

NO. 74202-7-1

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

In re the Welfare of A.M.M.A.,

Minor Child;

STATE OF WASHINGTON, DEPARTMENT OF SOCIAL AND
HEALTH SERVICES,

Respondent,

FILED
May 27, 2016
Court of Appeals
Division I
State of Washington

v.

ANTONIAL MONROE.

Appellant.

BRIEF OF RESPONDENT

ROBERT W. FERGUSON
Attorney General

Kristin Prater Glenn
Assistant Attorney General
WSBA No. 18152
115 E. Railroad Ave.,
Suite 306
Port Angeles, WA 98362
(360) 457-2711

TABLE OF CONTENTS

I. INTRODUCTION.....1

II. RESTATEMENT OF THE ISSUES1

 A. Did the trial court properly exercise its discretion and deny the father’s request for a continuance?.....1

 B. Does substantial evidence support the trial court’s finding that guardianship was not in the child's best interest where the proposed guardian had a permanently disqualifying criminal conviction and did not demonstrate the character, suitability or competence to serve as guardian?.....1

 C. Does substantial evidence support the trial court’s finding that continuation of the parent and child relationship clearly diminished the child's prospects for early integration into a stable and permanent home?.....2

III. STATEMENT OF THE CASE.....2

 1. The Department offered services and visitation to the father while he was incarcerated3

 2. While incarcerated, the father received 212 infractions for threats, outbursts, and assaulting staff5

 3. The father’s psychological evaluation revealed concerns about his parenting ability8

 4. The Department maintained A.M.M.A.’s placement in relative care until the child had to be removed due to the father’s threats9

 5. The father threatened the relative placement when a June 26, 2015 visitation failed to occur.....10

 6. The father’s grandmother was late to pick A.M.M.A. up for the visit and it could not occur.....11

| | | |
|-----|---|----|
| 7. | As a result of the canceled visit, the father threatened to “smoke” the relative placement care providers and their children..... | 12 |
| 8. | The relatives asked that A.M.M.A. be removed because they were concerned for their safety | 13 |
| 9. | The father’s role in A.M.M.A.’s life was minimal..... | 14 |
| 10. | At trial, A.M.M.A. was living in a stable licensed care home, and the Guardian ad Litem agreed it was in his best interest to remain there | 15 |
| 11. | After the Department filed a termination petition, the father filed a guardianship petition seeking the appointment of his great-grandmother as A.M.M.A.’s guardian | 16 |
| IV. | ARGUMENT | 18 |
| A. | The Trial Court Properly Exercised Its Discretion When It Denied The Father’s Motion For A Continuance..... | 18 |
| 1. | In denying the continuance, the trial court relied upon the supported facts, applied the correct legal standard, and reached a reasonable result..... | 18 |
| 2. | The termination trial had been pending for over four months | 19 |
| 3. | The proposed guardian was disqualified from serving as a guardian and a continuance to conduct additional investigation would not have remedied this defect..... | 21 |
| 4. | The OPD home study was not limited due to the evaluator’s inability to access Department records | 22 |
| 5. | <i>In re R.H.</i> can be distinguished on its facts | 23 |

| | | |
|----|---|----|
| 6. | The father is unable to demonstrate prejudice or that the trial outcome would have been different if the continuance had been granted | 24 |
| B. | Faced With Competing Guardianship and Termination Petitions, The Trial Court Determined That Guardianship Was Not In The Child’s Best Interests And That The Department Met The Statutory Requirements For Termination..... | 26 |
| 1. | The Department and the father pleaded many of the same elements in their competing guardianship and termination petitions | 29 |
| 2. | The proposed guardian had a disqualifying criminal conviction and did not demonstrate the character, suitability, or competence to serve as A.M.M.A.’s guardian | 31 |
| 3. | <i>In re R.H.</i> does not provide authority for the father’s argument that he should be allowed a continuance to search for other potential guardians. | 37 |
| 4. | Substantial evidence supported the trial court’s finding that continuation of the parent-child relationship clearly diminished the child’s prospects for early integration into a stable and permanent home | 40 |
| 5. | Substantial evidence supports the trial court’s finding that the father did not maintain a meaningful role in the child’s life, the Department made reasonable, but unsuccessful, efforts to reunify the child and father, and there were no barriers to the father’s service participation | 42 |
| C. | The Trial Court Properly Applied RCW 13.34.180(5)..... | 46 |
| V. | CONCLUSION | 48 |

TABLE OF AUTHORITIES

Cases

| | |
|---|------------|
| <i>Hampson v. Ramer</i> , 47 Wn. App. 806, 737 P.2d 298 (1987)..... | 19 |
| <i>In re Dependency of A.C.</i> , 123 Wn. App. 244, 98 P.3d 89 (2004)..... | 27, 41 |
| <i>In re Dependency of A.M.M.</i> , 182 Wn. App. 776, 332 P.3d 500 (2014)..... | 42 |
| <i>In re Dependency of A.V.D.</i> , 62 Wn. App. 562, 815 P.2d 277 (1991)..... | 31 |
| <i>In re Dependency of C.R.B.</i> , 62 Wn. App. 608, 814 P.2d 1197 (1991)..... | 26 |
| <i>In re Dependency of J.H.</i> , 117 Wn.2d 460, 815 P.2d 1380 (1991)..... | 19 |
| <i>In re Dependency of K.N.J.</i> , 171 Wn.2d 568, 257 P.3d 522 (2011)..... | 28 |
| <i>In re Dependency of K.S.C.</i> , 137 Wn.2d 918, 976 P.2d 113 (1999)..... | 28, 31 |
| <i>In re Dependency of M.H.P.</i> , 184 Wn.2d 741, 364 P.3d 94 (2015)..... | 27 |
| <i>In re Dependency of V.R.R.</i> Wn. App. 573, 141 P.3d 85 (2006)..... | 19, 24, 25 |
| <i>In re Sego</i> , 82 Wn.2d 736, 513 P.2d 831 (1973)..... | 27 |
| <i>In re Termination of M.J.</i> , 187 Wn. App. 399, 348 P.3d 1265 (2015)..... | 44 |

