

RECEIVED  
SUPREME COURT  
STATE OF WASHINGTON

10 APR 23 AM 8:55

BY RONALD R. CARPENTER

84458-5

CLERK

Supreme Court No. 84458-5

---

**SUPREME COURT OF THE STATE OF WASHINGTON**

---

In re the Welfare of P.P.T., J.J.I., O.L.T., Minor Children,  
STATE OF WASHINGTON,  
Department of Social & Health Services,

Respondent,

v.

PETER TSIMBALYUK,

Petitioner.

**FILED**  
APR 22 2010  
CLERK OF THE SUPREME COURT  
STATE OF WASHINGTON  
*[Signature]*

---

**DSHS ANSWER TO PETITION FOR DISCRETIONARY REVIEW**

---

ROBERT M. MCKENNA  
Attorney General

TRISHA L. MCARDLE  
Senior Counsel  
Attorney General's Office  
WSBA #16371  
800 Fifth Avenue, Ste. 2000  
Seattle, WA 98104  
(206) 464-6708

**ORIGINAL**

**FILED AS  
ATTACHMENT TO EMAIL**

**TABLE OF CONTENTS**

I. INTRODUCTION.....1

II. IDENTITY OF RESPONDENT .....2

III. RESTATEMENT OF THE CASE.....2

IV. REASONS WHY REVIEW SHOULD BE DENIED .....8

A. RAP 13.4(b) Sets out the Correct Standard for  
Acceptance of Review. ....8

B. The Court of Appeals decision reversing denial of  
termination is fully consistent with the last decade of case  
law and is consistent with the evidence presented below  
and the trial court’s own findings of fact. ....8

C. The Court of Appeals interpretation of RCW  
13.34.180(1)(f) is fully consistent with established case  
law.....17

D. This Court should not accept review because the case is  
moot. ....20

V. CONCLUSION .....20

## TABLE OF AUTHORITIES

### Cases

<i>BBG Group v. City of Monroe</i> , 96 Wn. App. 517, 982 P.2d 1176 (1999).....	20
<i>Hart v Social and Health Services</i> , 111 Wn.2d 445, 759 P.2d 1206 (1988).....	20
<i>In re A.C.</i> , 123 Wn. App. 244, 98 P.3d 89 (2004).....	18
<i>In re A.V.D.</i> , 62 Wn. App. 562, 815 P. 2d 277 (1991).....	16, 18, 19
<i>In re D.A.</i> , 124 Wn. App. 644, 102 P.3d 847 (2004).....	18
<i>In re Dependency of I.J.S.</i> , 128 Wn. App. 108, 114 P.3d 1215 (Div. I 2005), <i>rev. denied</i> , 155 Wn.2d 1021(2005).....	10
<i>In re Dependency of J.C.</i> , 130 Wn.2d 418, 924 P. 2d 21 (1996).....	18
<i>In re Dependency of K.S.C.</i> , 137 Wn.2d 918, 976 P. 2d 113 (1999).....	9, 18
<i>In re Dependency of T.C.C.B.</i> , 138 Wn. App. 791, 158 P.3d 1251 (Div. I 2007).....	9
<i>In re Esgate</i> , 99 Wn.2d 210, 660 P.2d 758 (1983).....	18
<i>In re Ott</i> , 37 Wn. App. 234, 679 P. 2d 372 (1984).....	19
<i>In re T.R.</i> , 108 Wn. App. 149, 29 P.3d 1275 (2001).....	18

<i>In re the Marriage of Hall</i> , 103 Wn. 2d 236, 692 P.2d 175 (1984).....	16
<i>In re the Welfare of C.B.</i> , 134 Wn. App. 336, 139 P.3d 1119 (Div. II 2006) .....	9
<i>In re Welfare of H.S.</i> , 94 Wn. App. 511, 973 P.2d 474 (1999).....	16
<i>In re Welfare of M.R.H. and J.D.F.</i> , 145 Wn. App. 10, 188 P.3d 510 (Div. III 2008), <i>rev. denied</i> , 165 Wn.2d 1009(2008), <i>cert. denied</i> 129 S. Ct. 1682 (2009) .....	9
<i>West v. Thurston County</i> , 144 Wn. App. 573, 183 P.3d 346 (2008).....	20

**Statutes**

RCW 13.34.180(1)(f).....	passim
RCW 13.34.231 and .232.....	9

**Rules**

RAP 13.5A(b) .....	8
RAP 13.4(b) .....	8
RAP 13.4(b)(1)(2)(4) .....	8
RAP 13.5A .....	8

## I. INTRODUCTION

On March 25, 2009, Superior Court Judge Ronald Kessler denied termination of the father's parental rights to these three children, ages two, four, and eight. The court found that all services capable of correcting the father's parental deficiencies had been provided; and found there was little likelihood the father's deficiencies could be remedied in the near future; and found that the children should remain out of their father's custody but denied termination concluding that some alternative to termination would better serve the children's interest. The trial court made this conclusion even though there was no alternative action pending before the court, and no alternatives advocated by any of the parties, and no evidence presented that any alternatives were viable or would provide the children the kind of stability and permanence they need.

The Court of Appeals, Division One reversed this ruling concluding that the trial court committed "obvious error" by mistakenly focusing on the children's current placements and assessing whether they were stable instead of looking at whether continuing the father's legal relationship impaired the children's ability to obtain a permanent home. The Court of Appeals also found the trial court's ruling inconsistent with its own findings that the children needed permanent homes and that the relative caretakers wanted to adopt. The Court of Appeals concluded that

the trial court incorrectly interpreted RCW 13.34.180(1)(f) and remanded the case so that after applying the correct legal standard, the trial court could assess whether termination is in the children's best interest.

## **II. IDENTITY OF RESPONDENT**

The State of Washington, Department of Social and Health Services, the Respondent herein and the Petitioner below, provides this answer to the Petitioner's Motion for Discretionary Review.

## **III. RESTATEMENT OF THE CASE**

This case concerns three children, O.L.T. age two, J.J.I. age four, and P.P.T. age eight. CP 266 – 276. The respondent, Peter Tsimbalyuk is the father of all three children. CP 267, Unchallenged Finding of Fact 1.1. P.P.T.'s mother is Veronica Haupt, and O.L.T. and J.J.I.'s mother is Toby Anne Irby. CP 267. P.P.T.'s mother had her parental rights terminated in November of 2008, and Ms. Irby relinquished her parental rights to J.J.I. and O.L.T. the first day of trial. CP 217-220, 224-232. The father was never married to P.P.T.'s mother, but he married Ms. Irby six months before the trial and he planned to raise the children with Ms. Irby despite her relinquishment. 1RP 52-53, 108, 110, Unchallenged Finding of Fact 1.10.

At the time of trial the Department had been involved with the father continuously since J.J.I.'s birth four years prior. 1RP 57-58,

CP 267, Unchallenged Finding of Fact 1.2. The Department had been involved with Ms. Irby for over fifteen years. CP 267-68, Unchallenged Finding of Fact 1.2, 1.3, 1.5.<sup>1</sup>

The father used drugs and has a criminal history involving drugs, burglary, theft, and vehicle prowl. 1RP 54. He has been arrested twenty five times and has been incarcerated approximately ten times. 1RP 54, 55. He had also been incarcerated for immigration related issues, and at the time of trial he was pursuing an appeal of an order requiring him deported to the Ukraine. 1RP 53. However, one of the most concerning parental deficiencies that was never corrected was the father's violent relationship with the mother. CP 271, Unchallenged Finding of Fact 1.15. In November of 2006, the father assaulted the mother by punching her in the face, back, neck, and abdomen where she recently had a Caesarean section involving the birth of O.L.T. CP 269, Unchallenged Finding of Fact 1.7. The assault was so severe it caused bruising, and it caused her to black out, throw up blood, and bleed from the rectum. *Id.* The father refused to help her and refused to let her go to the hospital for medical attention. *Id.*

---

<sup>1</sup> Ms. Irby suffers from chronic mental health and substance abuse problems and has been in and out of psychiatric hospitals. CP 268, Unchallenged Finding of Fact 1.5. In addition to the two children who are the subject of this appeal, she has lost three other children due to long standing parental deficiencies that have never been corrected despite continuous services. *Id.* At the time of trial, she was again hospitalized for psychiatric issues. 1RP 9-10, 16. She stopped services and stopped visiting O.L.T. and J.J.I. more than a year prior to trial and only saw the children five times in 2008. CP 268, Unchallenged Findings of Fact 1.5. The court found she was incapable of caring for the children even in conjunction with the father as the primary caretaker. *Id.*

