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**COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON**

IN RE THE DEPENDENCY OF

B.R. and T.V.

Minor Children.

RESPONDENT'S ANSWER TO BRIEF OF AMICUS CURIAE

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ORIGINAL

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I. INTRODUCTION

The Department of Social and Health Services (DSHS) agrees with Amicus Legal Voice that mothers who are victims of violence inflicted by their partners or husbands should not be “blamed” for the abuse they suffer. It also agrees that children who are not at risk of harm in the care of a parent who is a victim of violence should remain with that parent. Washington law and public policy clearly support this view – as does DSHS. However, the law and policy do not require the state to turn a blind eye to vulnerable children. Here, the mother was not the only victim. As a toddler, her son was so severely abused by the mother’s partner that he suffered brain damage. Even so, the child was placed back with his mother, on the condition that she not expose him to his abuser. Contrary to Legal Voice’s interpretation of the facts, the mother continued to have a relationship with this partner and continued to allow him contact with the child.

The trial court found the mother’s inability to protect her children continued to pose a risk to the children at the time of the termination trial and that it was unlikely she would be able to gain the skills and judgment necessary to protect them in the near future.

This was so despite the DSHS’s efforts to assist the mother in accessing the laws and services that would protect her and her children.

Throughout the boys' lives and the underlying dependency action, the mother failed to appreciate the risk that her violent partners and her violent lifestyle posed to her children. After nearly four years of assistance, the mother was still seeking contact with a violent partner. The trial court correctly determined that DSHS proved the statutory elements for termination, and that termination is in the best interests of the children.

II. ARGUMENT

All parents have a fundamental, constitutionally protected right to the care, custody, and companionship of their children. *In re the Matter of Sumey*, 94 Wn.2d 757, 762, 621 P.2d 108 (1980). However, this right is not absolute. When the rights of basic nurture, physical and mental health, and safety of the child and the legal rights of the parents are in conflict, the rights and safety of the child shall prevail. RCW 13.34.020.

While exposure of a child to domestic violence that is perpetrated against someone other than the child does not constitute negligent treatment or maltreatment in and of itself, the state does have the right to intervene when there is a risk of harm when the parent exposes her children to violent or abusive persons. RCW 26.44.020(13); RCW 26.44.010; *In re Interest of J.F.*, 109 Wn. App. 718, 731, 37 P.3d 1227 (2001).

The question before the trial court during the termination proceedings was not whether the mother made poor choices in her

selection of partners or whether a child who has experienced domestic violence should be removed from a non-protective parent's care. The orders in the underlying dependency established that – and further established that her violent relationships actually and potentially put her children at risk of harm. Instead, the question before the court was whether DSHS met its burden of establishing the elements of RCW 13.34.180(1). The trial court properly terminated the mother's parental rights.

A. The Termination Decision Was Based On Consideration And Application Of The Termination Statute, Not The Statute Authorizing Removal Of A Child From A Parent's Home

Washington law and policy were followed during both the underlying dependency and the termination proceedings. Legal Voice argues that the juvenile court unfairly and unconscionably blamed the mother for crimes committed against her and that the termination decision is contrary to Washington's laws and policies against domestic violence.

Legal Voice fails to properly relate Washington law and policy on domestic violence to the termination statute and this case's facts and, therefore, erroneously argues that the court in the termination proceeding was required to find a threat of "imminent harm" to the child. Amicus Br. at 11. Legal Voice then incorrectly asserts that the trial court's termination decision was based on an assumption that domestic violence

automatically poses an emergent risk to the children that justified termination. Amicus Br. at 5. Finally, Legal Voice argues that the children were at risk in their foster home. Amicus Br. At 19. Legal Voice's request to reverse is meritless.

