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No. 91757-4

SUPREME COURT
OF THE STATE OF WASHINGTON

In Re the Welfare of

K.M.M.,

Minor Child,

J.M. (father)

Petitioner/Appellant.

Kitsap County Superior Court
Cause No. 13-7-00084-9
The Honorable Judge Jeanette Dalton

Petitioner's Supplemental Brief

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ORIGINAL

TABLE OF CONTENTS

TABLE OF CONTENTS i

TABLE OF AUTHORITIES ii

SUMMARY OF ARGUMENT..... 1

STATEMENT OF FACTS..... 2

ARGUMENT..... 9

I. The trial court could not and did not find that the father is currently unfit, and instead found facts establishing that he is a fit parent..... 9

II. The trial court found that the department failed to provide necessary reunification services..... 12

CONCLUSION 19

APPENDIX
Court’s Oral Ruling (December 11, 2013)
Findings of Fact and Conclusion of Law (January 14, 2014)

TABLE OF AUTHORITIES

FEDERAL CASES

Santosky v. Kramer, 455 U.S. 745, 102 S.Ct. 1388, 71 L.Ed.2d 599 (1982)
..... 9

WASHINGTON STATE CASES

In re S.J., 162 Wn. App. 873, 256 P.3d 470 (2011), *reconsideration denied*
(Sept. 21, 2011)..... 12, 15, 16, 17

In re Welfare of A.B., 168 Wn.2d 908, 232 P.3d 1104 (2010)... 1, 9, 10, 11,
12

In re Welfare of C.S., 168 Wn.2d 51, 225 P.3d 953 (2010)..... 17, 18

WASHINGTON STATUTES

RCW 13.34.180 12, 13, 16, 17, 18

SUMMARY OF ARGUMENT

The court terminated J.M.'s parental rights with respect to his daughter, even while finding that he had corrected all of his parental deficiencies and that he was not to blame for the problems in the parent-child relationship. The court also found that the father did not pose any risk to the child, and was fit to parent his younger daughter.

The words "fit" and "unfit" do not appear anywhere in the trial court's findings. The findings do not describe any quality of the father that renders him unsuitable to care for his daughter. Even so, the Court of Appeals upheld the trial court's conclusion, characterizing the finding of current unfitness as "explicit."

The Court of Appeals' Published Opinion divorces the parental fitness inquiry from the attributes of a parent for the first time. According to that decision, a parent may become "unfit" through no fault of his or her own. Such "unfitness" may arise from problems created by a third party (such as the foster parents who abused K.M.M.) or by the department itself. No published opinion in Washington has ever taken this approach.

Furthermore, the decision directly conflicts with this court's reasoning in *In re Welfare of A.B.*, 168 Wn.2d 908, 918, 232 P.3d 1104 (2010).

After trial, the court found that the state failed to provide the father with the family therapy necessary to repair his relationship with his daughter during a “critical juncture” in the case. The court determined that the abuse K.M.M. suffered in foster care, as well as her work with the foster parents in therapy to form an attached bond, both contributed to the deterioration of the father-daughter bond. The state never offered the father the same services to help him re-form his attached bond with the child. The Court of Appeals should not have affirmed the trial court’s determination that the state had offered the father all of the services he needed to parent his daughter.

This termination order should be reversed.

STATEMENT OF FACTS

Following a termination trial, the trial court entered findings affirming that the father had no parental deficiencies, that the problems in the relationship between him and his daughter were not his fault, and that the department could have prevented the rift between them by offering family therapy at the appropriate time.¹ CP 107-109. Specifically, the court found that:

¹ The court also found that the father was a fit parent to his younger daughter: “No evidence has been presented that the father is anything less than a proper and appropriate parent for [the younger child].” RP 721.

X. The father's parental deficiencies have been corrected. The father never posed an abuse risk to [K.M.M.] ... The father was willing to enter into, to attend, and to make progress in, and complete all of the services that were offered to him by the state. The absence of a parent/child relationship today between the father and [K.M.M.] is not due to a parental deficiency but due to the absence of a relationship, which cannot now be corrected without great harm being caused to [K.M.M.].
CP 107.

XIV. The lack of the attachment bond is not due to any of [the father]'s parental deficits. [The father]'s parental deficits have been corrected. The father here has successfully participated in court ordered rehabilitative services and has remedied these individual parental deficits. He has fully complied with substance abuse, domestic violence, and hands on parenting services.
CP 109.

Additionally, the court found that family therapy at a critical point in the case could have prevented K.M.M.'s eventual refusal to continue her relationship with her parents:

XII. It is not due to parental deficiencies that [K.M.M.]'s psyche got to a point where she would no longer tolerate or engage in visits with her biological parents. Through no fault of the father, [K.M.M.] had taken the strong position that she did not want to engage in visitation. In 2011, the relationship between [K.M.M.] and her father was at a critical juncture and the provision of reunification therapy at that time may have prevented her from extinguishing her attachment to her father.
CP 108.

This last finding was also echoed in the court's oral ruling, which the court adopted in its written findings:²

² CP 111 (Finding XXII).

... there was a failure to provide reunification therapy at a critical juncture for [K.M.M.]... because there was that failure, [K.M.M.] was allowed to form a strong attachment with her foster parents... RP 722.

Finally, the court found that providing attachment therapy to the foster parents but not to the father exacerbated the problems in the case:

... this was a critical juncture in time for the relationship between [K.M.M.] and the father, [J.M.], and the tenuousness of her attachment to her father during that time period was more easily extinguished because she was working hard on facilitating attachments with adults, who happen to be her foster parents. RP 715-716.

Dependency proceedings had started when K.M.M. was five years old. At that time, Child Protective Services removed her and her younger sister from their parents' care due to the mistaken belief that the parents had harmed the younger girl.³ RP 36; CP 107 (Finding X).

Before K.M.M.'s birth, the father suffered serious injuries from an accident during a military training exercise. RP 465-468. He became dependent upon his prescription pain medication. RP 531.

After his children were removed, the father successfully completed inpatient and outpatient chemical dependency treatment, domestic violence treatment⁴, and anger management treatment. CP 409, 411, 413, 421.

³ K.M.M. also has a half-sister who is unrelated to the father. RP 17.

⁴ The father was not deemed to be a DV perpetrator. RP 538. He was, however, caught up in a single DV incident involving the mother and her new boyfriend after the children were removed. RP 536.

He also completed four different parenting classes and the “safecare” program.⁵ CP 415, 417, 423, 425, 427, 433.

Meanwhile, K.M.M. suffered physical abuse at the hands of her first foster parents. CP 59; RP 39-40. She told her father about the abuse. RP 477. When he tried to report the abuse to the police, K.M.M.’s court-appointed special advocate (CASA) told him that he could be criminally prosecuted for filing a false report. RP 477, 480. A Department of Social and Health Services (department) social worker later told the father that his suspicions of abuse were correct. RP 480.

The abuse – and the father’s inability to protect K.M.M. from it – contributed to K.M.M.’s difficulty forming healthy attachments. CP 107 (finding XI).

The father actively participated in visits with his children. RP 632-635. He planned tea parties and manicure sessions to keep the girls entertained in the department visitation room. RP 508-509, 635. The children enjoyed the visits with their father. RP 635.

K.M.M. was moved to a second foster home. CP 59. Her new foster parents participated extensively in therapy with her for four years. RP

⁵ At trial, the parties all agreed that the father had participated in and completed successfully all of his services. RP 442, 492-493, 629, 633. Further, witnesses noted that his parenting skills greatly improved, and the he had effected change. RP 234-235, 351, 442, 609, 611, 629, 631, 633, 637.

147-149, 183-188, 206-07. They were given instruction on how to help K.M.M. re-form a healthy attachment. RP 100-102, 147-149, 184.

K.M.M.'s therapist also had separate sessions with the foster parents to discuss how they could meet her needs. RP 99. The therapist taught the foster parents to treat K.M.M. like a much younger child, including rocking her and holding her in their laps, and to more generally consider her developmental age, as opposed to her (older) chronological age. RP 101-102. This service successfully helped the foster parents create a bonded attachment with K.M.M. CP 107 (Finding XI).

