent visitation with

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Mr. Salas and that continuing the dependency would cause her distress. Ms. Marshall said she did not think that Mr. Salas's relationship with A.B. would ever progress to the point where therapy would be beneficial and it was in A.B.'s best interest to live with her caregiver.

Mr. Gilbertson, A.B.'s guardian ad litem, testified that Mr. Salas was making an effort to connect with A.B. and that he had a very strong family support system. However, even with the support, Mr. Gilbertson said there was never a long period of time where Mr. Salas had displayed solid stability. Mr. Gilbertson said he was worried because Mr. Salas exhibited a lack of judgment in relationships, and his incarceration and subsequent lapse in visitation were detrimental to his relationship with A.B. He said that Mr. Salas and A.B. were nowhere near the point of a parent-child bond and that A.B. was far from any transition to be placed with Mr. Salas.

Mr. Gilbertson testified that A.B. was extremely bonded to her caregiver and to remove her would cause extreme emotional problems. He said that A.B. was currently living with her half-sibling and that a bond had already been established between them. He said that on-going court procedures would be very problematic for A.B. because she needed permanency. He concluded it was in

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A.B.'s best interest to sever the relationship with Mr. Salas and his extended family.

At the conclusion of the trial, the court was not satisfied that the Department had addressed all necessary issues relating to the relationship between Mr. Salas and A.B. The court asked Mr. Salas to demonstrate his commitment to be involved with A.B. and asked Mr. Salas to resolve the issue with his wife within 45 days. The court asked Mr. Salas to (1) have a domestic violence assessment done in Las Vegas and demonstrate participation in an on-going program and (2) have a substance evaluation done and demonstrate his involvement in regular urinalysis testing. The court also asked the Department to provide Mr. Salas and his mother with weekend visitation with A.B., in the event that they were in Washington. The court then deferred making its final decision until after the record was supplemented, and continued the matter.

In July, Mr. Salas obtained a domestic violence assessment in Las Vegas, which recommended a 26-week batterer's program. He also visited A.B. every two weeks. On August 21, 2005, Mr. Salas's marriage was dissolved. In September, Mr. Salas started a domestic violence program.

On November 16, trial resumed. The Department called family therapist,

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Martha Burns, to testify. Ms. Burns testified that she observed four visitation sessions between Mr. Salas and A.B. She also said she met with A.B. outside of visitation. Ms. Burns said that A.B. appeared nervous and anxious when with Mr. Salas and that she could not see how increasing contact between Mr. Salas and A.B. would develop a better relationship between them. She said that keeping this process going would increase A.B.'s anxiety and nervousness even in her own home. Ms. Burns said that A.B. understood that things were in limbo and that as long as Mr. Salas continued to try and reunify with A.B., her anxiety would be heightened, hindering his visits with her.

Mr. Salas then testified. Mr. Salas testified that his parents still had guardianship over his son with his former wife, and that he had not taken any steps to vacate or terminate the guardianship. Mr. Salas also said that he had completed eight sessions of the domestic violence program, but that he had missed two sessions. He said he had completed a drug and alcohol assessment and that he had been sober since 2001.

Julie Doshier of Heart to Heart Social Services testified that she supervised visitation between Mr. Salas and A.B. Ms. Doshier testified that between July and November, the visits remained the same in that it took a long time for A.B. to

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warm up to Mr. Salas and his mother. Ms. Doshier said that the caregiver's mother participated in these visits, but that she did not influence A.B. to be negative about the visitations with her father. She said that the caregiver's mother always encouraged A.B. to play with Mr. Salas and eat what they brought for her.

Ms. Marshall testified that she had also observed some of the visits between Mr. Salas and A.B. She said that the progression of a relationship between Mr. Salas and A.B. had been minimal. She said she believed that removing the caregiver's mother from the visits would result in distress to A.B. that would outweigh any benefit. Ms. Marshall said that if the termination petition was granted, the Department would still support A.B.'s paternal grandparents having contact with A.B. Ms. Marshall said that continuing the parent-child relationship, however, would greatly impact A.B.'s ability to have permanency in her life, and that she had been in limbo for four years.

