

NO. 91925-9

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**SUPREME COURT OF THE 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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**ANSWER TO MOTION FOR DISCRETIONARY REVIEW**

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## I. INTRODUCTION AND IDENTITY OF RESPONDENT

B.P., a girl, is now four years old and she has not lived with her mother for three years. She was placed in foster care at birth and was returned to her mother, Heidi Olson, at two and one-half months' old while the mother was receiving inpatient chemical dependency treatment. When B.P. was 11 months' old, Ms. Olson relapsed and B.P. was removed from her mother and again placed in foster care. Ms. Olson did not engage in services or regularly visit her daughter for 11 months. B.P. was placed with relatives when she was 16 months old and she remains in this home today.

Ms. Olson challenged the termination of her parental rights to B.P. claiming insufficient evidence supported the trial court's findings of fact and that the Department of Social and Health Services did not meet its burden under RCW 13.34.180(1). Specifically, she asserted she did not receive attachment therapy and thus, all services were not offered to her under RCW 13.34.180(1)(d). She also argued that the evidence did not support a finding that she was currently unfit to parent B.P. The Court of Appeals affirmed the trial court's order terminating her parental rights.

Ms. Olson's Motion for Discretionary Review ("Motion") is based on an incorrect reading of *In re the Welfare of C.S.*, 168 Wn.2d 51, 225 P.3d 953 (2010) and *In re the Termination of S.J.*, 162 Wn. App. 873, 256 P.3d 470 (2011) as well as a misconstrued view of the definition of unfitness to

parent found in *In re the Welfare of A.B.*, 168 Wn.2d 908, 232 P.3d 1104 (2010) and *In re the Welfare of A.B.*, 181 Wn. App. 45, 323 P.3d 1062 (2014). Neither the record nor the law supports her arguments. Respondent, the Department, requests that this Court deny Ms. Olson's Motion.

## **II. COURT OF APPEALS DECISION**

The Court of Appeals, Division III, affirmed the order terminating Ms. Olson's parental rights.

## **III. STATEMENT OF RELEVANT FACTS**

At the time that B.P. was born, the mother already had a documented history with the Department dating back to 2005 and involving three prior children who were no longer in her care. CP 180.

B.P. was born on July 8, 2011, at which time the Department again became involved with Ms. Olson and her family. Clerk's Papers ("CP") 180. A hospital hold was placed on B.P. 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 when she was thirteen years old. CP 180-181.

Less than a week after B.P. was born, the Department filed a Dependency Petition alleging the following parental deficiencies:

substance abuse; domestic violence; mental health; and parenting skills. CP 180; Report of Proceedings (“RP”) 250; Ex. P2). B.P. was removed from her 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 urinalysis (“UA/BA”) testing; hands-on parent training; and mental health treatment. CP 180; Ex. P2.

Subsequent to the shelter care hearing, 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 when she was about two and a half months old. 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 highly-structured settings. CP 183; RP 192-193. In other words, as the amount of structure decreased, so did the mother's prospects of success going forward on her own. CP 183; RP 192-193.

The mother completed inpatient treatment at Isabella House when B.P. was about seven months old. 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. Within three months, the mother relapsed but was able to hide her failure from Isabella House by faking her UA tests. RP 378-379. When Isabella House learned of her dishonesty a few weeks later, Isabella House promptly evicted the mother from the transition home. CP 182; RP 26-27, 378-379. Soon thereafter, when BP was 11 months old, the trial court removed B.P. from the mother's care. CP 182; Ex. P7, Ex. 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 only been visiting B.P. sporadically at that time. CP 182; RP 342-44. The mother admitted she had been high during visits in the fall of 2012, just as she had been when parenting B.P. in the past. RP 378-379.

The following spring, in May 2013, the mother reentered Isabella House. CP 182; RP 29. The mother reported her last use of illegal drugs was May 7, 2013 and claims to have remained sober ever since. CP 181-182; RP 29. She was pregnant at that time. 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 – for her own children—a significant parental skill. 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.

Ms. Olson graduated from Isabella House in December of 2013 when BP was about 2 ½ years old. RP 30. She began outpatient treatment with Partners with Families and Children (“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 noncompliant 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 she relapsed and B.P. was removed from her care again. RP 252; Exs. 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, when B.P. was 16 months old, 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 causing B.P. Ex. P9.