The department never offered the father the same type of training or attachment therapy. The father did not know that the foster parents were receiving that service until a few months before the termination trial. RP 510-511, 536. The department visitation supervisor did not permit the father to hold K.M.M. in his lap during visits because she did not consider it age-appropriate. RP 510.

When her foster parents adopted a young boy, K.M.M. attended the ceremony and celebration. RP 167-168, 207. She decided that she wanted to be adopted like him. RP 297. K.M.M.'s CASA also talked to her about being adopted as early as 2011. RP 163-65, 208.

In April of 2012, K.M.M. started refusing to visit with either of her parents. She also refused to visit with her sisters.⁶ RP 30, 394. K.M.M. was eight years old at this time.

The father asked the social worker for family therapy to address the problem. RP 500. The court ordered the father to engage in family therapy with K.M.M. CP 334. Other service providers and the child protection team (CPT) also recommended family therapy. CP 341, 355, 439. The case rotated among eight different social workers, none of whom ever offered the father family therapy with K.M.M. RP 492, 500.

A specialist recommended that the department arrange incidental contact between the K.M.M. and her parents. RP 239-243, 320. After K.M.M. refused to visit her father for over six months, the social worker arranged for the father to be present at the department office when she arrived in a van so they could have “natural” contact. RP 326. The social worker told the father about the plan during a brief phone call. RP 366, 523-524.

When the van pulled up, the father could not see K.M.M. through the windows because she was hiding in the back area. RP 329, 353, 523. He opened the back doors and found her lying face-down on the floor. RP

⁶K.M.M.’s sister’s case progressed toward reunification. The younger sister was eventually placed with her mother. CP 61. By the time of trial, the father had unsupervised overnight visits with his younger daughter. CP 62, 399.

329. He tried to comfort her by putting his hands on her shoulders.⁷ RP 329. The social worker ordered the father to step away from his daughter and ended the visit. RP 329. At the department's request, the court ordered all visits to stop after this single attempt. RP 330.

After the termination trial, the court found that the department had provided the father with all necessary services because it was too late, by the time of trial, to repair the bond between the father and child. CP 108 (Finding XIII).

During the oral ruling the trial judge expressed hope that the child would reach out and re-form her relationship with her father "in a few years, when she is starting high school." RP 725.

The court terminated the father's parental rights as to K.M.M. CP 113-114. The father timely appealed. CP 182. The Court of Appeals upheld the termination order in a published decision. Published Opinion, pp. 1-31.

⁷ The father's attempts to comfort his daughter made her more upset. RP 329.

ARGUMENT

I. THE TRIAL COURT COULD NOT AND DID NOT FIND THAT THE FATHER IS CURRENTLY UNFIT, AND INSTEAD FOUND FACTS ESTABLISHING THAT HE IS A FIT PARENT.

The trial court found that the father had remedied all of his parental deficiencies. CP 107. The court also found that any relationship problems with his daughter were not his fault. CP 107-109. The judge opined that the child's lack of attachment to her father may have resulted from her abuse in foster care. CP 107 (finding XI).⁸

These findings reflect an implicit conclusion that the father is currently fit.⁹ Because the court did not find the father unfit – and because the state did not prove unfitness by clear, cogent, and convincing evidence -- the termination order violated the father's right to due process.

Due process prohibits termination unless a parent is currently unfit.¹⁰ *A.B.*, 168 Wn.2d at 918 (*citing Santosky v. Kramer*, 455 U.S. 745, 760, 102 S.Ct. 1388, 71 L.Ed.2d 599 (1982)); U.S. Const. Amend. XIV.

⁸ The court found that “[The child] also had attachment problems following removal from her parents and after suffering inappropriate corporal punishment with resulting emotional trauma during the five months of her initial foster home.” CP 107 (finding XI).

⁹ The court's findings do not include the words “fit” or “unfit.” CP 105-112.

¹⁰ If a trial court fails to explicitly find parental unfitness, an appellate court may infer such a finding “if – but only if – all the facts and circumstances in the record... clearly demonstrate that the omitted finding was actually intended, and thus made, by the court.” *A.B.*, 168 Wn.2d at 921. Here, the court's ambivalence, including the judge's expression of hope that the child would seek to repair her relationship with her father later in her adolescence, forecloses an inferred finding of unfitness. *Id.*

The state must prove parental unfitness by evidence “equal to or greater than clear, cogent, and convincing evidence.” *Id.*

Here, the trial court implicitly found the father fit, and did not make a finding of current unfitness. CP 105-112. The father’s inability to parent this child was not due to any shortcoming on his part. The court explicitly found that

[t]he father’s parental deficiencies have been corrected... [T]he absence of a parent/child relationship today between the father and [K.M.M.] is not due to a parental deficiency... It is not due to parental deficiencies that [K.M.M.]’s psyche got to the point where she would no longer tolerate to engage in visits with her biological parents... The lack of the attachment bond is not due to any of [the father]’s parental deficits. [The father]’s parental deficits have been corrected.
CP 108-109.

Because the trial court’s finding of “inability to parent” K.M.M. is not based on any quality related to the father, it is not a finding of unfitness. *See A.B.*, 168 Wn.2d at 924-25. Due process prohibits termination under these circumstances.

In *A.B.*, the Supreme Court reversed a termination order despite “profound and intractable” problems in the bond between the father and child. *Id.* at 922. The problems were not the father’s fault, and the Supreme Court was unable to infer a finding of current parental unfitness. *Id.* at 924-25.

A.B. squarely addresses the issue presented in this case. The *A.B.* court held that a lack of attachment does not equate with unfitness absent some indication that the problem stems from the parental deficiencies. *A.B.*, 168 Wn.2d at 922.

Under *A.B.*, termination is foreclosed in this case. The issues in the parent-child relationship are not the father's fault. *Id.*

The court found that the rupture in the father's relationship with his daughter was not due to any parental deficiency. CP 107-109. The court pointed out that the father had successfully completed all services offered to him. CP 107 (Finding X). Indeed, the court expressed hope that the child would reach out and re-form her relationship with her father later in her adolescence. RP 725.

The unfitness inquiry must look to the qualities of a parent, not to outside circumstances that already inform other termination elements. Given the trial court's finding that the father has no parenting deficiencies, the termination order cannot stand. *A.B.*, 168 Wn.2d at 924-25. The Court of Appeals erred by ruling that a parent can be considered "unfit" based wholly on external circumstances unrelated to parental deficiencies.

The Court of Appeals' published opinion divorcing the unfitness requirement from the parent's qualities directly conflicts with this court's

holding in *A.B. A.B.*, 168 Wn.2d at 924-25.¹¹ The Court of Appeals' opinion must be reversed. The termination order must be vacated and the petition dismissed with prejudice.

This does not mean that the child will immediately be returned to the father against her will. The case will return to the dependency phase, and the parties will be able to explore options such as therapeutic visits. If return home proves impossible, alternatives for permanency short of termination remain.¹²

II. THE TRIAL COURT FOUND THAT THE DEPARTMENT FAILED TO PROVIDE NECESSARY REUNIFICATION SERVICES.

Before terminating parental rights, the court must find by clear, cogent, and convincing evidence that the department provided all necessary reunification services. RCW 13.34.180(1)(d). The state must also show that it has tailored the offered services to meet a parent's individual needs. *In re S.J.*, 162 Wn. App. 873, 881, 256 P.3d 470 (2011), *reconsideration denied* (Sept. 21, 2011).

¹¹ The Court of Appeals' decision mentions *A.B.* (referred to as "*A.B. I*" in the published decision) but does not discuss the case, even though the parties' briefs and oral arguments debated the case at length.

In fact, the father in *A.B.* was arguably *less* fit than the father in this case. *A.B.*'s father was arrested for an act of violence during the dependency, and he voluntarily moved out of state, leaving his child behind. *A.B.*, 168 Wn.2d at 913-15. The father in this case, on the other hand, actively engaged in visits until the child refused to see him, and successfully completed every service the department offered him. RP 632-635; CP 107 (finding X).

