

Supreme Court No. 92448-1
Court of Appeals No. 72421-5-1

IN THE SUPREME COURT FOR THE STATE OF WASHINGTON

In Re the Dependency of: D.L.B.

Edelyn Saint-Louis,
Petitioner.

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MOTION FOR DISCRETIONARY REVIEW

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A. IDENTITY OF MOVANT AND DECISION BELOW

Edelyn Saint-Louis asks this Court to review the decision affirming the termination of her parental rights to her son. In a published opinion, the Court of Appeals rejected Ms. Saint-Louis's argument that amended RCW 13.34.180(1)(f) applies to all parents who are incarcerated during the underlying dependency, regardless of whether they remain incarcerated at the time of the court's decision on a termination petition. In Re Dependency of D.L.B., ___ Wn. App. ___, 355 P.3d 345 (2015). A copy of the published opinion, issued July 13, 2015, along with a copy of the order denying Ms. Saint-Louis's motion for reconsideration, issued September 1, 2015, are attached in the appendix.

B. ISSUES PRESENTED FOR REVIEW

1. In 2013, Washington lawmakers expanded the rights of incarcerated parents. One change was that before termination of a person's parental rights, the court must consider additional factors, "If the parent is incarcerated." RCW 13.34.180(1)(f). This language does not state the pertinent time point. Applying the rules of statutory interpretation, this language is fairly read to mean, "If the parent is incarcerated [during the dependency]." Still, the Court of Appeals read the language to mean, "If the parent is incarcerated [at the time of the termination hearing]." The result is that many parents incarcerated during

a dependency are left unprotected by amended RCW 13.34.180(1)(f). Is the scope of amended RCW 13.34.180(1)(f) an issue of substantial public interest that should be decided by this Court? RAP 13.4(b)(4). Does the Court of Appeals' strained interpretation, which misapplies the rules of statutory interpretation, conflict with precedent? RAP 13.4(b)(1), (2).

2. The Department of Social and Health Services must prove that it provided all necessary and court-ordered services. RCW 13.34.180(1)(d). Under the change in the law, permanency plans "must include treatment that reflects the resources available at the facility where the parent is confined." RCW 13.34.136(2)(b)(i)(A). The Department did not try to provide services to Ms. Saint-Louis during her incarceration. Still, the Court of Appeals held that a violation of this law cannot be raised in a termination appeal and that the Department had met its burden to prove RCW 13.34.180(1)(d). Does this decision raise an issue of substantial public importance justifying review? RAP 13.4(b)(4).

3. The Department must prove that a parent is currently unfit and that there is little likelihood that the conditions will be remedied so that the child can be returned to the parent in the near future. RCW 13.34.180(1)(e). Despite her period of incarceration, Ms. Saint-Louis completed most of the court-ordered services and remedied her purported parental deficiencies related to substance abuse, mental health, parenting

skills, and victimization by men. Does the decision holding that the Department proved current parental unfitness and RCW 13.34.180(1)(e) conflict with precedent or raise an issue of substantial public concern? RAP 13.4(b)(1), (2), (4).

C. STATEMENT OF THE CASE

Edelyn Saint-Louis gave birth to D.B., a boy, on November 1, 2008. CP 349 (FF 2.1, 2.3). After an incident where Ms. Saint-Louis momentarily left D.B. asleep at home during the day, D.B. was found dependent as to his mother on May 11, 2012. Ex. 1 at 12.¹

During the dependency, Ms. Saint-Louis participated in her court-ordered services and, excluding her period of incarceration in 2013 and 2014, was largely compliant. Ex. 4 at 5 (December 2012 order recounting compliance and progress); Ex. 5 at 5 (May 2013 order recounting substantial compliance); Ex. 7 at 5-6 (April 2014 order showing lack of compliance and progress due solely to incarceration). Excluding her period of incarceration, Ms. Saint-Louis regularly visited her son. Ex. 3 at 6; Ex. 5 at 6; Ex. 7 at 6; RP 168, 378, 381.

¹ D.B.'s father, Kendrick Bryant, did not participate in the case and his parental rights were terminated by default. CP 130; 7/28/14RP 21. Ms. Saint-Louis last saw Mr. Bryant in Chicago in 2010 and left him and Chicago after he committed acts of domestic violence against her. RP 30, 491-94, 497, 502-03. Ms. Saint-Louis participated in and completed domestic violence victim's programs before and during the dependency. RP 59, 339; Ex. 34.

Ms. Saint-Louis participated in psychological and parenting evaluations by Dr. Steven Tutty in October 2012. Ex. 16 at 1. Although Dr. Tutty's opinion was largely negative, his observation of D.B. and Ms. Saint-Louis was positive. Ex. 16 at 12-13. Dr. Tutty noted Ms. Saint-Louis was attentive to D.B.'s safety, needs, and interests. Ex. 16 at 12. He recounted that Ms. Saint-Louis strongly desired reunification and that there was a reciprocal bond between mother and son. Ex. 16 at 13.

Ms. Saint-Louis submitted to a chemical dependency assessment in late July 2012 at Sound Mental Health, where she admitted to using marijuana. Ex. 13. In early November 2012, Ms. Saint-Louis participated in an intensive 28-day inpatient alcohol/drug treatment program, which she successfully completed. FF 2.10 (CP 353); Ex. 15, 32. She continued her treatment afterward, completing an outpatient program in April 2013 and attending twelve-step programs, such as alcoholics anonymous. FF 2.10 (CP 353); Ex. 33; RP 276.

Initially, the court rejected imposing a parenting education requirement on Ms. Saint-Louis. Ex. 1 at 9-10. After Dr. Tutty's recommendation that Ms. Saint-Louis participate in the "Incredible Years" parenting education program, the court added this as a service in December 2012. Ex. 4 at 10; Ex. 16 at 15. Ms. Saint-Louis had difficulties enrolling in the Incredible Years program because there were

not enough students to have a class. RP 70, 281, 414-15. Ms. Saint-Louis was finally able to start the program around May 2013. RP 71, 282.

Also in December 2012, the court ordered the Department to refer Ms. Saint-Louis for random urinalysis drug-testing. Ex. 4 at 10. In May 2013, Ms. Saint-Louis made a mistake and sipped some champagne at her cousin's wedding. RP 62-63; 426-27. As a result, she had one positive result for alcohol. This was a wakeup call for Ms. Saint-Louis and she enrolled in a relapse prevention program to ensure her sobriety. RP 75, 427. Ms. Saint-Louis produced clean test results afterwards. RP 425.

In July 2013, Ms. Saint-Louis got into a car accident and was charged with, among other things, hit and run. RP 63; Ex. 21, 22. She was in jail for about a month. RP 63-64, 394. Ms. Saint-Louis missed a court date and was arrested in November. RP 64, 394. She pleaded guilty to the charges against her. Ex. 21, 22, 25; RP 92, 532, 535.

