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Supreme Court No. 96155-7

NO. 51127-4-II

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

In the Matter of the Welfare of

M.O.,

minor child.

MOTION FOR DISCRETIONARY REVIEW

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A. IDENTITY OF THE PETITIONER

M.P., appellant below, seeks review of the Court of Appeals decision designated below in Section B.

B. COURT OF APPEALS DECISION

Mr. P. appealed from a Kitsap County Superior Court order terminating his parental rights to his daughter, M.O., and denying his petition for guardianship. The Court of Appeals affirmed the order of termination and denial of guardianship in an unpublished decision on April 12, 2018. Appendix A. A motion to modify the Commissioner's ruling was denied on July 12, 2018. Appendix B. This motion is based on RAP 13.3(a)(1) and RAP 13.4(b)(3).

C. ISSUES PRESENTED FOR REVIEW

1. A parent has a fundamental liberty interest in determining the care and custody of his/her child. *State v. Parvin*, 184 Wn.2d 741, 364 P.3d 94 (2015). Parental decisions regarding the upbringing of a child are entitled to the strongest due process protections. *Troxel v. Granville*, 530 U.S. 57, 120 S. Ct. 2034, 147 L.Ed.2d 49 (2000). In a hybrid guardianship-termination proceeding, juvenile courts determine, by a preponderance of the evidence, whether the parent-proposed guardianship, or the State-proposed termination, is in the child's best

interests. *Matter of J.B.*, 197 Wn. App. 430, 387 P.3d 1152 (2016).

Does a parent-proposed guardianship, as an expression of a parent's fundamental liberty interest in directing the upbringing of his/her child, lack requisite due process protections when it is considered in a hybrid guardianship-termination proceeding?

2. The State has a statutory and constitutional obligation to provide a parent all necessary services to remedy alleged parenting deficiencies before the termination of parental rights. *See Matter of B.P.*, 186 Wn.2d 292, 376 P.3d 350 (2016). These obligations function as due process protections for a parent's fundamental liberty interest in the care and custody of his/her children. *Id.* Futility is a limited exception to this obligation, and may only be invoked when a parent is unwilling or unable to utilize an offered service. *Matter of K.M.M.*, 186 Wn.2d 466, 379 P.3d 75 (2016). Should the State be allowed to claim futility when it failed to provide necessary services prior to a parent's failure to engage? Or is the State's failure to offer necessary services so violative of a parent's due process rights that the State is precluded from arguing futility?

D. STATEMENT OF THE CASE

Mark P. is the father of M.O., the two-year-old girl whose welfare is the subject of the proceedings. Mr. P. and his partner, Mary O., also have a five-year-old daughter, M.R.O., and an infant son, J.O. RP 280, 330.

When M.O. was born, her maternal grandparents, Candalaria and James Triplett, offered to provide a home for M.O., so that she could live with her older sister, M.R.O., who had been living with the grandparents in a third-party custody placement for most of her life. RP 94. Mr. Triplett is a Naval Officer, who has three years of shore duty remaining before his imminent retirement from the military. RP 130–32. Mrs. Triplett is a homemaker, dedicated to raising their children, Edward – who just graduated from high school and who hopes to study medicine, and Angelina, age 12. RP 96, 113–15, 148.

The Triplett's informed the Department of Social and Health Services (Department) they wanted to provide a permanent home for M.O., so the sisters could be together. RP 126–27, 148–49. Despite the Triplett's eagerness and capacity to welcome their second granddaughter into their home, their application as a placement option for M.O was delayed by the Department for years and never actually

approved. RP 83–85, 126–28. The Department stated the delay was due to Mrs. Triplett’s inability to pass a background check. RP 248. They cited a 2014 marital incident that involved Mrs. Triplett throwing a shoe at her husband in frustration. RP 71, 149. While Mrs. Triplett was charged with Fourth Degree Assault-DV, the case was later dismissed through the court diversion program. RP 249, 260. Although Mrs. Triplett was not actually disqualified as a relative placement for M.O., she needed an administrative waiver. RP 260–61. The Department refused to grant the waiver until Mrs. Triplett completed the diversion programs. RP 260–61.

Nearly three years later, and a while after Mrs. Triplett completed the diversion program, the Department approved Mrs. Triplett’s background check. RP 248–49; Ex. 24 (January 2017 letter). However, the Department continued to resist placing M.O. with the Triplett, citing missing documents and stating that Mrs. Triplett need to take “additional steps.” RP 248–57.

After years of Department inaction, Mr. P and Ms. O commissioned a private relative home study of the Triplett. RP 35–39. The study was conducted by Sonja Ulrich, a licensed social worker who formerly conducted home studies for the Department. RP 38.

Among her other conclusions, Ms. Ulrich strongly recommended the approval of the Triplets as a placement for M.O. RP 41; Ex. 23.

Meanwhile, Mr. P engaged in the remedial services ordered under the September 2015 dependency disposition, including a substance abuse evaluation. RP 211, 233. Unfortunately, the Department never sent Mr. P's completed evaluation to inpatient drug treatment programs, even though Mr. P had signed information releases. RP 238–40, 242.

The Department also failed to provide parenting classes to Mr. P. RP 243–45. The Department stated that doing so would be difficult to coordinate, as the parents were not reliable enough about attending visits. RP 243–45. This reasoning was contradicted by the guardian ad litem, however, who reported that Mr. P was consistent in visiting his daughter. RP 338–40. The guardian ad litem also noted that Mr. P made meaningful efforts to engage with M.O., coming prepared with food and enjoying the time with his daughter. RP 339.

Despite Mr. P.'s efforts to reunify with his daughter, the Department filed a petition for the termination of parental rights. CP 1–4. In response, the parents filed a guardianship petition, naming the Triplets as the proposed guardians. CP 111–15.

Following a hybrid guardianship-termination trial before the Honorable Leila Mills, the court entered an order denying the guardianship petition and granting the State's petition terminating the parental rights of both parents. Appendix C. In making this determination, the court concluded that termination, and not guardianship, was in the best interests of M.O. Appendix C 7, 9. The court did not state the burden of proof it applied to determine between the two options. *Id.* at 9. However, the fact the court compared the two options directly, without mentioning any other standard, indicates it applied the preponderance of the evidence standard. *See id.* The Court of Appeals affirmed the decision. Appendix A 7–11. Mr. P seeks review in this Court under RAP 13.4(b)(3).

E. ARGUMENT WHY REVIEW SHOULD BE GRANTED

1. A parent's fundamental interest in the upbringing of his or her child lacks adequate due process protections in a hybrid guardianship-termination proceeding.

Just like Mr. P in the present case, parents are increasingly proposing guardianship as an alternative to the termination of parental rights. *See, e.g., J.B.*, 197 Wn. App. 430; *Matter of Dependency of N.A.*, 2 Wn. App.2d 1015, 2018 WL 500201 (2018); *Matter of Dependency of C.L.M.*, 198 Wn. App. 1011, 2017 WL 959530 (2017);

Matter of Welfare of A.M.M.A., 195 Wn. App. 1041, 2016 WL 4275449 (2016).¹ However, the current structure of a hybrid guardianship-termination proceeding, on both a structural and practical level, fails to adequately protect a proposing parent's fundamental liberty interest in directing the upbringing of his/her child. Because this situation raises a significant constitutional question, the Court should grant review. RAP 13.4(b)(3).

a. A parent has a fundamental liberty interest in directing the upbringing of his/her children – this interest extends to parent-proposed guardianship petitions.

The interest of a parent in directing the upbringing of his/her child has been consistently recognized as fundamental. *Santosky v. Kramer*, 455 U.S. 745, 753, 102 S. Ct. 1388, 71 L.Ed.2d 599 (1982); *Wisconsin v. Yoder*, 406 U.S. 205, 92 S. Ct. 1526, 32 L.Ed.2d 15 (1972); *Meyer v. Nebraska*, 262 U.S. 390, 401, 43 S. Ct. 625, 67 L.Ed. 1042 (1923); *Stanley v. Illinois*, 405 U.S. 645, 652, 92 S. Ct. 1208, 31 L.Ed.2d 551 (1972). This interest extends to making determinations about a child's living arrangements. *See Moore v. City of E. Cleveland, Ohio*, 431 U.S. 494, 499, 97 S. Ct. 1932, 52 L.Ed.2d 531 (1977).

