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DIVISION I, COURT OF APPEALS
OF THE STATE OF WASHINGTON

IN RE THE DEPENDENCY OF B.R. (DOB 9/5/03)
AND T.V. (DOB 12/17/05), MINOR CHILDREN

On Appeal from the Superior Court of the
State of Washington for Snohomish County

The Honorable Gerald L. Knight

BRIEF OF AMICUS CURIAE LEGAL VOICE

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I. INTRODUCTION

Like Letitia Vandermeer, thousands of women in the State of Washington fall victim to domestic violence at the hands of their husbands and partners each year. Escape is a difficult process, often drawn out, subject to human emotion, and fraught with danger, made more complicated by the presence of children. To blame the victims – and their “poor choice” of partner – for the abuse they suffer, and, even worse, to use that “choice” as a basis to deprive them of their children, as the juvenile court did here, is unjust and simply bad policy. The precedent set by the juvenile court’s termination of Ms. Vandermeer’s parental rights unfairly blames victims for the abuse suffered, contravenes the efforts of Washington State to combat domestic violence and is contrary to the best interests of children in families marked by domestic violence.

II. INTEREST AND IDENTITY OF AMICUS

Because the decision in this case has profound implications for victims of domestic violence – many of whom are also mothers – Legal Voice has an interest in this appeal. Founded in 1978, Legal Voice, formerly known as the Northwest Women’s Law Center, is a non-profit public interest organization dedicated to protecting the rights of women through litigation, education, legislation, and the provision of legal information and referral services. Legal Voice is a leading regional expert

on domestic violence issues and has participated as counsel and as amicus curiae in cases throughout the Pacific Northwest and the country.

III. STATEMENT OF THE CASE

The juvenile court terminated the parent-child relationship between Letitia Vandermeer and her two children: B.R. (now six years old) and T.V. (now four years old). RP 404; CP 14-24. It concluded that Ms. Vandermeer was deficient as a parent because she had made and would continue to make poor choices with respect to men. FF 1.27.¹ In short, the juvenile court blamed Ms. Vandermeer for the abuse perpetrated by two former boyfriends: one who abused B.R. and another who abused her.

Almost five years ago, Ms. Vandermeer's then-boyfriend, Destry Schnebly, shook B.R. violently, injuring him, while babysitting him. RP 21, 395; FF 1.6, 1.7. The incident triggered the dependency case. RP 395; FF 1.8. Following the incident, Ms. Vandermeer ended her relationship with Mr. Schnebly and several months later, obtained a protective order preventing him from having any contact with her children. RP 26, 42; FF 1.13. She also attended support groups and counseling for battered women. RP 399-400; FF 1.20, 1.21.

¹ "FF" refers to the Findings of Fact, Conclusions of Law on Termination of the Parent-Child Relationship re: Mother by the juvenile court filed at CP 14-24.

But the juvenile court was not convinced that “anything [had] changed.” RP 395. *See also* RP 404. In support, it pointed to the fact that Ms. Vandermeer had contact with Mr. Schnebly at his mother’s funeral in August 2006. RP 397. *See also* RP 30-31. And, it observed that, up to November 2008, she had intermittent contact and sexual relations with her children’s father, Andrew Renfro, who had violently abused her in the past (as well as other women). RP 401-02; FF 1.16, 1.17. *See also* RP 19-20, 47, 335-36. Neither man had abused the children during this period of time however. RP 403-04. *See also* RP 189, 299, 313. Moreover, beginning in January 2009, Ms. Vandermeer ended her relationship with Mr. Renfro and took steps to ensure that he could not contact her, including obtaining an anti-harassment order against Mr. Renfro. RP 61, 75-76, 192, 312-13, 328-29. But the juvenile court was concerned that in the future “Ms. Vandermeer would ... put herself in harm’s way and thereby also put her children in harm’s way.” RP 401.

