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NO. 86048-3

SUPREME COURT OF THE STATE OF WASHINGTON

IN RE THE DEPENDENCY OF:

J.M.R.

A Minor Child.

SUPPLEMENTAL BRIEF OF RESPONDENT

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ORIGINAL

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I. INTRODUCTION

The Department of Social and Health Services filed a petition to terminate the parental rights of Mr. Rousseau to J.M.R. following two years of services offered through a dependency proceeding. During trial, Mr. Rousseau negotiated an open adoption agreement and stipulated to termination of his parental rights pursuant to RCW 13.34.180 and .190. After fully considering whether the agreement was entered knowingly and voluntarily, the trial court accepted the stipulation, pursuant to CR 2A and RCW 2.44.

Contrary to Mr. Rousseau's arguments, RCW 13.34.110(3) applies only to dependency and dispositional orders and does not prohibit stipulation to termination of parental rights. Similarly, the requirements of RCW 26.33 for consenting to adoption and terminating the parental rights of non-consenting parents do not apply to or limit stipulation to termination under RCW 13.34.180.

Parents subject to termination under RCW 13.34 are given a minimum of six months to correct issues relating to parental unfitness. As evidenced in this case, the decision to stipulate to termination under RCW 13.34 is never made in haste. Parents have months and often years to correct their problems or make a knowing and voluntary decision to stipulate to termination of their parental rights.

II. ISSUE

This Court accepted review on a single issue: does the trial court have authority to accept a parent's stipulation to the facts and order terminating parental rights, after the Department has presented a majority of its evidence, and the trial court finds the parent knowingly and voluntarily stipulated to the order?

III. STATEMENT OF THE CASE

The facts in this case are undisputed. J.M.R. is a nine-year-old boy. His father, John Rousseau, has an extensive history of drug abuse and domestic violence. He used methamphetamines and cocaine for at least twenty-five years and has several convictions for domestic violence assault and violations of domestic violence no contact orders.¹ He also has a life-threatening illness for which he is frequently hospitalized.² He admits that he cannot take care of the child. CP 173-176; Ex. 11 at 2.³

Due to serious addiction and domestic violence issues, both parents

¹ In an assessment dated April 17, 2008, Mr. Rousseau admitted to smoking 6-8 bowls of cocaine on April 8, 2008. He also admitted to injecting methamphetamine up to 6 times per day over a number of years. Ex. 35 at 4.

² Mr. Rousseau was diagnosed with a cancerous brain tumor, but received treatment and at the time of trial, his cancer was in remission. 2RP at 10. (The Verbatim Report of Proceedings is referred to as 1RP-April 14, 2009; 2RP-November 18, 2009).

³ The trial court found that Mr. Rousseau admitted he was unable to care for J.M.R. in the Order of Dependency entered September 6, 2007. Ex. 11. Mr. Rousseau again admitted his inability to care for J.M.R. in a Guardianship Petition filed on March 23, 2009. CP 173-176.

were unable to safely care for J.M.R.⁴ From November 2004, when he was two and one-half years old, to September 2005, the child resided primarily with his maternal grandmother in California. In September 2005, the grandmother was granted guardianship over J.M.R. and his two half-brothers. CP 277. Immediately after being appointed as legal guardian, the grandmother returned J.M.R. to Mr. Rousseau but kept the two older boys. *Id.*

In March 2006, the Department received two referrals relating to J.M.R.'s well-being. The first reported that three year old J.M.R. had been pushed away by Mr. Rousseau when the child tried to stop Rousseau from hitting the child's mother. CP 278. The second referral reported that Mr. Rousseau was hospitalized twice in one week for confusion, and responding paramedics observed the apartment to be unsanitary with piles of garbage, dirty clothes and old food all within reach of J.M.R.. CP 278; *In re J.M.R.*, 160 Wn. App. 929, 931-932, 249 P.3d 193 (2011).⁵

Then, on April 5, 2007, the Department received a referral from a Snohomish County court commissioner. J.M.R.'s parents were before the commissioner on a hearing for a domestic violence no-contact order. The

⁴ The mother, Angelique Porter, also had a long history of substance abuse and domestic violence, both as a victim and perpetrator. CP 276-279.

