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NO. 24923-9-III

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION ONE

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IN RE THE DEPENDENCY OF A.B.

STATE OF WASHINGTON,

Respondent,

v.

ROGELIO SALAS,

Appellant.

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COURT OF APPEALS  
DIVISION ONE  
OCT 31 2006

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ON APPEAL FROM THE SUPERIOR COURT OF THE  
STATE OF WASHINGTON FOR YAKIMA COUNTY

The Honorable Michael Schwab

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APPELLANT'S OPENING BRIEF  
MOTION FOR ACCELERATED REVIEW

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A. SUMMARY OF APPEAL

When the State petitioned to terminate his parental rights, Rogelio Salas was a fit parent who was immediately ready to take custody of his daughter, A.B., and provide her a safe and stable home. Salas had availed himself of and benefited from all the services offered by the Department of Social and Health Services, and he loved his daughter, as was shown by the over 100 visits Salas engaged in with her.

The juvenile court granted the State's termination petition solely because the child had bonded to her foster placement and the State's experts speculated that transition to her father's home would be difficult. The State did not refer Salas and his daughter to therapy that might have eased this transition, or engage in more than a perfunctory inquiry into the possible reasons for A.B.'s resistance to engaging with her father. Torn between wresting A.B. from the foster placement to which she undeniably had grown attached and respecting Salas's fundamental constitutional right to the care and custody of his child, the juvenile court made the wrong choice and terminated Salas's parental rights. The court's decision not only sets a high-water mark for the failure of DSHS and courts to pursue their statutory and constitutional mandate to reunify

dependent children with their parents, if allowed to stand, it also will set a dangerous precedent with regard to the erosion of parents' due process rights. Salas requests this Court reverse the termination order, and remand with direction the parties transition toward reunification.

**B. ASSIGNMENTS OF ERROR**

1. The order terminating Salas's parental rights violated his constitutionally-protected liberty interest in the custody of his child.

2. The juvenile court erred in finding termination of Salas's parental rights was in A.B.'s best interest.

3. The juvenile court erred in finding DSHS met its statutory burden of providing all necessary services reasonably available, capable of correcting Salas' parental deficiencies within the foreseeable future.

5. The juvenile court erred in finding that conditions would not be remedied so the child could be returned to Salas within the near future.

6. The juvenile court erred in finding continuation of the parent-child relationship diminished A.B.'s prospects for early integration into a stable and permanent home.

7. In the absence of substantial evidence in the record, the juvenile court erred in entering Finding of Fact (FOF) 1.14.<sup>1</sup>

11. In the absence of substantial evidence in the record, the juvenile court erred in entering FOF 1.15.

12. In the absence of substantial evidence in the record, the juvenile court erred in entering FOF 1.19.

13. In the absence of substantial evidence in the record, the juvenile court erred in entering FOF 1.20.

14. In the absence of substantial evidence in the record, the juvenile court erred in entering FOF 1.21.

15. In the absence of substantial evidence in the record, the juvenile court erred in entering FOF 1.22

16. In the absence of substantial evidence in the record, the juvenile court erred in entering FOF 1.25.

17. In the absence of substantial evidence in the record, the juvenile court erred in entering FOF 1.29.

18. In the absence of substantial evidence in the record, the juvenile court erred in entering FOF 1.31.

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<sup>1</sup> The court entered a memorandum opinion explaining its reasoning and subsequently signed numbered findings of fact and conclusions of law that essentially paralleled the memorandum opinion. The memorandum opinion and findings of fact and conclusions of law are attached as Appendices A and B, respectively. For the sake of clarity, assignments of error are made to the numbered findings.

19. In the absence of substantial evidence in the record, the juvenile court erred in entering FOF 1.32.

20. In the absence of substantial evidence in the record, the juvenile court erred in entering FOF 1.34.

21. In the absence of substantial evidence in the record, the juvenile court erred in entering FOF 1.35.

C. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Where a parent is presently fit, competent, and able to immediately take custody of his child, does the entry of an order terminating that parent's parental rights violate his fundamental, constitutionally-protected liberty interest in the care and custody of his child, requiring reversal of the order?

2. Where the State failed to identify a parental deficiency needing correction, was it error for the juvenile court to consider the merits of the State's termination petition?

3. Assuming for the sake of argument that a lack of bonding between the dependent child and her biological parent qualifies as a "deficiency" under the termination statutes, does the State's statutory obligation to provide all necessary services, reasonably available, capable of correcting parental deficiencies within the

foreseeable future require the State to provide services to correct this deficiency?

4. Where several experts, beginning with the parenting evaluator retained by the State at the dependency's inception, recommended individualized child and family counseling be provided to Salas and his daughter to break down her barrier to forming an attachment to him, does the State's failure to provide this service—or any other therapeutic services targeted at addressing the child's issues—require reversal of the termination order?

5. In June 2005 trial proceedings, the trial court ruled the State had not proven necessary services had been offered or provided, had not proven there was little likelihood conditions would be remedied so the child could be returned to her parent in the near future, and had not established continuation of the parent-child relationship would diminish the child's prospects for early integration into a stable and permanent home. In the intervening five months, the State incorporated the child's paternal grandmother into visits and had the child assessed for a possible attachment disorder, but did not refer the child and father to therapy or alter the structure of visits to facilitate bonding. Should the

State's decision to continue with the status quo ante, instead of trying to advance toward reunification, have precluded the entry of an order terminating the father's parental rights?

6. RCW 13.34.190 requires the State to prove by clear, cogent and convincing evidence that the parent's relationship with the child will diminish the child's prospects for early integration into a stable and permanent home. A.B. was in a stable foster placement, and was not likely to be removed from that placement except in the event that custody was restored to Mr. Salas. Where A.B.'s placement would be unaffected by continuation of the dependency, did the State adequately prove Mr. Salas's relationship with A.B. would diminish her prospects for early integration into a stable and permanent home?

7. Prior to terminating parental rights, the court must find the State proved by clear, cogent and convincing evidence that there was little likelihood that conditions would be remedied so that the child could be returned to the parent in the near future. RCW 13.34.180(5). Salas demonstrated a proven commitment to participate in and benefit from services developed a transition plan for his daughter to be moved to his care, located a therapist who could assist the child in dealing with the emotional effects of

separation from her current caregiver, and presented the testimony of an expert witness who stated Salas's plan was viable and could be accomplished in a relatively short amount of time. Given this evidence, did the State fail to prove there was little likelihood that conditions would be remedied so that the child could be returned to the parent in the near future?

8. Given Salas's competence and current fitness as a parent at the time of the termination proceedings, was the trial court's consideration of the child's best interests premature?

9. Prior to terminating parental rights, the juvenile court must find termination is in the child's best interests. A.B. had a father and extended family who loved her, had demonstrated their commitment to her through what the court itself termed as "heroic" efforts, who had established a safe, stable and loving home for her, and who were not opposed to her enjoying an ongoing relationship with her foster family. Did the juvenile court err in finding that termination of the parent-child relationship was in A.B.'s best interests?

#### D. STATEMENT OF THE CASE

1. Early Placement History. Rogelio Salas is a Mexican national who moved with his mother to Yakima, Washington, in

1993, after her divorce from his father. 1RP 79. Salas resided there for approximately seven years, until 1999 or 2000. Id. Salas had a six-year relationship with Jessica Briggs; however, the relationship revolved around Salas and Briggs' drug use. RP 79; Ex. 14 at 1. Wishing to extricate himself from the unhealthy situation, in 2000, Salas moved to Las Vegas, Nevada, to reside with his mother and stepfather. 1RP 74.

A.B. was born to Briggs in Yakima on October 27, 2001. 1RP 74; 2RP 205. 3RP 535.<sup>2</sup> She was born cocaine-addicted and was immediately removed from her mother's custody and placed in protective care. 2RP 203, 205, 359. Upon A.B.'s birth, Briggs informed the Department of Social and Health Services ("DSHS" or "Department") that Salas was A.B.'s father. 1RP 76. DSHS contacted Salas and he immediately took steps to secure custody of his daughter. 3RP 571-72. Salas, who had abused heroin,

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<sup>2</sup> Nine volumes of consecutively-paginated transcripts are referenced herein as follows:

|     |   |                    |
|-----|---|--------------------|
| 1RP | - | 6/13/05            |
| 2RP | - | 6/14/05            |
| 3RP | - | 6/15/05            |
| 4RP | - | 6/16/05            |
| 5RP | - | 6/17/05            |
| 6RP | - | 11/16/05           |
| 7RP | - | 11/17/05           |
| 8RP | - | 11/18/05, 11/21/05 |
| 9RP | - | 11/22/05           |

A supplemental volume of transcripts containing additional proceedings from 11/21/05 is referenced as 10RP followed by page number.

enrolled in drug court, engaged in substance abuse treatment, found employment, and made progress in his personal life. 3RP 535, 571-72.

He also sought immediate placement of A.B. in his care. He asked A.B.'s social worker to move her to Las Vegas to reside with him and his mother, and requested a home study be conducted by Las Vegas DSHS so he could be approved as a placement. 1RP 77-78. The home study was denied, however, because paternity had not been established by Yakima DSHS, and Salas's subsequent request for a home study was also denied. 1RP 78; 2RP 209. Salas alternately proposed that his aunt in Yakima be a preferred placement; Yakima DSHS denied this request as well because paternity had not yet been established. 2RP 300.

Salas's mother, Edelmira Orozco Rocke, made independent efforts to obtain custody of A.B. 3RP 535-39, 553. She contacted A.B.'s social worker, Jennifer Hammermeister, and asked that she be approved as a placement. 3RP 553. Hammermeister told Rocke that no action would be taken toward placing A.B. with her until paternity was established, but assured her that if paternity was proven, Rocke could obtain custody of A.B. 3RP 535-36, 553.

In lieu of expediting paternity testing and pursuing placement of A.B. with Salas's mother in Nevada or a local paternal relative, however, DSHS focused on placing the child with one of Briggs' relatives. 2RP 303-06. Due to the extensive criminal involvement of Briggs' family, DSHS unsuccessfully investigated over six potential relative placements before finally Trina Luna, a second cousin to A.B. who had adopted one of Briggs' other children, contacted the Department and asked to be considered as a placement. 2RP 307. Although Luna's husband had been imprisoned for child molestation in the second degree and rape, and Luna herself did not drive and was a high school dropout, DSHS felt she was the most appropriate potential placement thus far because she did not have any criminal history. 2RP 307, 309.

Eight months after A.B.'s birth, on August 1, 2002, paternity was finally established as to Salas, but by this point, DSHS resisted removing A.B. from Luna's home. 2RP 453; 3RP 539, 576, 578-79. DSHS denied Rocke's request for placement and, despite a court order permitting Salas to have visitation in Yakima, did nothing to facilitate the occurrence of visits. 3RP 539. Nor did DSHS initially fulfill its obligation to provide Salas with services. 2RP 352-53. In order to get services and visit his daughter, Salas had to seek court

intervention. Salas's first visit with A.B. occurred on February 25, 2003, nearly a year and a half after her birth. 2RP 301-02.

2. Salas's move to Yakima and DSHS's initial failure to refer Salas to appropriate services. In June 2003, Salas moved from Las Vegas to Yakima because he was advised by the juvenile court that this was the only way he could gain custody of his daughter. 1RP 81. This move coincided with the transfer of the case from Hammermeister to DSHS social worker Amy Marshall. 2RP 203. On June 13, 2003, Salas presented himself to Marshall in her office and immediately requested services. 2RP 216. Marshall referred Salas for urinalyses, a parenting assessment with Andrès Soto, and immediate visitation with A.B. Id. The visits were supervised visits three times per week for one hour each. 2RP 217.

To conduct the parenting assessment, Soto met with Salas and observed visits on June 19, 2003 and June 26, 2003. Ex. 14. At the same time that he commended Salas for his evident commitment to obtaining custody of A.B., Soto also noted that Luna had perceptible difficulty with the notion of A.B. transitioning to Salas's care. Ex. 14 at 1-2. Soto wrote that Luna was "tense and uncomfortable with the fact of Rogelio visiting with [A.B.]" Ex. 14 at 2. During the visit on June 19, 2003, Soto found that Luna

“competed with Rogelio for [A.B.]’s attention.” Id.; see also 3RP 427-28. A.B. in turn showed distress when Luna left the room. Ex. 14 at 2; 2RP 217-18.

Soto’s observations were consistent with the experience of Marshall herself as well as that of other visitation supervisors. On one occasion, Marshall asked Luna, who had transported A.B. to the visit, if she would spend the next 15-20 minutes getting A.B. comfortable and then leave. 2RP 320; Ex. 9. Luna responded she would not be leaving the lobby and would not leave “her” baby. Id. Luna’s behavior so upset A.B. that ultimately Salas consented to have the visit in the lobby. Ex. 9. On other occasions, visitation supervisors noted A.B.’s maternal grandmother, Carol Lopez, trying to “work up” A.B. by repeatedly telling her she loved her and lingering longer than appropriate during the visits. Ex. 31.

Soto recommended Salas continue with random urinalysis, engage in parent education, and continue with visits supervised by a Parent Educator. Ex. 14 at 2-3. He specifically noted that

[A.B.] is facing a great deal of painful emotions as she deals with the separation from her parent during visits. In fact, the instilling of such fear of abandonment could trigger other emotional problems in the child. Therefore, it is highly recommended that Angelique receives counseling, and that some visits be monitored by a child therapist for the sake of the

child. Though some children have a great deal of resiliency, it is important to offer this child the notion of security during this "trial basis approach" with her distant father, through services that could assist her in dealing with fear.

Ex. 14 at 2. Soto's written recommendations were for: "intensive parent education services, drug and alcohol assessment and follow recommendations for treatment, and counseling for [A.B.] and Rogelio." Ex. 14 at 3.

