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NO. 91925-9

SUPREME COURT OF THE STATE OF WASHINGTON

In re Welfare of B.P.,
STATE OF WASHINGTON, DSHS,
Respondent,
v.
H.O. (Mother),
Petitioner.

STATE OF WASHINGTON'S SUPPLEMENTAL BRIEF

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I. INTRODUCTION

B.P. is now nearly five years old and has spent more than three-quarters of her life outside of her mother's care. B.P.'s mother first used methamphetamine when she was 13 years old. She has lost her right to parent three older children, and she used methamphetamine during four pregnancies, including her pregnancy with B.P.

B.P. was first removed from her mother's care when she was born because B.P. was addicted to methamphetamine. B.P. was returned to her mother in a residential drug treatment program at two-and-a-half months old. But eight months later, when B.P. was almost a year old, her mother began using again and B.P. was removed a second time. The mother then missed multiple visits before disappearing altogether. B.P. suffered from the loss of her mother and became at risk for developing attachment disorder.

When B.P.'s mother resurfaced, she was addicted and pregnant again. She entered drug treatment late in her pregnancy and resumed visitation with B.P. when the little girl was two-years-old—more than a year after she stopped visiting B.P. regularly. The Department provided the mother with counseling and therapeutic services from providers with expertise in attachment. While the mother claims that the Department should have offered her “attachment therapy,” further attachment services would not have been successful until the mother improved her own mental health so that she could support her daughter's emotional needs.

Substantial evidence supports the trial court's express conclusion that the mother is currently unfit to parent B.P. The mother could not show she would be a stable placement for B.P., and if she failed, a third detachment would be especially harmful. She had not managed to maintain sobriety outside of a structured setting, and she still had significant therapeutic work to do to become emotionally healthy enough to support B.P. This was in part because B.P. was having special difficulty developing healthy attachment behaviors as a result of the sudden loss of her mother. Treatment providers testified that it would take anywhere from six months to two years, and hundreds, if not thousands, of visits for the mother to become healthy enough to forge an attachment and parent B.P. Thus, the trial court correctly terminated the mother's parental rights.

II. STATEMENT OF THE CASE

A. **Because of H.O.'s Drug Use, B.P. Was Separated From Her Mother Twice in Her First Year, Followed By a Year With Little or No Contact With Her Mother**

B.P.'s mother, H.O., started using methamphetamine in 1995 when she was 13 years old. VRP at 331; CP at 2, 181 (FOF 11).¹ Though she had some periods of sobriety, H.O. used methamphetamine and heroin intravenously over the next 18 years. VRP at 332; CP at 2, 181 (FOF 11). H.O.'s two oldest children were removed from her care in 2005. VRP at 328-29. Between 2009 and 2013, H.O. had four pregnancies and used methamphetamine during all of them. *See* Ex. 3 (Petition at 3); VRP at

¹ The specifically cited findings of fact (FOF) are unchallenged.

329-32, 377-78. She did not participate in her infant boy's dependency and parental rights were terminated; one baby was stillborn; B.P. was born addicted to methamphetamine; and her sister, A., was born six weeks after H.O. reentered treatment. VRP at 29-30, 266, 329-32, 377-78.

B.P. entered foster care soon after she was born. Exs. 2-3; CP at 180 (FOF 4-6). When B.P. was two-and-a-half months old, her mother entered Isabella House, a highly-structured, residential treatment center for mothers, and B.P. was placed with her. Ex. 4; CP at 182 (FOF 11). Things went awry when H.O. graduated and moved into less-structured transition housing with B.P. VRP at 191, 223-24, 334; Ex. 8; CP at 182 (FOF 11). H.O. failed to turn in verifications of self-help group attendance and started missing treatment sessions. VRP at 256. H.O. started using again, but she diluted her urine to beat her drug tests and hid her relapse for a short while. VRP at 256, 379. H.O. was eventually asked to leave the transition home because of her drug use. VRP at 257; CP at 182 (FOF 11).