⁵ As a result of the first referral, Ms. Porter entered into a voluntary services agreement with the Department that she would call 911 or a shelter if she or J.M.R. were exposed to physical violence in the home. CP 278.

mother testified that Mr. Rousseau choked her on two occasions and threatened to kill her. She also testified that he threw her around the house, broke her tooth, pulled her hair, and knowingly infected her with a potentially fatal disease. CP 109. As a result of the commissioner's referral, J.M.R. was taken into protective custody. CP 277.

At a shelter care hearing the following week, the court articulated the services Mr. Rousseau would have to engage in if he wanted to correct his parental deficiencies and have his son returned.⁶ CP 279; Ex. 3 at 4. These services included random urinalysis testing, anger management classes, a parenting class, and obtaining stable housing. Ex. 3 at 4.

J.M.R. was found dependent in September 2007. CP 280; Ex. 11. The trial court ordered that J.M.R. be placed in foster care, and that Mr. Rousseau participate in services to assist him in correcting his parental deficiencies. CP 281; Ex. 11 at 4. Specifically, the court ordered Mr. Rousseau to participate in domestic violence and drug/alcohol assessments and to follow through with resulting recommendations, to participate in parenting instruction, to establish and maintain a safe residence for the child and to continue with random urinalysis testing. Ex. 11 at 4.

After five and a half months, the juvenile court held a permanency planning hearing. The court found that Mr. Rousseau had failed to comply

⁶ Mr. Rousseau did not appear at the hearing, but was represented by counsel.

with any of the court ordered services.⁷ Ex. 14 at 3; CP 282. The court designated a primary permanent plan of adoption and an alternative plan of “return home” for J.M.R.. Ex. 14 at 5, 11; CP 282. Mr. Rousseau was ordered to participate in services to address his chemical dependency, domestic violence and parenting issues. Ex. 14 at 10.

On April 16, 2008, a year after the child was removed from his parents’ custody, the Department filed a petition to terminate parental rights.⁸ CP 276. The initial date scheduled for the termination fact finding hearing was September 15, 2008. CP 267.

On August 28, 2008, the court held a six month review hearing to consider what progress Mr. Rousseau had made on the services required by the dependency order. The court found that between February and August 2008, Mr. Rousseau completed his domestic violence and drug/alcohol assessments; started domestic violence treatment and intensive outpatient drug treatment, and had been in contact with the assigned social worker since July 2008. The court also found that Mr. Rousseau had stopped his domestic violence and drug treatments.⁹ He

⁷ The court found that Mr. Rousseau had not scheduled his domestic violence and drug alcohol assessments, had not enrolled in parenting classes, had not participated in random U.A.s, had not attended a dependency process workshop, had not established a safe and stable residence and had not met regularly with the social worker. Ex. 14 at 3.

⁸ After the termination petition was filed but prior to trial, the mother consented to J.M.R.’s adoption and voluntarily relinquished her parental rights under RCW 26.33. CP 132-135.

⁹ The court found that this was due to illness, but did not excuse his non-

failed to engage in parenting classes, did not comply with the random urinalysis requirement, and had not obtained a safe residence. Further, he had not visited J.M.R.. Ex. 15 at 2.

On March 20, 2009, Mr. Rousseau countered the termination petition by filing a guardianship petition. In the petition, he admitted five of the seven elements of the termination statute. Mr. Rousseau admitted that all services capable of correcting his parental deficiencies within the foreseeable future had been offered or provided and that there was little likelihood that conditions would be remedied to allow J.M.R. to return to Mr. Rousseau's care in the near future.¹⁰ The only significant difference between the petitions was that Mr. Rousseau requested a guardianship, rather than termination. CP 173-176; CP 276-285. The Department, however, chose to proceed with its termination petition because it believed that adoption was in the child's best interests. CP 283-284.

The termination trial was held on April 13 and 14, 2009. The trial court heard testimony from seven witnesses and admitted 38 Department

compliance and ordered him to complete the services. Ex. 15 at 2, 8.

