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COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON

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**COURT OF APPEALS, DIVISION III  
OF THE STATE OF WASHINGTON**



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**In Re the Welfare of:**

**B.P.**

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## I. INTRODUCTION

This appeal involves the welfare of B.P., who was two-and-a-half years old at the time of trial. B.P. was initially removed from the mother's care at birth, but was returned two and a half months later while the mother attended an inpatient treatment program that allowed children to reside with their parents in the facility. Although the mother completed her treatment, she relapsed shortly before B.P.'s first birthday, and B.P. was again removed from her mother's care. For the next year, the mother did not communicate with the Department, did not participate in services, and, most unfortunately, failed to visit her baby.

The mother's parental deficiencies are directly traceable to her lengthy history of substance abuse and relapse, mental health issues, and lack of parenting skills. At the time of trial, the mother testified that she last used nine months prior, in May of 2013. At the time of her testimony, the mother had completed inpatient treatment but was non-compliant with the requirements of her outpatient treatment. Her mental health issues were concerning as well. One therapist described the mother as institutionalized, meaning that while the mother could potentially succeed in highly-structured settings, the mother's ability to cope and maintain sobriety would likely decrease as the structural safeguards in place decreased. The mother's current therapist opined at trial that the mother

still had unresolved emotional trauma and maladaptive coping strategies. That therapist testified further that the mother especially struggled with empathy, which is essential in raising children.

The mother's personal problems were so great they impaired her relationship with B.P. The mother previously had B.P. in her care for about 9 months at the time the mother relapsed. B.P. was 11 months old at the time and was just solidifying any attachment to the mother. However, the mother's relapse and subsequent, extensive departure from B.P.'s life damaged B.P.'s emotional health and shattered that connection. As the family therapist working with this family observed, the mother maintained an inappropriate adult perspective that B.P. would eventually grow to love her because of a biological bond; this is not realistic. B.P.'s budding attachment to the mother had already been severed because of the mother, and, as the family therapist testified, even attempting to force B.P. to attach to the mother as a caregiver would injure B.P.'s mental health. Another therapist agreed with that assessment, stating that due to B.P.'s placement disruption, B.P. would unlikely ever be able to form healthy attachments period, and B.P.'s overall mental health would be damaged as a result.

After careful consideration of all the evidence presented, the trial court terminated the mother's parental rights. Now, the mother appeals

claiming that insufficient evidence existed to prove all services were offered to her. Specifically, the mother asserts that: the Department did not offer her “attachment” services; the evidence did not establish the circumstances would unlikely change in the near future; there was inadequate proof to support the court’s finding that continuation of the parent-child relationship diminished B.P.’s prospects for integration into a stable and permanent home, or that the mother was currently unfit; and the court’s best interest determination was in error. The mother, however, is mistaken.

The evidence was indeed sufficient to establish termination. At trial, the Department proved it offered therapeutic services to the mother and B.P. These services were designed to initiate and facilitate the relationship between mother and child. This is the first phase of attachment therapy. Although the mother had obtained sobriety temporarily, she was not in compliance with her outpatient treatment and subsequently relapsed soon thereafter. As a consequence, B.P. was removed from the mother’s care, which disrupted her child’s placement, caused her child emotional issues, and, combined with the mother’s own mental health issues, inhibited her relationship with her child. In short, the mother was unstable and unable to care for B.P. like B.P. both needed and

deserved, and the trial court recognized this after carefully considering all the evidence before it.

The trial court's findings were supported by substantial evidence. Those findings and the well-settled law support the trial court's legal conclusions and its order terminating the mother's parental rights.

## II. COUNTER STATEMENTS OF THE ISSUES

- A. **The Department offered the mother therapeutic services with Lori Eastep, designed to establish and nurture the mother's relationship with B.P. This service was designed to address the lack of attachment between B.P. and the mother. The Department met its burden to offer all services necessary to correct the mother's parental deficiencies.**
- B. **At the time of trial, the mother and B.P. had only a social relationship. It would take one year or more to build the type of relationship B.P. would need to have her emotional needs met. The mother's sobriety was new, but her own mental health still needed to be addressed. The trial court correctly found that there was little likelihood that B.P. could return to the mother in the near future.**
- C. **B.P. was at risk for developing an attachment disorder. She had already been in dependency for over two years. Continuing the parent-child relationship hinders B.P.'s ability to fully integrate into a stable and permanent home. In order to protect her mental health, B.P. needed permanency immediately. The trial court did not error in finding the Department met its burden in establishing that early continuation of the parent-child relationship diminished B.P.'s prospects for early integration into a stable and permanent home.**

- D. B.P. had emotional issues stemming from the mother's relapse and absence from B.P.'s life. The trial court did not error in finding that termination was in B.P.'s best interest.**
- E. The mother relapsed on methamphetamine. This caused B.P.'s removal from her care at a crucial time in B.P.'s development. From there, the mother continued using, did not participate in services, and failed to visit her child, and B.P. was at risk of forming attachment disorders as a result. The mother failed to appreciate how her actions (or inactions) negatively impacted B.P. The mother did not demonstrate any understanding of B.P.'s needs. Thus, the trial court correctly found the mother was currently unfit to parent.**

