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Division III, No. 32437-1-III

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IN THE  
SUPREME COURT  
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STATE OF WASHINGTON

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*In re the Welfare of B.P.*

STATE OF WASHINGTON/DSHS,

Respondent,

v.

H.O. (Mother),

Petitioner

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PETITIONER'S SUPPLEMENTAL BRIEF

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 ORIGINAL

**TABLE OF CONTENTS**

A. ISSUES PRESENTED FOR REVIEW.....1

B. STATEMENT OF THE CASE.....1

C. ARGUMENT.....10

Issue 1: Whether the State failed to prove it provided all necessary services, reasonably available, capable of correcting parental deficiencies, where the mother was offered therapeutic visitation but was not offered specific attachment and bonding services.....10

Issue 2: Whether the State failed to prove that the mother is currently unfit based on a lack of parent-child attachment, where the mother completed all services offered by the State, had successful therapeutic visits with the child, and is successfully parenting another child.....15

D. CONCLUSION.....19

**TABLE OF AUTHORITIES**

United States Supreme Court

*Santosky v. Kramer*, 455 U.S. 745,  
102 S. Ct. 1388, 71 L. Ed. 2d 599 (1982).....15, 19

Washington Supreme Court

*In re Dependency of K.N.J.*, 171 Wn.2d 568, 257 P.3d 522 (2011).....11

*In re Dependency of K.R.*, 128 Wn.2d 129, 904 P.2d 1132 (1995)....15, 16

*In re Dependency of Schermer*, 161 Wn.2d 927, 169 P.3d 452 (2007)....16

*In re Sego*, 82 Wn.2d 736, 513 P.2d 831 (1973).....15, 16

*In re Welfare of A.B.*, 168 Wn.2d 908,  
232 P.3d 1104 (2010).....15, 17, 18, 19

*In re Welfare of C.S.*, 168 Wn.2d 51, 225 P.3d 953 (2010)....10, 12, 13, 14

*In re Welfare of K.K.*, 119 Wn.2d 600, 836 P.2d 200 (1992).....16

Washington Courts of Appeal

*In re Dependency of T.L.G.*, 126 Wn. App. 181, 108 P.3d 156 (2005)....14

*In re Termination of S.J.*, 162 Wn. App. 873, 256 P.3d 470 (2011)...10, 14

*In re Welfare of A.B.*, 181 Wn. App. 45, 323 P.3d 1062 (2014).....16, 19

*In re Welfare of K.M.M.*, 187 Wn. App. 545, 349 P.3d 929 (2015).....16

*In re Welfare of M.R.H.*, 145 Wn. App. 10, 188 P.3d 510 (2008).....13

*Krause v. Catholic Comty. Servs.*, 47 Wn. App. 734,  
737 P.2d 280 (1987).....14

Washington State Statutes

RCW 13.34.020.....15  
RCW 13.34.180(1)(d).....13, 14

## **A. ISSUES PRESENTED FOR REVIEW**

Issue 1: Whether the State failed to prove it provided all necessary services, reasonably available, capable of correcting parental deficiencies, where the mother was offered therapeutic visitation but was not offered specific attachment and bonding services.

Issue 2: Whether the State failed to prove that the mother is currently unfit based on a lack of parent-child attachment, where the mother completed all services offered by the State, had successful therapeutic visits with the child, and is successfully parenting another child.

## **B. STATEMENT OF THE CASE**

B.P. was born on July 8, 2011. (CP 180; RP 330). A hospital hold was placed on B.P. as a result of Ms. 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 Ms. H.O.'s history with substance abuse and her mental health. (CP 180; RP 250).

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).

Ms. H.O. participated in mental health counseling and parenting services. (CP 183-184; RP 180, 182-183, 191, 198-199, 210-214; Exhibit

21). In September 2011, B.P. was placed with Ms. H.O. at Isabella House where Ms. 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). Ms. H.O. successfully completed the program in January 2012. (CP 182; RP 26, 34, 332-333).