¹⁰ See former RCW 13.34.230-.232 which governed dependency guardianships. The statute was repealed and replaced by RCW 13.36 in 2010. The other elements Mr. Rousseau admitted are: (a) the child was found to be a dependent child under RCW 13.34.030; (b) a dispositional plan was entered pursuant to RCW 13.34.130; and (c) the child was removed from the custody of the parent for a period of at least six months pursuant to a finding of dependency under RCW 13.34.030. Mr. Rousseau also admitted that a guardianship was in J.M.R.'s best interests. CP 173-176.

exhibits. CP 100-106. Halfway through the second day of trial, the parties requested a recess and to pursue settlement. CP 22. The father's attorney negotiated an open adoption agreement with the foster parents, the Department and the guardian ad litem.¹¹ 1RP 2; CP 56. The open adoption allows Mr. Rousseau to visit J.M.R. up to four times a year. 1RP 2; CP 136-139.

On the afternoon of April 14, 2009, after the adoption agreement was signed, Mr. Rousseau chose not to present his trial evidence. Instead, he opted to end the trial by signing a Stipulation and Order on Termination of Parent-Child Relationship. Mr. Rousseau stipulated to each of the elements of RCW 13.34.180 and affirmed in writing "I agree and desire that the attached order terminating the parent and child relationship between me and the above-named child be entered." CP 137. The order terminated Mr. Rousseau's parental rights pursuant to RCW 13.34.190 and ordered the child into the custody of the Department with the authority to place the child with adoptive parents. CP 138.

The trial court conducted a lengthy colloquy with Mr. Rousseau before explicitly finding that he entered into the stipulation voluntarily and without fraud or duress. 1RP 3-10; CP 138. It then accepted Mr.

¹¹ An open adoption agreement must be signed before parental rights are terminated. RCW 26.33.295. The Department and guardian ad litem are not parties to an open adoption agreement but by statute, must approve its terms in writing. RCW 26.33.295(2); *In re T.C.C.B.*, 138 Wn. App. 791, 800, 158 P.3d 1251 (2007).

Rousseau's stipulation to the factual and legal basis for termination and entered an order terminating his parental rights. 1RP 9; CP 136-139. Mr. Rousseau filed a notice of appeal of the stipulated order. Because he failed to perfect the appeal, it was dismissed. CP 91. On October 8, 2009, Mr. Rousseau filed a CR 60(b) motion to withdraw the stipulation and vacate the agreed order terminating parental rights. 2RP 4-9; CP 66-79. He did not move to invalidate the open adoption agreement.

After a hearing, the trial court again found Mr. Rousseau's stipulation to termination of his parental rights was knowing, intelligent, and voluntary, and denied his motion. 2RP 1-16; CP 19-20. Mr. Rousseau appealed the denial of his CR 60 motion, and, for the first time, argued that the trial court lacked the authority to accept his stipulation. App. Br. at 7-20. The Court of Appeals upheld the trial court, holding that when due process rights are protected, courts have authority to accept a parent's stipulation and enter judgment by consent. *In re J.M.R.*, 160 Wn. App. 929, 941-42, 249 P.3d 193 (2011). This Court granted review solely on the issue of whether a trial court has authority to enter a stipulated order terminating parental rights.

IV. ARGUMENT

Parental rights may be involuntarily terminated under two separate chapters of the Washington code. Termination arising in the context of

dependency and termination proceedings is addressed by RCW 13.34. When a termination arises in the context of RCW 13.34, it is always preceded by a dependency proceeding in the superior court. If the court enters a dependency order, the parent is provided an opportunity to correct parental deficiencies through services ordered in a dispositional plan. A termination action may commence only if the terms of the dispositional order and any subsequent review hearing orders are not satisfied.¹²

RCW 26.33 addresses termination in the context of adoption. Under RCW 26.33, a parent who voluntarily relinquishes custody of a child and consents to adoption also consents to termination of parental rights. The Department or a prospective adoptive parent may then file a termination action against the other parent who has refused consent or cannot be located.¹³ In sharp contrast to termination under RCW 13.34, a judicial proceeding to correct parental deficiencies does not occur prior to the filing of the termination action.¹⁴ In fact, offering remedial services is not required to terminate parental rights in an adoption proceeding.¹⁵

¹² See RCW 13.34.130; RCW 13.34.136; RCW 13.34.180. Any party to a dependency proceeding can file a petition to terminate parental rights. RCW 13.34.180(1).

¹³ See RCW 26.33.100-RCW 26.33.130.