### **III. COUNTER STATEMENT OF FACTS**

B.P. was born on July 8, 2011, at which time the Department became involved with her and her family.<sup>1</sup> (CP 180). This was not the mother's first encounter with the Department, however, as she has a documented history with the Department dating back to 2005; the mother has three children who are no longer in her care. (CP 180). As for B.P., a hospital hold was placed on her at birth because she was withdrawing from Methamphetamine, which the mother exposed her to during pregnancy. (CP 180). The mother has been a longtime user and abuser of substances, including heroin and methamphetamine, with her first use as early as when she was thirteen years old. (CP 180-181). The mother reported her last use of illegal drugs was May 7, 2013. (CP 181). On

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<sup>1</sup> The mother, H.O., was represented and fully participated in the termination trial. (CP 180). The Father was defaulted and an order terminating his rights to B.P. was entered on March 13, 2013. (CP 180).

July 13, 2011, the Department filed a Dependency Petition alleging the following parental deficiencies: substance abuse; domestic violence; mental health; and parenting skills. (CP 180, RP 250, Ex. P2). B.P. was removed from the mother's care at that time, and after a shelter care hearing, B.P. remained placed in foster care. (CP 180, Ex. P2). At that hearing, the mother agreed to participate in the following services: random UA/BA testing; hands-on parent training; and mental health treatment. (CP 180, Ex. P2).

Subsequently, the mother entered inpatient treatment at Isabella House, which is a six-month inpatient program that also incorporates parenting services. (CP 181-182, RP 21). Isabella House permits the placement of children with their mothers at the facility. (RP 24-25). Initially, the mother entered Isabella House without B.P., but based in part upon the mother's progress while there, B.P. was returned to the mother's care on September 27, 2011. (RP 24-25).

While the mother was at Isabella House, the Department referred her to Carla Paullin for individual counseling. (CP 183, RP 183). Ms. Paullin indicated she learned the mother had a traumatic childhood, an extensive criminal record, a lengthy history of substance abuse and relapse, and failed to parent her children for quite some time. (CP 183, RP 184-188). Ms. Paullin concluded that the mother presented symptoms

consistent with personality disorder, which only exacerbated the mother's impulsivity, inability to cope, and poor decision-making. (CP 183, RP 193-195). Further, Ms. Paullin believed the mother was extremely institutionalized, making the mother's ability to improve and stay sober largely contingent upon her presence in only highly-structured settings. (CP 183, RP 192-193). In other words, as the amount of structure decreased, so did the mother's prospects to be successful going forward on her own. (CP 183, RP 192-193).

The mother completed inpatient treatment at Isabella House in February of 2012. (CP 182, RP 26). After that, the mother and B.P. moved to an Isabella House transition home. (RP 26). This is a facility where women who have completed the inpatient program can live while they are looking for permanent housing. (RP 26). Women may remain at a transition home for up to 18 months. (RP 27). The women are required to provide UA results, engage in outpatient treatment, and attend self-help groups. (RP 26-27). In May of 2012, the mother relapsed but was able to hide her failure from Isabella House by faking her UA tests. (RP 378-379). It caught up to the mother in June of 2012, though, and Isabella House promptly evicted the mother from the transition home. (CP 182, RP 26-27, 378-379). On June 27, 2012, the trial court removed B.P. from the mother's care. (CP 182, P7, P8).

The mother continued to use methamphetamine into the fall of 2012. (CP 182, RP 342-344). The mother had not been engaging in services and had been visiting B.P. sporadically at that time. (CP 182, RP 342-44). The mother admitted she had been high during those visits, just as she had been when parenting B.P. in the past. (RP 378-379).

In May of 2013, the mother reentered Isabella House. (CP 182, RP 29). She was pregnant when she did. (CP 182, RP 29). In June of 2013, the mother gave birth to A.O., who was placed with the mother in an in-home dependency. (CP 182, RP 30).

That summer, the mother began working with a new individual counselor, Sandra Gorman-Brown. (CP 183, RP 134). Treatment focused on the mother's capacity to process traumatic events from her past. (CP 183, RP 135-136). The mother still had unresolved emotional issues directly related to her past, which has been and continues to be a significant barrier to the mother's recovery as it has caused her maladaptive coping strategies. (CP 183, RP 136-138). According to her individual counselor, the mother struggles to "feel her feelings," which has made her unable to have empathy – a significant parental skill – for her own children. (CP 183-184, RP 139-143). At the very least, a parent must be able to appreciate his or her own feelings before he or she can even

begin to comprehend those of his or her child (let alone help the child cope with those feelings). (CP 183-184, RP 141-143).

The mother graduated from Isabella House in December of 2013. (RP 30). She began outpatient treatment with Partners. (CP 182, RP 170-171). At the time of trial, the mother's counselor from Partners testified that she had missed some support group meetings and thus was non-compliant with her outpatient treatment. (CP 182, RP 172).

There were also issues concerning the mother's relationship with B.P. For the first two months of B.P.'s life, she was in foster care. (RP 251-252, Ex. P2). B.P. was placed with the mother for the next nine months until the mother relapsed and B.P. was removed from her care again. (RP 252, Ex. P3, P4, P5, P6, P7). B.P. was 11 months old at the time. The testimony at trial showed that it is around this age and developmental stage when primary attachment is forming and finalizing. (RP 62-64, 70-71). Because of the mother's relapse, continued drug abuse, and inconsistent contact, B.P.'s susceptible psyche was unnecessarily put at risk. (RP 71-73). On October 31, 2012, the dependency court, on its own motion, suspended the mother's contact with B.P. pending further court order due to the mother's erratic visitation and the harm it was doing B.P. (Ex. P9).