¹ Unpublished cases are cited only to show the existence of hybrid guardianship-termination proceedings, and not as precedential authority. GR 14.1(a).

A parent-proposed guardianship is a natural extension of this liberty interest. A guardianship allows for a permanent placement of a child. RCW 13.36.010. Thus, there can be no doubt that a parent petitioning for guardianship is deciding about his or her child's upbringing.

Furthermore, the guardianship statute evinces the recognition of parental authority in directing a child's upbringing. *In re A.W.*, 182 Wn.2d 689, 705, 344 P.3d 1186 (2015). Under guardianship, a parent can retain visitation rights, the right to consent to adoption, and provide financial or medical support. *Id.* Thus, a parent, when proposing guardianship, is exercising fundamental and statutorily recognized interest in directing his or her child's upbringing and must be given the requisite due process protections to ensure fundamentally fair procedures. *Lassiter v. Dep't of Soc. Servs.*, 452 U.S. 18, 27, 101 S. Ct. 2153, 68 L.Ed.2d 640 (1981); *Santosky*, 455 U.S. at 754.

b. The structure of a hybrid proceeding fails to adequately protect a proposing parent's fundamental liberty interest.

In a hybrid proceeding, trial courts are required to determine which option is in the child's best interests. *Compare* RCW 13.36.040(2)(a) *with* RCW 13.34.190(1)(b); *see also J.B.*, 197 Wn.

App. at 438. In a solo guardianship or termination proceeding, the State would have to prove its selected petition is in the child's best interests by a preponderance of the evidence. *Compare A.W.*, 182 Wn.2d at 711 (guardianship) *with K.M.M.*, 186 Wn.2d at 479 (termination). Juvenile courts apply these standards as the requisite burden of proof in hybrid proceedings, regardless of which party is proposing guardianship. *See J.B.*, 197 Wn. App. at 438; *C.L.M.*, 2017 WL 959530 at *8. Thus, for both the parent requesting guardianship and the State requesting termination, juvenile courts apply the same burden in proving the child's best interest.

However, the *A.W.* decision does not indicate the proper burden of proof when a parent brings a guardianship petition and, therefore, does not consider how a parent's fundamental liberty interest in directing the child's upbringing would require a different burden of proof. *See* 182 Wn.2d at 704–07 (only discussing the private interests at stake in relation to the State's burden of proof). As such, applying the burden of proof applicable when the State brings a guardianship petition to a guardianship petition brought by a parent fails to consider that a parent's fundamental interest in a child's upbringing must be protected. Accordingly, the burden of proof in determining between the

two options needs reconsideration in light of this constitutional infirmity. RAP 13.4(b)(3).

c. The practical reality of a hybrid proceeding prevents adequate protection of a proposing parent's fundamental liberty interest.

Even if the structure of a hybrid proceeding attempts to adequately protect a proposing parent's fundamental liberty interest, it is practically impossible for those protections to be meaningful.

There is substantial overlap between the essential elements establishing guardianship and termination. *Compare* RCW 13.36.040 (c)(i)–(v) *with* RCW 13.34.180(1)(a)–(e); *see also* *J.B.*, 197 Wn. App. at 438. Accordingly, a proposing parent is required to provide evidence that may be used to establish the elements needed to terminate his or her parental rights.

Thus, the strong due process protections within the termination statute are practically non-existent in a hybrid proceeding. *See In re Welfare of R.H.*, 176 Wn. App. 419, 425–26, 309 P.3d 620 (2013) (“Because of the parents’ fundamental constitutional rights at stake in termination hearings, due process requires that parents have the ability to present all relevant evidence for the juvenile court to consider prior to terminating a parent’s rights”). In a hybrid proceeding, a proposing

parent may have the ability to present evidence against termination; however, the statutory scheme renders using that ability impracticable and counter-productive to establishing the elements of a self-proposed guardianship petition. Thus, a parent's fundamental interests are demonstrably less protected in a hybrid proceeding than they would be in a stand-alone termination proceeding. Such a situation is inconsistent with long-standing case law and basic notions of traditional justice. *In re Sego*, 82 Wn.2d 736, 738, 513 P.2d 831 (1973) (the "grave responsibility" of interfering with parents' rights to care for their children limits the State's ability to terminate to only the "most powerful reasons").

The due process protections in a hybrid guardianship-termination proceeding are inadequate to protect a parent's fundamental interest in directing the upbringing of his or her child. The way juvenile courts structure the child's best interest determination fails to properly account for this fundamental interest. And even if there are sufficient considerations and protections afforded, the overlap between the guardianship and termination statutory elements all but erases these considerations and protections. This Court should grant review to resolve this significant constitutional question and ensure that

a parent's fundamental interest is adequately protected. RAP

13.4(b)(3).

2. Application of the futility exception implicates the due process protections of a parent's fundamental interest in determining the care and custody of his or her child – any expansion of the exception raises a significant constitutional question.

The State has a “statutory obligation to provide all... ‘necessary services, reasonably available, capable of correcting the parental deficiencies within the foreseeable future’” to a parent before it can terminate parental rights. *K.M.M.*, 186 Wn.2d at 479 (quoting RCW 13.34.180(1)(d)). There is a limited exception to this requirement when the provision of those services would be futile. *K.M.M.*, 186 Wn.2d at 483 (citing *In re Dependency of Ramquist*, 52 Wn. App. 854, 861, 765 P.2d 30 (1988)). However, the Court of Appeals decision vastly expands the futility exception in contravention of Mr. P's due process rights. This Court should grant review to ensure that Mr. P's and other parents' constitutional rights are not swallowed up by the futility exception. RAP 13.4(b)(3).

a. The necessary services requirement is essential to protecting a parent's fundamental liberty interest.

As discussed, a parent has a fundamental liberty interest in determining the care and custody of his/her children. *Parvin*, 184

Wn.2d at 759–60. This interest is obviously implicated in a termination proceeding. *K.M.M.*, 186 Wn.2d at 477–78. As such, the State has a statutory obligation to provide remedial services to ensure adequate due process protections of that fundamental interest. *See B.P.*, 186 Wn.2d at 319. Thus, the futility exception necessarily interacts with the due process rights of a parent and, therefore, its application should trigger significant constitutional scrutiny. *Troxel*, 530 U.S. at 66.

b. The Court of Appeals decision represents a substantial expansion of the futility exception.

A court should find the provision of necessary services futile only if a “parent is unwilling or unable to participate in a reasonably available service that has been offered or provided.” *K.M.M.*, 186 Wn.2d at 483 (citing *Ramquist*, 52 Wn. App. at 861). Normally, if a parent refuses or resists services or is incapable of utilizing them, futility may be found. *See In re Dependency of T.L.G.*, 126 Wn. App. 181, 202, 108 P.3d 156 (2005) (reviewing cases). However, courts have rejected futility arguments when the delay in the utilization of the services is not wholly the fault of a parent. *Id.* at 201. Further, simply because a parent is difficult to work with, or resists services, is not a sufficient basis for an appellate court to find futility when there is evidence that a parent wants to reunify with his or her children. *See id.*

at 202. The Court of Appeals decision represents a significant departure from these precepts.

The Court plainly concluded that “[t]he record does not support that [Mr. P] was offered all necessary services.” Appendix A 15. The Court recognized that, despite Mr. P’s repeated requests, the Department never referred him to inpatient drug treatment. *Id.* at 12–13. Additionally, the Department failed to refer Mr. P to a mental health evaluation and neglected to set up parenting classes for the parents. *Id.* at 12. Finally, the Court found that the Department improperly put the burden on Mr. P to seek out services. *Id.* at 13.

Nevertheless, the Court affirmed the juvenile court finding that provision of services was futile. *Id.* at 16. The Court reasoned that the Department, despite its extensive failures, did eventually offer Mr. P necessary services and those services were resisted. *Id.* Thus, even though the Department’s neglect was long-running, the Court excused it from providing Mr. P with necessary remedial services. *Id.*

This decision is highly problematic. The Court never discusses how the State’s failure to timely provide services, or its laissez-faire attitude towards fulfilling the mandates of the dispositional plan, contributed to Mr. P’s subsequent inability to fully engage in services.

By failing to engage in this discussion, especially after recognizing the Department's litany of mistakes, the Court sets a dangerous precedent wherein the Department may be dilatory in providing services, may wait for the parent to either get frustrated or seek out other options, and only then provide services, when it is either too late for the parent to take advantage of the services, or when there is an increased chance the parent refuses.