¹⁴ See *In re H.J.P.*, 114 Wn.2d 522, 528-530, 789 P.2d 96 (1990).

¹⁵ See *In re Infant Child Skinner*, 97 Wn. App. 108, 116, 982 P.2d 670 (1999) (remedial services not required in adoption proceedings; termination may occur when nonconsenting parent is unfit and withholding consent contrary to the child's best interest).

As the Court of Appeals has recognized, “[c]ourts have the authority to accept the stipulation of a party and enter a judgment by consent.” *In re J.M.R.*, 160 Wn. App. at 941 (quoting *State v. Parra*, 122 Wn.2d 590, 601, 859 P.2d 1231 (1993)). Statutory authority is not required for a trial court to resolve a civil trial mid-proceeding when the respondent desires to concede the facts and statutory elements. Termination of parental rights cases under RCW 13.34 are civil proceedings and in the absence of a statutory prohibition, stipulations are authorized by CR 2A and RCW 2.44, and favored by courts. The Legislature has imposed a waiting period only for voluntary terminations in the context of adoption, under RCW 26.33.

A. As With Any Civil Case, Stipulations Are Available To Parties And Courts In Termination Of Parental Rights Cases

Trial courts’ authority to enter orders based on stipulation is well established. “It is well recognized that a judgment may be entered by consent or stipulation of the parties.” *Smyth Worldwide Movers, Inc. v. Whitney*, 6 Wn. App. 176, 179, 491 P.2d 1356 (1971), citing *Washington Asphalt Co. v. Harold Kaeser Co.*, 51 Wn.2d 89, 316 P.2d 126 (1957).¹⁶ When consenting parties agree that there is no legitimate dispute left for a court to decide, stipulations allow for timely resolution of matters without

¹⁶ See also *In re the Welfare of M.G.*, 148 Wn. App. 781, 794, 201 P.3d 354 (2009).

using limited court resources and litigation expenses unnecessarily.

Stipulation in civil cases - including termination cases - is governed and authorized by CR 2A and RCW 2.44. CR 2A provides:

No agreement of the parties or attorneys in respect to the proceedings in a cause, the purport of which is disputed, will be regarded by the court unless the same shall have been made and assented to in open court on the record, or entered in the minutes, or unless the evidence thereof shall be in writing and subscribed by the attorneys denying the same.

Once made, a stipulation is binding on the parties. *Baird v. Baird*, 6 Wn. App. 587, 589, 494 P.2d 1387 (1972), citing *Cook v. Vennigerholtz*, 44 Wn.2d 612, 269 P.2d 824 (1954).

Nothing in RCW 13.34 or the Juvenile Court Rules prohibits or is inconsistent with the entry of stipulations authorized by CR 2A and RCW 2.44 in termination of parental rights proceedings under RCW 13.34. A trial court does not need additional statutory authority to accept a stipulation by a parent to terminate parental rights under RCW 13.34.

Stipulations are allowed by the Juvenile Court Rules and Superior Court Civil Rules. The Juvenile Court Rules govern procedures for matters that fall within the jurisdiction of juvenile court as defined by RCW 13.04.030. JuCR 1.1. This jurisdiction includes termination proceedings under RCW 13.34.180. *See* RCW 13.04.030(1)(c); JuCR 1.4(a) ("The Superior Court Civil Rules shall apply in proceedings other

than those involving a juvenile offense when not inconsistent with these rules and applicable statutes.”);¹⁷ CR 1 (“These rules govern the procedure in the superior court in all suits of a civil nature whether cognizable as cases at law or in equity with the exceptions stated in rule 81.”).¹⁸

B. By Its Plain Language, RCW 13.34.110(3) Does Not Prohibit Stipulation To Termination Of Parental Rights And Applies Only To Dependency And Dispositional Orders

Ignoring the both plain language of the statute and the procedural authority of a trial court to resolve terminations short of full trial under CR 2A and RCW 2.44, Mr. Rousseau argues that RCW 13.34.110(3) impliedly prohibits the use of stipulations in termination proceedings. However, by its plain language, RCW 13.34.110(3) applies only to entry of agreed dependency and dispositional orders. Mr. Rousseau cites no provision in the termination statutes, RCW 13.34.180 and RCW 13.34.190, prohibiting an agreement to termination orders; nor does he point to any contrary legislative intent. Instead, he cites to recent amendments to RCW 13.34.110, specifying the requirements for courts in accepting agreed dependency orders. He mistakenly assumes that the absence of similar amendment to the termination statute must mean that