| | |
|--|----------------|
| <i>In re the Welfare of A.W.</i> , 182 Wn.2d 689, 344 P.3d 1186 (2015)..... | 27 |
| <i>In re Welfare of A.J.R.</i> , 78 Wn. App. 222, 896 P.2d 1298..... | 29 |
| <i>In re Welfare of Angelo H.</i> , 124 Wn. App. 578, 102 P.3d 822 (2004)..... | 48 |
| <i>In re Welfare of H.S.</i> , 94 Wn. App. 511, 973 P.2d 474 (1999)..... | 47 |
| <i>In re Welfare of R.H.</i> , 176 Wn. App. 419, 309 P.3d 620 (2013)..... | 23, 24, 37, 38 |
| <i>Mayer v. Sto Industries, Inc.</i> , 156 Wn.2d 677, 32 P.3d 115 (2006)..... | 19 |
| <i>Seattle School Dist. No. 1 of King County v. State</i> , 90 Wn.2d 476, 585 P.2d 71 (1978)..... | 30, 44 |
| <i>State ex rel. Carroll v. Junker</i> , 79 Wn.2d 12, 482 P.2d 775 (1971)..... | 18 |
| <i>State v. Downing</i> , 151 Wn.2d 265, 87 P.3d 1169 (2004)..... | 18 |
| <i>State v. Hurd</i> , 127 Wn.2d 592, 902 P.2d 651 (1995)..... | 18 |
| <i>State v. Rohrich</i> , 149 Wn.2d 647, 71 P.3d 638 (2003)..... | 19 |
| <i>Willapa Trading Co. v. Muscanto, Inc</i> 45 Wn. App. 779, 727 P.2d 687 (1986)..... | 18 |
| <i>World Wide Video, Inc., v. City of Tukwila</i> , 117 Wn.2d 382, 816 P.2d 18 (1991)..... | 31 |

Statutes

| | |
|---------------------------------|----------------|
| RCW 13.34.020 | 26, 27, 47, 48 |
| RCW 13.34.145(5)(b) | 43, 44, 46 |
| RCW 13.34.145(5)(b)(i) | 44 |
| RCW 13.34.145(5)(b)(iv) | 45 |
| RCW 13.34.145(5)(b)(vi) | 45 |
| RCW 13.34.180(1)..... | 28, 29, 48 |
| RCW 13.34.180(1)(a)-(e)..... | 29 |
| RCW 13.34.180(1)(f)..... | passim |
| RCW 13.34.180(5)..... | 46 |
| RCW 13.34.190 | 28 |
| RCW 13.34.190(1)(b)..... | 29 |
| RCW 13.34.231 | 27 |
| RCW 13.36.030(2)..... | 22, 32 |
| RCW 13.36.040(2)..... | 27 |
| RCW 13.36.040(2)(c) | 27, 28, 29 |
| RCW 13.36.040(2)(c)(i)-(v)..... | 29 |
| RCW 74.15.030 | 22, 32 |
| RCW 74.15.030(2)(c) | 22, 32 |
| RCW 74.15.030(3)..... | 31 |

Regulations

| | |
|-----------------------------|--------|
| WAC 388-06A-0110(2)(c)..... | 22, 32 |
| WAC 388-06A-0170(1)..... | 22, 32 |
| WAC 388-06A-0170(1)(b)..... | 22, 32 |

I. INTRODUCTION

A.M.M.A. is a young child in need of permanency and stability. Faced with competing guardianship and termination petitions, the trial court determined guardianship was not in A.M.M.A.'s best interests. The proposed guardian had a permanently disqualifying criminal conviction for spousal abuse, and she did not demonstrate the suitability and character necessary to serve as a guardian.

A.M.M.A. had limited visitation with his incarcerated father, and this visitation alone did not result in the father playing a meaningful role in A.M.M.A.'s life. Substantial evidence established that A.M.M.A.'s continuing legal relationship with his father prevented A.M.M.A. from achieving the finality and permanency of adoption, and termination of the father's parental rights was in A.M.M.A.'s best interest.

II. RESTATEMENT OF THE ISSUES

- A. Did the trial court properly exercise its discretion and deny the father's request for a continuance?**
- B. Does substantial evidence support the trial court's finding that guardianship was not in the child's best interest where the proposed guardian had a permanently disqualifying criminal conviction and did not demonstrate the character, suitability or competence to serve as guardian?**

- C. **Does substantial evidence support the trial court’s finding that continuation of the parent and child relationship clearly diminished the child's prospects for early integration into a stable and permanent home?**

III. STATEMENT OF THE CASE

A.M.M.A. is almost four years old and has never lived with his father Antonial Monroe for more than a week.¹ Following his birth, A.M.M.A. and his mother stayed with his maternal grandmother for two years.² 2 RP 39.³ Then, the mother began living “from couch to couch,” occasionally dropping A.M.M.A. off with his maternal grandmother and disappearing for a day or two. 2 RP 39-40.

Mr. Monroe had a history of assaultive behavior and was repeatedly incarcerated. 2 RP 101. Shortly after A.M.M.A. was born, Mr. Monroe was in and out of the maternal grandmother’s home. 2 RP 43, 46. In 2012, when A.M.M.A. was approximately six months old, Mr. Monroe was convicted of possession of a controlled substance and promoting prostitution. 2 RP 6. He started serving his sentence on July 31, 2012, at the Washington State Reformatory in Monroe, and his earliest release date

¹ At trial, the child was nearly four years of age. He was born October 14, 2011. 2 RP 38; CP 294.

² The mother’s parental rights were terminated by the trial court. CP 294-302. She is not a party to this appeal.

³ The Department cites to the verbatim report of proceedings as follows: volume 1 (September 2, 2015) is designated 1 RP; volume 2 (September 3, 2015) is designated 2 RP; volume 3 (September 4, 2015) is designated 3 RP; volume 4 (September 8, 2015) is designated 4 RP.

is April 23, 2021. 2 RP 6, 99-100. After he was incarcerated, Mr. Monroe sent the maternal grandmother aggressive, abusive letters, and she stopped taking his phone calls because they were so upsetting. 2 RP 52.

In March 2014, the mother dropped A.M.M.A. off with his maternal grandmother and disappeared for three weeks. 2 RP 40. The grandmother made “a very difficult decision” to call Child Protective Services. 2 RP 40. On March 17, 2014, the Department of Social and Health Services filed a Dependency Petition, the trial court entered an agreed Order of Dependency on May 7, 2014, and an Order of Disposition, setting forth a court-ordered service plan, was entered on May 28, 2014. 3 RP 36; Ex. 3.

