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COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON  
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CoA No. 24923-9-III  
Supreme Court No. \_\_\_\_\_

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

IN RE THE DEPENDENCY OF A.L.S.B.

STATE OF WASHINGTON,

Respondent,

v.

ROGELIO SALAS,

Petitioner.

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STATE OF WASHINGTON  
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MOTION FOR DISCRETIONARY REVIEW

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A. IDENTITY OF PETITIONER

Rogelio Salas, the appellant below, moves for the relief set forth in Section B.

B. DECISION BELOW

Pursuant to RAP 13.5A, Salas seeks discretionary review of the decision of Division Three of the Court of Appeals affirming the order terminating his parental rights in his daughter, A.B. A copy of the opinion, issued on September 6, 2007, is attached as an Appendix.

C. ISSUES PRESENTED FOR REVIEW

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. Given these facts, Salas contends the order nonetheless terminating the parent-child relationship violated his due process right to the custody of his daughter and thus presents important constitutional questions that are of substantial public interest, meriting review.

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. Should this Court grant review and hold that absent proof of a current parental deficiency, consideration of the statutory factors set forth in RCW 13.34.180(1) and whether termination of parental rights is in the child's best interests violates due process?

D. STATEMENT OF THE CASE

Rogelio Salas and Jessica Briggs had a six-year relationship which resulted in the birth of A.B. in Yakima on October 27, 2001. 1RP 74, 79; 2RP 205. 3RP 535.<sup>1</sup> A.B. was born cocaine-addicted and was immediately removed from her mother's custody and placed in protective care. 2RP 203, 205, 359.

At the time Salas had left Briggs due to her drug use and moved to Nevada to live with his mother and stepfather. Briggs informed the Department of Social and Health Services ("DSHS" or "Department") that

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<sup>1</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.

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, stopped using drugs, 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, but DSHS resisted these efforts because paternity had not yet been established. 1RP 77-78, 2RP 300. Salas's mother, Edelmira Orozco Rocke, made independent efforts to obtain custody of A.B. 3RP 535-39, 553. A.B.'s social worker, Jennifer 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, ultimately placing the child with a distant cousin, Trina Luna. 2RP 303-07, 309.

Eight months after A.B.'s birth, 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.

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

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.

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.

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 adoption of A.B. and this plan never changed for the remainder of the proceedings. 2RP 237, 262.

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.

By court order, following his release from custody, Salas's visits with A.B. were supervised. 2RP 236. 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 Luna's schedule. 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.

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. 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.

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.

At the trial, Salas presented 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. 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. 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 denied the State's termination petition 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>2</sup>

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<sup>2</sup> A copy of the court's letter outlining the court's expectations is attached as Appendix C to the Brief of Appellant.

Salas submitted a plan that addressed all of the issues of concern to the court.<sup>3</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 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

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<sup>3</sup> A copy of Salas's proposed plan was filed with the court, admitted as Exhibit 59, and is attached as Appendix D to the Brief of Appellant.

licensed marriage and family therapist and alcohol and drug counselor.  
CP 44-65.<sup>4</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 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.

Cathey testified at the November hearings on Salas's behalf. 7RP 1244-69. 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

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<sup>4</sup> A copy of Cathey's home study was admitted as Exhibit 56 and is attached as Appendix E to the Brief of Appellant.

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.

Defense expert Kathy 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>5</sup> 7RP 1297. Lanthorn found Salas sincere, authentic, and very determined to pursuing custody of A.B. 7RP 1298.

Lanthorn 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. 7RP 1311. Lanthorn also 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 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

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<sup>5</sup> Lanthorn's report was admitted as Exhibit 58. 7RP 1299.

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. 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.

The trial court initially urged Salas to consider an open adoption agreement and when he refused, granted the State's termination petition. In an unpublished opinion, the Court of Appeals affirmed. Division Three sidestepped the question whether Salas had remedied his parental deficiencies, and on the basis that A.B. had not bonded to her father, determined termination was appropriate. Slip Op. at 16-19.