The assault occurred within hearing distance of P.P.T. who came downstairs and saw his mother bleeding. *Id.*, 3RP 387. After the assault, the father violated a no-contact order and told the mother to lie about the assault. CP 269, Unchallenged Finding of Fact 1.9. He threatened to tell the Department about her substance abuse if she told the truth about the assault. *Id.* His assault led to the removal of all three children and the establishment of dependency as to P.P.T. and O.L.T. 1RP 62-63, 66, 69-70, CP 267, Unchallenged Finding of Fact 1.3. The father's assault on the mother in November of 2006 was not the first such incident. CP 269, Unchallenged Finding of Fact 1.8. He had previously assaulted her on at least one occasion by hitting her with a belt for at least five or six minutes. *Id.*

Throughout the Department's involvement with this family, it provided extensive services to both parents.<sup>2</sup> With respect to the father, the Department facilitated a drug/alcohol evaluation, random urinalysis, parenting classes, psychological evaluation and treatment, domestic violence perpetrator's treatment and family preservation services. CP 268, Unchallenged Finding of Fact 1.4. A psychological evaluation conducted

---

<sup>2</sup> For over fifteen years it facilitated the mother's drug/alcohol evaluations, inpatient and outpatient substance abuse and mental health treatment, random urinalysis, family preservation services, domestic violence victims counseling, psychological evaluations, mental health counseling, parenting classes and housing assistance. CP 268-69, Unchallenged Finding of Fact 1.5.

in October of 2007 diagnosed the father as anti-social personality disordered, and concluded there were no services which, over a reasonable time, would remedy his deficiencies such that he could resume full custody of his children. CP 271-72, Unchallenged Finding of Fact 1.16. The Department provided the father individual mental health counseling to address the disorder, but he did not make sufficient progress. CP 272, Unchallenged Finding of Fact 1.18. On two separate occasions, the father began a domestic violence treatment program, but either quit or was suspended for non-compliance from both programs after just a few months. CP 270-71, Unchallenged Findings of Fact 1.12, 1.13.

At the time of trial, J.J.I. and O.L.T. were living with their paternal aunt, Lena, whom they looked to as their primary caretaker. CP 273, Unchallenged Finding of Fact 1.23. Prior to residing with his aunt, J.J.I. had been in multiple placements and had lived out of his parents' care for three of his four years. *Id.* O.L.T. had been out of his parents' care for all but five months of his two and a half years of life. *Id.* P.P.T. had lived with his paternal grandmother for the past two years, and had stayed with her and other aunts for substantial periods even before the Department got involved. 1RP 124, 2RP 260, CP 273, Unchallenged Finding of Fact 1.24. He too was extremely bonded to his paternal grandmother and looked to her as his primary caregiver. *Id.* The uncontroverted evidence established

that both the aunt and the grandmother wanted to adopt the children, and the aunt in particular had been hesitant to even accept the younger children into her home until they were legally free. 6RP 684, 7RP 875.

At trial, the father testified that he was fully capable of caring for his children and he wanted his children returned to him. 1RP 101, 102, 7RP 930. Neither he nor his attorney argued in favor of any permanent plan other than return to the father's care. 1RP 45-48, 7RP 930.

The trial court found the first five elements required for termination to be established by clear, cogent and convincing evidence. CP 267, 272-73, 275, Unchallenged Findings of Fact 1.2, 1.3, 1.20, 1.21, 1.23, 1.24, and Unchallenged Conclusion of Law 2.1. The court specifically found that all services reasonably available and capable of correcting the parental deficiencies within the foreseeable future had been expressly and understandably offered and found there was little likelihood that conditions could be remedied so the children could be returned to the father in the near future. CP 272, Unchallenged Findings of Fact 1.20, 1.21. The court found that all three children are in need of a permanent home given the instability they faced in their parents' home and the length of time they had spent in out-of-home placement and found that all three children have prospects for adoption. CP 274, Unchallenged Finding of Fact 1.25. The court found the father's testimony – the only witness to

testify on his behalf – to lack credibility. Unchallenged Finding of Fact 1.10, 1.11, 1.21.

Nonetheless, the court denied termination after concluding that a continued relationship with the father, while remaining in the custody of the relatives, was in the children's best interest. CP 274, Challenged Finding of Fact 1.27. The court found the state failed to prove that continuing the parent child relationship diminished the children's prospects for permanency because the court believed the children's placements with their relatives were stable. CP 274, Challenged Finding of Fact 1.30.<sup>3</sup> The court acknowledged there was no dependency guardianship petition pending and that the relatives wanted to adopt the children, but concluded that either dependency guardianship or long-term relative care would be in the best interests of the children because it would allow the father the right to see the children. CP 274, Findings of Fact 1.30 1.31, 1.32. The court encouraged any or all of the parties to file a dependency guardianship petition, and ultimately concluded that even an ongoing dependency would be sufficiently stable and permanent. CP 274-75, Challenged Findings of Fact 1.29, 1.34.

---

<sup>3</sup> Ironically, the court stated in its oral ruling that if the relatives testified to that affect, the court would have doubts about their commitment to the children. 7RP 999.

Both the Court Appointed Special Advocate (“CASA”) for the children and Department sought appellate review of the court’s order and after granting review, the Court of Appeals reversed, concluding that the trial court committed obvious error in its interpretation of RCW 13.34.180(1)(f). It remanded the case for further assessment of whether termination was in the children’s best interest. The father seeks review of the decision by the Court of Appeals.

#### **IV. REASONS WHY REVIEW SHOULD BE DENIED**

##### **A. RAP 13.4(b) Sets out the Correct Standard for Acceptance of Review.**

Despite the father’s argument that this Court should accept review based on RAP 13.4(b)(1)(2)(4), his motion for discretionary review fails to show that the decision below is in conflict with a decision of the Supreme Court or the Court of Appeals, or involves an issue that should be decided by the Supreme Court.

##### **B. The Court of Appeals decision reversing denial of termination is fully consistent with the last decade of case law and is consistent with the evidence presented below and the trial court’s own findings of fact.**

It has long been the law in Washington that when faced solely with a petition for termination of parental rights, the court’s duty is to determine whether the statutory requirements for termination are satisfied, and not concern itself with whether theoretical alternatives to termination

exist. This Court articulated that rule of law eleven years ago in the case of *In re Dependency of K.S.C.*, 137 Wn.2d 918, 976 P. 2d 113 (1999). In *K.S.C.*, the Court held: "Nothing in the statute directs that an assessment must be made of a dependency guardianship under RCW 13.34.231 and .232 as an alternative to termination." *Id.*

The principles articulated by this Court in *K.S.C.* have been reaffirmed numerous times. *In re Welfare of M.R.H. and J.D.F.*, 145 Wn. App. 10, 188 P.3d 510 (Div. III 2008), *rev. denied*, 165 Wn.2d 1009(2008), *cert. denied* 129 S. Ct. 1682 (2009)(court is not required to consider guardianship or open adoption if no such petition is filed); *In re Dependency of T.C.C.B.*, 138 Wn. App. 791, 158 P.3d 1251 (Div. I 2007) (no need for the court to consider theoretical alternatives such as guardianship or open adoption prior to terminating); *In re the Welfare of C.B.*, 134 Wn. App. 336, 139 P.3d 1119 (Div. II 2006)(court need not consider a dependency guardianship as alternative to termination when no petition has been filed); *In re Dependency of I.J.S.*, 128 Wn. App. 108, 114 P.3d 1215 (Div. I 2005), *rev. denied*, 155 Wn.2d 1021(2005) (in the absence of a petition for guardianship the state is not required to prove that an alternative such as guardianship is not available). In all of these cases, the parents argued that it was unconstitutional to terminate parental rights without proof that no alternatives to termination were available. All three

divisions of the Court of Appeals rejected this argument, and both this Court and the United States Supreme Court have declined review of this issue. *Id.*

Notwithstanding this long line of case law, the trial court denied termination based solely on its assumption that some alternative was available that might better serve the children's interests. 7RP 959, CP 274, Challenged Finding of Fact 1.28. The trial court's ruling was inconsistent with established law and the evidence presented in this case; it misinterpreted the termination statute; and it added an element to the termination statute that neither the legislature, nor any court in this state has required.

The Court of Appeals properly noted that the only action pending before the trial court was a petition for termination, yet the trial court denied termination based solely on its conclusion that some alternative to termination existed. Slip Op. at 6; and *see* Findings of Fact 1.22, 1.26, 1.27, 1.28, 1.29, 1.30, 1.32, 1.33, 1.34, Conclusion of Law 2.2, 2.3. The trial court's findings and conclusions were assumptions not supported by substantial evidence because there was no evidence, much less substantial evidence, supporting any alternative to termination.