Ms. Saint-Louis was incarcerated from November 2013 to June 2014, about eight months. RP 80. During this time, while she wanted to visit D.B., she did not see him. RP 82-84, 287, 306. D.B. did not know his mother was incarcerated. RP 163. While jailed, no one from the Department visited Ms. Saint-Louis. RP 287-88, 428. For two brief periods, one in March and the other in April 2014, Ms. Saint-Louis was on work release. RP 80-82. During the second work release, Ms. Saint-Louis

was able to see the assigned social worker. RP 333. Ms. Saint-Louis asked the social worker about having D.B. visit her and about services. RP 82-84, 333. The social worker told her it would be better for her to wait until she was released. RP 85. Except for this instance, no one from the Department visited Ms. Saint-Louis during her incarceration. RP 288, 428. Although the Department did not offer her services, Ms. Saint-Louis herself accessed a domestic violence victim's program and also saw a counselor from Sound Mental Health. RP 53, 157. While Ms. Saint-Louis was incarcerated, the Department filed its termination petition on January 31, 2014. CP 1.

Ms. Saint-Louis was released on June 18, 2014. RP 82. Ms. Saint-Louis promptly called the assigned social worker (who did not know she had been released) so that she could visit D.B. and continue her services. RP 334. Ms. Saint-Louis attended all the visits with D.B. before the termination trial. RP 168, 378, 381. D.B. was happy to see his mother and the visits went well. RP 88, 422. Ms. Saint-Louis enrolled in the Incredible Years program again. RP 284. She submitted to random urinalyses. RP 442-43. She enrolled in a relapse prevention program, anger management, and mental health counseling with Sound Mental Health. RP 155-56, 424. Ms. Saint-Louis was managing her prescriptions adequately without assistance from the Department. RP 337, 424; Ex. 35.

Ms. Saint-Louis also moved in with her boyfriend, Michael Conley. RP 293. The two were expecting a child in March 2015. RP 174.

The court held the termination trial in late July and early August 2014. CP 348 (FF 1).² Without considering the 2013 changes to the law and despite Ms. Saint-Louis's progress, engagement, and good relationship with D.B., the court terminated her parental rights. The Court of Appeals affirmed.

D. ARGUMENT

1. Amended RCW 13.34.180(1)(f) applies to all parents who are incarcerated during the dependency. The Court of Appeals erred in holding that amended RCW 13.34.180(1)(f) applies only to parents who are incarcerated at the time of the court's decision on a termination of parental rights petition.

a. Amended RCW 13.34.180(1)(f) requires a court hearing a termination petition to consider additional factors "if the parent is incarcerated."

Before termination of parental rights, the Department must prove, among other things,

[t]hat continuation of the parent and child relationship clearly diminishes the child's prospects for early integration into a stable and permanent home. If the parent is incarcerated, the court shall consider whether a parent maintains a meaningful role in his or her child's life based on factors identified in RCW 13.34.145(5)(b); whether the department or supervising agency made reasonable efforts as defined in this chapter; and whether particular barriers

² The finding erroneously says 2013.

existed as described in RCW 13.34.145(5)(b) including, but not limited to, delays or barriers experienced in keeping the agency apprised of his or her location and in accessing visitation or other meaningful contact with the child.

RCW 13.34.180(1)(f) (emphasis added).³

The emphasized portion was part of “AN ACT Relating to the

³ RCW 13.34.145(5)(b) was also part of the amended law. It lists six factors that the court should use in assessing whether an incarcerated parent maintains a meaningful role in his or her child’s life:

(b) The court’s assessment of whether a parent who is incarcerated maintains a meaningful role in the child’s life may include consideration of the following:

(i) The parent’s expressions or acts of manifesting concern for the child, such as letters, telephone calls, visits, and other forms of communication with the child;

(ii) The parent’s efforts to communicate and work with the department or supervising agency or other individuals for the purpose of complying with the service plan and repairing, maintaining, or building the parent-child relationship;

(iii) A positive response by the parent to the reasonable efforts of the department or the supervising agency;

(iv) Information provided by individuals or agencies in a reasonable position to assist the court in making this assessment, including but not limited to the parent’s attorney, correctional and mental health personnel, or other individuals providing services to the parent;

(v) Limitations in the parent’s access to family support programs, therapeutic services, and visiting opportunities, restrictions to telephone and mail services, inability to participate in foster care planning meetings, and difficulty accessing lawyers and participating meaningfully in court proceedings; and

(vi) Whether the continued involvement of the parent in the child’s life is in the child’s best interest.

RCW 13.34.145(5)(b).

rights of parents who are incarcerated.” Laws of 2013, ch. 173. “The 2013 amendments changed several features of our dependency statutes to address the problem of incarcerated parents and set forth a policy of attempting to help the incarcerated maintain relationships with their children.” In re the Termination of M.J., 187 Wn. App. 399, 407, 348 P.3d 1265 (2015). “The effect of [amended RCW 13.34.180(1)(f) and 13.34.145(5)(b)] was to require trial courts to consider whether an incarcerated parent could maintain a meaningful role, as defined, in the child’s life and to require [the Department] to make reasonable efforts to help the incarcerated person remedy parental deficiencies.” Id. at 408.

When applicable, the trial court must consider these three additional factors when deciding whether the Department has met its burden of proving RCW 13.34.180(1)(f). In re Dependency of A.M.M., 182 Wn. App. 776, 787, 332 P.3d 500 (2014). The Court of Appeals has uniformly held that amended RCW 13.34.180(1)(f) applies if the parent is incarcerated at the time of the court’s decision on a termination petition. Id.; M.J., 187 Wn. App. at 409; In re Welfare of K.J.B., 188 Wn. App. 263, 354 P.3d 879, 891 (2015) (statute applied to father who was only incarcerated for 51 days at end of dependency).

Ms. Saint-Louis was incarcerated for about eight months during the dependency. She was also incarcerated at the time when the

Department petitioned to terminate her parental rights.⁴ However, she was not incarcerated at the time of the court's decision. This case presents the question of whether the legislature intended amended RCW 13.34.180(1)(f) to apply to all parents who suffer from incarceration during the dependency of their children or just to parents who happen to be incarcerated at time of a decision on a termination petition. Misapplying the rules of statutory interpretation, the Court of Appeals held the only reasonable interpretation of RCW 13.34.180(1)(f) was that the legislature intended to exclude all parents who are not incarcerated at the time of the termination hearing. D.L.B., 355 P.3d at 351-52.

b. The purpose of statutory interpretation is to effectuate legislative intent.