B.P. reentered foster care just before her first birthday. CP at 182 (FOF 11). The court originally ordered visitation three times per week, but the mother frequently missed or was high during visits. CP at 89, 182 (FOF 12). Moreover, the sudden, second removal from her mother in her first year of life, paired with the mother's inconsistent visits, caused significant harm to B.P. CP at 89; VRP at 226-29 (impact on B.P. was "horrifying;" distress and reactive behavior so alarming, caregivers sought medical care). B.P. displayed aggression and disorganized behavior towards her mother during her sporadic visits. VRP at 263-64. In October

2012, the court suspended H.O.'s contact with B.P. and ordered that H.O. had to obtain a court order to resume visits. CP at 89; Ex. 9 at 7. H.O. was then absent from B.P.s life for nearly a year. CP at 89; Exs. 9, 10.

B.P. was placed with relatives where she did well. VRP at 230, 264-65. Even so, when there was a change in B.P.'s routine, her attachment behavior became "disorganized," she was unable to regulate her emotions, and she showed significant distress. VRP at 162-66. B.P.'s caregivers sought help for these issues. VRP at 162-66.

H.O., meanwhile, became pregnant again and continued to use methamphetamine during most of that pregnancy. VRP at 266. In January 2013 the Department filed the petition to terminate parental rights. CP at 1. However, when H.O. was eight months pregnant, she sought inpatient drug treatment, and making an exception to its normal policy, Isabella House readmitted her. CP at 182 (FOF 13). A. was born about six weeks later in June 2013 and the Department agreed to an in-home dependency so that A. remained with H.O. at Isabella House. CP at 182 (FOF 13). H.O. then sought leave from the court to reinstate her visitation with B.P. VRP at 270-71. Weekly visits began in September 2013, and the Department agreed to continue the termination trial. CP at 66-67. Visits were increased to twice-a-week in November. CP at 79-80. During this period, the court ordered the following services for H.O.: inpatient chemical dependency treatment, therapeutic visitation with B.P., hands on parenting/family therapy, a parenting assessment, family preservation services, and mental health services. Exs. 11-12. In December 2013, the

court delayed the termination trial a few weeks, over the State's objection. CP at 88-102.

Meanwhile, H.O. again progressed in the structured setting of Isabella House. VRP at 35. She graduated in December 2013. VRP at 30. H.O. then moved into transitional housing with A. VRP at 50-52.

B. At the Termination Trial, All Experts Believed H.O. Would Need Significantly More Time to Become Stable and Emotionally Healthy Enough to Become Fit to Parent B.P.

At the time of the termination trial in February 2014, H.O. had tested clean for about nine months. *See* CP at 182 (FOF 14). She was still living in transitional housing with A. and regularly visiting B.P. Several of the mother's service providers testified at the trial, and some noted that she was progressing with her chemical dependency treatment and her mental health counseling. VRP at 30, 128, 138, 143-44, 177, 240. But they also emphasized B.P.'s need for permanency and her risk for full blown attachment disorder, as well as their concerns about H.O.'s ability to remain sober in an unstructured setting and to effectively nurture B.P.'s mental health, which was at risk because of H.O.'s actions. VRP at 35, 69-72, 120-22, 140-42, 145-50, 162-65, 192-98, 231-35, 275-77, 280-85.

Specifically, H.O. was still in early recovery, relapse was a risk, and H.O. had never been successful in an unstructured setting since B.P. was born. VRP at 35-37, 192-93, 201, 206, 235 (chemical dependency and mental health counselors and GAL). Treatment providers expressed concern that H.O. would need to be substance free for at least another six months in an independent living situation before she would be considered

in remission. VRP at 129-32, 197, 207-08. For an IV drug user who began using as young as H.O. had, a two-year period of sobriety was probably a more accurate measure of when long-term sobriety would become likely. VRP at 198, 283 (mental health and chemical dependency counselor); *see also* CP at 183 (FOF 19).

Witnesses were also concerned that the mother lacked an adequate outside support system to help her avoid relapse. VRP at 172, 282 (chemical dependency counselor and social worker). The trial court found credible the testimony that H.O. had recently missed support group meetings, she was out of compliance with her outpatient treatment, and missing meetings had been one of her prior precursors to relapse. VRP at 172, 256, 281; CP at 182 (FOF 13). Witnesses also expressed significant concern that H.O.'s ability to cope and remain sober decreased when the amount of structure in her living situation decreased. CP at 183 (FOF 17), VRP at 192-93, 224, 245 (child therapist, mother's counselor, and GAL).