Here, the department failed to offer the father desperately-needed services. These included family therapy and bonding and attachment services (which were offered to the child's foster parents). These services could have healed the rift created by the dependency process. The state failed to comply with its statutory obligation to provide services, and failed to meet its burden at trial. RCW 13.34.180(1)(d).

1. The department never offered the father court-ordered interactive family therapy with his daughter, which was necessary for reunification.

After ten months without any visits, the court ordered family therapy "to address issues with visitation." CP 334. K.M.M.'s child protection team (CPT) also recommended that the parents be integrated into the child's therapy sessions.¹³ CP 341, 355, 439. The father's parenting coach told the social worker that he would benefit from interactive therapy with K.M.M. RP 341.

Even though the experts recommended family therapy and the court ordered it, the department never offered the father that service. RP 500. This failure proved disastrous.

¹² For example, the parties could agree to ongoing visitation as part of a dependency guardianship or third-party custody order.

¹³ The department is required to follow the advice of the CPT staffing unless the court orders otherwise. RP 338, 356.

The trial court explicitly found that the deterioration of the father's relationship with his daughter resulted from the department's failure to provide family therapy "at a critical juncture." RP 722; CP 108 (Finding XII). The court also found that the father was willing to engage and make progress in all services that the department offered. CP 107 (Finding X).

The Court of Appeals *sua sponte* decided that this "critical juncture" finding was unsupported by substantial evidence.¹⁴ Published Opinion, pp. 19-22. Neither the state nor the child's attorney assigned error to this finding. Here, the child changed from happily visiting with her father to refusing to see any member of her family. That point marked a critical juncture at which family therapy could have changed the course of this case.

Indeed, numerous experts – including the Child Protection Team and parenting coach -- recognized the pressing need for family therapy while the case was ongoing. CP 341, 355, 439. These expert recommendations prompted the court to continue to order the service even after K.M.M. began refusing to see her father.¹⁵ See CP 334.

¹⁴ According to the Court of Appeals, the child's statement that she wanted the case to "be over with" was ambiguous and could not support the court's "critical juncture" finding. Published Opinion., p. 20.

¹⁵ The Court of Appeals found that the court's order for "family therapy" was actually an order for a one-time evaluation with Tom Sherry regarding K.M.M.'s refusal to attend visits. Published Opinion., p. 22.

The Court of Appeals credits the department with “t[aking] action” to address K.M.M.’s refusal to see her father. Published Opinion, p. 21. The only meaningful action, however, was a single, ill-prepared “natural contact” more than six months after the issue came to light. RP 329-330, 353, 523. That effort was far from sufficient to meet the state’s burden to provide reunification services, particularly in light of the expert recommendations and court orders for family therapy, both of which the department ignored.

The state fails to offer all necessary services if it does not offer a critical service at a time when it would have permitted reunification. *S.J.*, 162 Wn. App. 873. Services must be provided when they could have an impact on the outcome of a dependency proceeding. Otherwise, the stat-

The record directly contradicts this interpretation. The trial court ordered the Tom Sherry assessment six months before the December order for “family therapy.” CP 324. The December order found that the father had already participated in the assessment with Tom Sherry. CP 334. The clear language of the order, the fact that the court separately ordered the assessment six months earlier, and the court’s separate finding regarding the father’s participation in the assessment, remove any ambiguity. The court ordered ongoing family therapy, in addition to a one-time assessment conducted by Sherry. CP 324, 334. Furthermore, the CPT as well as the parenting coach all emphasized the ongoing need for family therapy to heal the rift. CP 341, 355, 439.

The Court of Appeals’ incorrect and unsupported “interpretation” of the court’s order cannot retroactively excuse the department from offering family therapy, which was indisputably a “necessary” service, even if (according to the Court of Appeals’ logic) it was not a court-ordered service.

ute's promise of help for struggling families would be an empty one, and RCW 13.34.180(d) would serve no purpose.

The timeliness issue identified by the *S.J.* court is particularly important in this case. Had appropriate services been timely provided, reunification would have occurred. The court's finding that a critical juncture passed without necessary services does not excuse the department's failure. Instead, the finding proves that the department failed to meet its burden of offering or providing all necessary services.

The department never offered this family court-ordered family therapy. This service could have remedied the rupture in the relationship between the father and child. RP 722; CP 107 (Finding XI). The order terminating the father's parental rights must be reversed. *S.J.*, 162 Wn. App. at 884.

2. The department failed to offer the father the same bonding and attachment services it provided to the child's foster parents.

The department provided K.M.M.'s foster parents the opportunity to meet one-on-one with the child's therapist and to participate in her therapy sessions. RP 99, 147-149, 183-88, 206-207. The foster parents were taught to hold her in their laps, rock her like a much younger child, and engage her in imaginative play. RP 101, 147-149, 184. These techniques allowed the foster parents to form a bond with the child. RP 68.

The department never offered the father the same attachment and bonding services. *See RP generally*. In fact, the department's visit supervisor prohibited the father from holding K.M.M. in his lap because she did not consider it age-appropriate. RP 510.

The trial court found that the department's decision to provide these services to the foster parents and not to the father contributed to the problems in the father-child relationship. RP 715-716.

It is fundamentally unfair to shoulder a parent with the responsibility to repair damage to the parent-child attachment that occurs while a child is in state care. *S.J.*, 162 Wn. App. at 884. The state does not meet its burden under RCW 13.34.180(1)(d) if the department provides the foster parents with services that successfully permit them to care for a child but does not offer the parents the same opportunity. *In re Welfare of C.S.*, 168 Wn.2d 51, 55-56, 225 P.3d 953 (2010).

C.S. involved a child with special needs. *Id.* The department provided the foster mother training to help her address the child's behavioral problems and other needs. The training permitted her to successfully care for the child. *Id.* Because the department never offered *C.S.*'s mother that same training, this court reversed the termination order based on the department's failure to offer her all necessary services. *Id.* at 56-57.

Here, the department provided K.M.M.'s foster parents the opportunity to participate extensively in her therapy sessions. RP 147-149, 183-188, 206-207. The foster parents also met with the therapist without the child on numerous occasions to learn how best to care for her. RP 99. During that time, the foster parents were instructed in techniques that allowed them to successfully form an attached bond with K.M.M. RP 68, 101, 147-149, 184.

Despite this, the Court of Appeals found that the foster parents were not provided attachment and bonding services.¹⁶ Published Opinion, pp. 22-23. The court ignored the extensive training and one-on-one sessions the foster parents received. The service went far beyond individual therapy for K.M.M.

These services were necessary to permit the foster parents to care for K.M.M. They were just as necessary to permit the father to reunify with her. But the father was never given that opportunity.

The department did not offer the father all necessary services. RCW 13.34.180(1)(d). The state did not meet its burden at trial. The order terminating his parental rights must be reversed. *C.S.*, 168 Wn.2d at 57.

¹⁶ According to the court, the only service provided was counseling for K.M.M. Published Opinion., pp. 43-44.

CONCLUSION

The termination order must be reversed. The case must be remanded to the trial court to allow the parties to repair the problems in the relationship between the father and his child.

Respectfully submitted on February 19, 2016.

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CERTIFICATE OF SERVICE

I certify that on today's date:

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I filed the Supplemental Brief electronically with the Supreme Court.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF
THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE
AND CORRECT.

Signed at Olympia, Washington on February 19, 2016.



Jodi R. Backlund, WSBA No. 22917
Attorney for the Petitioner

APPENDIX

COURT'S RULING

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THE COURT: Be seated, everybody. All right. There are seven elements, six of which must be proved by the State by clear, cogent, and convincing evidence, in order to terminate a parent's relationship with his child. The seventh element is introduced by way of case law, and that element is required to be proved by a preponderance of the evidence.

Firstly, I accept, as fact, the agreed factual stipulations that were introduced in the record, and those will be the findings -- the underlaying findings of fact in this case.

I am going to go through each of the elements, as that's how I structured, in my mind, and had the elements and the evidence guide me to a result in this case.

So basically my process was to individually look at each element, look at the evidence that was introduced, which was relevant to that element, and then make a finding as to whether that element had been proved by clear, cogent, or convincing evidence.