After the Department rested, Mr. Salas called therapist Kathy Lanthorn to testify. Ms. Lanthorn testified that she observed A.B. during two visitation sessions. She said that Mr. Salas was very determined and committed to pursuing custody of A.B. Ms. Lanthorn said that she noticed behaviors

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unexpected of a four-year-old. She said that A.B. was very comfortable telling the adults what to do and that she seemed very accustomed to having things done for her. She said there were several situations where the caregiver's mother asked her to do something, and A.B. completely ignored her. She said she did not see Mr. Salas do anything that would concern her. She said that Mr. Salas was unbelievably patient and was very creative with A.B. She said that it took A.B. less than 30 seconds to start engaging with Mr. Salas, that A.B. did not hesitate and that it was a very quick transition. She said that A.B. was laughing and smiling at Mr. Salas and that A.B. called Mr. Salas "dad" and Mr. Salas's mother "grandma." RP at 1308. She said that on one visit A.B. sat on Mr. Salas's lap for awhile. She also said that she observed A.B. kiss Mr. Salas on his cheek.

Ms. Lanthorn said she did not agree with Ms. Burns's conclusion that A.B. and Mr. Salas did not have an attachment. She said that A.B. needed time with Mr. Salas without her caregivers so that she would not experience the anxiety of conflicting loyalties. She said she believed a transition to Mr. Salas was possible with A.B. Ms. Lanthorn said it was not in the best interests of A.B. to be forever denied contact with Mr. Salas.

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Mr. Gilbertson was then called to testify as a rebuttal witness. Mr. Gilbertson testified that he had not participated in the visitation sessions since June, because he felt that he had a good sense of how the visitations were going based on previous sessions. He said, however, based on what Ms. Lanthorn had said at trial, he attended one visitation session on November 18 to see if there was any change from previous sessions. Mr. Gilbertson said that when he arrived at the visit, he kept to a distance so as to not interfere. He said that A.B.'s expression changed when she saw Mr. Salas. He said she appeared saddened. He said that she would allow Mr. Salas to hold her, but that she never faced him. He said she would not make eye contact with him and would not turn to ask him questions.

Mr. Gilbertson said that an open adoption would have been a very good option for A.B. but that it was in A.B.'s best interest to terminate the parental rights, because A.B. needed permanency and stability. He said that the continuing efforts for visitation between A.B. and Mr. Salas were not benefiting A.B., as there had been no progress. Mr. Gilbertson said the older A.B. became, the more difficult visitation would be.

At the conclusion of the trial, the court found that despite Mr. Salas and his

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family's efforts, visitation had not yet established a close attachment between Mr. Salas and A.B. The court stated that this problem would need considerable long-term efforts to be resolved and that these problems were not the fault of the Department. It proposed an open adoption arrangement allowing Mr. Salas and his family regular visitation with A.B., but Mr. Salas did not agree to this option. Ultimately, the court found it in A.B.'s best interest to terminate Mr. Salas's parental rights. This appeal follows.

#### ANALYSIS

A. Constitutionally protected liberty interest in the care and custody of children

Mr. Salas contends the termination order violated his constitutionally protected liberty interest in the care and custody of A.B. He argues that he was competent, fit and able to care for A.B., and that the court erred by severing the parent-child relationship on the basis that A.B. had bonded with her caregiver. Mr. Salas relies on *In re Welfare of Churape*, 43 Wn. App. 634, 719 P.2d 127 (1986) and *In re Dependency of T.L.G.*, 126 Wn. App. 181, 198, 108 P.3d 156 (2005) to support his argument.