E. ARGUMENT WHY REVIEW SHOULD BE GRANTED

THIS COURT SHOULD REVIEW THE IMPORTANT CONSTITUTIONAL QUESTION WHETHER THE TERMINATION OF THE PARENTAL RIGHTS OF A FIT PARENT WHO IS IMMEDIATELY ABLE TO PROVIDE A SAFE, STABLE HOME TO HIS CHILD VIOLATES THAT PARENT'S FUNDAMENTAL RIGHT TO THE CUSTODY OF HIS CHILD.

A biological parent has a fundamental liberty interest in the care, custody and control of his or her child. U.S. Const. amend. 14; Santosky v. Kramer, 455 U.S. 745, 753, 102 S.Ct. 1388, 71 L.Ed.2d 599 (1982). 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).

1. Due process requires termination be based on current unfitness.

Prior to terminating a parent's legal right to the custody of her child, the court must find the parent suffers from a current parental deficiency. In re the Dependency of S.G., \_\_ Wn. App. \_\_, \_\_ P.3d \_\_, No. 25468-2-III, 2007 Wash. App. LEXIS 2557 at 9 (2007). "The primary purpose of a dependency is to allow courts to order remedial measures to preserve and mend family ties, and to alleviate the problems that prompted the State's initial intervention." In re the Dependency of T.L.G., 126 Wn. App. 181, 203, 108 P.3d 156 (2005).

That a decision to terminate parental rights must be predicated on ongoing parental deficiencies is axiomatic. See RCW 13.34.030(5) (defining "dependent child"). "Termination must be based on current unfitness." T.L.G., 126 Wn. App. at 203. Otherwise DSHS and the courts wade 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 such an instance so greatly erodes this legislative and constitutional mandate as to render it a nullity.

The record, the trial 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.

As the Court of Appeals recognized 20 years ago,

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.

In re Churape, 43 Wn. App. 634, 638, 719 P.2d 127 (1986).

The court in Churape reversed the termination order where the State had failed to prove current unfitness, 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, the court admonished that the existence of such bonds “cannot be the controlling consideration.” Id.

In T.L.G., a case involving parents whose mental health 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

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.

2. This Court should grant review and hold that where a parent is fit and able to resume custody of his child, consideration of the statutory termination elements deprives a parent of due process. In its slip opinion, Division Three failed to identify any parental deficiencies, because there were none. Division Three instead termed the lack of a bond between Salas and his daughter an "irremediable condition" barring reunification and so held the trial court's order terminating Salas's parental rights "gave

full respect to Mr. Salas's constitutional right in the care and custody of his A.B." Slip Op. at 18-19.

In so holding, the Court approved a constitutionally-defective termination proceeding – one predicated not on parental fitness, but on the Department's placement preference. But the nature of the constitutional right at stake *demand*s the court find a current parental deficiency before considering the termination factors or the child's best interests. S.G., 2007 Wash. App. LEXIS 2557 at 6-7. Otherwise, the termination order does not serve a compelling state interest and the procedure utilized is not narrowly tailored.

The State's statutory mandate is to preserve the family unit and reunify dependent children with their natural parents. RCW 13.34.020. As a matter of basic constitutional principle, the natural parent and foster placement do not have equal footing in a dependency action; the foster home by definition is a temporary measure in the process of alleviating parental deficiencies, and the parent cannot be criticized for pursuing what is both his statutory and constitutional right to the care and custody of his child. The proceeding here commenced from the perspective of what was in the child's best interests, and compared the child's prospects for happiness in her father's home to the foster home and in this way found the father lacking. This Court should grant review, and hold the

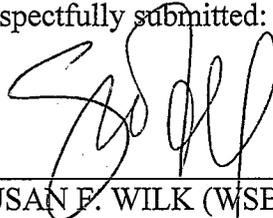
proceeding failed to provide the father with the substantive and procedural due process to which he was constitutionally-entitled.

F. CONCLUSION

For the foregoing reasons, Rogelio Salas respectfully requests this Court grant review.

DATED this 8<sup>th</sup> day of October, 2007.

