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**FILED**

**APR 24 2007**

COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON  
By \_\_\_\_\_

No. 25502-6-III

COURT OF APPEALS, DIVISION III  
STATE OF WASHINGTON

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STATE OF WASHINGTON,

Respondent,

v.

Welfare of C.S.

Appellant.

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APPEAL FROM THE SUPERIOR COURT  
FERRY COUNTY  
HONORABLE

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RESPONDENT'S BRIEF

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## STATEMENT OF CASE

In the case before us, the child, C.S., was born on October 5, 1999, to Amy and Kelly Singleton. A Dependency Petition was filed on September 5, 2002, alleging that the child had been abused or neglected. Both mother and father were present at the Shelter Care Hearing, but soon thereafter the father absented himself from the dependency action and was not located again until shortly before this Termination Fact-Finding that began on July 18, 2006.

Throughout the dependency the main obstacle to the reunification of the family was the mother's substance abuse. Numerous services and treatments were offered to the mother, but she was unable to remedy her substance abuse until recently. The mother was also diagnosed as suffering from mild Post Traumatic Stress Disorder, Borderline Personality Disorder, depression and anxiety. At the time of the Termination Hearing, the mother was in the process of applying for SSI for her inability to deal with unexpected and unpredictable day-to-day events. She did not yet have her GED or driver's license. She resided with Robert Auxier who has a long-standing chemical dependency problem for which he has undergone treatment, but he continues to use. Robert and Amy have another younger child in the home, and neither had any training or experience with ADHD children.

The child, C.S., suffers from Attention Deficient Hyperactivity Disorder (ADHD), Oppositional Defiant Disorder (ADD), Obsessive

Compulsive Disorder, Sensory Integration Disorder and Asthma. At the time of the Termination Hearing C.S. had been living with his foster mother, Arlette Porter, for about three-and-a-half years. Ms. Porter has been educated and trained in dealing with C.S.'s special needs and has provided a nurturing home for C.S. and would continue to do so.

The State's position was that the requirements of RCW 13.34.180(1) have been met:

- (a) C.S. was found to be a dependent child;
- (b) The Court entered a dispositional order;
- (c) C.S. had been removed from the parent's custody for at least six months (actually forty-six months) pursuant to the dependency;
- (d) Services ordered under RCW 13.34.136 were offered and provided; further all necessary services, reasonably available, capable of correcting the parental deficiencies within the foreseeable future have been expressly and understandably offered and provided;
- (e) The dispositional order was entered on November 5, 2002, and the mother had failed to substantially improve her parental deficiencies within twelve months, thereby giving rise to the rebuttable presumption that there was little likelihood that the deficiencies could be remedied so C.S. could be returned to his mother in the near future.

- (f) The continuation of the parent-child relationship clearly diminishes C.S.'s prospects of integration into a stable and permanent home.

The Court found that given C.S.'s special needs, the mother had failed to rebut the presumption that there is little likelihood that the conditions could be remedied so the child could be returned to his mother in the near future. The mother failed to show that she has the patience, presence of mind, skills, experience, time in the day, and availability to care for C.S. given the child's special needs. The mother did not show that her household and lifestyle have the stability and predictability required for C.S.'s well-being. The Court further found that Robert Auxier, the mother's boyfriend, works full-time and his continued sobriety and reliability remains a concern. Lastly, the Court found that as it is unlikely that C.S. could be returned to his mother in the near future, not to terminate the mother's parental rights would only prolong integration into the foster home, and the foster parent indicated she would adopt C.S. (Conclusions of Law p.10).

The Court found that by clear, cogent and convincing evidence the termination of Amy Singleton's parental rights was in the best interest of C.S. It would also allow Arlette Porter to adopt C.S., and provide the stability, continuity, and full-time care the child requires in view of his medical and psychological needs. (Conclusions of Law p. 11)

## ARGUMENT

### **I. THE STATE FAILED TO PROVIDE SERVICES REASONABLY AVAILABLE, CAPABLE OF CORRECTING THE MOTHER'S PARENTAL DEFICIENCIES.**

The Appellant contends that the State failed to provide services reasonably available, capable of correcting the mother's parental deficiencies. However, the record clearly establishes that the State did offer and provide such services to Ms. Singleton.

In the case before us Ms. Singleton's parenting deficiencies centered around her problems of drug abuse, domestic violence and mental health issues, which manifested themselves in the child, C.S., being abused and neglected while in the custody of the mother. [RP 10-12 and 329-331] The Court noted that the State was not able to effectively offer family preservation services or home support services due to the mother's overriding substance abuse. (Findings of Fact p. 3)

The Court in *In re the Dependency of T.R.*, 108 Wn. App. 146, 29 P.3d 1275 (2001), held that the State is not required to provide a particular service to a parent if there is not evidence that the service would improve the parent's ability to function as a parent. It went on to state that when a parent is unwilling or unable to make use of the services provided by the State to improve parenting skills, the State is not required to offer still other services that might be helpful.