The court's broad and unnuanced application of the futility exception runs counter to the primary purpose of the dependency: the use of "remedial measures to preserve and mend family ties, and to alleviate the problems that prompted the State's initial intervention." *T.L.G.*, 126 Wn. App. at 203 n. 60 (citing *Krause v. Catholic Comty. Servs.*, 47 Wn. App. 734, 744, 737 P.2d 280 (1987)).

The court's failure to fully consider how the Department's neglect contributed to Mr. P's later reticence to accept the Department's referrals also imperils Mr. P's due process rights. The mandates of RCW 13.34.180(1)(a)–(f) are meant to secure a parent's fundamental legal interests. *See B.P.*, 186 Wn.2d at 319. When the Department is negligent in fulfilling those mandates, a court must reject termination. *In re Dependency of K.D.S.*, 176 Wn.2d 644, 652, 294

P.3d 695 (2013). Thus, when the futility exception is applied, the due process rights of a parent are necessarily implicated. Therefore, an improper expansion of the futility exception would vitiate those due process protections. This is what transpired in the present case. The Department prevented Mr. P from timely receiving and capitalizing on necessary services, and then used his understandable distrust of the Department as a justification for futility.

The Department should not be allowed to unreasonably delay the provision of services and then claim it would be futile to provide those services. However, the Court of Appeals decision seemingly would allow – and even encourage – just this conduct. This Court should grant review to ensure that the Department is not improperly circumventing parents’ due process protections. RAP 13.4(b)(3).

CONCLUSION

Because the burden of proof used by lower courts to decide whether guardianship or termination is in the child's best interest raises a significant constitutional question, this Court should grant review. In addition, this Court should review the scope of the futility exception to the Department's obligation to provide remedial services to parents in dependency proceedings, as it raises a significant constitutional question.

DATED this 6th day of August, 2018.

Respectfully submitted,



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APPENDIX A



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STATE OF WASHINGTON

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

IN THE MATTER OF THE
WELFARE OF:

M.O.,

A minor child.

Consol. Nos. 51127-4-II
51147-9-II

RULING AFFIRMING ORDER
DENYING GUARDIANSHIP
AND AFFIRMING ORDER
TERMINATING PARENTAL
RIGHTS

M.P. is the father of M.O., a girl born in 2015. He appeals the juvenile court's orders terminating his parental rights and denying his petition for guardianship, arguing that the juvenile court applied the wrong standard in adjudicating the guardianship petition, and that the Department of Social and Health Services (Department) failed to prove it had provided all necessary services to M.P. This court considered M.P.'s appeal on an accelerated basis under RAP 18.13A. This court affirms the juvenile court's orders denying the guardianship petition and terminating M.P.'s parental rights.

FACTS

M.O. tested positive for drugs in 2015. As a result, the Department filed a dependency petition. Both M.P. and M.O.'s mother¹ have a demonstrated history of substance abuse. M.O. was found dependent as to both parents in September 2015.

In April 2016, the Department filed a termination petition as to both parents. In response, M.P. filed a guardianship petition pursuant to RCW 13.36, requesting that M.O.'s maternal grandparents become her legal guardians. The grandmother, Mrs. Triplett, would be the primary caretaker as her husband, Mr. Triplett, was in the Navy. The Triplett's have been the non-parental custodians of M.P.'s older daughter since 2013.² The juvenile court held a joint trial considering the guardianship petition and termination petition in June 2017.

At trial, M.P. appeared with a standby Tagalog³ translator. M.P. explained that he had not asked for an interpreter to be present during review hearings but, due to the gravity of the termination hearing, he wanted to make sure he understood everything. M.P. participated in direct examination in English but on cross-examination, M.P. answered exclusively through the translator. Mrs. Triplett also testified with a Tagalog interpreter.

At trial, Nicole Reed, a social worker for the Department testified. She stated that M.P. had ongoing drug and alcohol issues and there were concerns about his mental

¹ M.O.'s mother is not a party to this appeal.

² M.P.'s older daughter is not involved in this appeal.

³ Tagalog is the native language in the Philippines.

health. When she took on the case, about a year and a half into the dependency, M.P. was not participating in any services. She primarily addressed M.P.'s failures to: (1) complete drug treatment; (2) engage in parenting classes; and (3) participate in mental health services.

Drug Treatment

In October 2016, Reed gave M.P. information about two or three different facilities where he could obtain a drug and alcohol evaluation. M.P. set up and completed an evaluation at a facility in Kent in November 2016. After the evaluation but before the evaluator prepared a written report, Reed spoke to the evaluator on the telephone. The evaluator told Reed she would be recommending M.P. do inpatient treatment, in part because his urinalysis (UA) was positive. Reed asked the evaluator to send her a copy of the evaluation when it was complete.

Right after the evaluation, M.P. repeatedly asked Reed to send his evaluation to various treatment centers where he could do inpatient treatment. Reed told M.P. she could not make a referral until she had a copy of the evaluation report, which she asked M.P. to obtain. M.P. told Reed he was having difficulty communicating with the evaluator. M.P. signed releases for Reed to obtain the evaluation. Reed left one voicemail message for the evaluator in December or January but never got a copy of the evaluation. Reed did not notify M.P.'s counsel about her difficulty in obtaining the report and did not make any other attempts to obtain it, even though she believed M.P. was actively using and needed inpatient treatment. When asked why she never made a referral to a different facility for a second evaluation, Reed responded "I thought it was appropriate to go back

to [M.P.] and see if he could work it himself, considering he was the one that was asking me to send it out." Report of Proceedings (RP) June 20, 2017 at 242.

By late 2016 or early 2017, Reed said she "stopped forcing the issue, because [M.P.] told me he wasn't going to go. He was leaving the state, so he had no desire to participate in inpatient." RP June 20, 2017 at 238. However, M.P. never left⁴ and he continued to visit M.O. for the next six months until June, when the termination hearing was held.

Parenting Classes

Reed identified Incredible Years as a potential parenting class for M.P., but testified that she believed his inconsistent visitation attendance and the fact that visitation remained supervised made the course logistically impossible. Reed explained that while the Department can provide supervised visitation for the class, it could not in this case because of her concern as to whether the parents would show up.

Reed, however, acknowledged that there was a period of time over a number of months when both parents were regularly attending visits. Nonetheless, she did not try setting up the class to see if the parents would attend. Despite this, she believed that parenting classes were "available to [M.P.] at any time. [H]e could have asked for it." RP June 20, 2017 at 294.

⁴ M.P. testified that he asked Reed to obtain a copy of the evaluation and that he needed inpatient treatment. He acknowledged having told Reed he had plans to go to work on a boat in Alaska but never followed through. He denied ever telling Reed he would not do inpatient treatment.

Mental Health Services

Reed did not identify any attempt to provide services for M.P.'s alleged mental health issues.⁵ Although, she testified that the facility that performed M.P.'s drug evaluation was a "co-occurring" facility that could provide mental health evaluations, M.P. only received a drug evaluation there. RP June 20, 2017 at 213.

Based on M.P.'s failure to resolve his parenting issues, Reed did not believe M.P. was fit to care for a child because "we've been involved for two years, and there's been no engagement in any service that would alleviate the Department's concerns." RP June 20, 2017 at 218-19. Reed testified that she believed there was no likelihood of placing M.O. with M.P. in the near future.

Reed testified that M.O. struggled with her visits with her parents despite doing very well in her foster home.

[S]ometimes she's crying and screaming uncontrollably [during her visits]. Sometimes she's just very stoic and needs to be led into the visit room. In the visits, I have observed her to really just kind of be very quiet, sometimes sitting off playing by herself not really engaging with her parents. She can't really engage with her infant brother, but – unless there's food out. She likes to sit on her dad's lap to be fed, but for any type of involvement, no, she's pretty much playing by herself.

RP June 20, 2017 at 221. She, however, acknowledged that M.O. was more "comfortable" with her father. RP June 20, 2017 at 298.

⁵ A permanency planning order from March 2017 directed M.P. to contact Kitsap Mental Health for a mental health evaluation. Because his social worker from that time period did not testify, there is no information as to whether she worked with him to do this. When Reed started as M.P.'s social worker, he was no longer living in Kitsap County.