In August of 2013, the court ordered a one-time, supervised visit between the mother and B.P. Ms. Eastep, the family therapist, supervised. (CP 184, RP 62). Because B.P. had not seen the mother in about 13 months, B.P. did not recognize her at this visit. (CP 184, RP 63). Ms. Eastep would continue to work with the mother and B.P. thereafter, setting goals meant to help build a relationship between them. (CP 184, RP 66-68). Ms. Eastep noted, however, this could take considerable time or could even prove unsuccessful in the end. (RP 69-72).

At the core of the challenge the mother and B.P.'s relationship faced was B.P.'s complete disconnect from the mother, which was created by the mother's absence from B.P.'s life. (RP 69-73, 78-81). Nevertheless, the mother steadfastly ignored reality and mistakenly maintained that B.P. loved her because she loved B.P. (RP 69). As Ms. Eastep opined, young children like B.P. simply do not carry such adult perspectives about human relations. (RP 69-70). Instead, children are just beginning to attach to their caregivers at this critical stage. (RP 69-70). Due to the choices the mother made, B.P. had to endure multiple placements that not only inhibited B.P.'s attachment to her mother but also complicated B.P.'s capacity to attach generally. (RP 69-73). It eventually became Ms. Eastep's belief that B.P. would never be able to form a real

attachment to the mother and that forcing B.P. to do so would significantly injure B.P.'s mental health. (RP 69-73).

In November of 2013, the mother, B.P. and A.O. met with Carol Thomas for the purposes of a parenting assessment. (RP 108). Ms. Thomas indicated that with respect to attachment, the window to form such healthily essentially closes after the first year of life. (RP 104-108). Having healthy attachment is critical to an individual's mental health. (RP 104-108). At the time of the assessment, Ms. Thomas observed no evidence whatsoever of attachment between B.P. and the mother; at best, any connection between mother and child was characterized as a developing social relationship. (RP 112-114).

Ms. Thomas also reviewed B.P.'s placement history. (RP 119-120). Given B.P.'s age and the number of disruptions in placement she had experienced, Ms. Thomas felt that B.P. would struggle with forming healthy attachments more than average children, and that any further disruptions in placement would only increase the likelihood that B.P. would never be able to form a healthy attachment. (RP 119-21).

At trial, Ms. Eastep described the mother's relationship with B.P. as a social relationship with an emerging emotional aspect. (RP 74-75). An individual's own mental and emotional wherewithal were fundamental

to meet a child's needs. (RP 70-74, 141-142). Here, the mother was not able to do that for B.P.

After hearing all the evidence, the trial court determined that the Department carried its burden under RCW 13.34.180. The trial court issued an oral ruling and later entered written findings of fact and conclusions of law. (CP 179-90). The trial court specifically found that the Department had established each element of RCW 13.34.180 by clear, cogent, and convincing evidence. (CP 179-90). It also expressly found that the mother was currently unfit to parent and that termination of the mother's parental rights were in B.P.'s best interest. (CP 179-90).

The mother has timely appealed. (CP 177-78).

#### IV. LAW AND ARGUMENT

Parents have a constitutionally protected right to the care, custody, and companionship of their child. *In the Matter of Sumey*, 94 Wn.2d 757, 762, 621 P.2d 108 (1980). However, parents' constitutional rights are not absolute. When a parent's actions, decisions, or inability to act seriously conflicts with the physical or mental health of the child, the parents' rights must be balanced against both the child's right to basic nurture, safety, and physical and mental health, and the State's right and responsibility to intervene to protect the child. RCW 13.34.020; *Krause v. Catholic Cmty. Srvs.*, 47 Wn. App. 734, 743, 737 P.2d 280 (1987). Therefore, the

dominant concern on review should be the safety and welfare of the child. RCW 13.34.020; *In the Matter of Seago*, 82 Wn.2d 736, 738, 513 P.2d 831 (1973).

To this end, the parent does not have unlimited time to correct his or her deficiencies. The law creates a sense of urgency by requiring that a petition for termination of parental rights be filed whenever the child has been in foster care for 15 of the past 22 months, unless compelling reasons excuse the requirement. RCW 13.34.145(1)(c). The law's focus on permanency reflects the importance of security and stability in a child's life, as well as a child's need for continuity and permanency in relationships. *See* Joseph Goldstein, Anna Freud & Albert Solnit, *Beyond the Best Interests of the Child* (2d ed. 1979). Additionally, the law views the passage of time from the child's perspective, not the parent's. *In re Dependency of T.R.*, 108 Wn. App. 149, 164-65, 29 P.3d 1275 (2001) (foreseeable future must be viewed from the eyes of the child).

The following elements are necessary to terminate parental rights:

- (a) That the child has been found to be a dependent child under RCW 13.34.030(4); and
- (b) That the court has entered a dispositional order pursuant to RCW 13.34.130; and
- (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. 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.
- (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)(a)-(f). Once these elements are proven, RCW 13.34.190(2) requires that termination must be shown to be in the child's best interests. The burden of proof for the best interest element is a preponderance of the evidence. *Dependency of A.V.D.*, 62 Wn. App. 562, 571, 815 P.2d 277 (1991).