¹⁷ In the context of court rules, “inconsistent” means “court rules so antithetical that it is impossible as a matter of law that they can both be effective.” *State v. Chavez*, 111 Wn.2d 548, 555, 761 P.2d 607 (1988), (internal citations omitted); *In re Dependency of L.S.*, 62 Wn. App. 1, 813 P.2d 133 (1991).

¹⁸ Termination of parental rights proceedings are not “special proceedings” that fall within the exceptions set forth in CR 81.

the legislature was implicitly barring stipulations in termination proceedings. Mot. for Discr. Rev. at 7.

The 2001 amendment to RCW 13.34.110 did not result in a significant change in the legal standards for stipulated or agreed dependency orders. The amendment only recognized that a parent may waive his right to a dependency fact-finding trial by stipulating or agreeing to an order of dependency. Laws of 2001, ch. 332, § 7, p. 1694-95. The amendment added due process protections to the entry of stipulated orders; made the orders subject to court approval; required the parent or his attorney to appear before the court; and required the court to determine that the parent understands the terms of the order and its consequences, and that the stipulation was entered knowingly and willingly, without duress or fraud. *Id*; see also RCW 13.34.110(3). The amendment did not establish *new* authority for the juvenile court. Instead, it articulated the findings the court must make to satisfy due process.

Implicit in Mr. Rousseau's argument is a contention that, prior to the 2001 amendment to RCW 13.34.110, a juvenile court had no authority to accept an agreed order of dependency. This is not the case. As the courts have recognized, "[u]nder JuCR 3.7 and RCW 13.34.110, the trial court is only required to hold a hearing when facts are in dispute." *In re L.S.*, 62 Wn. App. 1, 8, 813 P.2d 133 (1991). As many cases reflect, agreed orders of dependency were entered prior to 2001.¹⁹ Prior to the

¹⁹ See, e.g. *In re Dependency of J.S.*, 111 Wn. App. 796, 46 P.3d 273 (2002) (child placed with relative in 2000 following agreed order of dependency); *In re J.W.*,

2001 amendments, however, RCW 13.34.110 provided that the parties did not need to appear in court if they were all in agreement. Because former RCW 13.34.110 conflicted with CR 2A, JuCR 1.4(a) dictated that the civil rules would not apply to that section. The result was that in practice, parents often stipulated to dependency without even coming to court.²⁰

Like former RCW 13.34.110, the termination statute does not limit the court's authority to accept a stipulation and agreed order. It does not indicate that parents can agree without coming to court. Thus, pursuant to JuCR 1.4(a), the stipulation procedures of CR 2A and RCW 2.44 were applicable to terminations under RCW 13.34.180 prior to the 2001 amendments to the dependency statute and remain so. Nothing in RCW 13.34.110(3) or 13.34.180 and .190 prevents parties from agreeing to settle a termination fact-finding mid-trial – rather than continuing with a trial when all parties agree that the petitioner has proved its case.

Mr. Rousseau's argument implicitly presumes a trial court has no authority to accept a stipulation or agreed order in *any* phase of a dependency proceeding absent specific legislative authorization. The rigid interpretation of the statute advocated by Mr. Rousseau would mean that a juvenile court has no authority to accept a stipulation or agreed order of

111 Wn. App. 180, 43 P.3d 1273 (2002) (1999 agreed order of dependency); *In re Welfare of H.S.*, 94 Wn. App. 511, 973 P.2d 474 (1999) (termination proceeding where children were found dependent by agreed order); *In re Dependency of A.C.*, 74 Wn. App. 271, 873 P.2d 535 (1994) (challenge to contested disposition order following entry of agreed order of dependency).