In August of 2013, the court ordered a one-time, supervised visit between the mother and B.P. Lori Eastep, the family therapist, supervised. CP 184; RP 62. Because B.P. had not seen her mother in about 13 months, B.P. did not recognize her at this visit. CP 184; RP 63. Ms. Eastep continued 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.

The core of the challenge facing the mother and B.P.'s relationship was B.P.'s complete disconnect from Ms. Olson, which was created by her own absence from B.P.'s life. RP 69-73, 78-81. Nevertheless, Ms. Olson 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 her mother and that forcing B.P. to do so would significantly injure B.P.'s mental health. RP 69-73.

In November of 2013, Ms. Olson, 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 a healthy attachment 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 her 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 thought that B.P. would struggle 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 is fundamental to

meeting a child's needs. RP 70-74, 141-142. Here, the mother was not able to do that for B.P. RP 147

After hearing all the evidence, the trial court determined that the Department carried its evidentiary burden under RCW 13.34.180. The trial court issued an oral ruling and later entered written findings of fact, conclusions of law, and an order terminating Ms. Olson's parental rights. 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 Ms. Olson's parental rights was in B.P.'s best interest. CP 179-90.

On June 4, 2015, Division III of the Court of Appeals issued a published opinion affirming the trial court's termination of Ms. Olson's parental rights.

#### **IV. REASONS WHY REVIEW SHOULD BE DENIED**

Under RAP 13.5A, the Court applies RAP 13.4(b) in considering motions for discretionary review in juvenile matters. RAP 13.4(b) states:

A petition for review will be accepted by the Supreme Court only: (1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or (2) If the decision of the Court of Appeals is in conflict with another decision of the Court of Appeals, or (3) If a significant question of

law under the Constitution of the State of Washington or of the United States is involved; or (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

Ms. Olson contends review by this Court is warranted under subsections (1), (2), and (4). Pet.'s Mot. at 9. However, Ms. Olson articulates no conflict between the Court of Appeals decision in this case and *In re the Welfare of C.S.*, 168 Wn.2d 51, 225 P.3d 953 (2010) or *In re the Termination of S.J.*, 162 Wn. App. 873, 256 P.3d 470 (2011) as required under RAP 13.4(b)(1) and (2). She also does not establish a conflict between this case and *In re the Welfare of A.B.*, 168 Wn.2d 908, 232 P.3d 1104(2010) and/or *In re the Welfare of A.B.*, 181 Wn. App. 45, 323 P.3d 1062 (2014), as required under RAP 13.4(b)(1) and (2). Nor does she establish an issue of substantial public interest regarding the definition of unfitness that should be determined by the Supreme Court under RAP 13.4(b)(4).

**A. The Court Of Appeals' Decision Affirming the Termination Of Ms. Olson's Parental Rights Is Consistent With *In re the Welfare of C.S.*, 168 Wn.2d 51, 225 P.3d 953 (2010) and *In re the Termination of S.J.*, 162 Wn. App. 873, 256 P.3d 470 (2011).**

The mother attempts to analogize the facts of this case with *In re the Welfare of C.S.*, 168 Wn.2d 51, 225 P.3d 953 (2010) and *In re the Termination of S.J.*, 162 Wn. App. 873, 256 P.3d 470 (2011) See Pet.'s Mot.

at 11-14. But *C.S.* and *S.J.* are both distinguishable. Ms. Olson does not raise – or even reference – any issue regarding the substantial public interest argument. Accordingly, review under RAP 13.4(b)(4) is improper.

Ms. Olson relies on *In Re. C.S.*, 168 Wn.2d 51, 225 P.3d 953 (2010) to support her argument that the Department failed to offer her attachment services. In *C.S.*, the child was removed from his mother due to her substance abuse issues in November 2002. *Id.* at 53. The court found that the mother only had one identified parental deficiency, substance abuse, and that services were offered to the mother to remedy that deficiency. In 2004, the mother entered and completed substance abuse treatment after many failed attempts. *Id.* at 54. After she achieved sobriety, the Department did not identify any other parental deficiency, nor did it offer the mother any other services. *Id.* Despite this, the Department did not seek to reunite the family; rather, it filed for termination of parental rights. *Id.* at 55. The trial court concluded that termination was appropriate because the mother lacked the patience and skills to address the child's special needs. *Id.* at 55. The foster parent was given training to handle the child, but the mother was not. *Id.* at 56. This Court held that termination was not appropriate as the Department failed to offer the mother any service or training to deal with the child's special needs, which was the basis for the termination. *Id.*