The father did not file, or argue for, or even mention a dependency guardianship, or a third party custody action, and he did not advocate that

the children remain with their relatives in some sort of long term care agreement or ongoing dependency. Finding of Fact 1.29, 1.31, 1RP 45-48, 7 RP 981, 992. In fact, he had no desire for the children to remain with the relatives and he advocated for a full return of the children to his custody. He claimed he was prepared to do whatever was necessary to make that happen. 1RP 45-48, 101, 102, 7RP 930.

Neither the Department nor the CASA, who were the only other parties to the action, advocated for, or believed an alternative to termination was viable or appropriate and no evidence was presented suggesting otherwise. Both the Department and the CASA advocated for termination of the father's parental rights based on the children's urgent need for permanency, their need for a healthy attachment to a caretaker who is consistent, stable, and nurturing, and the relative's desire for adoption. 5RP 667, 680-681, 682, 684, 687-688, 7RP 874, 878. They believed that termination and adoption by the current relative caretakers is in the children's best interest, and believed there is a risk of harm if termination is not ordered because the relatives want to set boundaries with the father, they want to make their own decisions for the children, and they want the Department out of their lives. 5RP 668, 680, 6RP 685, 686, 687, 688, 697, 720, 7RP 868, 874-875, 876, 877, 881.

In his motion for discretionary review, the father argues that the

Court of Appeals substituted its own judgment for that of the trial court and claims that both Dr. Borton and the CASA testified that termination would harm the children. Father's motion at 14-15. However, the record belies the father's argument. Neither Dr. Borton nor the CASA testified that they favored a dependency guardianship over termination, and neither testified that the positive nature of the father's visitation was a sufficiently compelling reason to keep the father's parental rights in tact. The CASA was especially adamant that termination was the only resolution that would provide these children permanency and serve their best interest.

She had been the CASA for two years and spent hundreds of hours investigating the case. 6RP 794, 800, 7RP 873. Although she considered alternatives to termination and would have been open to them for P.P.T. earlier in the case, those alternatives were no longer viable at the time of trial. 7RP 878, 879, 880. The grandmother, with whom P.P.T. lived, wanted to adopt him and P.P.T. knew this. 7RP 857, 866. With respect to the younger children, the only alternative to which the relatives would agree was adoption, and that had been their position since the children were placed with them, so there was no feasible alternative for the younger children. 7RP 877. The CASA also worried about the passage of time, the instability the children had already had in their placements, and the need to provide them with secure homes. J.J.I. was especially

vulnerable and could neither wait any longer for a permanent home, nor risk another move. 6RP 849, 850, 7RP 891. He had already been moved eight times and was fragile. 7RP 887, 891. All of the children needed clarity with respect to who would parent them. 7RP 876. Despite the father's positive interaction with the children during his few hours of supervised visitation, he was still incapable of caring for the children; he did not understand their developmental needs; he could not meet their emotional or mental health needs; he could not protect them; and the CASA believed his situation had not changed since 2006. 7RP 869, 873, 874. She testified that continuing the relationship with the father even six more months would not be in the children's best interest and would diminish their prospects for integration into a stable and permanent home. 7RP 874. She believed the children would be harmed if the court did not terminate because it would interfere with the relatives ability to parent the children successfully. 7RP 881.

The father claims that the CASA disagreed with termination because the father had a bond with his children and visitation was often positive, but the CASA clearly believed the positive bond the children had with their father was an issue separate from whether the legal relationship with the father should continue. 7RP 869. The CASA believed termination was imperative regardless of how positive visitation was. 6RP

849, 850, 7RP 857, 866, 869, 873, 874, 876, 877, 878, 879, 880, 881, 887, 891. Both the CASA and Department social worker believed termination was the only viable option that would serve the children's best interest, and they supported termination even if it meant they could no longer visit with their father, and even if the relatives did not ultimately adopt the children. 6RP 690, 720, 771, 7RP 869-70, 878, 880, 881, 890, 891, 892.

The father makes similarly unsupported claims about Dr. Borton's testimony. Father's motion at 16. The selective quotes the father cites in support of his claims were from Dr. Borton's written evaluation of the father that occurred a year and a half prior to trial, and by the time trial occurred the circumstances were vastly different. At the time of Dr. Borton's written evaluation, the father had separated from the mother and had no plans to reunite with her, and the relatives who had the children were not the same relatives who had the children at the time of the trial. 3RP 381, 383, 396, 425, 435. Dr. Borton testified that at the time he wrote his report a year and a half earlier, he felt there were options other than termination that should be explored to allow the father some contact with the children, but he acknowledged that circumstances had changed since he wrote his evaluation. 3RP 424. Dr. Borton was absolutely concerned to learn that the father not only reunited with the mother but married her and was living with her at the time of trial. 3RP 426. That judgment was,

in Dr. Borton's opinion, very dangerous for the children as was the father's decision to quit counseling. 3RP 425, 431. Dr. Borton admitted that the relatives who had the children at the time he wrote his evaluation seemed willing to allow the father to play the role of 'visiting' parent, and that would have been good for the children if it happened at the time. 3RP 431-432. Now however, the tables had turned. 3RP 432. Dr. Borton did not believe the father could be a full time parent for the children and he did not believe the father should have even frequent visitation with them. 3RP 432, 465. There were simply too many instances of bad judgment, deception, and lack of knowledge about the children's needs. 3RP 432. Also Dr. Borton could not speak about the current relative care providers or their relationship with the father, or how they felt about visitation, and he acknowledged he was not an expert on the different kinds of permanent plans that were available. 3RP 435, 450, 465-66. He agreed that a guardianship might present a tough situation for the family. 3RP 440, 450. It would impact the relative's relationship with the father, cause a confusion of roles, and pressure loyalties and alliances within the family. 3RP 440. He agreed that permanency is important to children and that instability is detrimental. 3RP 439. Ultimately, Dr. Borton did not testify one way or another about whether termination was currently appropriate.<sup>4</sup>

---

<sup>4</sup> Thus the father's interpretation of the court's Finding of Fact 1.17 and his

Viewing the evidence as a whole, no fair minded person would interpret either Dr. Borton's testimony or the CASA's testimony as supporting guardianship over termination. *In re Welfare of H.S.*, 94 Wn. App. 511, 519, 973 P.2d 474 (1999) (court reviews sufficiency challenges by looking at the record as a whole); *In re the Marriage of Hall*, 103 Wn. 2d 236, 246, 692 P.2d 175 (1984) (substantial evidence is that quantity of evidence sufficient to persuade a fair-minded person of the truth of the stated premise). The father may have been bonded to his children and he may have been capable of engaging with them for a few hours of supervised visitation, but that was all he was capable of doing and it was hardly enough to justify denying these children a permanent home. *In re A.V.D.*, 62 Wn. App. 562, 815 P.2d 277 (1991) (evidence supported termination notwithstanding finding that continued contact was in child's best interest).

Although the father asserts correctly that trial court's decisions are entitled to some deference, no published case permits trial courts the unfettered authority to make decisions about children's welfare, which are not supported by the evidence. In this case, the trial court's conclusion that some result other than termination would serve the children's best

---

implication that Dr. Borton testified against termination is incorrect.

interest was supported by nothing more than innuendo and assumption, and the Court of Appeals correctly reversed.

**C. The Court of Appeals interpretation of RCW 13.34.180(1)(f) is fully consistent with established case law.**

The father claims that the Court of Appeals interpreted RCW 13.34.180(1)(f) “out of existence” by concluding that a finding under RCW 13.34.180(1)(f) “necessarily follows from an adequate showing” that there is little likelihood that conditions will be remedied so that the children can be returned to the parent in the near future. Father’s motion at 18. But that was not the only basis for reversing the trial court in this case, and far from conflicting with other Court of Appeals or Supreme Court precedent, this interpretation of the statute is fully consistent with the principle first articulated in 1996 by this Court in the case of *In re Dependency of J.C.*, 130 Wn.2d 418, 427, 924 P.2d 21 (1996)(finding under RCW 13.34.180(1)(f) necessarily follows from an adequate showing that there is little likelihood that conditions will be remedied so that the children can returned to the parent).

The Court of Appeals additionally relied on this Court’s precedent holding that the focus of RCW 13.34.180(1)(f) “is the parent-child relationship and whether it impedes the child’s prospects for integration, not what constitutes a stable and permanent home.” *In re Dependency of*

*K.S.C.*, 137 Wn.2d 918, 976 P. 2d 113 (1999). This too is consistent with a long line of cases holding that RCW 13.34.180(1)(f) is not concerned with the child's particular placement at termination, or the personal relationships involved, or whether the child will be adopted. See Department's opening brief at 26-28; *In re A.C.*, 123 Wn. App. 244, 98 P.3d 89 (2004); *In re J.C.*, 130 Wn.2d 418, 427, 924 P.2d 21 (1996); *In re K.S.C.*, 137 Wn.2d 918, 976 P.2d 113 (1999); *In re A.V.D.*, 62 Wn. App. 562, 569, 815 P.2d 277 (1991); *In re Esgate*, 99 Wn.2d 210, 214, 660 P.2d 758 (1983); *In re D.A.*, 124 Wn. App. 644, 102 P.3d 847 (2004) *In re A.C.*, 123 Wn. App. 244, 98 P.3d 89 (2004); *In re T.R.*, 108 Wn. App. 149, 29 P.3d 1275 (2001).