Strikingly, the juvenile court found no evidence of any other parental deficiencies. To the contrary, it concluded that it is “clear” Ms. Vandermeer loves her children and she is capable of parenting them; no one testified otherwise. RP 394; FF 1.26. The juvenile court observed that “when asked what is the mother’s strengths, the guardian ad litem indicated that she had excellent parenting skills.” RP 394. Indeed, in

contrast to many other termination cases, Ms. Vandermeer has a steady job, access to appropriate housing, and has no history of drug or alcohol abuse. RP 394; FF 1.26. *See also* RP 35-38, 39-40, 76, 318. But these positive attributes were not enough. The juvenile court terminated her parent-child relationship with B.R. and T.V. because, it concluded, she had failed to correct – despite having attended the prescribed support groups and counseling – the behavior that had “got the children into foster care:” her relationships with men who abused her and might potentially abuse her children. RP 395; FF 1.27. *See also* RP 404. Notably, in doing so, the juvenile court did not conclude that Ms. Vandermeer’s relationships with men posed a clear and present danger to her children’s health, safety or welfare. CP 14-24.

Ms. Vandermeer appealed the termination decision. CP 11-12. Legal Voice, with the consent of the parties to the appeal, asked the Court of Appeals for permission to submit an amicus brief. On December 28, 2009, the Court of Appeals granted that request.

IV. ARGUMENT

The decision by the juvenile court to terminate the parent-child relationship between Ms. Vandermeer and her children – because of her “poor choice” in partners – sets a dangerous precedent. A victim of domestic violence is not to blame for the crimes of violence committed

against her. Finding that these mothers are neglectful or assuming that domestic violence automatically poses an emergent risk to their children that justifies termination of their parental rights, as did the juvenile court here, mistakenly blames the victims for the abuse inflicted by others, undermines social and legal efforts to combat it, empowers their batterers, and is contrary to the best interests of the affected children.

A. The Juvenile Court's Termination Decision Unfairly and Unconscionably Blames Ms. Vandermeer, the Victim, for Crimes Committed Against Her.

1. Domestic violence victims should not be blamed for harms caused by their abuser.

Domestic violence is a terrifying reality for women² in the State of Washington. Thousands of women are subjected to physical, sexual or psychological abuse by their husbands or partners each year.³ The effects of domestic violence are severe: broken bones, scratches, cuts, bruises,

² Women are the victims of intimate violence significantly more often than men. In 2001, women accounted for 85% of the victims of intimate partner violence and men accounted for approximately 15% of the victims nationally. U.S. Dept. of Justice, Bureau of Justice Statistics, Crime Data Brief, INTIMATE PARTNER VIOLENCE, 1993-2001 (Feb. 2003). *See also* Patricia Tjaden and Nancy Thoennes, FULL REPORT OF THE PREVALENCE, INCIDENCE, AND CONSEQUENCES OF VIOLENCE AGAINST WOMEN at 25 (Nov. 2000) (finding that women are significantly more likely than men to report being victimized by an intimate partner than men).

³ Washington Association of Sheriffs and Police Chiefs, CRIME IN WASHINGTON 2008 ANNUAL REPORT at 104 (Washington police departments responded to 34,148 domestic violence calls in 2008); Robert Thompson, Amy Bonomi, et al., "Intimate Partner Violence Prevalence, Types, and Chronicity in Adult Women," 30 AM. JOURNAL OF PREVENTATIVE MEDICINE 6 (2006) (In a recent survey of women in Washington and Idaho, 44% of respondents reported having experienced intimate partner violence in their adult lifetime.).

burns, and rape. Victims of domestic violence may lose their jobs or face eviction as a result of their batterers' actions. "Domestic violence is also a significant contributor to homicide, divorce, incarceration, homelessness, HIV, substance use, suicidality, depression, and a broad range of other medical, behavioral and mental health problems among women." Evan Stark, CPS: REFORMING CHILD PROTECTIVE SERVICES THROUGH ADVOCACY FOR BATTERED WOMEN (July 2008) ("Stark, CPS").⁴

Women are not engaging in criminal activity when they are beaten or abused. Battering can happen to anyone;⁵ and battered women cannot foresee that men they know will become batterers. Abusers do not necessarily behave abusively in relationships outside the home (*see* <http://www.wscadv.org/aboutDV.cfm> (last visited on Jan. 13, 2010)), and they give potential victims no warning of future violence inside the home. Even when a woman realizes that she is being abused, she may not know precisely when the abuse will happen. Batterers themselves decide when relationships become violent. As Sarah Buel, a clinical professor at the

⁴ Available at <http://www.wscadv.org/resourcesPublications.cfm?aid=7B49498B-C298-58F6-0EDAC9B5B5A67980>).