B.P. was removed from Ms. H.O.'s care in July 2012, following a relapse by Ms. H.O. (CP 181-182, 184; RP 28, 34, 193, 226, 257-260, 335, 338-340, 378-379; Exhibits 7, 8). B.P. was first placed in foster care and then moved to a relative placement in November 2012. (CP 184; RP 226, 259, 264).

Beginning in July 2012, visits between B.P. and Ms. H.O. were set up for three times per week for two hours. (RP 227, 260; Exhibit 8). Ms. H.O. attended some visits, with ten missed visits between the end of July and the end of October 2012. (RP 227, 261). At a review hearing held on October 31, 2012, the trial court ordered "[i]f mother does not appear for her visit on 10/31/12 visits will be suspended until mother brings a motion to resume visits." (RP 228-229, 261-262, 264; Exhibit 9). Visits stopped in October 2012. (RP 264).

Ms. 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).

During her second time at Isabella House, Ms. H.O. gave birth to another child, her daughter A. (CP 182; RP 30, 270, 331, 354). A. was placed with Ms. 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). Ms. H.O. remained clean and sober since entering Isabella House on May 9, 2013 through the time of trial. (CP 182; RP 35, 47, 299, 322, 332; Exhibit 1).

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

In August 2013, Ms. 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, Ms. 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, Ms. H.O. was compliant with all ordered services. (RP 273; Exhibit 12). DSHS made a referral for a new service, family therapy with Ms. Eastep. (RP 273; Exhibit 12). The case proceeded to a termination trial in February 2014. (RP 8-434).

Ms. Eastep testified regarding the therapeutic visits between Ms. H.O. and B.P. which took place between August 2013 and February 2014. (RP 61-

101). She testified she conducts a therapeutic visit between a parent and a child of B.P.'s age as follows:

A therapeutic visit is typically for the benefit of the child, so you are there to provide therapeutic support to the child during the interaction if they are having a hard time. Obviously, if there is something unsafe or something that is creating risk that the parent is doing, then we would intervene in that moment. But really it's a lot of observing, it's a lot of just taking note of the interactions and seeing kind of how the child is tolerating it and what the parent is bringing to the interaction.

(RP 61; 92-94).

Ms. Eastep testified therapeutic visits are "not family therapy, so I'm really not there to provide a whole lot of instruction . . . really for the most part you're just observing . . . [s]o you are really there as sort of a safeguard to intervene." (RP 92-94).

When asked if she created treatment goals for her work with B.P. and Ms. H.O., Ms. Eastep responded "[v]ery basic treatment goals because it was still in the capacity of therapeutic visits, therapeutic contact, not family therapy." (RP 67). Ms. Eastep testified the treatment goals were as follows:

[T]o develop therapeutic rapport with the family; to assist [Ms. H.O.] in identifying cues and boundaries that [B.P.] has related to their physical and emotional contact; and to assess [B.P.]'s social/emotional relationship with Ms. [H.O.] and her sibling, [A.].

(RP 67).

Ms. Eastep testified that she did "a little bit" of a family therapy component during the therapeutic visits, "[b]ut a lot of it was really just allowing the interactions to happen and supporting, if needed, but . . . not

constant.” (RP 94, 97). She testified regarding the difference between therapeutic visitation, family therapy, and bonding and attachment work. (RP 94-95). She testified “I’m not, you know, like a certified attachment person.” (RP 95).

Ms. Eastep testified that prior to the first therapeutic visit, which took place in August 2013, she spoke with Ms. H.O. in preparation for the visit. (RP 62). She testified “[Ms. H.O.] had not seen [B.P.] in about eleven months, I believe, so she obviously was wanting to be very mindful of what [B.P.] was going to need . . . .” (RP 62). Ms. Eastep testified Ms. H.O. “was extremely cautious about what the experience would be like for [B.P.][.]” (RP 98). She testified Ms. H.O. was very clear in acknowledging she was a stranger to B.P. (RP 101).

Ms. Eastep testified she talked with Ms. H.O. about the differences between social and emotional relationships, and attachment. (RP 68-69). When asked if Ms. H.O. seemed to understand the differences, Ms. Eastep testified:

I think that Ms. [H.O.] has a lot of insight as far as she really recognized from the beginning that she was a stranger. She did not argue the fact that just because [B.P.] was her biological daughter that she would know her. She 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 Ms. 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

Ms. 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 Ms. H.O. and B.P. are together. (RP 98). She testified B.P. does not identify Ms. H.O. as her primary attachment figure. (RP 69). Ms. Eastep testified an emotional connection between Ms. H.O. and B.P. emerged. (RP 68, 75).