The Court of Appeals reversed the judgment in this case because the trial court mistakenly focused on what it believed was a stable and permanent home for the children rather than whether the father's legal relationship presented an obstacle to the children's adoption. Slip Op at 12-13. Reversal was clearly appropriate because the trial court's ruling was not only inconsistent with the law, but inconsistent with the trial court's own findings that all three children needed permanency given the instability they had experienced, and the relative's preference to live without the oversight of the Department and the court. The Court of Appeals correctly pointed out that these findings by the trial court

established that the father's ongoing legal relationship indeed posed an obstacle to the children's adoption prospects. Slip Op. at 13.

The law in Washington has long held that where a parent is unlikely to correct parental deficiencies in the near future, continuing the relationship can only result in the child remaining in temporary care or "limbo" for a long period of time, thereby diminishing the child's prospects for early integration into a permanent and stable home. *In re A.V.D.* 62 Wn. App. 562, 569, 815 P.2d 277 (1991). Although a foster home or relative home may be a stable home, it is not a permanent one. *In re Ott*, 37 Wn. App. 234, 239, 679 P. 2d 372 (1984). "If returning the child to the parent is not possible, the appropriate action is to terminate parental rights and place the child in an adoptive home." *Id.* at 239-40. The Court of Appeals decision properly recognized this established law, and correctly reversed a ruling that would have otherwise left these young children to remain indefinitely in foster care.<sup>5</sup>

---

<sup>5</sup> Indeed the trial court was satisfied that even if guardianship or third party custody was not possible, "ongoing dependency and placement in relative care would be sufficiently stable and permanent without adoption." CP 274, Challenged Finding of Fact 1.29. This conclusion by the trial court violates the plain language of the statute, which guarantees dependent children the right to "early integration" into a "stable and permanent home" and "speedy resolution" of the proceedings. See Department's opening brief at 31-32.

**D. This Court should not accept review because the case is moot.**

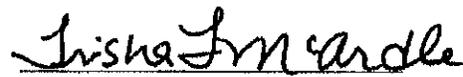
In October of 2009, the Department filed a second termination petition concerning these children, and the case went to trial before the Honorable Michael J. Fox in March of 2010. Appendix A. Following a six day trial, Judge Fox terminated the father's parental rights based on the history of this case and the factual events that have transpired since Judge Kessler denied termination a year ago. *Id.* Appellate courts generally will not hear moot cases. *Hart v Social and Health Services*, 111 Wn.2d 445, 447, 759 P.2d 1206 (1988). A case is moot if the question on appeal is purely academic and cannot provide meaningful relief to the parties involved. *BBG Group v. City of Monroe*, 96 Wn. App. 517, 521, 982 P.2d 1176 (1999); *West v. Thurston County*, 144 Wn. App. 573, 183 P. 3d 346 (2008). Although the father may chose to appeal the order resulting from the second trial, the issues arising from the first trial are now purely academic.

**V. CONCLUSION**

The father has failed to establish that the Court of Appeals decision is in conflict with this Court's prior rulings or other Court of Appeals rulings and established no reason for this court to accept review. This Court should deny his Motion for Discretionary Review.

RESPECTFULLY SUBMITTED this 23<sup>rd</sup> day of April, 2010.

ROBERT M. MCKENNA  
Attorney General

A handwritten signature in cursive script that reads "Trisha L. McCardle".

TRISHA L. MCARDLE  
WSBN 16371  
Senior Counsel  
800 Fifth Avenue, Suite 2000  
Seattle, WA 98104  
206 464-7045

# Appendix A

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

**FILED**  
KING COUNTY, WASHINGTON

MAR 26 2010

Judge Michael J. Fox

SUPERIOR COURT CLERK  
BY Leah Fontanez  
DEPUTY

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY  
JUVENILE DEPARTMENT

IN RE DEPENDENCY OF:

TSIMBALYUK, PETER PETROVICH  
DOB: 9/12/2000

IRBY, JAYCOB JAMES  
DOB: 2/21/2005

TSIMBALYUK, OSCAR LEONID  
DOB: 8/17/2006

Minor Children.

NO. 09-7-04166-9 SEA  
NO. 09-7-04167-7 SEA  
NO. 09-7-04168-5 SEA

FINDINGS OF FACT, CONCLUSIONS  
OF LAW, AND ORDER OF  
TERMINATION OF PARENT-CHILD  
RELATIONSHIP FOLLOWING FACT-  
FINDING TRIAL AS TO FATHER, PETER  
LEONIDOVICH TSIMBALYUK

(Clerk's Action Required)

THIS MATTER came on before the Honorable Michael J. Fox for a hearing on the Department's Petition for Termination of Parent-Child Relationship. Trial occurred on March 10, 11, 15, 16, 17, and 18, 2010. An oral decision was delivered on March 22, 2010. The Department appeared through its social worker, Sandra Street, and was represented by Marci D. Comeau, Assistant Attorney General. The father, Peter Leonidovich Tsimbalyuk, appeared *pro se*, after entering a knowing and voluntary waiver of his right to counsel, and was assisted by standby counsel Alison Warden and Roger Freeman. The court-appointed special advocate, Lori Reynolds, appeared, and was represented by Heidi Nagel. The parental rights of the mother of Peter Petrovich Tsimbalyuk, Veronica Haupt, were

FINDINGS OF FACT, CONCLUSIONS OF  
LAW AND ORDER OF TERMINATION OF  
PARENT-CHILD RELATIONSHIP  
FOLLOWING FACT-FINDING TRIAL AS TO  
FATHER, PETER LEONIDOVICH  
TSIMBALYUK

1 terminated by order of the court on November 3, 2008. The parental rights of the mother of  
2 Jaycob Irby and Oscar Tsimbalyuk, Toby Irby, were terminated by order of the court on  
3 February 13, 2009.

4 The court heard testimony from the following witnesses: Peter Tsimbalyuk, Dr.  
5 Richard Borton, Detective Ellen Inman, Julie Young, Sandra Street, Doug Bartholomew,  
6 Barry Glatt, Jay Williamson, and Lori Reynolds. The court admitted into evidence 60  
7 exhibits.

8 The Court having considered the files and records herein and being fully advised in  
9 the premises now makes the following:

10 **I. FINDINGS OF FACT**

11 1.1 Peter Petrovich Tsimbalyuk, born on September 12, 2000, is the child of Peter L.  
12 Tsimbalyuk, and Veronica Haupt, who are not minors. The parental rights of Veronica  
13 Haupt have previously been terminated on November 3, 2008.

14 1.2 Jaycob James Irby, born on February 21, 2005, and Oscar Leonid Tsimbalyuk,  
15 born on August 17, 2006, are the children of Peter Leonidovich Tsimbalyuk and Toby  
16 Anne Irby, who are not minors. The parental rights of Toby Anne Irby have been  
17 previously terminated on February 13, 2009.

18 1.3 Jaycob James Irby was found dependent pursuant to RCW 13.34.030 by agreed  
19 orders of dependency entered as to the mother and father on May 17, 2005. Disposition  
20 orders were also entered on that date.

21  
22  
23  
24 FINDINGS OF FACT, CONCLUSIONS OF  
25 LAW AND ORDER OF TERMINATION OF  
26 PARENT-CHILD RELATIONSHIP  
FOLLOWING FACT-FINDING TRIAL AS TO  
FATHER, PETER LEONIDOVICH  
TSIMBALYUK

1 1.4 Peter Petrovich Tsimbalyuk and Oscar Leonid Tsimbalyuk were found dependent  
2 pursuant to agreed orders of dependency as to their mothers and father on May 18, 2007.  
3 Disposition orders were also entered on that date.

4 1.5 In the father's dispositional order as to Jaycob, he agreed to engage in a  
5 drug/alcohol evaluation and engage in random urinalysis two times per week. In the  
6 father's dispositional order as to Peter and Oscar, he agreed to engage in age-appropriate  
7 parenting classes, a psychological evaluation and recommended treatment, random  
8 urinalysis for 90 days, domestic violence perpetrator's treatment, and Family  
9 Preservation Services if the children were returned to him. The father was also ordered to  
10 comply with the restraining order regarding Ms. Irby.

11 1.6 The children have been removed from the care of their parents for a period of at  
12 least six months pursuant to a finding of dependency.