Marshall failed to refer Salas and A.B. to counseling, failed to involve a child therapist in the visits between Salas and A.B., and did not place Salas in individual, intensive parenting classes. Instead, she referred Salas to group parenting classes. 2RP 316-19, 334. Marshall claimed that Soto told her it would be okay to substitute his written recommendations for parent education and individual counseling with weekly group classes, but she was able to provide no documentation of this conversation. 2RP 317.

Marshall alternately asserted that DSHS did not provide the more intensive services because they were not sure how the case would proceed. 2RP 350-51. If the anticipated outcome was termination, then DSHS planned to hold off on the intensive services, and increase them only if the case moved toward placement of A.B. in Salas's home. 2RP 351.

After Luna was transitioned out of visits and A.B. was transported to visits by Lopez, A.B.'s separation anxiety diminished. 2RP 223. The visits also improved after they were scheduled in a park, rather than the sterile environs of the DSHS office. 2RP 219-20, 312, 314; 3RP 431. By August 2003, Marshall felt the visits were progressing well enough that she referred Salas to a supervising agency in lieu of supervising the visits herself. 2RP 227-28. Salas and A.B. had developed a bond and Marshall trusted Salas. 2RP 228.

In addition to progressing well with his visits, Salas did very well in services. He had maintained sobriety since December 25, 2001, and completed four out of five of recommended group parenting classes. Ex. 10, 11, 12, 13; 3RP 403-06. By September, 2003, Marshall was prepared to approve unsupervised visits; however, on September 16, 2003, Salas no-showed for a scheduled visit. 2RP 232. He had been arrested for a fourth-degree assault involving his then-girlfriend, Christina Scott. 2RP 233, 235; 3RP 410-11.

3. Proceedings in 2004 and 2005. Because of his immigration status, even though charges were dismissed, Salas was detained until December 2003. 2RP 233; 3RP 410-11. Upon

his release, visits recommenced but DSHS's attitude toward reunification changed. 2RP 235, 315. The primary plan advocated by DSHS was now for adoption of A.B. and this plan never changed for the remainder of the proceedings. 2RP 237, 262.

Because of the arrest, DSHS required Salas complete a domestic violence assessment and follow any recommendations. 2RP 235. Rose Roberson conducted the assessment and referred Salas to a 20-week anger management program, which Salas began on March 16, 2004. 1RP 16-21. Salas married Scott in May 2004, when he learned she was pregnant with his child. 1RP 175. In July 2004, Salas disclosed another altercation with Scott to Roberson. 1RP 28-30. On July 19, 2004, Salas was arrested for an alleged assault involving Scott. 1RP 37. After this incident, Salas separated from Scott. In January 2005, Scott gave birth to a son. 1RP 176.

Also following his release from custody, by court order, Salas's visits with A.B. were supervised. 2RP 236. According to Marshall, Keith Gilbertson, the Guardian Ad Litem ("GAL"), and visitation supervisors, after visits recommenced in 2004, A.B. was resistant to the visits and the attachment to Salas she had shown in 2003 had disappeared. 1RP 98, 100, 104-05, 110-12, 149-59; 2RP

238-39, 241, 243, 250; 5RP 776-77, 828. This notwithstanding, DSHS opposed increasing visits, even though this step was recommended by an expert as a means of establishing and promoting an attachment between A.B. and Salas. 5RP 742-45. In order to obtain increased visits, Salas had to go to court and then received only two visits twice a week for a total of two hours. 5RP 751.

At the same time, it was exceedingly difficult for Salas to obtain and maintain stable employment and housing – prerequisites to reunification – and meet all of his obligations under the dependency, as all of Salas's services, including his visitation with A.B., were scheduled during regular work hours. Marshall refused to reschedule visits for a time that would have enabled Salas to maintain a regular job, because this was not convenient for the schedule of the foster parent. 3RP 432-35, 460. Salas found employment in construction and then when this job posed too many conflicts with his obligations under the dependency he worked as an auto detailer. 3RP 408. Salas's bills piled up and he soon found himself in trouble financially. 1RP 82. In March 2005, finding DSHS no closer to transitioning A.B. to his care than one year

earlier, and facing increasing financial difficulty, Salas returned to Las Vegas, Nevada. 1RP 82-83, 173; 3RP 434-35.

Salas reasoned that he needed to address his own needs in order to be able to meet the needs of A.B., and in Las Vegas, he had a stable job with medical benefits. 1RP 173; 3RP 434-35.

Although Salas did not inform anyone of his plans to leave prior to departing, he telephoned Marshall and Roberson to notify them as he was leaving. 3RP 434.

Upon arriving in Las Vegas, Salas immediately obtained employment with Roofing Wholesale as a roof loader, a job which paid him \$9 an hour plus overtime and provided medical benefits. 3RP 386-89. According to his supervisor, Roofing Wholesale Assistant Manager James Sluder, Salas was a reliable worker with a congenial personality who was expected to advance in his position. 3RP 389-90, 395-96. Roofing Wholesale required employees to submit to urinalyses, and during his tenure as an employee there, Salas had never had a positive test. 3RP 391-92.

After he left Yakima, Salas's next visit with A.B. was on May 20, 2005. 2RP 253. According to Marshall, this visit did not go well. A.B. did not acknowledge Marshall, which Marshall speculated was due to A.B.'s negative association between

Marshall and the supervised visits, and showed no response to Salas. 2RP 253. A.B. just wanted to be held by Carol and sat with her back to Salas. 2RP 253-54. She did play a chasing game with him, but according to Marshall, would not allow him to touch her. 2RP 256.

4. June 2005 termination trial and court's ruling denying State's termination petition. On September 13, 2004, the Department filed a petition to terminate Salas's parental rights. CP 74-80. Marshall explained that even though the Department had earlier that year elected to withdraw a termination petition, the Department intended to go forward with termination at that time because Salas had had an opportunity to reunite with A.B. which he disrupted because of his incarceration and the domestic violence incidents with Scott. 2RP 263. A termination trial took place before the Honorable Michael Schwab on June 13, 14, 15, 16, and 17, 2005.

Keith Gilbertson, the GAL, supported the State's termination petition, based principally on the difficulty A.B. had in forming an attachment to Salas. 5RP 775-85, 828. Gilbertson believed it would be traumatic to A.B. to remove her from her home with Luna. 5RP 785. Gilbertson asserted he did not believe Salas would be

ready to parent A.B. on his own. 4RP 807. Gilbertson acknowledged that DSHS did not assist Salas as it should have when he was struggling the most to make ends meet financially and still fulfill his commitment regarding services in Yakima. 4RP 771. He thought DSHS should have helped Salas with finding stable employment that would pay his bills and permit him to engage in court-ordered services. Id.

Salas countered the State's claim that he was not prepared to parent A.B. with evidence of the safe, stable home he provided for the two sons of Christina Scott, A. and G., of whom A. was his biological son. 2RP 440-51. Salas lived in a house belonging to his parents, across the street from his parents' own residence, 1.5 blocks away from a park and three blocks away from an elementary school. 4RP 658-59. The neighborhood was suitable for children, consisting of single-family residences, and the house had an enclosed backyard where children could play safely. 4RP 658-59. Salas also noted he had maintained sobriety since December 25, 2001, engaged in parenting classes in both Yakima and Nevada, separated from Scott, obtained stable employment, and faithfully engaged in numerous visits with A.B., all with the ultimate goal of

obtaining custody of her. 3RP 400-06, 417-18, 435-51, 498, 520-26.

Salas's mother, Edelmira Orozco Rocke, also testified. 3RP 534-62. She recounted her efforts to obtain custody of A.B. and, when these efforts were unsuccessful, to simply be a part of her life, and the concerted resistance to these efforts she met from DSHS. 3RP 536-41. On one occasion, Rocke flew up to meet A.B. on her first birthday, only to be told by DSHS that A.B.'s caretaker was not going to be available for a visit. 3RP 539. During 15 trips Rocke took to Yakima, DSHS only permitted Rocke to meet with A.B. a total of four times, and then only briefly. 3RP 541. Rocke's status as biological grandparent was accorded little legitimacy by Yakima DSHS, who never invited her to be a part of family team decision-making. 3RP 541.

Rocke also testified Salas was a good son and a very good father to his own sons. 3RP 542. Although Rocke cared for the children while Salas was at work, upon his return home, Salas helped with the children's care. 3RP 542-44. He helped feed and change them, played with them, walked with them in a stroller to the park, put them to bed, gave them a lot of affection, and kept them safe. 3RP 542-43. Rocke believed Salas was ready to take

A.B. right away, and both she and her husband, Salas's stepfather, testified they would be able to provide Salas with a lot of support in giving A.B. a safe and stable home. 3RP 544, 554-55, 588-601.

Larry Rocke, Salas's stepfather, also worked closely with Salas to provide a transition plan to move A.B. into Salas's care. He proposed that visitations be increased, and be followed by supervised visits in Nevada. 3RP 597. Next, A.B. could have unsupervised visits in Nevada, and ultimately, Salas could obtain custody of his daughter. 3RP 597. Rocke believed this transition could be accomplished within three to six months. 4RP 649.

Larry Rocke confirmed Salas's report that his relationship with Christina Scott had ended, stating Salas had not indicated reconciliation with Scott was an option. 4RP 666. He informed the court that Salas intended to divorce Scott, but had not done so yet. 4RP 667-68.

The trial court commented that it believed strongly in family, and that it was very impressed by the passion and commitment of Edelmira Rocke. 4RP 673. The court found it was in A.B.'s best interest to know a credible blood line. 5RP 907. Based on A.B.'s history of being born drug-addicted, the court suggested it would be appropriate to have her evaluated by a specialized professional.

5RP 901. The court concluded the State had not proven necessary services had been offered or provided, had not proven there was little likelihood conditions would be remedied so A.B. could be returned to her parent in the near future, and had not established continuation of the parent-child relationship would diminish A.B.'s prospects for early integration into a stable and permanent home.

5RP 908-09. The court reserved on the question whether termination would be in A.B.'s best interest, and continued the matter until August 1, 2005, for Salas to submit a proposed plan addressing the issues of substance abuse, domestic violence, his relationship with Christina Scott and her children, child support for A.B., and parental and personal assessments for himself and A.B.

5RP 909.<sup>3</sup>

5. Salas's compliance with the court's order and November proceedings. Salas submitted a plan that addressed all of the issues of concern to the court.<sup>4</sup> Salas completed a drug and alcohol assessment and committed to providing all recommendations and/or court orders; he set up urinalysis testing; and he obtained a domestic violence assessment and committed to

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<sup>3</sup> A copy of the court's letter outlining the court's expectations is attached as Appendix C.

<sup>4</sup> A copy of Salas's proposed plan was filed with the court, admitted as Exhibit 59, and is attached as Appendix D.

following all recommendations of the provider, as well as to living his life without future incidents or accusations of domestic violence. Salas and Scott entered a joint petition for divorce and agreed to permit the Rockes to file for legal guardianship of their biological son, A. Salas arranged to address outstanding child support obligations and obtained a home study of his residence in Las Vegas. Salas proposed a detailed transition plan that incorporated his mother so as to ease A.B.'s move from Yakima into his home.

Salas identified a child and family counselor who would work with A.B. to address the inevitable emotional distress she would experience when she transitioned to his custody and located a pediatrician and elementary school for her. Salas provided the court with written proof of the joint petition for divorce decree, his domestic violence assessment, and a copy of the home study completed by Alton J. ("Jack") Cathey, a licensed marriage and family therapist and alcohol and drug counselor. CP 44-65.<sup>5</sup>

Nonetheless, in November 2005, the State renewed its effort to terminate Salas's parental rights. The Department retained Martha Burns, a child therapist and former DSHS adoption worker who had testified numerous times for DSHS as an expert witness to

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<sup>5</sup> A copy of Cathey's home study was admitted as Exhibit 56 and is attached as Appendix E.

evaluate A.B. 6RP 960-62. Burns testified that Salas had made little progress in forging a bond with A.B. despite his consistent efforts during scheduled visits. 6RP 960-62, 985; 7RP 1186.

Julie Doshier, a visitation supervisor who observed all of Salas's visits between July 23, 2005 and October 16, 2005, agreed the visits had remained the same since she began supervising them. 6RP 1053-62. She never heard A.B. refer to Salas by name and noted that occasionally, A.B. threw toys that Salas gave her into the dumpster. 6RP 1055, 1061-62. Both Burns and Doshier opined that Carol Lopez's presence could have a chilling effect on A.B.'s bonding with Salas but neither recommended her removal from the visits. 6RP 960, 983-84, 987.

Cathey testified at the November hearings on Salas's behalf. 7RP 1244-69. He stated that in order to conduct the home study, he visited Salas's home on July 29, 2005, arriving early so as to observe Salas interacting with his mother and getting ready for the visit. 7RP 1247-48. Cathey met with and interviewed Salas for approximately three hours. Cathey described the home atmosphere as congenial, and the home as well-maintained, suitable, and safe for a child. 7RP 1248, 1269. Cathey interviewed Salas's work manager, Sluder, who said Salas was a responsible

employee. 7RP 1249. Cathey also performed a drug/alcohol assessment of Salas and found he was not dependent on drugs or alcohol. 7RP 1254-55. For this reason, Cathey did not recommend further substance abuse treatment. 7RP 1256. Cathey reviewed Salas's transition plan and found it as viable as it could be, with the caveat that Cathey did not have an opportunity to meet A.B. 7RP 1250.