Witnesses with expertise in attachment were also concerned about how long it would take to develop a bond between H.O. and B.P. Ms. Eastep, a therapist with training in attachment who provided therapeutic visitation, testified that while B.P. was developing an emerging emotional relationship with H.O., B.P. did not see H.O. as her primary attachment figure—a person she trusted and relied on to meet her needs and sort through her feelings—because of the history of lack of care-giving. VRP at 68-69, 75. It would take hundreds or thousands of visits over a year or two to establish a secure attachment. VRP at 77-79.

Ms. Clemons, a mental health therapist treating B.P., opined that as a result of the mother's disappearance from B.P.'s life at a critical developmental stage, B.P. has problems with bonding and attachment and is at risk for developing attachment disorder. VRP at 162-64; CP at 186-87 (FOF 35). A different child therapist who evaluated B.P. said that attachment, especially in early childhood, is crucial and a "cornerstone of mental health." VRP at 106-07. She explained how children whose primary attachment is disrupted grieve the loss and are less likely to make emotional connections in the future. VRP at 120-22. Children with unhealthy attachment strategies or attachment disorder often develop an inability to build relationships, especially intimate ones. They are more likely to engage in risky behavior, to be unable to regulate their emotions creating behavioral problems, and to suffer from depression, anxiety, and other mental health problems. VRP at 71-72, 162-63.

Ms. Eastep explained how to avoid these negative outcomes: B.P.'s mental health requires that her parent be emotionally attuned to her, model appropriate attachment, and express feelings in a healthy way. VRP at 80. But at the time of trial, H.O. was still working on her own mental health, including learning to deal with her own complex and prolonged childhood trauma. VRP at 135-37; CP at 183 (FOF 20). H.O. had personality disorder traits that exacerbated her impulsivity and poor decision-making. CP at 183 (FOF 16). Her substance abuse was a maladaptive coping strategy, so being able to work through her feelings

about her own trauma would be key to remaining clean. VRP at 137; CP at 183 (FOF 20).

Ms. Gorman-Brown is a certified attachment therapist who treated H.O. VRP at 134, 150. She explained how H.O.'s disconnect from her own feelings impaired her ability to parent B.P. VRP at 141-42; CP at 183 (FOF at 21). Parenting requires the ability to prioritize the needs of the child above the parent's self-interest, to put oneself in the child's shoes, and to feel some of what the child is feeling. VRP at 141; CP at 183 (FOF 21). A parent with H.O.'s emotional limitations will have tremendous difficulty understanding and responding to her child's feelings. VRP at 141; CP at 183 (FOF 21). Young children depend entirely on parents to learn to cope with feelings, and a parent's ability to help the child regulate and respond to feelings "is of paramount importance." VRP at 141-42.

Ms. Gorman-Brown's concerns with reunification were based on H.O.'s inability to be emotionally available enough to do the attachment work necessary for B.P.'s healthy development. VRP at 147; *see also* VRP at 275. In order to make enough progress to work on better attachment with B.P., H.O. would have to address her own history and its impact on her emotional and mental health. *See* VRP at 145-46. H.O.'s limited ability to cope with feelings also created a higher risk of relapse. VRP at 148. From a mental health perspective, it would take at least another six months of therapy for H.O. to work through her own trauma. VRP at 149-50. Similarly, B.P.'s GAL did not believe that H.O. was capable of

putting B.P.'s needs above her own, where B.P. needed a consistent schedule and an adult who could read her emotional cues. VRP at 233-35.

In short, all of the treatment providers involved in the case believed that permanency was important for B.P. and none believed at the time of trial that H.O. was currently ready to have B.P. move back with her mother. B.P.'s guardian ad litem concluded that termination was in B.P.'s best interest. VRP at 239.

Based on this evidence, the trial court found that all of the elements of RCW 13.34.180 were met by clear, cogent, and convincing evidence, including that all necessary services, reasonably available and capable of correcting parental deficiencies within the foreseeable future were offered and provided. CP at 180-81. The therapeutic visits with Ms. Eastep were designed, in part, to address the mother-child relationship. CP at 181, 186. Thus, although the court was once concerned about attachment services, the court found "overwhelming" evidence that, given the mother's current state, it would take a year or more for attachment services to succeed, and that was too long, given that B.P. had already been out of the mother's care for 20 months. CP at 186. The trial court emphasized that the lack of bond between H.O. and B.P. was caused by H.O.'s relapse and failure to consistently visit. CP at 186.