Preliminarily, I would like to say, for the record, that this case presents what, to me, is a unique and tragic circumstance for all involved. The case revolves around

1 dependencies, and termination trials normally revolve
2 around whether a parent's deficiencies can be repaired to
3 the extent that the child can be returned home. This case
4 presents a unique circumstance to this court in that the
5 ultimate issue has become, in my opinion, whether the
6 child's assertions and the child's mental and emotional
7 health is what should dictate the outcome of this
8 particular case. So let me get started with the elements.

9 The first element in a termination trial under
10 13.34.180 is that the child has been found to be a
11 dependent child under RCW 13.34.030(5). This element has
12 been uncontested. The evidence that supports this element
13 exists throughout the record but primarily in Exhibits 1
14 and 2.

15 The second element is that the Court has entered a
16 dispositional order per 13.34.130. Again, this element is
17 uncontested. There are a number of dispositional orders
18 that were entered throughout the course of the dependency
19 action, but the findings can be based upon Exhibits 3 and
20 4.

21 Three, the third element, is that the child has been
22 removed from the parent's custody for at least six months
23 pursuant to a finding of dependency. Once again, this
24 element is uncontested. Both Mother and Father provided
25 the factual basis for this element to be satisfied, as well

1 as the testimony from Mr. Richardson, Ms. Pritchard,
2 Ms. Sinnitt, the Geeslins, and Exhibits 1 through 4 and 5.

3 The fourth element is the one where I have focused
4 the most attention. The fourth element states, "That the
5 services ordered under RCW 13.34.136" -- also known as the
6 permanency plan -- "have been expressly and understandably
7 offered or provided and all necessary services reasonably
8 available, capable of correcting the parental deficiencies
9 within the foreseeable future, have been expressly and
10 understandably offered or provided."

11 Now, in this element, the issue that presents itself
12 for this court is today versus history, today versus March
13 and April of 2012, because I believe that the critical time
14 period where services were reasonably available that were
15 capable of correcting the parental deficiencies within a
16 foreseeable future were not provided at a time when those
17 deficiencies or those problems could have been corrected,
18 and that specifically is a form of reunification therapy or
19 counseling between Kylie Miller and her father, Mr. Miller.

20 Initially, I do find, for the record, that
21 Mr. Miller's testimony was very credible. I found his
22 demeanor to reflect to me an earnestness in cooperating
23 with the department to the extent that he was able, and he
24 appeared to me to be guileless.

25 I also reference Exhibit 4, which was a

1 dispositional hearing, which was held on May 4 of 2009.
2 There were a number of services that were listed in that
3 order, and I will go through them one by one.

4 The father was to cooperate with financial
5 information. There is no evidence of non-compliance with
6 this issue, and it later dropped off of any of the
7 dispositional orders.

8 Second, the father was to cooperate with the release
9 of information. This is an issue that the department says
10 the father did not cooperate with. The father agrees that
11 he did not sign releases of information, at least with the
12 VA, early on. His reason was he was struggling with the VA
13 to get himself services through the VA by correcting the
14 dishonorable or the other-than-honorable discharge that he
15 got, which would have precluded his eligibility of services
16 to that of eligible for services or an honorable discharge.

17 So while it is true that the father did not sign
18 releases of information, the fact of the matter is that he
19 was, at that point, ineligible for services from the VA.
20 And even if he had signed releases of information, the VA
21 would have declined services no matter what. It wasn't
22 until he was reclassified as an honorable discharge that VA
23 services could have been provided.

24 Still, according to the testimony from the social
25 workers -- and there were several on this particular case

1 -- and Mr. Miller, there was some confusion over whether
2 Mr. Miller would qualify for services through the VA, and
3 that is also reflected in the dispositional orders that
4 required him to seek counseling through the VA or another
5 treatment provider.

6 No. 3: The parent was to provide written documents
7 to the GAL and the social workers to show that he had
8 attempted, made progress in, and/or completed the other
9 court-ordered services. This issue was also uncontested.
10 The record is replete with the father's willingness to
11 enter into, to attend, make progress in, and complete all
12 of the services that were offered to him by the State, such
13 as the parent-to-parent program, his chemical dependency
14 evaluation and follow-up through Agape, Parenting Place
15 program, random UA's, regular visits with the child, which
16 he did up until the year of 2012, and I am going to talk
17 about that separately. He did sign releases, and once the
18 final releases for the VA were signed, he was in compliance
19 with those conditions.

20 He did follow -- he didn't actually have a primary
21 care doctor that I heard about, but he did follow the
22 department's recommendations with respect to mental health
23 to some degree. He did have some complaints about the
24 first mental health provider, but for reasons, which I will
25 discuss in just a second, even if the father had done the

1 mental health therapy 100 percent and was in attendance
2 with the mental health therapy provider 100 percent, the
3 mental health therapy that was provided to Mr. Miller was
4 not the kind of mental health therapy that, at the time it
5 was finally provided, would have had any effect on Kylie's
6 psyche and whether she was willing to visit with her
7 father.

8 In other words, by that point, I do not find that
9 therapy would have corrected any parental deficits that
10 existed within Mr. Miller to an extent that it would have
11 disallowed a reunification plan to occur.

12 The father also cooperated with the domestic
13 violence assessment and completed the services that were
14 required as a result of that assessment.

15 In Exhibit 6, there was another permanency plan
16 order, which indicated that the child was to remain in
17 foster care. It continued the same services for the
18 father.

19 In Exhibit 8, the department added to the permanency
20 plan order that the department will work with the VA on the
21 father's mental health services. The father -- the
22 department was to provide mental health services for the
23 dad that were recommended by O'Leary, either through the VA
24 or a separate provider. This order was signed on November
25 8 of 2010, but this kind of therapy didn't actually begin

1 for quite some time; I think almost a year later.

2 Again, I think it is fundamental to my decision that
3 there were no -- well, there was some mental health issues
4 that were presented by the father -- by the witnesses who
5 were referring back to Dr. O'Leary's evaluation. I did not
6 see Dr. O'Leary's evaluation. I don't know, specifically,
7 what mental health deficits the father presented with. I
8 would have liked to have seen that. It would have helped
9 my decision.

10 But having said that, the ones that I am aware of
11 are anger issues and post-traumatic stress disorder. The
12 father admitted on the witness stand that he suffered from
13 both anger issues and post-traumatic stress disorder and
14 some depression, and those -- the anger issues, I didn't
15 find a connection to parental deficits because there was
16 nothing that was presented to me that indicated that the
17 dependency was based on any physical harm that was brought
18 to bear on Kylie.

19 And, in fact, when Kylie testified, and she was
20 asked, "Did Josh ever hurt you," she said no, her father
21 had never hurt her. She mis-believed that her father had
22 hurt her younger sister, Khloe, and that is how this whole
23 process got started. Although, I haven't seen the
24 dependency petition, obviously, so I can only make this
25 inference from the testimony that was presented.

1 But it appears to me that the dependency began as a
2 result of the ER visit for Khloe and suspicion by the ER
3 doctor that Khloe had received a twisting injury --
4 twisting/breaking injury to her forearm, which is
5 significant for a grabbing and twisting of a child's arm,
6 physical abuse. It later turned out that that was not
7 correct; that Kylie, in fact, had injured herself, in
8 accordance with the reports made by the parents, but the
9 suspicion was raised at the first visit.

10 What happened in the interim, however, is that the
11 parents were found to have some serious drug and alcohol
12 issues, which created a neglectful home environment such
13 that Kylie became a product of neglect. She did suffer
14 from some of the emotional effects of neglect.

15 What I have heard the most about was the
16 parentification by Kylie of her younger sibling, Khloe, and
17 then later after Kaitlyn was born. There were also
18 attachment issues that Kylie presented with, but it is
19 fundamental to my decision that there was no significant
20 testimony, no real evidence presented, that the father ever
21 posed an abuse risk to Kylie.

22 So his issues with post-traumatic stress disorder
23 and anger, which can be significant for parental deficits,
24 were not ever tied in the evidence back to whether they
25 were deficiencies that presented him from parenting Kylie.