The testimony at the Fact-Finding disclosed the mother's long history of substance abuse: starting with alcohol at age ten, marijuana at age twelve,

and then moving on to harder drugs, including methamphetamine, cocaine and heroine. She repeatedly failed at all treatment efforts provided her from 2001 through 2004. In its Findings of Fact, subsection D, the court recounted the treatment services offered to Ms. Singleton:

“The following services have been offered by the state to correct parental deficiencies: caseworker supervision; chemical dependency inpatient treatment at Isabella House from November to December, 2001; chemical dependency inpatient treatment at Pioneer Center North; chemical dependency inpatient treatment at Evergreen Manner from March, 2003 to August, 2003, followed by transitional housing at the Tree of Life August, 2003 to May, 2004; chemical dependency inpatient treatment at Prosperity House June, 2004; chemical dependency treatment at Sundown Ranch for 28 days in November, 2004, with intensive outpatient after care at Ferry County Community Services from November, 2004 to the present; visitation with Colton when his mother was in treatment, and supervised visitation with Colton at her own home.

These services were all expressly and understandably offered and provided by the caseworkers. The State did not offer family preservation or home support services, due to her overriding substance abuse problem.”

Given the nature and extent of Ms. Singleton’s substance abuse, there were no further services that could have reasonably been offered that bore a likelihood of correcting her parental deficiencies within the foreseeable future.

## **II. THE STATE REFUSED TO PROVIDE VISITATION**

The Appellant also contends that the State coldly refused to provide visitations between the child and his mother. The Appellant quotes the caseworker, Edith Vance, as testifying that providing regular visitation was

a “logistical nightmare”, and that this somehow justified keeping visits from happening. However, Ms. Vance’s full testimony only recounts failure to provide visitation where treatment facilities imposed “black out period(s)” in order to facilitate recovery, and that it became easier to facilitate visitations once Ms. Singleton progressed in her treatment and moved into her apartment in the Tree of Life program. [RP 40] In fact, the Appellant presented testimony of only three cancelled visitations in the nearly four years of the dependency action. The undisputed testimony is that in spite of four years of the mother’s unstable lifestyle and numerous commitments, the State provided visits.

**III. STATE FAILED TO PROVIDE PSYCHOLOGICAL, FAMILY PRESERVATION AND HOME SUPPORT SERVICES.**

These allegations are without merit. Firstly, the mother did undergo a psychological evaluation with Dr. Lewis in February 2004. Secondly, additional services would have been of little effect given the mother’s substance abuse problems. The testimony of Ms. Vance was that Ms. Singleton took part in a parenting program through the University of Washington while she was enrolled in the Tree of Life program in Everett, Washington. [RP 44-45]. She also testified that a parenting assessment had been planned, but never took place because the mother suffered another drug related relapse. [RP 50-51]

The Court found from the testimony presented that Ms. Singleton’s present psychological diagnosis was mild post-traumatic stress disorder,

borderline personality disorder, depression and anxiety. (Findings of Fact p. 4) Her case manager, Ronald Casebeer, described the mother as having long standing disabilities, traumas and anxiety disorders. He testified that Ms. Singleton feels a need for familiarity and predictability in her life. [RP 220 - 227]

The State submits that all necessary services, reasonably available, capable of correcting the mother's parental deficiencies within the foreseeable future had been offered and provided, as required by RCW 13.34.180 (1)(d). Furthermore, these services were tailored for Ms. Singleton's needs, but met with little success. *In re the Dependency of P.D.*, 58 Wn. App. 18, 792 P.2d 159 (1990).

**IV. STATE FAILED TO PROVE THERE WAS LITTLE LIKELIHOOD THAT MOTHER'S DEFICIENCIES WOULD BE REMEDIED IN NEAR FUTURE.**

The Appellant contends that the State failed to prove there was little likelihood that the mother's deficiencies would be remedied in the near future. However, the testimony before the Court spoke to the continued special needs of the mother that go beyond her substantial substance abuse problems.

The testimony before the Court is that Ms. Singleton left school in the ninth grade, that she had been abusing alcohol and drugs since she was ten years old, that she has a history of being violent, of domestic violence and prostitution and resides with a boyfriend who continues to use drugs. The

mother was diagnosed as being overwhelmed by the complexity of circumstances, as having difficulty making well thought through responses and decisions when she needs to respond to a new or novel situation or task, and as having difficulty processing and thinking flexibly, to the point where she is at risk for her own emotional stability. [RP 223 - 226]

The record reflects that Ms. Singleton is making strides in getting healthy. The testimonies of her case providers is that she is finally making progress, but she still has a long way to go. However, she is still applying for SSI, doesn't have a driver's license, and counts on her boyfriend who is not committed to his sobriety as he is still experiencing relapses and not being forthcoming with that information. [RP 179 - 181]

It was during this time that Ms. Singleton was making her progress with her life that Kenneth Ray, a clinical and counseling psychologist, diagnosed C.S. with ADD and later ADHD. Mr. Ray testified to his findings and treatment, and to the consultations and education process of the foster mother, Arlette Porter, in dealing with the child's conditions. [RP 98 - 101] Ms. Porter testified to the steps she takes in parenting C.S. and preserving the structure and supervision needed because of the child's ADHD and ADD. [RP 113 - 117]. Even Mr. Auxier had registered his concerns that Ms. Singleton may not be able to handle C.S. and his half-brother, and that was before C.S. was diagnosed with ADHD. [RP 183].