1. The Department offered services and visitation to the father while he was incarcerated

Department social worker Natalie Judd was assigned to A.M.M.A.’s case when the child was placed in care in March 2014. 2 RP 90, 92. At that time, Ms. Judd identified Mr. Monroe’s parental deficiencies to include his lengthy incarceration and his resulting inability to parent A.M.M.A. 2 RP 99. After a contested disposition hearing, the court ordered Mr. Monroe to complete a psychological evaluation with a parenting component, a substance abuse evaluation, random UAs, and a domestic violence assessment. 2 RP 99, 3 RP 70. The Department

requested the domestic violence assessment because of reports of Mr. Monroe's controlling behaviors. 3 RP 71.

Ms. Judd spoke with a Department of Corrections counselor to determine what services could be offered to Mr. Monroe in prison. 3 RP 29. While some services were not available, Mr. Monroe was able to take parenting classes, and the Department was able to arrange for a psychological evaluation. 3 RP 29. Ms. Judd maintained contact with Mr. Monroe's DOC counselors and had monthly phone meetings with his counselors and with Mr. Monroe. 3 RP 30. She regularly sent Mr. Monroe letters to inform him of his service requirements and to provide case updates. 2 RP 101; Ex. 7. Initially, Mr. Monroe sent Ms. Judd responsive letters. 3 RP 33; Ex. 18. After he was served with the termination petition, Mr. Monroe became angry and aggressive during his phone calls with Ms. Judd. 2 RP 103. Because of this, in June 2015, Ms. Judd stopped the phone conversations and communicated with Mr. Monroe solely by letter. 2 RP 103.

Mr. Monroe never indicated he was having trouble communicating with Ms. Judd or that he did not understand what was expected of him. 3 RP 35. Mr. Monroe was present for case meetings and court hearings, but he would not listen to what others had to say. 3 RP 89-90. At times, he was disruptive. 3 RP 90.

2. While incarcerated, the father received 212 infractions for threats, outbursts, and assaulting staff

Department of Corrections (DOC) Classification Counselor Margaret Hobbs was very familiar with Mr. Monroe; she served as his counselor from July 2009 until April 2010, during one of his previous incarcerations, and from April until July 2015, during his current incarceration. 1 RP 94, 96-97. Ms. Hobbs met with Mr. Monroe frequently and allowed him to use her office phone to contact his Department social worker. 1 RP 97. Ms. Hobbs described Mr. Monroe as “extremely demanding” and indicated he would get very upset when things did not occur when he wanted them to. 1 RP 107.

Mr. Monroe had been incarcerated on and off for twenty years. 2RP 101. Between 1995 and 2015, Mr. Monroe received 212 infractions while incarcerated. 1 RP 101. In 2015 alone, he received eight major infractions. 1 RP 101. Mr. Monroe received infractions for general outbursts, 23 separate staff assaults, disobeying rules, and resisting staff orders. 1 RP 102.

While incarcerated, Mr. Monroe completed three required sessions of anger management classes in 2006, 2013, and 2014. 1 RP 99, 112; Ex. 16-17. Ms. Hobbs explained that one mandated session was normal, but requiring an inmate to complete three sessions was not normal. 1 RP 113.

Mr. Monroe continued to receive infractions after completing the anger management programs, and, at trial, his most recent infraction occurred two months earlier in July 2015. 1 RP 103-04. Ms. Hobbs observed no change in Mr. Monroe's aggression. 1 RP 106. While Mr. Monroe verbalized that he wanted to be treated like everyone else, Ms. Hobbs indicated that he did not know "how to act like everybody else." 1 RP 106.

At the time of trial, Mr. Monroe was residing in closed custody, in the next to highest custody level. 1 RP 102. Mr. Monroe's many infractions also led to a change in his release date. 1 RP 105. As part of the sanctions, Ms. Hobbs estimated Mr. Monroe lost good conduct time totaling approximately 300 days. 1 RP 105-06.

DOC Correctional Unit Supervisor Jeffery Flick previously worked as a counselor in the prison's intensive management unit. 2 RP 74. Mr. Monroe was an inmate in the intensive management unit from January 6, 2014 to November 17, 2014, April 12, 2015 to April 21, 2015, and from June 30, 2015 to July 20, 2015. 2 RP 74. Placement in the intensive management unit indicated Mr. Monroe posed a risk to the general population and regular prison. 2 RP 79. As Mr. Flick explained:

[Mr. Monroe] does not like the word no. And when he gets bad news he misbehaves. He threatens people. He just poses a real threat to the safety of the institution, officers, and other inmates.

2 RP 80.

Mr. Flick had multiple interactions with Mr. Monroe after hearings in A.M.M.A.'s case. 2 RP 80. When Mr. Monroe received news he interpreted negatively, officers would have to place him in wrist restraints in an attempt to control his aggressive outbursts. 2 RP 81. Mr. Flick explained six officers would work to try to get control of Mr. Monroe. “[I]t just turned our whole programming and everything upside down for the whole entire day, and that became a daily basis,” Mr. Flick noted. 2 RP 81. After a period of demonstrated positive behavior, an inmate in the intensive management unit could return to the general population. 2 RP 83. Mr. Monroe was able to maintain his behavior in the general population for some time, but then he would return to the intensive management unit. 2 RP 84.

DOC Classification Counselor Roberto Mendiola served in the prison's Echo Unit, a closed-custody unit. 2 RP 4-5. Mr. Monroe was assigned to the Echo Unit for a month from July 20, 2015 to August 20, 2015. 2 RP 5. When Mr. Monroe arrived, Mr. Mendiola met with him to establish goals. 2 RP 6-7. Mr. Mendiola completed a needs assessment and identified Mr. Monroe had high needs in areas involving his aggression, attitudes, behaviors, coping skills, sexual deviancy, community employment, friends, alcohol, drug use, and mental health. 2 RP 8.

3. The father's psychological evaluation revealed concerns about his parenting ability

Clinical psychologist Kevin Zvilna conducted psychological evaluations and parenting assessments for the Department. 1 RP 44, 49. In January 2015, he conducted an evaluation of Mr. Monroe at the prison. 1 RP 50-51; Ex. 1. In performing the evaluation, Dr. Zvilna relied upon various testing measures including an IQ test, a personality test, a general mental status examination, and two objective parenting evaluations. 1 RP 52. Based upon the tests, Dr. Zvilna reached a number of rule-out diagnoses, indicating there was evidence pointing to a specific diagnosis, but not enough to give a full diagnosis. 1RP 52-53, 55.

