

No. 92448-1

IN THE SUPREME COURT FOR THE STATE OF WASHINGTON

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

Edelyn Saint-Louis,

Petitioner.

PETITIONER'S SUPPLEMENTAL BRIEF

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ORIGINAL

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A. INTRODUCTION

“A fair reading of legislation demands a fair understanding of the legislative plan.” King v. Burwell, ___ U.S. ___, 135 S. Ct. 2480, 2496, 192 L. Ed. 2d 483 (2015). In 2013, the governor signed into law a legislative plan expanding the rights of incarcerated parents. Among its requirements, a court hearing a petition to terminate parental rights must consider additional factors, “[i]f the parent is incarcerated.” RCW 13.34.180(1)(f). Disregarding the legislative plan, the Court of Appeals read this language to apply only to parents who are incarcerated at the time of the termination hearing. To effectuate the legislative plan, this language is fairly read to apply to parents who are incarcerated during the underlying dependency. This Court should overrule the Court of Appeals and hold that amended RCW 13.34.180(1)(f) applies to parents incarcerated during the dependency. Accordingly, because Edelyn Saint-Louis was incarcerated during the dependency of her son and the trial court failed to apply the change in the law, the order terminating her parental rights should be reversed.

B. 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 briefly left D.B. asleep at home during the day, D.B. was found dependent

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.

Ms. Saint-Louis participated in psychological and parenting evaluations by Dr. Steven Tutty in October 2012. Ex. 16 at 1. Dr. Tutty's observation of D.B. and Ms. Saint-Louis's interaction was positive. Ex. 16 at 12-13. He 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

¹ D.B.'s father, Kendrick Bryant, did not participate in the case and his parental rights were terminated by default. CP 130; RP 21. Ms. Saint-Louis last saw Mr. Bryant in Chicago in 2010, when she 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.

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. CP 353 (FF 2.10); Ex. 15, 32. She continued her treatment, completing an outpatient program in April 2013 and attending twelve-step programs, such as Alcoholics Anonymous. CP 353 (FF 2.10); Ex. 33; RP 276.

Initially, the court rejected a parenting education service. Ex. 1 at 9-10. After Dr. Tutty recommended Ms. Saint-Louis participate in the “Incredible Years” parenting education program, however, the court added this as a service in December 2012. Ex. 4 at 10; Ex. 16 at 15. Due to the low number of students (the program needed a minimum number) and Ms. Saint-Louis’s schedule working evenings, Ms. Saint-Louis had difficulty starting the program. RP 70, 165, 281, 414-16. She was able to start the program around August 2013. RP 71, 282.

Also in December 2012, the court ordered the Department to refer Ms. Saint-Louis for random urinalysis drug-testing (UAs). 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 and Ms. Saint-Louis 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 was in a car accident and was later charged with, among other things, hit and run. RP 63; Ex. 21, 22. She was in jail for about a month. RP 63-64, 393. 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, 535.

Ms. Saint-Louis was incarcerated from November 2013 to June 2014, about eight months. RP 80. During this time, she wanted to visit D.B. but was not able to see him. RP 82-84, 287, 306. D.B. did not know his mother was incarcerated. RP 163. 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 287-88, 428. During her incarceration, Ms. Saint-Louis herself accessed a domestic violence victim's program and also saw a counselor from Sound Mental Health. RP 53, 157. 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 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 283-84. 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. In re Dependency of D.L.B., 188 Wn. App. 905, 908, 355 P.3d 345 (2015).

² The finding erroneously says 2013.

C. ARGUMENT

1. The trial court failed to apply amended RCW 13.34.180(1)(f), which applies to parents incarcerated during the dependency.

a. Overview of the 2013 act expanding the rights of incarcerated parents.

In 2013, “AN ACT Relating to the rights of parents who are incarcerated” became law. Laws of 2013, ch. 173. The act recognized that parents incarcerated during a dependency should have a fair opportunity to have a meaningful relationship with their children and not have their parental rights needlessly terminated. See In re the Termination of M.J., 187 Wn. App. 399, 407, 348 P.3d 1265 (2015) (legislation “set forth a policy of attempting to help the incarcerated maintain relationships with their children.”).