1. B.R. Was A Victim Of Domestic Violence And The Mother Admitted The Children Were At Risk Of Harm

Unlike a dependency, a termination proceeding is an action to implement a permanent plan for a child, if safe reunification with the parent is not an option. At termination, DSHS is required to prove that the child has already been found dependent. RCW 13.34.180(1)(a). That element was established and was undisputed. CP at 15, 17, 19 (Findings of Fact 1.8, 1.11, 1.18). It is well established that a child may be declared dependent if a parent exposes a child to risk of harm from another person even if the harm does not materialize. *In re Interest of J.F.*, 109 Wn. App. 718, 731, 37 P.3d 1227 (2001).

This is not a case where children were removed from a parent based solely on the parent being a domestic violence victim. This appeal pertains to an order terminating parental rights, after a four year dependency. B.R. was taken into protective custody by law enforcement and was placed in out-of-home care by court order entered within 72 hours of the child's removal. Exs. 1, 4, 9, and 13. B.R. was initially placed out

of home, not because his mother was the victim of violence, but because he was the victim; it was the child who was physically abused by the mother's violent partner. Ex. 4. When the mother agreed to get a protective order against her partner and agreed that she would not permit him to have any access to B.R., the child was returned to her care. Ex. 7. Although T.V. was removed from the mother's care and a dependency established shortly after he was born, he too, was returned to the mother's care. Ex. 13.

Because the mother allowed B.R.'s abuser to have contact him and T.V., the boys were taken into protective custody a second time. Again, this was not due to the mother's poor choice of partners, but because of her unwillingness or inability to protect her children from the man who had severely abused B.R. when he was just 20 months old. Exs. 1, 9 and 23. Throughout the dependency the mother consistently violated or failed to comply with court orders regarding her and her children's contact with the abusers, failed to correct her parental deficiencies, and consistently placed her children at risk. Exs. 9, 17, 23, 24, 26, 27, 28, 30. Although she was a domestic violence victim, that was not the basis for the children's placement in out-of-home care.

Inherent in the dependency findings is a finding that a parent has parental deficiencies that need to be corrected. *See, e.g., In re Interest of*

S.G., 140 Wn. App. 461, 468, 166 P.2d 802 (2007); *In re Dependency of T.L.G.*, 126 Wn. App. 181, 198, 108 P.3d 156 (2005). That finding is repeatedly reviewed and reassessed during the dependency, until the child can be returned to the custody of a parent. RCW 13.34.138. The statute does not require relitigation of the dependency findings in the termination order. *In re K.R.*, 128 Wn.2d 129, 141-42, 904 P.2d 1132 (1995). Here, the mother agreed that she had parental deficiencies that needed to be corrected and that remedial services were necessary to correct those deficiencies. CP at 15-17 (Finding of Fact 1.8, 1.11); Exs. 7, 16. She admitted B.R. had been assaulted by Destry S.; she continued to have contact with him after that assault; she failed to comply with court orders; she also acknowledged the child was the victim of domestic violence by Mr. R.; and she continued to try to rekindle a relationship with Mr. R. just weeks before the termination trial. RP 47, 67; Exs. 9, 17, 23, 24, 26, 27, 28, 30.

The trial court was not required to find “imminent risk of harm” in order to terminate the mother’s parental rights. This Court resolved this issue, holding that if the statutory factors for termination are proved – specifically that the child has been found dependent, as required by RCW 13.34.180(1)(a), and that it is unlikely conditions can be remedied so the child can be returned to the parent in the near future, as required by RCW

13.34.180(1)(e) – a finding of harm to the child has implicitly been made. *In re I.J.S.*, 128 Wn. App. 108, 118, 114 P.3d 1215, *review denied*, 155 Wn.2d 1021 (2005); *Krause v. Catholic Community Svcs.*, 47 Wn. App. 734, 742-43, 737 P.2d 280 (1987).

Given the mother's inability to protect her children from violent partners, and her lack of insight into how violent partners put her and, more importantly, her children at risk, DSHS provided her with evaluators and experts who concluded that she required counseling and domestic violence support groups. Dr. Evan Freedman, the psychologist who evaluated the mother, testified that there were no other services that could have corrected her deficiency. RP at 244. This conclusion is especially telling when viewed in the context of his records review 18 months after his initial evaluation. Although the mother had been participating for some time in the services he initially recommended, Dr. Freedman saw little evidence of change or progress. RP at 216, 219, 221.