The defense retained Kathy Lanthorn, a licensed therapist, to review videotapes of visits, documents, and physically observe visits, and offer an opinion based on her observations and expertise whether a transition could be made under the existing circumstances.<sup>6</sup> Lanthorn reviewed the home study and drug and alcohol assessment completed by Cathey, Burns' assessment, Doshier's visitation reports, Salas's letter to the court in which he outlined his transition plan, and a July 25, 2005 ISSP by Amy Marshall. 7RP 1296-97. Lanthorn met A.B. in two visits on September 29 and 30, 2005, and prepared a report detailing her findings and recommendations.<sup>7</sup> 7RP 1297.

Lanthorn found Salas sincere, authentic, and very determined to pursuing custody of A.B. 7RP 1298. She thought

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<sup>6</sup> Lanthorn's curriculum vitae was admitted as Exhibit 47.

<sup>7</sup> Lanthorn's report was admitted as Exhibit 58. 7RP 1299.

A.B.'s behavior was unusual for a four-year-old: A.B. was bossy and Lanthorn did not hear her say "please" or "thank you." 7RP 1303. Lanthorn attributed this behavior to a lack of structure in the home system in which A.B. resided; A.B.'s conduct was consistent with a child who wielded a lot of power in a system which did not provide adequate limits. 7RP 1357-58. Lanthorn found Salas "unbelievably patient" with a child who tested him quite frequently, and creative in his ability to find non-threatening ways to redirect her. 7RP 1305-06.

Lanthorn noted that while she did not observe Lopez overtly trying to distract A.B., Lopez also did not encourage A.B. to take snacks or drinks from Salas or his mother. 7RP 1310. She testified that children are sensitive to covert cues, and opined that A.B.'s hesitance to engage with Salas might stem from divided loyalties and a desire to please both parents; she might feel that if she ate or drank food provided by her father it would be negative. 7RP 1311. In support of this, Lanthorn cited an incident during the visit on July 29. At that visit, A.B. spent an extended amount of time playing with her father and paternal grandmother, then when it was time to leave, she went to Lopez, crawled in her lap, and asked, "Was I bad, grandma?" 7RP 1371.

Lanthorn disagreed with many of Burns' observations. 7RP 1316. In contrast to Burns, Lanthorn observed a clear emotional connection between A.B. and Salas, as well as a demonstrable physical comfort level. 7RP 1316. Lanthorn faulted Burns' characterization of Salas and his mother as "simplistic," and stated Burns did not account for the fact that both Salas and Edelmira Rocke spoke English as a second language. 7RP 1327. Lanthorn herself was a fluent Spanish speaker who was state-certified at the highest level, and conducted her evaluation in both English and Spanish. 7RP 1327-28.

Lanthorn believed Salas's ability to gain custody of his daughter had been negatively impacted by what she characterized as institutional bias against a single Latino male. 7RP 1330. Lanthorn also noted that family therapy would have been very helpful to Salas and A.B., but that this service was never offered or provided. 7RP 1326. Even so, Lanthorn believed A.B.'s development in the past five years had given her stability so she could weather an adjustment to living in Salas's home, provided she received support in this transition from her current caregivers. 7RP 1324-25.

Lanthorn strongly believed it would be in A.B.'s best interest to be transitioned to her father because she had already lost her mother. 7RP 1329, 1378. All things being equal, Lanthorn believed the best place for a child was with a biological parent who was a competent parent. 7RP 1359. Salas wanted A.B. and had demonstrated to the court that he was willing to do everything possible to prove his competency as a father. 7RP 1329. Lanthorn testified that A.B. would be damaged by not being raised by her father when he was available, competent, and able to parent her. 7RP 1361, 1369.

6. Juvenile court's ruling. At the conclusion of the case, the defense contended the State had offered no services to strengthen Salas's relationship with his daughter, and instead merely retained people to perform assessments. 9RP 1807. Salas's counsel argued that to terminate the parental rights of a fit parent would violate due process. 9RP 1811. Clearly anguished at its choices, the trial court looked for legal authority to do something other than terminate Salas's parental rights or return the case to dependency. 9RP 1800. Ultimately, the court tried to split the baby, and entered a memorandum opinion terminating Salas's parental rights, but encouraging the parties to enter an open adoption agreement that

would still permit visitation between A.B., Salas, and his family. CP 24-43. When Salas did not elect to agree to an open adoption, the court entered findings of fact and conclusions of law in support of its decision to terminate. From the memorandum opinion and the juvenile court's findings of fact and conclusions of law, Salas appeals. CP 4-23.

#### E. ARGUMENT

##### 1. THE TERMINATION ORDER VIOLATED SALAS'S CONSTITUTIONALLY-PROTECTED LIBERTY INTEREST IN THE CARE AND CUSTODY OF HIS DAUGHTER.

"The family entity is the core element upon which modern civilization is founded." Custody of Smith, 137 Wn.2d 1, 15, 969 P.2d 21 (1998), aff'd, Troxel v. Granville, 530 U.S. 57, 120 S.Ct. 2054, 147 L.Ed.2d 49 (2000). A biological parent has a fundamental liberty interest in the care, custody and control of his or her child. Santosky v. Kramer, 455 U.S. 745, 753, 102 S.Ct. 1388, 71 L.Ed.2d 599 (1982); In re Sumey, 94 Wn.2d 757, 762, 621 P.2d 108 (1980). "This primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition." Troxel v. Granville, 120 S.Ct. at 2060 (citing Wisconsin v. Yoder, 406 U.S. 205, 232, 92 S.Ct. 1526, 32 L.Ed.2d

15 (1972)). Intervention by the State into the life of the family, including the removal of the child from the home and termination of parental rights, implicates "the most essential aspect of family privacy . . . the right of the family to remain together without coercive interference of the awesome power of the State."

Duchenease v. Sugerman, 566 F.2d 817, 825 (9th Cir. 1977). Thus, in dependency matters, the State's ostensible goal is to nurture the family unit and to keep the family intact "unless a child's right to conditions of basic nurture . . . health, or safety is jeopardized." RCW 13.34.020; In re J.B.S., 123 Wn.2d 1, 8-9, 863 P.2d 1344 (1993).

This fundamental right is not absolute. When a parent's "actions or decisions seriously conflict with the physical or mental health of the child" the State has the right and responsibility to intervene and protect the child. In re Sumey, 94 Wn.2d 757, 762, 621 P.2d 108 (1980). The termination of parental rights, however "should be allowed only for the most powerful reasons." In re the Dependency of H.S., 94 Wn. App. 511, 530, 973 P.2d 474 (1999).

To prevail in a termination proceeding the State must prove:

- (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 13.34.180(1).

These elements are separate and distinct and each must be proven by clear, cogent, and convincing evidence. RCW 13.34.190

(1)(a); In re S.V.B., 75 Wn. App. 762, 768, 880 P.2d 80 (1994);

Krause v. Catholic Community Services, 47 Wn. App. 734, 740,

737 P.2d 280, rev. denied, 108 Wn.2d 1035 (1987). Only after establishing each of these elements may the court consider whether the State has proven by a preponderance of the evidence that termination of parental rights is in the best interests of the child. RCW 13.34.190(2); In re Dependency of H.W., 92 Wn. App. 420, 425, 961 P.2d 963 (1998).

a. The termination of the parental rights of a competent parent who is immediately able to provide a safe, stable, and nurturing home to his child violates that parent's fundamental liberty interest in raising and caring for his child. The first three elements of RCW 13.34.180 are not in dispute in the instant case and are not challenged here. 3RP 431. In sections 2 and 3, infra, Salas does contest the State's proof of the remaining three elements, but this case turns on more than a simple want of statutory proof.

Salas's case is unique in that it cannot credibly be contested that by the time of both the proceedings in June as well as the November hearings, Salas had fully addressed any deficiencies that may have previously prompted concerns regarding his ability to parent his daughter. He engaged in and benefited from all of the services in which he was ordered to participate, and established a

safe, loving home for A.B. Further, Salas amply established not only his strong desire to obtain custody of his child, he demonstrated he was willing and able to draw upon community and familial resources to ease A.B.'s transition from her current caregiver.

By contrast, DSHS's intractability on the subject of Salas obtaining custody of his daughter may at best be characterized as bureaucratic inertia, as demonstrated by the Department's singular reluctance to (1) transition Lopez out of visits, (2) augment Salas's existing visitation, or (3) experiment with visits without Lopez until ordered by the court to do so at the very conclusion of the proceedings. A more cynical view exposes the Department pouring thousands of taxpayer dollars into building a termination case against Salas in lieu of providing him and his daughter with the services that might actually breach the distance between them.

In keeping with the constitutional guarantee expressed in Santosky, in enacting the Juvenile Court Act, the Legislature has declared the family unit to be a "fundamental resource of American life which should be nurtured." RCW 13.34.020. The Legislature has further declared that "Toward the continuance of this principle. .

. the family unit should remain intact unless a child's right to conditions of basic nurture, health, and safety is jeopardized." Id.

The six statutory elements that the State must prove to terminate parental rights were implemented to ensure the entry of a termination order is accompanied by adequate due process safeguards. RCW 13.34.180; In re Dependency of I.J.S., 128 Wn. App. 108, 116-17, 114 P.3d 1213 (2005); In re Moseley, 34 Wn. App. 179, 184, 660 P.3d 315 (1983) (procedural fairness required at child deprivation proceedings in order to protect constitutional guaranties of due process).

b. Termination must be based on current unfitness.

The termination statute presumes either the existence of enduring parental deficiencies that are incapable of correction by court-ordered services or an unwillingness on the part of the dependent parent to engage in such services. See RCW 13.34.180(1)(d); RCW 13.34.180(1)(e); In re Dependency of T.L.G., 126 Wn. App. 181, 198, 108 P.3d 156 (2005) ("A threshold problem here is that DSHS never identified the parental deficiencies to be corrected.").

That a decision not to reunify must be predicated on ongoing parental deficiencies is axiomatic. See RCW 13.34.030(5) (defining "dependent child"). As Division One of this Court flatly stated,

"[t]ermination must be based on current unfitness." T.L.G., 126 Wn. App. at 203. Otherwise DSHS and the courts waded into the dangerous waters of acting as an adoption agency for dependent children, rather than protecting the family unit, as is their mandate. The termination of parental rights in this instance so greatly erodes this legislative and constitutional mandate as to render it a nullity.

The record, the court's memorandum opinion, and the court's findings of fact and conclusions of law in this case make plain that DSHS did not and could not point to a parental deficiency, a constitutional prerequisite for a termination proceeding to go forward. The only alternative, at this point, was for the termination petition to be dismissed and the parties ordered to transition toward reunification.

This Court's opinion in In re Churape, 43 Wn. App. 634, 719 P.2d 127 (1986), is directly on point. In Churape, the father, a Mexican national, had failed to sustain any significant contact with his children during the early years of their development because he was an undocumented alien and was twice deported during the dependency proceedings. 43 Wn. App. at 637. The social worker testified that three months of visitation was not enough to offset 2½ years of sporadic contact. Id.

While acknowledging these circumstances, this Court noted, however,

On the other hand, the only "unremediable" condition testified to was lack of contact with the children prior to September 1983. The DSHS counselor testified Mr. Churape could be an adequate parent, was fond of the children, and would be a gentle but firm disciplinarian. Despite deportation and transportation problems stemming from the distant placement of R., Mr. Churape managed to visit N. 25 times and R. 13 times between September 1983 and December 1984. Moreover, he acquired a trailer and, later, an apartment which was found adequate by the caseworker. At the time of termination, he had steady employment, adequate housing, and was married to a spouse who was willing and able to help raise the children and assist him in altering his illegal immigration status. These latter facts militate against the court's finding that termination was warranted.

Id. at 438.

This Court noted a trial court's termination decision is usually accorded substantial deference by the appellate court, but chastised the juvenile court for its decision:

Legislative requirements contained in the 1977 enactment of RCW 13.34 regarding dependency reviews and plans are not merely hoops the parties must jump through. They are the means provided to attempt to alleviate, mitigate, or cure existing problems that have required state intervention. RCW 13.34.130. The legislative focus is on keeping the family unit intact. RCW 13.34.020. Hence, reuniting the family must be the principal goal of the Department of Social and Health Services.

Churape, 43 Wn. App. at 638.

Accordingly, this Court reversed the termination order, and remanded with the specific direction that the juvenile court “place emphasis on the legislative mandate to attempt to keep families together.” Id. at 639. While acknowledging the children may have developed bonds to their foster family, this Court admonished that the existence of such bonds “cannot be the controlling consideration.” Id.

In T.L.G., a case presenting dramatically different facts—most notably, parents whose difficulties had served as a long-standing impediment to their resumption of custody of their children, despite their evident desire to do so—Division One of this Court reached a like result. The Court reversed a termination order where the State did not identify a parental deficiency but called an expert to testify that three to five years would be needed to treat the parent’s mental illness. Because the expert did not correlate the need for treatment to parenting ability, the Court disagreed that the expert’s testimony “amounted to saying that three years of treatment was needed before the parents could care for the children.” 126 Wn. App. at 204-05.

These decisions illustrate the basic principle that where a parent is competent, fit, and able resume custody, a juvenile court cannot, consistent with due process, end the parent-child relationship simply because the child has bonded to her foster home. Termination of parental rights in such an instance makes a mockery of government intervention in the familial unit and the carefully-crafted process whereby dependent children are to be reunited with their families.

c. The termination order must be reversed and the case remanded with direction that the court and DSHS fulfill their mandate of reunifying Salas with his daughter. Given Salas's fundamental constitutional right, the unequivocal legislative mandate, and the extensive body of caselaw signaling that a fit parent may not have his parental rights terminated, it was plainly erroneous for the trial court to sever the parent-child bond in this case. This Court should reverse the termination order and remand with direction the parties fulfill their legislative mandate to keep families together. Cf., Churape, 43 Wn. App. at 639.

2. THE STATE FAILED TO PROVE ALL REASONABLY AVAILABLE, NECESSARY SERVICES WERE OFFERED OR PROVIDED TO MR. SALAS TO RECTIFY THE LACK OF ADEQUATE BONDING BETWEEN HIM AND HIS DAUGHTER.