⁵ *See Nicholson v. Williams*, 203 F. Supp. 2d 153, 193 (E.D.N.Y. 2002) ("It is now recognized that domestic violence occurs at all class levels, across all ethnic, racial, and religious lines, in all groups, among all educational backgrounds and sexual orientations, and in both rural and urban areas.").

University of Texas Law School and domestic violence advocate and prosecutor noted: “Domestic violence represents serious violent crime; this is *not* codependence, for there is nothing the victim can do to stop the violence, nor is there anything she does to deserve the abuse.” Sarah M. Buel, “Fifty Obstacles to Leaving, a.k.a. Why Abuse Victims Stay,” 28 THE COLORADO LAWYER 10 at 19 (October 1999) (“Buel”).

2. Leaving an abusive home or relationship is a difficult, complicated, and often dangerous process.

Although many people believe that battered women can easily leave an abusive home or relationship, this is not necessarily true. “[Domestic] violence always happens in a context in which human beings have complicated feelings for and attachments to each other.” National Council of Juvenile & Family Court Judges, EFFECTIVE INTERVENTION IN DOMESTIC VIOLENCE & CHILD MALTREATMENT CASES: GUIDELINES FOR POLICY AND PRACTICE at 23 (1998) (“NCJFCJ Report”)⁶. There are a myriad of reasons why leaving is difficult for many women. *See, e.g.*, Buel at 19-28. For example, following an attack, a batterer may promise to change, swearing he will never drink or hit the victim again. Victims often give credence to such promises; “[v]ictims are socialized to be

⁶ Available at <http://www.thegreenbook.info>.

forgiving and do not want their important relationships to fail because they refuse to forgive.” *Id.* at 24.⁷ More important, however, violent relationships are characterized by substantial power disparities that often make leaving difficult for many women. *Id.* Frequently, the act of leaving or attempting to leave a violent relationship itself triggers the severest violence. *Id.* at 19 (“It is estimated that a battered woman is 75 percent more likely to be murdered when she tries to flee or has fled, than when she stays.”).⁸

As this case illustrates, leaving an abusive relationship often requires multiple attempts and may take years, particularly if children are involved. Indeed, the United States District Court for the Eastern District of New York observed in *Nicholson v. Williams* (a successful challenge to the New York child protective agency’s policy and practice of removing children who witnessed domestic violence), “the process of extrication from a violent relationship often takes time, through a series of separations and seeming reconciliations.” 203 F. Supp. 2d 153, 194 (E.D.N.Y. 2002).

⁷ See also <http://www.domesticviolence.org/cycle-of-violence/> (last visited January 13, 2010) (“Abuser may promise it will never happen again.”).

⁸ Jake Fawcett, et al., NOW THAT WE KNOW FINDINGS AND RECOMMENDATIONS FROM THE WASHINGTON STATE DOMESTIC VIOLENCE FATALITY REVIEW FOR THE WASHINGTON STATE COALITION AGAINST DOMESTIC *Violence* at 8, 30 (December 2008) (available at <http://www.wscadv.org/resourcespublications.cfm?ald=46CF88FC-C29B-57E0-81A9BE6D1B76CB3E>) (In at least 47% of the homicides committed by a domestic violence abuser in Washington State the victim had left, divorced, or separated from the abuser or was attempting to leave or break up with the abuser).

3. The failure or inability of a battered woman to leave an abusive home or relationship does not reflect a lack of care or concern for her children.