Dr. Zvilna diagnosed Mr. Monroe with a rule-out diagnosis of Attention Deficit Disorder, Not Otherwise Specified, and Antisocial Personality Disorder, based upon Mr. Monroe's long history of impulsivity, his exploitation of others, and his assaultive behavior. 1 RP 55. Dr. Zvilna concluded that Mr. Monroe had control issues based upon the psychological testing and as evidenced in the transcripts of phone calls between Mr. Monroe, his great-grandmother, and his girlfriend. 1 RP 57, 61-62; Ex. 32.

Mr. Monroe described his relationship with A.M.M.A. as positive. 1 RP 63. Dr. Zvilna observed Mr. Monroe and A.M.M.A. for 20 to 30

minutes during a visit. 1 RP 64. Dr. Zvilna agreed the interaction was a positive one; Mr. Monroe cared for the child. 1 RP 65. However, Dr. Zvilna noted: “[O]ne of my concerns was really that [Mr. Monroe] would not have a chance to really be a primary parent for at least the next six years.” 1 RP 65. Mr. Monroe was scheduled to be incarcerated for six more years, and Dr. Zvilna felt this was a long time for A.M.M.A. to wait. 1 RP 67-68.

Dr. Zvilna reviewed transcripts from Mr. Monroe’s threatening telephone calls and concluded they demonstrated Mr. Monroe’s manipulation of others, his negative attitude toward women, and they presented significant concerns regarding Mr. Monroe’s parenting ability and modeling behavior. 1 RP 68-69; Ex. 32.

4. The Department maintained A.M.M.A.’s placement in relative care until the child had to be removed due to Mr. Monroe’s threats

For the majority of the dependency case, A.M.M.A. was placed in relative care. 3 RP 72. When Ms. Judd was initially assigned to the case in March 2014, A.M.M.A. was placed in licensed foster care. 2 RP 105. The Department used a relative search process to determine whether any relatives, paternal or maternal, were available to serve as a placement for A.M.M.A. 4 RP 70.

Cortez Jackson, Mr. Monroe's half-brother, and Mr. Jackson's partner, Lorraine Lahas, stepped forward and volunteered to serve as a relative placement for A.M.M.A. 4 RP 70. Mr. Monroe requested and supported this placement option. 2 RP 105. In May 2014, the dependency court ordered that A.M.M.A. be placed in relative care, and he moved to live with Mr. Jackson and Ms. Lahas. 2 RP 105. A.M.M.A. was successfully placed with these relatives for over a year, until June 2015 when Mr. Monroe threatened to kill Mr. Jackson, Ms. Lahas, and their children. 2 RP 106; 4 RP 71; Ex. 32. Due to the nature of the threats, A.M.M.A. was removed from the relative care home and placed in licensed care, where he was living at the time of trial. 2 RP 106.

5. The father threatened the relative placement when a June 26, 2015 visitation failed to occur

At the end of May 2015, Mr. Monroe's grandmother, Bernice Nurse, was authorized to begin providing transportation for A.M.M.A. to attend visitation with his father at the prison. 3 RP 17. Ms. Nurse had a criminal history. 2 RP 122. In 1990, she walked in to her house, discovered her husband in bed with her sister, and she attacked him. 2 RP 122. She was convicted of Assault in the Second Degree for the domestic violence offense 2 RP 122; 3 RP 14. In August 2014, Ms. Judd notified Ms. Nurse that under Washington law, Ms. Nurse's conviction was a

permanently disqualifying offense, and the Department could not allow her to have unsupervised contact with A.M.M.A. 3 RP 14. However, the dependency court allowed Ms. Nurse to provide transportation for visits between Mr. Monroe and A.M.M.A. 2 RP 122, 128.

The Department asked that no one else be with Ms. Nurse during visits or be present in her vehicle, and the dependency judge told Ms. Nurse no one else should be with her. 3 RP 19-20. Immediately following the court hearing authorizing the transportation, Ms. Judd met with Ms. Nurse and Ms. Lahas, the relative placement. 3 RP 17. Ms. Judd told Ms. Nurse that visits had been occurring twice a month for two hours from 1:00 – 3:00 pm and they should stay that way. 3 RP 17. After some difficulties with the first visit on June 12, 2015, Ms. Judd left Ms. Nurse a message again reminding her that visits were to occur twice a month for two hours, from 1:00 – 3:00 pm. 3 RP 21-22.

6. Mr. Monroe's grandmother was late to pick A.M.M.A. up for the visit and it could not occur

On June 26, 2015, Ms. Nurse was scheduled to pick A.M.M.A. up at his daycare at 12:00 p.m. 2 RP 128, 130. Ms. Nurse got lost and by the time she arrived, it was after 2:30 p.m. 2 RP 128, 130. The daycare provider would not let Ms. Nurse take A.M.M.A. because Ms. Lahas indicated he needed to be somewhere at 4:00. 2 RP 130. The visit did not

occur. 2 RP 130. At trial, Ms. Nurse indicated she was not upset, because she knew she was late. 2 RP 130. However, she told Mr. Monroe that she was unable to bring A.M.M.A. because of Ms. Lahas' schedule. 2 RP 130.

7. As a result of the canceled visit, the father threatened to “smoke” the relative placement care providers and their children

Following the cancelled visit, Ms. Judd received a phone message from the relative caregivers, Cortez Jackson and Lorraine Lahas, indicating the family received a threatening phone message from Mr. Monroe, and they were very concerned for their safety and the safety of their children. 2 RP 104-05. In the message, Mr. Monroe told Mr. Jackson:

You punk ass...you got this bitch tryin' to dictate my motherfuckin' son...when you shoulda gave my son...to my grandmother. ...You can play this for the court.... I'm gonna smoke you...I'm gonna smoke you and that bitch.... Fuck you and your kids.... They can die with you...That's how serious I am.

Ex. 32a, p.3.

Ms. Judd contacted DOC seeking a copy of this phone call as well as other threatening phone calls the father made that day. 2 RP 63-64. Ms. Judd listened to the CDs and identified the voices of Mr. Monroe, the great-grandmother Bernice Nurse, and Ms. White, Mr. Monroe's girlfriend. 2 RP 110; Ex. 25. The phone calls were transcribed and admitted at trial. Ex. 32a-c.