DSHS repeatedly claimed the problem preventing reunification was the lack of bonding between A.B. and Salas. In its written findings, the trial court referenced this issue, noting that at the conclusion of proceedings in June 2005, “the Court was not satisfied that DSHS had identified and addressed all necessary issues relating to the father-child relationship.” Finding of Fact 1.28. The court noted that even after the additional proceedings and testimony from many witnesses, it “continues to have concerns regarding numerous issues connected to the visitation.” Finding of Fact 1.29. The court noted it was concerned

About the location of the visits, the participation of the caretakers, certain behaviors of the child during visits, lack of affectionate physical contact between the father and the child during the visits, sharing of food during visits, utilization of toys, books and other activities during visits, and comments made by the child during visits.

Finding of Fact 1.30.

The court discussed the testimony of witnesses on both sides and concluded, “[T]he problems in this regard are profound

and intractable and will need considerable long-term efforts to be resolved. These problems are not the fault of DSHS or the result of DSHS's failure to provide reasonable services." Finding of Fact 1.31. The court speculated the child's difficulties could be the result of "subtle changes in the child's relationship with her caretaker" or "her original status as a drug-affected newborn." *Id.* The court predicted it would take "years" for A.B. to transition into her father's home. Finding of Fact 132.

The court ignored, however, that following Salas's release from custody in December 2003, DSHS maintained a rigid status quo with visitation that it was unwilling to disturb. Visits were limited to two two-hour visits per week or less, all with a supervisor present, and all with a caretaker present.

a. The State did not offer or provide individualized parent-child therapy, even though this service was recommended by experts as a means of dissipating A.B.'s resistance to forming an attachment with her father. Despite recommendations from as early as 2002 for individual parent-child therapy as a means of surmounting A.B.'s resistance to her father, DSHS inexplicably did not refer Salas and his daughter to therapy and did not even bother to have A.B. assessed by a professional until after the first

termination proceeding occurred. DSHS also took no other affirmative steps to promote the development of a bond, such as transitioning Lopez out of visits, or working toward unsupervised visits. In fact, it was not until DSHS was prodded to do so by the court that it even incorporated Salas's mother into visitation, even though she implored both DSHS caseworkers assigned to A.B. to give her the opportunity to know her granddaughter.

DSHS even provided an explanation for its unwillingness to refer Salas and A.B. to individual counseling: because Marshall did not know if the Department would move toward terminating Salas's parental rights, Marshall elected to "hold off" on the counseling, and increase services only if the plan shifted toward placing A.B. in Salas's home. 2RP 350-51. In effect, the Department was hedging its bets: in the event Salas's parental rights were terminated, this would provide a post hoc justification for the Department's unwillingness to expend the additional resources needed for therapy.

The United States Supreme Court recognizes that the State has the "unusual ability to structure evidence" during dependency and the power to "shape the historical events that form the basis for termination." Santosky, 456 U.S. at 763. This is especially true as

it pertains to visitation. Research shows that the frequency of parental visits strongly correlates to the caseworker's prediction for reunification. Sonya J. Leathers, Parental Visiting and Family Reunification: Could Inclusive Practice Make a Difference?, 81 CHILD WELFARE 595, 606 n. 14 (2002). In other words, if the caseworker is skeptical about the chances for reunification, the department will likely be reluctant to provide maximum visitation or the support necessary to make visitation successful. This in turn will inevitably shape the historical events of the dependency, with the State actually playing a part in weakening the parent-child bond rather than fulfilling the mandate to work toward reunification. Santosky, 456 U.S. at 765 n. 13 (noting that one of the ways in which the State might structure evidence for termination is by denying visitation and preventing parent-child contact); In re Hauser, 15 Wn. App 231, 236, 548 P.2d 333 (1976) (recognizing the injustice that would exist if a trial court were permitted to enter a finding that no parent-child bond exists based merely upon evidence showing the absence of visitations when the department is responsible for such absences).

b. DSHS did not work to transition A.B.'s caregivers out of visits. DSHS's attitude toward the provision, frequency, and

structure of visits in this case amply illustrates the United States Supreme Court's concern in Santosky. Because of a claimed fear that increased visits or transitioning Lopez out of visits would be harmful to A.B., DSHS did not even experiment with these steps. It was not until the November termination proceedings when it was recommended by the court that DSHS arranged for a visit to take place without the presence of Lopez or Luna. 9RP 1663-64.<sup>8</sup>

DSHS can be faulted for how it arranged for Lopez to be absent during this visit: rather than have her inform A.B. that she would be visiting with her father for a couple of hours without Lopez but that Lopez would come to pick her up at the visit's conclusion, Marshall directed Lopez to simply disappear as A.B. traveled up the escalator with Marshall to meet her father. 8RP 1503; 9RP 1652-54. As a result, A.B. became upset when she could not find her grandmother and a majority of the visit was geared around a game where Salas and A.B. pretended to look for Lopez. 8RP 1504; 9RP 1673. Even so, DSHS's fears of trauma to A.B. from a visit without her caretaker did not materialize.

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<sup>8</sup> It should be noted that DSHS offered Salas this visit but refused to allow him to have another person or his expert, Kathy Lanthorn, present during the visit, telling him, "Either take it or leave it." 8RP 1523. Marshall claimed she opposed Lanthorn's presence because she feared having a new face during the visit might influence A.B.'s behavior. 9RP 1677.

DSHS unfairly attempted to use this single visit to rebut Salas and other defense witnesses' belief that without A.B.'s caretakers at visits, A.B. might be more inclined to bond with her father. 8RP 1521-22 (State's cross-examination). However, the State's derisive questioning of Salas regarding this belief evinces an imperfect understanding of parental alienation, which Lanthorn testified was a likely cause of A.B.'s reluctance to engage with her father in Lopez's presence. See 7RP 1371-74. Rather, the alienation of affection between a child and a parent due to acrimony between the child's custodians is a complex problem for which therapeutic solutions often provide the only answer. See e.g. Kathleen Niggemyer, Parental Alienation Is Open Heart Surgery: It Needs More than a Band-Aid to Fix It, 34 Cal. W. L. Rev. 567, 583-84 (1998) (advocating collaboration between courts and mental health system to address complex emotional difficulties created by parental alienation); Ira Turkat, Parental Alienation Syndrome: A Review of Critical Issues, 18 J. Am. Acad. Matrimonial Law. 131 (2002) (discussing clinical characteristics of parental alienation syndrome (PAS) and advocating that in cases where PAS may be an issue, courts should closely involve a mental health professional with expertise in the area).

DSHS also did not involve unbiased mental health professionals in the case who could take a close look at the influence A.B.'s caregivers might be having on her ability to form a relationship with her father without feeling disloyal or conflicted. Rather than crediting the "systems" approach advocated by Lanthorn to assessing A.B.'s situation or exploring Lanthorn's assessment further, 7RP 1351-58, DSHS dug in its heels and protected Luna and her family from scrutiny.

c. The Juvenile Court's Factual Findings that Services Were Offered or Provided Must be Stricken. Given the Department's recalcitrance to actually offer services, instead of merely performing assessments, the court's findings that DSHS provided "reasonable" services capable of correcting deficiencies are without evidentiary support, and must be stricken. "A trial court's erroneous determination of facts, unsupported by substantial evidence, will not be binding on appeal." State v. Broadaway, 133 Wn.2d 118, 131, 942 P.2d 363 (1997). This Court should strike findings of fact 1.14, 1.15, 1.31, 1.32, and 1.33, as unsupported by substantial evidence in the record, and reverse the juvenile court's determination that services were offered or provided.

d. The State's failure to offer or provide all necessary requires reversal of the termination order. Because the State failed to offer or provide Mr. Salas with all necessary services to correct any parental deficiencies, the court entered the termination order contrary to the requirements of RCW 13.34.136(1)(b)(iv). This error requires reversal as the State is obligated to affirmatively offer or provide such services before terminating a parent's rights. See e.g., H.W., 92 Wn. App. at 429-30.

3. THE STATE FAILED TO DEMONSTRATE THE CONTINUATION OF A.B.'s RELATIONSHIP WITH MR. SALAS CLEARLY DIMINISHED A.B.'s PROSPECTS FOR INTEGRATION INTO A STABLE AND PERMANENT HOME.

Under RCW 13.34.180(1)(f), the State must prove that an on-going relationship between a parent and child reduces the child's chances of integrating into a stable and permanent home. There was no evidence presented to support this contention. A.B. would either be placed in a stable or permanent home with her natural father or would remain in her original foster placement. The State's failure to demonstrate that continuation of the parent-child relationship would clearly diminish A.B.'s prospects for early integration into a stable and permanent home, as required under RCW 13.34.180(1)(f), mandates reversal of the termination of Mr.

Salas's parental rights.

Several witnesses for the Department testified that A.B. felt the lack of permanence created by her ongoing visitation arrangement with her father. The inference was that she somehow sensed the continuing litigation and was adversely affected by it. See Findings of Fact 1.33, 1.34, and 1.35.

Defense expert Kathy Lanthorn suggested a contrary inference: she disagreed that A.B. was sensitive to cues in her environment that led her to believe Salas could pose a threat to her stability. 7RP 1374. Instead, Lanthorn believed A.B. was actually worried about displeasing her caregivers. 7RP 1374.

Either way, however, the ongoing dependency in no way affected A.B.'s stability or permanence. This Court should find that the State did not prove this essential element of the termination statute.

**4. THE STATE DID NOT PROVE TERMINATION OF SALAS'S PARENTAL RIGHTS WAS IN A.B.'S BEST INTERESTS.**

Even if the State has established the requirements set forth in RCW 13.34.180, the court may still conclude it is not in the child's best interests to order the termination of parental rights. RCW 13.34.190(4).

The factors affecting the "best interests" of the child must be decided based on the facts and circumstances of an individual case. In re Aschauer, 93 Wn.2d 689, 695, 611 P.2d 1245 (1980); In re Becker, 87 Wn.2d 470, 477, 553 P.2d 1339 (1976). Thus, an appellate court must evaluate whether any rational trier of fact could have concluded by a preponderance of the evidence that under these facts, termination was in the best interests of the child. See In re S.V.B., 75 Wn. App. at 775-76.

In this case, the State's case fails because Salas was currently fit to parent his daughter. Even assuming that the lack of bonding can be characterized as a deficiency, however, the State failed to prove all of the elements of RCW 13.34.180, specifically that it offered or provided all necessary services to correct Salas's parental deficiencies and that continuation of the parental relationship would be detrimental to A.B.'s integration into a permanent home. For both reasons, the court's consideration of A.B.'s "best interests" was premature. RCW 13.34.190.

Nonetheless, even considering the issue, it was not in A.B.'s best interest to be permanently deprived of a relationship with Salas. A.B. is an exceptionally fortunate child: she was loved and desired by two families. She had two stable homes who were

willing to nurture and care for her into adulthood. Notwithstanding A.B.'s attachment to her caregivers, it was wrong for the court to view the right of both families to A.B.'s care as somehow equal. Salas, as A.B.'s biological parent, enjoyed a special right to A.B.'s care and custody which no amount of fostering by Luna could undermine.<sup>9</sup>

The Washington Supreme Court has called a parent's right to the care, custody, and companionship of his or her child a "sacred" right that is "more precious . . . than the right of life itself." Sumey, 94 Wn.2d at 762. Given the paramount importance of the parent-child relationship, termination of Salas's parental rights was a draconian step unjustified by the proceedings before the court, and undeserved in light of Salas's heroic efforts to gain custody of his child.

The requirements of RCW 13.34.180 were not adequately proven in this case. Thus, the court prematurely examined the best interests of the child. Reversal of the termination order is required. RCW 13.34.190; In re Churape, 43 Wn. App. at 639.

#### F. CONCLUSION

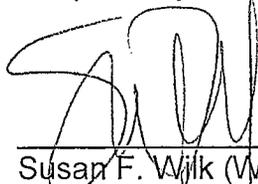
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<sup>9</sup> It should be noted that Salas and his family were supportive of A.B. maintaining a relationship with her half-brother in Luna's home, to whom she had grown close, and did not oppose A.B. having a continued relationship with Luna herself. 3RP 601-02.

Termination of Salas's parental rights in his daughter, A.B., where Salas was a fit, competent and devoted parent immediately able to take custody of his daughter offended fundamental principles of due process. Further, as set forth above, the evidence presented in this case was insufficient to prove all necessary and reasonably available services were offered or provided to Mr. Salas prior to the termination of his parental rights. Last, the juvenile court erroneously determined continuation of the parent-child relationship would not be A.B.'s best interest. For these, and the other reasons explained herein, this Court must reverse the order terminating Mr. Salas's parental rights in A.B.

DATED this 31<sup>st</sup> day of October, 2006.

Respectfully submitted:



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Susan F. Wilk (WSBA 28250)  
Washington Appellate Project (91052)  
Attorney for Appellant

In re the Dependency of A.B., CoA No. 24923-9-III

**LIST OF APPENDICES**

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| Appendix C | Letter from the Honorable Michael Schwab             |
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## Appendix A

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CLERK OF  
SUPERIOR COURT

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR YAKIMA COUNTY

In re the Welfare of

ANGELIQUE LIZETTE SALAS BRIGGS,  
DOB 10/27/01

NO 04-7-00643-8

MEMORANDUM OPINION

This case is an action filed by the State of Washington's Department of Social and Health Services (DSHS) for the entry of an order terminating the parent-child relationship between Angelique Lizette Salas Briggs and her parents Jessica L. Briggs (mother) and Rogelio Salas (father), pursuant to RCW 13.34.180. The trial commenced without a jury on June 13, 2005 and continued on June 14, 15, 16, 17 and November 16, 17, 18, 21 and 22, 2005 at which point the evidentiary record was completed. The petitioner State of Washington appeared by and through its counsel, Assistant Attorney General Kimberly A. Loranz. The respondent father Rogelio Salas appeared personally and with his counsel Holly Hermon. The Guardian Ad Litem (GAL) Keith Gilbertson appeared personally and participated in all the proceedings.

