

No. 91925-9

No. 32437-1-III

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION THREE



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*In re the Welfare of B.P.*

STATE OF WASHINGTON/DSHS,

Respondent,

v.

H.O. (Mother),

Appellant

**FILED**

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Court of Appeals  
Division III  
State of Washington

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ON APPEAL FROM THE SUPERIOR COURT OF THE  
STATE OF WASHINGTON FOR SPOKANE COUNTY

The Honorable Linda G. Tompkins

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BRIEF IN SUPPORT OF MOTHER'S  
MOTION FOR ACCELERATED REVIEW

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## A. SUMMARY OF ARGUMENT

The trial court terminated the parental rights of mother H.O. as to her daughter B.P. (DOB 7-8-11). The trial court erred by terminating H.O.'s parental rights to B.P., because the State failed to offer or provide all necessary services. The State failed to offer or provide attachment therapy to H.O. and B.P., instead offering this service to the foster parents and B.P. Had all necessary services been offered or provided, there is a likelihood that parental deficiencies would have remedied in B.P.'s near future. There was not substantial evidence that continuation of the parent-child relationship diminished B.P.'s prospects for early permanency. Likewise, there was not substantial evidence that termination was in the B.P.'s best interests. Finally, the evidence presented at trial established that H.O. was currently fit to parent B.P. H.O. was capable of caring for another child, her daughter A. The State's primary concern at trial was B.P.'s lack of attachment to H.O., rather than any parenting deficiencies of H.O. At the time of trial, H.O. corrected her parental deficiencies, substance abuse and mental health, as identified by the Department of Social and Health Services. H.O. respectfully requests that the order terminating her rights to B.P. be reversed.

## B. ASSIGNMENTS OF ERROR

1. The trial court erred by terminating H.O.'s parental rights to B.P. (CP 189).
2. The trial court erred by finding the State offered or provided all necessary services, reasonably available, capable of correcting parental deficiencies within the foreseeable future. (FF 10; CL 3).
3. The trial court erred by finding the services offered were those needed to remedy H.O.'s parental deficiencies. (FF 10; CL 3).
4. The trial court erred by finding the State offered services to H.O. to address her mental health and how it impacted her ability to parent B.P. (FF 15; CL 3).
5. The trial court erred by finding the State offered services to address H.O.'s parenting issues. (FF 23; CL 3).
6. The trial court erred in finding given the number of placement disruptions she had had, Carol Thomas felt it was more likely than not that [B.P.] would struggle to attach to others, and additional disruptions in placement would raise the likelihood that she would never form a healthy attachment. (FF 29).
7. The trial court erred by finding there was little likelihood that conditions would be remedied so that B.P. could be returned to H.O. in the near future. (FF 30, 36; CL 3).
8. The trial court erred in finding [H.O.] does not demonstrate the ability to feel her own feelings, and she has not demonstrated the ability to place [B.P.]'s needs above her own. (FF 32).
9. The trial court erred by finding the services necessary to build the type of relationship necessary to meet B.P.'s needs would take one year or more and that is too long. (FF 33; CL 3).
10. The trial court erred by finding B.P.'s foreseeable future is now, and that there is little likelihood that B.P. could be returned to H.O. in the foreseeable future. (FF 36; CL 3).
11. The trial court erred by finding continuation of the parent-child relationship clearly diminished B.P.'s prospects for early integration into a stable and permanent home. (FF 37, 38; CL 3).

12. The trial court erred by finding it is in B.P.'s best interests to terminate the parent-child relationship. (FF 40; CL 3).

13. The trial court erred by finding H.O. is currently unfit to parent B.P. (FF 41; CL 3).

### **C. ISSUES PRESENTED FOR REVIEW**

Issue 1: Whether the trial court erred by finding that all necessary services were expressly and understandably offered or provided.

Issue 2: Whether the trial court erred by finding there was little likelihood that conditions would be remedied so that B.P. could be returned to H.O. in the near future.

Issue 3: Whether the trial court erred by finding that continuation of the parent-child relationship diminished B.P.'s prospects for early integration into a stable and permanent home.

Issue 4: Whether the trial court erred by finding that it was in B.P.'s best interests to terminate her mother's parental rights.

Issue 5: Whether the trial court erred by finding H.O. was currently unfit to parent B.P.

### **D. STATEMENT OF THE CASE**

B.P. was born on July 8, 2011. (CP 180; RP 330). Following her birth, B.P. was not released to her mother, H.O.'s, care.<sup>1</sup> (CP 180, 184; RP 250-251; Exhibit 2). A hospital hold was placed on B.P. as a result of H.O.'s methamphetamine use during pregnancy. (CP 180-181; RP 220, 251, 378; Exhibit 2). Upon her release from the hospital, B.P. was placed in foster care. (CP 180-181, 184; RP 220, 251; Exhibit 2). The Department of Social and Health Services (DSHS's) initial concerns were H.O.'s history with substance abuse and her mental health. (CP 180; RP 250). H.O. first used

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<sup>1</sup> B.P.'s father was also named in the termination petition. (CP 1-6). He failed to appear, and an order of default was entered against him. (CP 35-39). Subsequently, the trial court terminated his parental rights to B.P. (CP 134-138).

methamphetamine at age 13 and has used methamphetamine, heroin, marijuana, and alcohol at points throughout her life. (CP 180-181; RP 331-332, 377-378; Exhibit 1).

An order of dependency was entered in August 2011. (CP 180-181; RP 251-252; Exhibit 3). The disposition and subsequent review orders required the mother to complete the following services, along with any provider recommendations: random UA/BA testing, mental health treatment, chemical dependency evaluation and treatment, hands on parenting training, therapeutic visitation, and family therapy. (CP 180-181; Exhibits 2, 3, 5, 6, 7, 9, 10, 11, 12).

H.O. participated in mental health counseling with Carla Paullin from October 2011 to July 1012. (CP 183; RP 182-183, 191, 198-199). H.O. attended regularly, was compliant and highly motivated, and was always willing to talk. (RP 190, 198-199, 204).

H.O. participated in parenting services from December 2011 to June 2012, with provider Jewel Bang. (CP 184; RP 180, 210-214; Exhibit 21). These services included hands on parenting training and family preservation services. (CP 184; Exhibit 21). Ms. Bang's reports were positive. (Exhibit 21).

In September 2011, B.P. was placed with H.O. at Isabella House where H.O. was enrolled in a six-month residential chemical dependency program. (CP 181-182, 184; RP 20, 22-24, 26, 34, 220, 252, 332-333, 335-336; Exhibit 4). H.O. successfully completed the program in January 2012.

(CP 182; RP 26, 34, 332-333). H.O. then moved to Isabella House's transition house, a facility where women can reside while looking for more permanent housing. (CP 182; RP 26, 34, 333). While living at the transition house, H.O. was required to provide UAs, participate in outpatient services, and attend self-help groups. (RP 26-27).