1 So even if he had gotten the therapy in November of
2 2010 for those issues, I do not believe that if he was in
3 therapy during that time period, as Kylie was in therapy
4 during that time period, that anyone would have been able
5 to discover and address, at that point, the forming issue
6 that Kylie was beginning to form attachments to her foster
7 parents and that her need for attachment to the foster
8 parents has now gotten to the point where reunification
9 therapy is impossible. At least that is what the
10 therapists tell me.

11 Now, Exhibit 9 did note -- the Court noted that if
12 parental visits expanded, then hands-on parenting was to be
13 provided to the father. That was done. Again, there was a
14 note that the department was to provide mental health
15 services through the VA or another. That was not done.

16 Exhibit 10 required that the father continue with
17 safe care. That was done. May I see the exhibits, please?
18 And in Exhibit 12, the Court noted that services for the
19 father were completed or no longer necessary. For example,
20 his out-patient treatment with Agape for drug and
21 alcohol/substance abuse issues was completed, and that was
22 noted by the Court. The father was to participate in
23 random UA testing. The Court discontinued that service
24 because the father had completed his treatment and had not
25 relapsed or presented with any concerns about relapse to

1 the Court.

2 The Court did also continue services under the
3 paragraphs C, D and E: "The Father will attend therapy and
4 follow all recommendations, sign releases, and hands-on
5 parenting with safe care and Barbara Norman. Parents could
6 participate in counseling." This is under the services for
7 the children. This particular order was dated on February
8 24 of 2012. The provision in this order, as we look back
9 on it now, has much more significance than I believe that
10 it did at the time that it was signed.

11 But the Court had interlineated under paragraph
12 3.12, "Services for the children are: The child shall be
13 provided all necessary and appropriate services." The
14 Court ordered: "Physical custodian shall cooperate with
15 the agency case plan," et cetera, and this provision, which
16 was handwritten in, "Parents can participate in counseling
17 as appropriate and recommended by the counselor."

18 At that time, according to the testimony, Kylie had
19 been in therapy with Corey Staton, who was hired by the
20 department, paid by the department, to provide therapy for
21 Kylie for her social and emotional/developmental needs and
22 to correct her parentification behaviors.

23 Significantly, Corey Staton testified that during
24 the course of her therapy sessions in the year 2011, Kylie
25 expressed to Ms. Staton that Kylie wanted to be adopted and

1 no longer wanted to see her parents. Even though this
2 sentiment was expressed within the confines of the
3 therapeutic relationship between Kylie and Ms. Staton,
4 visits were ongoing in 2011. Parents were participating in
5 services in 2011. Things appeared, on the outside, at
6 least from DSHS's perspective, to be going in the right
7 direction as far as the father was concerned. There were
8 issues going on with the mother that caused the focus to be
9 largely on her during this period of time.

10 Having said that, though, Ms. Staton took no action
11 as a result of the sentiment that Kylie expressed about
12 wanting to be adopted and no longer wanting to see her
13 parents. In fact, she said on the witness stand that she
14 did not advise DSHS about this sentiment because she saw
15 this as healing for Kylie.

16 In the context of the situation at the time, Kylie
17 was suffering from attachment problems, and, as a result,
18 she had some significant social and emotional/developmental
19 delays and suffered from parentification issues. So
20 Ms. Staton's testimony reveals that her primary focus
21 during the course of therapy was to work on the -- well,
22 she said, and I quote, "She needed to facilitate secure
23 attachments." This was echoed by the guardian ad litem's
24 testimony during trial when she said, quote, "Kylie got the
25 therapy she needed to secure -- to facilitate secure

1 attachments."

2 Unfortunately, at this time, there was no mechanism
3 in place, and no one was scrutinizing the therapeutic notes
4 with an eye towards the -- what could happen as a result of
5 working hard to facilitate Kylie's secure attachments with
6 her adults around her, who happen to be her foster parents,
7 and the effect that it would have on her, which was that
8 she would extinguish the forming attachment that she had
9 with her father to the point where it would become
10 extinguished as of April of 2012.

11 No one has a crystal ball, and we cannot go back in
12 time to determine whether had the department been more
13 vigorous or vigilant about scrutinizing any of the therapy
14 notes whether there would have been a clue even provided
15 that would have indicated that this circumstance -- which I
16 might say, Mr. Richardson testified he'd seen only once in
17 his entire career, and this is it -- were Kylie, herself,
18 makes a decision that she will no longer attach to her
19 parents or identify herself with that family.

20 But I do find, in my scrutinization of the record
21 before me, that this was a critical juncture in time for
22 the relationship between Kylie Miller and her father, Josh
23 Miller, and that the tenuousness of her attachment to her
24 father during that time period was more easily extinguished
25 because she was working hard on facilitating attachments

1 with adults, who happen to be her foster parents.

2 Counseling on the side, according to Ms. Pritchard's
3 testimony, began for the father in earnest as of October of
4 2012. Again, by October of 2012, there was nothing that
5 any therapist could have done in order to facilitate or
6 accomplish reunification between Kylie and her father, and
7 I take this from the testimony of Mr. Sherry whose opinion
8 I defer to in this regard.

9 I do note, for the record, that in terms of the
10 father's parental deficits, the record is replete with his
11 earnest cooperation with the department and his
12 accomplishment of those services, and I cite into the
13 record Exhibits 23, 24, 25, 26, 27, 29, 30, 31, 32, 34 and
14 35. All of those exhibits provide the evidence of the
15 father's successful completion of all of the course kinds
16 of services that the father could engage with.

17 On July 5 of 2012, Kylie -- well, actually in March
18 of 2012, Kylie began to show reluctance to visit with her
19 parents. She began to refuse to go to visits, and she
20 began to show stress as a result of visits with her
21 parents.

22 Consequently, the Court, in July of 2012, ordered
23 Tom Sherry to conduct an evaluation and a recommendation as
24 to whether reunification and therapy was advisable for this
25 child. Tom Sherry testified that there was no reasonable

1 probability that reunification therapy could, or would,
2 remedy that current condition that Kylie presented with.

3 I note that it is not due to parental deficiencies
4 that Kylie's psyche got to a point where she would no
5 longer tolerate or engage with visits with her biological
6 parents. Rather, it is a circumstance, I believe, or a
7 combination, I believe, of a lapse of time, not striking
8 while the iron was hot, in terms of getting reunification
9 therapy started in 2011 when Kylie began -- when she first
10 began to express that she wanted to be adopted and no
11 longer wanted to visit with her family and the focus of all
12 of the therapy, which was to facilitate Kylie to shore up
13 and encourage her to form secure attachments with adults.

14 All of that, in combination, it is my opinion, what
15 created or had a great deal to do with creating the current
16 situation, which is that Kylie has, in fact, formed a
17 secure attachment with her foster parents through no fault
18 of her father's, and that Kylie, herself, has taken the
19 unique position -- or not unique -- but the position that
20 -- the strong position that she will not engage with her
21 parents during visitation and does not want to be a part of
22 that family.

23 Everyone has agreed and testified, from my review of
24 the record, that there really is no reasonable probability
25 that reunification, or any other kind of therapy, can

1 remedy this situation within the foreseeable future, and in
2 fact, the testimony that is presented indicates that trying
3 to do that would be detrimental to Kylie.

4 Ms. Staton testified that the attachment bond that
5 no longer exists with her parents cannot be repaired now.
6 Mr. Sherry testified that it is too late for reunification
7 therapy and that overriding Kylie's decision to be adopted
8 would be detrimental to Kylie. She would, or could,
9 internalize that dismissiveness of her stated desires, act
10 out, and it would likely compromise her ability to begin to
11 go to establish the other social and emotional stages that
12 she needs to go through as a teenager, such as developing
13 an ability for empathy, et cetera.

14 Mr. Sherry also testified that she would, as did
15 Ms. Staton, both agreed, that Kylie would suffer an
16 emotional derailment of her progress if termination was not
17 granted and she did not perceive permanence in her life.

18 With respect to Element No. 6, then, I find that
19 that element has been satisfied by clear, cogent, and
20 convincing evidence; that continuation of the parent-child
21 relationship clearly diminishes the child's prospects for
22 early intergradation into a stable and permanent home, but
23 it isn't because of a parental deficiency that I make that
24 finding.