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The petitioner called the following witnesses at trial

- ROSE ROBERSON – mental health counselor, Yakima, WA
- STEVE BERGLAND – Parent educator, Yakima, WA
- TAWNYA WRIGHT – clinical director, Personal Parenting, Inc , Yakima, WA
- AMY MARSHALL – social worker DSHS, Yakima, WA
- ROGELIO SALAS-OROZCO – respondent father, Las Vegas, NV
- MARTHA BURNS – licensed marriage & family therapist, Yakima, WA
- JULIE DOSHIER – visitation supervisor, Pasco, WA
- TRINA LUNA – child’s caregiver, Yakima, WA

The respondent called the following witnesses at trial

- ROGELIO SALAS-OROZCO – respondent father, Las Vegas, NV
- KATHY LANTHORN – licensed therapist, Yakima, WA
- ALTON JACK CATHEY – licensed therapist, Las Vegas, NV
- PAJET GUNNIER – child’s maternal grandmother, Wapato, WA
- SAMUEL GONZALEZ – licensed therapist, Las Vegas, NV
- JAMES SLUDER – Asst Mgr Whisle Roofing, father’s employer, Las Vegas, NV
- EDELMIRA OROZCO–ROCKE – respondent’s mother, Las Vegas, NV
- LARRY ROCKE – respondent’s stepfather, Las Vegas, NV

KEITH GILBERTSON (GAL) also testified at trial

1 Numerous exhibits were also admitted into evidence per the attached list The  
2 Court has carefully considered the testimony of the witnesses, the exhibits, and the  
3 arguments of counsel, and issues the following decision  
4

5 FACTUAL AND PROCEDURAL BACKGROUND

6 1 Angelique Lizette Salas Briggs is a female child born on October 27, 2001  
7 at Yakima Valley Memorial Hospital in Yakima, Washington

8 2 (a) The biological mother is Jessica L. Briggs

9 (b) The biological father is Rogelio Salas-Orozco

10 3 The parents were never married Mr Salas underwent genetic paternity  
11 testing On June 25, 2002 the results of the testing indicated that he was the biological  
12 father of this child

13 4 At the time of the child's birth, tests at the hospital indicated the presence  
14 of cocaine in the child's system A referral was made as required by law, to the Child  
15 Protective Services division of the Washington State Department of Social and Health  
16 Services (Department)

17 5 On October 29, 2001 the Yakima Police Department took the child into  
18 protective custody and placed the child in the care of a state social worker The child  
19 was then placed in a licensed foster home pending more information on a relative  
20 placement

21 6 On October 29, 2001 the mother Jessica L. Briggs, was also placed into  
22 custody by the Yakima Police Department and incarcerated for unrelated outstanding  
23 warrants

24 7 At the time of the child's birth, the father, Rogelio Salas-Orozco, was living  
25

1 in Las Vegas, Nevada with his mother Edelmira Orozco-Rocke and stepfather Larry  
2 Rocke

3 8 The parents were notified of a Shelter Care Hearing for the child which  
4 was scheduled for Thursday, November 1, 2001, pursuant to a dependency petition  
5 which had been filed on October 30, 2001

6 9 The child remained in foster care and was placed with Trina Luna in or  
7 around February, 2002 where she has lived ever since Trina Luna was determined by  
8 the court to be a maternal blood relative of the child Also present in Ms. Luna's home  
9 is a half brother of Angelique named Darren Darren is three years old and has lived  
10 with Ms Luna since birth and she has adopted him

11 10 The child was found to be a dependent child pursuant to RCW  
12 13 34 030(5) on February 4, 2002

13 11 The Court also entered a dispositional order pursuant to RCW 13 34 130  
14 on February 4, 2002 as to both parents This order established an initial plan for  
15 services for both parents and visitations with the child

16 12 The child's status has been reviewed at least every six months since the  
17 original order of dependency

18 13 The child has been removed from the custody of the parents for over six  
19 months pursuant to the finding of dependency

20 14 The Department had contact with the mother commencing in October  
21 2001 regarding the recommended services and her relationship with the child but there  
22 has been no contact since February, 2002

23 15 The Department has had contact with the father commencing in October,  
24 2001 and has continued to have contact ever since The father had his first visit with  
25

1 the child on 2/25/03 when the child was 16 months old. On 6/11/03 the father relocated  
2 to Yakima from Las Vegas. A visitation schedule with the father was begun on 6/13/03  
3 and has continued, with several interruptions, since then. The father has also  
4 participated in a wide variety of services since February, 2002 both in Yakima and Las  
5 Vegas. The father officially relocated back to Las Vegas in March, 2005.

6 16 On May 8, 2004 the father, Rogelio Salas-Orozco, was married to  
7 Christina Scott in Yakima, Washington. The marriage was dissolved in Las Vegas,  
8 Clark County, Nevada on August 21, 2005.

9 17 One child was born to the parties of that marriage, namely Aksel Jahmeel  
10 Salas born on January 1, 2005. The Decree of Divorce provided for joint custody of that  
11 child but the primary residential placement has been and continues to be with the father  
12 in Las Vegas. Furthermore, the mother and father agreed that the child could be placed  
13 on a temporary basis with the father's parents as guardians.

14 18 Christina Scott is also the mother of Geovany Isaak Salas, a male child  
15 born on March 11, 2004. The natural father of this child is unknown. Rogelio Salas  
16 currently has custody of this child pursuant to a Yakama Indian Nation dependency  
17 order.

18 19 On September 13, 2004 the Department filed a petition pursuant to  
19 RCW 13.34.180 seeking the termination of the parent-child relationship as to the  
20 parents of Agelique Lizette Salas Briggs.

21 20 On November 22, 2004, Keith Gilbertson was appointed by the Court to  
22 be the child's Guardian ad Litem (GAL).

23 21 The natural mother, Jessica L. Briggs, never participated in the  
24 proceedings and was declared to be in default. On July 8, 2005 an order was entered  
25



1 many services but he maintains that the method and manner of service delivery and  
2 case management was not provided in good faith with the mandated requirement that  
3 he and/or his family be considered as a placement for the child. He has continued to  
4 challenge the placement of the child with Trina Luna as an improper relative placement  
5 and one that is ultimately not in the child's best interests.

6 The father further contends that there is a strong likelihood that conditions will be  
7 remedied so that the child can be placed with him or his family in the near future, and  
8 that continuation of the father-child relationship will enhance the child's prospects for  
9 early integration into a stable and permanent home, namely his own home.

10 Finally, the father submits that he has stabilized his life, overcome any  
11 deficiencies, completely cooperated with the Department and the court in every respect  
12 and that he is fully ready and able to assume care, custody and control of the child after  
13 a short transition from the child's current placement. He asserts that the petition for  
14 termination of the father-child relationship should be denied and that the Court should  
15 order immediate plans for the permanent placement of the child with him.

#### 16 ANALYSIS

17 Courts have long recognized that a biological parent has a fundamental liberty  
18 interest in the care, custody, and control of his or her child, but that fundamental right is  
19 not absolute. In re Dependency of A.V.D., 62 Wn. App. 562, 567, (1991). The State  
20 also has an obligation to protect the child when the parent's action or inaction  
21 endangers a child's physical or emotional welfare. RCW 13.34.020, In re Welfare of  
22 Sumey, 94 Wn.2d 757, 762, (1980). RCW 13.34.180 governs the termination of  
23 parental rights. It sets forth six factors the State must allege and prove in a termination  
24 hearing,  
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(1) That the child has been found to be a dependent child,

(2) The Court has entered a dispositional order pursuant to RCW 13 34 130,

(3) That the child has been removed or will, at the time of the hearing, have been removed from the custody of the parent for a period of at least six months pursuant to a finding of a dependency,

(4) That the services ordered under RCW 13 34 136 have been expressly and understandably offered or provided and all necessary services, reasonably available, capable of correcting the parental deficiencies within the foreseeable future have been expressly and understandably offered or provided,

(5) That there is little likelihood that conditions will be remedied so that the child can be returned to the parent in the near future, and

(6) The continuation of the parent and child relationship clearly diminishes the child's prospects for early integration into a stable and permanent home

The State must prove its case by clear, cogent and convincing evidence RCW 13 34 190(1)(a) Once the trial court finds that each of the criteria in RCW 13 34 180 has been proven by clear, cogent and convincing evidence, it must then be decided whether, by a preponderance of the evidence, that termination is in the best interests of the child RCW 13.34 190(2). In re Welfare of A J R., 78 Wn. App. 222, (1995) In parental termination proceedings, the paramount consideration is the welfare of the child In re Russell, 70 Wn 2d 451, (1967), In re Dependency of K S C., 137 Wn 2d 918, 925, (1999) Permanent deprivation of parental rights should be allowed only for the most powerful reasons In re Seago, 82 Wn 2d 736, 738 (1973)

Dependency

The child was found to be a dependent child on February 4, 2002, pursuant to

1 RCW 13 34 030 (5)

2 Dispositional Order

3 A Dispositional Order was entered on February 4, 2002 pursuant to RCW  
4 13 34 130

5 Removal from Parents

6 The child has been removed from the custody of the parents for a period of at  
7 least six months since the finding of dependency in February, 2002

8 Services

9 Services must be identified and provided to a child and parent where such child  
10 is not in the parent's custody to ensure the safety of the child and reunification with the  
11 parent RCW 13 34 030 RCW 13 34 110 RCW 13 34.130 Interest of Mahaney 146  
12 Wn2d 878 (2002)

13 In the case at hand the Department identified services for both the mother and  
14 father The child had been removed from the mother at birth and the father was not  
15 living in the child's home or otherwise present at the birth

16 The Department offered or provided the following services for the mother

- 17 (1) Drug/alcohol evaluation and all treatment recommendations  
18 (2) Random UAs  
19 (3) Parent assessment and all recommendations therefor  
20 (4) Psychological evaluation and all recommendations therefore  
21 (5) Visitation

22 The mother never cooperated with the Department or participated in services and  
23 her rights to the child were terminated

24 The Department offered or provided the following services for the father  
25

- 1 (1) Drug/alcohol evaluation and all treatment recommendations
- 2 (2) Random UAs
- 3 (3) Home study
- 4 (4) Domestic violence/anger management assessment and treatment
- 5 recommendations
- 6 (5) Parent assessment/education and all recommendations therefor
- 7 (6) Visitation
- 8 (7) Genetic testing for paternity

9 The father's life has been very complicated in the last four years His basic  
10 residence and family support has always been in Las Vegas, Nevada where he now  
11 lives with his mother and stepfather He has indicated from the very beginning a strong  
12 desire to have custody of Angelique and to also have his own family involved in her life  
13 He has moved back and forth from Las Vegas to Yakima in an attempt to cover a wide  
14 variety of legal and personal responsibilities

15 However, certain legal troubles in Las Vegas and Yakima, as well as financial  
16 difficulties, have hampered his ability to successfully complete all treatment  
17 recommendations and to maintain consistent and meaningful contact with the child  
18 Despite these circumstances he has demonstrated a sincere and conscientious  
19 commitment in this case regarding his child

20 There is considerable evidence in the record that the Department has made  
21 reasonable efforts to provide and offer appropriate services for the father These efforts  
22 have been made despite the logistical problems related to the father's circumstances  
23 and within the context of the child's need for permanence The Court does not share  
24 the father's view that the Department ignored his concerns and his family's right to  
25

1 participate, or otherwise to unreasonably delay the process of paternity testing

2 The trial record in this case was accomplished in two stages. At the end of the  
3 first stage in June 2005 the Court was not satisfied that the Department had identified  
4 and addressed all of the necessary issues relating to the father-child relationship. The  
5 Court made some suggestions in that regard. This led to the second stage of the trial in  
6 November, 2005 at which time both parties supplemented the record and attempted to  
7 enhance their respective positions.

8 After careful review of the record, including a very intense evaluation of the  
9 testimony of the witnesses, the Court continues to have concerns regarding numerous  
10 issues connected to the visitations. The subject of visitations is very important in this  
11 case because it is the only way to determine if an attachment and bond can be  
12 established between the father and child, given that the father did not begin to have  
13 contact with the child until she was over one year old. The father has had over 100  
14 visitations with the child, including many where his mother was also present. The father  
15 and his family have made almost heroic efforts to participate in these visits and to try  
16 and make them meaningful, but despite their efforts the visitations have not established  
17 a close attachment between father and child.

18 Specifically, the Court is concerned about:

- 19 (a) the location of the visits  
20 (b) the participation of the caregivers  
21 (c) certain behaviors of the child during the visits  
22 (d) lack of affectionate physical contact between the father and child during the  
23 visits  
24 (e) sharing of food during visits  
25

1 (f) utilization of toys, books and other activities during visits

2 (g) comments by the child during the visits

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

15 Likelihood That Conditions Will Be Remedied So That the Child can be Returned to the  
16 Parent in the Near Future

17 It is a misnomer to consider "returning" the child to the father in this case. The  
18 child has never lived with the father. The first contact between father and child took  
19 place in February, 2003. Visitations with the child did not begin until June, 2003 when  
20 the child was 20 months old and had been living with her caregiver for 17 months. This  
21 original visitation schedule was interrupted thereafter because of the father's other legal  
22 troubles.