In addition to the six statutory elements, the State must also show that the parent is unfit. *In the Matter of the Welfare of A.B.*, 168 Wn.2d 908, 921, 232 P.3d 1104 (2010), *In Re the Welfare of K.R.*, 128 Wn.2d 129, 904 P.2d 1132 (1995). Current parental unfitness is implicitly established when the Department proves all six of the statutory elements. *In re K.N.J.*, 171 Wn.2d 568, 576-77, 257 P.3d 522 (2011). A court can also explicitly make a finding of current parental unfitness. *A.B.* 168 Wn.2d at 920-921.

Upon review, the trial court's decision is entitled to great deference and its findings of fact must be upheld when supported by substantial evidence in the record. *Dependency of K.S.C.*, 137 Wn.2d 918, 925, 976 P.2d 113 (1999). The reviewing court may not weigh the evidence or decide witness credibility. *In re A.V.D.*, 62 Wn. App. at 568. Substantial evidence is evidence sufficient to convince a fair-minded, rational person of the truth of the declared premise. *Worldwide Video v. Tukwila*, 117 Wn.2d 382, 387, 816 P.2d 8 (1991). The standard of proof in a dependency proceeding is clear, cogent, and convincing evidence and is satisfied where the facts at issue are shown through the evidence to be highly probable. *Dependency of K.S.C.*, 137 Wn.2d at 925.

Here, the court was within its discretion to determine that the evidence presented was substantial and met all elements of RCW 13.34.180

and .190 by the clear, cogent, and convincing standard. The trial court's termination of the mother's parental rights regarding B.P. should be affirmed.

**A. The Department offered the mother therapeutic service with Lori Eastep designed to establish and nurture the mother's relationship with B.P. This service was designed to address the lacking attachment between B.P. and the mother. The Department met its burden to offer all services necessary to correct the mother's parental deficiencies.**

The mother first asserts that the Department did not offer or provide all reasonably necessary and available services capable of correcting her parental deficiencies. Specifically she contends the Department failed to offer her attachment therapy.

Primarily, the purpose of a dependency is for remedial measures to be provided to families, either as ordered by the court or offered by the Department, to help families and correct problems that brought the children into State care. *In re Dependency of T.L.G.*, 126 Wn. App. 181, 203, 108 P.3d 156 (2005). Services provided or offered must be specifically tailored to meet the individual needs of the parent. *In re Dependency of T.R.*, 108 Wn. App. 149, 161, 29 P.3d 1275 (2001). If a parent is unwilling or unable to take advantage of services offered or provided, then the Department is relieved of any obligation to provide additional services. *In re Dependency of Ramquist*, 52 Wn. App. 854,

861, 765 P.2d 30 (1988). Furthermore, the Department is not required to offer service when said services are not likely to correct parental deficiencies in the foreseeable future and such an offer would be futile. *In re Dependency of P.D.*, 58 Wn. App. 18, 26-27, 792 P.2d 159 (1990).

The mother claims the Department failed to offer her attachment therapy. The mother's argument is not well taken.

Attachment work involves teaching a parent to be in tune with cues to maintain their child's emotional regulation. (RP 77, 94, 166). The Department made a referral to Lori Eastep to provide family therapy for the mother and B.P. (RP 273). Ms. Eastep has a Master's Degree in Social Work from the University of Washington. (RP 57). She is also a licensed independent clinical social worker. (RP 57). Ms. Eastep provides individual and family therapy for her clients. (RP 58). She is knowledgeable about attachment. (RP 59).

Ms. Eastep was court ordered to conduct one therapeutic contact between B.P. and her mother in August 2013. (RP 61). She then continued to see the pair, and testified she had 22 sessions with them. (RP 66). Ms. Eastep set up treatment goals with the mother and B.P. (RP 67). She discussed the difference between a social relationship, and emotional relations and attachment with the mother. (RP 68-69, 71-72). In their work, Ms. Eastep indicated that they went from no relationship, to a social

relationship to an emerging emotional connection. (RP 74-75). She then said that it would take hundreds, or thousands of contacts to establish a secure attachment. (RP 77). While, Ms. Eastep characterized this in her testimony as therapeutic visits, this is exactly what one would expect to occur in attachment therapy. In fact she testified that it is hard to separate therapy from therapeutic visits. (RP 94). She also testified with a young child therapy looked similar to therapeutic visits. (RP 100).

Carol Thomas, is child therapist. She described attachment work as redefining the parent for the child, and giving them experiences that were opposite of what the child had known with the parent previously. (RP 125). Given B.P.'s age, Ms. Thomas indicated that the work would be mostly helping the parent understand the grieving process of losing an attachment, and developing strategies for the child moving forward. (RP 125).

Ms. Clemmons, an attachment specialist also testified. (RP 158). She testified that attachment work with a child like B.P. involves teaching a parent to be in tune with cues to maintain an emotional regulation. (RP 166). This is what Ms. Eastep testified she was providing. The mother relies solely on her own testimony to assert that she should have been provided with "attachment therapy" and if she was, she would have been

successfully reunified with her child. (RP 383). This is not consistent with the testimony at trial.