One change was to ensure that incarcerated parents could participate in the dependency. RCW 13.34.067(3) (incarcerated parent who is unable to attend a case conference must have option to participate remotely via telephone or video);³ RCW 13.34.136(2)(b)(i)(A) (permanency plans must address how an incarcerated parent will participate, include treatment reflecting available resources at the facility where parent is confined, and provide for visitation unless it is not in the

³ Laws of 2013, ch. 173 § 1.

child's best interests).⁴ Other provisions recognize that incarceration often creates unfair barriers to reunification and instruct the courts that termination may not be justified. RCW 13.34.145(5)(a)(iv) (parent's incarceration may qualify as a "good cause exception" for the court to decline to order the Department to file a termination petition);⁵ RCW 13.34.180(2) (in rebuttal to any presumption established under subsection RCW 13.34.180(1)(e), court may consider constraints imposed by incarceration).⁶ Another provision instructs that when a parent faces a long-term incarceration, the Department should examine other options besides termination when the parent maintains a meaningful role with his or her child. RCW 13.34.180(5) (when a parent is sentenced to a long-term incarceration and has maintained a meaningful role in the child's life, the Department should consider placements that allow the parent to maintain that relationship, including a guardianship).⁷

Additionally, the legislation altered "allegation" (f) of RCW 13.34.180(1), which the Department generally must allege and prove in order to terminate a person's parental rights. RCW 13.34.190. Now, this provision requires the court to consider three additional factors "[i]f the parent is incarcerated":

⁴ Laws of 2013, ch. 173 § 2.

⁵ Laws of 2013, ch. 173 § 3.

⁶ Laws of 2013, ch. 173 § 4.

⁷ Laws of 2013, ch. 173 § 4.

[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 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).⁸

⁸ 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

b. Amended RCW 13.34.180(1)(f) applies to parents who are incarcerated during the dependency, not just to parents incarcerated at the time of a court's decision on a termination petition.

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. Campbell & Gwinn, 146 Wn.2d at 9. 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). In the end, courts should "choose the meaning that best furthers the statute's intended purpose." Gorre v. City of Tacoma, 184 Wn.2d 30, 37, 357 P.3d 625 (2015); accord Bennett v. Hardy, 113 Wn.2d

(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).

912, 928, 784 P.2d 1258 (1990); In the Matter of the Detention of R., 97 Wn.2d 182, 187, 641 P.2d 704 (1982) (“the spirit and intent of the law should prevail over the letter of the law.”).

The language, “[i]f the parent is incarcerated,” is in the present tense. RCW 13.34.180(1)(f). However, the statute does not state the pertinent time point. The statute does not say, “[i]f the parent is incarcerated [at the time of the termination hearing].” Thus, interpretation is required to ascertain the meaning of the statute. See Burwell, 135 S. Ct. at 2490 (“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).

Given the purpose of the act, the statute is more reasonably read to mean, “[i]f the parent is incarcerated [during the dependency].” As the Court of Appeals has recognized (including in this case), the purpose of the legislation was plainly to protect parents who suffer from incarceration during a dependency and to help keep the parent-child relationship intact. M.J., 187 Wn. App. at 407-08; D.L.B., 188 Wn. App. at 918. The legislature sought to remedy the problem incarceration caused to the parent-child relationship. Such “[r]emedial 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 of Appeals justified its interpretation based on temporal language used in other provisions of the act. D.L.B., 188 Wn. App. at 917-18 (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 manifested intent in other section and presumption that the legislature enacts laws which are constitutional overcame this rule). 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); see, e.g., In re Det. of W.C.C., No. 91950-0, slip. op at 7, 2016 WL 1165442, at *3 (Mar. 24, 2016) (“logical appeal to the maxim *expressio unius est exclusio alterius*” was not controlling in light of unique legislative history). 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, 192 L. Ed. 2d 1 (2015) (government took this canon of construction too far in arguing that because neighboring provisions explicitly included mental element, statute did not contain implied mental element).⁹

The legislature’s plain intent was for the trial court to consider additional factors if the parent suffered from incarceration during the dependency. The additional factors concern efforts or barriers related to a parent’s incarceration that arose during the dependency. RCW 13.34.180(1)(f). Further, several of the factors identified in RCW 13.34.145(5)(b) (which the court must consider) relate to services, efforts,

⁹ The Court of Appeals’ contention that “[i]f the legislature intended to encompass prior incarceration in RCW 13.34.180(1)(f), it would have done so,” D.L.B., 184 Wn. App. at 918, fails to recognize that “[s]ometimes 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).

and barriers at points before a termination proceeding. They focus on both party's actions during the dependency in connection with the parent's incarceration. The factors are applicable to parents who are incarcerated during a dependency.