Reed also testified that the Department does not support a guardianship for M.O. with the grandparents.

The concern the Department has with regards to the grandparents was there was the domestic violence incident that needed to have the admin waiver completed.

And there's also concerns with regards to Mrs. Triplett's involvement with her daughter and her inability to—I would say, say 'no' to [the mother] and keep the children that she—Mrs. Triplett has in her care safe from [the mother] and M.P.

... I believe that there is—Ms. Triplett loves her daughter, I have no doubt. But I have concerns with regards to Mrs. Triplett understanding what the parents' deficiencies are and what those—how those deficiencies contribute to the safety and well-being of children in her care—or how it could impact the children's safety and well-being in her care by allowing parents who are actively using to come in and engage with those children.

And so because of that, I don't think she has the ability to tell her daughter "No, I need to keep these kids safe and put the kids' safety first and foremost."

RP June 20, 2017 at 224-25.

Reed testified that moving M.O. to a new placement would be very traumatizing for M.O. She explained that when the grandmother is at visitation,

[S]he does not engage with Mrs. Triplett. In fact, refuses any type of touch from her, any type of hug, any type of interaction. She steers clear of Mrs. Triplett.

And that's concerning, because Mrs. Triplett would be the primary caretaker of [M.O.] as Mr. Triplett is employed by the Navy so he's not always in the home. And I think it would be very traumatizing.

RP June 20, 2017 at 228.

Following trial, the juvenile court concluded that it would be in M.O.'s best interests to terminate the parent-child relationship. In particular, it concluded that the Department offered and provided all necessary services to the father: Drug/Alcohol evaluation and treatment, random UAs, mental health intake and services, and parenting classes. It

stated, "[t]he father has failed to follow through with the court ordered services He instead testified that he wanted to go to Alaska to work on fishing boats." Clerk's Papers (CP) at 74.

As to M.P.'s guardianship petition, the juvenile court concluded that neither a guardianship with the Triplets nor a guardianship in general is the in the best interest of M.O. Consequently, the juvenile court denied M.P.'s guardianship petition and entered an order terminating M.P.'s parental rights to M.O.

ANALYSIS

I. Guardianship

M.P. first argues that the juvenile court erred when it denied his guardianship petition and granted the Department's petition to terminate M.P.'s parental rights. Specifically, he argues that the juvenile court applied the wrong standard when adjudicating the guardianship petition.

He contends that when a parent's petition for guardianship competes with a petition to terminate parental rights, due process requires "proof, by clear and convincing evidence, that guardianship is *clearly* contrary to the child's best interests." Br. of Appellant at 16 (*italics theirs*). This court disagrees.

RCW 13.36.040 provides:

- (2) A guardianship shall be established if:
 - (a) *The court finds by a preponderance of the evidence* that it is in the child's best interests to establish a guardianship, rather than to terminate the parent-child relationship and proceed with adoption, or to continue efforts to return custody of the child to the parent; and
 - (b) All parties agree to entry of the guardianship order and the proposed guardian is qualified, appropriate, and capable of performing the duties of guardian under RCW 13.36.050; or

- (c)(i) The child has been found to be a dependent child under RCW 13.34.030;
- (ii) A dispositional order has been entered pursuant to RCW 13.34.130;
- (iii) At the time of the hearing on the guardianship petition, the child has or will have been removed from the custody of the parent for at least six consecutive months following a finding of dependency under RCW 13.34.030;
- (iv) The services ordered under RCW 13.34.130 and 13.34.136 have been offered or provided and all necessary services, reasonably available, capable of correcting the parental deficiencies within the foreseeable future have been offered or provided;
- (v) There is little likelihood that conditions will be remedied so that the child can be returned to the parent in the near future; and
- (vi) The proposed guardian has signed a statement acknowledging the guardian's rights and responsibilities toward the child and affirming the guardian's understanding and acceptance that the guardianship is a commitment to provide care for the child until the child reaches age eighteen.

(Emphasis added). In *In re the Welfare of A.W.*, 182 Wn.2d 689, 710, 344 P.3d 1186 (2015), the Supreme Court held that the preponderance of the evidence standard for guardianships under RCW 13.36.040 satisfies due process.

Nothing in *A.W.* or RCW 13.36 suggests that the standard should vary according to the identity of the petitioner or whether a competing termination petition has been filed. Indeed, in *In re the Matter of J.B.*, 197 Wn. App. 430, 387 P.3d 1152 (2016), this court affirmed a juvenile court order terminating parental rights where the parents had filed a competing guardianship petition. In the unpublished portion of the opinion this court stated, "when a termination and guardianship petition are being pursued simultaneously, the juvenile court determines whether a preponderance of the evidence establishes

termination or guardianship to be in the child's best interest."⁶ *J.B.*, 47903-6-II slip op. at 16; see 197 Wn. App. 430.

Despite the clear language of the guardianship statute and recent decisions holding the preponderance standard constitutional, M.P. urges this court to adopt the standard applied by a District of Columbia court in 1995 in an adoption and custody case, *In re T.J.*, 666 A.2d 1, 11 (D.C. 1995). There, a child was placed in foster care due to the mother's mental illness. *T.J.*, 666 A.2d at 4. The child's great-aunt petitioned for custody and the child's foster mother filed a competing adoption petition. *T.J.*, 66 A.2d at 4-5. The appellate court determined that the juvenile court should have given the mother's choice of custodian "weighty consideration" "overcome only by a showing, by clear and convincing evidence, that the custodial arrangement and preservation of the parent-child relationship is clearly contrary to the child's best interests." *T.J.*, 666 A.2d at 11. This court, however, declines to adopt the standard applied in *T.J.* in light of RCW 13.36.040(2)(a) and cases applying the statute.

Here, the juvenile court properly determined that a guardianship was not in the best interest of M.O. and denied the guardianship petition. The juvenile court explained that the parent-child relationship has a damaging and destabilizing effect on M.O. that would negatively impact her integration into any permanent and stable placement. The juvenile court acknowledged culture, language, and heritage as important factors to consider, but concluded that M.O. "does not have a positive relationship, and very little

⁶ Although unpublished opinions have no precedential value and are not binding, this court recognizes the persuasive value of this statement. See GR 14.1(a) and (c).

bond, with the mother, the father, or the grandparents." CP at 77. The juvenile court additionally found that the Triplets were not suitable guardians due to the grandmother's domestic violence record and lack of boundaries with the parents given the parents' drug use.

M.P. also argues that, as M.O.'s parent, his preference for a guardianship over termination should be given special weight. However, the juvenile court concluded that M.P. is unfit to parent. Consequently, his opinion is not entitled to any special consideration. See *A.W.*, 182 Wn.2d at 707 n.16 (explaining that the interests of the parent and child are presumed to converge until the State proves that there is parental unfitness).

Finally, M.O. challenges the factual findings concerning M.O.'s bond with her grandparents. He alleges that the juvenile court incorrectly examined the bond that existed as of the termination trial and failed to acknowledge that the grandparents (as well as M.O.'s sibling) did not have the opportunity to form a bond with M.O. Substantial evidence supports that although M.O. was more willing to engage with Mr. Triplett, she did not have a bond with either grandparent and did not have any attachment to her grandmother, her proposed primary caretaker. And the juvenile court properly considered M.O.'s relationship with her grandparents when examining M.O.'s best interest. *A.W.*, 182 Wn.2d at 711. With respect to whether the lack of bond with the grandparents is the Department's fault and whether this consideration is material, this court notes that M.P. does not cite to any guardianship case that considered these issues. Given that the grandparents could have asked for additional or restructured visitation for themselves and M.O.'s sibling during the dependency and did not, this court cannot say that the juvenile

court erred when it examined the bond as it existed as of the termination trial in considering M.O.'s best interest.

In sum, this court concludes that the juvenile court complied with due process by applying the preponderance standard set forth in RCW 13.36.040 to determine whether a guardianship was in M.O.'s best interest.

II. Termination

The juvenile court may order termination of a parent's rights as to his child if the Department establishes the six elements in RCW 13.34.180(1)(a) through (f) by clear, cogent, and convincing evidence. The Department also must prove by a preponderance of the evidence that termination of parental rights is in the child's best interests. RCW 13.34.190(1)(b). Clear, cogent and convincing evidence exists when the ultimate fact in issue is shown to be "highly probable." *In re the Welfare of Sego*, 82 Wn.2d 736, 739, 513 P.2d 831 (1973) (quoting *Supove v. Densmoor*, 225 Or. 365, 372, 358 P.2d 510 (1961)).