Here, the mother has not rebutted the presumption that there is little likelihood that she would be able to remedy her parental deficiencies and

provide for the care of a six-year-old with ADHD.

**V. STATE FAILED TO PROVE CONTINUATION OF MOTHER'S RELATIONSHIP WITH CHILD DIMINISHED CHILD'S PROSPECTS FOR INTEGRATION INTO STABLE AND PERMANENT HOME.**

The Appellant claims the State failed to prove that continuation of the mother's relationship with her child clearly diminished the child's prospects for early integration into a stable and permanent home. The testimony shows that C.S. is in a stable home and the foster mother is ready to make it a permanent home for the child.

Ms. Porter has consistently and effectively met the child's special needs. She has received the education and training needed to provide for C.S.'s special needs. She has made herself available full-time, works within five minutes of her home and C.S.'s school. She is in daily contact with C.S.'s teachers and deals with the almost daily issues that arise regarding C.S. [RP 112 - 120]. Mr. Ray testifies that the prognosis for C.S. is optimistic provided C.S. continues with ongoing therapy and remains in a stable environment. [RP 94 - 111].

During the same time that Ms. Porter has been providing a stable home and ongoing therapy for C.S., Ms. Singleton has been working on her own psychological problems of post-traumatic stress disorder, borderline personality disorder, depression and anxiety by reducing or avoiding unfamiliar and unpredictable situations. [RP 220 - 27] Testimony was presented that Ms. Singleton was working on getting healthy, maintaining

sobriety, stabilizing her life and getting a driver's license. Although her counselors state that she is making progress in these areas, no one was able to predict when she could provide the minimal level of care required by C.S.'s condition. Kenneth Ray, in response to a series of hypothetical questions about a parent with this history and symptoms presented by Ms. Singleton being able to effectively parent C.S., stated he would not recommend such a person parent a child with C.S.'s needs. [RP 108 - 111]

The Court found that the continuation of the parent-child relationship clearly diminishes the child's prospects for integration into a stable and permanent home. The Court in *In re the Dependency of D.A.*, 124 Wn. App. 644, 102 P.3d 847 (2004), held that the findings entered by a trial judge in support of a judgment terminating parental rights will not be disturbed on review if such findings are supported by substantial evidence in the record that the court could have found to be clear, cogent, and convincing. The deference is paid to the trial judge's decision as he has the advantage of having the witnesses before him.

#### **VI. TERMINATION WAS NOT IN C.S.'s BEST INTEREST.**

Lastly, the Appellant claims that termination was not in C.S.'s best interests. This is simply not true.

The Appellant's falsely makes the statements that Ms. Singleton proved she had overcome her drug and alcohol abuse problem. She may have, but she still attends almost daily sessions to remain sober. [RP 314 -

339] And, her counselor, Steve Bradburn, views lapses or relapses as normal. [RP 179] Further, there is no testimony that the mother overcame her mental health problems, but the testimony of Mr. Casebeer does show that she has begun treatment. Neither is there any evidence that Ms. Singleton has studied or trained herself in dealing with her son's ADHD or ADD problems. The Court overlooked none of this.

Testimony was presented that based upon Mr. Ray's knowledge of C.S.'s condition, and of the progress made by the child under the care of Ms. Porter, it was in the child's best interests to remain with his foster mother. Mr. Ray stated that it is very important for C.S. to maintain stability with attachment in his foster family with its support structures. [RP 342] He also testified that he would not recommend placement of a child with C.S.'s problems with a mother who has the history and psychological diagnosis of Ms. Singleton. [RP 108 - 111]

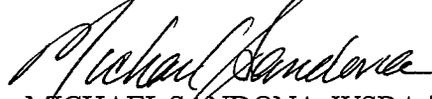
### CONCLUSION

In conclusion, in a termination proceeding the State has a compelling interest to prevent harm to children, and it has an obligation to intervene and protect a child from harm or the risk of harm. When parental actions or decisions seriously conflict with the physical or mental health of the child, the State has a *parens patriae* right and responsibility to intervene to protect the child. *In re the Dependency of I.J.S.*, 128 Wn. App. 108, 114 P.3d 1215 (2005).

At the time of this termination hearing, C.S. was six years old and he had been living with his foster mother, Arlette Porter, for three-and-a-half years. The State maintains that the record demonstrates that the statutory elements of RCW 13.34.180(1) have been proven by clear, cogent and convincing evidence, and that the Court was able to properly find that termination of the parent-child relationship was in the best interest of the child. Therefore, the State respectfully requests that this appeal be dismissed.

DATED this 23<sup>rd</sup> day of April, 2007.

Respectfully submitted,



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