The trial court also found there was little likelihood that conditions would be remedied so that B.P. could be returned to her mother in the near future. CP at 185. Given H.O.'s long-term substance abuse, her lack of demonstrated ability to remain sober outside of a structured setting, and

her recent problems with attending meetings, the court was wary that she would not be able to stay sober long-term. CP at 185-86. If B.P. moved back with H.O. and had to separate from her again because of relapse, B.P. would suffer significant additional harm. CP at 185. H.O.'s mental health issues, her significant trauma history, and her resulting inability to address her own feelings, all led to a lack of demonstrated ability to place B.P.'s needs above her own. CP at 186.

The trial court expressly found that H.O. was unfit to parent B.P. CP at 187-88. This finding required the court to evaluate whether the mother could meet B.P.'s needs, and the evidence indicated that H.O. could not. CP at 187-88. H.O. was responsible for causing the stops and starts in her parenting that had been so damaging to B.P. CP at 188. H.O. had not demonstrated an understanding of B.P.'s need for permanency or that her actions caused a risk of attachment disorder. CP at 188. B.P.'s needs are different from A.'s because A had not been separated from her mother, A. had always lived with H.O. in a structured setting, and these differences were the result of H.O.'s own actions. CP at 188; VRP at 445. H.O. failed to demonstrate that she was able to understand her own feelings or those of her child. CP at 188. The Court of Appeals affirmed. *In re Welfare of B.P.*, 188 Wn. App. 113, 353 P.3d 224 (2015).

III. STATEMENT OF THE ISSUES

H.O. identified two issues in her motion for discretionary review:

1. Where the State provided services targeted at improving the attachment bond between mother and child, but the mother was not yet ready to further develop an attachment with her very young child, did the State offer and provide all necessary services capable of remedying parental deficiencies in the foreseeable future?

2. Is there substantial evidence in the record to support the trial court's express finding that the mother was currently unfit to parent B.P., and can a parent be fit to parent one child, but unfit to parent a different child with different needs?

IV. ARGUMENT

The burden is on the mother to show the trial court's findings are not supported by substantial evidence. *See, e.g., In re Dependency of K.S.C.*, 137 Wn.2d 918, 925, 976 P.2d 113 (1999); *Fisher Props. Inc. v. Arden-Mayfair, Inc.*, 115 Wn.2d 364, 369, 798 P.2d 799 (1990). Here, the trial court's findings are supported by substantial evidence sufficient "to persuade a fair-minded person of the truth of the asserted premise." *State v. Homan*, 181 Wn.2d 102, 106, 330 P.3d 182 (2014).

Only the trial judge has the advantage of seeing the witnesses testify and observing their demeanor. *See K.S.C.*, 137 Wn.2d at 925. The trial court is therefore better positioned to judge the weight to be given conflicting testimony. *E.g., Brooks v. Warner*, 50 Wn.2d 99, 102, 309 P.2d 757 (1957). As a result, appellate courts do not reweigh evidence or reevaluate the credibility of witnesses in termination proceedings. *In re the Welfare of Sego*, 82 Wn.2d 736, 739-40, 513 P.2d 831 (1973).

A. The Department Provided Services to Repair the Bond H.O. Had Broken, but Further Attachment Services Would Have Been Futile Until H.O. Resolved Her Own Emotional Issues

H.O. argues that the State should have provided “attachment therapy,” but H.O.’s providers had significant expertise in attachment and bonding. Substantial evidence in the record supports the trial court’s finding that “all necessary services, reasonably available, capable of correcting parental deficiencies within the foreseeable future have been offered or provided.” CP at 181 (FOF 10).