The facts before the trial court showed that the children were at risk in the mother's home and that one of them had suffered actual harm at the hands of the mother's partners. DSHS's efforts in helping her take advantage of the laws that would protect her and her children, and in learning how to appreciate the risks posed by her partners, were rejected or were unsuccessful. The trial properly terminated her parental rights.

2. The Mother Failed To Correct Her Parental Deficiency That Led To The Children's Removal Despite Several In-Home Placements And Numerous Services

Legal Voice erroneously asserts that this mother took active steps in the underlying dependency to protect her children after B.R. suffered a near fatal injury, at the hands of her partner, Mr. S. The evidence showed that this mother continuously violated protection orders, failed to comply with dependency court orders, and did not correct the deficiency that led to the children's removal from her care. Ex. 1, 4, 9, 17, 23, 24, 26, 27, 28, 30; *In re the Dependency of B.R. and T.V.*, Cause No. 60208-0-I (2007).

Legal Voice argues that a woman's concern for her children can be a reason the woman stays with an abuser and the reason she seeks help, correctly stating that many women cannot change by themselves. Amicus Br. at 9. This mother was not expected to change by herself. Prior to termination, the court and DSHS attempted on several occasions to place the children with their mother with a support system in place. The placements were conditioned on the mother's compliance with protection orders and with orders requiring her to prevent contact between the children and Mr. S., a man who proved he was dangerous to little children. The mother did not meet these conditions. As a result of her actions in exposing her children to the partners who had abused her and B.R., and her failure to comply with court orders, the Department's attempts to

support an in-home placement of the children with their mother failed and the court ordered the children be placed in foster care. Ex. 1, 4, 9, 17, 23, 24, 26, 27, 28, 30; *In re the Dependency of B.R. and T.V.*, Cause No. 60208-0-I (2007).

During the dependency, the mother was provided with numerous services. She participated in an anger management assessment. RP at 178. She completed a psychological evaluation. CP at 19 (Finding of Fact 1.22). She attended between 40 and 50 domestic violence support groups, CP at 19 (Finding of Fact 1.20), and attended counseling between February 2008 and September 2008. CP at 19 (Finding of Fact 1.21). There were no other services available that were capable of assisting her in correcting her parental deficiencies within the foreseeable future. CP at 20 (Finding of Fact 23).

Furthermore, the trial court in this case had the benefit of expert testimony as to how the mother's actions impacted her children's safety and welfare. Dr. Freedman testified that the mother's most significant parental deficit was her lack of insight as to how her relationship choices may place her children at risk of harm. RP at 215-216. He testified she was unable to put the needs of her children above her own needs. RP at 222, 243. He saw little prospect for improvement, and saw little change

despite her participation in remedial services. CP at 19-20 (Finding of Fact 1.22); RP at 219.

Likewise, the mother's therapist, Lynn Springer, testified she was concerned about the mother's ability to keep herself and her children safe because she continued to be involved with a person who perpetrated domestic violence against her and her children in the past. RP at 259. She concluded that the mother continued to lack insight into how her own actions were contributing to her problems. RP at 263. In her closing report, Ms. Springer noted that, despite therapeutic intervention, the mother's ability to keep her child safe and to nurture their optimal development remained in question. CP at 20 (Finding of Fact 1.28); Ex. 49.

While the mother may love her children, and may have progressed in her parenting skills, this does not mean she corrected the deficiency that led to the children's out-of-home placement. *See In re Dependency of S.M.H.*, 128 Wn. App. 45, 48-50, 60, 115 P.3d 990 (2005). It was clear from the experts' testimony that the mother had not corrected her deficiencies and failed to understand the risks her behaviors posed. She lacked insight, was unable to put her children's needs above her own, and there was little prospect for improvement.