In termination proceedings, the juvenile court has the advantage of having the witnesses before it, and therefore this court accords deference to the juvenile court's decision. *In re the Welfare of Aschauer*, 93 Wn.2d 689, 695, 611 P.2d 1245 (1980). This court limits its analysis to whether substantial evidence supports the juvenile court's findings of fact and whether those findings support the court's conclusions of law. *Sego*, 82 Wn.2d at 739. Substantial evidence is evidence sufficient to persuade a fair-minded rational person of the truth of the declared premise. *Bering v. SHARE*, 106 Wn.2d 212, 220, 721 P.2d 918 (1986), *cert. dismissed*, 479 U.S. 1050 (1987). This court does not make credibility determinations or weigh evidence. *Sego*, 82 Wn.2d at 739-40.

A. Parental Services

Before terminating parental rights, the Department must affirmatively offer or provide necessary services and must tailor the services to each individual's needs.⁷ *In re Dependency of T.R.*, 108 Wn. App. 149, 161, 29 P.3d 1275 (2001); *In re the Welfare of Hall*, 99 Wn.2d 842, 850, 664 P.2d 1245 (1983). At a minimum, the Department must provide the parent with a referral list of agencies or organizations that provide the services. *Hall*, 99 Wn.2d at 850. In determining whether the requirements under RCW 13.34.180(1)(d) have been met, the juvenile court may consider any service received, from whatever source, if it relates to the potential correction of a parenting deficiency. *In re Dependency of D.A.*, 124 Wn. App. 644, 650-52, 102 P.3d 847 (2004), *review denied*, 154 Wn.2d 1030 (2005).

Here, Reed failed to offer or provide mental health services and parenting classes to M.P. She never referred him for a mental health evaluation and never set up Incredible Years parenting classes for the parents to attend. With respect to drug treatment, despite that in the fall of 2016, M.P. made multiple requests to her to refer him to inpatient

⁷ At the termination hearing, the Department took the position that because the father's guardianship petition required him to allege that "[t]he services ordered under RCW 13.34.130 and 13.34.136 have been offered or provided and all necessary services, reasonably available, capable of correcting the parental deficiencies within the foreseeable future have been offered or provided," he could not challenge his termination of parental rights on the ground the Department failed to provide services. RCW 13.36.040(2)(c)(iv). M.P. responded that the burden of proof is higher in termination proceedings than guardianship proceedings, so he should still be allowed to challenge a termination even if he also requested a guardianship in the event his parental rights are terminated. The juvenile court agreed with the Department that by filing the guardianship petition, "the parents have stipulated" to the services element but it also examined each termination element. RP June 26, 2016 at 429. On appeal, the Department does not argue that M.P. cannot challenge the termination of his parental rights.

treatment, told her he had trouble obtaining a copy of his evaluation, and signed appropriate releases, Reed never obtained the written evaluation or made any referrals.⁸

Moreover, throughout her testimony, Reed placed a burden on M.P. to seek out services. *In re Dependency of T.L.G.*, 126 Wn. App. 181, 200, 108 P.3d 156 (2005) (Department has an obligation to provide all necessary services); *In re Dependency of H.W.*, 92 Wn. App. 420, 428-29, 961 P.2d 963, 969 P.2d 1082 (1998). For example, she stated he needed to ask for parenting classes in order to obtain them. When M.P. had trouble obtaining a copy of his drug evaluation, she testified that even after M.P. signed releases for her to obtain the evaluation, she still thought "he could have contacted them himself and asked to have it sent to me." RP June 20, 2017 at 237, 242 (explaining she believed it was appropriate to ask M.P. to "see if he could work [on getting his evaluation] himself, considering he was the one that was asking me to send it out").

The Department, however, does not have to provide additional services when the parent is unable or unwilling to make use of them. *In re Dependency of Ramquist*, 52 Wn. App. 854, 861, 765 P.2d 30 (1988), *review denied*, 112 Wn.2d 1006 (1989). Here, the juvenile court found that M.P. did not follow through with offered services and instead

⁸ The Department also states that M.P. was previously offered inpatient treatment after spending a night at a detox center. The juvenile court found only that he spent a night in detox but did not mention any offer of inpatient treatment connected to this stay.

M.P. acknowledged that his previous social worker, An-Deiss Savage, brought him to an earlier drug-alcohol evaluation at Kitsap Recovery Center (KRC) but M.P. said he was asked to leave KRC the next day and he did not know if anyone recommended services at that time. He later added that Savage brought him to KRC because there was an available bed for inpatient, but "then they found out that I was clean, so they sent me home the next day." RP June 20, 2017 at 327. Ms. Savage did not testify at the termination hearing.

wanted to move to Alaska. Substantial evidence supports that M.P. informed Reed in approximately early 2017, that he planned to move.

This case, however, is not identical to *Ramquist*. In *Ramquist*, the Department had offered the mother all mandated services. She participated in some but not all services. And at the termination hearing, two doctors and a caseworker testified that her "parental deficiencies are untreatable." *Ramquist*, 52 Wn. App. at 861; see also *Matter of K.M.M.*, 186 Wn.2d 466, 483, 379 P.3d 75 (2016) (addressing futility). Under these circumstances, the court held that "a parent's unwillingness or inability to make use of the services provided excuses the state from offering extra services that might have been helpful." *Ramquist*, 52 Wn. App. at 861.

In contrast, Reed's testimony showed that Reed neither offered nor provided all court-ordered services to M.P. at the time he repeatedly requested referrals from her to inpatient drug treatment in the fall of 2016.⁹ It was only after Reed failed to make a referral that M.P. informed her that he wanted to move to Alaska. But he never moved to Alaska and continued to visit M.O.

In *T.L.G.*, the court did not follow *Ramquist* and related cases, *In re Dependency of P.D.* and *In re Dependency of T.R.*, for two reasons. 126 Wn. App. at 202-03; see *In*

⁹ RCW 13.34.180(d) requires that the services be "capable of correcting the parental deficiencies within the foreseeable future." Reed did not testify as to how long M.P.'s services would take to complete. The guardian ad litem, Stephenie Hooker, however, stated that she did not believe either parent could remedy identified deficiencies in M.O.'s near future. The Department does not argue here that any failure to offer services should be excused because the services would not have remedied M.P.'s deficiencies in the foreseeable future. See *In re the Welfare of M.R.H.*, 145 Wn. App. 10, 25, 188 P.3d 510 (2008).

re Dependency of P.D., 58 Wn. App. 18, 26-27, 729 P.2d 159 (1990) (mother did not complete mental health services and had severe schizophrenia; Department excused from providing parenting classes and anger management evaluation); *T.R.*, 108 Wn. App. at 161 (Department did not have to offer family counseling to non-compliant mother with history of mental issues and substance abuse, when that service would not have improved her ability to function as a parent). First, in *T.L.G.*, the evidence did not show that the parents "resisted or refused services." *T.L.G.*, 126 Wn. App. 16 202. Second, there was no evidence in *T.L.G.*, to show that the parent would not benefit from an additional service. *T.L.G.*, 126 Wn. App. at 202-03.

This case falls in between *Ramquist* and *T.L.G.* The record does not support that (1) M.P. was offered or provided all necessary services, and (2) he would not have benefited from drug treatment, parenting classes or a mental health evaluation. There is some evidence, however, to show that M.P. eventually was unwilling to do some of the services that he knew he needed,¹⁰ but had never been provided. Reed said M.P. told her he "wasn't going to go" to inpatient treatment because of his move and testified he said the same thing with respect to parenting classes. RP June 20, 2017 at 238.

¹⁰ But this evidence is contested: M.P. denied telling Reed he was unwilling to go into inpatient treatment, and that he is willing to do further evaluation and recommended treatment. The juvenile court's termination decision does not clearly resolve this conflict. It did not find that the father refused services. Rather, it states only that the father "failed to follow through with the court ordered services He instead testified that he wanted to go to Alaska to work on fishing boats." CP at 74. This court reasonably infers from this language that the juvenile court determined that M.P. ultimately did not want to engage in services because of his intended move.