Several witnesses testified that attachment therapy was available in the area, however, none testified that the mother was not already receiving such therapy. The purpose of attachment therapy is to build a health and secure relationship between parent and child. The mother and B.P. went from no relationship, to a social relationship, to an emerging emotional relationship. This is evidence that the mother and B.P. were receiving services specifically tailored to address their relationship and improve it.

The mother relies on *In re. C.S.*, 168 Wn.2d 51, 225 P.3d 953 (2010) to support her argument on this issue. In that case, the child had special needs which made him difficult to manage. *Id.* at 55-56. The foster parent was given training to handle the child, but the mother was not. *Id.* Thus, the Supreme Court held that termination was not appropriate as the parent's ability to manage the child was the only parental deficiency left. *Id.* This case is distinguishable from the case at hand. First, the mother still had mental health issues that would impact her ability to parent B.P. Second, the mother was given therapeutic services to address her parenting relationship with B.P. These services were provided first when B.P. was placed with her, and again after she returned. The mother fails to take any responsibility for the fact that her

relapse and disengagement from B.P.'s life from the time she was nearly one to over 2 years old greatly impacted B.P. and their relationship. The services were offered to the mother, they simply did not bring success.

The mother also relies on *In re S.J.*, 162 Wn. App. 873, 256 P.3d 470 (2011) to support her assertion that the Department failed to offer her attachment therapy. First, in that case the Department was offering hands on parenting, and the provider testified she did not ever provide these type of services. *Id* at 878. The court also found the lack of bonding and attachment was an issue because it was the State's removal of the child that diminished the bond the mother and child had. *Id.* at 883. The court also found in that case that the Department delayed services to the mother which negatively impacted her bond with her child. *Id.* 883-884.

*S.J.* is also distinguishable from the case at hand. First, the Department was providing services and the mother initially had her child returned to her. She relapsed, the child was removed and the mother disengaged in her services and stopped visiting for over a year. (RP 26027, 342-44, 378-37). The disruption in the parent child relationship was not caused by the Department, but rather by the mother in the choices she made. Secondly, the Department did offer the attachment services. Ms. Eastep worked with the mother and child. She was qualified to provide family therapy. She described her work with the mother and B.P.

and was unable to distinguish it from attachment work. She did indicate there are many types of attachment work. (RP 77, 94) She further testified that during her 22 sessions with the mother and child they went from no relationship to an emerging emotional relationship. (RP 66, 74-75). Thus, the evidence supported the finding that services, specifically tailored to address the nature of the relationship between the mother and B.P. were provided and were working to improve that relationship.

Finally, the mother seems to assert that she should have been offered the same services that B.P. got from Ms. Clemmons in her foster home. However, Ms. Clemmons testified that B.P. was at high risk of obtaining an attachment disorder due to her placement history. Working with B.P. in her foster homes, would benefit anyone caring for B.P. as it was helping her build a healthy attachment strategy. These services were designed to benefit the child, not the foster parents. Without a healthy attachment strategy, B.P. would struggle to form a healthy bond with any caregiver.

As the trial court found, the Department offered attachment services designed to improve the mother's relationship with B.P. Ms. Eastep worked with the mother and mother and child built an emerging social relationship. This would not occur if Ms. Eastep was solely acting as a supervisor of a visit, ensuring the child was kept safe. This occurred

because Ms. Eastep worked with the mother to help her redefine herself to her child after her breaking of their initial attachment and her prolonged absence from her life.

The court correctly determined that all services were offered to the mother. Attachment therapy does not occur in a vacuum and requires the existence of a relationship between the participants. The first goal in attachment is to build a relationship. This is exactly what occurred. The court found that the mother was provided with parenting services; services designed to improve the parent child relationship. By using the phrase “attachment therapy” the mother tries to assert this is a service separate and apart from parenting services. However, nothing in the record indicates that “attachment therapy” is something completely different and separate from family therapy or therapeutic visits. Rather, the evidence shows that the mother was receiving the services, albeit by a different title. Courts should not consider the label given to services, it should consider the testimony about what service was provided, how it was provided, and what the goal was. Such an approach ensures that courts are considering what was actually offered to the parent and if it was specifically designed to meet the parents needs in each case. This is exactly what the trial court did in this case. The court did not err in finding that all services were offered to the mother.

**B. At the time of trial, the mother and B.P. had only a social relationship. It would take one year or more to build the type of relationship B.P. would need to have her emotional needs met. The mother's sobriety was new, but her own mental health still needed to be addressed. The trial court correctly found that there was little likelihood that B.P. could return to the mother in the near future.**

One of the statutory factors that the State must prove prior to terminating parents' rights is that there is little likelihood that parental deficiencies will be remedied so that the child can return to the parents in the near future. RCW 13.34.180(1)(e). The focus of RCW 13.34.180(1)(e) "is whether the identified deficiencies have been corrected." *In re Dependency of M.R.H.*, 145 Wn. App. 10, 27, 188 P.3d 510 (2008)(citing *In re Dependency of K.R.*, 128 Wn.2d 129, 144, 904 P.2d 1132 (1995)). When deficiencies have not been corrected, then termination is appropriate if the services would not remedy the deficiencies in the foreseeable future. *In re T.R.*, 108 Wn. App. at 164. While there is no numerical standard to measure what the foreseeable future is, it is a factual inquiry that is determined from the child's perspective, and this perspective varies with age. *In re Dependency of A.C.*, 123 Wn. App. 244, 249, 98 P.3d 89 (2004); *In re T.R.* 108 Wn. App. at 164. For young children, the foreseeable future may mean a matter of months. *In re Welfare of Hall*, 99 Wn.2d 842, 850-851, 664 P.2d 1245