Biological parents have a fundamental liberty interest in the care, custody and control of their children. *Meyer v. Nebraska*, 262 U.S. 390, 399, 43 S. Ct. 625, 67 L. Ed. 1042 (1923); *In re*

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*Welfare of Sumey*, 94 Wn.2d 757, 762, 621 P.2d 108 (1980). A trial court asked to interfere with a parent's right 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). However, a parent's fundamental right is not absolute. *Sumey*, 94 Wn.2d at 762. The State has a responsibility as *parens patriae* to intervene to protect a child when the parent's actions or inactions endanger the child's physical or emotional welfare. *Id.* RCW 13.34.180 and RCW 13.34.190 effectuate this obligation. Under these statutes, a court may terminate parental rights if it finds that (1) the requisite allegations are supported by clear, cogent and convincing evidence; and (2) termination is in the best interests of the child. RCW 13.34.190(1)(a), (2).

Here, there was an adequate basis for the trial court to conclude that the relevant factors were met, and neither *Churape* nor *T.L.G.* supports Mr. Salas's argument that this violated his constitutional rights as a parent. In *Churape*, 43 Wn. App. at 635, the father was an undocumented migrant worker who had been deported several times. Both of his daughters were declared dependent and placed in foster care. *Id.* After several months of little contact with his daughters, the Department filed a termination petition to terminate the father's parental rights. *Id.* The frequency of the father's visits increased thereafter, however, and

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the termination petition was dismissed. *Id.* A subsequent termination petition was filed following the father's second deportation that year, and the father's parental rights were ultimately terminated. *Id.* at 635-36.

On appeal, the Court remanded the proceeding to the trial court for additional testimony regarding whether the problems necessitating state intervention had been remedied and whether reunification of the family could be effectuated in the near future. *Id.* at 639. The court found that the evidence established the only irremediable condition was the father's lack of contact with his children. *Id.* at 638. The court then stated that the fact that the children had been in foster homes and had developed ties to their foster parents could not be the controlling consideration. *Id.* at 639. The court did not indicate, however, whether the children were unable to bond or form attachments to their father or whether the visits were detrimental to them in any way.

In *T.L.G.*, 126 Wn. App. at 194-95, the Department filed a petition to terminate parental rights based in part on the parents' issues with anxiety and depression. The Department alleged these mental health issues rendered the parents incapable of providing proper care for their children for an extended period of time. *Id.* at 195. At the conclusion of the trial, the court terminated the

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parental rights of both parents, finding that the parents suffered from significant mental health issues that would require three years of specialized treatment and that their mental illnesses rendered them incapable of providing proper care for their children for an extended period of time. *Id.* at 196-97.

On appeal, the court reversed the termination order, holding the State did not establish how the parents' mental health issues related to their ability to care for their children. *Id.* at 198-206. The court stated that mental illness is not, in and of itself, proof that a parent is unfit or incapable. Instead, the court stated that termination must be based on current unfitness and children cannot be removed from their homes merely because their parents suffer from mental illness. *Id.* at 203.

*Churape* and *T.L.G.* demonstrate that where a parent is competent, fit and able to resume custody, a court cannot end the parent-child relationship simply because the child has bonded to a foster care provider. Here, however, the fact that A.B. had bonded to her caregiver was not the only concern before the court. Rather, the irremediable condition was not Mr. Salas's lack of contact with A.B or his inability to parent her, but A.B.'s inability to form any sort of bond or attachment to her father. Mr. Salas had over 100 visits in three years with A.B.

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Despite the number of visits, the evidence supported the trial court's finding that A.B. was unhappy and distressed by the visits. A.B. was anxious and nervous and several experts testified at trial that she was far from any transition toward a parent-child relationship with Mr. Salas, and the problem would get worse as she grew older. These concerns go beyond the concerns at issue in *Churape* and *T.L.G.*

Moreover, although parents have a fundamental liberty and privacy interest in the care and custody of their children, the court may not accommodate the parents' rights when to do so would ignore the basic needs of the child. *In re Welfare of Aschauer*, 93 Wn.2d 689, 695, 611 P.2d 1245 (1980). A child's right to basic nurturing includes the "right to a safe, stable, and permanent home and a speedy resolution of [dependency] proceeding[s]." RCW 13.34.020; *In re Dependency of C.R.B.*, 62 Wn. App. 608, 615, 814 P.2d 1197 (1991).