A narrow interpretation creates absurd and strained results. A parent could be incarcerated for almost the entire period preceding the termination hearing, but still receive no protection under RCW 13.34.180(1)(f). In other words, if the parent is released from his or her incarceration shortly before trial, courts can terminate the person's parental rights without considering (1) whether the Department made reasonable efforts, (2) whether the parent tried to maintain a relationship with the child despite incarceration, or (3) whether the parent experienced barriers during incarceration that impeded contact with the child. RCW 13.34.180(1)(f). In contrast, parents who remain incarcerated at the time of the court's decision are entitled to protection under RCW 13.34.180(1)(f) even if they were only recently incarcerated. See, e.g., In re Welfare of K.J.B., 188 Wn. App. 263, 284, 354 P.3d 879 (2015), review granted, 184 Wn.2d 1033 (2016). This is not sensible.

The other changes created by the act are not a substitute for applying the additional factors to all parents who are incarcerated during the underlying dependency. Amended RCW 13.34.180(1)(f) is part of the

State's burden of proof. In re Dependency of A.M.M., 182 Wn. App. 776, 787-90, 332 P.3d 500 (2014). It ensures that the court has fairly considered the parent's circumstances and the Department's efforts.

To the extent that the statute remains susceptible to competing interpretations, legislative history supports the broader reading. Gorre, 184 Wn.2d at 42-43 (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).¹⁰ Further, the bill reports and fiscal notes¹¹ do not indicate that the provision at issue would be limited only to parents who remain incarcerated at the time of trial.

Properly applying the rules of interpretation and to effectuate the legislature's purpose, this Court should hold that amended RCW 13.34.180(1)(f) applies to parents who are incarcerated during the

¹⁰ 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 March 31, 2016).

¹¹ Attached in Br. of App.; available at <https://fortress.wa.gov/ofm/fnspublic/legsearch.aspx?BillNumber=1284&SessionNumber=63> (last accessed March 31, 2016).

underlying dependency, regardless of whether they are incarcerated at the time of the court's decision on a termination petition.

c. The failure by the trial court to apply the law requires reversal and remand for a new trial.

In A.M.M., the Court of Appeals reversed an order terminating the parental rights of an incarcerated parent because the trial court did not apply amended RCW 13.34.180(1)(f) and the Department had not met its burden of proof as to the amended element. A.M.M., 182 Wn. App. at 784-89. The court reasoned that nothing in the record showed that the Department had presented evidence to meet its burden or that the trial court actually applied the law in effect. Id. at 787. Following this Court's decision in A.B.,¹² which required a clear demonstration that an omitted finding on parental unfitness was actually intended, the court rejected the notion that other findings were an adequate substitute. Id. at 788-89.

As in A.M.M., the Department did not present evidence to satisfy this burden and there is no indication in the record that the Department or the court considered the applicable law as required by RCW 13.34.180(1)(f) and RCW 13.34.145(5)(b). Br. of App. at 29-30. Moreover, the record shows the trial court's failure to apply RCW 13.34.180(1)(f) was prejudicial. The evidence showed that Ms. Saint-

¹² In re Welfare of A.B., 168 Wn.2d 908, 912, 232 P.3d 1104 (2010).

Louis maintained a meaningful role in D.B.'s life, that the Department failed to make reasonable efforts during her incarceration, and that particular barriers impeded Ms. Saint-Louis. RCW 13.34.180(1)(f); Br. of App. at 30-33. Following A.M.M., this Court should reverse and remand for a new trial. A.M.M., 182 Wn. App. at 790.¹³

2. The Department failed to meet its burden to provide all necessary and court-ordered services.

Before termination, all court-ordered services under RCW 13.34.136 must have been expressly and understandably offered or provided. RCW 13.34.180(1)(d);¹⁴ In re Dependency of T.L.G., 126 Wn. App. 181, 200, 108 P.3d 156 (2005). Additionally, all other necessary services must be provided. T.L.G., 126 Wn. App. at 200. Under the 2013 change in the law as to incarcerated parents, if 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). Read together, these provisions mean that the Department must, where possible,

¹³ The A.M.M. court remanded for proceedings consistent with its opinion. A.M.M., 182 Wn. App. at 790. However, the effect was to require a new trial because when an appellate court “reverses a judgment and makes no final disposition of the case, the usual procedure contemplated is a new trial.” State v. Jones, 148 Wn.2d 719, 722, 62 P.3d 887 (2003). Further, because the “error manifests itself in the Department failing to satisfy its burden of proof as to all statutory factors,” additional evidence would be required for the Department to meet its burden of proof. A.M.M., 182 Wn. App. at 779.

¹⁴ This provision reads: “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.” RCW 13.34.180(1)(d).

provide all court-ordered and necessary services to incarcerated parents.