Most battered women also “care deeply about their children’s safety and want to protect them from physical assaults and from the harms of poverty and isolation.” NCJFCJ REPORT at 11. Their concern for their children can be both the reason they stay with their abuser and the reason that they seek help. The National Council of Juvenile and Family Court Judges acknowledged this dilemma: “The battered woman cannot change or stop the perpetrator’s violence by herself. If she does not have adequate support, resources, and protection, leaving him may simply make it worse for her children.” NCJFCJ REPORT at 19. Indeed, the court in *Nicholson v. Williams* observed that “[t]he limiting factor on what a battered mother does to protect herself or her children from the batterer is usually a lack of viable options, not a lack of desire.” 203 F. Supp. 2d at 200.

Penalizing a battered woman for “failure to protect or neglect” and permanently separating her from her children for failing to leave her abuser sends the message that the woman, not her abuser, is responsible for her victimization. *See Stark, CPS* at 13. *See also Nicholson*, 203 F. Supp. 2d at 201 (“Accusing battered mothers of neglect aggravates the problem because it blames the mother for failing to control a situation which is defined by the batterer’s efforts to deprive her of control.”). As

such, the National Council of Juvenile and Family Court Judges⁹ recommends that “[c]hild protection services ... avoid strategies that blame a non-abusive parent for the violence committed by others.” NCJFCJ REPORT at 51, 66 (Recommendation 22).

But the juvenile court in this case did precisely the opposite; it laid the blame for the abuse Ms. Vandermeer and B.R. suffered (and might suffer in the future) on her, and not where it belongs: on Destry Schnebly and Andrew Renfro. As the court held in *Nicholson v. Williams*, “[i]t desecrates fundamental precepts of justice to blame a crime on the victim.” 203 F. Supp. 2d at 252.

B. The Juvenile Court’s Termination Decision Is Contrary to Washington’s Laws and Policies Against Domestic Violence and Further Endangers Victims and Their Children.

Washington State has a clear public policy of preventing domestic violence and assuring that victims of domestic violence receive the “maximum protection from abuse which the law and those who enforce the law can provide.” RCW 10.99.010 (recognizing that domestic violence is “a serious crime against society”). This policy includes

⁹ The Advisory Committee which drafted these recommendations consisted of a diverse group of professionals from child welfare and domestic violence services, members of the academic community, judges and federal agency representatives. Support for the project came from the United States Department of Health and Human Services, United States Department of Justice, and other governmental and private entities. NCJFCJ REPORT at 2-3.

protecting domestic violence survivors and their children and holding domestic violence perpetrators accountable. The Washington State Supreme Court noted in *Danny v. Laidlaw Transit Servs., Inc.*:

The legislative, judicial, and executive branches of government have repeatedly declared that it is the public policy of this state to prevent domestic violence by encouraging domestic violence victims to escape violent situations, protect children from abuse, report domestic violence to law enforcement, and assist efforts to hold their abusers accountable.

165 Wn.2d 200, 221, 193 P.3d 128, 138 (2008).¹⁰ In the absence of actual harm or imminent threat of harm to the children, terminating the parental rights of domestic violence victims, as the juvenile court did here, contravenes this clear policy.

Such action will also have the practical result of discouraging domestic violence victims from taking steps necessary to protect themselves, like calling the police, requesting emergency medical care, obtaining protective orders, or confiding in neighbors. See Justine A. Dunlap, “Sometimes I Feel Like A Motherless Child: The Error of

¹⁰ See also *State v. Dejarlais*, 136 Wn.2d 939, 944-45, 969 P.2d 90 (1998) (finding a clear statement of public policy to prevent domestic violence and holding that reconciliation may not void a domestic violence protection order); *In re Disciplinary Proceeding Against Turco*, 137 Wn.2d 227, 253 n. 7, 970 P.2d 731 (1999) (holding that “[t]he Legislature has established a clear public policy with respect to the importance of societal sensitivity to domestic violence and its consequences”); *State v. Anaya*, 95 Wn. App. 751, 759-760, 976 P.2d 1251, 1256 (Div. 1, 1999) (“We fully agree that the Legislature has stated in very clear terms that domestic violence is a serious crime and that official response to that crime must protect victims.”).