13 1.7 Jaycob Irby was removed from the care of his parents in March 2005. He was  
14 returned to the care of his parents in March 2006.

15 1.8 Peter Tsimbalyuk was removed from the care of his parents on November 21,  
16 2006. The father was arrested and incarcerated on that date. Peter Jr. has never been  
17 returned to the care of his parents since that date.

18 1.9 Oscar Tsimbalyuk and Jaycob Irby were removed from the care of their mother,  
19 Toby Irby, on January 16, 2007. The father was incarcerated at that time. Jaycob and  
20 Oscar have never been returned to the care of their parents since that date.

21 1.10 Mr. Tsimbalyuk is not a credible witness. Examples of Mr. Tsimbalyuk's lack of  
22 credibility include his failure to provide an accurate residential address to the court, his  
23

24 FINDINGS OF FACT, CONCLUSIONS OF  
25 LAW AND ORDER OF TERMINATION OF  
26 PARENT-CHILD RELATIONSHIP  
FOLLOWING FACT-FINDING TRIAL AS TO  
FATHER, PETER LEONIDOVICH  
TSIMBALYUK

1 continued failure to accurately describe the extent of the assault perpetrated against Toby  
2 Irby in November 2006, and his denial that he understands what a "relapse" is or  
3 knowing that his wife ever used illegal drugs. He also attempted to persuade his wife to  
4 lie concerning his assault upon her.

5 1.11 Mr. Tsimbalyuk's wife, Toby Irby, has chronic mental health and substance abuse  
6 issues.

7 1.12 Ms. Irby was involved with the Department for twenty years. She has never  
8 successfully parented children or been able to sustain a consistent parenting role in her  
9 children's lives. She has a total of five children, all of whom have been removed from her  
10 care. Her parental rights have been terminated to three children, and two other children  
11 were placed with their father in Mexico.

12 1.13 Ms. Irby was offered continuous services over the past fifteen years, including  
13 drug/alcohol evaluations, inpatient and outpatient substance abuse treatment, random  
14 urinalysis, family preservation services, domestic violence victim's counseling,  
15 psychological evaluations, mental health counseling, parenting classes, and housing  
16 assistance. None of these services have been able to address the Ms. Irby's long-standing  
17 parental deficiencies.

18 1.14 Ms. Irby ceased all court-ordered services around January or February 2008. Ms.  
19 Irby stopped visiting with her children in January 2008, re-commenced visitation around  
20 November 2008, visited only three more times, and ceased visitation again in December  
21 2008. Ms. Irby is incapable of caring for children, and Mr. Tsimbalyuk does not  
22 recognize the continued risk Ms. Irby poses to children.  
23

24 FINDINGS OF FACT, CONCLUSIONS OF  
25 LAW AND ORDER OF TERMINATION OF  
26 PARENT-CHILD RELATIONSHIP  
FOLLOWING FACT-FINDING TRIAL AS TO  
FATHER, PETER LEONIDOVICH  
TSIMBALYUK

4

ATTORNEY GENERAL OF WASHINGTON  
800 Fifth Avenue, Suite 2000  
Seattle, WA 98104-3188  
(206) 464-7744

1 1.15 In November 2006, the father assaulted Ms. Irby. After Ms. Irby returned home one  
2 evening with Oscar, Mr. Tsimbalyuk changed Oscar's diaper, put the child down to sleep,  
3 came downstairs, and assaulted Ms. Irby.

4 1.16 Mr. Tsimbalyuk punched Ms. Irby several times in the face, neck, chest, back,  
5 and abdomen where she had recently had a Caesarean section. The assault caused  
6 bruising and caused Ms. Irby to black out, bleed from her nose, throw up blood, and bleed  
7 from the rectum.

8 1.17 Mr. Tsimbalyuk yelled at Ms. Irby throughout the assault. Ms. Irby was fearful of  
9 Mr. Tsimbalyuk and begged for Mr. Tsimbalyuk to stop the assault.

10 1.18 Mr. Tsimbalyuk refused to permit Ms. Irby to go to the hospital for medical  
11 attention. Mr. Tsimbalyuk told Ms. Irby that it was her job to take care of the children.

12 1.19 Peter Jr., who was then six years old, heard Ms. Irby's screams, came downstairs,  
13 and saw Ms. Irby's injuries.

14 1.20 As a result of Mr. Tsimbalyuk's assault on that evening, and as a result of Mr.  
15 Tsimbalyuk's behavior towards Ms. Irby on other occasions, Detective Inman provided  
16 Ms. Irby with domestic violence victim's resources and shelter information.

17 1.21 Mr. Tsimbalyuk assaulted Ms. Irby on at least two other occasions, once with a belt,  
18 hitting her for at least five or six minutes in order to punish her for relapsing until she was  
19 "black and blue," and once when he put a pillow over her face and airway in November  
20 2008, which Ms. Irby disclosed to the Department social worker, Sandra Street.

21  
22  
23  
24 FINDINGS OF FACT, CONCLUSIONS OF  
25 LAW AND ORDER OF TERMINATION OF  
26 PARENT-CHILD RELATIONSHIP  
FOLLOWING FACT-FINDING TRIAL AS TO  
FATHER, PETER LEONIDOVICH  
TSIMBALYUK

5

ATTORNEY GENERAL OF WASHINGTON  
800 Fifth Avenue, Suite 2000  
Seattle, WA 98104-3188  
(206) 464-7744

1 1.22 While Mr. Tsimbalyuk was incarcerated for assaulting Ms. Irby, Mr. Tsimbalyuk  
2 contacted Ms. Irby on six different occasions in violation of a restraining order. Mr.  
3 Tsimbalyuk was aware of the restraining order.

4 1.23 During the conversations from the jail, Mr. Tsimbalyuk told Ms. Irby to lie to the  
5 court and the Department about the assault. Mr. Tsimbalyuk told Ms. Irby it would be  
6 "good" if she ignored the subpoena compelling her testimony for his criminal trial. Mr.  
7 Tsimbalyuk told Ms. Irby she should tell the criminal court that she had been coerced into  
8 saying that Mr. Tsimbalyuk had assaulted her. Mr. Tsimbalyuk threatened to tell the  
9 criminal court and the Department that Ms. Irby had "mental issues" and that Ms. Irby had  
10 used drugs on the night of the assault if Ms. Irby did not cooperate with the lie.

11 1.24 Once Mr. Tsimbalyuk was released from jail, Mr. Tsimbalyuk continued to violate  
12 the restraining order between himself and Ms. Irby until the restraining order was terminated  
13 in July 2008.

14 1.25 Mr. Tsimbalyuk married Toby Irby in September 2008 after being ordered deported  
15 by the Department of Justice Immigration Court on August 15, 2008. Mr. Tsimbalyuk plans  
16 to co-parent his children with Ms. Irby, who relinquished her parental rights to Jaycob and  
17 Oscar in February 2009. Mr. Tsimbalyuk has no plans to separate from Ms. Irby. Mr.  
18 Tsimbalyuk believes that Ms. Irby is a good mother who poses no risk to his children. Ms.  
19 poses a grave risk to children in her care.

20 1.26 Services ordered under RCW 13.34.130 have been expressly and understandably  
21 offered or provided and all necessary services reasonably available, capable of correcting  
22

23  
24 FINDINGS OF FACT, CONCLUSIONS OF  
25 LAW AND ORDER OF TERMINATION OF  
26 PARENT-CHILD RELATIONSHIP  
FOLLOWING FACT-FINDING TRIAL AS TO  
FATHER, PETER LEONIDOVICH  
TSIMBALYUK

1 the parental deficiencies within the foreseeable future have been expressly and  
2 understandably offered or provided.

3 1.27 Mr. Tsimbalyuk was offered random urinalysis in 2007, arranged and paid for by  
4 the Department, and he completed random urinalysis at that time.

5 1.28 Mr. Tsimbalyuk was offered parenting classes in 2007 and completed parenting  
6 classes.

7 1.29 Mr. Tsimbalyuk was offered a psychological evaluation with a parenting  
8 component with Dr. Richard Borton, arranged and paid for by the Department, in 2007.  
9 Mr. Tsimbalyuk completed the psychological evaluation.

10 1.30 In February 2010, Dr. Borton conducted an updated assessment of the case based  
11 upon a records review of materials collected between March 2009 through February  
12 2010.

13 1.31 Dr. Borton noted significant deceptiveness on the part of Mr. Tsimbalyuk during the  
14 clinical interview.

15 1.32 Dr. Borton expressed concerns regarding the father's judgment with regards to the  
16 risks posed by Ms. Irby, the father's lack of remorse regarding the domestic violence, and  
17 the father's inability to recognize the impact of the domestic violence on his children.