The mother’s mental health provider, Ms. Gorman-Brown, did her postgraduate work in attachment and was a certified attachment therapist. VRP at 134, 150. Ms. Eastep provided therapy connected with visitation and was also trained in attachment. VRP at 58-59. While she described her role in varying ways, Ms. Eastep’s treatment goals were to help H.O. understand B.P.’s cues and boundaries and make sure H.O. understood the consequences of her absence from B.P.’s life at such a critical stage. VRP at 67, 69-73. She helped the mother come to visitations prepared. VRP at 73. Ms. Eastep had a good therapeutic rapport with H.O., and she was doing the same work she would have done in family therapy—helping the mother to process and develop a deeper understanding of her child. VRP at 92-94. While at one point she testified that she was providing therapeutic visitation, rather than “attachment work” or “family therapy,” VRP at 92-94, Ms. Eastep instructed H.O. on reading cues and providing appropriate emotional support to B.P., VRP at 67, key aspects of improving the parent-child bond. And when asked directly whether

“family therapy” would have been different with a child this young, she answered that because she provides both services, “especially when you have a young child” . . . “I don’t know that it would have looked that much different with Ms. [O].” VRP at 100.

The mother relies on *In re the Termination of S.J.*, 162 Wn. App. 873, 256 P.3d 470 (2011), to argue that she should have been provided with more intensive attachment services. Mot for Disc. Rev. at 13. However, unlike the mother in *S.J.*, H.O. received services from providers with significant expertise in bonding and attachment. *In re S.J.*, 162 Wn. App. at 877-79; VRP at 58-59, 134. Here, it was H.O., not the State, that caused the break in the parent-child bond. *See In re S.J.*, 162 Wn. App. at 877-78; VRP at 226-29. Another distinction is that further attachment or bonding services would have been futile here because H.O. was unable to recognize her own emotions and express them in a healthy way. *In re S.J.*, 162 Wn. App. at 883. Ms. Gorman-Brown, the certified attachment therapist, explained that in order to progress enough to work on attachment strategies with B.P., the mother would have to acknowledge the impact that her own past has had on her ability to both understand her feelings and deal effectively with them. VRP at 145-46. She predicted that it would take at least another six months of individual therapy for H.O. to work through her own trauma. VRP at 149-50. Only then could more intensive attachment work even *begin*. Substantial evidence therefore shows that further “attachment therapy” would have been futile given the mother’s current status.

“Where the record establishes that the offer of services would be futile, the trial court can make a finding that the Department has offered all reasonable services.” *In re Welfare of M.R.H.*, 145 Wn. App. 10, 25, 188 P.3d 510 (2008). Even when the State somehow fails to offer or provide necessary services, “termination is appropriate if the service would not have remedied the parent’s deficiencies in the foreseeable future, which depends on the age of the child.” *In re Dependency of T.R.*, 108 Wn. App. 149, 164, 29 P.3d 1275 (2001); *see also In re Welfare of Hall*, 99 Wn.2d 842, 850–51, 664 P.2d 1245 (1983) (sufficient improvement could not have occurred within the foreseeable future, even if parenting training were provided).

The futility exception to further services is met here because the foreseeable future is measured from the child’s perspective and “[a] matter of months for young children is not within the foreseeable future. . . .” *In re Welfare of M.R.H.*, 145 Wn. App. at 28. For example, six months in the life of a fifteen-month-old and eight months for a four-year-old are not within the foreseeable future. *In re Welfare of Hall*, 99 Wn.2d at 844, 850-51; *In re Dependency of P.A.D.*, 58 Wn. App. 18, 27, 792 P.2d 159 (1990). Here, six months to two years was not in the foreseeable future for a two-and-a-half-year-old who had been in foster care for more than half her life.

The mother also relies on *In re Welfare of C.S.*, 168 Wn.2d 51, 225 P.3d 953 (2010), arguing that B.P.’s caregivers received attachment services, while she did not. Mot. for Disc. Rev. at 14. But unlike the

mother in *C.S.*, H.O. has not shown the services provided to B.P. and her caregivers were significantly different or less effective than those H.O. and B.P. received from Ms. Eastep. See *In re Welfare of C.S.*, 168 Wn.2d at 55-56. H.O. received assistance from Ms. Eastep more frequently than services were provided to B.P.'s caregivers. VRP at 66, 160 (H.O. twice per week; caregivers every other week). Ms. Eastep helped H.O. develop a deeper understanding of her child, and instructed H.O. on reading cues and providing appropriate emotional support to B.P. VRP at 92-94. Meanwhile, Ms. Clemons provided services targeted at helping B.P.'s caregivers read her cues and avoid disruptions in her schedule, which triggered strong reactions in B.P. VRP at 161, 166. Ms. Clemons explained that helping B.P. develop an ability to attach would eventually be transferred to other relationships. VRP at 168-69.