Around June 2012, H.O. relapsed and left transition house. (CP 182; RP 28, 34, 193, 257-258, 335, 338, 378-379). B.P. was removed from H.O.'s care on June 27, 2012. (CP 181-182, 184; RP 226, 258-259, 339-340; Exhibits 7, 8). B.P. was first placed in foster care and then moved to a relative placement in November 2012 where she has remained since. (CP 184; RP 226, 259, 264). H.O. attended some visits with B.P. between July 2012 and October 2012. (CP 182, 184; RP 227, 261, 263-264, 340-342).

H.O. again entered the residential chemical dependency program at Isabella House in May 2013. (CP 182; RP 29, 34, 270, 343). She successfully completed the program in December 2013. (CP 182; RP 30, 353). H.O. then moved to Hearth Homes, followed by St. Margaret's Shelter. (RP 51-52, 319-320, 353, 357, 364, 366). While at St. Margaret's, H.O. was working on obtaining her own place to live. (RP 324).

During her second time at Isabella House, H.O. gave birth to another child, her daughter A. (CP 182; RP 30, 270, 331, 354). A. was placed with H.O., and A. has never been removed from her care. (RP 30, 52-53, 126, 270, 331). A. appears to be on target developmentally. (RP 277). H.O. has

remained clean and sober since entering Isabella House on May 9, 2013. (CP 182; RP 35, 47, 299, 322, 332; Exhibit 1).

H.O. participated in individual counseling with Sandra Gormon-Brown, beginning in July 2013. (CP 183; RP 134-135). H.O. has made progress and is very receptive to doing the work required in therapy. (RP 138-139). She has worked hard and is highly motivated. (RP 151).

In August 2013, H.O. had a therapeutic visit with B.P., conducted by Lori Eastep. (CP 184; RP 61-62, 230, 289, 371). Between October 2013 and February 2014, H.O. had 22 therapeutic visits with B.P., with each visit lasting two hours. (CP 185; RP 66-67, 82, 97, 230, 371).

At the final dependency review hearing held on December 18, 2013, H.O. was compliant with all ordered services. (RP 273; Exhibit 12). An additional service, family therapy, was ordered at this hearing. (CP 184; RP 273-275; Exhibit 12). DSHS made a referral for family therapy with Ms. Eastep. (RP 93, 97, 100, 273-275).

The case proceeded to a termination trial in February 2014. (RP 8-434).

Paige Beerbohm, H.O.'s treatment counselor during her second time at Isabella House, described H.O. as very positive and stated she did very well in treatment and there was a lot of improvement overall. (RP 30-31, 44). She testified that H.O. was in early recovery. (RP 35). Ms. Beerbohm stated that she saw H.O. the week before trial, and that she did not have any concerns. (RP 39).

Ms. Eastep testified regarding the therapeutic visits between H.O. and B.P. which took place between August 2013 and February 2014. (RP 61-101). For the first therapeutic visit, which took place in August 2013, Ms. Eastep testified H.O. was very prepared, and brought along age-appropriate toys and items for B.P. to play with. (RP 61-63). She testified B.P. tolerated the visit well. (RP 87-88). Ms. Eastep stated H.O. has appropriate insight into her relationship with B.P., in that “[s]he was very aware that her absence created some challenges in regards to their relationship and what that would mean.” (RP 69).

Ms. Eastep testified she saw B.P. and H.O. twice a week until December 10, 2013, and then once a week after that time. (RP 92). When asked for the reason for reduction in contact with her, Ms. Eastep testified H.O. was appropriate in the visits and B.P. was tolerating the visits, so she no longer felt that therapeutic visitation was necessary. (RP 92-93). Ms. Eastep testified she does not have any safety concerns when H.O. and B.P. are together, and “from the very beginning [H.O.’s] been very sensitive to what it is that this experience might be for [B.P.] and has tried to be aware of that.” (RP 98).

Ms. Eastep testified B.P. does not identify H.O. as her primary attachment figure. (RP 69). She testified an infant forms an attachment at eleven months, and “if there's an absence and that child is attaching to another person, it makes it very difficult from an attachment strategy to change that without forcing it.” (RP 70-71). Ms. Eastep testified while “I

don't know that I could say there's evidence of an attachment[,] [t]here is an emerging emotional connection that I have seen." (RP 75). She testified that in order for a child to establish a secure attachment, "it takes hundreds and sometimes thousands of contacts . . . ." (RP 77). Ms. Eastep testified attachment therapy is available in Spokane. (RP 94-95).

Ms. Eastep testified H.O. asks a lot of great questions during visits, and "[d]uring therapeutic sessions when there's behaviors or things that come up, she asks for support or for insight." (RP 73). Ms. Eastep described H.O. as being very attuned to A., and described A. as "a very healthy, happy little girl." (RP 73, 98).

When asked what H.O. struggles with in parenting, Ms. Eastep testified "I don't know that I could identify anything specifically in the contact that I've had that she actually struggles with." (RP 74).

When asked if she sees B.P. being able to return to H.O.'s care in the near future, Ms. Eastep stated she does not think that it is a yes or a no question. (RP 84). She testified "I think that [B.P.] needs permanence, and I think that what the Court's going to decide is that's either with the relatives or that's with [H.O.]." (RP 84). Ms. Eastep stated that H.O. has made a lot of positive progress. (RP 84). When asked if termination of H.O.'s parental rights is in B.P.'s best interests, Ms. Eastep testified:

I think permanency is in [B.P.'s] best interest. This may not be the best answer, but I had suggested a guardianship. That's what I thought was in [B.P.'s] best interest was for [H.O.] to retain her parental rights and be involved with her child, but that [B.P.] remain with her current placement because she is attached to them and is doing very well

there. So when you look at [B.P.'s] best interest, it's that she has permanency and that there's not a significant change for her.

(RP 85).

Ms. Eastep testified it is possible that returning B.P. to H.O. could be a very positive thing for B.P. (RP 98).

With regards to family therapy, Ms. Eastep testified "especially when you have a young child, you don't really ever do family therapy." (RP 100). She stated she does not know if it would look much different than the therapeutic visits she was doing. (RP 100).

Carol Thomas testified she conducted a parenting assessment with H.O., B.P. and A. in November 2013. (RP 108, 125). Her conclusion following the assessment was that B.P. was developing a social relationship with H.O. (RP 113). Ms. Thomas testified there were no characteristics of an attachment with B.P. towards H.O. (RP 113, 122).