The meaning of a statute is a question of law reviewed de novo. State, Dep't of Ecology v. Campbell & Gwinn, L.L.C., 146 Wn.2d 1, 9, 43 P.3d 4 (2002). Washington statutes are to be liberally construed. RCW 1.12.010. In interpreting a statute, the court ascertains and carries out the legislature's intent. Id. at 9. If the statute's meaning is plain, the court applies the plain meaning. Id. at 9-10. Plain meaning "is discerned from all that the legislature has said in the statute and related statutes which

⁴ Although the changes in the law were in effect, the Department's termination petition did not include the amended language. CP 1-13. This was contrary to the statute which requires that all the statutory elements be alleged in the petition. RCW 13.34.180(1) (termination petition "shall allege all of the following . . .").

disclose legislative intent about the provision in question.” Id. at 11. Context and consideration of the overall statutory scheme is fundamental when interpreting a statute. Davis v. Michigan Dep’t of Treasury, 489 U.S. 803, 809, 109 S. Ct. 1500, 103 L. Ed. 2d 891 (1989). A court may examine legislative history or other aids to construction if the statute is subject to more than one reasonable meaning. Campbell & Gwinn, 146 Wn.2d at 12. Statutes are interpreted to avoid unlikely, absurd, or strained results. Broughton Lumber Co. v. BNSF Ry. Co., 174 Wn.2d 619, 635, 278 P.3d 173 (2012).

c. The rules of grammar do not resolve the meaning of the statute.

The Court of Appeals’ analysis begins with grammar. D.L.B., 355 P.3d at 352. The court correctly recounts that the phrase “if the parent is incarcerated” is in the present tense. Id. The court incorrectly assumes that this plainly refers to the time of the termination hearing rather than during the dependency. Id. This assumption is unwarranted. The statute does not state the pertinent time point. If the statute said, “If the parent is incarcerated [at the time of the termination hearing],” then the court’s grammatical analysis would be correct. The statute, however, does not say that. Given the context and purpose, the statute is reasonably read to mean, “If the parent is incarcerated [during the dependency].” Thus, the

meaning of the statute is unclear and interpretation is required to resolve the dispute. See King v. Burwell, ___ U.S. ___, 135 S. Ct. 2480, 2490, ___ L. Ed. 2d ___ (2015) (“when read in context, with a view to its place in the overall statutory scheme, the meaning of the phrase ‘established by the State’ is not so clear.”) (internal quotations and brackets omitted).

d. Canons of interpretation cannot be used to thwart legislative intent.

The court’s other primary justification for its interpretation was other temporal language in other provisions of the act. D.L.B., 355 P.3d at 352 (referring to other provisions using phrase “prior incarceration”). This analysis is a form of the canon *expressio unius est exclusio alterius* (to express one thing in a statute implies the exclusion of the other). But the “rule *expressio unius est exclusio alterius* . . . , like all other rules of statutory construction, is to be used only as a means of ascertaining the legislative intent.” Swanson v. White, 83 Wn.2d 175, 183, 517 P.2d 959 (1973) (holding that strongly manifest intent in other section and presumption that the legislature enacts laws which are constitutional rebutted this canon of construction). This “statutory maxim is subordinate to the primary rule of statutory interpretation, which is to follow legislative intent.” O.S.T. ex rel. G.T. v. BlueShield, 181 Wn.2d 691, 701, 335 P.3d 416 (2014). It “cannot be rigidly applied . . . to . . . defeat the

intent of the legislature.” State v. Williams, 94 Wn.2d 531, 538, 617 P.2d 1012 (1980). Moreover, as recognized by the United States Supreme Court, “the presumption of consistent usage readily yields to context.” Burwell, 135 S. Ct. at 2493 n.3 (2015). The Court of Appeals took this canon too far. Cf. Elonis v. United States, ___ U.S. ___, 135 S. Ct. 2001, 2008, ___ L. Ed. 2d ___ (2015) (government took this canon of construction too far in arguing that statute did not contain implied mental element because neighboring provisions explicitly included mental element).

**e. A narrow construction of amended RCW
13.34.180(1)(f) creates absurd and strained results.**

The Court of Appeals’ interpretation creates absurd and strained results. The court’s interpretation means that a parent incarcerated for the entire dependency, but released the day of the termination hearing, is entitled to no protection under amended RCW 13.34.180(1)(f). It means that parents like Ms. Saint-Louis, who were incarcerated for a significant period, but released before the court’s decision, receives no added protection. In other words, courts can terminate the parental rights of these persons without considering (1) whether the Department made reasonable efforts, (2) whether the parent tried to maintain a relationship with his or her child despite incarceration, or (3) whether the parent experienced barriers during incarceration that impeded contact with the

child. RCW 13.34.180(1)(f). It provides an incentive for the Department to game the system and schedule termination trials to occur shortly after a parent's release. That way, the Department can lessen its burden of proof and avoid inquiry into whether it fulfilled its duty to make "reasonable efforts" in trying to keep the family unit intact. See A.M.M., 182 Wn. App. at 785-90 (failure by trial court to consider additional factors meant Department had failed to meet its burden of proof). In contrast, parents who remain incarcerated at the time of the court's decision are entitled to protection under amended RCW 13.34.180(1)(f) even if they were only recently incarcerated. See, e.g., K.J.B., 354 P.3d at 891.

The Court of Appeals explains that its interpretation is sound because the effect of other amendments result in the parent's incarceration being considered at a different stage. D.L.B., 355 P.3d at 352-53 (citing the various amendments). This is not necessarily true. The parent may be incarcerated at a point outside these stages or the court may (as in this case) fail to apply the law. Regardless, the other provisions are not a substitute for amended RCW 13.34.180(1)(f). This provision is part of the Department's burden of proof. A.M.M., 182 Wn. App. at 779. It also ensures that the trial court has fairly considered the parents' circumstances and the Department's efforts before terminating. The other provisions do not fulfill these purposes. Moreover, "the legislature does not engage in

unnecessary or meaningless acts” and courts “presume some significant purpose or objective in every legislative enactment.” John H. Sellen Const. Co. v. State Dep’t of Revenue, 87 Wn.2d 878, 883, 558 P.2d 1342 (1976).

f. Legislative history shows the amended law was intended to apply to all parents who are incarcerated during a dependency.

The Court of Appeals ignored the legislative history, which should have been considered because Ms. Saint-Louis’s interpretation is reasonable. Gorre v. City of Tacoma, No. 90620-3, 2015 WL 5076290, at *6 (Wash. Aug. 27, 2015) (examining legislative history because there was not a single, reasonable interpretation of statutory language). The final bill report, in the section addressing discretionary petitions for termination of parental rights, states “[i]n determining whether a parent has failed to complete court-ordered treatment, the court must consider constraints that a parent experienced by a current or prior incarceration.” Final Bill Report Senate House Bill 1284 at 3 (emphasis added).⁵ Further, the bill reports and fiscal notes⁶ do not recount that the provision at issue

⁵ Attached in Br. of App.; available at <http://lawfilesext.leg.wa.gov/biennium/2013-14/Pdf/Bill%20Reports/House/1284-S%20HBR%20FBR%2013.pdf> (last accessed September 24, 2015.)

⁶ Attached in Br. of App.; available at <https://fortress.wa.gov/ofm/fnspublic/legsearch.aspx?BillNumber=1284&SessionNumber=63> (last accessed September 24, 2015).

would be limited only to parents who remain incarcerated at the time of trial. Thus, the legislative history supports Ms. Saint-Louis's interpretation.

g. As part of remedial legislation, the provision should be construed broadly to effectuate its purpose of protecting incarcerated parents.