Respectfully submitted:



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Attorneys for Petitioner

In re the Welfare of A.B., No. 24923-9-III  
Supreme Court No. \_\_\_\_\_

Appendix

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SEP 10 2007

SEP 06 2007 Washington Appellate Project

In the Office of the Clerk of Court  
WA State Court of Appeals, Division III

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

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

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

**FACTS**

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

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

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

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

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

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

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

On September 16, unsupervised visitation was scheduled to start. Mr. Salas, however, did not show up for the visit, because he had been arrested for a domestic violence incident involving his then-girlfriend. Mr. Salas pleaded guilty

to fourth degree assault and was incarcerated for several months. Visitation with A.B. did not resume until February 2004.

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

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

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

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

On January 1, 2005, Mr. Salas and his wife had a son, A.S. In February, Mr. Salas's wife was convicted of criminal mistreatment as a result of the care she was providing to her disabled sister while she and Mr. Salas were living together. That same month, Mr. Salas was suspended from his anger management program after he stopped attending classes. On February 7, Mr. Salas informed Mr. Bergland that he was moving back to Las Vegas. Mr. Bergland told Mr. Salas that he would keep his file open in case he came back so that visitation with A.B. could continue. On February 25, Mr. Salas did not attend his scheduled visitation session. His file was later closed.

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

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

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

On June 13, 2005, the termination trial commenced. The Department first called Ms. Roberson to testify. Ms. Roberson testified that Mr. Salas's progress in the anger management program was "average" and that he was still in need of

domestic violence treatment. Report of Proceedings (RP) at 35. Ms. Roberson said she would not recommend returning the child to Mr. Salas.

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

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

Mr. Bergland testified that the biggest problem between Mr. Salas and A.B. concerned their bonding and attachment. He said that even though he saw

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

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

Ms. Marshall testified that A.B. needed consistency and stability. She said that there were inconsistencies in Mr. Salas's progress, but then he suddenly moved to Las Vegas. She opined that Mr. Salas was not a stable parent. Ms. Marshall said that A.B. did not progress after one year of consistent visitation with Mr. Salas and that continuing the dependency would cause her distress. Ms. Marshall said she did not think that Mr. Salas's relationship with A.B. would

ever progress to the point where therapy would be beneficial and it was in A.B.'s best interest to live with her caregiver.

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

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

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

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

On November 16, trial resumed. The Department called family therapist, Martha Burns, to testify. Ms. Burns testified that she observed four visitation sessions between Mr. Salas and A.B. She also said she met with A.B. outside of visitation. Ms. Burns said that A.B. appeared nervous and anxious when with Mr.

Salas and that she could not see how increasing contact between Mr. Salas and A.B. would develop a better relationship between them. She said that keeping this process going would increase A.B.'s anxiety and nervousness even in her own home. Ms. Burns said that A.B. understood that things were in limbo and that as long as Mr. Salas continued to try and reunify with A.B., her anxiety would be heightened, hindering his visits with her.

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

Julie Doshier of Heart to Heart Social Services testified that she supervised visitation between Mr. Salas and A.B. Ms. Doshier testified that between July and November, the visits remained the same in that it took a long time for A.B. to warm up to Mr. Salas and his mother. Ms. Doshier said that the caregiver's mother participated in these visits, but that she did not influence A.B. to be negative about the visitations with her father. She said that the caregiver's

mother always encouraged A.B. to play with Mr. Salas and eat what they brought for her.

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

After the Department rested, Mr. Salas called therapist Kathy Lanthorn to testify. Ms. Lanthorn testified that she observed A.B. during two visitation sessions. She said that Mr. Salas was very determined and committed to pursuing custody of A.B. Ms. Lanthorn said that she noticed behaviors unexpected of a four-year-old. She said that A.B. was very comfortable telling the adults what to do and that she seemed very accustomed to having things done for her. She said there were several situations where the caregiver's mother asked her to do something, and A.B. completely ignored her. She said

she did not see Mr. Salas do anything that would concern her. She said that Mr. Salas was unbelievably patient and was very creative with A.B. She said that it took A.B. less than 30 seconds to start engaging with Mr. Salas, that A.B. did not hesitate and that it was a very quick transition. She said that A.B. was laughing and smiling at Mr. Salas and that A.B. called Mr. Salas "dad" and Mr. Salas's mother "grandma." RP at 1308. She said that on one visit A.B. sat on Mr. Salas's lap for awhile. She also said that she observed A.B. kiss Mr. Salas on his cheek.