Ms. Thomas testified she has not seen H.O. and B.P. since the assessment. (RP 123). She testified if H.O. and B.P. had consistent and frequent contact from November 2013 until the time of trial, she believes the social relationship between them would exist. (RP 126). Ms. Thomas recommended assessing the relationship between H.O. and B.P. for increased contact, if H.O. remains substance free and lives independently for three to six months. (RP 128-129).

Ms. Thomas testified the relationship between H.O. and A. was different than the relationship between H.O. and B.P. (RP 113-114). She

testified that H.O. did well managing both B.P. and A. (RP 128). Ms. Thomas stated “[H.O.] was able to meet both children's physical and emotional needs in a prompt, consistent, appropriate manner.” (RP 128).

Ms. Thomas testified that it takes about twelve months for a baby to identify their primary attachment figure. (RP 105, 114-115). She testified when B.P. was removed from H.O.'s care just prior to her first birthday, “[u]sually for children that age, they would have consolidated a primary attachment with their primary caregiver.” (RP 120). Ms. Thomas testified when the attachment is disrupted at that age, it would be experienced as a loss, and the child would go through a grieving process. (RP 120-121). She testified that when there are multiple disruptions in placement, children go towards detachment, and do not make themselves available for attachment. (RP 121).

Ms. Gormon-Brown testified that H.O. is making improvements with regard to “feel[ing] her feelings.” (RP 141, 143). She testified not being able to do so can negatively impact parenting, because parenting requires empathy for the child. (RP 141-144). Ms. Gormon-Brown testified H.O. experiences empathy, and “she is able to show some empathy for [B.P.]” (RP 144). She testified H.O.'s mental health is reasonably stable. (RP 147).

When asked about H.O.'s ability to reunify with B.P., Ms. Gormon-Brown testified “I have more concern about [B.P.'s] ability to reunify with [H.O.] than I do [H.O.'s] ability to reunify with [B.P.]” (RP 147). She testified that from a mental health perspective, she did not believe there were

“any issues in [H.O.’s] mental health that would impact her ability to have a child that was removed from her care brought back into her care[.]” (RP 147).

Ms. Gormon-Brown testified she is willing to continue working with H.O., and that if her parental rights to B.P. are not terminated, she would be available to do attachment work between H.O. and B.P. (RP 151-152).

Amanda Clemons, a licensed mental health therapist specializing in family therapy and attachment services, testified she received a referral from DSHS to work with B.P. and the relatives she is placed with “in terms of attachment and assisting them in meeting [B.P.’s] needs.” (RP 158-159). She testified she does not believe it is in [B.P.’s] best interests to have another disruption in care. (RP 164-165).

Ms. Clemons testified “I think the more secure [B.P.] feels with the relative makes the transition much -- that disruption even more difficult because the work I’ve done has made [B.P.] feel more secure in terms of the relatives' caregiving.” (RP 168). She testified B.P.’s attachment to her relatives is not very healthy, due to the disruptions in placement. (RP 168-169). Ms. Clemons testified she has not done any work between H.O. and B.P., but is it possible to do so. (RP 166-167).

Kolleen Steward testified H.O. began intensive outpatient drug treatment in December 2013. (RP 170-171). She testified that although H.O. had not verified her attendance of outside self-help meetings, she has no current concerns about H.O.’s recovery. (RP 172-174, 176-178).

Ms. Paullin testified that in order to consider H.O. in remission from her substance abuse, she needs to be clean and sober for a period of two years. (RP 197-198). Ms. Paullin acknowledged she had not worked with H.O. since July 2012. (RP 209).

B.P.'s guardian ad litem Karen Schweigert testified when B.P. was in H.O.'s care from September 2011 to June 2012, B.P. did fairly well. (RP 215-216, 221-223). She testified the relationship between H.O. and B.P. initially was remarkable, and although "H.O. had not had much contact with her daughter initially . . . she was able to get [B.P.] onto a nursing-on-demand schedule, which took an unbelievable amount of dedication and patience." (RP 223). Ms. Schweigert testified that "[w]hen [H.O.'s] sober, she is a really good mother." (RP 240).

Ms. Schweigert admitted she has not seen H.O. and B.P. together since their visits resumed in August 2013. (RP 230, 241-242). She described B.P. as a happy, healthy, and outgoing girl. (RP 230-231). Ms. Schweigert testified B.P. "still has some issues as far as adjusting to disruptions in her schedule." (RP 230-231). She acknowledged that although it took B.P. some time to get used to the visits with H.O., B.P. has adapted. (RP 231).

Ms. Schweigert testified she has concerns about H.O.'s ability to put B.P.'s needs ahead of her own. (RP 231). She acknowledged her concerns about H.O.'s decision making arise primarily from information she received from B.P.'s current foster parents. (RP 243). When asked to identify H.O.'s parenting deficiencies, Ms. Schweigert testified H.O. had not had an

opportunity to parent by herself outside of structured settings. (RP 234-235, 238-239).

Ms. Schweigert testified she does not think B.P. can be reunified with H.O., because B.P. is attached to her current placement. (RP 235-236, 246). She stated that her significant concern for B.P. is that she has lost her attachment to H.O. (RP 245-246). Ms. Schweigert testified it is possible that if B.P. were returned to H.O., she could transfer the attachment back to H.O. (RP 246). She testified termination of H.O.'s parental rights is in B.P.'s best interests. (RP 239).

Social worker Marcey Monohan testified she was surprised Ms. Eastep was doing therapeutic visits with H.O. and B.P., because she sent a referral for family therapy. (RP 273-275). However, she further testified family therapy was not age-appropriate for B.P. (RP 312).

Ms. Monohan testified she does not believe H.O. remedied her parental deficiencies. (RP 279). She identified H.O.'s current parental deficiencies as substance abuse and "her mental health in regards to her ability to be emotionally available for a child like [B.P.]." (RP 275-277, 280). Ms. Monohan testified H.O. has not remedied her substance abuse issue, because she is early in her recovery. (RP 279-280). She testified H.O. is compliant with her individual counseling. (RP 297).

When asked why H.O. can have A. in her care, but not B.P., Ms. Monohan testified A. has not had the disruption in caregivers like B.P. (RP 275-276). She testified B.P. does not respond well to a change in her routine,

and H.O. will have a hard time helping B.P. process her emotions without disruption. (RP 276-277). Ms. Monohan testified she has no concerns regarding H.O.'s abilities to meet A.'s needs, as long as H.O. remains clean and sober. (RP 299).

Ms. Monohan testified H.O.'s legal relationship with B.P. is impeding her ability to achieve permanence. (RP 284). She testified the relationship between H.O. and B.P. is a social relationship. (RP 285, 300). Ms. Monohan acknowledged she did not observe the therapeutic visits between H.O. and B.P. conducted by Ms. Eastep. (RP 299). She testified B.P. will not attach to H.O. unless forced to do so. (RP 314). Ms. Monohan testified H.O. is not fit to parent B.P., and termination of H.O.'s parental rights is in B.P.'s best interests. (RP 239).