When asked how long it takes for a child to form an attachment with an adult, Ms. Eastep testified:

I don't know that once it's disrupted, I don't know the timeframe. I know that some can and some can't, and what the research says is no one is really sure why some kids are able to be resilient and repair that and attach to a primary figure again and why others are not.

(RP 71).

She testified she does not know whether B.P. would be one of these resilient children. (RP 72). Ms. Eastep testified she spoke with Ms. H.O. about some of the risks associated with multiple attachment disruptions for children. (RP 71-72). She testified "I think that [Ms. H.O.] recognizes there's a risk but I think that she's willing to take that risk because it's her daughter and she believes that she has done what she needs to be reunified." (RP 72).

Ms. Eastep described Ms. H.O. as being very attuned to A., and described A. as "a very healthy, happy little girl." (RP 73, 98). She testified Ms. [H.O.] is A.'s primary attachment person. (RP 70). When asked what Ms. 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).

Carol Thomas testified she conducted a parenting assessment with Ms. 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 Ms. H.O. (RP 113). Ms. Thomas testified there were no characteristics of an attachment with B.P. towards Ms. H.O. (RP 113, 122). She testified that Ms. 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). She testified that although B.P. did not use it, Ms. H.O. provided safety and protection for B.P. during the parenting assessment. (RP 111).

Ms. Gormon-Brown testified Ms. H.O.’s mental health is reasonably stable. (RP 147). She testified “[t]he risk to parenting in Ms. [H.O.]’s case is that she has a quite significant disconnect from feeling states.” (RP 140). She testified Ms. H.O. has made progress in this area, in “feeling her feelings.” (RP 141-143). She testified Ms. H.O. experiences empathy, and that she is able to show some empathy for B.P. (RP 144). She testified that from a mental health perspective, she did not believe there were “any issues in [Ms. 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. Gordon-Brown testified her concern about Ms. H.O.’s ability to reunify

with B.P. was whether Ms. H.O. can be emotionally available for B.P. (RP 147-148).

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). Ms. Clemons testified she first saw B.P. on October 21, 2013. (RP 160). She testified she has not done any work between Ms. H.O. and B.P., but is it possible to do so. (RP 166-167).

Kolleen Steward testified Ms. H.O. began intensive outpatient drug treatment in December 2013. (RP 170-171). She testified that although Ms. 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).

B.P.’s guardian ad litem Karen Schweigert admitted she has not seen Ms. H.O. and B.P. together since their visits resumed in August 2013. (RP 230, 241-242) When asked what she sees as Ms. H.O.’s parenting deficiencies, Ms. Schweigert testified Ms. H.O. has not had an opportunity to parent “24/7” by herself. (RP 235). When asked how Ms. H.O. should be given that opportunity, Ms. Schweigert testified “because of the attachment issues and because I think it’s unlikely that [B.P.] would be able to reattach to [Ms. H.O.], especially without significant trauma, I don’t believe that she could or should.” (RP 245). She acknowledged it would be possible for B.P.

to transfer her attachment back to Ms. H.O., if she were returned to Ms. H.O. (RP 246).

When asked to identify Ms. H.O.'s parental deficiencies, Social worker Marcey Monohan testified "I would say her substance abuse is still a concern, and her mental health in regards to her ability to be emotionally available for a child like [B.P.]." (RP 275, 280).

Ms. 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). Ms. H.O. testified she could imagine it was "really scary" for B.P. when she did not show up for a visit. (RP 381-382). She testified she is concerned about the long-term impacts this will have on B.P. (RP 382).

When asked if she was willing to risk taking B.P. home with her, despite B.P.'s problems, Ms. 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).

The trial court terminated Ms. 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).