(1983)(8 months was not in foreseeable future for 4 year old); *In re P.A.D.* 58 Wn. App. 18, 27, 792 P.2d 159 (1990) (6 months was not in foreseeable future of a 15 month old). “Although 1 year may not be a long time for an adult decision maker, for a young child it may seem like forever.” *In re A.W.*, 53 Wn. App. 22, 32, 765 P.2d 307 (1988).

The mother asserts she corrected her parental deficiencies of substance abuse and mental health. This is problematic on two counts. First, the Department did not agree that her substance abuse or her mental health issues were corrected. Second, the mother’s argument does not address her parenting issues.

The mother had a long history of substance use and abuse. (RP 331-332) She began using drugs at age 13. (RP 331). Her first attempt at in-treatment was when she entered Isabella House in August 2011. (RP 332). She completed treatment in February of 2012 and began out-patient treatment. (RP 338). In May of 2012 she relapsed, but hid it and faked her UA results. (RP 378-79). She was expelled from the program in June 2012. (RP 28). She then continued to use until May 2013 when she again sought in-patient treatment at Isabella House. (RP 342-344). She graduated in December 2013, and at the time of trial was engaged in intensive out-patient treatment with Partners. (RP 171). At this time she was still only in early recovery from her substance abuse. (RP 35).

At the time of trial, the mother had been in out-patient for 2 months but was non-compliant for not attending outside support groups. (RP 172). These group meetings are important in order to build a clean and sober support network. (RP 172). They were just starting to work on her relapse prevention plan. (RP 175). Without outside support, her risk of relapse was quite high. (RP 37, 175). Out-patient treatment typically lasts 9 to 18 months, so the mother had at least 5 months left in treatment at the time of trial. (RP 175). Without outside group meeting attendance, her chemical dependency counselor would have concerns. (RP 178). Her in-patient counselor would also be concerned with a lack of support group meeting attendance. (RP 38).

Carla Paullin, is licensed mental health counselor and a chemical dependency professional that worked with the mother in this case. (RP 182-183). She testified that you need six months of sobriety to be deemed in partial remission and one year to be in full remission. (RP 197-198). However, from her experience of 15 years of chemical dependency treatment, her work with the mother, and her knowledge of the mother's use history, she felt the mother would need 2 years of sobriety to feel good about her sobriety. (RP 182-183, 198). Ms. Paullin also testified, the mother also has never shown any success in a completely unstructured setting. (RP 191-192). Thus, the mother had not corrected her substance

abuse issues at the time of trial. Given the mother's substance abuse history, the court's determination that her substance abuse issues would not be remedied in the foreseeable future for B.P. who was 2 and a half years old, was supported by substantial evidence.

The mother's mental health was also a parental deficiency that had not been remedied. The mother's current counselor, Sandra Gormon-Brown, indicated the mother has an extensive trauma history and struggled to feel her feelings. (RP 135-6). Ms. Gormon-Brown testified the mother's trauma history was a barrier to parenting. (RP 136). This history resulted in the mother having maladaptive coping strategies. (RP 137). The mother's risk to her parenting, from a mental health perspective was his significant disconnect in her feeling states. (RP 140). This would impact the mother's ability to prioritize her child's needs above our own, or to have empathy. (RP 141). The inability to feel feelings as an adult makes it difficult to access the feeling states of children. (RP 141-142). A parent must be able to help a child cope with their feelings and regulate emotions. (RP 141-142). If a parent cannot feel their own feelings, then they cannot help a child cope with their feelings. (RP 141-142). At the time of trial, the mother was making progress with addressing her own feelings, but Ms. Gorman-Brown had concerns about B.P returning to the mother's care. (RP 142-147). She was concerned the mother could not be

emotionally available to B.P. (RP 147). Ms. Gormon-Brown believed the mother needed at least 6 more months of therapy. (RP 149-150).

Ms. Paullin started seeing the mother for individual counseling in October 2011. (RP 183). One of her concerns was that the mother was very institutionalized, which meant she could only succeed in highly structured settings. (RP 191-92) But when the amount of structure decreases, she would struggle to succeed. (RP 191-192). Based upon the testimony of Ms. Gormon-Brown and Ms. Paullin, the court's finding that the mother's mental health would not likely be remedied in the foreseeable future for B.P. was supported by substantial evidence.

Finally, the mother fails to acknowledge her lack of a relationship with B.P. was a parental deficiency that needed to be addressed. The mother had B.P. in her care from the time B.P. was 2 and a half months old until she was nearly a year old. Then the mother relapsed and B.P. was removed from her care. The mother severed the attachment she had started to build with B.P. and then disengaged in services and most importantly stopped visiting her child. The damage this caused to B.P. was testified to by Ms. Eastep, Ms. Clemmons and Ms. Thomas. At the time of trial B.P. did not view her mother as a safe parental authority. In order to handle the trauma of another placement disruption, B.P. would need a strong relationship with her mother and her mother would need to

be able to put her own feelings aside for the good of B.P. The mother was unable to do this. Ms. Eastep testified the mother recognized the risk to B.P.'s mental health, but wanted reunification anyway. (RP 72). She discounted the experts, and believed that with more time B.P.'s ability to attach to her would change. (RP 383).