H.O. testified she is committed to staying clean. (RP 345-346). She testified she knows the hurt and confusion she caused B.P. and that she is committed to fixing it. (RP 346). H.O. stated "I'm completely committed to doing whatever is necessary to help [B.P.] with a good transition." (RP 383).

H.O. testified that her relationship with B.P. has improved since the parenting assessment. (RP 374). She testified there is an emotional relationship developing between her and B.P. (RP 375-376). H.O. testified she wants B.P. to come home with her and A., but she also wants B.P.'s foster parents to be a continuous part of her life. (RP 376).

When asked if she was willing to risk taking B.P. home with her, despite B.P.'s problems, H.O. testified "I think that those were all things that

could change if services like attachment therapy had been something that [Ms. Clemons] had been working on with me and not the foster family.” (RP 383). When asked if she struggles to feel her feelings, H.O. testified “I think that it was something that I used addiction to cope with, but it's something that I am obviously doing now.” (RP 391).

Based on the foregoing, the trial court terminated H.O.’s rights to B.P. (CP 179-190; RP 435-446). In its findings of fact, the trial court found “[t]he court was concerned about what attachment services were offered to [H.O].” (CP 186).

H.O. timely appealed. (CP 177-190).

## E. ARGUMENT

### Introduction

Parents have a fundamental liberty interest in the custody and care of their children. *In re Dependency of K.D.S.*, 176 Wn.2d 644, 652, 294 P.3d 695 (2013). This fundamental right is not absolute. *In re Dependency of M.S.*, 98 Wn. App. 91, 95, 988 P.2d 488 (1999). The State may infringe on this right “only when the parent is endangering the child’s physical or emotional welfare.” *In re Welfare of C.S.*, 168 Wn.2d 51, 54, 225 P.3d 953 (2010). Termination of parental rights “should be allowed only for the most powerful reasons.” *In re Welfare of H.S.*, 94 Wn. App. 511, 530, 973 P.2d 474 (1999).

“Parents before the court in dependency proceedings rarely come without significant difficulties.” *In re Dependency of T.L.G.*, 126 Wn. App.

181, 203, 108 P.3d 156 (2005). Nonetheless, “[t]he paramount goal of child welfare legislation is to reunite the child with his or her legal parents, if reasonably possible.” *In re Dependency of K.N.J.*, 171 Wn.2d 568, 577, 257 P.3d 522 (2011).

In order to terminate a parent-child relationship, the State must satisfy a two-part test. *Id.* at 576. First, the State must prove the six statutory elements set forth in RCW 13.34.180(1). *Id.* These six statutory elements are as follows:

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

RCW 13.34.180(1). The focus of this first step is the adequacy of the parents. *K.N.J.*, 171 Wn.2d at 576. A court may terminate a parent's rights to her child only if there is a showing of current parental unfitness. *In re Welfare of A.B.*, 168 Wn.2d 908, 920, 927, 232 P.3d 1104 (2010). Second, the court determines if termination is in the best interests of the child. *K.N.J.*, 171 Wn.2d at 577 (citing RCW 13.34.190(1)(b)).

In order to terminate a person's parental rights, the State must prove the six statutory elements by clear, cogent, and convincing evidence. *K.N.J.*, 171 Wn.2d at 576-77. "Clear, cogent, and convincing evidence exists when the ultimate fact in issue is shown by the evidence to be highly probable." *In re Dependency of K.R.*, 128 Wn.2d 129, 141, 904 P.2d 1132 (1995) (internal quotation marks omitted) (quoting *In re Sego*, 82 Wn.2d 736, 739, 513 P.3d 831 (1973)). If the State satisfies the first part of the test by proving these six statutory elements, then the court proceeds to the second part of the test. *Id.* at 577. The court may reach the second step only if the first step is satisfied. *Id.*; see also *A.B.*, 168 Wn.2d at 911. The second step must be proved by a preponderance of the evidence. *A.B.*, 168 Wn.2d at 912.

Whether a termination order satisfies statutory requirements is a question of law, reviewed de novo. *K.N.J.*, 171 Wn.2d at 574. "The court's factual findings under RCW 13.34.180(1) must be upheld if supported by substantial evidence from which a rational trier of fact could find the necessary facts by clear, cogent and convincing evidence." *In re Welfare of M.R.H.*, 145 Wn. App. 10, 24, 188 P.3d 510 (2008) (citing *In re Dependency of C.B.*, 61 Wn. App. 280, 286, 810 P.2d 518 (1991)). "Substantial evidence is evidence sufficient to persuade a fair-minded rational person of the truth of the declared premise." *In re Welfare of C.B.*, 134 Wn. App. 942, 953, 143 P.2d 846 (2006).

**Issue 1: Whether the trial court erred by finding that all necessary services were expressly and understandably offered or provided.**

The State failed to offer or provide all necessary services to H.O. The State failed to timely offer or provide attachment therapy to H.O. and B.P.

RCW 13.34.180(1)(d) “requires the State to prove DSHS ‘offered or provided all and necessary services, reasonably available, capable of correcting the parental deficiencies.’” *In re Termination of S.J.*, 162 Wn. App. 873, 881, 256 P.3d 470 (2011) (quoting RCW 13.34.180(1)(d)). “This encompasses ‘all reasonable services that are available within the agency, or within the community, or those services which the department has existing contracts to purchase’ in order to enable a parent to ‘resume custody.’” *T.L.G.*, 126 Wn. App. at 198 (quoting RCW 13.34.136(1)(b)(i), (iv)).

To meet its statutory burden under RCW 13.34.180(1)(d), “the State must tailor the services it offers to meet each individual parent’s needs.” *S.J.*, 162 Wn. App. at 881 (citing *In re Dependency of T.R.*, 108 Wn. App. 149, 161, 29 P.3d 1275 (2001)). However, “[w]here the record establishes that the offer of services would be futile, the trial court can make a finding that the Department has offered all reasonable services.” *C.S.*, 168 Wn.2d at 56 n.2 (quoting *M.R.H.*, 145 Wn. App. at 25).

It is the State’s duty to provide all court-ordered and necessary services to the parent. *In re Dependency of D.A.*, 124 Wn. App. 644, 651, 102 P.3d 847 (2004). “At a minimum, it must provide a parent with a list of

referral agencies that provide those services.” *Id.* It is not the parent’s responsibility to independently search out services. *Id.* at 651-52.

Here, the State failed to timely offer or provide attachment therapy to H.O. and B.P. H.O. completed all court-ordered services offered by DSHS. (RP 273, 297; Exhibit 12). The primary concern raised at trial, and found by the trial court, was B.P. does not identify H.O. as her primary attachment figure. (CP 186; RP 69, 113, 122, 245-246, 285, 300). However, attachment therapy was not offered or provided to H.O. and B.P. DSHS instead chose to offer attachment therapy to B.P. and her foster parents. (RP 158-159).