The concurrence in *K.M.M.* addressed a situation in which the Department failed to offer or provide a necessary service and then argued the service was futile: “a service cannot be futile when the Department has never even offered it.” 186 Wn.2d at 499 (Fairhurst, J. concurrence). Even assuming that this is a binding statement of law, however, the record in *K.M.M.* clearly showed that the Department never attempted to have the father engage in attachment and bonding therapies. See also *In re the Welfare of C.S.*, 168 Wn.2d 51, 56, 225 P.3d 953 (2010) (Department failed to train mother to how to handle child’s mental conditions).

In contrast, Reed testified that despite failing to provide M.P. with his requested treatment referral, she later tried to engage M.P. in drug treatment but he said “he had no desire to participate in inpatient.” RP June 20, 2017 at 238. She added, “[w]e still had conversations [about treatment,] but every time I asked about it, he was leaving the state.” RP June 20, 2017 at 238. Similarly, when Reed spoke with the mother and M.P. about parenting classes in December or January, “he said he wasn’t going, he was leaving the state.” RP June 20, 2017 at 293.

Because M.P. does not cite any case that found an exception to futility in circumstances such as these—where the assigned social worker initially failed to capitalize on requests for treatment but the parent later became unwilling to engage in services; and because the “futility rule” derives from cases in which the State offered services but eventually gave up after the parent refused to accept the offers; and because Reed eventually asked the father to engage in services and he refused, this court concludes that the Department was excused from providing M.P. with services. *In re K.M.M.*, 186 Wn.2d at 499 (Fairhurst, J. concurrence) (quoting the “futility rule” set out in

In re Parental Rights to B.P., 186 Wn.2d 292, 316 n.5., 376 P.3d 350, (2016)); *Ramquist*, 52 Wn. App. at 861.

B. Linguistic Services

M.P. argues that the Department failed to tailor its services to his linguistic and cultural needs by not providing him or Mrs. Triplett with interpreters throughout the dependency. This court disagrees.

RCW 74.04.025(1) requires the Department to provide non-English speaking recipients of its services with bilingual services. *State-Office of Governor v. Public Emp. Relations Comm'n*, 183 Wn. App. 758, 760, 334 P.3d 1177 (2014). Similarly WAC 388-271-0020 instructs the Department to timely provide a qualified interpreter to recipients of its services. See also WAC 388-271-0030.

Here, the record does not reflect any expressed need for an interpreter by M.P. He fully participated in English throughout the dependency, including testifying at trial in English. While M.P. did appear with an interpreter at the termination hearing, he only used the interpreter during cross-examination. Additionally, the Department had no duty to provide services to the grandparents, thus it had no duty to provide Mrs. Triplett an interpreter.

C. Best Interest/Findings on Parent-Child Bond

Just as M.P. challenges the juvenile court's determination that M.O. did not have a bond with her grandparents, he challenges the juvenile court's finding that he had a "minimal parent-child bond" with M.O. CP at 76. The juvenile court found that both parents "served to destabilize the child," failed to consistently attend visitation and when

they did they often would fall asleep, and that M.O. had a negative reaction to visitation. CP at 76.

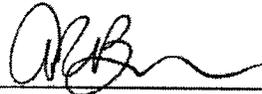
In light of Reed’s testimony and the guardian ad litem’s report, this court concludes that these findings are supported by substantial evidence. Even though M.P. had been more consistent with visitation than the mother and was “generally . . . more appropriate” with M.O. during visits, as of the termination trial, M.O. was having significant negative reactions to visitation with her father. RP June 20, 2017 at 337. This situation did not improve even after the Department made changes to the visit structure and engaged in infant mental health specialist. Consequently, this court rejects M.P.’s challenge to the juvenile court’s finding of fact that M.P. had only a minimal parent-child bond with M.O. and the related conclusion that it was not in her best interest to continue the parent-child relationship. Accordingly, it is hereby

ORDERED that the order terminating M.P.’s parental rights as to M.O. is affirmed.

It is further

ORDERED that the order denying M.P.’s guardianship petition is affirmed

DATED this 12 day of April, 2018.



Aurora R. Bearse
Court Commissioner

- cc: Jan Trasen
- Nathan C. Collins
- Peter E. Kay
- Hon. Leila Mills

APPENDIX B

RECEIVED

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SCANNED

Washington Appellate Project

Filed
Washington State
Court of Appeals
Division Two

July 12, 2018

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

In the Matter of the Welfare of:

M.O.,

A minor child.

No. 51127-4-II

51147-9-II

ORDER DENYING
MOTION TO MODIFY

Petitioner father M.P. moves to modify a Commissioner's ruling dated April 12, 2018, in this case. Following consideration, the court denies the motion. Accordingly, it is

SO ORDERED.

PANEL: Jj. Maxa, Lee, Sutton

FOR THE COURT:

A handwritten signature in black ink that reads "Maxa, C.J." written over a horizontal line.

MAXA, C.J.

APPENDIX C

RECEIVED AND FILED
IN OPEN COURT

JUL 14 2017

DAVID W. PETERSON
KITSAP COUNTY CLERK

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KITSAP
JUVENILE DEPARTMENT

In Re the Welfare of:

NO. 16-7-00114-9

MAJA OLARTE
DOB 06/19/2015

FINDINGS OF FACT AND CONCLUSIONS
OF LAW AS TO MARY OLARTE, MOTHER,
AND MARK PAREDES, FATHER

THIS MATTER having come on regularly for hearing for a termination of parental rights before the undersigned Judge of the above-entitled court in June 2017; MARY OLARTE, mother of the child did appear in person and through LEYNA HARRIS; the father, MARK PAREDES did appear in person and through counsel NATHAN COLLINS; the Washington State Department of Social and Health Services Social Worker, NICOLE REED, was personally present and represented through attorneys, ROBERT FERGUSON, Attorney General, and PETER KAY, Assistant Attorney General; STEPHENIE HOOKER appeared as Guardian ad Litem for the minor child; and the court having considered the files and records herein, and listened to all the evidence presented by all parties, and the court, NOW, THEREFORE, makes and enters the following:

FINDINGS OF FACT

I.

MAJA OLARTE was born on 06/19/2015.

II.

1
2 A petition setting forth allegations for the termination of parental rights relative to the
3 aforesaid child, who is within or resides within KITSAP County, has been filed.

III.

4
5 The parents are MARK PAREDES, father, and MARY OLARTE, mother.

IV.

6
7 MARK PAREDES filed, and the mother, MARY OLARTE joined, a RCW 13.36
8 guardianship petition on the child, naming JAMES TRIPLETT and CANDALARIA TRIPLETT as
9 proposed guardians for the child, under cause number 17-7-00152-0. As part of filing this
10 guardianship petition, the father stipulated, and the mother joined in, that the first five elements
11 under RCW 13.36.040(c)(i)-(v) have been met by a preponderance of the evidence. These five
12 elements are reflected in the first five elements under the termination statute, RCW 13.34.180
13 (1)(a)-(e). The Department presented evidence on these elements under the termination action.
14 The court finds the elements contained RCW 13.34.180 (1)(a)-(e) have been established by clear,
15 cogent and convincing evidence, even if there was no guardianship petition filed, as detailed below:

A.

16
17 MAJA OLARTE was originally found dependent in September 2015, and the court
18 subsequently entered a dispositional order as to the parents.

B.

19
20 Since being found to be a dependent child, the Kitsap County Juvenile Court has continued
21 to find MAJA OLARTE to be a dependent child pursuant to RCW 13.34.030, and placed out of the
22 parents' care. The child has been out of the parents' care her entire life.

C.

23
24 All services ordered under RCW 13.34.130 have been expressly and understandably offered
25 or provided to MARY OLARTE, including: Drug/Alcohol evaluation and treatment, random UAs,
26 psychological evaluation and parenting assessment; mental health intake and services, and

1 parenting classes. All services ordered under RCW 13.34.130 have been expressly and
2 understandably offered or provided to father, MARK PAREDES, including: Drug/Alcohol
3 evaluation and treatment, random UAs, mental health intake and services, and parenting classes.

4 D.

5 All services reasonably available, capable of correcting the parental deficiencies within the
6 foreseeable future, have been offered or provided to the parents. The father has failed to follow
7 through with the court ordered services, other than attending a drug/alcohol evaluation that
8 recommended in-patient treatment and spending one night at a detox facility. He instead testified
9 that he wanted to go to Alaska to work on fishing boats. The mother has failed to follow through
10 with the court ordered services, except for attempts at drug treatment. MARY OLARTE completed
11 an in-patient program in 2016, but failed to follow thorough with out-patient treatment. She is
12 currently in the Kitsap Criminal Drug Court program as a result of her pending criminal matter, and
13 has been sent to complete another in-patient treatment program due to her on-going substance use
14 by the Kitsap Criminal Drug Court.