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

Mr. Gilbertson was then called to testify as a rebuttal witness. Mr. Gilbertson testified that he had not participated in the visitation sessions since June, because he felt that he had a good sense of how the visitations were going based on previous sessions. He said, however, based on what Ms. Lanthorn had said at trial, he attended one visitation session on November 18 to see if

there was any change from previous sessions. Mr. Gilbertson said that when he arrived at the visit, he kept to a distance so as to not interfere. He said that A.B.'s expression changed when she saw Mr. Salas. He said she appeared saddened. He said that she would allow Mr. Salas to hold her, but that she never faced him. He said she would not make eye contact with him and would not turn to ask him questions.

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

At the conclusion of the trial, the court found that despite Mr. Salas and his family's efforts, visitation had not yet established a close attachment between Mr. Salas and A.B. The court stated that this problem would need considerable long-term efforts to be resolved and that these problems were not the fault of the Department. It proposed an open adoption arrangement allowing Mr. Salas and his family regular visitation with A.B., but Mr. Salas did not agree to this option.

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Ultimately, the court found it in A.B.'s best interest to terminate Mr. Salas's parental rights. This appeal follows.

## ANALYSIS

### A. CONSTITUTIONALLY PROTECTED LIBERTY INTEREST IN THE CARE AND CUSTODY OF CHILDREN

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

Biological parents have a fundamental liberty interest in the care, custody and control of their children. *Meyer v. Nebraska*, 262 U.S. 390, 399, 43 S. Ct. 625, 67 L. Ed. 1042 (1923); *In re Welfare of Sumey*, 94 Wn.2d 757, 762, 621 P.2d 108 (1980). A trial court asked to interfere with a parent's right should employ great care. *In re Welfare of H.S.*, 94 Wn. App. 511, 530, 973 P.2d 474 (1999), *cert. denied*, 529 U.S. 1108 (2000). However, a parent's fundamental right is not absolute. *Sumey*, 94 Wn.2d at 762. The State has a responsibility as *parens patriae* to intervene to protect a child when the parent's actions or

inactions endanger the child's physical or emotional welfare. *Id.* RCW 13.34.180 and RCW 13.34.190 effectuate this obligation. Under these statutes, a court may terminate parental rights if it finds that (1) the requisite allegations are supported by clear, cogent and convincing evidence; and (2) termination is in the best interests of the child. RCW 13.34.190(1)(a), (2).

Here, there was an adequate basis for the trial court to conclude that the relevant factors were met, and neither *Churape* nor *T.L.G.* supports Mr. Salas's argument that this violated his constitutional rights as a parent. In *Churape*, 43 Wn. App. at 635, the father was an undocumented migrant worker who had been deported several times. Both of his daughters were declared dependent and placed in foster care. *Id.* After several months of little contact with his daughters, the Department filed a termination petition to terminate the father's parental rights. *Id.* The frequency of the father's visits increased thereafter, however, and the termination petition was dismissed. *Id.* A subsequent termination petition was filed following the father's second deportation that year, and the father's parental rights were ultimately terminated. *Id.* at 635-36.

On appeal, the Court remanded the proceeding to the trial court for additional testimony regarding whether the problems necessitating state intervention had been remedied and whether reunification of the family could be

effectuated in the near future. *Id.* at 639. The court found that the evidence established the only irremediable condition was the father's lack of contact with his children. *Id.* at 638. The court then stated that the fact that the children had been in foster homes and had developed ties to their foster parents could not be the controlling consideration. *Id.* at 639. The court did not indicate, however, whether the children were unable to bond or form attachments to their father or whether the visits were detrimental to them in any way.

In *T.L.G.*, 126 Wn. App. at 194-95, the Department filed a petition to terminate parental rights based in part on the parents' issues with anxiety and depression. The Department alleged these mental health issues rendered the parents incapable of providing proper care for their children for an extended period of time. *Id.* at 195. At the conclusion of the trial, the court terminated the parental rights of both parents, finding that the parents suffered from significant mental health issues that would require three years of specialized treatment and that their mental illnesses rendered them incapable of providing proper care for their children for an extended period of time. *Id.* at 196-97.