Here, A.B. has been dependent and in foster care since her birth. She is now almost six years old. The trial court carefully examined the services provided to Mr. Salas and his progress in addressing his deficiencies, even continuing the dependency trial for several months to allow Mr. Salas and the Department to address additional issues. Because the testimony at trial

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established that A.B. was far from any transition to Mr. Salas, the only alternative to termination was to continue her dependency indefinitely. The trial court considered the testimony and reasonably concluded that further services were unlikely to remedy the conditions that prevented placing A.B. with Mr. Salas, and that permanently placing A.B. in a stable home with her caregiver was in her best interests. Absent agreement to an open adoption, the court concluded that termination of Mr. Salas's parental rights was necessary to a permanent placement for A.B. In so holding, the court gave full respect to Mr. Salas's constitutional interest in the care and custody of A.B.

B. Sufficiency of evidence to support termination of parental rights

Apart from his constitutional challenge, Mr. Salas contends the court's findings of fact under RCW 13.34.180 are unsupported by the evidence.

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 dependant child;
- (b) That the court has entered a dispositional order pursuant to RCW 13.34.130;
- (c) That the child has been removed or will, at the time of the hearing, have been removed from the custody of the parent for a period of at least six months pursuant to a finding of dependency;
- (d) That services ordered under RCW 13.34.136 have been expressly and understandably offered or provided and all necessary services, reasonably available, capable of correcting the parental

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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.

A court may terminate parental rights if the Department proves the elements of RCW 13.34.180(1) by clear, cogent and convincing evidence. RCW 13.34.190(1)(a). "Clear, cogent and convincing" means highly probable. *In re Dependency of K.R.*, 128 Wn.2d 129, 141, 904 P.2d 1132 (1995). Additionally, the trial court must find by a preponderance of the evidence that termination is in the best interests of the child. RCW 13.34.190(2).

We will not second guess the court's factual findings under RCW 13.34.180(1) if they are supported by substantial evidence. *In re Dependency of C.B.*, 61 Wn. App. 280, 286, 810 P.2d 518 (1991). Because only the trial court has the opportunity to hear the testimony and observe the witnesses, its decision is entitled to deference; this court does not judge the credibility of the witnesses or weigh the evidence. *In re Dependency of A.V.D.*, 62 Wn. App. 562, 568, 815 P.2d 277 (1991).

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Mr. Salas does not challenge the court's findings on the first three elements of the statute. He contends, however, that the Department failed to provide all services reasonably necessary to correct his parental deficiencies. Specifically, he argues that the Department did not offer or provide individualized parent-child therapy sessions, despite a 2003 recommendation for such services, and did not work towards transitioning A.B.'s caregivers out of the visits. This is not a basis to reverse the trial court. Even where the Department "inexcusably fails" to offer services to a willing parent, termination will still be deemed appropriate if the services "would not have remedied the parent's deficiencies in the foreseeable future, which depends on the age of the child." *In re Dependency of T.R.*, 108 Wn. App. 149, 164, 29 P.3d 1275 (2001). Where the record establishes that the offer of services would be futile, the trial court can make a finding that the State has offered all reasonable services. *In re Welfare of Ferguson*, 32 Wn. App. 865, 869-70, 650 P.2d 1118 (1982), *rev'd on other grounds*, 98 Wn.2d 589, 656 P.2d 503 (1983).

Here, there was substantial evidence to establish that therapy sessions between Mr. Salas and A.B. would have been futile. Ms. Marshall testified that based on her observations of A.B. and Mr. Salas, she did not think that Mr.