Pursuing Battered Mothers for Failure to Protect,” 50 LOY. L. REV. 565 (Fall 2004); Evan Stark, “The Battered Mother in the Child Protective Service Caseload: Developing an Appropriate Response,” 23 WOMEN’S RTS. L. REP. 107 (2002) (“Stark, THE BATTERED MOTHER”). This is inconsistent with Washington State’s considerable efforts to provide resources and safeguards to victims and survivors of domestic violence, including:

- Washington’s Domestic Violence Prevention Act, which allows victims to obtain civil protection orders against their abusers (RCW 26.50.030);
- The address confidentiality program, which provides victims of domestic violence with substitute addresses in order to prevent abusers from locating their victims (RCW 40.24.010);
- Special safeguards relating to unemployment compensation for persons who are forced to leave their employment to protect themselves or their family from domestic violence (RCW 50.20.050(1)(b)(iv));
- Protections against penalties for lessees who are forced to break residential leases in order to escape domestic violence (RCW 59.18.575); and
- Community-based services for victims of domestic violence and their children (*see, e.g.*, RCW 70.123.150).

These efforts are supplemented by the work of many private, non-profit organizations and individuals that provide shelter and support to battered women and children in the State. *See, e.g.*, <http://www.wscadv.org/memberPrograms.cfm> (last visited Jan. 18, 2010) (listing many such organizations in Washington State).

The message to domestic violence victims in Washington is clear: the law is here to protect you and to help you protect yourself and your family from future abuse. This message will be undermined if domestic violence victims fear that exercising the options provided by the State will result in losing their children. Forcing a mother to choose between taking steps necessary to protect herself and her children, on one hand, and the risk that the State will intervene in her relationship with her children, on the other hand, could have dangerous or disastrous consequences. *See Nicholson*, 203 F. Supp. 2d at 204 (detailing negative consequences of intervention).

In addition, the precedent set by the juvenile court termination decision will only compound the victimization of abused mothers and empower batterers. Stark, CPS at 2. Domestic violence is about control, and children can be part of that control. Indeed, some batterers attempt to exploit a mother's concern for her children to prevent her from leaving, either by threatening to abduct the child or threatening to challenge custody if the mother leaves with the children. *See Buel* at 20.¹¹ In such situations, a mother may decide that it is safer for the children if she stays

¹¹ *See also*, Stark, THE BATTERED MOTHER at 124 (discussing "tangential spouse abuse" where the abuser treats the child as an extension of the mother and threatens or harms the child to increase the mother's dependence and or fear).

with her abuser. To terminate a mother's parental rights in this situation re-victimizes the mother. It also lends credibility to the abuser's threat that if she disobeys him, she will lose her children, and so perpetuates the abuser's conduct. *See Nicholson*, 203 F. Supp. 2d at 201 ("Counterproductively, one of the outcomes of accusing the battered woman of neglect is that the power of the batterer in the household may be reinforced."). In this way, it is contrary to Washington's policy to hold domestic violence perpetrators accountable and to prevent them from interfering with their victim's attempts to report the abuse.¹²

C. Separating Children From Their Non-Abusive Parent, in the Absence of a Threat of Imminent Harm to the Child, as Here, Does Not Serve the Best Interests of the Child.

Without question, domestic violence perpetrators do not only victimize adults; studies have consistently found that the risk that children will be abused or neglected is higher in households where domestic violence occurs than where it is absent.¹³ In addition, children who are not themselves maltreated often suffer from the effects of observing and

¹² *See, e.g.*, RCW 26.50.110 (violation of protective order under Domestic Violence Protection Act a crime); RCW 9.94A.728 (domestic violence a serious crime against society, and offenders are not eligible for earned early release time); RCW 9A.36.150 (unlawful for a domestic violence perpetrator to interfere in the victim's reporting of abuse).

¹³ *See, e.g.*, NCJFCJ REPORT at 9; Stark, CPS at 5-6.

hearing their mothers being abused.¹⁴ But the impact of domestic violence on children's emotional well-being and physical safety inevitably varies greatly from family to family. Research in this area is weak. Evan Stark, a sociologist and acknowledged expert in domestic violence,¹⁵ recently observed that studies on the effects of domestic violence on children are typically unrepresentative, fail to balance reported problems with measures of resilience or protective factors, rarely link outcomes to the type of domestic violence or exposure involved, and do not control for confounding factors. "In sum" he concluded, "we know little more than that domestic violence places some subset of children at risk and what types of problems they suffer." Stark, CPS at 6. *See also Nicholson*, 203 F.Supp.2d at 197-98 (summarizing expert testimony re impact of domestic violence on children). Moreover, "the proportion of cases where the harm to children rises to a level sufficient to prompt emergency removal is too small to justify a generic equation of domestic violence with child abuse or neglect." *Id.* at 6.