Finally, the Court of Appeals overlooked the remedial purpose of the act. The purpose of the legislation, which even the Court of Appeals acknowledged, was plainly to protect parents who suffer from incarceration during a dependency and help keep the parent-child relationship intact. D.L.B., 355 P.3d at 352-53; M.J., 187 Wn. App. at 407-08. "Remedial legislation should be construed broadly to effectuate its purposes." Tcherepnin v. Knight, 389 U.S. 332, 336, 88 S. Ct. 548, 19 L. Ed. 2d 564 (1967). Accordingly, amended RCW 13.34.180(1)(f) must "be liberally construed in favor of the beneficiary of the act" and exceptions "narrowly construed in a manner that is consistent with the terms and spirit of that legislation." Silverstreak, Inc. v. Washington State Dep't of Labor & Indus., 159 Wn.2d 868, 881-82, 154 P.3d 891 (2007); accord Gaines v. Dep't of Labor & Indus., 1 Wn. App. 547, 552, 463 P.2d 269 (1969) ("any doubt as to the meaning of the statute should be resolved in favor of the claimant for whose benefit the act was passed."). The court's narrow interpretation is inconsistent with these principles.

h. This important issue is one of substantial public interest that should be decided by this Court.

Lawmakers did not intend to limit amended RCW 13.34.180(1)(f) only to parents who remain incarcerated at the time of a termination hearing. While the legislature might have been more artful,⁷ legislative intent establishes that the scope of RCW 13.34.180(1)(f) extends to all parents who are incarcerated during the dependency preceding the termination hearing. “A fair reading of legislation demands a fair understanding of the legislative plan.” Burwell, 135 S. Ct. at 2496 (2015). Because this case involves an issue of substantial public interest that should be decided by this Court and the decision of the Court of Appeals is in conflict with precedent, this Court should grant review. RAP 13.4(b)(1), (2), (4).

2. The law expanding the rights of incarcerated parents requires that available services be provided to an incarcerated parent. Whether a violation of this law can be raised in an appeal from a termination order is an issue of substantial public interest.

In conjunction with her argument that the Department failed to prove that it provided all necessary services under RCW 13.34.180(1)(d), Ms. Saint-Louis argued that the Department violated RCW

⁷ “Sometimes the legislative body was not as artful as it could have been in choosing the words for the text of the bill it has passed.” Hale v. Wellpinit Sch. Dist. No. 49, 165 Wn.2d 494, 509, 198 P.3d 1021 (2009).

13.34.136(2)(b)(i)(A). This provision is also a part of the act expanding the rights of incarcerated parents. Laws of 2013, ch. 173 § 2. Under this provision, where possible, permanency plans “must include treatment that reflects the resources available at the facility where the parent is confined.” RCW 13.34.136(2)(b)(i)(A). There was no showing that the Department tried to provide Ms. Saint-Louis services while incarcerated.

Yet the Court of Appeals held (in a footnote), that despite the mandatory wording of RCW 13.34.136(2)(b)(i)(A), the Department can get away with making no effort to provide services while a parent is incarcerated and then hold the incompleteness of services against the parent at the termination trial. See D.L.B., 355 P.3d at 354 n.10. Under the court’s opinion, the parent’s only remedy is to “appeal” the defective permanency planning order. Op. at 14 n.10. But the law specifically requires that “the services ordered under RCW 13.34.136 have been expressly and understandably offered or provided” RCW 13.34.180(1)(d) (emphasis added). Moreover, “[t]he permanency planning process continues until a permanency planning goal is achieved or dependency is dismissed.” RCW 13.34.136(1). Thus, it is proper to raise the violation of RCW 13.34.136(2)(b)(i)(A) in conjunction with whether the Department met its burden to prove RCW 13.34.180(1)(d). Further, unless this order is part of the dependency disposition, the parent

has no right to appeal and must seek discretionary review. In re Dependency of Chubb, 112 Wn.2d 719, 721-22, 773 P.2d 851 (1989).

This issue is also one of substantial public importance justifying review. RAP 13.4(b)(4). This Court should grant review on whether the failure to provide available services to a parent while incarcerated, as required under RCW 13.34.136(2)(b)(i)(A), results in a failure to prove that all services were provided under RCW 13.34.180(1)(d).

3. The evidence did not prove current parental unfitness or that there was little likelihood that the conditions would be remedied in the near future. The Court of Appeals contrary conclusion conflicts with precedent.

The Department must prove that the parent is currently unfit to parent the child. In re Welfare of A.B., 168 Wn.2d 908, 920, 232 P.3d 1104 (2010). The Department must also prove that “there is little likelihood that conditions will be remedied so that the child can be returned to the parent in the near future.” RCW 13.34.180(1)(e). These requirements must be proved by clear, cogent, and convincing evidence. A.M.M., 182 Wn. App. at 784.

Ms. Saint-Louis completed most of the services. She remedied the purported parental deficiencies related to substance abuse, mental health, and being a victim of domestic violence. Br. of App. at 35-43. She already had adequate parenting skills and had completed part of the

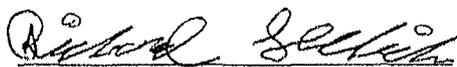
recommended parenting education course. Br. of App. at 38-39. The Court of Appeals decision that the evidence proved current parental unfitness and RCW 13.34.180(1)(e) is contrary to precedent. See, e.g., In re Welfare of A.B., 181 Wn. App. 45, 61-32, 323 P.3d 1062 (2014) (evidence of mother's cognitive impairments insufficient to prove current parental unfitness). This issue also warrants this Court's review. RAP 13.4(b)(1), (2), (4).

E. CONCLUSION

Amended RCW 13.34.180(1)(f) was intended to apply to all parents who are incarcerated during the dependency of their children, not just those parents who happen to be incarcerated when the Court decides a petition to terminate parental rights. Along with the issues concerning services and parental fitness issues, this Court should grant review on the scope of amended RCW 13.34.180(1)(f).

DATED this 1st day of October, 2015.

Respectfully submitted,



Richard W. Lechich – WSBA #43296

Washington Appellate Project

Attorney for Petitioner

Appendix

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In the Matter of the Dependency of)	
)	No. 72421-5-1
D.L.B.,)	
D.O.B: 11/01/08,)	DIVISION ONE
Minor child.)	
)	PUBLISHED OPINION
STATE OF WASHINGTON,)	
DEPARTMENT OF SOCIAL AND)	
HEALTH SERVICES,)	
)	
Respondent,)	
)	
v.)	
)	
EDELYN SAINT-LOUIS,)	
)	FILED: July 13, 2015
Appellant.)	