Since becoming clean and sober, H.O. diligently attended 22 therapeutic visits with B.P. (CP 185; RP 66-67, 82, 97, 230, 371). H.O. has appropriate insight into her relationship with B.P., and she recognizes the challenges in the relationship. (RP 69, 98, 346). B.P. tolerated the visits, so much so that Ms. Eastep felt therapeutic visitation was no longer necessary. (RP 87-88, 92-93, 231). Ms. Eastep and H.O. identified an emerging emotional connection between H.O. and B.P. (RP 75, 375-376). H.O. and B.P. made progress in their relationship, and the State failed to provide the necessary service of attachment therapy to continue this process. *See S.J.*, 162 Wn. App. at 881 (quoting RCW 13.34.180(1)(d) (setting forth what the State is required to provide under the termination statute).

H.O. testified that she felt B.P.’s problems could change if attachment therapy was offered to her, rather than to the foster family. (RP

383). The trial court also expressed concern about the lack of attachment services offered to H.O. (CP 186). Ms. Eastep testified attachment therapy is available in Spokane. (RP 94-95). Ms. Gormon-Brown testified she is willing to continue to work with H.O., and that she would be available to do attachment work between H.O. and B.P. (RP 151-152). Ms. Clemons testified it is possible for her to do attachment work between H.O. and B.P. (RP 166-167). Attachment therapy between H.O. and B.P. is a necessary service the State failed to offer or provide.

This case is akin to *C.S.*, where our Supreme Court found termination of the mother's parental rights was improper because the State failed to offer the mother training on how to handle her child's behavioral problems. *See C.S.*, 168 Wn.2d at 55-57. The State provided the foster parent with this training. *C.S.*, 168 Wn.2d at 55-56. The Court found offering the mother this training would not have been futile, where the mother had addressed her parenting deficiencies: "[the mother] had been sober for 22 months by the time of the termination hearing and the trial court concluded she had no lingering deficiency from substance abuse or mental health issues that would preclude her from *caring* for [her child], much less successfully completing training to do so." *Id.* at 56 n.2 (emphasis in original).

This case is also akin to *S.J.*, where this Court found termination of the mother's parental rights was improper because the State failed to offer the mother with timely mental health services and attachment and bonding

services between her and her son. *See S.J.*, 162 Wn. App. at 881-84. This Court reasoned that attachment and bonding was a major issue identified by the trial court, and that the State acknowledged the mother's need for attachment and bonding services. *S.J.*, 162 Wn. App. at 883-84. This Court also reasoned that the mother maintained a relationship with her other children that did not exhibit this child's behaviors. *Id.*

The offer of attachment therapy to H.O. and B.P. would not be futile.<sup>2</sup> *See C.S.*, 168 Wn.2d at 56 n.2 (quoting *M.R.H.*, 145 Wn. App. at 25). H.O. is compliant with all of the other services offered by DSHS. (RP 273, 297; Exhibit 12). H.O. has remained clean and sober since May 9, 2013. (CP 182; RP 35, 47, 299, 322, 332; Exhibit 1). There are no issues in H.O.'s mental health that would impede her ability to have B.P. returned to her care. (RP 141, 143-144, 147). H.O. and B.P. made progress in their relationship, and an emotional connection had occurred. (RP 75, 375-376). H.O. was appropriately aware of the challenges in their relationship and was willing to work on them. (RP CP 185; RP 66-67, 69, 82, 97-98, 230, 346, 371, 383). Both Ms. Gormon-Brown and Ms. Clemons were available to offer attachment therapy to H.O. and B.P. (RP 151-152; 166-167). Finally, H.O. has maintained a relationship with her daughter A., who does not have the

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<sup>2</sup> Substantial evidence does not support the trial court's finding of fact that, given the number of placement disruptions she had had, Ms. Thomas felt it was more likely than not that [B.P.] would struggle to attach to others, and additional disruptions in placement would raise the likelihood that she would never form a healthy attachment. (CP 185, FF 29). Ms. Thomas' testimony was generalized; she did not give an opinion specifically related to B.P. (RP 120-121).

same attachment issue as B.P. *See S.J.*, 162 Wn. App. at 883-84; (RP 30, 52-53, 73, 98, 126, 270, 275-277, 299, 331).

In sum, the State failed to timely offer or provide attachment therapy to H.O. and B.P. Accordingly, the court's termination order should be reversed and the case remanded so that H.O. may be offered all necessary services to correct her identified parenting deficiencies.

**Issue 2: Whether the trial court erred by finding there was little likelihood that conditions would be remedied so that B.P. could be returned to H.O. in the near future.**

The services were inadequate in this case, so a finding that there was little likelihood of conditions remedying in the near future was premature, and contrary to the evidence presented at trial. Had adequate services been provided, there was a likelihood that B.P. could have transitioned to H.O.'s care in the near future.

In order to terminate parental rights, the State must prove "[t]hat there is little likelihood that conditions will be remedied so that the child can be returned to the parent in the near future." RCW 13.34.180(1)(e). The statute further provides:

*A parent's failure to substantially improve parental deficiencies within twelve months following entry of the dispositional order shall give rise to a rebuttable presumption that there is little likelihood that conditions will be remedied so that the child can be returned to the parent in the near future. The presumption shall not arise unless the petitioner makes a showing that all necessary services reasonably capable of correcting the parental deficiencies within the foreseeable future have been clearly offered or provided.*

RCW 13.34.180(1)(e) (emphasis added).

The focus of this statutory factor is “whether parental deficiencies have been corrected.” *D.A.*, 124 Wn. App. at 656 (quoting *K.R.*, 128 Wn.2d at 144). Further, “[w]hat constitutes ‘near future’ depends on the age of the child and the circumstances of the child's placement.” *C.B.*, 134 Wn. App. at 954 (citing *T.L.G.*, 126 Wn. App. at 205). For a younger child, a shorter period constitutes the “near future” than it does for an older child. *Id.*; see also *In re Dependency of P.D.*, 58 Wn. App. 18, 27, 792 P.2d 159 (1990) (stating that six months is not the near future for a fifteen month old child).