¹⁴ *Id.*

¹⁵ Evan Stark is a Professor and the Chair of the Department of Urban Health Administration at the University of Medicine and Dentistry of New Jersey. *See* http://sph.umdnj.edu/staff/staffDetail.cfm?tblPers_ID_pk=620 (last visited Jan. 18, 2010). He testified as an expert witness in *Nicholson v. Williams*, 203 F. Supp. 2d at 183, 193, 198 (E.D.N.Y. 2002) (discussing Dr. Stark's "lengthy and well-substantiated opinion" regarding the effect of witnessing domestic violence on children).

In the absence of actual harm or a threat of imminent harm to children, they are generally best protected when their non-abusive parent is given the support and resources she needs to care for her children while extricating her family from the abusive relationship. *See Stark, THE BATTERED MOTHER* at 126-27 (“Best practice standards in child welfare cases involving domestic violence rely on joint and ongoing safety planning with the non-offending caretaker, including court protection...”). The well-being of a child in a home where domestic violence is present is strongly tied to the well-being of the non-abusive parent. As such, the National Council of Juvenile and Family Court Judges Family Violence Department recommends keeping the children in the care of the non-abusive parent wherever possible:

As a way to ensure stability and permanency for children, child welfare administrators and juvenile court personnel should try to keep children affected by maltreatment and domestic violence in the care of their non-offending parent (or parents), whenever possible. Making adult victims safer and stopping batterers’ assaults are two important ways to remove risk and thereby create permanency for children.

NCJFCJ REPORT at 14 (Recommendation 2). *See also Margaret Hobart, ASSESSING THE IMPACT OF DOMESTIC VIOLENCE ON CHILDREN’S SAFETY* at 3 (June 2007) (“Removing children from battered women primarily because those women are being abused by their male partners is not

preferable, particularly when the victims have the capacity to engage in appropriate parenting, which many or most do.”).¹⁶

In fact, disrupting the parent-child relationship as a reaction to domestic violence may further traumatize children and cause additional psychological problems for them. Amanda J. Jackson, “*Nicholson v. Scoppetta*: Providing a Conceptual Framework for Non-Criminalization of Battered Mothers and Alternatives to Removal of Their Children From the Home,” 33 CAP. U. L. REV. 821, 855 (2005); Catherine J. Ross, “The Tyranny of Time: Vulnerable Children, ‘Bad’ Mothers, and Statutory Deadlines in Parental Termination Proceedings,” 11 VA. J. SOC. POL’Y & L. 176, 221-22 (Winter 2004). Symptoms from such unnecessary separation include fear, anxiety, depression, a diminished sense of self, and regressive behavior. *Id.* See also *Nicholson*, 203 F. Supp. 2d at 199 (discussing expert testimony on the effects of removal on children). Research has called into question the assumption that children who witness domestic violence suffer harm worse than that caused by removing such children from their homes. See *New Jersey Div. of Youth & Fam. Servs. v. S.S.*, 855 A.2d 8, 25 (N.J. Sup. Ct. 2004) (“If we could take judicial notice of the fact that domestic violence begets emotional

¹⁶ Available at <http://www.wscadv.org/resourcesPublications.cfm?aId=E4227323-C298-58F6-0282FDDE9191D155>.

distress or other psychic injury in child witnesses, we would be less concerned by the court's conclusion here that appellant was an abuser. However, we cannot.... [legislative determinations about the likely harm of domestic violence] do[] not and cannot constitutionally be held to substitute for the fact-finding of family court.”). Indeed, in 2006, the Washington State Legislature clarified that exposure to domestic violence by itself does not constitute negligent treatment or maltreatment. RCW 26.44.020(13).