On appeal, the court reversed the termination order, holding the State did not establish how the parents' mental health issues related to their ability to care for their children. *Id.* at 198-206. The court stated that mental illness is not, in

and of itself, proof that a parent is unfit or incapable. Instead, the court stated that termination must be based on current unfitness and children cannot be removed from their homes merely because their parents suffer from mental illness. *Id.* at 203.

*Churape* and *T.L.G.* demonstrate that where a parent is competent, fit and able to resume custody, a court cannot end the parent-child relationship simply because the child has bonded to a foster care provider. Here, however, the fact that A.B. had bonded to her caregiver was not the only concern before the court. Rather, the irremediable condition was not Mr. Salas's lack of contact with A.B or his inability to parent her, but A.B.'s inability to form any sort of bond or attachment to her father. Mr. Salas had over 100 visits in three years with A.B. Despite the number of visits, the evidence supported the trial court's finding that A.B. was unhappy and distressed by the visits. A.B. was anxious and nervous and several experts testified at trial that she was far from any transition toward a parent-child relationship with Mr. Salas, and the problem would get worse as she grew older. These concerns go beyond the concerns at issue in *Churape* and *T.L.G.*

Moreover, although parents have a fundamental liberty and privacy interest in the care and custody of their children, the court may not accommodate the

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parents' rights when to do so would ignore the basic needs of the child. *In re Welfare of Aschauer*, 93 Wn.2d 689, 695, 611 P.2d 1245 (1980). A child's right to basic nurturing includes the "right to a safe, stable, and permanent home and a speedy resolution of [dependency] proceeding[s]." RCW 13.34.020; *In re Dependency of C.R.B.*, 62 Wn. App. 608, 615, 814 P.2d 1197 (1991).

Here, A.B. has been dependent and in foster care since her birth. She is now almost six years old. The trial court carefully examined the services provided to Mr. Salas and his progress in addressing his deficiencies, even continuing the dependency trial for several months to allow Mr. Salas and the Department to address additional issues. Because the testimony at trial established that A.B. was far from any transition to Mr. Salas, the only alternative to termination was to continue her dependency indefinitely. The trial court considered the testimony and reasonably concluded that further services were unlikely to remedy the conditions that prevented placing A.B. with Mr. Salas, and that permanently placing A.B. in a stable home with her caregiver was in her best interests. Absent agreement to an open adoption, the court concluded that termination of Mr. Salas's parental rights was necessary to a permanent placement for A.B. In so holding, the court gave full respect to Mr. Salas's constitutional interest in the care and custody of A.B.

B. SUFFICIENCY OF EVIDENCE TO SUPPORT TERMINATION OF PARENTAL RIGHTS

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

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

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

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

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the trial court must find by a preponderance of the evidence that termination is in the best interests of the child. RCW 13.34.190(2).

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

Mr. Salas does not challenge the court's findings on the first three elements of the statute. He contends, however, that the Department failed to provide all services reasonably necessary to correct his parental deficiencies. Specifically, he argues that the Department did not offer or provide individualized parent-child therapy sessions, despite a 2003 recommendation for such services, and did not work towards transitioning A.B.'s caregivers out of the visits. This is not a basis to reverse the trial court. Even where the Department "inexcusably fails" to offer services to a willing parent, termination will still be deemed appropriate if the services "would not have remedied the parent's deficiencies in the foreseeable future, which depends on the age of the child." *In re*

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*Dependency of T.R.*, 108 Wn. App. 149, 164, 29 P.3d 1275 (2001). Where the record establishes that the offer of services would be futile, the trial court can make a finding that the State has offered all reasonable services. *In re Welfare of Ferguson*, 32 Wn. App. 865, 869-70, 650 P.2d 1118 (1982), *rev'd on other grounds*, 98 Wn.2d 589, 656 P.2d 503 (1983).

Here, there was substantial evidence to establish that therapy sessions between Mr. Salas and A.B. would have been futile. Ms. Marshall testified that based on her observations of A.B. and Mr. Salas, she did not think that Mr. Salas's relationship with A.B. would ever progress to the point where therapy would be beneficial. Ms. Burns testified that it would be hard to provide therapy to a young child, because young children are not as verbal as older children. She said that it is difficult to teach a young child to identify feelings and that some children are not "in touch" with the same types of things as adults. RP at 954.