Ms. Olson's situation is not analogous to *C.S.* Unlike the mother in *C.S.*, at the time of termination, Ms. Olson had identified parental deficiencies that had not been remedied. She still had mental health issues that would negatively impact her ability to parent B.P. RP 136. In fact, her mental health issues made it unlikely she could prioritize her child's needs over her own, and she needed at least six months of additional therapy to address these deficiencies. RP 140, 149-150. Additionally, Ms. Olson 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 when contact resumed in 2013. Furthermore, unlike the mother in *C.S.*, Ms. Olson did not maintain her sobriety. She relapsed and then stopped engaging in services and failed to consistently visit B.P. for 13 months. Ms. Olson 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 two years old greatly impacted B.P. and their relationship. The services were offered to Ms. Olsen. They simply did not yield success.

In its opinion, the Court of Appeals addresses *C.S.* and properly distinguishes it. Ms. Olson in her Motion does not specifically assert how the Court of Appeals erred by distinguishing *C.S.* Rather, she merely asserts *C.S.* applies, re-arguing her case as she did below.

Ms. Olson 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. In *S.J.*, the child was removed from his mother due to mental health and substance abuse issues in 2005. *Id.* at 876. The mother struggled for the first six months of the dependency and was admitted but discharged from three inpatient treatment centers. *Id.* The mother discovered she was pregnant in January 2006 and entered and completed inpatient treatment. *Id.* After completing treatment, the mother began mental health services. *Id.* In May 2006, the Department filed for termination of parental rights as the mother had not obtained stable housing and had issues with her parenting. *Id.* at 877. In December 2006, the Department offered therapeutic visits with the mother and S.J. designed to create a healthy parent child relationship. *Id.* This service stopped when the therapist felt the contact was detrimental to the child. *Id.* The Department then offered hands on parenting through the YWCA to address the attachment and bonding issues between S.J. and his mother. *Id.* at 878. However, the provider testified she did not ever provide this service in any form to the mother. *Id.* That omitted service was critical.

The Court of Appeals determined that termination of the mother's parental rights was not appropriate in that case. The court took issue with the Department's delay in providing mental health services to the mother.

The court found that had mental health services been offered sooner, the mother would have likely been able to achieve and maintain her sobriety sooner. *Id.* at 882. The court also found the Department did not offer attachment and bonding services through the YWCA as the Department believed. *Id.* at 883. The court also found that the lack of a bond was created by removal of the child by the Department, as there was evidence that mother and child had a bond at the time the petition was filed. *Id.* at 883. The court also found that the Department delayed services for the mother which negatively impacted her bond with her child. *Id.* at 883-884.

Ms. Olson's situation is not analogous to *S.J.* Unlike the mother in *S.J.*, within two months of the initial removal, the Department was providing, and Ms. Olson was participating in, services such that B.P. was returned to Ms. Olson. Ms. Olson then relapsed causing B.P. to be removed. However, rather than remaining in contact with the Department and participating in services and visiting the child, Ms. Olson completely disengaged in her services and stopped visiting B.P. for over a year. RP 26-27, 342-44, 378-37.

Unlike *S.J.*, the disruption in the parent child relationship was not caused by the Department, but by Ms. Olson and the choices she made. Additionally, the Department did offer 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. Ms. Eastep indicated there are many types of attachment work. RP 77, 94. The goal of attachment therapy is to improve the relationship between parent and child. Ms. Eastep testified that during her 22 sessions with the mother and child they went from no relationship to an emerging emotional relationship, which is the first step in the attachment process. 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. However, an attachment between B.P. and Ms. Olson could not be attained within the foreseeable future. This is contrary to the facts in *S.J.* wherein no attachment work was provided at all. *S.J.* does not support or mandate a reversal of the termination order here.

Ms. Olson fails to establish conflict with either of these cases and because Ms. Olson fails to articulate any meaningful reason why review by this Court is warranted under RAP 13.4(b)(1), (2) or (4), denial of her motion is appropriate.