Here, the trial court erred by finding there was little likelihood that conditions would be remedied so that B.P. could be returned to H.O. in the near future. H.O. corrected her parental deficiencies as identified by DSHS: substance abuse and mental health. (CP 180; RP 250, 273, 297; Exhibit 12). Although Ms. Monohan testified to the contrary, her testimony was contradicted by H.O.’s service providers. (RP 147, 172-174, 176-178, 275-277, 279-280). Ms. Gormon-Brown testified H.O. did not have any mental health issues that would prevent returning a removed child to her care. (RP 147). She testified H.O.’s mental health is reasonably stable. (RP 147). Ms. Gormon-Brown also testified H.O. is able to show empathy for B.P., her mental health is reasonably stable, and she is making improvements in “feel[ing] her feelings.” (RP 141, 143-144, 147). In addition, H.O. has remained clean and sober since May 9, 2013. (CP 182; RP 35, 47, 299, 322, 332; Exhibit 1). Her outpatient drug treatment provider testified she has no current concerns about H.O.’s recovery. (RP 172-174, 176-178).

Ms. Schweigert testified H.O.'s parental deficiency was that she had not had an opportunity to parent by herself outside of structured settings. (RP 234-235, 238-239). However, H.O. had not yet had the opportunity to live alone, following her substance abuse recovery. (RP 51-52, 319-320, 353, 357, 364, 366). At the time of trial, H.O. was working on obtaining her own place to live. (RP 324). And, H.O.'s lack of independent housing was not a parental deficiency identified by DSHS. (CP 180-181; RP 250; Exhibits 2, 3, 5, 6, 7, 9, 10, 11, 12).

The State's primary concern at trial was B.P.'s lack of attachment to H.O., rather than any parental deficiencies of H.O. (CP 186; RP 69, 113, 122, 245-246, 285, 300). The focus of RCW 13.34.180(1)(e) is whether the parent has corrected his or her parental deficiencies. *See D.A.*, 124 Wn. App. at 656 (quoting *K.R.*, 128 Wn.2d at 144). Because H.O. corrected her parental deficiencies, the trial court erred in finding the element set forth in RCW 13.34.180(1)(e).

**Issue 3: Whether the trial court erred by finding that continuation of the parent-child relationship diminished B.P.'s prospects for early integration into a stable and permanent home.**

There was insufficient evidence presented at trial that continuation of the parent-child relationship diminished B.P.'s prospects for early integration into a stable and permanent home.

In order to terminate parental rights, the State must prove "[t]hat continuation of the parent and child relationship clearly diminishes the child's prospects for early integration into a stable and permanent home."

RCW 13.34.180(1)(f); *see also* *K.D.S.*, 176 Wn.2d at 654-56 (the State must independently prove the element set forth in RCW 13.34.180(1)(f); proof of the element set forth in RCW 13.34.180(e) does not necessarily prove this element).

The focus of this factor “is the parent-child relationship and whether it impedes the child’s prospects for integration, not what constitutes a stable and permanent home.” *In re Dependency of K.S.C.*, 137 Wn.2d 918, 927, 976 P.2d 113 (1999). The trial court is not permitted to consider “whether the natural parents or the foster parent would provide the better home.” *Santosky v. Kramer*, 455 U.S. 745, 760, 102 S. Ct. 1388, 71 L. Ed. 2d 599 (1982).

Here, Ms. Monohan testified that H.O.’s legal relationship with B.P. is impeding her ability to achieve permanence. (RP 284). To the extent that Ms. Monohan parroted the legal standard without any independent factual basis from the case’s history, this finding cannot be supported. *See In re Dependency of C.R.B.*, 62 Wn. App. 608, 618-19, 814 P.2d 1187 (1991).

B.P. has adjusted to having visits with H.O. (RP 92-93, 231). Ms. Schweigert acknowledges that although it took B.P. some time to get used to the visits with H.O., B.P. has adapted. (RP 231). After several months of visits, Ms. Eastep testified that, because H.O. was appropriate in the visits and B.P. was tolerating the visits, she no longer felt that therapeutic visitation was necessary. (RP 92-93). Ms. Eastep testified “what I thought was in [B.P.’s] best interest was for [H.O.] to retain her parental rights and be

involved with her child, but that [B.P.] remain with her current placement because she is attached to them and is doing very well there.” (RP 85).

Ms. Thomas recommended assessing the relationship for increased contact, if H.O. remains substance free and lives independently for three to six months. (RP 128-129). And, Ms. Clemons did not testify that the relationship between H.O. and B.P. impedes B.P.’s prospects for integration. (RP 157-169).

This testimony does not provide substantial evidence that the relationship between H.O. and B.P. impeded B.P.’s prospects for integration. *See K.S.C.*, 137 Wn.2d at 927. The testimony shows H.O. and B.P. are successfully able to have contact, and increased contact is possible. (RP 92-93, 128-129, 231). Ms. Eastep’s testimony shows H.O. can remain in contact with B.P., without affecting B.P.’s current placement. (RP 85). There was no evidence presented that continuing the parent-child relationship between H.O. and B.P. harmed B.P.’s well-being. *Cf. K.D.S.*, 176 Wn.2d at 658-59 (where the record contained sufficient evidence to support the finding that the continued parent-child relationship harmed the child’s well-being).

There was not substantial evidence presented at trial that H.O.’s relationship with B.P. diminished B.P.’s chances for early integration into a stable and permanent home.

**Issue 4: Whether the trial court erred by finding that it was in B.P.'s best interests to terminate her mother's parental rights.**

The trial court's best interest finding was premature, because the State failed to prove all of the factors in RCW 13.34.180. Should this Court disagree, there was not sufficient evidence presented at trial that termination of the mother's parental rights was in B.P.'s best interests.

In order to terminate parental rights, the trial court must find that "[s]uch an order is in the best interests of the child." RCW 13.34.190(1)(b). The trial court may consider whether termination of parental rights is in a child's best interests if, and only if, the factors in RCW 13.34.180 were proven by clear, cogent and convincing evidence. *K.N.J.*, 171 Wn.2d at 576-77. "Whether a termination is in the best interests of a child must be determined based upon the facts of each case." *In re Dependency of A.M.*, 106 Wn. App. 123, 131, 22 P.3d 828 (2001) (citing *In re Aschauer's Welfare*, 93 Wn.2d 689, 695, 611 P.2d 1245 (1980)). The State must prove that termination of parental rights is in the best interests of a child by a preponderance of the evidence. *A.B.*, 168 Wn.2d at 912.

"[C]hildren have fundamental liberty interests at stake in termination of parental rights proceedings." *In re Dependency of M.S.R.*, 174 Wn.2d 1, 20, 271 P.3d 234 (2012). These include a child's interest in "maintaining the integrity of the family relationships." *Id.*; see also, e.g., *Kenny A ex rel. Winn v. Perdue*, 356 F.Supp.2d 1353, 1360 (N.D. Ga 2005) (holding that children have fundamental liberty interests in termination proceedings); *Wooley v. City of Baton Rouge*, 211 F.3d 913, 923 (5th Cir.