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Salas's relationship with A.B. would ever progress to the point where therapy would be beneficial. Ms. Burns testified that it would be hard to provide therapy to a young child, because young children are not as verbal as older children. She said that it is difficult to teach a young child to identify feelings and that some children are not "in touch" with the same types of things as adults. RP at 954.

Additionally, the testimony at trial established that it would be harmful to A.B. to transition her caregivers from the visits. Mr. Bergland testified that he never got to a point during the visitation sessions where A.B.'s caregivers could be removed from the visits without causing trauma to A.B. Ms. Doshier testified that even though the caregiver's mother participated in the visits she observed, she did not negatively influence A.B. in any way, and in fact encouraged A.B. to play with Mr. Salas. Ms. Marshall also testified that the progression of the relationship between A.B. and Mr. Salas was so minimal that removing the caregiver from the visits would result in negative consequences to A.B. that would outweigh any benefit. Mr. Gilbertson testified that the difficulties in visitation between Mr. Salas and A.B. would only increase as A.B. grew older. The evidence was thus sufficient that any additional services would have been futile to remedy the deficiencies in Mr. Salas and A.B.'s ability to bond or form an

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attachment. The court did not err in finding that the Department offered or provided all necessary services and concluding that additional services would not likely remedy the conditions in the near future.

Mr. Salas next contends the Department failed to establish that the continuation of the parent-child relationship clearly diminished A.B.'s prospects of integration into a stable and permanent home. However, the testimony at trial established that A.B. had been in foster care since birth and needed permanence and stability. The court acknowledged that it would be a misnomer to consider "returning" A.B. to Mr. Salas, as she has never lived with him. Clerk's Papers at 35. The Department presented evidence that it would take a considerable length of time before A.B. would be comfortable with Mr. Salas and that there had never been a significant period of time over which Mr. Salas had displayed solid stability. The Department also presented evidence that ongoing court proceedings would be problematic, that A.B. understood she was in limbo and that keeping the dependency process open would increase A.B.'s anxiety and nervousness. The evidence was thus sufficient to establish that continuation of the parent-child relationship clearly diminished A.B.'s prospects of integration into a stable and permanent home.

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Mr. Salas also contends the Department failed to prove that termination of his parental rights was in A.B.'s best interests. No specific factors are involved in a best interests determination, and "each case must be decided on its own facts and circumstances." *A.V.D.*, 62 Wn. App. at 572.

Here, substantial evidence supported the finding that termination was in A.B.'s best interests. A.B.'s social worker, her guardian ad litem and a family therapist all recommended that it was in A.B.'s best interests to sever the relationship with Mr. Salas. The court thus did not err in finding that termination was in A.B.'s best interests.

#### CONCLUSION

We conclude that the court's termination order did not violate Mr. Salas's constitutionally protected liberty interest in the care and custody of A.B. We also conclude that the court's findings that Mr. Salas was provided all services reasonably necessary to correct his parental deficiencies and that continuation of the parent-child relationship clearly diminished A.B.'s prospects of integration into a stable and permanent home were supported by substantial evidence at trial. Based on the evidence presented, the trial court did not err in concluding that termination was in A.B.'s best interests.

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Affirmed.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

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Stephens, J.

WE CONCUR:

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Schultheis, A.C.J.

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Kulik, J.

**PROOF OF SERVICE**

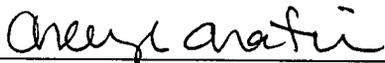
I certify that I served a copy of this document on all parties or their counsel of record on the date below as follows:

Susan F. Wilk  
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- US Mail
- ABC/Legal Messenger
- Hand delivered by \_\_\_\_\_
- E-mail: \_\_\_\_\_

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 16th day of May, 2008, at Tumwater, Washington.

  
\_\_\_\_\_  
Cheryl Chafin, Legal Assistant