In finding Ms. H.O. currently unfit to parent B.P., the trial court found:

This element requires the court to determine if Ms. [H.O.] is able to meet [B.P.]'s needs. The evidence clearly indicates that she cannot. Ms. [H.O.] relapsed causing a disruption in her relationship with [B.P.]. She failed to

consistently visit [B.P.] and did not maintain a relationship with her. Ms. [H.O.] is responsible for the stops and starts in her parenting. She does not understand [B.P.]'s needs for permanency or the risk she faces if she develops an attachment disorder. Ms. [H.O.] cannot claim that because [A.] is in her care, that she must be fit to parent. [B.P.]'s needs are different and her attachment issues are the result of her mother's actions. Ms. [H.O.] has not demonstrated an ability to understand her own feelings, or those of [B.P.]. Thus, the Department has established that Ms. [H.O.] is currently unfit to parent.

(CP 187-188).

Ms. H.O. timely appealed. (CP 177-190). The Court of Appeals affirmed the termination of Ms. H.O.'s parental rights to her daughter B.P. in a published opinion.

### C. ARGUMENT

**Issue 1: Whether the State failed to prove it provided all necessary services, reasonably available, capable of correcting parental deficiencies, where the mother was offered therapeutic visitation but was not offered specific attachment and bonding services.**

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)). The State must also show that it tailored the offered services to meet a parent’s individual needs. *S.J.*, 162 Wn. App. at 881. “When a ‘condition’ precludes reunion of parent and child . . . regardless of whether it can be labeled as a ‘parental deficiency,’ the State must provide any necessary services to address that condition as set forth in RCW 13.34.180(1)(d).” *In re Welfare of C.S.*, 168 Wn.2d 51, 56 n.3, 225 P.3d 953 (2010). The State must prove the

statutory element of RCW 13.34.180(1)(d) by clear, cogent, and convincing evidence. *In re Dependency of K.N.J.*, 171 Wn.2d 568, 576-777, 257 P.3d 522 (2011).

Here, the primary concern raised at trial, and found by the trial court, was that B.P. does not identify Ms. H.O. as her primary attachment figure. (CP 186; RP 69, 113, 122, 245-246, 285, 300). Despite this primary concern, specific attachment and bonding services were not provided to Ms. H.O. and B.P.

The Court of Appeals found “[a]ttachment was the goal with the services offered by Ms. Eastep.” Published Opinion, pg. 10. However, Ms. Eastep conducted therapeutic visits between Ms. H.O. and B.P., not attachment therapy. (RP 61-101). At most, Ms. Eastep did “a little bit” of a family therapy component during the therapeutic visits. (RP 94, 97). Her role at the therapeutic visits was primarily observation. (RP 61, 92-94). Ms. Eastep acknowledged she is not a certified provider of attachment therapy. (RP 95).

The Court of Appeals also found that therapeutic services were offered to Ms. H.O. to strengthen her relationship with B.P., without the desired success, because “Ms. Eastep opined B.P. would never be able to form a real attachment to H.O and that forcing B.P. to do so would significantly injure B.P.’s mental health.” Published Opinion, pg. 10. To the contrary, Ms. Eastep testified that when an attachment with an adult is disrupted, some children can be resilient and repair and attach to a primary

figure again, and some cannot. (RP 71). She testified she does not know whether B.P. would be one of these resilient children. (RP 72). In addition, Ms. Schweigert acknowledged it would be possible for B.P. to transfer her attachment back to Ms. H.O., if she were returned to Ms. H.O. (RP 246).

Instead of providing specific attachment and bonding services to Ms. H.O. and B.P., DSHS instead chose to offer these services to B.P. and her foster parents. (RP 158-159). These services with the foster parents began in October 2013, when Ms. H.O. was only a few months away from successfully completing the residential chemical dependency program at Isabella House. (CP 182; RP 30, 160, 353). These services were necessary to permit Ms. H.O. to reunify with B.P. Ms. H.O. was never given that opportunity.