In short, substantial evidence supports the trial court's finding that all services capable of correcting the mother's deficiencies in the foreseeable future were provided. The mother received services from professionals specifically trained in attachment, and further attachment therapy would have been futile given the mother's unresolved problems.

B. The Trial Court Expressly Found H.O. Was Currently Unfit to Parent B.P. and Substantial Evidence Supports That Finding

Due process requires that the parent must be unfit to parent the child before a parent-child relationship can be terminated. *In re the Welfare of A.B.*, 168 Wn.2d 908, 919, 232 P.3d 1104 (2010). To meet this burden, the State must show that the parent's deficiencies prevent the

parent from providing “basic nurture, health, or safety by clear, cogent, and convincing evidence.” *In re the Welfare of A.B.*, 181 Wn. App. 45, 61, 323 P.3d 1062 (2014) (internal quotation marks omitted). “Nurture” includes supporting a child’s mental and emotional health, not just protecting physical safety. *E.g.*, RCW 13.34.020 (child has right to “basic nurture, physical *and mental health*, and safety.”) (Emphasis added). The court must evaluate fitness to parent the particular child. Harm done as a result of the parent’s absence and the parent’s inability to remedy that harm are legitimate factors in determining whether the parent is currently fit to parent a particular child.

1. Substantial evidence supports the trial court’s finding that H.O. is currently unfit to parent B.P.

The State established by clear, cogent, and convincing evidence that H.O. is currently unfit to parent B.P. It was H.O. who broke the parent-child bond with her drug abuse, leading B.P. to suffer two separations from her mother in the first year of B.P.’s life, followed by the mother’s failure to consistently visit B.P. for more than a year. CP at 89, 180, 182 (FOF 4-6, 11). And even though H.O. made some progress, including nine months of sobriety, no witness advocated for B.P. to be returned to her care at the time of the termination trial. Instead evidence showed that with her history of addiction, H.O. needed at least six months in an unstructured setting and two years of total sobriety before the experts believed she would be in remission, and reliable enough not to be likely to

harm B.P. with another detachment because of relapse. *See* VRP at 129, 197-98, 208-09, 283.

Meanwhile, B.P.'s mental health requires that her mother be emotionally attuned to her, model appropriate attachment, and express her own feelings in a healthy way. VRP at 80. But H.O.'s mental health challenges prevented her from meeting her daughter's needs. VRP at 140-42, 147-50. Ms. Gorman-Brown predicted that it would take at least another six months for H.O. to work through her own trauma, VRP at 149-50. Ms. Paullin, a mental health and chemical dependency counselor, believed she would need another two years to become stable. CP at 183 (FOF 19); VRP at 198. B.P.'s guardian ad litem did not believe that H.O. was capable of putting B.P.'s needs above her own, particularly where B.P.'s special needs—which the mother caused—required a consistent schedule and adults who could read her emotional cues. VRP at 233-34. The GAL also did not believe that H.O. fully appreciated the harm she did to B.P. when she relapsed and disappeared. VRP at 280.

H.O. and the Court of Appeals dissenting opinion point to testimony about H.O.'s improvements and things she was doing well. The State does not dispute that progress. But the trial judge observed the witnesses and was able to weigh both conflicting testimony and witness credibility. Where substantial evidence in the record supports the trial court's findings, the existence of some conflicting testimony does not warrant reversal. *See In re Welfare of L.N.B.-L.*, 157 Wn. App. 215, 243, 237 P.3d 944 (2010).