The record does not show that the Department made reasonable efforts to offer Ms. Saint-Louis services during her incarceration. Outstanding court-ordered services included 90 days of consistent and clean urinalyses and a parenting education program (specifically the Incredible Years). There was no testimony that urinalyses could not have been provided at the facility. Neither was there testimony that an adequate parenting education program was unavailable. And while there was a chemical dependency program available, Ms. Saint-Louis was not referred to it. RP 154-55, 428. This record shows a lack of reasonable efforts and a violation of RCW 13.34.136(2)(b)(i)(A).

The Court of Appeals erroneously held that a parent must appeal the permanency plan order or else a violation of RCW 13.34.136(2)(b)(i)(A) is waived. D.L.B., 188 Wn. App. at 921 n.10. The law, however, 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 a 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).¹⁵

Because the Department did not prove that the services were unavailable to Ms. Saint-Louis during her incarceration, the Department did not prove that it provided all necessary services to her. Had the Department provided Ms. Saint-Louis services during her incarceration, she would have made greater progress. Even with her incarceration, Ms. Saint-Louis had already completed most of the services. Hence, provision of the services to Ms. Saint-Louis during her incarceration would not have been futile. See In re Welfare of C.S., 168 Wn.2d 51, 56 n.2, 225 P.3d 953 (2010). The court erred in holding that RCW 13.34.180(1)(d) was satisfied. Br. of App. at 33-34.

3. The Department failed to prove current unfitness and that there was little likelihood that conditions will be remedied so that the child can be returned to his mother in the near future.

Before termination, the Department must prove current parental unfitness. In re Welfare of A.B., 168 Wn.2d 908, 920, 232 P.3d 1104 (2010). It must also prove “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). The Department did not prove these requirements. Br. of App. at 34-43. In affirming, the Court of Appeals reasoned Ms.

¹⁵ 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).

Saint-Louis “continued to have unresolved domestic violence issues, lack of parenting skills, and potential chemical dependency issues,” and that she would not correct these deficiencies within the near future. D.L.B., 188 Wn. App. at 922.¹⁶

But the risk that a child might be exposed to domestic violence is not a parental deficiency. The contrary understanding is at odds with the statutory definitions of “dependent child,” “abuse or neglect,” and “negligent treatment or maltreatment.” See RCW 13.34.030(6)(b) (dependent child based on abuse or neglect as defined in chapter 26.44 RCW); RCW 26.44.020(1), (16) (abuse or neglect of child based on negligent treatment or maltreatment expressly excludes exposing child to domestic violence against person other than the child).¹⁷ In any event, there was no evidence that Ms. Saint-Louis’s current partner perpetrated domestic violence upon her. This “deficiency” did not support termination. Br. of App. at 39-41.

The evidence also did not prove the other purported parental deficiencies. Br. of App. at 34-40. There was no evidence that Ms. Saint-

¹⁶ Conspicuously absent is the notion that Ms. Saint-Louis had mental health issues that precluded her from parenting her son. Hence, the Court of Appeals impliedly accepted Ms. Saint-Louis’s argument that the evidence did not establish that her mental health prevented her from parenting. Br. of App. at 37-38.

¹⁷ Hence, “the poor choice of a partner is not a reason for the State to interfere in the life of a family. Only where a partner poses a clear and present danger to the child’s health, welfare and safety may a child be declared dependent.” In re Dependency of M.S.D., 144 Wn. App. 468, 482, 182 P.3d 978 (2008).

Louis had a current substance abuse problem. Br. of App. at 35-36. As for her parenting skills, Ms. Saint-Louis had previous parenting education and had attended five classes in the Incredible Years program. RP 73, 282. Moreover, the Incredible Years program was recommended to the foster parents, yet D.B was in their care. RP 262. The State failed to prove that Ms. Saint-Louis was currently unfit to parent D.B.

Regardless, the conditions could be remedied in the “near future.” Ms. Saint-Louis made substantial progress and her outstanding services were not onerous. She could have completed them within six months. Accordingly, the State failed to prove RCW 13.34.180(1)(e). See In re Welfare of C.B., 134 Wn. App. 942, 958, 143 P.3d 846 (2006) (State failed to prove RCW 13.34.180(1)(e) because of parent’s recent improvement and lack of evidence showing parent would not continue to improve in six-months to a year).

D. CONCLUSION

Amended RCW 13.34.180(1)(f) applies to parents incarcerated during the dependency. The Court of Appeals should be reversed.

Respectfully submitted this 8th day of April, 2015,

/s Richard W. Lechich
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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

IN RE D.L.B.
MINOR CHILD

E.S.,

PETITIONER MOTHER.

NO. 92448-1

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