18 1.33 Dr. Borton made a provisional diagnosis of an anti-social personality disorder for  
19 Mr. Tsimbalyuk in the 2007 evaluation. The diagnosis was only provisional due to Dr.  
20 Borton's inability to confirm whether Mr. Tsimbalyuk had a conduct disorder diagnosis  
21 prior to the age of fifteen.  
22  
23

24 FINDINGS OF FACT, CONCLUSIONS OF  
25 LAW AND ORDER OF TERMINATION OF  
26 PARENT-CHILD RELATIONSHIP  
FOLLOWING FACT-FINDING TRIAL AS TO  
FATHER, PETER LEONIDOVICH  
TSIMBALYUK

1 1.34 Dr. Borton confirmed symptoms supporting the diagnosis of an Anti-Social  
2 Personality Disorder based upon the updated information reviewed in February 2010,  
3 including Mr. Tsimbalyuk's self-focused decisionmaking, manipulation, disregard of  
4 authority, and deception.

5 1.35 Dr. Borton recommended against the father resuming custody of the children both in  
6 his 2007 evaluation and his 2010 updated assessment.

7 1.36 Dr. Borton found that there were no services which, over a reasonable period of  
8 time, would remedy Mr. Tsimbalyuk's parenting deficiencies such that he could resume  
9 custody of his children.

10 1.37 Dr. Borton recommended that Mr. Tsimbalyuk engage in counseling and indicated  
11 that Mr. Tsimbalyuk would likely need intensive, long-term psychotherapy with external  
12 monitoring in order to make progress towards addressing his mental health disorder.

13 1.38 Dr. Borton supports the termination of Mr. Tsimbalyuk's parental rights because Mr.  
14 Tsimbalyuk's priorities are skewed towards his interests over those of his own children (as  
15 demonstrated by his choice in marrying Ms. Irby, who was demonstrably neglectful of the  
16 children), because Mr. Tsimbalyuk's visitation with the children has become significantly  
17 less positive over the past year and Mr. Tsimbalyuk has been unable to manage his own  
18 stress during his interactions with the children, and because Mr. Tsimbalyuk's mental health  
19 issues pose a risk to the children's safety in his care. Mr. Tsimbalyuk proposes that the  
20 children remain in the custody of their present foster parents, but that his parental rights not  
21 be terminated so that he has the legal status of a father and that he can visit the children once  
22 a week. He does not urge that he be awarded full custody of the children.  
23

24 FINDINGS OF FACT, CONCLUSIONS OF  
25 LAW AND ORDER OF TERMINATION OF  
26 PARENT-CHILD RELATIONSHIP  
FOLLOWING FACT-FINDING TRIAL AS TO  
FATHER, PETER LEONIDOVICH  
TSIMBALYUK

1 1.39 Dr. Borton also expressed concerns about Mr. Tsimbalyuk's deportation status, Mr.  
2 Tsimbalyuk's motivation in attempting to retain his parental rights with regard to his  
3 deportation status, and Mr. Tsimbalyuk's refusal to comply with the court order requiring  
4 the release of Mr. Tsimbalyuk's immigration records. The court finds that Mr.  
5 Tsimbalyuk's motivation to resist the termination of his parental rights is, in part, influenced  
6 by his desire to have his currently ordered deportation overturned.

7 1.40 Mr. Tsimbalyuk was referred to domestic violence batterer's treatment by  
8 Department social worker Sandra Street.

9 1.41 Mr. Tsimbalyuk engaged in domestic violence perpetrator's treatment with Doug  
10 Bartholomew and Associates from May 2007 through August 2007. The father selected Mr.  
11 Bartholomew's program, and the Department approved the father's enrollment in the  
12 program.

13 1.42 The father made no progress in his first domestic violence treatment program. He  
14 continued to believe that his behavior was justified, he did not want to change his behavior,  
15 he showed no regard for the feelings of others, and he showed no emotional reaction that  
16 would inhibit future bad behavior.

17 1.43 Mr. Tsimbalyuk withdrew from Doug Bartholomew's program because he did not  
18 want to participate in a program that required polygraphs. The use of polygraphs is a  
19 reasonable part of domestic violence treatment.

20 1.44 Mr. Tsimbalyuk then engaged in domestic violence perpetrator's treatment with  
21 Coastal Treatment and Associates from September 2007 through February 2008. The father  
22 selected the program, and the Department approved the father's enrollment in the program.  
23

24 FINDINGS OF FACT, CONCLUSIONS OF  
25 LAW AND ORDER OF TERMINATION OF  
26 PARENT-CHILD RELATIONSHIP  
FOLLOWING FACT-FINDING TRIAL AS TO  
FATHER, PETER LEONIDOVICH  
TSIMBALYUK

1 1.45 Ms. Tsimbalyuk made no progress in his second domestic violence treatment  
2 program. He never took domestic violence treatment seriously, saw himself as the "victim,"  
3 and took no accountability for the serious physical and emotional abuse he perpetrated  
4 against his victim.

5 1.46 Mr. Tsimbalyuk was suspended from domestic violence treatment in February 2008  
6 after he refused to complete a responsibility letter to his victim, Ms. Irby.

7 1.47 The father never re-initiated domestic violence perpetrator's treatment following his  
8 discharge from Coastal Treatment in February 2008.

9 1.48 Both Mr. Bartholomew and Mr. Glatt believe that Mr. Tsimbalyuk would now  
10 require a two-year domestic violence treatment program to overcome Mr. Tsimbalyuk's  
11 parental deficiencies related to domestic violence perpetrator's issues.

12 1.49 The Department referred Mr. Tsimbalyuk to individual mental health counseling  
13 with various providers, which included low-cost and sliding scale fee options.

14 1.50 The Department paid for the father's individual mental health counseling with Jay  
15 Williamson, a licensed mental health provider with a domestic violence treatment  
16 background. The Department was not court-ordered to pay for this service.

17 1.51 The father engaged in counseling with Mr. Williamson to address his provisional  
18 diagnosis of anti-social personality disorder.

19 1.52 Mr. Tsimbalyuk was not motivated to change his behaviors, did not believe he  
20 had any mental health problems, and lacked insight into the effect of his presence and  
21 behavior on his children. Jay Williamson agreed with Dr. Borton's diagnosis of Mr.  
22 Tsimbalyuk as having an Anti-Social Personality Disorder.

23  
24 FINDINGS OF FACT, CONCLUSIONS OF  
25 LAW AND ORDER OF TERMINATION OF  
26 PARENT-CHILD RELATIONSHIP  
FOLLOWING FACT-FINDING TRIAL AS TO  
FATHER, PETER LEONIDOVICH  
TSIMBALYUK

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

1.53 The father would require two more years of counseling with external monitoring in order to make progress towards addressing the symptoms of his Anti-Social Personality Disorder.

1.54 Mr. Tsimbalyuk was referred for additional mental health counseling services by the Department following the termination of his services with Jay Williamson, but failed to follow through with any meaningful mental health counseling.

1.55 Mr. Tsimbalyuk claims he attended five sessions of counseling with an intern from City University in late 2009, but did not provide the counselor with any materials regarding his mental health diagnosis, his dependency case, or any collateral information that could have assisted the counselor in addressing his mental health issues.

1.56 Mr. Tsimbalyuk does not believe he has any mental health issues. He is not amenable to mental health treatment and is unlikely to make progress in addressing his mental health issues in the near future.

1.57 In January 2010, Mr. Tsimbalyuk was ordered to engage in random urinalysis. Mr. Tsimbalyuk was referred for random urinalysis on multiple occasions by Department social worker Sandra Street. Mr. Tsimbalyuk never engaged in this service. These missed UAs are presumed by the court to be "dirty."

1.58 In February 2010, Mr. Tsimbalyuk was ordered to engage in a drug and alcohol evaluation. Mr. Tsimbalyuk was referred for this service by Department social worker Sandra Street. Mr. Tsimbalyuk never engaged in this service.

1.59 No other services could have been offered or were available that could have remedied the father's parental deficiencies in the near future.

1 1.60 The father was offered services in an express and understandable manner. He was  
2 offered services in writing, over the phone, and in person.

3 1.61 Mr. Tsimbalyuk does not believe he needs any further services to address his  
4 parental deficiencies, because he does not believe he has any parental deficiencies.

5 1.62 Mr. Tsimbalyuk never requested financial assistance from the court to pay for  
6 domestic violence batterer's treatment or mental health counseling.

7 1.63 Mr. Tsimbalyuk never indicated to his treatment providers that he was financially  
8 unable to pay for treatment.