The State does not meet its burden under RCW 13.34.180(1)(d) if DSHS provides the foster parent with services that successfully permit them to care for a child but does not offer the parents the same opportunity. *See C.S.*, 168 Wn.2d at 55-56. In *C.S.*, the mother remedied her identified parenting deficiency of substance abuse and any mental health problems. *Id.* at 55. The trial court terminated her parental rights to her child, concluding she lacked the skills to care for him, given his special needs. *Id.* This Court reversed the termination order, finding the State did not meet its burden under RCW 13.34.180(1)(d), where the mother was not offered training to address the child's special needs, but such training was offered to the foster parent. *Id.* at 55-56.

The Court of Appeals distinguished *C.S.*, finding that while there, “the parent’s ability to manage the child was the only parental deficiency left . . . [h]ere, [Ms.] H.O. has mental health issues impacting her ability to parent B.P.” Published Opinion, pg. 9. However, although she had concerns about whether Ms. H.O. can be emotionally available for B.P., Ms. Gormon-Brown testified Ms. H.O.’s mental health is reasonably stable, and she did not believe there were “any issues in [Ms. 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 147-148).

These facts presented by Ms. Gormon-Brown do not excuse DSHS from fulfilling its duty to provide the necessary bonding and attachment services. *See* RCW 13.34.180(1)(d). The offer of specific bonding and attachment services would not have been futile. *C.S.*, 168 Wn.2d at 56 n.2 (quoting *In re Welfare of M.R.H.*, 145 Wn. App. 10, 25, 188 P.3d 510 (2008)). Ms. H.O. is compliant with all of the other services offered by DSHS. (RP 273, 297; Exhibit 12). She has remained clean and sober since May 9, 2013. (CP 182; RP 35, 47, 299, 322, 332; Exhibit 1). As Ms. Gormon-Brown testified, there are no issues in Ms. H.O.’s mental health that would impede her ability to have B.P. returned to her care. (RP 141, 143-144, 147).

In finding that DSHS offered Ms. H.O. all necessary services, the Court of Appeals reasoned “[t]he disruption in the parent-child relationship was not caused by the Department, but rather by [Ms.] H.O.’s choices[.]”

following her relapse in 2012. Published Opinion, pg. 10. However, our dependency scheme is not simply about assigning fault; it is based on identifying parental deficiencies and impediments to reunification and providing services to address these issues. *See* RCW 13.34.180(1)(d). “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, this does not excuse DSHS from providing necessary services. *See id.* “The primary purpose of a dependency is to allow courts to order remedial measures to preserve and mend family ties, and to alleviate the problems that prompted the State's initial intervention.” *Id.* (citing *Krause v. Catholic Comty. Servs.*, 47 Wn. App. 734, 744, 737 P.2d 280 (1987)). “The State is charged with reuniting families where possible . . . and with providing necessary services to achieve that goal . . . .” *C.S.*, 168 Wn.2d at 56 n.3 (internal citations omitted).

DSHS did not offer Ms. H.O. all necessary services. *See* RCW 13.34.180(1)(d). By failing to offer Ms. H.O. specific attachment and bonding services, the State did not meet its burden at trial. The order terminating her parental rights must be reversed. *C.S.*, 168 Wn.2d at 56-57; *see also S.J.*, 162 Wn. App. at 881-84 (termination of parental rights held improper because the State failed to offer the mother timely mental health services and attachment and bonding services between her and her son).

**Issue 2: Whether the State failed to prove that the mother is currently unfit based on a lack of parent-child attachment, where the mother completed all services offered by the State, had successful therapeutic visits with the child, and is successfully parenting another child.**

“[A] parent has a constitutional due process right not to have his or her relationship with a natural child terminated in the absence of a trial court finding of fact that he or she is currently unfit to parent the child.” *In re Welfare of A.B.*, 168 Wn.2d 908, 920, 232 P.3d 1104 (2010); *see also Santosky v. Kramer*, 455 U.S. 745, 760, 102 S. Ct. 1388, 71 L. Ed. 2d 599 (1982). The parental unfitness inquiry must look to the qualities of the parent, rather than the best interests of the child. *Id.* at 922, 925-926.

The State must prove parental unfitness by clear, cogent, and convincing evidence. *In re Dependency of K.R.*, 128 Wn.2d 129, 142, 904 P.2d 1132 (1995) (citing *Santosky*, 455 U.S. at 769). “Clear, cogent, and convincing evidence exists when the ultimate fact in issue is shown by the evidence to be highly probable.” *Id.* at 142 (internal quotation marks omitted) (quoting *In re Sego*, 82 Wn.2d 736, 739, 513 P.2d 831 (1973)).