**B. The Court Of Appeals' Decision Affirming the Termination Of Ms. Olson's Parental Rights Properly Determined that the Trial Court Did Not Err By Finding Ms. Olson Was Currently Unfit to Parent B.P.**

Ms. Olson argues the Department failed to meet its burden to prove current parental unfitness prior to terminating parental rights. In support of this argument, Ms. Olson cites to two cases dealing with the current unfitness standard, *In re the Welfare of A.B.*, 168 Wn.2d 908, 232 P.3d 1104(2010) and *In re the Welfare of A.B.*, 181 Wn. App. 45, 323 P.3d 1062 (2014); however, she does not specifically argue how the decision here conflicts with either case. She also does not establish how the current unfitness finding regarding Ms. Olson is an issue of substantial public interest. Accordingly, review under RAP 13.4(b)(1) (2)and (4) is improper. Ms. Olson's argument in this regard appears to challenge the sufficiency of the evidence rather than any consideration governing acceptance of review by this Court under RAP 13.4(b).<sup>1</sup>

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). 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

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<sup>1</sup> The appellate court upholds the trial court's factual findings if substantial evidence supports them. *In re Dependency of K.D.S.*, 176 Wn.2d 644, 652, 294 P.3d 695 (2013).

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 Ms. Olson 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). This would include a parent being detrimental to the child's growth and development. *See A.B.*, 181 Wn. App. at 61 n.2. If a parent is unable to parent a child, then the parent is unfit. *In re Welfare of K.M.M.*, \_\_\_ Wn. App. \_\_\_, 349 P.3d 929, 945 (2015). In *K.M.M.*, Division II held that the lack of a relationship between a parent and a child can be a basis for a finding of parental unfitness. *Id.*

Here, Ms. Olson initially achieved reunification with her child. RP 24-25. When B.P. was 11 months' old, Ms. Olson relapsed and the child was removed. CP 182, Ex. P7, Ex. P8. She did not visit B.P. on any consistent basis for the next year. CP 182, RP 342-44. By the time Ms. Olson resumed contact with B.P., B.P. had developed the beginnings of an attachment disorder. RP 69-73. At the same time, Ms. Olson had maladaptive coping strategies. CP 183; RP 136-138. In order for B.P.'s

needs to be met, including addressing her attachment issues, Ms. Olson would need to be able to cope with her own feelings in order to help B.P. address her feelings in a healthy way. CP 183-184, RP 139-143. She did not demonstrate an ability to do this. CP 183-194, RP 139-143. Rather, she maintained her adult perspective that because of the biological bond, B.P. should be with her and that over time everything would be fine. RP 69-73.

Furthermore, Ms. Olson had just begun her sobriety. RP 35. She had not demonstrated an ability to remain sober outside of any structured setting. RP 36-38. Ms. Olson was unable to acknowledge the emotional damage B.P. suffered from the two removals from her care. RP 69-73. Ms. Olson did not demonstrate the ability to place B.P.s' needs ahead of her own. RP 69-73. While Ms. Olson was able to bring appropriate items to visitation (in a structured setting) and there were no physical safety concerns at visitation, the issues surrounding Ms. Olson's ability to understand and meet B.P.'s needs still existed. RP 69-73. It was Ms. Olson's mental health limitations and her inability to meet B.P's emotional needs that made her unfit to parent. RP 69-73.

Ms. Olson also asserts that because she was parenting another child, she was automatically fit to parent B.P. She cites to no authority to support this argument. The Court of Appeals rejected this argument

finding that Ms. Olson's parenting abilities regarding A.O., a child that she had since birth in her care in a structured environment, have no bearing on her ability to parent B.P. a child that was displaced from Ms. Olson for a significant period of time. The lack of a relationship with a child is a basis for a finding of current parental unfitness. *K.M.M.*, 349 P.3d at 945.

Because Ms. Olson fails to articulate any meaningful reason why review by this Court is warranted under RAP 13.4(b)(1), (2), or (4), denial of her Motion is appropriate.

#### **V. CONCLUSION**

Ms. Olson fails to provide support for review under RAP 13.4(b)(1), (2) or (4). The decision below does not conflict with prior Supreme Court decisions or Court of Appeals decisions and does not raise issues of substantial public importance. Accordingly, the Department respectfully

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requests this Court deny her Motion.

RESPECTFULLY SUBMITTED this 24<sup>th</sup> day of August, 2015.

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**CERTIFICATE OF SERVICE**

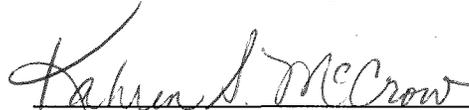
I certify that I served all parties, or their counsel of record, a true and correct copy of the Department of Social and Health Services' Answer to Motion for Discretionary Review to the following addresses:

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

DATED this 14<sup>th</sup> day of August, 2015, at Spokane, Washington.



Kahren S. McCrow  
Legal Assistant