²⁰ Now, if a parent chooses to stipulate, but not attend court, the court makes a record that the parent had actual notice of the right to appear and chose not to or the parent may waive presence by filing a form determined by the Court pursuant to GR 9. RCW 13.34.110(3)(c)(iv).

the parties in any phase of a dependency proceeding absent specific statutory authorization.²¹ Dependency proceedings are remedial, non-adversarial proceedings designed to help parents alleviate parental deficiencies and reunify families. *In re Dependency of Schermer*, 161 Wn.2d 927, 943, 169 P.3d 452 (2007). Under Mr. Rousseau's interpretation of RCW 13.34.110(3), this purpose would be entirely frustrated as trial courts would be prohibited from accepting agreement to any hearing under RCW 13.34, except for initial dependency and dispositional orders. This is an absurd consequence that the court is bound to avoid. *E.g., State v. Hall*, 168 Wn.2d 726, 737, 230 P.3d 1048 (2010).

The trial court proceeded properly in accepting Mr. Rousseau's stipulation and agreed order pursuant to CR 2A and RCW 2.44. The stipulation was entered in open court, on the record, and signed by both Mr. Rousseau and his attorney. CP 136-139; 1 RP 13. The court fulfilled its function to ascertain that the parties and counsel understood the stipulation. *Baird*, 6 Wn. App at 589, citing *Jones v. Jones*, 23 Wn.2d 657, 161 P.2d 890 (1945). The Court of Appeals correctly determined that this process protected Mr. Rousseau's due process rights. *In re J.M.R.*, 160 Wn. App. at 942.²²

²¹ For example, there could be no agreement for out-of-home placement at a shelter care hearing held pursuant to RCW 13.34.065, no agreement as to the form of orders in dependency review or permanency planning hearings under RCW 13.34.138 and RCW 13.34.145, and no agreed orders entered pursuant to the former guardianship dependency statute, RCW 13.34.232 because none of these statutes specifically allow for stipulations or the entry of agreed orders.

²² The Department agrees with the Court of Appeals analysis with regard to due process protections that should be included when a trial court accepts a stipulated or agreed order of termination. *In re J.M.R.*, 160 Wn. App. at 942.

C. The Statutory Requirements For Consenting To Adoption Do Not Apply To A Stipulation To Termination

Mr. Rousseau claims his stipulation was “in reality a voluntary relinquishment without the required 48-hour procedural safeguard allowing for revocation under chapter 26.33.” Mot. for Disc. Rev. at 5. This is incorrect.

A voluntary relinquishment of parental rights is a formal, court-supervised, legal proceeding in which a consenting parent gives a child up for adoption.²³ RCW 26.33.080, 090; *In re M.S.*, 156 Wn. App. 907, 914, 236 P.3d 214 (2010). The statute requires that a written consent to adoption – meeting the requirements of RCW 26.33.160 – be filed with the petition for relinquishment. RCW 26.33.080. The contents of the consent are set forth in RCW 26.33.160. This statute plainly states that a consent to adoption (not a relinquishment or voluntary termination) may not be presented to the court for approval until 48 hours after it is signed or 48 hours after the child is born, whichever is later, and that the consent is revocable until it is approved by the court. Here, Mr. Rousseau did not file a petition for relinquishment under RCW 26.33.080 and 090; nor did he sign a consent to adoption under RCW 26.33.160. Instead, he

²³ RCW 26.33.020(11) defines relinquishment as “the voluntary surrender of custody of a child to the department, an agency, or prospective adoptive parents.”

stipulated to the facts and the entry of an order in a proceeding to terminate his parental rights pursuant to RCW 13.34.180 and .190 and then argued on appeal that he should have been given 48 hours to consider and revoke his stipulation. The legislature could have – but unambiguously did not – include a waiting period in RCW 13.34.180 or .190, for parents who concede to termination of their parental rights. Neither did the legislature direct that conceding parents must file a new petition for relinquishment under RCW 26.33.080 and .090, rather than immediately stipulate to termination pursuant to procedure established by court rules.²⁴ The Court should reject Mr. Rousseau's request that the Court rewrite the law to include such a provision.