23 It is more appropriate, in the Court's view, to consider whether the child can be  
24 "placed" with the parent in the near future. The evidence in the record is overwhelming  
25

1 and certainly clear, cogent and convincing to the Court that the child has developed a  
2 primary bond and attachment to her present caregiver, Trina Luna, and that the child  
3 would suffer considerable detriment if that bond were severed by placement with the  
4 father. The conditions cannot be remedied in the near future to change that. However,  
5 the evidence also indicates to the Court that conditions can be remedied so that the  
6 child can continue to have contact with the father and his family in the near future

7 The child is currently four years old. The caregiver and the caregiver's  
8 immediate family have been the central and dominant part of her life. Her attachment to  
9 them is profound and exclusive. But that will change in the next few years as the child  
10 develops more contacts with the outside world at school, at play and in the larger  
11 community. During that transition there is a likelihood that the bonds with her caregiver  
12 will soften and evolve, and the child will be more open and accepting of her father.  
13 Will continuation of the parent and child relationship clearly diminish the child's  
14 prospects for early integration into a stable and permanent home?

15 The child has been living with the present caregiver virtually all her life, for almost  
16 four years. She is fully integrated into that home, which has been demonstrated to be a  
17 stable home. Ms. Luna has also demonstrated a commitment to the child and a desire  
18 to adopt her. There is currently no legal designation of a permanent home for the child  
19 and the continuation of the father-child relationship does in fact prevent the continuation  
20 of a stable home and the establishment of a permanent home with the caretaker at the  
21 earliest possible time.

#### 22 Best Interests of the Child

23 Courts look at a variety of factors to determine the best interests of a child and  
24 generally base their final decisions on the totality of facts and circumstances of each  
25

1 case, where no one factor is dispositive of the issue Dependency of A.V.D. 62 Wn App

2 562(1991) Some of the factors include the following

3 (a) the interaction and interrelationship of the child with the child's parent or  
4 caregiver, the child's siblings and any other person who may significantly affect the  
5 child's best interest

6 (b) the child's adjustment to home, school and community

7 (c) the mental, physical and spiritual health of all individuals involved in the  
8 child's life

9 (d) the child's cultural background

10 The child in the case at hand has established a stable and powerful bond with  
11 her caregiver Trina Luna, and her half brother Darren Ms Luna has done a fine job of  
12 caring for and nurturing the child through some very difficult life stages. It would not be  
13 in the child's best interest to remove the child from Ms Luna's home at this time or in  
14 the near future

15 On the other hand the father has presented some excellent credentials as a  
16 responsible adult

17 (a) He has a good job, a demonstrated work ethic, and a commitment to  
18 providing financial support for his family

19 (b) He has overcome a substance abuse problem, been clean and sober for  
20 four years, and been willing and able to continue counseling and treatment as needed

21 (c) He has participated in domestic violence and anger management  
22 counseling

23 (d) He has maintained a patient and loving commitment to visitations with his  
24 child, despite frequent indications of resistance by the child  
25

1 (e) He is a part of a loving and caring extended family who maintain a safe  
2 and stable home in Las Vegas

3 (f) He has disengaged himself physically and legally from a dysfunctional and  
4 unhealthy relationship with Christina Scott and taken appropriate steps to care for two  
5 children from that relationship

6 There have been indications over the last two and a half years of great potential  
7 for an attachment between the father and child in this case. Given the father's  
8 significant progress and his potential to be a positive male figure in the child's life, it  
9 would not be in the child's best interest to completely sever the relationship with his  
10 child at this time so long as this relationship does not conflict with the permanent  
11 placement for the child. This is especially so if the child will grow up in Central  
12 Washington with its large and significant Hispanic population. This child is one-half  
13 Hispanic and the cultivation of her cultural identity, with appropriate input from the father  
14 and his family, can, in the Court's view, be very important to the child's self-esteem and  
15 overall development.

#### 16 CONCLUSION

17 The Court is satisfied that the Department has presented clear, cogent and  
18 convincing evidence to establish the criteria set out in RCW 13.34.180. Furthermore,  
19 the Court is satisfied by a preponderance of the evidence that it is in the child's best  
20 interest to enter into a permanent placement with the present caregiver. However, the  
21 Court is also satisfied by a preponderance of the evidence that it is in the child's best  
22 interest to maintain a relationship with her father and his family provided that the  
23 continuation of that relationship does not constitute a perpetual challenge to the  
24 legitimacy of the placement with Ms. Luna  
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1 The only way to resolve this dilemma is through the creation of an open adoption  
2 which contains a visitation plan for the father and his family and provisions for ongoing  
3 supervision by the Court to review and decide disputes and grievances

4 The open adoption would allow for the establishment of a permanent home for  
5 the child and for the continuation of the father-child relationship

6 The parties are hereby directed to engage in discussions to determine whether  
7 an open adoption is possible and then to report back to the Court within thirty days from  
8 the date herein. If it turns out that the parties cannot agree on this alternative, then the  
9 Court will hear further argument and will decide if the best interests of the child in having  
10 a permanent home with Ms. Luna require the termination of the father-child relationship  
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13 DATED this 5th day of JANUARY, 2006  
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17 JUDGE MICHAEL E. SCHWAB  
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## Appendix B

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KIM M. EATON  
EX OFFICIO CLERK OF  
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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

FINDINGS OF FACT, CONCLUSIONS OF  
LAW, AND ORDER OF TERMINATION  
RE: FATHER  
(revised 10/04)

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 Jahrneel 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 ore 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

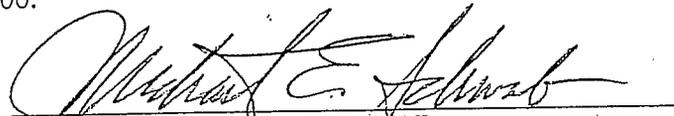
25 2.1 The court has jurisdiction over the parties and subject matter herein.

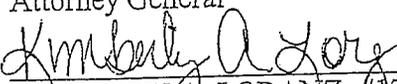


1 3.2 IT IS FURTHER ORDERED that the Washington State Department of Social and  
2 Health Services is hereby granted permanent legal custody of the above-named child with the right  
3 to place such child in a prospective adoptive home, the power to consent to the adoption of said  
4 child, and the 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.

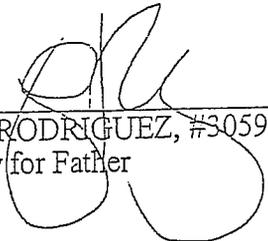
6 3.3 That this matter is set for a review hearing on the 20th day of July at 9:00 a.m.,  
7 under the dependency cause number 01-7-00116-0, unless the child is earlier adopted. The review  
8 hearing scheduled for July 19, 2006 is hereby stricken.

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

10   
11 JUDGE MICHAEL E. SCHWAB

12 Presented by:  
13 ROB MCKENNA  
14 Attorney General  
15   
KIMBERLY A. LORANZ, #17430  
Assistant Attorney General

16 Approved, Notice of Presentation  
17 Waived:  
18   
KEITH GILBERTSON  
Guardian ad litem

19   
SONIA RODRIGUEZ, #30595  
Attorney for Father

20 SW: Amy Marshall, Yakima DCFS

21 CERTIFICATE OF SERVICE  
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 \_\_\_\_\_

## Appendix C



2005 NOV 17 PM 12 09  
SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR THE COUNTY OF YAKIMA  
EX OFFICIO CLERK OF  
Yakima County Courthouse  
128 N Second Street  
Yakima, Washington 98901

Judge Michael E. Schwab  
Department No 7

Phone (509) 574-2710  
Fax No (509) 574-2701  
michael.schwab@co.yakima.wa.us

June 23, 2005

Ms. Kim Loranz, Esq  
Attorney General's Office  
120 S 3rd St., Suite 100  
Yakima, WA 98901

Ms. Holly Hermon, Esq  
Morales Rodriguez  
917 Pitcher Street  
Yakima, WA 98091

Mr. Keith Gilbertson  
Guardian ad Litem  
Yakima County Juvenile Court  
1728 Jerome Ave  
Yakima, WA 98902

Re: Welfare of Angelique Briggs  
Yakima County Cause No. 04-7-00643-8

Dear Ms. Loranz, Ms Hermon, and Mr. Gilbertson:

I am writing to follow up some of the matters that were discussed at the conclusion of the trial in the above case on Friday, June 17, 2005.

1. It is my understanding that the Department will present orders regarding termination of the mother's rights.
2. The Court deferred making a final decision regarding the father's rights until additional efforts are completed
  - a The father shall prepare a plan by August 1, 2005 which addresses the issues of substance abuse, domestic violence, his relationship with Christina Scott and her children, child support for Angelique, and parental and personal assessments

- for himself and Angelique. These matters shall be pursued at father's expense until further order of the Court.
- b. Visitations will continue, to include father's mother. Father's stepfather will be phased in at a later date for visitations, if appropriate, so as not to overwhelm the child. Every effort should be made to provide for visitations on weekends and holidays.
  - c. The Department will pursue completion of an assessment of the child to identify any barriers to visitation and/or contact with the father.
  - d. This matter shall be noted up by the parties for a hearing to review the above issues and to consider any final resolution of the Department's petition to terminate the father's rights.

Please let me know if you have any questions in this regard. I would encourage the parties to continue to discuss a settlement of this matter. Several options were discussed at trial e.g. open adoption and guardianship

Sincerely,

  
MICHAEL E SCHWAB

## Appendix D

Holly Hermon

---

**From:** All4angelique@aol.com  
**Sent:** Wednesday, August 03, 2005 10:58 AM  
**To:** Holly Hermon  
**Subject:** Rogelio Salas Holly please submit our plan to the court

August 2, 2005

Judge Michael Schwab  
SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR THE COUNTY OF YAKIMA  
Yakima County Courthouse  
128 N. Second Street  
Yakima, WA. 98901

Dear Honorable Judge Schwab:

As the court requested, I am providing a plan to address all issues of concern to the court so that my family and I will be granted the opportunity to reunify with my daughter Angelique Salas Briggs.

1-0. Substance Abuse:

1-1 Completed a drug and alcohol assessment, Friday, 7/29/05 Drug and Alcohol Assessment Report is due by 8/4/05.

1-2. Drug and Alcohol Assessment Service Provider

Human Dimensions Unlimited, Inc  
A. Jack Cathey, MA, LMFT, LADC  
Marriage and Family Therapist License No. 508  
Licensed Alcohol and Drug Counselor No. 661-L  
Phone: 702-254-0090 Fax 702-638-1540  
Email. [JCCathey@cox.net](mailto:JCCathey@cox.net)

1-3 I agree to follow any recommendations made by substance abuse assessment report and ordered by the court.

1-4 I am committed to a clean and sober lifestyle. I have been clean since December of 2001. I fully understand that I must avoid people and places that could take away my sobriety.

1-5. Established a qualified provider in Las Vegas to setup drug testing. The facility requires that the court specify frequency of testing I agree to follow any court order for substance

8/3/2005

testing.

1-6 Substance Testing Service Provider:

Accutest Drug Abuse Testing Co.  
John Messina  
9187 W Flamingo Rd  
Suite 110  
Las Vegas, NV 89147  
Phone. 702-732-8616

2.0. Domestic Violence.

2.1. Completed a domestic violence assessment, Tuesday, 7/27/05 Domestic Violence Assessment Report is due by 8/4/05

2.2. Domestic Violence Assessment Service Provider:

Safe Nest / TADC  
Aida Almufdi, DV Counselor  
2915 W. Charleston Blvd  
Suite 12  
Las Vegas, NV. 89102  
Phone: 702-877-0133 Fax: 702-455-7243

2.3. I agree to follow any recommendations made by the domestic violence assessment and ordered by the court.

2.4. I am committed to live my life without any future incidents or accusations of domestic violence. I believe that the past incidents had a lot to do with the relationship I was in with Christina Scott because I never had been accused or involved in any DV related problems. However, I have learned from experience and the anger management classes that I can choose a positive response to any negative situation.

3.0. Relationship with Christina Scott and the Children

3.1. Due to the fact that the most serious problems that I have had in the last two years have been related to my relationship with Christina Scott caused my decision to separate from her in 2004. The only reason I allowed her in my apartment in February 2005 was because their power had been disconnected and due to the cold weather, I believed Christina, the children and her sister could be in danger so I did what I thought was right at the time.

3.2. I talked with Christina when she visited the children in July 2005 and she and I agreed to sign guardianship documents, allowing my mom and step dad to file for legal guardianship of Aksel Jahmeel Salas, Wednesday, 7/27/05, in Clark County District Court. The Guardianship was approved by the court, 8/1/05. Aksel will continue to live in our home. Christina decided that she wants one of her relatives to take care of Geovanny Salas and we agreed to bring him to Toppenish, WA. in the beginning of August

3.3 Christina and I agreed to a Joint Petition Divorce.

3.4. I completed the mandatory divorce education seminar, Thursday, 7/28/05

3.5. Joint Petition Divorce filed Monday, August 1, 2005

4.0. Child Support for Angelique:

4 1. Child Support Case Worker Contact Information.

STATE OF WASHINGTON  
Division of Child Support  
Account IN-4756846  
Ms. C Dubeau, Case Worker  
1002 N. 16th Avenue  
PO Box 22510  
Yakima, WA. 98907-2510  
Phone: 509-249-6000

4 2. Contacted my child support case worker, July 2005, regarding process to review child support order for a reduction in child support payments Case worker agreed to forward documents to be filed with division of child support

4.3 Case worker stated that she would begin automatic payroll deduction for current payments of \$214 and that she would begin to deduct additional \$86.00 for past due child support for a total of \$300 per month starting in August 2005

4.4 Completed Request for Review of Child Support Order 7/30/05 and mailed to Division of Child Support.

4 5. If Division of Child Support denies the reduction request my other option is to hire an Attorney who can request a court hearing on the matter. It's unlikely that I can afford this option

5.0. Parental / Personal Assessments:

5 1. Completed parental and personal assessments including a home inspection, Friday, 7/29/05 Parental and Personal Assessment Report due by 8/4/05.