9 1.64 Mr. Tsimbalyuk testified that he had \$4,000 in the bank, that he was able to expend  
10 \$20,000 to fund his immigration appeal and that he would be able to fund future appeals,  
11 and that he was voluntarily working only thirty hours a week up until January 2010. Mr.  
12 Tsimbalyuk's relatives posted \$5000 bail for him, and he is currently still out on bail. Mr.  
13 Tsimbalyuk paid for a psychological evaluation in connection with his immigration appeal,  
14 but has refused to pay for mental health services in connection with the dependency of his  
15 children. Mr. Tsimbalyuk's testimony that he was financially unable to afford services is  
16 not credible.

17 1.65 Mr. Tsimbalyuk had the financial means to pay for domestic violence treatment and  
18 mental health counseling if he had chosen to participate in services. Mr. Tsimbalyuk did not  
19 participate in domestic violence treatment and mental health counseling after January 2009  
20 because he chose not to participate in the services. He also agreed, but then refused to pay  
21 for, interpreter services in this case.  
22  
23

24 FINDINGS OF FACT, CONCLUSIONS OF  
25 LAW AND ORDER OF TERMINATION OF  
26 PARENT-CHILD RELATIONSHIP  
FOLLOWING FACT-FINDING TRIAL AS TO  
FATHER, PETER LEONIDOVICH  
TSIMBALYUK

- 1 1.66 There is little likelihood that conditions will be remedied so that the children  
2 could be returned to the father's care in the near future.
- 3 1.67 The father has failed to substantially improve his parental deficiencies within  
4 twelve months of the entry of the disposition order. Pursuant to RCW 13.34.180(1)(e),  
5 the rebuttable presumption that there is little likelihood that conditions will be remedied  
6 so that the children can be returned the father in the near future applies, and the father has  
7 not presented sufficient evidence to rebut the presumption.
- 8 1.68 RCW 13.34.180(1)(e)(ii) applies. The father suffers from a psychological  
9 incapacity or mental deficiency that is so severe and chronic as to render the parent  
10 incapable of providing proper care for the children for extended periods of time, and  
11 there is a documented unwillingness of the father to receive and complete treatment and  
12 there is documentation that there is no treatment that can render the parent capable of  
13 providing proper care for the child in the near future.
- 14 1.69 Without domestic violence treatment, Mr. Tsimbalyuk poses a high risk of re-  
15 offending.
- 16 1.70 The father has no understanding of the effect of domestic violence on its victims or  
17 on children.
- 18 1.71 Mr. Tsimbalyuk's perpetration of domestic violence continues to be a parental  
19 deficiency that has not been corrected and will not be corrected in the near future.
- 20 1.72 Mr. Tsimbalyuk's visitation with the children has become less consistent and lower  
21 in quality over the past year.
- 22  
23

1 1.73 Mr. Tsimbalyuk's behavior in shaving Jaycob's head at the June 2009 visit was  
2 inappropriate and hurtful to his son. Mr. Tsimbalyuk shaved Jaycob's head while Jaycob  
3 cried, screamed, and begged him to stop. Mr. Tsimbalyuk shaved Jaycob's head even  
4 though the visit supervisor tried to intervene and directed him to stop. Mr. Tsimbalyuk told  
5 the visit supervisor he had the permission of the relative caregiver, Lena Budnik, when he  
6 did not have the caregiver's permission. Mr. Tsimbalyuk shaved Jaycob's head to "get the  
7 attention" of his sister, not to bond with his son.

8 1.74 Mr. Tsimbalyuk was ordered by the court in June 2009 not to shave his children's  
9 heads at visits. However, in January 2010, Mr. Tsimbalyuk proceeded to shave all three of  
10 his children's heads at a visit in obvious defiance of the court's order.

11 1.75 Mr. Tsimbalyuk has permitted his cousin to come to a visit with his sons and take  
12 pictures of the children. Mr. Tsimbalyuk was aware of the rules prohibiting other persons  
13 and pictures at visits and deliberately broke the rules.

14 1.76 Mr. Tsimbalyuk has used visits to complain about the CASA and the court process  
15 in front of the children.

16 1.77 Mr. Tsimbalyuk cancelled a substantial number of visits without sufficient notice  
17 knowing that three missed visits cancelled without sufficient notice would result in the  
18 termination of his visitation contract. Mr. Tsimbalyuk's testimony that he was unaware of  
19 the visitation policy is not credible.

20 1.78 Mr. Tsimbalyuk's visits have been suspended since February 2010 because Mr.  
21 Tsimbalyuk has refused to comply with the court's order regarding random urinalysis. Mr.  
22

23

24 FINDINGS OF FACT, CONCLUSIONS OF  
25 LAW AND ORDER OF TERMINATION OF  
26 PARENT-CHILD RELATIONSHIP  
FOLLOWING FACT-FINDING TRIAL AS TO  
FATHER, PETER LEONIDOVICH  
TSIMBALYUK

14

ATTORNEY GENERAL OF WASHINGTON  
800 Fifth Avenue, Suite 2000  
Seattle, WA 98104-3168  
(206) 464-7744

1 Tsimbalyuk has indicated he has no intention of complying with the court's order in the near  
2 future, even to have his visits reinstated.

3 1.79 Mr. Tsimbalyuk has not provided the court with an accurate address for where he  
4 would reside with his children.

5 1.80 Because of his missed UAs, the court finds that Mr. Tsimbalyuk has been using  
6 drugs.

7 1.81 Mr. Tsimbalyuk rented a rental property from his sister and brother-in-law, Lena  
8 and Sergey Budnik, from approximately August 2008 to January 2010.

9 1.82 Mr. Tsimbalyuk paid rent for the property for approximately one year, then  
10 stopped paying rent.

11 1.83 Mr. Tsimbalyuk permitted others to move into the property, charged them rent,  
12 and did not turn the rent over to the Budniks.

13 1.84 Mr. Tsimbalyuk destroyed the property. He broke windows, damaged walls and  
14 doors, left garbage lying about, and used drugs on the premises. Mr. Tsimbalyuk's  
15 testimony that Sergey Budnik damaged the property is not credible.

16 1.85 On January 16 and 17, 2010, Mr. Tsimbalyuk sent harassing text messages to his  
17 sister, Lena Budnik.

18 1.86 On January 19, 2010, Mr. Tsimbalyuk sent a multimedia message containing  
19 gunshots and glass breaking to his sister.

20 1.87 Based upon Mr. Tsimbalyuk's harassment of Lena Budnik, the relative placement  
21 for Jaycob and Oscar, Ms. Budnik obtained a protection order against Mr. Tsimbalyuk.  
22

1 1.88 Mr. Tsimbalyuk has blatantly violated a lawful order requiring him to sign a  
2 release for his Department of Justice records which would provide the court access to  
3 information about his immigration status. The court draws a negative inference based  
4 upon Mr. Tsimbalyuk's failure to comply with the court order.

5 1.89 The near future for Peter Jr. is approximately three months; the near future for  
6 Jaycob and Oscar is approximately one month.

7 1.90 Continuation of the parent-child relationship between the children and their father  
8 clearly diminishes the children's prospects for early integration into a stable and permanent  
9 home.

10 1.91 The children are adoptable children and have prospects for adoption.

11 1.92 All three children have been out of the care of Mr. Tsimbalyuk for an  
12 exceptionally long period of time. It is in the best interest of the children to have stability  
13 in their homes and custodial status. Jaycob has been out of Mr. Tsimbalyuk's care for  
14 fifty months, or over eighty percent of his life.

15 1.93 Oscar has been out of Mr. Tsimbalyuk's care for thirty-eight months, or over  
16 eighty-five percent of his life.

17 1.94 Peter Jr. has been out of Mr. Tsimbalyuk's care for forty months, or  
18 approximately a third of his life. Before this, Peter Jr. spent all but seven months of his  
19 life in the care of his paternal relatives, primarily his paternal grandmother.

20 1.95 Both Jaycob and Oscar look to their paternal aunt and uncle, Lena and Sergey  
21 Budnik, as their primary caregivers.

22  
23  
24 FINDINGS OF FACT, CONCLUSIONS OF  
25 LAW AND ORDER OF TERMINATION OF  
26 PARENT-CHILD RELATIONSHIP  
FOLLOWING FACT-FINDING TRIAL AS TO  
FATHER, PETER LEONIDOVICH  
TSIMBALYUK

1 1.96 When Jaycob was placed in parental care, he suffered developmentally and lost  
2 progress he had made when he was placed out of parental care. Since he has been placed  
3 out of parental care, he has made significant developmental strides.

4 1.97 Peter is extremely bonded to his paternal grandmother, Vasilisa Timoshchuk,  
5 whom he looks to as his primary parent.

6 1.98 All three children are in need of a permanent home, given the instability they have  
7 faced in their biological home and the length of time they have spent in out-of-home care.

8 1.99 The stability and permanency of the children's homes depend on these  
9 proceedings coming to an end. These children have already waited too long for an end to  
10 these proceedings.