“The legislature declares that the family unit should remain intact unless a child's right to conditions of basic nurture, health, or safety is jeopardized.” RCW 13.34.020. Based on this statutory provision, the Washington Court of Appeals held that “[t]o meet its burden to 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.” *In re Welfare of A.B.*, 181 Wn. App. 45, 61, 323 P.3d 1062 (2014). The Court of Appeals further held that parenting deficiencies “that do not present an immediate or severe risk to the child’s safety are not sufficient to render a parent currently unfit.” *Id.* at 64-65.

Ms. H.O. urges this Court to adopt the Court of Appeal’s definition of current parental unfitness. *See A.B.*, 181 Wn. App. at 61, 64-65.<sup>1</sup> This definition comports with this Court’s holding that identifying parental deficiencies is not the equivalent of proving parental unfitness. *See In re Dependency of Schermer*, 161 Wn.2d 927, 943, 169 P.3d 452 (2007); *see also In re Welfare of K.K.*, 119 Wn.2d 600, 609, 836 P.2d 200 (1992).

Here, the State failed to prove, by clear, cogent, and convincing evidence, that Ms. H.O. is currently unfit to parent B.P. DSHS was required to prove that it is “highly probable” that Ms. H.O.’s parenting deficiencies rendered her incapable of providing B.P. with basic nurture, health, or safety. *See K.R.*, 128 Wn. 2d at 142 (defining clear, cogent, and convincing evidence) (quoting *Sego*, 82 Wn.2d at 739); *see also A.B.*, 181 Wn. App. at 61 (setting forth this standard).

Ms. H.O. completed all services offered by the State. (RP 273, 297; Exhibit 12). In addition, Ms. H.O.’s therapeutic visits with B.P. demonstrated that she was a fit parent. (RP 61-101). Ms. Eastep testified she

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<sup>1</sup> The Court of Appeals also addressed the definition of current parental unfitness in *In re Welfare of K.M.M.*, 187 Wn. App. 545, 575-578, 349 P.3d 929 (2015). This Court granted review of this decision. *See In re Welfare of K.M.M.*, 184 Wash.2d 1026 (2016). Ms. H.O. disagrees with the Court of Appeals ruling in *K.M.M.*, finding the father unfit to parent his daughter based solely on the lack of a relationship between them, and requests this Court decline to follow *K.M.M.* here. *See K.M.M.*, 187 Wn. App. at 563, 577.

does not have any safety concerns when Ms. H.O. and B.P. are together. (RP 98). Ms. Eastep eventually reduced her contact with Ms. H.O. and B.P. to once a week, believing therapeutic visitation was no longer necessary because Ms. H.O. was appropriate in the visits and B.P. was tolerating the visits. (RP 92-93). Ms. Eastep also acknowledged an emotional connection between Ms. H.O. and B.P. emerged over the course of the visits. (RP 68, 75).

Furthermore, the fact that Ms. H.O. was capable of caring for another child, her daughter A., while not dispositive, was highly relevant to parental fitness. (RP 30, 52-53, 126, 270, 331).

Both the trial court and Court of Appeals found Ms. H.O.'s ability to parent A. does not support a finding that she is currently fit to parent B.P. (CP 188); Published Opinion, pg. 18. The trial court reasoned that "[B.P.]'s needs are different and her attachment issues are the result of her mother's actions. (CP 188). The Court of Appeals reasoned "the circumstances between the two children vary markedly; one child being constantly with [Ms.] H.O. in a structured environment, while the other was displaced from [Ms.] H.O. for a significant amount of time, creating attachment differences." Published Opinion, pg. 18.

However, the fact that Ms. H.O. is fit to parent A. should be weighed heavily in favor of finding current parental fitness to parent B.P. The focus of the parental unfitness inquiry is the qualities of the parent, rather than the best interests of the child. *A.B.*, 168 Wn.2d at 922, 925-26.