TRICKEY, J. — In 2013, the legislature amended the Juvenile Court Act, chapter 13.34 RCW, to ensure that the rights of incarcerated parents are protected throughout various stages of the dependency and termination process. One of these amendments is codified in RCW 13.34.180(1)(f), the amended language of which states that “[i]f the parent is incarcerated,” the trial court must consider several factors before terminating the parent-child relationship. Here, the mother was not incarcerated at the time of the termination hearing but was incarcerated for numerous months during the dependency. She contends that the order terminating her parental rights must be reversed because the trial court failed to consider the amended factors set forth in RCW 13.34.180(1)(f). We disagree and hold that the plain meaning of RCW 13.34.180(1)(f), as gleaned from its language and surrounding statutes, supports the conclusion that the amended factors apply only when the parent is incarcerated at the time of the termination hearing. Accordingly, we reject the mother’s contention, as well as others she raises on appeal,

and affirm the trial court's order terminating her parental rights.

FACTS¹

D.L.B. was born on November 1, 2008, to Edelyn Saint-Louis. The father is not a party to this termination proceeding.²

Since an early age, D.L.B. was exposed to domestic violence while in his mother's care. In 2009, the father threw D.L.B. at Saint-Louis and then struck her in the head. After this incident, Saint-Louis obtained a permanent no-contact order against the father.

A few years later, when D.L.B. was approximately two years old, Saint-Louis and D.L.B. moved in with the father's sister in Chicago for a few months. The father followed them to Chicago shortly thereafter, and would visit the house often. He would frequently harass and assault Saint-Louis. On at least one occasion, D.L.B. witnessed a physical altercation between Saint-Louis and the father. The police arrested the father three times during the three and a half months they resided in Chicago.

Saint-Louis and D.L.B. returned to Seattle. In early 2012, the Department of Social and Health Services (Department) received reports concerning domestic violence between Saint-Louis and her boyfriend at the time. The police had been called to Saint-Louis's residence on multiple occasions to investigate. On February 8, 2012, the police arrested Saint-Louis for leaving D.L.B. unattended for several hours. D.L.B. was taken

¹ Edelyn Saint-Louis assigns error to a number of the trial court's findings. However, she fails to devote argument to several of these claimed errors in her brief. The assignments of error are therefore waived. Cowiche Canyon Conservancy v. Bosley, 118 Wn.2d 801, 809, 828 P.2d 549 (1992). Saint-Louis also challenges several of the court's findings of fact in footnotes in her opening brief. We need not address arguments raised in footnotes. State v. Johnson, 69 Wn. App. 189, 194 n.4, 847 P.2d 960 (1993). In any event, a review of the record leads to the conclusion that the challenged findings are either supported by the record or were not material to the court's decision.

² The father's parental rights were terminated on May 16, 2014, by order of default. This appeal concerns only the termination of Saint-Louis's parental rights.

into protective custody.

On March 8, 2012, the Department filed a dependency petition on D.L.B.'s behalf. On May 11, 2012, D.L.B. was declared dependent as to both parents. The trial court required Saint-Louis to complete the following services: (1) random urinalysis (UA) testing two times per week; (2) a psychological evaluation with parenting component and compliance with recommended treatment; and (3) a domestic violence support group.

In July 2012, the Department referred Saint-Louis to Dr. Steve Tutty for a psychological and parenting evaluation. Saint-Louis completed the evaluation in October 2012. Dr. Tutty observed a positive bond between Saint-Louis and D.L.B. However, he found that Saint-Louis presented with "a myriad of risk factors that threaten the safety and well-being of [D.L.B.]"³ He opined that Saint-Louis's "presentation, testing outcomes, and clinical/CPS history support psychological challenges best characterized by bipolar illness, polysubstance abuse, panic disorder, executive functioning deficits, learning disabilities, and histrionic traits."⁴

Dr. Tutty recommended against reunification of Saint-Louis with D.L.B. He determined that Saint-Louis's prognosis for maintaining the safety and welfare of D.L.B. was poor at the time of the evaluation and in the foreseeable future. Dr. Tutty concluded that it was highly unlikely that Saint-Louis would be able to remediate her parental deficits within the timeframe allowed for the Department to establish permanency. He nevertheless recommended she complete the following services within six months of the November 2012 evaluation: (1) drug and alcohol evaluation and follow-up with all recommendations; (2) medical consultation to explore additional psychotropic

³ Exhibit (Ex.) 16 at 13.

⁴ Ex. 16 at 13.

medications to target her mental health issues of bipolar illness, panic disorder, and executive functioning deficits; (3) participation in the Incredible Years parent education program; (4) monitored visitations about once a week; (5) participation in a domestic violence support group; and (6) work with her social worker in obtaining suitable housing and employment options.

D.L.B. was referred to the Foster Care Assessment Program (FCAP) for a reunification assessment. In the FCAP evaluator's written report, dated December 12, 2012, the evaluator recommended against reunification. She recommended Saint-Louis enroll in the Incredible Years parent education program "sooner rather than later."⁵

On November 5, 2012, Saint-Louis enrolled in a 30-day in-patient chemical dependency treatment program to address her dependence on alcohol, cannabis, and cocaine. She successfully completed that program and subsequently enrolled in an out-patient program in December 18, 2012. She completed that program in April 2013. Saint-Louis's UAs remained clean until May 2013, when she tested positive for alcohol during a random UA test. Her case worker recommended she participate in a relapse prevention program. Saint-Louis was unable to begin classes until a week before the termination trial in July 2014.

Following a dependency review hearing on May 30, 2013, the trial court found that Saint-Louis was in compliance with all court-ordered services except that she had missed five random UA tests since March 2013 and had not attended parent education classes. The trial court added another service to be completed by Saint-Louis: participation in mental health counseling.

⁵ Ex. 17 at 10.

In July 2013, Saint-Louis was arrested for a hit and run charge. She was incarcerated for approximately one month. In August 2013, she was released. On October 24, 2013, Saint-Louis failed to appear at a court hearing on the matter and, as a result, a warrant was issued for her arrest.

In November 2013, Saint-Louis was arrested. She pleaded guilty to one count of hit and run, one count of vehicular assault, and one count of taking a motor vehicle without permission in the second degree. She also pleaded guilty to two counts of attempted forgery arising from a separate incident.

Saint-Louis was incarcerated from November 2013 to June 2014. On January 31, 2014, while she was incarcerated, the Department filed a petition for termination of Saint-Louis's parental rights.

For two brief periods, Saint-Louis was on work release. The first time was for approximately one week in March 2014; the second was for approximately two weeks in April 2014. While on her second work release in April, Saint-Louis's social worker, Alyssa Livingston, met with her to review services, which had not been started but had been referred. They spoke about setting up visits and discussed Saint-Louis's participation in the Incredible Years parent education program.

Saint-Louis had the option of going on work release again, but she opted against it. Nevertheless, she participated in domestic violence services while incarcerated. She also saw someone from Sound Mental Health twice each week.

In June 2014, Saint-Louis called Livingston after she was released from jail. At that point, Livingston made referrals for Saint-Louis to begin UA testing. She also made referrals to the Incredible Years parent education program and scheduled visits between

Saint-Louis and D.L.B. Saint-Louis began the program in late 2013, but she missed several classes and was discharged. She began the program again on July 29, 2014.

The termination hearing took place at the end of July 2014. The trial court terminated Saint-Louis's parental rights.

Saint-Louis appeals.