The overwhelming evidence was that while the mother made progress, she had not made enough progress that her parental deficiencies would likely be remedied in the foreseeable future. B.P. was 2 and a half at the time of trial. The foreseeable future for her was under 6 months. The mother needed several more months of sobriety, six more months of individual therapy, and hundreds if not thousands of contacts with B.P. to remedy all of her parental deficiencies. The court did not err in determining this was not likely.

**C. B.P. was at risk for developing an attachment disorder. She had already been in dependency for over two years. Continuing the parent-child relationship hinders B.P.'s ability to fully integrate into a stable and permanent home. In order to protect her mental health, B.P. needed permanency immediately. The trial court did not error in finding the Department met its burden in establishing that early continuation of the parent-child relationship diminished B.P.'s prospects for early integration into a stable and permanent home.**

Generally, the Revised Code of Washington states “[w]hen the rights of basic nurture, physical and mental health, and safety of the child

and the legal rights of the parents are in conflict, the rights and safety of the child should prevail.” RCW 13.34.020. Basic rights to nurturing “includes the right to a safe, stable, and permanent home and a speedy resolution of any proceeding under this chapter.” *Id.*

Specifically the Code requires proof “[t]hat continuation of the parent and child relationship clearly diminishes the child's prospects for early integration into a stable and permanent home” before parental rights can be terminated. RCW 13.34.180(1)(f). The Washington State Supreme Court has stated that “[t]he plain language of RCW 13.34.180(1)(f) merely requires the trial court to find that the continued parent-child relationship diminishes the child's prospects of *integration* into a stable and permanent home.” *In the Matter of the Dependency of K.D.S.*, 176 Wn.2d 644,658, 294 P.3d 695, 702 (2013). The Court further stated the main focus “is the parent-child relationship and whether it impedes the child's prospects for integration.” *Id.* (quoting *In re Dependency of K.S.C.*, 137 Wn.2d 918, 927, 976 P.2d 113,118 (1999)).

Courts have found that one way to satisfy RCW 13.34.180(1)(f) is evidence of the parent-child relationship causing harm to the child. *Id.*; *K.S.C.*, 137 Wn.2d 918, 932, 976 P.2d 113,120. However, it has been consistently held that “[w]hile a detrimental personal relationship would not be irrelevant, this factor is mainly concerned with the continued effect

of the legal relationship between parent and child.” *In re P.P.T.*, 155 Wash. App. 257, 268, 229 P.3d 818, 823 (2010); *In re A.C.* 123 Wn. App. 244, 250, 98 P.3d 89, 92 (2004).

B.P. is in a foster care placement. Foster care, even a relative placement, is a temporary situation. *In re Dependency of J.H.*, 117 Wn.2d 460, 469, 815 P.2d 1380, 1384 (1991). There is substantial evidence in the record that B.P. needs permanence now. Ms. Clemmons testified that B.P. is at risk of forming an attachment disorder. (RP 164). Ms. Eastep testified that B.P. was a child in need of permanence. (RP 83, 85). Going between the mother and her foster home was confusing, and after being in the system her entire life, B.P. needed to know what her world was going to look like. (RP 83).

The mother argues that the need for permanency was not established because B.P. and the mother were visiting without any harm to B.P. But the testimony was that B.P. would never be able to attach to her mother. Another disruption in placement could cause long term emotional harm to B.P. The testimony was that B.P. needed permanency now. The court’s finding to this effect was supported by substantial evidence.

**D. B.P. had emotional issues stemming from the mother's relapse and absence from B.P.'s life. The trial court did not error in finding that termination was in B.P.'s best interest.**

The overriding goal of the termination proceeding is to serve the best interests of the child. *In re Dependency of A.W.*, 53 Wn. App. 22, 765 P.2d 307 (1988). Children have a basic right to nurturing, which includes the right to a safe, stable, permanent home and speedy resolution of the dependency and termination proceedings. RCW 13.34.020. The factors involved in determining the best interests of the child are not capable of specification; rather, the best interests of the child must be determined based on the facts and circumstances of each case. *In re Dependency of A.M.*, 106 Wn. App. 123, 22 P.3d 828 (2004); *In re Dependency of A.V.D.*, 62 Wn. App. 562, 572, 815 P.2d 277 (1991); *see also In re Becker*, 87 Wn.2d 470, 553 P.2d 1339 (1976) (holding that this determination is dependent upon the facts and circumstances of each case and each case is different). Termination here is the only course of action which would be in the best interests of this child.

Although parents have a fundamental liberty and privacy interest in the care and custody of their children, when the rights of the child conflict with their rights, the rights of the child must prevail. *In re Dependency of T.R.*, 108 Wn. App. 149, 154, 29 P.3d 1275 (2001); *see also In re Sego*, 82 Wn.2d 736, 738, 513 P.2d 831 (1973) (holding that anytime the rights of parents and the welfare of the child conflict, the court must rule in the child's

favor). The dominant consideration in determining the best interests of a child is the child's welfare, and the parental relationship must be subordinate to this consideration, the needs of the child must prevail. *In re Dependency of S.M.H.*, 128 Wn. App. 45, 115 P.3d 990 (2005).