2000) (“a child's right to family integrity is concomitant to that of a parent...”); *Duchesne v. Sugarman*, 566 F.2d 817, 825 (2d Cir. 1977) (internal quotations omitted) (“This right to the preservation of family integrity encompasses the reciprocal rights of both parent and children. It is the interest of the parent in the ‘companionship, care, custody and management of his or her children’ . . . and of the children in not being dislocated from the ‘emotional attachments that derive from the intimacy of daily association,’ with the parent. . . .”).

B.P. was placed with H.O. when she was approximately two months old, and remained with H.O. until just before her first birthday. (CP 181-182, 184; RP 24, 226, 252, 258-259, 335-336, 339-340; Exhibits 4, 7, 8). Ms. Schweigert testified that the relationship between H.O. and B.P. was initially remarkable. (RP 223). H.O. was able to nurse B.P., “which took an unbelievable amount of dedication and patience.” (RP 223). Ms. Schweigert testified that “[w]hen [H.O.’s] sober, she is a really good mother.” (RP 240).

H.O. attended some visits with B.P. following her relapse, and since becoming clean and sober, has maintained a consistent visitation schedule. (CP 182, 184-185; RP 66-67, 82, 97, 227, 230, 261, 263-264, 340-342, 371). In her therapeutic visits with B.P., H.O. demonstrated appropriate insight into her relationship with B.P. (RP 69, 73, 98). H.O. came prepared and brought along age-appropriate toys and items for B.P. (RP 61-63). H.O. also asks for support and insight during the visits in order to address B.P.’s needs. (RP 73).

Ms. Eastep did not testify that termination of H.O.'s parental rights was in B.P.'s best interests. (RP 85, 98). Ms. Eastep testified that permanency is in B.P.'s best interests, and "what I thought was in [B.P.'s] best interest *was for [H.O.] to retain her parental rights and be involved with her child*, but that [B.P.] remain with her current placement because she is attached to them and is doing very well there." (RP 85) (emphasis added). She testified it is possible that returning B.P. to H.O. could be a very positive thing for B.P. (RP 98). Out of all the witnesses testifying at the termination trial, Ms. Eastep had the most recent and frequent observations of H.O. and B.P. (CP 185; RP 66-67, 82, 97, 123, 230, 241-242, 299, 371).

Ms. Clemons testified she does not believe it is in [B.P.'s] best interests to have another disruption in care. (RP 164-165). However, Ms. Clemons has not interacted with H.O. and B.P., but rather, with B.P. and her foster parents. (RP 158-159, 166-167).

Ms. Schweigert testified termination of H.O.'s parental rights is in B.P.'s best interests. (RP 239). However, she acknowledged it is possible that if B.P. were returned to H.O., she could transfer her attachment back to H.O. (RP 246). Ms. Schweigert also admitted she has not seen H.O. and B.P. together since their visits resumed in August 2013, and that her concerns about H.O.'s decision making arise primarily from information she received from B.P.'s current foster parents, rather than direct observations. (RP 230, 241-243).

Ms. Monohan testified termination of H.O.'s parent rights is in B.P.'s best interests. (RP 239). She acknowledged she did not observe the therapeutic visits between H.O. and B.P. conducted by Ms. Eastep. (RP 299). To the extent that Ms. Clemon's, Ms. Schweigert's and Ms. Monohan's opinions on this factor parroted the legal standard without any independent factual basis from the case's history, this finding cannot be supported. *C.R.B.*, 62 Wn. App. at 618-19. In evaluating the best interests factor, this Court should look to the opinion of Ms. Eastep, who had the most recent and frequent observations of H.O. and B.P. (CP 185; RP 66-67, 82, 97, 123, 230, 241-242, 299, 371).

H.O. testified she knows the hurt and confusion she caused B.P. and that she is committed to fixing it. (RP 346, 383). Ms. Gordon-Brown acknowledged H.O. is making improvements with regard to "feel[ing] her feelings[ ]" and that she is able to show empathy for B.P. (RP 141, 143-144).<sup>3</sup>

Termination of H.O.'s parental rights was not in the best interests of B.P. B.P. has a fundamental liberty interest in maintaining her relationship with H.O. *M.S.R.*, 174 Wn.2d at 20; *see also Kenny A ex rel. Winn*, 356 F.Supp.2d at 1360; *Wooley*, 211 F.3d at 923; *Duchesne*, 566 F.2d at 825. Further, the evidence presented at trial shows that H.O. is a really good mother when she is sober, that she has appropriate insight into her

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<sup>3</sup> Based on the testimony of Ms. Gormon-Brown, substantial evidence does not support the trial court's finding of fact that H.O. does not demonstrate the ability to feel her own feelings, and that she has not demonstrated the ability to place B.P.'s needs above her own. (CP 186, FF 32; RP 141, 143-144, 147).

relationship with B.P., that she has empathy for B.P., and that she is committed to fixing their relationship. (RP 61-63, 69, 73, 98, 141, 143-144, 346, 386). Because termination of her biological mother's parental rights is not in B.P.'s best interests, the termination order should be reversed.

**Issue 5: Whether the trial court erred by finding H.O. was currently unfit to parent B.P.**

Termination of parental rights must be based on a parent's current unfitness rather than merely a parent's history of problems. *In re Welfare of A.G.*, 160 Wn. App. 841, 845, 248 P.3d 611 (2011); *A.B.*, 168 Wn.2d at 920; *C.B.*, 134 Wn. App. 942. Even if the State purports to establish the termination factors in RCW 13.34.180(1), it is well settled that the trial court may not terminate the rights of a currently fit parent. *A.G.*, 160 Wn. App. at 845; *A.B.*, 168 Wn.2d at 919-20; *In re Welfare of Shantay C.J.*, 121 Wn. App. 926, 936, 91 P.3d 909 (2004) (citing *H.S.*, 94 Wn. App. at 523); *Santosky*, 455 U.S. at 760.

Identifying parenting deficiencies is not the equivalent of proving parental unfitness. *In re Welfare of A.B.*, \_\_\_ Wn. App. \_\_\_, 323 P.3d 1062, 1070 (2014) (citing *In re Dependency of Schermer*, 161 Wn.2d 927, 943, 169 P.3d 452 (2007)). "[A] finding of current unfitness requires more than the determination that DSHS has proved, by a preponderance of the evidence, that a parenting deficiency exists, as in a dependency proceeding." *Id.* at 1071. "[T]o prove current unfitness in a termination proceeding, DSHS is required to prove that the parent's parenting deficiencies prevent the parent

from providing the child with ‘basic nurture, health, or safety’ by clear, cogent, and convincing evidence.” *Id.*

Here, the trial court erred by finding H.O. was currently unfit to parent B.P. (CP 187-188). The evidence presented at trial established that H.O. was currently fit to parent B.P.