5 2 Parental / Personal Assessment Service Provider:

Human Dimensions Unlimited, Inc.  
A. Jack Cathey, MA, LMFT, LADC  
Marriage and Family Therapist License No 508  
Licensed Alcohol and Drug Counselor No 661-L  
Phone. 702-254-0090 Fax: 702-638-1540  
Email: [JCCathey@cox.net](mailto:JCCathey@cox.net)

5.3 I agree to follow any recommendations made by the parental and personal assessments and ordered by the court

5.4 I believe that since I returned to Las Vegas my life has improved greatly. A big part is the relief of having a stable job. I was struggling financially in Yakima, WA. because I had to work a part time job to maintain the daytime visitations with my daughter and it put a lot of pressure on my mom and step dad because they helped me with most of my expenses throughout the time I lived in Yakima, WA. The other part of it is that I'm back with my family. My mom and I have always been very close and she has always been there for me. Now, I am happy to be home and I know she is happy to see me making progress in my life. My step dad and I are also close and he has really been there for me to talk with no matter what it is and we have worked very closely so that I can succeed in reunifying with my daughter, Angie

5.5. My mom was very happy to finally get the opportunity to visit her grand daughter Angelique again after almost two years of not being allowed to visit. The visits were good and my mom enjoyed every moment of her time with Angie. My mom and I made two trips to Yakima, WA since the trial for a total of four visits on 7/9/05, 7/10/05, 7/23/05 and 7/24/05.

5.6. Our family is ready for Angelique. We have been preparing for her return since she was born and we have never given up on her coming home. My mom, step dad and I want to assure the court of the following facts and commitments

Our neighborhood is clean and safe. There are no apartments, just single family homes. The majority of the neighbors are older longtime residents.

Our home is a safe, comfortable place for Angie to grow up. My mom does not have a outside job and she is home during the day to prepare Angie's food, provide her personal care, fix her snacks and have play time and learn time with her.

Angelique has her own room that we will work to personalize for Angie with her help so that she feels comfortable in it.

When I come home from work I will have playtime and learn time with Angie everyday, help with her dinner and prepare her for sleep.

Through my job, Angelique will be covered under my health insurance for all of her medical needs. We have an excellent pediatrician that has attended to Aksel and Geovanny and she will be an excellent medical provider for Angie.

Angelique will grow up with her brother Aksel and she will meet other children of our family and longtime friends that she will bond with. Also, during summer vacation, we bring some of Jessica Briggs other children (currently living with Jessica's mom) to stay with us for two weeks to a month so eventually Angie would get to know her other siblings as well.

We have a large, gated and locked back yard with slide and climbing apparatus for her to play on. We have many toys and stuffed animals already in the home. We will purchase additional toys that will entertain her as well as educate her as she continues to grow up.

We have a library of children's books and my mom, my step dad and myself are all

committed to reading time with Angelique. We also have a library of children's videos as well as a number of satellite TV channels with children's programming that will entertain as well as educate her

My mom, step dad and I are committed to Angelique's education. When Angie starts school we will keep regular communication with Angie's teachers to determine if she needs additional counseling or tutoring and we will provide for those services if recommended. We will all participate in homework with her and attend school functions. John S. Park-Edison Elementary School is three blocks away and is a Edison Partnership Academy that is a modern facility that gets high marks from friends and neighbors who have children in the school. When Angie starts school my mom or step dad will take her in the morning and pick her up. Also, the school has a very large playground that is open after school and on the weekends and I will take Angie to play ball with her or for her to play with other kids.

We have a newly renovated park two blocks away from our home and we will take Angie and Aksel to the park on a regular basis when the weather permits.

I am committed to being the best dad for Angelique. I will do everything in my power to keep her safe and secure and I will always love her and care for her so that she will grow to be the best person she can possibly be. My mom and step dad are committed to being the best grandparents for Angelique. They love her and have proven beyond any doubt that they believe in the value of family and will fight for that value with all that they have. Our family believes without any doubt that the best interest of Angelique is for her to live permanently with her paternal family and we will parent her together with a lot of love, attention and guidance so that this reunification is a success for everyone involved.

#### 5.7. Additional Parental / Personal Service Providers:

Parent-Child Relationship Counseling  
Donna Wilburn  
Marriage & Family Therapist  
9402 W. Lakemead Blvd  
Las Vegas, NV 89134  
Phone: 234-9325  
Email: [wilburn8@cox.net](mailto:wilburn8@cox.net)

Medical  
Wee Care Pediatrics  
Tina Langerap, PA-C  
4785 S Durango Dr. Suite 101  
Las Vegas, NV. 89147  
Phone: 702-889-8444 Fax: 702-889-8454

School  
John S. Park-Edison Elementary  
Principal: Jean Fortuna  
931 Franklin Avenue  
Las Vegas, NV 89104

Phone: 702-799-7904

6.0. Fathers Proposed Transition Plan from Foster Home, Yakima, WA. to Family Home, Las Vegas, NV.

6.1. We propose that my mom, my step dad and I visit with Angie on Friday and Saturday, 8/12/05 and 8/13/05, for three to four hours per visit without the caretaker or caretakers mother present during these visits or any future visits so that bonding can be accelerated.

6.2. We propose that my mom remain in Yakima for an additional two weeks, 8/14 to 8/28 and that she is granted visits everyday, without caretaker or caretakers mother present so that grandmother bonding can be accelerated

6.3. If the court accepts the proposal for my mom to have the extended visits from 8/14 to 8/28, we are also proposing during the first week that she is allowed to take Angelique to a restaurant to eat without caretaker or caretakers mom present. During the second week we propose that my mom is allowed to take Angie unsupervised to eat at her sisters home and the following day, she is allowed to have Angie for one unsupervised overnight visit

6.4. We propose in September 2005, that my mom, step dad and I are granted two unsupervised overnight visitations in Yakima for the weekend, 9/10 and 9/11, at my Aunts house.

6.5. We propose that my mom remains in Yakima for an additional two weeks, 9/12 to 9/25 and she is granted visitation each day including a minimum of three consecutive overnights each week at my Aunts home.

6.6. We propose that on 9/25, when my mom returns to Las Vegas, NV., she is allowed to return with Angelique and all of her possessions so that she can live with us permanently. We have a Family Therapist available for counseling to address any issues that come up

6.7. We will register her immediately in pre-school so that she can bond with other children and begin to adjust to her new home.

6.8. We urge the court to allow a short time for the transition to our home in Las Vegas, NV. from Angie's foster home in Yakima, WA. because the caretaker may have real difficulty with placement and there could be conflict or treatment that has a negative impact on Angelique. Please review Permanency Planning 09/09/03 document for reference

In conclusion, I have completed the tasks given me by the court and I now respectfully ask the court to dismiss the departments termination of my parental rights and put the court ordered plan in place to bring my daughter, Angelique home permanently. Thank you.

Sincerely,

Rogelio Salas

## Appendix E

**HUMAN DIMENSIONS UNLIMITED, INC**

Individual, Couples and Group  
Marriage and Family Therapy  
Substance Abuse Counseling

**Honorable Michael Schwab  
Judge Juvenile Division  
Yakima County Superior Court  
Yakima Washington**

**Date:** August 4, 2005  
**Case Name:** Rogelio Salas  
**Child at issue:** Angelique Lizette Salas Briggs      **DOB:** 10-27-01  
**Date order received:** July 27, 2005

**A, Home study, B, Substance Abuse Assessment, C, Establish a therapist in Las Vegas to assist with reunification and parenting issues, D, Transition/reunification plan;**

**A, Home study:** The visit to Rogelio's home was accomplished on Friday, July 29, 2005. He lives with his mother Edelmura, age 46, (hereinafter referred to as Ede) and step-father, Larry Rocke, age 42, who were present during the visit. Also present were Aksel, Rogelio's 7 month old son and Geovanni, age 15 months, a son of Rogelio's wife Christina by another man. It was reported that Christina was recently but is no longer incarcerated in Washington. Rogelio will be returning Geovanni to family members in Washington when he returns there for his court appearance on August 10. Rogelio and his family in Las Vegas live in a nice home in an older well kept neighborhood. Larry and Ede also own a home directly across street from the home in which they now live. That will be home to Rogelio and his children if he is able to gain custody of his daughter Angelique. Both homes are similar size, 3 bedrooms, one bath, kitchen, dining area and living room in about 1800 sq ft of living space. The home is well maintained with some current remodeling, installing french doors between Rogelio's bedroom and the room that is intended for Angelique (hereinafter referred to as Angie) is in progress. The school that Angie would attend is about 3 blocks away and will be convenient for Rogelio or his mother to drive or walk Angie to and from school.

The rapport between those present was open, warm and spontaneous. I arrived an hour earlier than expected which provided an opportunity to observe Rogelio helping his mother with the last minute details of getting ready for my visit. It was a positive experience seeing them interacting which left an impression of the sort of cooperation and mutual support and cooperation one might expect with child rearing problems in the future. Ede was caring for both of the young children when I got there and she was also being sure that other matters were being attended. The home was comfortable and safe for infants and young children. It is quite adequate for the family and the family as it might be anticipated.

**Interview with parent and grandparents:**

Rogelio's mother Ede presents as well organized in thought and speech. She is coherent and articulate and she communicates easily with no tendency for tangential speech. She is well oriented to the dynamics of the current situation. In observing her with the small children she showed herself to be a warm, patient and competent caretaker. This is of particular importance in that it is she who will be providing care for Angie while Rogelio is at work in the event Angie comes to live with Rogelio. Ede is a stay at home mom.

Larry, Rogelio's step father also presented as very well organized in thought and speech and well oriented to the dynamics of the current situation. He is very supportive of Rogelio's effort to gain custody of his daughter. This is important because Rogelio and his babies will be living with Larry and Ede in the immediate future and for some time until the adjustment and reunification has been satisfactorily completed between Rogelio and Angie. Larry, an avid stamp collector is employed as a sales person for Hampton Collectibles.

Rogelio also presents as well organized in thought and speech. He is very well oriented to the dynamics of the current effort to gain custody of his daughter. Rogelio is articulate and asked very pertinent questions that reflected an understanding of the current action and the possible outcomes and the ramifications that the results will have on all the involved parties. Rogelio is employed by a roofing supply company. He was employed by the same company when he moved to Washington to be closer to his children. He attempted to find employment but was unsuccessful so he eventually moved back to Las Vegas. The company that employed him prior to his move to Washington rehired him and he expects to be there for sometime. He operates a fork lift now and expects to become a delivery truck driver in the near future. He is currently earning \$9.00 hour and his pay will go to about \$14.00 when he gets his license and the promotion comes about. He reports that he gets a fair amount of overtime so that will continue and his weekly earnings will increase.

At the present time Rogelio's status is that of permanent resident. He will become eligible to become a U.S. Citizen in 2009. He has a very positive attitude about becoming a citizen.

The overall impression of Rogelio was that of a hard working man who is intent on raising his children. He reports that he has no one in his life at this time and can dedicate his time and energy to his children.

**Collateral information:**

James Sluder, Assistant manager for Wholesale Roofing Co. was available for a telephone conversation on August 3. James is Rogelio's supervisor. He was very positive in his comments about Rogelio stating that Rogelio is a hard worker with goals and aspirations to move up in his job. At the present time he is a forklift operator and general materials handler. He expects Rogelio will become a driver within the next couple of months. This will result in a substantial increase in his hourly wage. The overtime will continue and he expects Rogelio to do well.

**B, Substance Abuse Assessment,**

Per the court's request, a substance abuse assessment was accomplished on July 29. The assessment consisted of an oral history and the administration of two written assessment instruments, the SASSI, (Substance Abuse Subtle Screening Inventory) and the SUDDS, (Substance Use Disorders Diagnostic Schedule)

Rogelio admits using alcohol, cocaine, cannabis, and amphetamines, and heroin when he was younger. He continued to use alcohol, cannabis, and heroin after he stopped abusing amphetamines. He admits his abuse began when he was about 15 and continued until he was in his mid 20's. He admits having a moving violation and that he was in trouble with the law for his behavior on at least two occasions. He stopped late in 2001 and has not used anything since. The results of the SASSI and the SUDDS support his report.

The results of the SASSI indicated that he has a **Low probability of Substance Dependence** but he may be at risk for acting out. His **Defensiveness** score was not elevated which indicates that he was not attempting to "look good" and slant his answers. A copy of his results are attached. The results of the SUDDS consistently supported his contention that he is not using and has not used for the past year.

**C, Establish a therapist in Las Vegas to assist with the Reunification and Parenting issues.** Donna Wilburn, a licensed Marriage and Family Therapist in Las Vegas has agreed to work with Rogelio and Angie in their reunification and re-attachment process. She is very experienced working with parenting issues as well as adjustment problems as they present. She may be reached at 702-234-9325.

**Transition/Reunification plan:**

The following plan has been discussed with Rogelio and his parents and is presented for the court's consideration.