The lack of attachment between Ms. H.O. and B.P. does not render Ms. H.O. unfit to parent B.P. This is not a parenting deficiency that poses “an immediate or severe risk to the child’s safety.” *A.B.*, 181 Wn. App. at 64-65. And, as a matter of fundamental fairness, Ms. H.O. should not be found currently unfit based on this lack of attachment, without requiring the State to first provide the necessary specific attachment and bonding services, as argued in Issue 1 above. The fact that Ms. H.O. is fit to parent A. demonstrates that specific attachment and bonding services were the critical missing element in reunification.

Further, in finding Ms. H.O. currently unfit to parent B.P., both the trial court and Court of Appeals found Ms. H.O. was unable to understand her feelings. (CP 188); Published Opinion, pg. 17. To the contrary, Ms. Gormon-Brown’s testimony was that Ms. H.O. had made progress in this area. (RP 141-143). Importantly, she testified Ms. H.O. experiences empathy, and that she is able to show empathy for B.P. (RP 144).

Both the trial court and the Court of Appeals also stated that Ms. H.O. did not understand B.P.’s feelings. (CP 188); Published Opinion, pg. 17-18. To the contrary, the record is replete with acknowledgments by Ms. H.O. of B.P.’s feelings. (RP 62, 69, 98, 71-72, 101, 346, 381-382). Prior to the first therapeutic visit in August 2013, Ms. H.O. acknowledged she was a stranger to B.P. (RP 69, 101). She also acknowledged she could imagine it was “really scary” for B.P. when she did not show up for a visit, following her 2012 relapse. (RP 381-382).

Termination of Ms. H.O.'s parental rights to B.P. are, in effect, being justified because the foster parents can presumably take better care of B.P. However, this is not the standard for current parental unfitness. *See A.B.*, 168 Wn.2d at 925-26 (quoting *Santosky*, 455 U.S. at 759-60). The fact-finding between the parent and the State does not “purport to determine whether the natural parents or the foster parents would provide a better home.” *A.B.*, 168 Wn.2d at 926 (quoting *Santosky*, 455 U.S. at 759). “Rather, it is designed to focus on whether ‘the natural parents are at fault’ and litigate questions of ‘what the State did’ and ‘what the natural parents did not do.’” *Id.* (quoting *Santosky*, 455 U.S. at 759-60). Here, Ms. H.O. was compliant with all services offered by the State and the State did not offer her specific attachment and bonding services that were crucial for her reunification with B.P. (RP 273, 297; Exhibit 12).

Ms. 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 that it is “highly probable” that Ms. H.O.'s parenting deficiencies rendered her incapable of providing B.P. with basic nurture, health, or safety. *See A.B.*, 181 Wn. App. at 61, 64-65. The termination order should be reversed.

**D. CONCLUSION**

The termination order should be reversed and the matter remanded for further proceedings. The State failed to prove (1) that the DSHS offered all necessary services, where it did not offer or provide specific attachment and bonding services to Ms. H.O. and B.P., and (2) that Ms. H.O. was currently unfit to parent B.P.

Respectfully submitted this 22nd day of March, 2016.

  
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Jill S. Reuter, WSBA #38374

*/s/ Kristina M. Nichols*  
\_\_\_\_\_  
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IN THE SUPREME COURT  
OF THE STATE OF WASHINGTON

In re the Welfare of ) Supreme Court No. 91925-9  
B.P. ) COA No. 32437-1-III  
\_\_\_\_\_ )  
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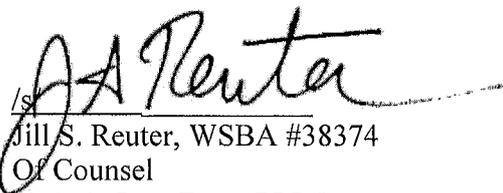
On March 22, 2016, I deposited for first-class mailing with the U.S. Postal Service, postage prepaid, a true and correct copy of the attached Petitioner's supplemental brief to the following:

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Dated this 22nd day of March, 2016

  
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Dear Clerk,

Please accept for filing the attached Petitioner's Supplemental Brief, in Case No. 91925-9, In re the Welfare of: B.P.

Thank you.

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