H.O.’s therapeutic visits with B.P. demonstrated that she was a fit parent. H.O. showed appropriate insight into her relationship with B.P. and sensitivity to B.P.’s needs. (RP 69, 98). She came prepared and brought along age-appropriate toys and items for B.P. (RP 61-63). H.O. also asks for support and insight during the visits in order to address B.P.’s needs. (RP 73). Ms. Eastep testified she does not have any safety concerns when H.O. and B.P. are together. (RP 98). Importantly, Ms. Eastep could not identify anything that H.O. struggles with in terms of parenting. (RP 74).

The evidence presented at trial also established that H.O. was capable of caring for another child, her daughter A. H.O. has parented A. since her birth. (RP 30, 52-53, 126, 270, 331). Ms. Eastep described H.O. as being very attuned to A., and described A. as “a very healthy, happy little girl.” (RP 73, 98). Ms. Monohan testified that as long as H.O. remains clean and sober, she has no concern regarding H.O.’s ability to meet A.’s needs. (RP 299).

Ms. Thomas’ testimony also establishes H.O.’s current parental fitness. (RP 128). She testified H.O. did well managing both B.P. and A.:

“[H.O.] was able to meet both children’s physical and emotional needs in a prompt, consistent, appropriate manner.” (RP 128).

The State’s primary concern at trial was B.P.’s lack of attachment to H.O., rather than any parenting deficiencies of H.O. (CP 186; RP 69, 113, 122, 245-246, 285, 300). However, B.P.’s lack of attachment to H.O. does not make H.O. an unfit parent. *See A.B.*, 323 P.3d at 1071. At the time of trial, H.O. had remedied her parental deficiencies, substance abuse and mental health, as identified by DSHS. (CP 180; RP 250, 273, 297; Exhibit 12). Although Ms. Monohan testified to the contrary, her testimony was contradicted by H.O.’s service providers. (RP 147, 172-174, 176-178, 275-277, 279-280). Ms. Gormon-Brown testified H.O. did not have any mental health issues that would prevent returning a removed child to her care. (RP 147). H.O.’s outpatient drug treatment provider testified she has no current concerns about H.O.’s recovery. (RP 172-174, 176-178).

Ms. Monohan also testified H.O. will have a hard time helping B.P. process her emotions without disruption. (RP 276-277). However, Ms. Gormon-Brown’s testimony belies this opinion. (RP 141, 143-144, 147). She testified H.O. is able to show empathy for B.P., her mental health is reasonably stable, and she is making improvements in “feel[ing] her feelings.” (RP 141, 143-144, 147).

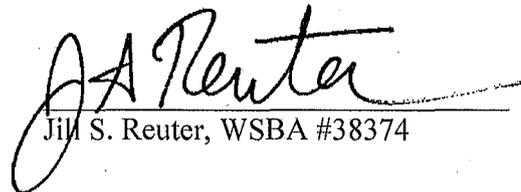
H.O.’s current fitness to parent at the time of the termination trial should have resulted in dismissal of the termination petition. DSHS did not prove H.O.’s parenting deficiencies prevented her from providing B.P. with

“basic nurture, health, or safety” by clear, cogent, and convincing evidence. See *A.B.*, 323 P.3d at 1071. The trial court’s termination decision should be reversed.

#### F. CONCLUSION

The State failed to prove, and the trial court erroneously found, that the Department offered all necessary services. The Department failed to offer or provide attachment therapy to H.O. and B.P. Had H.O. been offered all necessary services, there is a likelihood that her parental deficiencies would have been remedied in B.P.’s near future. Furthermore, the State failed to prove that continuation of H.O.’s parental rights diminished B.P.’s chances for early permanency. The record does not support the termination under RCW 13.34.180(1)(d), (e) or (f). Termination of H.O.’s parental rights was also not in B.P.’s best interests. Finally, the State failed to prove and the trial court erroneously found that H.O. was currently unfit to parent B.P. The termination order should be reversed and the matter remanded for further proceedings.

Respectfully submitted this 24th day of July, 2014.

  
Jim S. Reuter, WSBA #38374

/s/ Kristina M. Nichols  
Kristina M. Nichols, WSBA #35918  
Attorneys for Appellant Mother

APPENDIX REQUESTED BY COURT:

Available at:  
Termination Order (CP 179-190);  
Dependency Review Orders (Plaintiff's Exhibits 5, 6, 7, 9, 10, 11, 12)

COURT OF APPEALS  
DIVISION III  
OF THE STATE OF WASHINGTON

In re Dependency of B.P. )  
(B.P. DOB: 07/08/2011) ) COA No. 32437-1-III  
 )  
 ) PROOF OF SERVICE  
 )

I, Kristina M. Nichols, assigned counsel for the Appellant mother herein, do hereby certify as follows:

On July 24th, 2014, I deposited for first-class mailing with the U.S. Postal Service, postage prepaid, a true and correct copy of the Appellant mother's motion for accelerated review, addressed to:

H.O. (Address Confidential)

Having obtained prior permission from the Office of the Attorney General, I also served Amy Suzanne Soth, AAG, at amym2@atg.wa.gov, by email with a true and correct copy of the same.

Dated this 24th day of July, 2014.

/s/ Kristina M. Nichols  
Kristina M. Nichols, WSBA #35918  
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PO Box 19203  
Spokane, WA 99219  
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Wa.Appeals@gmail.com

**NICHOLS LAW FIRM PLLC**

**July 24, 2014 - 1:47 PM**

**Transmittal Letter**

Document Uploaded: 324371-Motion for Accelerated Review 324371.pdf  
Case Name: In re the Welfare of B.P., State v. H.O.  
Court of Appeals Case Number: 32437-1  
Party Represented: H.O.  
Is This a Personal Restraint Petition?  Yes  No  
Trial Court County: \_\_\_\_ - Superior Court # \_\_\_\_

**Type of Document being Filed:**

- Designation of Clerk's Papers
- Statement of Arrangements
- Motion: \_\_\_\_
- Response/Reply to Motion: \_\_\_\_
- Brief
- Statement of Additional Authorities
- Affidavit of Attorney Fees
- Cost Bill
- Objection to Cost Bill
- Affidavit
- Letter
- Electronic Copy of Verbatim Report of Proceedings - No. of Volumes: \_\_\_\_  
Hearing Date(s): \_\_\_\_\_
- Personal Restraint Petition (PRP)
- Response to Personal Restraint Petition
- Reply to Response to Personal Restraint Petition
- Other: \_\_\_\_\_

**Comments:**

No Comments were entered.

Proof of service is attached and an email service by agreement has been made to amym2@atg.wa.gov and wa.appeals@gmail.com.

Sender Name: Jill S Reuter - Email: [jillreuterlaw@gmail.com](mailto:jillreuterlaw@gmail.com)