The recording and transcripts reveal Mr. Monroe made multiple threats of violence against the relative placement because of the cancelled visit. During a phone call with his girlfriend Brandi White, he stated:

My grandma went up there to go get my son then his bitch went and didn't even get my son to my grandma.... [Y]ou...show him where [Cortez Jackson and Lorraine Lahas' house] it's at, you tell Ant to go around the lake and light that mother fucker up. ...I'm not playin' no fuckin' games. I'm dead serious. He gonna get this message loud and clear.

Ex. 32a, p. 10, 12.

Mr. Monroe also told his girlfriend:

You need to go and beat that bitch's [Ms. Lahas'] ass. That's what you need to do. ...You need to pull that bitch by her hair and drag her all up and down the street. You don't even need to hit the bitch. Drag her by her hair, up and down the mother fuckin' street. Make the bitch get concrete burns. ...I want you to beat that bitch's ass, that's what I want you to go do.

Ex. 32b, p. 6-8.

8. The relatives asked that A.M.M.A. be removed because they were concerned for their safety

On June 30, 2015, Mr. Jackson contacted Ms. Judd and asked that A.M.M.A. be removed from his care because he was concerned for the safety of his family and for A.M.M.A. 3 RP 8. A case meeting was held on July 7, 2015. 3 RP 8. At the meeting, Mr. Jackson played Mr. Monroe's threatening message. 3 RP 9.

During the meeting, Mr. Monroe did not apologize, and he did not indicate his threats were a misunderstanding. 4 RP 76. After his message was played to the meeting attendees, Mr. Monroe laughed. 3 RP 11. Mr. Jackson and Ms. Lahas remained fearful of Mr. Monroe and requested Department help to obtain a restraining order against him. 4 RP 75.

Mr. Jackson and Ms. Lahas were torn; they loved A.M.M.A. 4 RP 75. The Department made the ultimate decision that it was not safe for A.M.M.A. to remain in their care because Mr. Monroe could not be controlled. 4 RP 75. Due to the nature of Mr. Monroe's threats and the emergent safety risk, the Department requested removal of A.M.M.A. from the home. 2 RP 106. Mr. Monroe blamed Lorraine Lahas. 4 RP 54

9. The father's role in A.M.M.A.'s life was minimal

Ms. Judd characterized Mr. Monroe's role in A.M.M.A.'s life as minimal. 3 RP 40. Mr. Monroe had been incarcerated for much of A.M.M.A.'s young life, and there was very little contact between Mr. Monroe and A.M.M.A. until the Department became involved. 3 RP 40. Ms. Judd did not believe the visits allowed Mr. Monroe to build his relationship with the child. 3 RP 41. The visits were short, at most two hours per visit. 3 RP 41. Between March 2012 and March 2014, Mr. Monroe had one visit with A.M.M.A. 2 RP 49. After the dependency case was filed, Mr. Monroe first visited with his son in October 2014. 3 RP 141. From

October 2014 to June 2015, he started visiting his son regularly. 3 RP 141. Initially, visits occurred twice a month for two hours per visit, reverted to once per month, and then returned to two times per month. 3 RP 141.

10. At trial, A.M.M.A. was living in a stable licensed care home, and the Guardian ad Litem agreed it was in his best interest to remain there

At trial, A.M.M.A. was living in a pre-approved adoptive home. 3 RP 42. He had adapted very well to his new home. 3 RP 43. Ms. Judd had never seen him as playful, talkative, and joyful as he appeared in this new placement. 3 RP 43. “[H]e just seems...lighter, less stressed.” 4 RP 72. Ms. Judd believed it was in A.M.M.A.’s best interest to be adopted by his current caregivers. 3 RP 44. She did not believe Mr. Monroe should maintain a continuing role in A.M.M.A.’s life. 3 RP 45. Based upon Mr. Monroe’s manipulative, controlling, aggressive behavior, she felt it would be dangerous and detrimental to the child if Mr. Monroe continued to maintain a role in A.M.M.A.’s life. 3 RP 45.

For A.M.M.A. to be successful in the rest of his life, Ms. Judd believed he needed to have a clean slate. 3 RP 46. Ms. Judd explained A.M.M.A. needed to know he had a stable family that loved him, would take care of him, and would meet all his needs. RP 46. She noted: “This is a three-and-a-half-year-old child...[a]nd what he really needs is a consistent, safe, and a stable home.” 3 RP 46.

A.M.M.A.'s guardian ad litem, Marianne Yamashita, was director of Northwest Family and Children Services. 3 RP 81. She had served as director of the agency for 40 years and had been a guardian ad litem for over 700 children. 3 RP 82. She was appointed to A.M.M.A.'s case in March 2014. 3 RP 85.

Ms. Yamashita supported A.M.M.A.'s move to foster care because she did not feel that A.M.M.A. or his caregivers were safe due to Mr. Monroe's threats. 3 RP 93. Ms. Yamashita testified that the Department adequately explored whether the relative placement could be maintained. 3 RP 92. She concluded that any benefit A.M.M.A. gained by maintaining family connections was outweighed by concerns for his safety. 3 RP 109, 112. His safety, stability and permanency were more important. 3 RP 112. Ms. Yamashita concluded: "I just can't see that [Mr. Monroe] would be a positive influence in his son's life." 3 RP 105.

11. After the Department filed a termination petition, Mr. Monroe filed a guardianship petition seeking the appointment of his great-grandmother as A.M.M.A.'s guardian

On January 13, 2015, the Department filed a Petition for Termination of Parent-Child Relationship. CP 330-354. In April 2015, Mr. Monroe began to talk with Ms. Judd about having his grandmother, Ms. Nurse, serve as a permanent placement option for A.M.M.A. 3 RP 35. Ms.

Judd again explained that Ms. Nurse could not be approved because of her permanently disqualifying criminal conviction. 3 RP 35. Nevertheless, in July 2015, Mr. Monroe filed a guardianship petition, seeking to appoint Bernice Nurse as A.M.M.A.'s guardian. CP 355-59.