Evan Stark opined that placement in foster care of children who have witnesses domestic violence should be used “only as a last resort” and in cases involving “compelling evidence that a mother’s judgment is impaired (by chronic substance use or mental illness, for instance) or the child faces imminent harm.” *See Stark, THE BATTERED MOTHER* at 118.

He notes that:

[E]ven under the best of circumstances, removal of a child to foster care can be a traumatic experience, but in domestic violence cases where the bond to the primary care-taker has already been made fragile by abuse, the trauma of placement can be particularly harsh, evoking powerful feelings of guilt and self-loathing that can leave lasting scars.

Id. He also reports that psychological research has found that:

[C]hildren removed from their natural homes and placed in a series of foster homes suffered long-term psychological problems that were actually more serious than the problems

experienced by physically abused children who continued to be at-risk for abuse who remained with their parents.

Stark, CPS at 11.

This case tragically bears out these conclusions. B.R. and T.V. were placed in a series of foster homes; B.R. went through no less than eight such homes during the course of the dependency case. *See* FF 1.34. While in foster care, both children exhibited significant behavioral problems. *See* RP 88-99, 152; FF 1.38. Once the protective order against Mr. Schnebly was in place, would the children have been worse off had they remained in Ms. Vandermeer's care?

Finally, terminating a non-abusive parent's rights is no guarantee the children will be protected from future abuse or harm. Evidence suggests that children who are removed from their non-abusive parent are also at risk of harm in foster care. Kathleen A. Copps, "The Good, the Bad, and the Future of *Nicholson v. Scoppetta*: An Analysis of the Effects and Suggestions for Further Improvements," 72 ALB. L. REV. 497 (2009); *Nicholson*, 203 F. Supp. 2d at 199 ("Another serious implication of removal is that it introduces children to the foster care system which can be much more dangerous and debilitating than the home situation."). *See also* Hobart at 4 ("Children placed in foster care are at risk of trauma from the removal process and abuse in the foster care setting"); Marsha

Garrison, "Why Terminate Parental Rights?" 35 STAN. L. REV. 423 (1983).

V. **CONCLUSION**

A victim is not to blame for the abuse perpetrated on her or her children. It is not her choices that cause the violence. To hold otherwise, will set a dangerous precedent, undermine social and governmental efforts to combat domestic violence and hold the perpetrators accountable, and threaten the well-being of thousands of children. For these reasons, this Court should reverse the juvenile court's decision to terminate the parent-child relationship between Ms. Vandermeer and her children: B.R. and T.V. Being a victim of domestic violence simply does not disqualify one from parenthood.

RESPECTFULLY SUBMITTED this 20th day of January, 2010.

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CERTIFICATE OF SERVICE

The undersigned certifies under the penalty of perjury according to the laws of the State of Washington that on this date I caused to be served via hand delivery a copy of the foregoing document upon on the following individuals:

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Deanna L. Schow

NO. 63788-6-I

COURT OF APPEALS
DIVISION ONE

JAN 29 2010

**COURT OF APPEALS FOR DIVISION I
STATE OF WASHINGTON**

In re Dependency of:
B.R. and T.V.

LETITIA VANDERMEER,

Appellant,

v.

STATE OF WASHINGTON,
DEPARTMENT OF SOCIAL AND
HEALTH SERVICES,

Respondent.

DECLARATION OF
SERVICE

I affirm under penalty of perjury of the laws of the State of Washington that the following is true and correct to my best knowledge and belief:

1. My name is Ronda Larivee and I am employed as a paralegal for counsel for respondent.

2. On January 28, 2010, I sent via legal messenger a true and accurate copy of **Brief of Respondent** to the following persons:

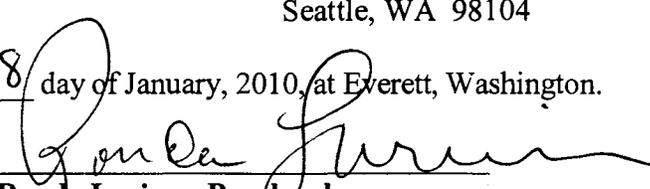
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