25 Did you hear that Ms. --

1 MS. CRUIKSHANK: Yes, not based on parental
2 deficiencies.

3 THE COURT: It's not based upon a parental
4 deficiency but, rather, the conflagration of circumstances
5 that I described earlier; the passage of time, the focus on
6 attachment therapy, and forming strong bonds with the
7 adults, and the failure to act at the time when she began
8 to make these assertions during the course of her therapy.

9 The last element, is it in the child's best interest
10 to terminate the parental relationship? This is by a
11 preponderance of the evidence standard, a
12 more-likely-than-not standard. Here, all of the
13 professionals agreed that termination of the relationship
14 with her father was in Kylie's best interest. None of the
15 professionals who rendered this opinion were cross-examined
16 to the point where I would find that their testimony as to
17 this opinion was to be disregarded, not given very much
18 weight, or not credible.

19 I find, for the record, that the most credible
20 witness on this issue was Corey Staton and Mr. Sherry, who
21 are both experienced psychologists and whose opinions were
22 not discredited, at least during cross-examination.

23 Now, I do want to go back through because we do have
24 some remaining issues on No. 4, which is the issue of the
25 services to be rendered. The difficulty that this court

1 has in terms of the legal direction to take in this
2 particular case has to do with the element, themselves, and
3 why the elements were drafted.

4 The -- let me get the exhibits straightened back out
5 and give them to the -- Ms. Cruikshank, in her briefing,
6 cites to the case of In re T.L.G. at 136 Wn.App 181,
7 wherein, the Court rejected the idea that a delay in
8 providing one service could be used to justify the failure
9 to provide other reasonably-available services. In that
10 case, the provision of psychological evals was delayed, and
11 the State took the position that other services could not
12 be provided.

13 In her materials, Ms. Cruikshank was focused on this
14 issue with respect to the father not signing releases or
15 not pursuing services through the VA, and then the
16 department saying, "Well, because we thought the VA could
17 provide services, his delay caused our delay in getting the
18 mental health services to the dad as of October of 2012."

19 For the reasons, however, that I stated earlier,
20 this is -- there has been no testimony provided that had
21 the father been able to engage with therapy earlier, that
22 it would have had any difference on the effect or the
23 outcome of this case, and that's because it wasn't the
24 father's mental health counseling upon which reunification
25 was dependent.

1 The case is replete with the fact that most of the
2 folks in Kylie's world were focused on the mother's
3 behavior and her therapy and her recovery and her
4 treatment. The father was doing what he could, but no one
5 had ever contemplated that the father was going to be the
6 primary parent here, and in fact, the father is still not
7 the primary parent of his daughter, Khloe. Although, I do
8 want to state for the record, and find for the record, that
9 Khloe, who is Kylie's younger sister, has been successfully
10 reunited with her mother and has visitations with her
11 father, and that is going very well. No evidence has been
12 presented that the father is anything less than a proper
13 and appropriate parent for Khloe.

14 And I find that in this case, the -- it's not truly
15 relevant to the outcome of the case whether the father was
16 able to engage with VA mental health therapy during the
17 time period that people were pointing the finger at him to
18 do so because there is no indication that there was a
19 parental deficit that that therapy would have corrected to
20 the point that it was dependent on what -- that
21 reunification was dependent on the engagement in that
22 therapy.

23 In addition, there is a difficulty that I have with
24 the fact that there is no case that I found that has been
25 presented to me, so it presents something of a unique fact

1 pattern for me, that would indicate that, for whatever
2 reason, the failure to engage Kylie in reunification
3 therapy at a time when it would have been successful is a
4 basis for terminating parental rights at this juncture.

5 But having said that, when I look at this situation,
6 and I look at Element No. 4 versus all of the other
7 elements, the ones that -- in weighing the father's -- the
8 now current situation where there was a failure to provide
9 reunification therapy at a critical juncture for Kylie --
10 and that would take a whole -- another trial to find out
11 why that occurred, but I do find that it did occur --
12 because there was that failure, Kylie was allowed to form a
13 strong attachment bond with her foster parents such that
14 given her unique and very strong personality, which no
15 doubt she inherited from her biological father, that
16 relationship between her dad and her cannot now be repaired
17 without great harm being caused to Kylie.

18 And so I find that all of the services that the
19 father could have engaged with, the father did comply with
20 and successfully complete. Today, as of today, there is no
21 service that is reasonably available that is capable of
22 correcting the relationship between Kylie and her father.
23 The relationship is not due to a parental deficiency today.
24 It is due, as I said, to that earlier moment in time, which
25 was missed in terms of the ability for Kylie and her dad to

1 reunify.

2 This element talks about correcting parental
3 deficiencies, and that is where I also have a problem with
4 the case, as it exists before me, because I do find that
5 parental deficiencies have been corrected, and they were in
6 the process of being corrected during the time period where
7 intervention with Kylie would have been successful.

8 But having said that, and through no fault of the
9 father, the opportunity to reunify this family does not
10 exist anymore. The therapists have testified that it is in
11 Kylie's best interest to terminate parental rights.
12 Frankly, I was hopeful that a guardianship, a dependency
13 guardianship, could be a good middle ground here so that
14 Kylie would know that she has a biological father that
15 wants to be her dad, wants to parent her, and wants to be
16 engaged in her life.

17 I am not convinced that Kylie's declaration would
18 exist permanently. She still hasn't reached her teenage
19 years when she emancipates from the family she is living
20 with as a natural course. And who knows that when she is
21 15 or 16, if a dependency guardianship had been established
22 or had been contemplated by the parties, that when she was
23 15 or 16, she would not go and live with her dad.

24 But sadly, no one has presented any evidence that a
25 dependency guardianship is feasible or that it could be

1 engaged in or would be engaged in. I would have liked to
2 have utilized that opportunity. I am just telling the
3 parties that. I am, however, today, forced to make a
4 decision as to termination or continuing the dependency,
5 and I am -- I must find, based upon the evidence that was
6 presented, and the facts that were presented, that it is in
7 Kylie's best interest to terminate the parental rights by
8 the father.

9 I am not happy about making this decision. I can
10 say that in my career, this is one of the decisions that I
11 would prefer not to have been forced to make. And in terms
12 of making this decision, I needed to go back and allow the
13 facts to direct me under each of the elements.

14 I am very concerned that Element No. 4 was never
15 written to address this circumstance because -- and I have
16 made my findings with respect to Mr. Miller and his ability
17 to be a participating and good father. And if that were
18 the criteria, and there was no damage that would be done to
19 Kylie through a process of attempting to reunify, then I
20 would not terminate parental rights. But circumstance has
21 intervened in this case to create an untenable situation,
22 and so that will be my ruling.

23 So I will anticipate that findings of fact and
24 conclusions of law will be written and an order should be
25 presented at the earliest opportunity.

1 Not for this decision, in terms of my findings of
2 fact or conclusions, Ms. Cruikshank, Mr. Miller, I feel bad
3 for you in this circumstance.

4 MR. MILLER: Because they didn't do their damn
5 job.

6 THE COURT: Okay. And it bothers me that in
7 weighing through the evidence and moving through these
8 criteria, that it results in such a dramatic circumstance
9 for you in your life. I can't walk through your future
10 with you, and I can't walk through your future with Kylie,
11 but I am so hopeful that in a few years, when she is
12 starting high school, that she will know you and reach out
13 to you and that you will reach out to her and that she will
14 understand how well loved she is by you and her mother.
15 That is my hope.