At the hearing in September 2015, the trial court consolidated the guardianship and termination petitions. 1 RP 26. The consolidated guardianship hearing and termination of parental rights trial took place over four days in September 2015. CP 60, 294. At trial, the court found that a guardianship with the paternal grandmother was not in A.M.M.A.'s best interests. CP 62 (FF 2 7). After comparing the admitted phone recordings with Ms. Nurse's testimony, the trial court concluded that Ms. Nurse would say or do anything to get custody of A.M.M.A. and much of her testimony was false. CP 63 (FF 2 7 3). The trial court found no basis to establish a guardianship. CP 64 (FF 2 8).

The trial court found the statutory elements of RCW 13.34.180(1) were established, both parents were currently unfit to parent, and termination of parental rights was in A.M.M.A.'s best interest. CP 294-302. At the conclusion of the hearing, the trial court entered an order denying the guardianship petition and granting termination of the parental rights. CP 60-66, 294-302. Mr. Monroe timely appeals.

IV. ARGUMENT

A. **The Trial Court Properly Exercised Its Discretion When It Denied The Father's Motion For A Continuance**

Mr. Monroe argues the trial court abused its discretion when it denied his motion to continue the termination trial to allow additional time for the trial court to “fully and fairly” consider a guardianship and so he could present all relevant evidence. Br. of Appellant, p. 20. The trial court denied the motion and its decision was both reasonable and a proper exercise of its discretion.

1. **In denying the continuance, the trial court relied upon the supported facts, applied the correct legal standard, and reached a reasonable result**

In both civil and criminal cases, a decision to “grant or deny a motion for a continuance rests within the sound discretion of the trial court.” *State v. Downing*, 151 Wn.2d 265, 272, 87 P.3d 1169 (2004). Trial court decisions to grant or deny motions for continuances are reviewed for abuse of discretion. *State v. Hurd*, 127 Wn.2d 592, 594, 902 P.2d 651 (1995); *Willapa Trading Co. v. Muscanto, Inc.*, 45 Wn. App. 779, 785, 727 P.2d 687 (1986). A trial court abuses its discretion when it exercises that discretion based on untenable grounds or reasons. *State ex rel. Carroll v. Junker*, 79 Wn.2d 12, 26, 482 P.2d 775 (1971). A discretionary decision rests on “untenable grounds” or is based on “untenable reasons” if the trial

court relies on unsupported facts or applies the wrong legal standard. *Mayer v. Sto Industries, Inc.*, 156 Wn.2d 677, 684, 132 P.3d 115 (2006), citing *State v. Rohrich*, 149 Wn.2d 647, 654, 71 P.3d 638 (2003). Whether an abuse of discretion has occurred will depend on the particular facts and circumstances of each case. *Hampson v. Ramer*, 47 Wn. App. 806, 813, 737 P.2d 298 (1987).

An appellate court will find an abuse of discretion only when no reasonable person would take the position adopted by the court. *In re Dependency of J.H.*, 117 Wn.2d 460, 472, 815 P.2d 1380 (1991). Here, the trial court relied upon the supported facts, applied the correct legal standard, and reached a reasonable result; there was no abuse of discretion.

2. The termination trial had been pending for over four months

In considering a motion to continue a termination of parental rights trial, the court should take into account “diligence, due process, the need for an orderly procedure, the possible effect on the trial and whether prior continuances were granted.” *In re Dependency of V.R.R.* 134 Wn. App. 573, 581, 141 P.3d 85 (2006).

On January 13, 2015, the Department filed a Petition for Termination of Parent-Child Relationship. CP 330-354. In April 2015, the

trial court entered an order scheduling the case for a five day trial to begin September 2, 2015. CP 315-318. On July 21, 2015, Mr. Monroe filed a petition seeking the appointment of his grandmother, the child's great-grandmother, as the guardian of the child. CP 355-59. Six days before trial, Mr. Monroe filed a motion to continue the trial, seeking additional time to adequately investigate the proposed guardian. CP 204-06.

On the first day of trial, Mr. Monroe's attorney requested a two-week continuance to review the updated discovery that the Department had just provided and to interview two witnesses the father had just identified. 1 RP 3-5. Mr. Monroe's attorney argued that he had not had sufficient time to communicate with Mr. Monroe because the father was in DOC custody, it was difficult to contact him, Mr. Monroe was limited to ten-minute phone conversations, and the attorney did not feel this provided sufficient opportunity to consult. 1 RP 4, 11. Mr. Monroe's attorney acknowledged he had a couple of substantive conversations with Mr. Monroe. 1 RP 4-5.

The Department objected to the motion, arguing the recent discovery was produced in compliance with the trial court's April 2015 scheduling order. 1 RP 6; CP 315-18. The Department further argued that the proposed guardian had a permanently disqualifying criminal conviction, and the Department could not recommend her for placement. 1

RP 8. Finally, the Department argued the trial had been pending for over four months, the father's attorney had been assigned for over a year, the father's witnesses could have been identified earlier, and the father's unavailability for consultation was due, in large part, to his own behavior in prison which led to multiple infractions and restrictive custodial placements. 1 RP 12-13, 102. The child's guardian ad litem joined the Department's objection to the continuance. 1 RP 13-14.

The trial court recessed the trial for one and one-half hours to allow Mr. Monroe's attorney time to review the discovery and to explore the availability of the additional witnesses. 1 RP 10-11. The trial court noted it could not control the limitations placed by the Department of Corrections on Mr. Monroe's availability to consult with his attorney, and a continuance would not be granted on that basis. 1 RP 11.

After a break, Mr. Monroe's attorney noted that he had sufficient time to review the additional discovery, but he renewed his motion for a continuance on the grounds that he needed to contact the additional witnesses and he had not been able to have sufficient contact with Mr. Monroe. 1 RP 12. The trial court denied the motion. 1 RP 13.

- 3. The proposed guardian was disqualified from serving as a guardian and a continuance to conduct additional investigation would not have remedied this defect**

Mr. Monroe also argues he requested an additional two weeks to “adequately investigate” the proposed guardian, Bernice Nurse. Br. of Appellant, p. 20. Specifically, Mr. Monroe requested “adequate time to investigate whether Ms. Nurse was available as a proper guardian.” Br. of Appellant, p. 20.