ANALYSIS

Parents have a fundamental liberty interest in the care and welfare of their children. In re Dependency of Schermer, 161 Wn.2d 927, 941-42, 169 P.3d 452 (2007). To terminate parental rights, the Department must satisfy a two-pronged test. In re Dependency of K.N.J., 171 Wn.2d 568, 576, 257 P.3d 522 (2011). The Department must first prove the statutory elements set forth in RCW 13.34.180(1)(a) through (f)⁶ by clear, cogent, and convincing evidence. K.N.J., 171 Wn.2d at 576-77.

⁶ RCW 13.34.180(1) states, in pertinent part:

A petition seeking termination of a parent and child relationship may be filed in juvenile court by any party, including the supervising agency, to the dependency proceedings concerning that child. Such petition shall conform to the requirements of RCW 13.34.040, shall be served upon the parties as provided in RCW 13.34.070(8), and shall allege all of the following unless subsection (3) or (4) of this section applies:

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

Evidence is clear, cogent, and convincing if it established the ultimate fact in issue as "highly probable." In re Dependency of K.R., 128 Wn.2d 129, 141, 904 P.2d 1132 (1995) (internal quotation marks omitted) (quoting In re Sego, 82 Wn.2d 736, 739, 513 P.2d 831 (1973)). If the trial court finds that the Department has met its burden under RCW 13.34.180, it may terminate parental rights if it also finds by a preponderance of the evidence that termination is in the "best interest" of the child. K.N.J., 171 Wn.2d at 577.

Where the trial court has weighed the evidence, our review is limited to determining whether the court's findings of fact are supported by substantial evidence and whether those findings support the court's conclusions of law. In re Dependency of P.D., 58 Wn. App. 18, 25, 792 P.2d 159 (1990). "'Substantial evidence' is evidence in sufficient quantity to persuade a fair-minded, rational person of the truth of the declared premise." In re Welfare of T.B., 150 Wn. App. 599, 607, 209 P.3d 497 (2009) (quoting World Wide Video, Inc. v. City of Tukwila, 117 Wn.2d 382, 387, 816 P.2d 18 (1991)). The determination of whether the findings of fact are supported by substantial evidence "must be made in light of the degree of proof required." P.D., 58 Wn. App. at 25. In determining whether substantial evidence supports the trial court's findings, this court does not weigh the evidence or the credibility of witnesses. In re Dependency of E.L.F., 117 Wn. App. 241, 245, 70 P.3d 163 (2003).

meaningful role in his or her child's life based on factors identified in RCW 13.34.145(5)(b); whether the department or supervising agency made reasonable efforts as defined in this chapter; and whether particular barriers existed as described in RCW 13.34.145(5)(b) including, but not limited to, delays or barriers experienced in keeping the agency apprised of his or her location and in accessing visitation or other meaningful contact with the child.

Application of RCW 13.34.180(1)(f)

Saint-Louis first contends that the termination order must be reversed because the Department failed to prove, and the trial court failed to consider, the recent statutory amendments pertaining to incarcerated parents. We disagree.

Effective July 2013, the legislature amended several statutes in the Juvenile Court Act in a law entitled, "An Act Relating to the rights of parents who are incarcerated." LAWS OF 2013, ch. 173 (amending RCW 13.34.067, .136, .145, .180). One of the amended provisions was to RCW 13.34.180(1)(f), the sixth element of the parental rights termination statute. LAWS OF 2013, ch. 173 § 4. The legislature added three specific factors that the trial court must consider before terminating the parental rights of a parent who "is incarcerated." LAWS OF 2013, ch. 173 § 4; see In re Dependency of A.M.M., 182 Wn. App. 776, 786, 332 P.3d 500 (2014). Amended subsection .180(1)(f) states, in part:

If the parent is incarcerated, the court shall consider [(1)] whether a parent maintains a meaningful role in his or her child's life based on factors identified in RCW 13.34.145(5)(b)^[7]; [(2)] whether the department or

⁷ RCW 13.34.145(5)(b) (as amended by LAWS OF 2013, ch. 173 § 3), provides:

The court's assessment of whether a parent who is incarcerated maintains a meaningful role in the child's life may include consideration of the following:

(i) The parent's expressions or acts of manifesting concern for the child, such as letters, telephone calls, visits, and other forms of communication with the child;

(ii) The parent's efforts to communicate and work with the department or supervising agency or other individuals for the purpose of complying with the service plan and repairing, maintaining, or building the parent-child relationship;

(iii) A positive response by the parent to the reasonable efforts of the department or the supervising agency;

(iv) Information provided by individuals or agencies in a reasonable position to assist the court in making this assessment, including but not limited to the parent's attorney, correctional and mental health personnel, or other individuals providing services to the parent;

(v) Limitations in the parent's access to family support programs, therapeutic services, and visiting opportunities, restrictions to telephone and mail services, inability to participate in foster care planning meetings, and difficulty accessing lawyers and participating meaningfully in court proceedings; and

supervising agency made reasonable efforts as defined in this chapter; and [(3)] whether particular barriers existed as described in RCW 13.34.145(5)(b) including, but not limited to, delays or barriers experienced in keeping the agency apprised of his or her location and in accessing visitation or other meaningful contact with the child.

(Emphasis added.)

The parties dispute the application of RCW 13.34.180(1)(f) to this case. Saint-Louis asserts that the plain meaning of subsection .180(1)(f), when viewed in context of the surrounding statutes, unambiguously conveys the legislature's intent to apply the amended factors to a parent who was incarcerated at some point during the dependency, even if the parent was not incarcerated at the time of the termination hearing. The Department, on the other hand, contends that the factors apply only if the parent is incarcerated at the time of the termination trial.⁸ We agree with the Department. Upon an examination of the plain language of RCW 13.34.180(1)(f) and other related amendments enacted in the same session law, we conclude that the factors contained within subsection .180(1)(f) must be proven only if the parent is incarcerated at the time of the termination hearing.

The issue before us is one of statutory interpretation, which we review de novo. State v. Bradshaw, 152 Wn.2d 528, 531, 98 P.3d 1190 (2004). The purpose of statutory interpretation is to carry out the legislature's intent. State v. Eaton, 168 Wn.2d 476, 480, 229 P.3d 704 (2010). Construction of a statute must be consistent with the statute's

(vi) Whether the continued involvement of the parent in the child's life is in the child's best interest.

⁸ The Department initially asserts that Saint-Louis waived this claimed error by failing to raise the issue concerning RCW 13.34.180(1)(f) at the termination hearing. However, this court has discretion to review a claim raised for the first time on appeal, and we exercise that discretion here. See State v. Blazina, 182 Wn.2d 827, 344 P.3d 680, 683 (2015) ("RAP 2.5(a) grants appellate courts discretion to accept review of claimed errors not appealed as a matter of right.").

underlying purposes and must avoid constitutional deficiencies. Eaton, 168 Wn.2d at 480. Reviewing courts presume the legislature did not intend absurd results. Eaton, 168 Wn.2d at 480.