16 All right. So we need a time. Will the lawyers
17 work on that with Ms. Kluver?

18 MR. KAY: Yes.

19 MS. CRUIKSHANK: Yes.

20 THE COURT: All right.

21 MS. CRUIKSHANK: If I may have some time?

22 THE COURT: We will be adjourned.

23 [Whereupon, the proceedings
24 adjourned.]
25

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JAN 14 2014

DAVID W. PETERSON
KITSAP COUNTY CLERK

A

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KITSAP
JUVENILE DEPARTMENT

In Re the Welfare of:

NO. 13-7-00084-9

KYLIE MILLER, 08/09/2002

FINDINGS OF FACT AND CONCLUSIONS
OF LAW AS TO JOSHUA MILLER, FATHER

THIS MATTER having come on regularly for hearing for a termination of parental rights before the undersigned Judge of the above-entitled court on October 29 through November 4, November 15, and December 11, 2013; JOSHUA MILLER, father of the above-named child, was served notice hereof by personal service and did appear personally, and through counsel, CATHERINE CRUIKSHANK; the Washington State Department of Social and Health Services Social Worker, LISA SINNETT, was personally present and represented through attorneys, ROBERT FERGUSON, Attorney General, and PETER KAY, Assistant Attorney General; JENNIFER MARTIN appeared as Guardian ad Litem for the minor child; STEPHEN GREER appeared as attorney for the child, and the court having considered the files and records herein, and listened to all the evidence presented by all parties, the arguments of counsel, and the court, NOW, THEREFORE, makes and enters the following:

FINDINGS OF FACT

1.

KYLIE MILLER was born on August 9, 2002.

24
25

II.

A petition setting forth allegations for the termination of parental rights relative to the aforesaid child, who is within or resides within KITSAP County, has been filed.

III.

The parents of the child are DANA COSTELLO, mother, and JOSHUA MILLER, father.

IV.

KYLIE MILLER was originally found dependent in April 2009, pursuant to RCW 13.34.030, and the court subsequently entered a dispositional order.

V.

Since being found to be a dependent child, the Kitsap County Juvenile Court has continued to find KYLIE MILLER to be a dependent child pursuant to RCW 13.34.030.

VI.

KYLIE MILLER was placed in the custody of the Department of Social and Health Services in February 2009, and has remained out of the parents' care since then.

VII.

All court ordered services have been expressly and understandably offered and/or provided to JOSHUA MILLER, including: parenting classes, including hands on parenting services; psychological evaluation and parenting assessment; Domestic Violence services; mental health counseling; random UA's; and drug/alcohol evaluation and treatment.

VIII.

The parents had serious drug/alcohol issues when the dependency case began, that resulted in a neglectful home environment. KYLIE MILLER is a product of that neglectful environment, suffering from some of the emotional effects of neglect and attachment issues. KYLIE MILLER was also parentified as to her younger sibling, KHLOE MILLER.

IX.

1
2 All services reasonably available, capable of correcting the parental deficiencies within the
3 foreseeable future, have been offered or provided to the father with the exception of reunification
4 services which if provided are no longer capable of providing a solution. The father has remedied
5 his own parental deficiencies identified by the State it's petition.

X.

6
7 The father's testimony was credible. The father's parental deficiencies have been corrected. The
8 father never posed an abuse risk to Kylie. The issues the father may have with PTSD or anger are
9 not deficiencies that prevented him from parenting Kylie. The father was willing to enter into, to
10 attend, make progress in, and complete all the services that were offered to him by the state. The
11 absence of a parent/child relationship today between the father and Kylie is not due to a parental
12 deficiency but due to the absence of the relationship, which cannot now be corrected without great
13 harm being caused to Kylie.

XI.

14
15 KYLIE MILLER initially presented in February 2009 with significant social, emotional and
16 developmental delays; and parentification issues when she came into the care of the dependency
17 court. She also had attachment problems following removal from her parents and after suffering
18 inappropriate corporal punishment with resulting emotional trauma during the five months of her
19 initial foster home placement. KYLIE MILLER needed to participate in individual therapy to
20 address her issues and to facilitate the development of secure attachments. She has had on-going
21 counseling since 2009 to address her issues. KYLIE forming attachments to her foster parents was
22 evidence of the healing that KYLIE was undergoing, that she was developing the ability to attach to
23 others, according to her therapist.

24 However, no one had a crystal ball in this case. Social worker Kris Richardson has never
25 seen this happen on any other case he has been involved with, in which the child herself makes a
26 decision that she will no longer identify herself with her own biological family. By March 2012,

1 KYLIE began to show reluctance to attend visits, and soon afterwards, in May 2012, she began
2 refusing to attend visits with the parents.

3 XII.

4 It is not due to parental deficiencies that Kylie's psyche got to the point where she would no
5 longer tolerate or engage with visits with her biological parents. Through no fault of the father,
6 Kylie had taken the strong position that she did not want to engage in visitation. In 2011, the
7 relationship between Kylie and her father was at a critical juncture and the provision of
8 reunification therapy at that time may have prevented her from extinguishing her attachment to her
9 father.

10 XIII.

11 As a result of KYLIE's refusal to attend visitation with her parents, the court ordered Tom
12 Sherry to perform an evaluation on the issue of reunification therapy. Tom Sherry concluded that
13 there is no probability that reunification therapy could remedy the now severed parent child bond,
14 the attachment bond, between KYLIE MILLER and JOSHUA MILLER. Everyone has agreed and
15 testified that there is no reasonable probability that reunification therapy, or any other kind of
16 therapy, can remedy this situation within the foreseeable future. Thus, all services reasonably
17 available, capable of reuniting KYLIE with her father within the foreseeable future, have been
18 offered or provided in this case. The absence of any bond between KYLIE and her father cannot
19 now be corrected.

20 XIV.

21 There is no likelihood that conditions will be remedied so that KYLIE MILLER could be
22 returned to the father in the near future. The parent child relationship, the attachment bond, no
23 longer exists between these two individuals. There is no service that is capable of correcting this
24 now severed parent child relationship, this severed attachment bond between KYLIE MILLER and
25 JOSHUA MILLER.

26

1 The lack of the attachment bond is not due to any of JOSHUA MILLER's parental deficits.
2 JOSHUA MILLER's parental deficits have been corrected. The father here has successfully
3 participated in the court ordered rehabilitative services and has remedied these individual parental
4 deficits. He has fully complied with substance abuse, domestic violence, and hands on parenting
5 services.

6 No one had contemplated that the father would be the primary parent for KYLIE. He is not
7 now the primary parent for his other daughter. KHLOE MILLER, along with her half-sibling
8 KAITLYN COSTELLO, has been returned to the care of the mother for more than a year now, and
9 JOSHUA MILLER is an appropriate parent to KHLOE MILLER.

10 XV.

11 The attachment bond, the parent-child relationship, that no longer exists between KYLIE
12 MILLER and JOSHUA MILLER, cannot now be repaired. To attempt reunification therapy would
13 be detrimental to KYLIE, causing great harm to her, according to Tom Sherry and Cory Staton, two
14 experienced therapists. KYLIE MILLER would suffer emotional derailment of her progress, and
15 any such attempt would likely compromise her ability to begin to establish the other social and
16 emotional stages she needs to go through, such as developing an ability for empathy. KYLIE
17 MILLER herself has taken the strong position that she will not engage with her parents during visits
18 and does not want to be a part of that family.

19 XVI.

20 KYLIE MILLER is not an Indian child as defined by the Indian Child Welfare Act, 25
21 U.S.C. §1901, et. seq.

22 XVII.

23 The Service members Civil Relief Act of 2003, 50 U.S.C. §501, et. seq., does not apply.

24 XVIII.

25 Continuance of the parent-child relationship clearly diminishes the child's prospects for
26 early integration into a stable and permanent home. The attachment bond, the parent-child

1 relationship, that no longer exists between KYLIE MILLER and JOSHUA MILLER cannot now be
2 repaired. Rather, KYLIE MILLER would suffer an emotional derailment of her progress if she did
3 not perceive permanent in her life. KYLIE MILLER herself has taken the strong position that she
4 does not want to be a part of that family. Overriding Kylie's strong desire that she wants to be
5 adopted would be detrimental to her. Tom Sherry and Cory Stanton, two experienced therapists
6 both agreed on this. The court finds that they are the most credible witnesses on this issue. There is
7 no evidence that a guardianship would be feasible or could be or would be engaged in here.