To be designated a proposed guardian in a guardianship petition, a person must meet the minimum requirements to care for a child established by the Department under RCW 74.15.030. RCW 13.36.030(2). The Department requires background checks on relatives who may be caring for a child. RCW 74.15.030(2)(c); WAC 388-06A-0110(2)(c). Convictions for certain felony crimes *permanently prohibit*, or disqualify, an individual from being authorized to have unsupervised access to children. WAC 388-06A-0170(1). The disqualifying felony crimes include spousal abuse. WAC 388-06A-0170(1)(b). Ms. Nurse was permanently disqualified from serving as a guardian due her criminal conviction for spousal abuse. 3 RP 14. An additional two weeks would not have remedied this barrier to A.M.M.A.’s placement with her.

4. The OPD home study was not limited due to the evaluator’s inability to access Department records

Mr. Monroe asked Office of Public Defense (OPD) social worker Michael Aldrich to conduct a relative home study of Ms. Nurse’s home. 4

RP 8. Although Mr. Aldrich indicated that the Department might have confidential information to which he did not have access to in conducting his home study, he did not indicate his home study was limited in scope for this reason. 4 RP 8. Instead, the record established any limitation in the scope of his home study was the result of the nature of the services he was asked to provide: he was contracted to provide a relative home study, not a guardianship or adoption placement report. 4 RP 24-25, 28. His home study was not limited due to information the Department failed to provide as Mr. Monroe wrongly suggests. Br. of Appellant, p. 22-23.

5. *In re R.H.* can be distinguished on its facts

Mr. Monroe's reliance on *In re Welfare of R.H.*, 176 Wn. App. 419, 309 P.3d 620 (2013) is misplaced. In *R.H.*, the proposed guardian, an aunt, had been identified four months prior to the termination trial, the proposed guardian completed background checks and the State "was in the process of approving the aunt for guardianship placement." *In re R.H.*, 176 Wn. App. at 429. More importantly, the Department acknowledged in that case that the proposed guardian would probably be the permanent placement of the children whether or not the court terminated parental rights. *In re R.H.*, 176 Wn. App. at 429. Because of these factors, the *R.H.* court found that the denial of the continuance of the termination trial deprived the father of his right to present material evidence that guardianship with the aunt would allow the children to have a permanent

home and maintain the relationship with their father. *In re R.H.*, 176 Wn. App. at 429.

Here, in contrast to *R.H.*, Mr. Monroe brought a last minute motion to require the Department to investigate a home that cannot be considered for placement. This was no surprise to Mr. Monroe; the Department consistently maintained that Ms. Nurse could not be approved due to her disqualifying conviction. 3 RP 14, 35. Mr. Monroe filed his petition in July 2015, and any motion to require further investigation of the proposed guardian should have happened contemporaneously with that filing and it presented no basis to delay the trial. Moreover, at trial, Mr. Monroe's attorney did not renew his request for a continuance on this basis. Instead, he argued for a two-week continuance to investigate newly identified witnesses and because Mr. Monroe's incarceration prevented him from having sufficient pre-trial discussions. 1 RP 12.

6. The father is unable to demonstrate prejudice or that the trial outcome would have been different if the continuance had been granted

On the first day of trial, Mr. Monroe's attorney requested a continuance so he could have additional time to prepare and present all material relevant to Mr. Monroe's defense. Br. of Appellant, p. 24. In denying the motion, Mr. Monroe argues the trial court violated his fundamental due process rights, citing *In re Dependency of V.R.R.*, 134 Wn. App. 573, 141 P.3d 85 (2006). Br. of Appellant, p. 24. But to demonstrate that the denial of a continuance violated his due process rights, Mr. Monroe

must show that he was prejudiced by the denial or that the outcome of the trial would have been different. *In re V.R.R.*, 134 Wn. App. at 581.

In *V.R.R.*, the father's attorney was appointed the day before the termination trial, and the Department agreed to a continuance. *In re V.R.R.*, 134 Wn. App at 575. However, when the father failed to appear on the day of trial, the Department opposed a continuance and proceeded to present testimony. *In re V.R.R.*, 134 Wn. App. at 575. In holding that the trial court abused its discretion in denying the father's request for a continuance, the Court noted that the father's attorney was not prepared to represent the father, was not prepared to do an opening statement or cross examination, and had received no case documents. *In re V.R.R.*, 134 Wn. App. 585-86.

Here, the facts are very different. Mr. Monroe's attorney received and reviewed discovery, made appropriate objections on cross-examination, presented testimony in support of the father's position, and argued vigorously during closing argument. 1 RP 12, 58; 2 RP 118-136; 3 RP 123-49; 4 RP 5-17; 32-42; 59-63; 78-81; 94-99. Mr. Monroe fails to indicate how his attorney was ineffective, and the record does not support such an assertion. Further, the trial judge considered a number of factors in denying the father's motion including: 1) the trial court was unable to control the limitations placed on the incarcerated parent's availability by the Department of Corrections; 2) the pretrial recess allowed the father's attorney time to review the recently provided discovery; 3) the recess review did not lead the father's attorney to identify new witnesses; 4) the father's attorney retained the ability to renew the motion to continue

should the father be surprised by evidence presented during the trial. 1 RP

13. In denying the motion, the trial court noted:

If it comes to light that anything that you recently received becomes critical of the trial itself you can renew your motion as to any particular part of the Department's presentation of their case, if you feel somehow it's prejudicing you for receiving something at the last minute. Based on what you said at this point I don't believe that will be the case.

1 RP 13.

For these reasons, the father does not establish that he was prejudiced or received ineffective assistance of counsel, and his due process argument fails. Given the trial had been pending for over four months, the trial court acted within its discretion in denying the father's motion for a continuance, and the order should be affirmed.

B. Faced With Competing Guardianship and Termination Petitions, The Trial Court Determined That Guardianship Was Not In The Child's Best Interests And That The Department Met The Statutory Requirements For Termination

The rights of a dependent child include the right to physical and mental health, safety, and basic nurture, a safe, stable, and permanent home, and a speedy resolution of the dependency and termination proceedings. RCW 13.34.020; *In re Dependency of C.R.B.*, 62 Wn. App. 608, 615, 814 P.2d 1197 (1991). The court must consider both the fundamental right of the parent to the care and custody of the child and the child's right to health and safety. *In re Dependency of M.H.P.*, 184 Wn.2d

741, 779 fn. 7, 364 P.3d 94 (2015). Where the parent's interests conflict with the child's rights, the rights of the child prevail. RCW 13.34.020; *In re Sego*, 82 Wn.2d 736, 738, 513 P.2d 831 (1973).