11 1.100 The children are not Indian children as that term is defined by the Indian Child  
12 Welfare Act, 25 U.S.C. 1901, et seq.

13 1.101 The status of the children's sibling relationships and the nature and extent of sibling  
14 placement, contact or visits is as follows: Jaycob and Oscar are placed together. They have  
15 visitation with Peter Jr. as arranged by the caregivers.

16 1.102 Mr. Tsimbalyuk is unfit to parent these children.

17 1.103 Termination of the parent-child relationship is in the best interest of these children.

18 1.104 Mr. Tsimbalyuk voluntarily absented himself from the proceedings on the afternoon  
19 of Wednesday, March 17, 2010, pursuant to *State v. Thomson*, 123 Wn.2d 877, 872 P.2d  
20 1097 (1994). Mr. Tsimbalyuk was in the courthouse at approximately 1:20 P.M. He failed  
21 to return to the courtroom after the lunch recess at 1:30 P.M. He contacted his stand-by  
22 counsel, Roger Freeman, at approximately 3:45 P.M. and indicated he had a headache and  
23

24 FINDINGS OF FACT, CONCLUSIONS OF  
25 LAW AND ORDER OF TERMINATION OF  
26 PARENT-CHILD RELATIONSHIP  
FOLLOWING FACT-FINDING TRIAL AS TO  
FATHER, PETER LEONIDOVICH  
TSIMBALYUK

1 that he had left the courthouse to go and lay down. He did not notify court staff or the  
2 parties of his intention to leave for the day. Because Mr. Tsimbalyuk voluntarily absented  
3 himself from the proceedings on the afternoon of March 17, 2010, he also waived his right  
4 to counsel on that afternoon as well. *State v. DeWeese*, 117 Wn.2d 369, 816 P.2d 1 (1991).

5 From the foregoing Findings of Fact, the court enters the following:

6 **II. CONCLUSIONS OF LAW**

- 7 2.1 The court has jurisdiction over the parties and subject matter herein.
- 8 2.2 Termination of the parent-child relationship between the above-named minor  
9 children and the father is in the child's best interest.
- 10 2.3 The foregoing findings of fact and the allegations of RCW 13.34.180 and .190  
11 have been proven by clear, cogent and convincing evidence. Having heretofore entered  
12 Findings of Fact and Conclusions of Law, the court hereby makes the following:

13 **III. ORDER**

- 14 3.1 **IT IS HEREBY ORDERED** that the above-named minor children remain  
15 dependent children pursuant to RCW 13.34.030.
- 16 3.2 **IT IS FURTHER ORDERED** that the parent-child relationship between the  
17 above-named minor children and the children's father, Peter Leonidovich Tsimbalyuk, be  
18 permanently terminated pursuant to RCW 13.34.180 et seq., divesting the father and  
19 children of all legal rights, powers, privileges, immunities, duties and obligations  
20 between each other.
- 21 3.3 **IT IS FURTHER ORDERED** that the Washington State Department of Social  
22 and Health Services is hereby granted: **PERMANENT LEGAL CUSTODY** of the  
23

24 FINDINGS OF FACT, CONCLUSIONS OF  
25 LAW AND ORDER OF TERMINATION OF  
26 PARENT-CHILD RELATIONSHIP  
FOLLOWING FACT-FINDING TRIAL AS TO  
FATHER, PETER LEONIDOVICH  
TSIMBALYUK.

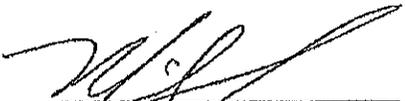
1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

above-named minor children with the right to place such children in a prospective adoptive home; the power to consent to the adoption of said children; and the power to place said children in temporary care and authorize any needed medical care, dental care or evaluations of said children until the adoption is finalized.

3.4 **IT IS FURTHER ORDERED** that once permanent legal custody is granted to the Department of Social and Health Services, the probate or other department of any Superior Court of the State of Washington is granted concurrent jurisdiction for purposes of proceeding with an adoption.

3.5 **IT IS FURTHER ORDERED** that the matter be set for a review hearing as previously scheduled, unless an order of guardianship or adoption is sooner entered.

DATED this 26 day of March, 2010.

  
JUDGE MICHAEL J. FOX

FINDINGS OF FACT, CONCLUSIONS OF  
LAW AND ORDER OF TERMINATION OF  
PARENT-CHILD RELATIONSHIP  
FOLLOWING FACT-FINDING TRIAL AS TO  
FATHER, PETER LEONIDOVICH  
TSEMBALYUK

ATTORNEY GENERAL OF WASHINGTON  
800 Fifth Avenue, Suite 2000  
Seattle, WA 98104-3188  
(206) 464-7744

1 Presented by:

2 ROBERT M. MCKENNA  
3 Attorney General

4 By: /s/ Marci D. Comeau  
5 MARCI D. COMBAU, WSBA #38027  
6 Attorney General of WA  
7 800 5<sup>th</sup> Avenue, Ste. 2000  
8 Seattle, WA 98104  
9 Telephone: (206) 587-5097  
10 Fax: (206) 464-6338  
11 E-mail: MarciC@atg.wa.gov

12 Approved as to form:

13 \_\_\_\_\_  
14 PETER L. TSIMBALYUK  
15 Father

\_\_\_\_\_   
ALISON WARDEN  
Stand-By Counsel

16 \_\_\_\_\_  
17 Lori Reynolds by HCN  
18 LORI REYNOLDS  
19 CASA

Hildi Nagel  
\_\_\_\_\_   
HILDI NAGEL 24160  
Attorney for CASA

20  
21  
22  
23  
24 FINDINGS OF FACT, CONCLUSIONS OF  
25 LAW AND ORDER OF TERMINATION OF  
26 PARENT-CHILD RELATIONSHIP  
FOLLOWING FACT-FINDING TRIAL AS TO  
FATHER, PETER LEONIDOVICH  
TSIMBALYUK

20 ATTORNEY GENERAL OF WASHINGTON  
800 Fifth Avenue, Suite 2000  
Seattle, WA 98104-3188  
(206) 464-7744

NO. 84458-5

SUPREME COURT OF THE STATE OF WASHINGTON

In re the Welfare of P.P.T., J.J.I., O.L.T,  
Minor Children

DECLARATION OF  
SERVICE

STATE OF WASHINGTON,  
Department of Social and Health  
Services,

Respondent,

v.

PETER TSIMBALYUK,

Petitioner.

I, Vanessa Valdez, declare as follows:

I am a Legal Assistant employed by the Washington State Attorney  
General's Office. On April 23, 2010, I sent a copy of: **DSHS Answer to  
Petition for Discretionary Review, and Declaration of Service** via first  
class, US mail, to:

1. **Lila J. Silverstein**, Washington Appellate Project, 1511 Third Avenue, Ste. 701, Seattle, WA 98101
2. **Amanda J. Beane**, Perkins Coie, L.L.P., 1201 3<sup>rd</sup> Avenue, Ste. 4800, Seattle, WA 98101

I declare under penalty of perjury, under the law of the State of  
Washington that the foregoing is true and correct.

DATED this 23rd day of April, 2010 at Seattle, Washington.

  
 \_\_\_\_\_  
 VANESSA VALDEZ  
 Legal Assistant

RECEIVED  
 SUPREME COURT  
 STATE OF WASHINGTON  
 10 APR 23 AM 8:55  
 BY RONALD K. CARPENTER  
 CLERK

ORIGINAL

FILED AS  
ATTACHMENT TO EMAIL

**OFFICE RECEPTIONIST, CLERK**

---

**To:** Valdez, Vanessa (ATG)  
**Subject:** RE: 84458-5 filing

Rec. 4-23-10

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

**From:** Valdez, Vanessa (ATG) [mailto:VanessaV1@ATG.WA.GOV]  
**Sent:** Friday, April 23, 2010 8:23 AM  
**To:** OFFICE RECEPTIONIST, CLERK  
**Subject:** 84458-5 filing

**Case: Supreme Court No. 84458-5**

In re the Welfare of PPT, JJI, OLT, Minor Children,

State of Washington, Department of Social and Health Services v. Peter Tsimbalyuk

**Documents for filing:**

**DSHS Answer to Petition for Discretionary Review, Appendix A, and declaration**

***Filed by:***

Trisha McArdle, Senior Counsel

Washington State Attorney General's Office

WSBA #16371

(206) 464-7045

[TrishaM@atg.wa.gov](mailto:TrishaM@atg.wa.gov)

<<84458-5 DSHS Answer.pdf>> <<84458-5 Appendix A.pdf>> <<84458-5 Dec of Svc.pdf>>

**VANESSA VALDEZ**

Washington State Attorney General's Office

Social and Health Services Division

(206) 464-7045