8 XIX.

9 An order terminating the parental rights is in the best interests of the child. The attachment
10 bond, the parent-child relationship, no longer exists between KYLIE MILLER and JOSHUA
11 MILLER, and it cannot now be repaired. KYLIE MILLER herself has taken the strong position that
12 she does not want to be a part of that family, and that she wants to be adopted. KYLIE MILLER
13 needs to begin to establish the other social and emotional stages she needs to go through, such as
14 developing an ability for empathy. KYLIE MILLER would suffer an emotional derailment of her
15 progress if she did not perceive permanent in her life. Tom Sherry and Cory Stanton, two
16 experienced therapists both agreed on this. These two therapists also testified that termination of
17 the parental rights is in Kylie's best interest. Continuing the dependency is not in the best interests
18 of the child.

19 XX.

20 The Guardian ad Litem and the child's attorney, STEPHEN GREER, appeared at the
21 hearing and recommended that the rights of the father be permanently terminated.

22 XXI.

23 The child has the following siblings: Khloe Miller and half sibling Kaitlyn Costello. These
24 two children reside in the care of the mother, Dana Costello. Kylie Miller has refused to have
25 contact with Khloe Miller and Kaitlyn Costello.

XXII.

The agreed factual stipulations that were introduced into the record are incorporated in these findings. The oral decision handed down on December 11, 2013 and transcribed on December 13, 2013 is incorporated by reference in these findings

FROM THE FOREGOING FINDINGS OF FACT, THE COURT NOW MAKES AND ENTERS THE FOLLOWING:

CONCLUSIONS OF LAW

I.

That this court has jurisdiction of the person of said minor child, of JOSHUA MILLER, father, and of the subject matter of this case.

II.

That it would be in the best interest of the minor child, including the child's health and safety, that the parent-child relationship between the above-named child and JOSHUA MILLER, father, be terminated and that the child be placed in the custody of the Washington State Department of Social and Health Services for placement as best suits the needs of the child. The Department of Social and Health Services has the authority to consent to the adoption of the child and to place said child in temporary care and authorize any needed medical care, dental care or evaluations of the child until the adoption is finalized.

III.

That all the allegations contained in the termination petition, as provided in RCW 13.34.180(1)(a) through (f), have been established by clear, cogent and convincing evidence.

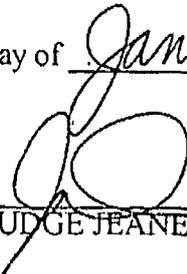
IV.

1 Because the attachment bond no longer exists between KYLIE MILLER and her father,
2 JOSHUA MILLER is currently unable to parent KYLIE MILLER; to do so is not in her best
3 interests.

4 V.

5 That an order terminating the parent and child relationship between KYLIE MILLER and
6 JOSHUA MILLER, father, is in the best interests of the child.

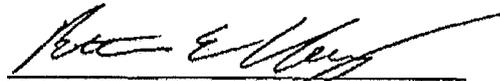
7
8 DONE IN OPEN COURT this 14 day of January, 2014.

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10 
11 _____
12 JUDGE JEANETTE DALTON

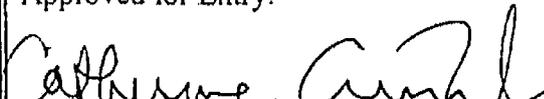
12 Presented by:

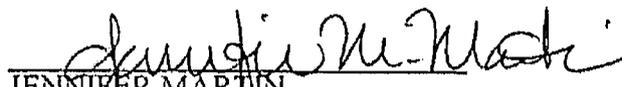
JEANETTE DALTON

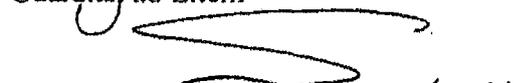
13 ROBERT FERGUSON
14 Attorney General

15 
16 _____
17 PETER KAY, WSBA #24331
18 Assistant Attorney General

19 Approved for Entry:

20 
21 _____
22 CATHERINE CRUIKSHANK, WSBA #10255
23 Attorney for Father

24 
25 _____
26 JENNIFER MARTIN
Guardian ad Litem

27 
28 _____
29 STEPHEN GREER, WSBA # 17166
30 Attorney for Child

RECEIVED AND FILED
IN OPEN COURT

JAN 14 2014

DAVID W. PETERSON
KITSAP COUNTY CLERK

AK

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KITSAP
JUVENILE DEPARTMENT

In Re the Welfare of:

NO. 13-7-00084-9

KYLIE MILLER, 08/09/2002

ORDER OF TERMINATION
AS TO JOSHUA MILLER, FATHER

THIS MATTER having come on regularly for a hearing for a termination of parental rights before the undersigned Judge of the above-entitled court on October 29 through November 4, November 15, and December 11, 2013; JOSHUA MILLER, father of the above-named child, was served notice hereof by personal service and did appear personally, and through counsel, CATHERINE CRUIKSHANK; the Washington State Department of Social and Health Services Social Worker, LISA SINNETT, was personally present and represented through attorneys, ROBERT FERGUSON, Attorney General, and PETER KAY, Assistant Attorney General; JENNIFER MARTIN appeared as Guardian ad Litem for the minor child, STEPHEN GREER appeared as attorney for the child, and the court having listened to all the evidence presented by all parties, the arguments of counsel, and the court having made and entered its Findings of Fact and Conclusions of Law, and being in all matters fully advised, NOW, THEREFORE, it is hereby

ORDERED, ADJUDGED and DECREED that said child, KYLIE MILLER is hereby declared to be a dependent child as defined by RCW 13.34.030 and under the permanent jurisdiction of the court, and that JOSHUA MILLER FATHER, no longer retain parental rights and all rights, powers, privileges, immunities, duties and obligations, including any rights to custody,

30

1 control, visitation or support existing between JOSHUA MILLER, father, and the child are severed
2 and terminated, and JOSHUA MILLER FATHER, shall have no standing to appear at any further
3 legal proceedings concerning the child. It is further

4 ORDERED, ADJUDGED and DECREED that any support obligation existing prior to the
5 effective date of this order is not severed or terminated. It is further

6 ORDERED, ADJUDGED and DECREED that the child is committed to the custody of the
7 Department of Social and Health Services, and said Department has the right and authority to give
8 consent to travel and consent to medical, minor surgery, and dental care deemed necessary for the
9 welfare of said child without further order of the court until adoption is finalized. It is further

10 ORDERED, ADJUDGED and DECREED that the Department of Social and Health
11 Services has the authority to place said child for adoption and must consent to the adoption of said
12 child pursuant to RCW 26.33.160.

13 DONE IN OPEN COURT this 14 day of January, 2014

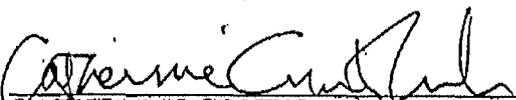
14
15 
16 JUDGE JEANETTE DALTON
JEANETTE DALTON

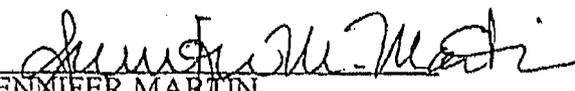
16 Presented by:

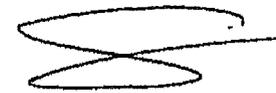
17 ROBERT FERGUSON
18 Attorney General

19 
20 PETER KAY, WSBA #24331
Assistant Attorney General

21 Approved for Entry:

22
23 
24 CATHERINE CRUIKSHANK, WSBA #16255
Attorney for Father

25
26 
JENNIFER MARTIN
Guardian ad Litem


STEPHEN GREER, WSBA # 17066
Attorney for Child

OFFICE RECEPTIONIST, CLERK

To: Backlund & Mistry; Kay, Peter (ATG); Eric Nielsen; dobsonlaw@comcast.net
Subject: RE: 91757-4-In re K.M.M.-Supplemental Brief

Received 2/19/16

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To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>; Kay, Peter (ATG) <peterk@atg.wa.gov>; Eric Nielsen <nielsene@nwattorney.net>; dobsonlaw@comcast.net
Subject: 91757-4-In re K.M.M.-Supplemental Brief

Attached is Petitioner's Supplemental Brief.

Thank you.

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Backlund & Mistry
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Olympia, WA 98507
(360) 339-4870