15 E.

16 There is little likelihood that conditions will be remedied so that the child can be returned to
17 the parents in the near future. MARY OLARTE is currently unfit to parent the child. The mother
18 has not effectively participated in services to address her substance abuse and mental health issues.
19 She has a long history of such issues that have prevented her from being able to care for her
20 children. The parents had another child, Johnathan Olarte-Paredes, who was born in August 2016,
21 positive for methamphetamines. She has not been visiting with MAJA OLARTE on a regular basis,
22 and as a result there is a minimal parent-child bond present and no connection between the mother
23 and the child. The testimony was that the mother would often fall asleep when she did attend visits.

24 MARK PAREDES is currently unfit to parent the child. The father has not participated in
25 services to address his substance abuse and mental health issues. He has a long history of such
26 issues that have prevented him from being able to care for his children. The parents had another

1 child, Johnathan Olarte-Paredes, who was born in August 2016, positive for methamphetamines.
2 He has not been visiting with MAJA OLARTE on a regular basis, and while the child tolerated the
3 father at visits, there is a minimal parent-child bond present. The testimony was that the father
4 would often fall asleep at visits with the child. He has acknowledged that he is not able to care for
5 the child and wants the child to be placed in a guardianship.

V.

7 MAJA OLARTE is not an Indian child as defined by the Indian Child Welfare Act.

VI.

9 The Servicemembers Civil Relief Act of 2003, 50 U.S.C. §501, et. seq., does not apply.

VII.

11 Continuance of the parent-child relationship clearly diminishes the child's prospects for
12 early integration into a stable and permanent home. The Department can prove this element in one
13 of two ways. *In re Welfare of R.H.*, 176 Wn. App. 419, 428, 309 P.3d 620 (2013). First, the
14 Department can prove that prospects for a permanent home exist but the parent-child relationship
15 prevents the child from obtaining that placement. Second, the Department can prove the parent-
16 child relationship has a damaging and destabilizing effect on the child that would negatively
17 impact the child's integration into any permanent and stable placement. A guardianship is
18 material as to whether the Department has established this element.

19 The parents have filed a guardianship petition under RCW 13.36, 17-7-00152-0, naming
20 JAMES TRIPLETT and CANDALARIA TRIPLETT as proposed guardians, and the court has
21 reviewed RCW 13.36 and the case law on guardianships. Under the case of *A.W.*, 182 Wn.2d 689
22 (2015), and the case of *A.C.*, 123 Wn.App. 244 (2004), the court looks at various factors – there
23 is no exclusive set of factors, instead each case is unique. Under guardianships, the parent-child
24 relationship is maintained and some form of visitation is a part of the guardianship. There must
25 be some persuasive evidence that further contact between the parents and the child is beneficial
26 to the child – if the focus of a determination between a guardianship and a termination is what is

1 in the best interests of the child. This continued contact is an important factor for the court to
2 consider on the issue of guardianship and termination.

3 Here, there is a minimal parent-child bond present, and the parents have served to
4 destabilize the child. Both the mother and the father have on-going methamphetamines use and
5 mental health issues. The parents have not consistently attended visitation and they have not
6 developed a bond with the child as a result of their failure to consistently attend visitation. When
7 the parents did attend visitation, they would often fall asleep. There is no evidence that the bond
8 between the parents and the child is growing. The parents may want a bond with the child, but
9 their actions have caused a bond not to be present, even after two years into the case. The child
10 has been in care for two years, waiting for the parents. The mother, especially, has been absent
11 from visitation due to her in-patient attendance and criminal issues.

12 Furthermore, MAJA OLARTE has had a negative reaction when going to visitation.
13 Visits have been traumatic for MAJA OLARTE and she has had great difficulty adjusting to
14 these visits, when the parents would attend. These negative reactions are a strong indication of
15 the parents' failure to develop a parent-child bond with the child. The parent-child relationship
16 has a damaging and destabilizing effect on the child that would negatively impact the child's
17 integration into any permanent and stable placement.

18 Prospects for a permanent home exist but the parent-child relationship prevents the child
19 from obtaining that placement. The continuation of the parent-child relationship diminishes her
20 prospects for early integration into a permanent and stable home. Due to the child's adjustment
21 issues, it is not in the child's best interest to move her. The child cannot be returned to the
22 parents, due to their parental unfitness, and she is not legally in a permanent and stable home as
23 long as the parental rights remain. Instead, the child should be freed up for an adoption, as this
24 would provide her with a permanent and stable home.

25 In making its decision, the court is not minimizing issues of culture, language, and
26 heritage, as these are important factors. However, cultural values cannot override what is in the

1 best interest of the child at issue. The court must consider where MAJA OLARTE is at in her
2 short life and what is best for her. She does not have a positive relationship, and very little bond,
3 with the mother, the father, or the grandparents.

4 A guardianship is not in the best interest of MAJA OLARTE. Even if JAMES
5 TRIPLETT and CANDALARIA TRIPLETT were suitable guardians for the child, the result
6 would be the same - a guardianship is not in the best interest of MAJA OLARTE. Should the
7 Department have placed with the child with the grandparents initially is not the deciding factor in
8 the case. Instead, the issue is the best interest of the child in terms of placement.

9 The grandmother's criminal domestic violence matter impeded the child's placement
10 early in the case. CANDALARIA TRIPLETT was on probation for domestic violence until June
11 2016, after the child was placed in her current foster/adoptive placement. It was clear that
12 JAMES TRIPLETT was not present in the home at times during the case due to his Navy
13 commitments. The mother had also vetoed JAMES TRIPLETT as a visitation supervisor during
14 the case, and MARY OLARTE and MARK PAREDES were together, and visiting together,
15 during most of the case. As a result, the Department could not have JAMES TRIPLETT
16 supervise the parents' visits, even when he was present in the area.

17 Even if not looking at the child's perspective, the TRIPLETTs are not suitable guardians
18 in general. The court will not place another child in their care as there are sufficient concerns for
19 the court. The fact that Mariah Olarte was previously placed with the Triplett's in a non-parental
20 custody action, and has not yet been removed from their care, is not the dispositive factor, or the
21 standard for the court. Since the placement of Mariah, the grandmother committed domestic
22 violence against the grandfather when she overdosed. CANDALARIA TRIPLETT has
23 minimized the parents' methamphetamine and mental health issues. She allowed the parents to
24 drive her and Mariah to a visit with MAJA OLARTE, while the parents were actively using
25 methamphetamines. The grandmother testified that she relies on the parents to tell her when they
26

1 are using methamphetamines and takes them at their word. As the grandmother testified, if she
2 was to ask them, the parents would just say no, that they were not using methamphetamines.

3 There is a lack of boundaries between the parents, with their methamphetamine and
4 mental health issues, and the grandparents. The parents were living at the grandparents' residence
5 when Johnathon Olarte-Paredes was born in August 2016, and tested positive for
6 methamphetamines at birth. CANDALARIA TRIPLETT testified that the mother told her that
7 the mother would stop bothering her if she gets placement of the kids. The court has serious
8 concerns about whether the grandmother can stand up to the parents, with the grandfather gone in
9 the Navy. The court cannot guarantee the safety of the child if the child was placed with the
10 grandparents as a result of all of these issues.

11 VIII.

12 An order terminating all parental rights is in the best interests of the child. A guardianship
13 is not in the best interest of MAJA OLARTE. There is no evidence that the bond between the
14 parents and the child is growing. When the parents did attend visitation, they would often fall
15 asleep. Furthermore, MAJA OLARTE has had a negative reaction when going to visitation.
16 Visits have been traumatic for MAJA OLARTE and she has had great difficulty adjusting to
17 these visits, when the parents would attend. These negative reactions are a strong indication of
18 the parents' failure to develop a parent-child bond with the child.

19 Due to the child's adjustment issues, it is not in the child's best interest to move her. The
20 child cannot be returned to the parents, due to their parental unfitness, and she is not legally in a
21 permanent and stable home as long as the parental rights remain. Instead, the child should be
22 freed up for an adoption, as this would provide her with a permanent and stable home.