Statutory interpretation starts with the statute's plain meaning. State v. Slattum, 173 Wn. App. 640, 649, 295 P.3d 788 (2013). "If the meaning of the statute is plain, the court discerns legislative intent from the ordinary meaning of the words." Tesoro Ref. & Mktg. Co. v. State, Dep't of Revenue, 164 Wn.2d 310, 317, 190 P.3d 28 (2008). "In determining the plain meaning of a provision, we look to the text of the statutory provision in question, as well as the context of the statute in which that provision is found, related provisions, and the statutory scheme as a whole." State v. Garcia, 179 Wn.2d 828, 836-37, 318 P.3d 266 (2014) (internal quotation marks omitted) (quoting State v. Ervin, 169 Wn.2d 815, 820, 239 P.3d 354 (2010)). We give effect to the plain meaning of the statute if it is plain on its face. Slattum, 173 Wn. App. at 649.

Saint-Louis's interpretation conflicts with the verb tense used in the text of subsection .180(1)(f). The statutory text, "if the parent *is* incarcerated," uses the present tense form of the verb "to be." (Emphasis added.) Applying ordinary English grammar, the present tense does not refer to parents who have already been incarcerated; rather, it indicates that the subsection's application is limited to those currently incarcerated. Thus, the plain language of subsection .180(1)(f) shows that the legislature contemplated that RCW 13.34.180(1)(f) be applied to parents who are incarcerated at the time of the termination hearing, and not to parents incarcerated before the hearing.

The legislature's use of specific temporal language in other provisions of the 2013 law confirms that the legislature intended to limit the application of subsection .180(1)(f)

to parents who are incarcerated at the time of the termination hearing. For example, RCW 13.34.145(4)(a)(iv)⁹ states that one "good cause exception" to filing a termination petition is where "[t]he parent *is incarcerated*, or the parent's *prior incarceration* is a significant factor in why the child has been in foster care" LAWS OF 2013, ch. 173 § 3 (emphasis added). RCW 13.34.145(4)(c) similarly provides specific temporal language: "The constraints of a parent's *current or prior incarceration* . . . may be considered" LAWS OF 2013, ch. 173 § 3 (emphasis added). Under RCW 13.34.180(1)(e)(iii), the court may consider "mitigating circumstances, such as a parent's *current or prior incarceration*." LAWS OF 2013, ch. 173 § 4 (emphasis added). And under RCW 13.34.180(2), "[a]s evidence of rebuttal to any presumption established pursuant to subsection (1)(e) of this section, the court may consider the particular constraints of a parent's *current or prior incarceration*." LAWS OF 2013, ch. 173 § 4 (emphasis added). Thus, the legislature's deliberate use of temporal language in other provisions amended in the same session law strongly suggests that its use of the present tense in "is incarcerated" was not inadvertent. If the legislature intended to encompass prior incarceration in RCW 13.34.180(1)(f), it would have done so.

Saint-Louis contends that the legislature's overarching changes in 2013 illustrate its intent that a parent's incarceration be considered at all stages of the dependency process, no matter when in the dependency the parent was incarcerated. While we agree that the overall purpose of the changes was to protect the rights of incarcerated parents, we do not read the amendments as broadly as Saint-Louis suggests. Rather, an

⁹ RCW 13.34.145(4) was renumbered as RCW 13.34.145(5) when the code reviser incorporated all 2013 amendments to this section. See LAWS OF 2013, ch. 173 § 3, ch. 206 § 1, ch. 332 § 3 (effective July 28, 2013).

examination of the amendments enacted in the 2013 law demonstrates the legislature's intent to give incarcerated parents the opportunity to participate and have their rights considered during discrete stages of the dependency and termination process, such as during the case conference, when developing a permanency plan and at the permanency planning hearing, and at the termination hearing. See LAWS OF 2013, ch. 173 § 1 (amending RCW 13.34.067(3) to require that an incarcerated parent be provided the option to participate in the case conference through teleconference or videoconference); LAWS OF 2013, ch. 173 § 2 (amending former RCW 13.34.136(2)(b)(i), recodified as RCW 13.34.136(2)(b)(i)(A) by Laws of 2014, ch. 163 § 2, to require that the permanency plan of care address how the incarcerated parent will participate in the case conference and permanency plan meetings, include available resources at the facility where parent is confined, and provide for visitation unless it is not in the child's best interests); LAWS OF 2013, ch. 173 § 3 (amending former RCW 13.34.145(4) to provide that at the permanency planning hearing, the parent's prior or current incarceration may constitute a "good cause" exception to ordering the Department to file a termination petition); LAWS OF 2013, ch. 173 § 4 (amending RCW 13.34.180(2) to provide that as evidence of rebuttal to any established presumption pursuant to RCW 13.34.180(1)(e), the trial court at the termination hearing may consider the constraints of the parent's current or prior incarceration); LAWS OF 2013, ch. 173 § 4 (amending RCW 13.34.180(5) to state that when a parent is sentenced to a long-term incarceration and has maintained a meaningful role in the child's life, the Department must consider placements that allow the parent to maintain the relationship). Thus, according to the structure and language of the amended provisions of the Juvenile Court Act, by the time of the termination hearing, if the parent

was incarcerated during one of those prior stages of the dependency, the trial court has already considered the parent's incarceration.

The plain meaning of the phrase, "is incarcerated," is unambiguous. A reading of the plain language, along with the statutory scheme as a whole and related provisions within RCW 13.34.180, makes clear that the trial court is not required to consider the amended factors set forth in RCW 13.34.180(1)(f) if the parent is not incarcerated at the time of the termination hearing, even if the parent was previously incarcerated during the dependency. The trial court did not err.

Reasonable Efforts to Offer Services

Saint-Louis next contends that the Department failed to meet its burden under RCW 13.34.180(1)(d) of proving that it made reasonable efforts to offer or provide her with all available services during her incarceration. She asserts the Department failed to offer her UA tests, an adequate parenting education program, and referral to a chemical dependency program. We disagree.

The Department may not terminate parental rights unless it proves that "all necessary services, reasonably available, capable of correcting the parental deficiencies within the foreseeable future have been expressly and understandably offered or provided." RCW 13.34.180(1)(d).

A service is necessary within the meaning of the statute if it is needed to address a condition that precludes reunification of the parent and child. In re Welfare of C.S., 168 Wn.2d 51, 56 n.3, 225 P.3d 953 (2010). The services offered must be individually tailored to a parent's specific needs. In re Dependency of D.A., 124 Wn. App. 644, 651, 102 P.3d 847 (2004). The Department is not required to offer or provide services that would be

futile. In re Dependency of T.R., 108 Wn. App. 149, 163, 29 P.3d 1275 (2001). Services that might have been helpful need not be offered when a parent is unwilling or unable to make use of the service provided. In re Dependency of S.M.H., 128 Wn. App. 45, 54, 115 P.3d 990 (2005).

Saint-Louis was referred to Intensive Family Preservation Services, UA testing, the Incredible Years parent education program, a psychological evaluation, an FCAP evaluation, and mental health counseling. She was provided bus fare tickets to enable to her obtain those services.