While women should not be blamed for violence committed against them, that was not the reason for B.R. and T.V.'s initial and subsequent removals. B.R. was a victim of domestic violence at the hands of the mother's partners. The mother refused to recognize and protect her children from her violent partners which caused the dependency to continue for nearly four years. DSHS provided numerous resources and opportunity for the mother to safely parent these children. The mother failed to do so, and her rights were properly terminated.

B. The Mother's Rights Must Be Balanced Against The Children's Rights

In balancing the child's rights with a parent's rights, the legislature has determined that the child's rights prevail over the parents. RCW 13.34.020. When a parent agrees to a dependency and a dispositional order, she is agreeing that a parental deficiency exists and is agreeing to engage in a remedial process that will hopefully result in reunification. A parent does not have unlimited time to correct her deficiencies. The law creates a sense of urgency by requiring that a petition for termination of parental rights be filed whenever the child has been in foster care for 15 of the past 22 months, unless compelling reasons excuse the requirement. RCW 13.34.145(1)(c). The law's focus on permanency reflects the importance of security and stability in a child's life, as well as a child's

need for continuity and permanency in relationships. *See, In re Dependency of J.B.S.*, 123 Wn.2d 1, 12-13, 863 P.2d 1344 (1993).

The children's best interests are of paramount concern to the trial court. Indeed, the dominant concern on review should be the safety and welfare of the child. RCW 13.34.020; *In the Matter of Sego*, 82 Wn.2d 736, 738, 513 P.2d 831 (1973). As indicated above, the record showed that the mother could not safely parent these children and that it was in the children's best interest to sever their legal relationship with their mother.

C. The Children Were Not At Risk Of Harm In Their Current Foster Placement

Legal Voice also erroneously argues these children were at risk of harm in their current foster placement. There is no evidence in the record to support this claim. B.R. and T.V. were in a prospective adoptive home at the time of trial. They could not wait a year for permanence; rather, they need immediate permanency. CP at 22 (Findings of Fact 1.35, 1.38). B.R. has behavioral problems and was quite difficult to manage upon arriving in his current placement, but since that time has engaged in a variety of treatment and counseling services and has made significant strides. *Id.* His mother does not believe he needs services. RP at 33. B.R. cannot make any further progress until he is in a permanent home. CP at 22 (Finding of Fact 1.39). T.V. is thriving in his current home. *Id.*

Regardless, the children's foster care placement was irrelevant to the mother's inability to correct her parental deficiencies. The trial court properly applied the elements of termination statute and properly terminated the mother's parental rights.

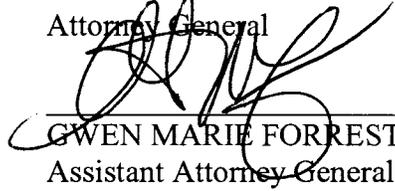
III. CONCLUSION

Legal Voice's argument that the domestic violence laws and policies in Washington require reversal of the termination order should be rejected. The termination statute is not inapposite to the domestic violence laws; both the law and the facts of this case supported termination of the mother's parental rights. The trial court considered the mother's undisputed agreement that the children were dependent and at risk of harm in her care. All appropriate services were offered and provided, and after four years, the mother still could not provide a safe home for her children, nor was it likely that she would be able to do so in the foreseeable future. The trial court properly determined that continuing the parent-child relationship diminished the children's their prospects for early integration into a stable and permanent home, and that it was in the children's best interest to be legally freed for adoption.

The termination order should be affirmed.

RESPECTFULLY SUBMITTED this 1st day of February,
2010.

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NO. 63788-61 FEB -1 PM 4:07

**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 February 1, 2010, I sent via legal messenger OR personal service a true and accurate copy of **RESPONDENT'S ANSWER TO BRIEF OF AMICUS CURIAE** to the following persons:

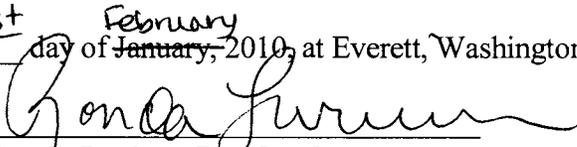
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