Moreover, it was not just the insufficient bond between H.O. and B.P. that resulted in the finding of unfitness, it was the mother's inability to forge such a bond within the foreseeable future. Even where evidence shows that the parent may eventually become capable of correcting parental deficiencies, termination is appropriate when deficiencies will not be corrected within the foreseeable future. *In re Welfare of Hall*, 99 Wn.2d at 850-51 (four-year-old in foster care for two years); RCW 13.34.180(1)(e) (rebuttable presumption upon failure to substantially improve parental deficiencies within 12 months of dispositional order). And current inability to meet the child's needs, including her emotional needs, is a valid basis for a finding of current unfitness. See *In re Aschauer's Welfare*, 93 Wn.2d 689, 693-94, 611 P.2d 1245 (1980) (parents loved their children and were not deliberately abusive, but they were not able to meet their children's needs); *In re Dependency of Schermer*, 161 Wn.2d 927, 941, 169 P.3d 452 (2007) (interest in protecting child's physical, mental, and emotional health).

2. H.O.'s ability to parent A. in a structured setting does not preclude the finding that H.O. is unfit to parent B.P.

H.O. suggests that because she was fit to have A. live with her, she must be fit to parent B.P. But this argument ignores that fitness to parent one child does not establish fitness to parent a different child. *In re the Welfare of A.B.*, 168 Wn.2d at 918 (focusing on whether parent is "currently unfit to parent *the child*") (emphasis added); see also, e.g., *C.P. v. R.S.*, 961 N.E.2d 592, 595 (Mass. 2012) ("A parent may be fit to raise

one child but not another.”); *In re Guardianship of Estelle*, 875 N.E.2d 515, 582 (Mass. 2007) (asking whether the parent was “fit to parent *this* child in *these* circumstances at *this* time”); *In re the Matter of Kontola*, 361 N.W.2d 20, 28-29 (Mich. App. 1984) (“Although evidence of how parents treat one child may be probative of their treatment of another, . . . such evidence is not conclusive or automatically determinative.”).

In this case, the mother’s own actions had harmed B.P., creating special needs not shared by A. It was precisely H.O.’s inability to meet these special needs that led the GAL, and ultimately the trial court, to conclude that she was currently unfit to parent B.P. and could not remedy that unfitness in the near future. VRP at 231-35; CP at 187-88. The mother was not even having unsupervised visits with B.P. by the time of trial. VRP at 75 (discussing visits with Eastep and at a visitation facility).

Ms. Eastep explained that unlike B.P., A. sees her mother as her primary attachment. VRP at 70. And because the mother has consistently parented A. since birth, she better sees and understands A.’s cues. VRP at 70. In contrast, for B.P. to reattach with her mother after her mother’s destruction of their bond, the attachment would have to be forced, in part, by destruction of B.P.’s other bonded relationships. VRP at 70-71.² This would cause B.P. significant emotional upset and likely a year of grieving,

² The Court of Appeals dissent suggests that termination of H.O.’s parental rights inappropriately severs the relationship between B.P. and A. *In re the Welfare of B.P.*, 188 Wn. App 113, 164, 353 P.3d 224 (2015) (Fearing, J. dissenting). That is not the case. RCW 13.34.025(1)(a), .130(6), .136(2)(b), .200. The State is required to facilitate sibling visitation during dependencies and even where children are adopted, sibling contact is often maintained.

which would make parenting her a challenge, especially along with another baby. VRP at 84-85, 120-21. H.O. was not presently able meet B.P.'s needs and could not become able to do so in the foreseeable future.

V. CONCLUSION

Substantial evidence supports the trial court's findings that all necessary services were provided, that further attachment services would be futile until the mother fully addressed her own trauma, and that H.O. is currently unfit to parent B.P. in light of B.P.'s special needs, which were caused by H. O.'s own actions. This Court should affirm.

RESPECTFULLY SUBMITTED this 22nd day of March, 2016.

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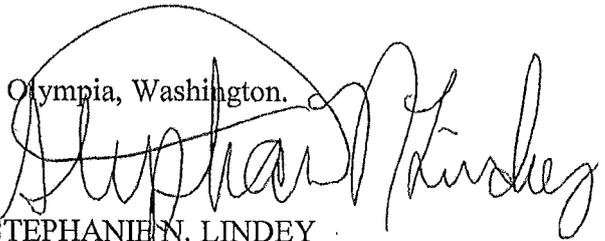
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Dear Clerk,

Attached in case number 91925-9, please find the following document:

1. State of Washington's Supplemental Brief.

Thank you,

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