Where the legislature uses certain statutory language in one statute and different language in another, a difference in legislative intent is evidenced. *In re Forfeiture of One 1970 Chevrolet Chevelle*, 166 Wn.2d 834, 842, 215 P.3d 166 (2009); *State v. Roggenkamp*, 153 Wn.2d 614, 625, 106 P.3d 196 (2005). Moreover, the differing legislative intents and purposes between actions under RCW 26.33 and under RCW 13.34 are evidenced by the differing choices that parents are faced with under each statute. When it drafted the adoption statute, the legislature had both

²⁴ The legislature also left intact a non-consenting parent's right to change his mind in the middle of a termination trial brought under RCW 26.33.120, and stipulate to termination – with no waiting period. *Compare* RCW 26.33.120 and RCW 13.34.180 with CR 2A and RCW 2.44.

parents of newborn babies and fit parents in mind. The 48 hour waiting period, however, was primarily focused on parents of newborns. Prior to 1984, a hearing on a petition for relinquishment could be heard at any time following a child's birth. In 1984, the legislature enacted SHB 626 and created a comprehensive, reorganized adoption code. Final Bill Report on Substitute H.B. 626, 49th Leg., Reg. Sess. (Wash. 1984). It added the 48 hour waiting period following a child's birth before a hearing could occur. Although the legislature had the high emotions surrounding the birth of a child in mind when it enacted the waiting period, fit parents who voluntarily consent to adoption under RCW 26.33 have the benefit of the 48 hour waiting period as well.

Termination proceedings such as the one here are governed by RCW 13.34.180 and .190, and have entirely different policy concerns than those that arise in adoptions under RCW 26.33. In sharp contrast to the fit or new parent the legislature was considering in enacting RCW 26.33, a parent subject to termination of parental rights under RCW 13.34 has been determined in an adjudicated dependency to have significant parenting deficiencies, and has been given a minimum of six months (not just 48 hours) from the finding of dependency before a termination order can be entered. *See* RCW 13.34.180(1)(c).

Further, pursuant to RCW 13.34.136, court-ordered services must be provided to the parent, as well as all necessary services, reasonably available, capable of correcting the parental deficiencies within the foreseeable future. RCW 13.34.180(1)(d). The minimum six-month dependency and the requirement for services are elements of the termination statute that must be proven by clear, cogent and convincing evidence. *Id.*²⁵ This period of time to allow parents to remedy parental deficiencies comports with one of the primary purposes of RCW 13.34 — “the family unit should remain intact unless a child’s right to conditions of basic nurture, health or safety is jeopardized. RCW 13.34.020.

It is inappropriate and unnecessary to, as Mr. Rousseau suggests, graft a requirement of a 48-hour waiting period onto terminations entered by stipulation pursuant to RCW 13.34.180, RCW 13.34.190, and CR 2A. A lengthy waiting period—the period of services offered pursuant to the dependency—is already built in for the protection of parents of children found to be dependent pursuant to RCW 13.34.030.

Unlike the typically fit parent who relinquishes under RCW 26.33, Mr. Rousseau had two years to consider his options. He had multiple

²⁵ The other elements include proof that there is little likelihood that conditions will be remedied so that the child can be returned to the parent in the near future. . . that continuation of the parent and child relationship clearly diminishes the child’s prospects for early integration into a permanent and stable home and that termination be in the child’s best interests. RCW 13.34.180(1)(e),(f); 13.34.190. The latter must be proved by a preponderance of the evidence. *Id.*

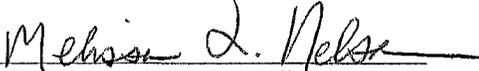
opportunities to take advantage of the services offered him during the dependency process, and have the child returned to his care. He also had over a year to contemplate his response to the termination of parental rights petition. Alternatively, he could have chosen to file a relinquishment petition and consent to adoption prior to commencement of the termination trial. He made a knowing and voluntary decision to stipulate to termination of his parental rights following two years of opportunity to correct his parental deficiencies.

Mr. Rousseau's stipulation was not a relinquishment in fact or de facto. Logic and statutory construction reject viewing it as such. After hearing seven witnesses testify against his parenting capacity, he chose to stipulate to termination. The trial court had authority to accept and enter his stipulation to termination under JuCR 1.4, CR 2A and RCW 2.44.

V. CONCLUSION

The Court of Appeals and trial court order accepting the stipulated order terminating parental rights should be affirmed.

RESPECTFULLY SUBMITTED this 8th day of December, 2011.


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PROOF OF SERVICE

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

DATED this 8th day of December, 2011, at Bellingham, Washington.



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