Additionally, the testimony at trial established that it would be harmful to A.B. to transition her caregivers from the visits. Mr. Bergland testified that he never got to a point during the visitation sessions where A.B.'s caregivers could be removed from the visits without causing trauma to A.B. Ms. Doshier testified that even though the caregiver's mother participated in the visits she observed, she did not negatively influence A.B. in any way, and in fact encouraged A.B. to

play with Mr. Salas. Ms. Marshall also testified that the progression of the relationship between A.B. and Mr. Salas was so minimal that removing the caregiver from the visits would result in negative consequences to A.B. that would outweigh any benefit. Mr. Gilbertson testified that the difficulties in visitation between Mr. Salas and A.B. would only increase as A.B. grew older. The evidence was thus sufficient that any additional services would have been futile to remedy the deficiencies in Mr. Salas and A.B.'s ability to bond or form an attachment. The court did not err in finding that the Department offered or provided all necessary services and concluding that additional services would not likely remedy the conditions in the near future.

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

stability. The Department also presented evidence that ongoing court proceedings would be problematic, that A.B. understood she was in limbo and that keeping the dependency process open would increase A.B.'s anxiety and nervousness. The evidence was thus sufficient to establish that continuation of the parent-child relationship clearly diminished A.B.'s prospects of integration into a stable and permanent home.

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

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

#### CONCLUSION

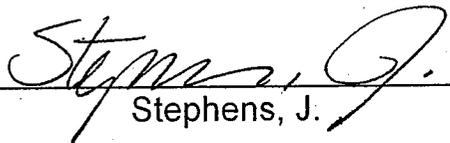
We conclude that the court's termination order did not violate Mr. Salas's constitutionally protected liberty interest in the care and custody of A.B. We also conclude that the court's findings that Mr. Salas was provided all services

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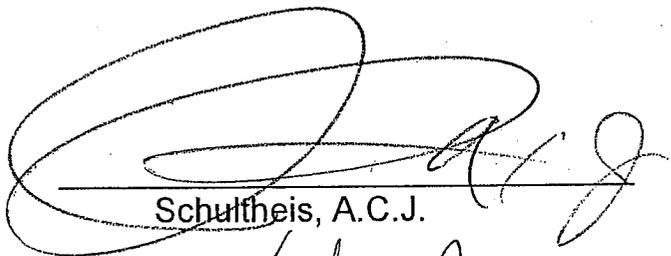
reasonably necessary to correct his parental deficiencies and that continuation of the parent-child relationship clearly diminished A.B.'s prospects of integration into a stable and permanent home were supported by substantial evidence at trial. Based on the evidence presented, the trial court did not err in concluding that termination was in A.B.'s best interests.

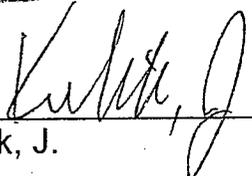
Affirmed.

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

  
Stephens, J.

WE CONCUR:

  
Schultheis, A.C.J.

  
Kulik, J.



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

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

NO. 24923-9-III

FILED  
COURT OF APPEALS DIV #1  
STATE OF WASHINGTON  
2007 OCT -8 PM 4:57

**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 8<sup>TH</sup> DAY OF OCTOBER, 2007, I CAUSED A TRUE AND CORRECT COPY OF THE **MOTION FOR DISCRETIONARY REVIEW** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

- |   |   |
|---|---|
| [X] KIMBERLY LORANZ, AAG<br>ATTORNEY GENERAL'S OFFICE<br>1433 LAKESIDE CT, SUITE 102<br>YAKIMA, WA 98902-7354 | (X) U.S. MAIL<br>( ) HAND DELIVERY<br>( ) _____ |
| [X] ROGELIO SALAS<br>1008 YUCCA AVENUE<br>LAS VEGAS, NV 89104   | (X) U.S. MAIL<br>( ) HAND DELIVERY<br>( ) _____ |

**SIGNED** IN SEATTLE WASHINGTON, THIS 8<sup>TH</sup> DAY OF OCTOBER, 2007.

X \_\_\_\_\_ *gnl*