23 IX.

24 The Guardian ad Litem, STEPHENIE HOOKER, appeared at the hearing and
25 recommended that the parental rights of MAJA OLARTE, child, be permanently terminated.
26

X.

1
2 The child has the following siblings: Mariah Olarte, who resides in the non-parental custody
3 with James and Candalaria Triplett. The children have been having sibling contact during visits.
4 Johnathan Olarte- Paredes, a dependent child, resides in a different foster home and the children
5 have been having sibling contact during visits.
6

7 FROM THE FOREGOING FINDINGS OF FACT, THE COURT NOW MAKES AND
8 ENTERS THE FOLLOWING:
9

CONCLUSIONS OF LAW

I.

11
12 That this court has jurisdiction of the person of said minor child, of MARY OLARTE,
13 mother, MARK PAREDES, father, and of the subject matter of this case.
14

II.

15
16 That it would be in the best interest of the minor child, including the child's health and
17 safety, that the parent-child relationship between the above-named child and MARY OLARTE,
18 mother, and MARK PAREDES, father, be terminated and that the child be placed in the custody of
19 the Washington State Department of Social and Health Services for placement as best suits the
20 needs of the child. The Department of Social and Health Services has the authority to consent to
21 the adoption of the child and to place said child in temporary care and authorize any needed medical
22 care, dental care or evaluations of the child until the adoption is finalized.
23

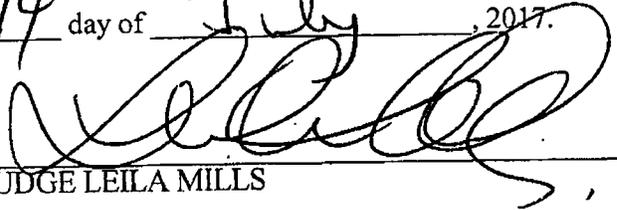
III.

24
25 That all the allegations contained in the termination petition, as provided in RCW
26 13.34.180(1)(a) - (f) have been established by clear, cogent, and convincing evidence.

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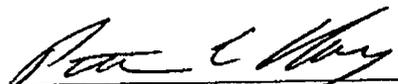
IV.

That an order terminating the parent and child relationship between MARY OLARTE, mother, MARK PAREDES, father and MAJA OLARTE, child, is in the best interests of the child. An order establishing a guardianship under RCW 13.36 is not in the best interests of the child.

DONE IN OPEN COURT this 14 day of July, 2017.

JUDGE LEILA MILLS
LEILA MILLS

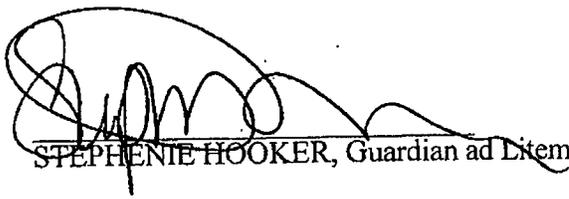
Presented by:

ROBERT FERGUSON
Attorney General


PETER KAY, WSBA #24331
Assistant Attorney General

Approved for Entry:


NATHAN COLLINS, WSBA # 48613
Attorney for MARK PAREDES, father


STEPHENIE HOOKER, Guardian ad Litem


LEYNA HARRIS, WSBA # 48038 AS TO FORM
Attorney for MARY OLARTE, mother

RECEIVED AND FILED
IN OPEN COURT

JUL 14 2017

DAVID W. PETERSON
KITSAP COUNTY CLERK

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KITSAP
JUVENILE DEPARTMENT

In Re the Welfare of:

NO. 16-7-00114-9

MAJA OLARTE, DOB 06/19/2015

ORDER OF TERMINATION AS TO MARY
OLARTE, MOTHER, AND MARK PAREDES,
FATHER.

THIS MATTER having come on regularly for a hearing for a termination of parental rights before the undersigned Judge of the above-entitled court in June 2017; the father, MARK PAREDES did appear in person and was presented by counsel NATHAN COLLINS; MARY OLARTE, mother, did appear in person and was represented by counsel LEYNA HARRIS; the Washington State Department of Social and Health Services Social Worker, NICOLE REED, was personally present and represented through attorneys, ROBERT FERGUSON, Attorney General, and PETER KAY, Assistant Attorney General; STEPHENIE HOOKER appeared as Guardian ad Litem for the minor child; and the court having listened to all the evidence presented by all parties, the arguments of counsel, and the court having made and entered its Findings of Fact and Conclusions of Law, and being in all matters fully advised, NOW, THEREFORE, it is hereby

ORDERED, ADJUDGED and DECREED that said child, MAJA OLARTE, is hereby declared to be a dependent child as defined by RCW 13.34.030 and under the permanent jurisdiction of the court, and that MARY OLARTE, mother, and the father, MARK PAREDES, no longer retain parental rights and all rights, powers, privileges, immunities, duties and obligations, including any rights to custody, control, visitation or support existing between MARY OLARTE,

1 mother, the father, MARK PAREDES and the child are severed and terminated, and MARY
2 OLARTE, mother, and the father, MARK PAREDES shall have no standing to appear at any
3 further legal proceedings concerning the child. It is further

4 ORDERED, ADJUDGED and DECREED that any support obligation existing prior to the
5 effective date of this order is not severed or terminated. It is further

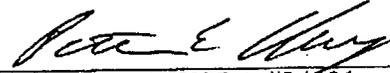
6 ORDERED, ADJUDGED and DECREED that the child is committed to the custody of the
7 Department of Social and Health Services, and said Department has the right and authority to give
8 consent to travel and consent to medical, minor surgery, and dental care deemed necessary for the
9 welfare of said child without further order of the court until adoption is finalized. It is further

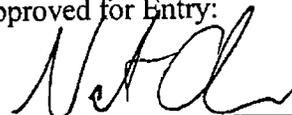
10 ORDERED, ADJUDGED and DECREED that the Department of Social and Health
11 Services has the authority to place said child for adoption and must consent to the adoption of said
12 child pursuant to RCW 26.33.160.

13 DONE IN OPEN COURT this 14 day of July 2017
14 
15 JUDGE LEILA MILLS

LEILA MILLS

16 Presented by:
17 ROBERT FERGUSON
18 Attorney General

19 
20 PETER KAY, WSBA #24331
21 Assistant Attorney General

22 Approved for Entry:
23 
24 NATHAN COLLINS, WSBA #45613
25 Attorney for MARK PAREDES

26 
LEYNA HARRIS, WSBA #
Attorney for MARY OLARTE


STEPHENIE HOOKER
Guardian ad Litem

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION TWO**

IN RE M.O.)	
MINOR CHILD)	
)	
)	
M.P.,)	NO. 51127-4-II
)	
)	
APPELLANT FATHER.)	
)	

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ARRANZA RILEY, STATE THAT ON THE 30TH DAY OF NOVEMBER, 2017, I CAUSED THE ORIGINAL **OPENING BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS - DIVISION TWO** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

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[peterk@atg.wa.gov]
[SHSTacAppeals@ATG.WA.GOV]
OFFICE OF THE ATTORNEY GENERAL
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E-SERVICE VIA COA PORTAL |
| [X] M.P.
1411 JAMES LN
APT 163
KENT, WA 98032 | (X)
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() | U.S. MAIL
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SIGNED IN SEATTLE, WASHINGTON THIS 30TH DAY OF NOVEMBER, 2017.

X _____ 

Washington Appellate Project
701 Melbourne Tower
1511 Third Avenue
Seattle, Washington 98101
Phone (206) 587-2711
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WASHINGTON APPELLATE PROJECT

November 30, 2017 - 3:27 PM

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Appellate Court Case Title: In re the Interest of M.O.
Superior Court Case Number: 16-7-00114-9

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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. 51127-4-II**, 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 Brian Ward, Assistant Attorney General
[shstacappeals@ATG.WA.GOV] [brian.ward@atg.wa.gov]
- Attorney for CASA/GAL
- appellant
- Attorney for other party


MARIA ANA ARRANZA RILEY, Legal Assistant
Washington Appellate Project

Date: August 6, 2018

WASHINGTON APPELLATE PROJECT

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Filing Motion for Discretionary Review of Court of Appeals

Transmittal Information

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Appellate Court Case Title: In re the Interest of M.O. (511274)

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