Here the evidence was overwhelming that termination was in B.P.'s best interest. Ms. Eastep testified that B.P. needed permanence. (RP 85). Ms. Eastep was hoping for something short of termination so that B.P. and her mother could still have some contact. (RP 85). But that was not a possibility in this case, although it had been considered. (RP 403). Ms. Eastep went on to state that permanency and no significant change for B.P. was what was in her best interest. (RP 85). Thus, she was in effect stating that termination was in B.P.'s best interest, because that was the only option that would give B.P. permanence and require no significant change for B.P.

Ms. Schweigert, the child's guardian ad litem had concerns about the mother's ability to place B.P.'s needs ahead of her own. (RP 75). She did not feel that the mother would be able to parent B.P. (RP 236). She testified termination was in B.P.'s best interest. (RP 239).

Marcey Monohan was the assigned case worker for the mother and B.P. (RP 250). She testified that the mother avoids her feelings, which makes it difficult for her to be emotionally present for B.P. (RP 276).

This will make parenting B.P. extremely difficult for the mother. (RP 276-77) Ms. Monohan was the only witness who saw the mother with B.P. during the time B.P. was placed with her mom, and after removal. (RP 284): She noted significant differences in the relationship. (RP 284). B.P. is anxious and unsure of herself with her mother. (RP 285) It no longer looks like a mother-child relationship. (RP 285) She believed termination was in B.P.'s best interest. (RP 285)

All the witnesses who testified indicated that termination was in B.P.'s best interest. Other than the mother, no witness indicated termination was not in her best interest. The evidence supporting the court's finding was supported by substantial evidence.

**E. The mother relapsed on methamphetamine. This caused B.P.'s removal from her care at a crucial time in B.P.'s development. From there, the mother continued using, did not participate in services, and failed to visit her child, and B.P. was at risk of forming attachment disorders as a result. The mother failed to appreciate how her actions (or inactions) negatively impacted B.P. The mother did not demonstrate any understanding of B.P.'s needs. Thus, the trial court correctly found the mother was currently unfit to parent.**

In addition to the six statutory elements, the State must also show that the parent is unfit. *In the Matter of the Welfare of A.B.*, 168 Wn.2d 908, 921, 232 P.3d 1104 (2010), *In Re the Welfare of K.R.*, 128 Wn.2d 129, 904 P.2d 1132 (1995). Current parental unfitness is implicitly established when the Department proves all six of the statutory elements.

*In re K.N.J.*, 171 Wn.2d 568, 576-77, 257 P.3d 522 (2011). A court can also explicitly make a finding of current parental unfitness. *A.B.* 168 Wn.2d at 920-921.

Here, the trial court made an explicit finding that the mother was currently unfit to parent B.P. To meet its burden to prove current unfitness in a termination proceeding, the Department must 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. *In re Welfare of A.B.* 181 Wn. App. 45, 61, 323 P.3d 1062 (2014).

Here, the mother initially achieved reunified with her child. When the child was 11 months old, the mother had relapsed and the child was removed. The mother did not visit her child on any consistent basis for the next year. By the time the mother resumed contact with B.P. she had developed the beginnings of an attachment disorder. The mother struggled to feel her own feelings and had maladaptive coping strategies. In order for B.P.'s needs to be met, including addressing her attachment issues, her parent would need to be able to cope with their own feelings in order to help B.P. address her feelings in a healthy way. The mother did not demonstrate an ability to do this. Rather, the mother maintained her

adult perspective that because of the biological bond, B.P. should be with her and that over time everything would be fine.

The mother had just begun her sobriety. She had not demonstrated an ability to remain sober outside of any structure setting. She did not acknowledge the emotional damage B.P. suffered with the removal from her care. She did not demonstrate the ability to place B.P.s' needs ahead of her own. Thus, the court's finding that the mother was unfit to parent B.P. was supported by substantial evidence.

#### V. CONCLUSION

The Department established the elements of RCW 13.34.180(1)(e) by clear cogent and convincing evidence. B.P. needs a safe, secure, and structured environment. She has the right to emotional well-being, permanency, and speedy resolution of this proceeding. Termination was in B.P.'s best interest. The mother is currently unfit to parent her child. The court's decision to terminate the mother's parental rights was supported by substantial evidence and should be affirmed.

RESPECTFULLY SUBMITTED this 22<sup>nd</sup> day of September, 2014.

  
AMY SOTH, WSBA #26181  
Assistant Attorney General

**FILED**

NO. 32437-1-III

SEP 22 2014

**COURT OF APPEALS, DIVISION III  
OF THE STATE OF WASHINGTON**

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

In Re:

DECLARATION OF  
MAILING

B.P.

I, Pandora K. Thoorsell, state that on September 22, 2014, I deposited in the United States mails by first class mail, proper postage affixed, a copy of Respondent's Brief to:

Kristina Nichols  
Attorney at Law  
P.O. Box 19203  
Spokane, WA 99219-9203

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

DATED this 22nd day of September, 2014, at Spokane, Washington.

Pandora K. Thoorsell  
Pandora K. Thoorsell