Livingston testified she met with Saint-Louis several times to discuss services. She reviewed the service plan with Saint-Louis in late December 2012. Livingston first referred Saint-Louis to the Incredible Years parent education program in January 2013, after Dr. Tutty had made the recommendation. Livingston spoke with Saint-Louis on the phone and communicated with her via e-mail.

The Incredible Years parent education program and random UA tests were available to Saint-Louis when she was on work release and before and after her incarceration. Before she was incarcerated, Saint-Louis had numerous opportunities to engage in these services. She never followed through with them. She missed several UA tests and was referred to the Incredible Years parent education program on several occasions before and after she was in custody.

Despite her receipt of referrals to services and encouragement by the Department to engage in the services, Saint-Louis was unable or unwilling to complete many of the services. The trial court's finding is supported by substantial evidence.¹⁰

¹⁰ Saint-Louis nevertheless contends that the Department failed to comply with RCW 13.34.136(2)(b)(i)(A). Under that provision, "If the parent is incarcerated," the permanency plan

Current Unfitness and Little Likelihood that Conditions Would be Remedied

Saint-Louis next challenges the trial court's findings that she was currently unfit to parent D.L.B. and there was little likelihood that conditions would be remedied so that D.L.B. could be returned to her in the near future. Each finding is supported by substantial evidence.

The Department must prove that the parent is currently unfit and "[t]hat there is little likelihood that conditions will be remedied so that the child can be returned to the parent in the near future." RCW 13.34.180(1)(e); In re Welfare of A.B., 168 Wn.2d 908, 921, 232 P.3d 1104 (2010).

"To meet its burden to prove current unfitness in a termination proceeding, [the Department] 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).

By the time of the termination hearing, Saint-Louis had completed in-patient and out-patient chemical dependency programs. But she had relapsed over one year earlier and was just beginning a relapse prevention program. She had not been able to successfully complete the 90 days of UA tests without missed or diluted UAs. She participated in three domestic violence support groups, including one while in jail. However, at the time of the termination hearing, Saint-Louis was living with a man who had at least three domestic violence assault incidents, had a protection order issued against him as to his former spouse, and violated that order in 2012.

must "include treatment that reflects the resources available at the facility where the parent is confined." RCW 13.34.136(2)(b)(i)(A). However, Saint-Louis does not appeal the permanency plan order. We reject this argument.

Moreover, Saint-Louis was referred to the Incredible Years parent education program on several occasions (December 27, 2012, January 2, 2013, May 16, 2013, and after her June 2014 release from incarceration). This program was recommended by both Dr. Tutty and the FCAP evaluator. Saint-Louis began the program in late 2013, but she missed several classes and was discharged. She began the program again on July 29, 2014.

Although Saint-Louis had recently engaged in services, Livingston testified, Saint-Louis had no history that would suggest that she would continue to engage in those services and make progress. She testified that D.L.B. would be at risk because none of the original issues that brought him into protective custody had been remedied.

In all, by the time of the termination trial, Saint-Louis continued to have unresolved domestic violence issues, lack of parenting skills, and potential chemical dependency issues. As the evidence reflected, these uncorrected parenting deficiencies made Saint-Louis a serious risk to D.L.B. and prevented her from being able to provide D.L.B. with his basic needs. The trial court did not err in finding that Saint-Louis was currently unfit to parent D.L.B.

Nor did the court err in finding that there was little likelihood that Saint-Louis would correct her deficiencies within the foreseeable future. The focus of RCW 13.34.180(1)(e) is whether the identified deficiencies have been corrected. In re Welfare of M.R.H., 145 Wn. App. 10, 27, 188 P.3d 510 (2008). "Even where there is evidence that the parent may eventually be capable of correcting parental deficiencies, termination is still appropriate where deficiencies will not be corrected within the foreseeable future." In re Welfare of A.G., 155 Wn. App. 589, 590, 229 P.3d 935 (2010). Although the law provides

no numerical standard to measure the foreseeable future, this determination is a factual inquiry evaluated from "the child's point of view," which varies with the child's age. In re Dependency of A.C., 123 Wn. App. 244, 249, 98 P.3d 89 (2004) (citing In re Welfare of Hall, 99 Wn.2d 842, 851, 664 P.2d 1245 (1983)); see, e.g., T.R., 108 Wn. App. at 165-66 (one year is not foreseeable or near future for six-year-old child); Hall, 99 Wn.2d at 850-51 (eight months is not within the foreseeable future of a four-year-old child); In re Dependency of A.W., 53 Wn. App. 22, 32, 765 P.2d 307 (1988) (one year not in the near future of three-year-old child); P.D., 58 Wn. App. at 27 (six months not in near future of 15-month-old child).

Livingston testified that she believed there was little likelihood that conditions would be remedied so that D.L.B. could be returned to his mother in the near future. Livingston also said that Saint-Louis would have to consistently engage in services, such as the Incredible Years parent education program, relapse prevention, individual mental health counseling, for a minimum of six months before the Department would consider a transition plan. But the Court Appointed Special Advocate testified that waiting that long would be harmful to D.L.B. Substantial evidence supports the trial court's finding.

Affirmed.

WE CONCUR:

Schindler, J.

Trickoy
Becker
2019 JUL 13 AM 9:53
COURT OF APPEALS
STATE OF WASHINGTON

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

In the Matter of the Dependency of)	
)	No. 72421-5-1
D.L.B.,)	
D.O.B: 11/01/08,)	ORDER DENYING MOTION
Minor child.)	FOR RECONSIDERATION
)	
STATE OF WASHINGTON,)	
DEPARTMENT OF SOCIAL AND)	
HEALTH SERVICES,)	
)	
Respondent,)	
)	
v.)	
)	
EDELYN SAINT-LOUIS,)	
)	
Appellant.)	

The appellant, Edelyn Saint-Louis, has filed a motion for reconsideration herein. The court has taken the matter under consideration and has determined that the motion should be denied.

Now, therefore, it is hereby

ORDERED that the motion for reconsideration is denied.

Done this 1st day of September, 2015.

FOR THE COURT:

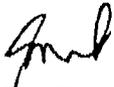
Trichey, J

2015 SEP -1 10 24
CLERK OF COURT
STATE OF WASH.

DECLARATION OF FILING AND MAILING OR DELIVERY

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the below date, a true copy of the **Motion for Discretionary Review to the Supreme Court** was filed in the **Court of Appeals** under **Case No. 72421-5-I**, and a true copy was mailed with first-class postage prepaid or otherwise caused to be delivered to the following attorney(s) or party/parties of record at their regular office or residence address as listed on ACORDS:

- respondent Kelly Taylor, Assistant Attorney General
[SHSSeaEF@atg.wa.gov] [kellyt1@atg.wa.gov]
- appellant
- Attorney for CASA /GAL
- Attorney for Other Party


MARIA ANA ARRANZA RILEY, Legal Assistant
Washington Appellate Project

Date: October 1, 2015