Continue the visits in Washington between Rogelio, Angie and Ede eliminating the current foster parents from the visits gradually, e.g., Carol, the current supervisor in the visits would be there for the first 2 hour session and then excuse herself after the first hour on the second day. On the next weekend visitation she could be excused after the first hour on the first day and the entire visit on the second day. On the third visit she could bring Angie and leave and allow Rogelio and Ede to take Angie to a park or other public play area and then they could have dinner together. The next day could be much the same. On the fourth visit Angie could spend the afternoon and evening and then be picked up for breakfast and have more time together on the second day. On the fifth visit perhaps Angie might have an overnight with Rogelio and Ede. If the plan is successful and there is evidence of comfort on Angie's part a weekend in Las Vegas might be considered. Subsequent visits may be extended to several days or a week in Las Vegas with Rogelio and eventually if the reunification appears to be moving in a positive and satisfactory direction the court could consider allowing Angie to be with her father. Certainly the therapist in Las Vegas could be introduced to Angie. Rogelio might have some sessions with the therapist before Angie comes to Las Vegas so that they can begin

to develop some rapport and give Rogelio some direction in the therapeutic area

The process will take some time but Rogelio is committed to make it work

**Conclusions and Recommendations:**

1 Rogelio wants his daughter He has done a lot of work to get his personal life on track and his primary motivation has been to gain custody of his daughter This evaluator had the opportunity to observe him with his 7 month old son during the home visit He held the baby on his lap during the entire visit and kept him pacified and comfortable by talking to him and making over him He was a happy baby

2 Rogelio is living with his mother and step-father In this instance this is a positive situation Ede demonstrated that she is a loving and capable grandmother to the children and she will be a primary care giver in supporting Rogelio and Angie She does not work and is at home to meet the needs of the children

3 Rogelio has worked hard to turn his life around He is drug free and both the SASSI and the SUDDS results were supportive of his stated current involvement with drugs and/or alcohol - he is not dependent and not abusing any substance.

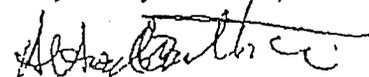
4 Rogelio is re-employed by the Wholesale Roofing Company The assistant manager was very positive in his remarks about Rogelio and his expectation that he will be a long term employee

5 Rogelio is willing to do the work, make the very expensive trips to Washington and see the counselor in order to have his baby with him

6 Rogelio is interested in gaining his US citizenship and plans to remain in Las Vegas He will have his own home when it is appropriate and he and the children are ready

I recognize that I have only one side of the story but the side that I do have does not give me reason to doubt that in the event Angie is placed with her father in Las Vegas she will be loved and cared for It appears to this evaluator that the environment would nurture healthy physical, intellectual and emotional development

Respectfully submitted,



Alton J. Cathey, MA, LMFT, LADC

Marriage and Family Therapist License

#508

Licensed Alcohol and Drug Counselor

#661-L

Page 1  
SASSI-3 ADULT

Name ROGELIO SALAS  
Entry Type scale score  
Age: 28  
Marital Status: Separated  
Family Substance Abuse History:  
Total Arrests: 3  
Prior Treatments, Education  
Employment Status, Full-time  
Weekly Fam Net Income \$801-\$900

Questionnaire Number: 51  
Date: 07/30/2005  
Sex: Male  
Blood Alcohol Level  
DWI/DUI Arrests: 1  
Client ID Number: 538532097  
Highest Grade Completed: 9  
Ethnic Origin: HISPANIC AMERICAN  
Family Members in Household: 4

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**Assessment Overview**

Random Responding:  
Alcohol and/or Other Drug Problems:  
Acting Out  
Defensiveness:  
Indication of Emotional Pain

Results indicate no evidence of random responding  
Low Probability of Substance Dependence  
High risk of a problem  
Results indicate no evidence of a problem  
Results indicate no evidence of a problem

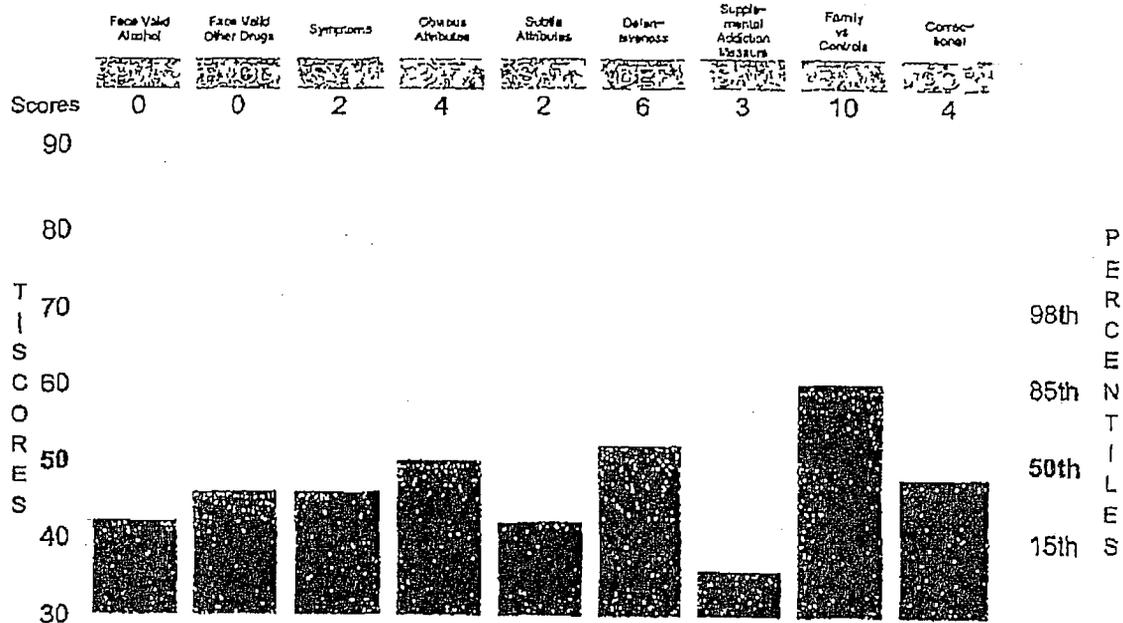
The face valid responses are based on THE PAST SIX MONTHS OF THIS CLIENT'S LIFE.

Note: In addition to test results, supplemental clinical information is required to meet the accepted standards for a DSM-IV clinical diagnosis of a Substance Use Disorder.

Name: ROGELIO SALAS Sex: M Age: 28 Client ID Number: 538532097

SASSI-3 ADULT

RAP=0



SASSI RESULTS FOR THIS CLIENT The decision rules classify him as having a low probability of having a substance dependence disorder

READING THE GRAPH This client's actual scores are plotted on the graph in relation to a normative sample (i.e., individuals who were not being evaluated or treated for addictions or other clinical problems) For each scale, a T score of 50 on the graph above represents the average score for this normative sample Any scale score can be compared to the normative sample by referring to the T scores on the left of the graph and the percentiles on the right Only 15% of this normative population would score lower than a T of 40. Similarly, only 15% would score higher than a T of 60, and only 2% would score higher than a T of 70

ABOUT THE SASSI-3 SCALES FVA, FVOD, and SYM are "face valid" scales that are used in the decision rules to identify adults who are likely to have a substance dependence disorder They measure acknowledged substance misuse and its consequences OAT, SAT, DEF, and SAM are "subtle" scales that are part of the decision rules OAT, SAT, and DEF can also be used to develop hypotheses about clinical issues - ability to acknowledge problematic behavior, insight into personal problems, defensiveness, low self-esteem RAP is used to identify individuals who may not have responded to the SASSI in a meaningful way COR and FAM are not part of the decision rules COR provides an indication of the client's relative risk for problems in the criminal justice system FAM can be used to identify individuals who may have a tendency to focus on the needs of other people, while being relatively unable to identify and take care of their own needs Please refer to the SASSI-3 User's Guide and the SASSI-3 Manual for more detailed information on the meaning of each scale and how to interpret profile patterns

Name, ROGELIO SALAS Sex M Age 28 Client ID Number. 538532097

SASSI-3 ADULT

RAP=0

**LOW PROBABILITY OF SUBSTANCE DEPENDENCE**

The profile does not contain sufficient evidence to warrant classifying the client as substance dependent. If there is external evidence of substance misuse, it is recommended that the client be referred to an education program. Since psychoactive substance dependence can never be entirely ruled out, ongoing assessment is indicated if the client presents with problems related to substance usage.

**ACTING OUT HIGH RISK OF A PROBLEM**

The client is at relatively high risk for ongoing legal problems and other types of norm violations. Since substance usage increases the likelihood of impulse control problems, the treatment plan should include a component directed toward substance abuse if there is any indication that the client is at high risk for developing substance abuse problems. Structured, didactic, cognitive-behavioral interventions are recommended. Treatment should include a focus on increasing the client's sense of responsibility for his behavior.

|                     |   |
|---------------------|---|
| The SASSI Institute | For a free clinical consultation on this profile call<br>1-888-297-2774 |
|---------------------|---|



**HUMAN DIMENSIONS UNLIMITED, INC.**

Individual, Couples and Group  
 Marriage and Family Therapy  
 Substance Abuse Counseling

Alton Jack Cathey, MA, MFT, LADC  
 9402 W. Lake Mead Blvd  
 Las Vegas, NV, 89134  
 Phone 702-254-0090  
 FAX 702-638-1540

|                     |              |   |
|---------------------|--------------|---|
| Professional Status | 1992-Present | Licensed Marriage and Family Therapist #508<br>Bureau of Alcohol and Drug Abuse cert #00661-L<br>Trained Mediator, Custody Evaluator, Parent Coordinator  |
| Experience          | 1989-Present | <u>Human Dimensions Unlimited, Inc</u> Private Practice, A broad Spectrum of personal issues, emotional, sexual, substance use and abuse, compulsive gambling, divorce and child custody and abuse issues, pre-marital, marital, stress management, and critical incident debriefing<br><u>Holman Adapt</u> Substance abuse, Families, Couples, Individuals and Groups<br><u>Harmony Counseling</u> (See Human Dimensions Unlimited)<br><u>Bridge Counseling Associates</u> (See Human Dimensions)<br><u>Desert Springs Hospital</u> Support and Stress Management groups for cardiac patients<br><u>Various Therapy and Support Groups</u> Men's issues, Women's issues, Codependence and Adult Children of , Survivors of Incest and Sexual Abuse for both Men and Women, Gay and Lesbian issues, Sexual, Love and Relationship addiction |
|                     | 1982-Present | Motivational Seminars, Staff Development, Continuing Education Training for Health Professionals  |
|                     | 1974-1982    | Assoc Dean of Admissions & Records, Northern Arizona University   |
|                     | 1967-1972    | Dean of Students, Admissions, Director of Counseling, Assoc Professor of Choral Music, Editor of College Catalog, Prescott College  |
|                     | 1971-1974    | General Contractor, Custom Homes, Prescott Arizona  |
|                     | 1963-1967    | High School Music Teacher   |
|                     | 1955-1958    | AirResearch Mfg Co Field Service Engineer   |
|                     | 1951-1955    | USAF Aircraft and Engine mechanic, Flight Engineer  |
| Education           | 2001         | Corporate Crisis Intervention Training (CISD) two days  |
|                     | 1995-present | Training and experience in sexual addiction and dysfunction   |
|                     | 1997         | 40 hours Mediation Training   |
|                     | 1990-1992    | 1500+ hours MFT Internship<br>Univ NV Las Vegas, MFT course work<br>Northern Colorado Univ Emotional Problems of Students<br>ABD Northern AZ University, Ed D, School Administration  |
|                     | 1966         | Arizona State University, MA Counseling/Guidance  |
|                     | 1965         | Arizona State University, BA Music Educ   |
|                     | 1948         | Mesa High School, Mesa, Arizona   |

|              |           |   |
|--------------|-----------|---|
| Personal     |           | 75 years of age, 5'10", 205 pounds, Married, Excellent Health   |
| Affiliations | 1996-1999 | Past Treasurer, Nevada Association for Marriage and Family Therapists, Clinical Member, American Association for Marriage and Family Therapists |
| Activities   |           | 25 years soloist and/or director of various civic and church musical organizations  |
| Hobbies      |           | Photography, Radio Control Model Airplanes, Travel  |
| Background   |           | Native of Arizona, Extensive travels (USAF) Orient and US   |
| References   |           | Furnished upon Request  |

Experience comment Three of the entities mentioned under experience are Employee Assistance Program and/or Mental Health Providers to several of the major Casino/Hotels in Las Vegas, hence the opportunity to experience a very wide range of counseling situations and presenting problems in a relatively short period of time. Significant recent experience includes extensive work with the U S Postal Service, several major banks and other entities providing therapy as well as Critical Incident Debriefing. In the past few years working closely with The Meadows in Wickenburg Arizona, I have specialized in assessing, diagnosing and treating sexual addiction, sexual dysfunction and survivors of incest and sexual abuse for both men and women. I have been active doing custody evaluation and home study work for the family court system since outsourcing began in 1997. Most recently I have been conducting Cooperative Parenting and Divorce classes for high conflict parents. I also serve the family court as a Parent Coordinator.

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION THREE

RECEIVED

NOV 03 2006

In the Office of the Clerk of Court  
Washington Court of Appeals, Division Three

By \_\_\_\_\_

IN RE A.B. )  
DSHS – STATE OF WASHINGTON, )  
 )  
RESPONDENT, )  
 )  
v. )  
 )  
ROGELIO SALAS, )  
 )  
APPELLANT. )

NO. 24923-9-III

DECLARATION OF SERVICE

I, MARIA ARRANZA RILEY, DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOLLOWING IS TRUE AND CORRECT:

THAT ON THE 31<sup>ST</sup> DAY OF OCTOBER, 2006, I CAUSED A TRUE AND CORRECT COPY OF THE **APPELLANT'S OPENING BRIEF/MOTION FOR ACCELERATED REVIEW** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

- KIMBERLY LORANZ, AAG  
ATTORNEY GENERAL'S OFFICE  
1433 LAKESIDE CT, SUITE 102  
YAKIMA, WA 98902-7354
- ROGELIO SALAS  
1008 YUCCA AVENUE  
LAS VEGAS, NV 89104

RECEIVED  
COURT OF APPEALS  
DIVISION ONE  
OCT 31 2006

**SIGNED** IN SEATTLE WASHINGTON, THIS 31<sup>ST</sup> DAY OF OCTOBER, 2006.

x \_\_\_\_\_  
*me*