A trial court faced with competing petitions for guardianship and termination must first determine whether guardianship serves the child's best interests. *In re Dependency of A.C.*, 123 Wn. App. 244, 246, 98 P.3d 89 (2004) (analyzing competing petitions under the old guardianship statute RCW 13.34.231 (2000), *repealed* by Laws of 2010, ch. 272 sec. 16). A trial court may order a guardianship be established if the six statutory elements of RCW 13.36.040(2)(c) are established by a preponderance of the evidence and the court finds that guardianship, rather than termination of parental rights or continued efforts to return the child to parental care, is in the child's best interests. RCW 13.36.040(2); *In re the Welfare of A.W.*, 182 Wn.2d 689, 711, 344 P.3d 1186 (2015). The statutory elements are:

- (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.

RCW 13.36.040(2)(c).

A trial court may order termination of parental rights if the Department proves the six statutory elements of RCW 13.34.180(1) by clear, cogent, and convincing evidence. RCW 13.34.190; *In re Dependency of K.S.C.*, 137 Wn.2d 918, 925, 976 P.2d 113 (1999); *In re Dependency of K.N.J.*, 171 Wn.2d 568, 582, 257 P.3d 522 (2011). These statutory elements are:

- (a) That the child has been found to be a dependent child;
- (b) That the court has entered a dispositional order pursuant to RCW 13.34.130;
- (c) That the child has been removed or will, at the time of the hearing, have been removed from the custody of the parent for a period of at least six months pursuant to a finding of dependency;
- (d) That the services ordered under RCW 13.34.136 have been expressly and understandably offered or provided and all necessary services, reasonably available, capable of correcting the parental deficiencies within the foreseeable future have been expressly and understandably offered or provided;

- (e) That there is little likelihood that conditions will be remedied so that the child can be returned to the parent in the near future;...and
- (f) That continuation of the parent and child relationship clearly diminishes the child's prospects for early integration into a stable and permanent home.

RCW 13.34.180(1).

The court must also find that termination is in the best interests of the child. RCW 13.34.190(1)(b). For this element, the burden of proof is by a preponderance of the evidence. *In re Welfare of A.J.R.*, 78 Wn. App. 222, 896 P.2d 1298, *review denied*, 127 Wn.2d 1025 (1995).

1. The Department and the father pleaded many of the same elements in their competing guardianship and termination petitions

The first five statutory requirements for guardianship and termination of parental rights are the same. RCW 13.36.040(2)(c)(i)-(v); RCW 13.34.180(1)(a)-(e). In A.M.M.A.'s case, in January 2015, the Department filed a termination petition alleging that parental rights should be terminated based upon the statutory elements set forth in RCW 13.34.180(1). CP 331-33. In July 2015, Mr. Monroe filed a guardianship petition alleging that a guardianship should be established based upon the statutory elements set forth in RCW 13.36.040(2)(c)). CP 355-59. In their respective petitions, both the Department and Mr. Monroe alleged that the first five statutory elements had been established. The trial court found:

“As both sides agree that these same elements are in existence, there is no need to prove them and the court makes the finding that they are true.” CP 63 (Finding of Fact (FF) 2 7 1); CP 296 (FF 2 6). Mr. Monroe challenges this finding, but he does not present argument supporting his challenge. Br. of Appellant, p. 1. Accordingly, his assignments of error are deemed abandoned. *Seattle School Dist. No. 1 of King County v. State*, 90 Wn.2d 476, 585 P.2d 71 (1978). Further, the trial court found the Department provided additional evidence at the termination trial that also proved the statutory elements. CP 296 (FF 2 6).

At trial, because the first five elements of the guardianship and termination statutes were not in dispute, the trial court next examined whether a guardianship served A.M.M.A.’s best interests. The trial court found that guardianship was not in A.M.M.A.’s best interests. CP 62 (FF 2 7). The trial court determined that the proposed guardian, Ms. Nurse, had a permanently disqualifying criminal conviction and she did not demonstrate that she was a suitable guardian. The court found:

After comparing the admitted phone recordings made following the missed visit in June 2015 with Mrs. Nurse’s testimony, the court concludes that Mrs. Nurse would say or do anything to get custody of this child and concludes that much of Mrs. Nurse’s testimony proved to be false. Although Mrs. Nurse said that her role in her family is to “stand tall” and “take responsibility” for her actions, the phone calls showed that she did not stand tall against the father and, instead, instigated and agitated his anger. She also attempted to allow Brandi White, the father’s girlfriend, to have an

unauthorized visit with the child and father and had an unapproved overnight visits with the child even though she knew these actions were not approved. ...Mrs. Nurse has not shown that she could be proper placement for the child and that she would not be controlled by the father. Mrs. Nurse's conduct testimony and permanent disqualifier all prove that it would not be in this child's best interests to be placed with her.

CP 63 (FF 2 7 3); CP 299 (FF 2 19).

The decision of the trial court is entitled to great deference on review and its findings of fact must be upheld if they are supported by substantial evidence in the record. *In re K.S.C.*, 137 Wn.2d at 925. Substantial evidence is evidence in sufficient quantity to persuade a fair-minded, rational person of the truth of the declared premise. *World Wide Video, Inc., v. City of Tukwila*, 117 Wn.2d 382, 387, 816 P.2d 18 (1991). The reviewing court may not decide the credibility of witnesses or weigh the evidence. *In re Dependency of A.V.D.*, 62 Wn. App. 562, 568, 815 P.2d 277 (1991). Substantial evidence supports the trial court findings.

2. The proposed guardian had a disqualifying criminal conviction and did not demonstrate the character, suitability, or competence to serve as A.M.M.A.'s guardian

The Department has the power to investigate any person, including relatives, for character, suitability, and competence in the care and treatment of children. RCW 74.15.030(3). To be designated a proposed guardian in a guardianship petition, a person must be age twenty-one or

over and must meet the minimum requirements to care for a child as established by the Department under RCW 74.15.030. RCW 13.36.030(2). The Department must conduct background checks on relatives who may be caring for a child. RCW 74.15.030(2)(c); WAC 388-06A-0110(2)(c). Convictions for certain felony crimes *permanently prohibit*, or disqualify, an individual from being authorized to have unsupervised access to children. WAC 388-06A-0170(1). The disqualifying felony crimes include spousal abuse. WAC 388-06A-0170(1)(b).

In July 2015, Bernice Nurse, A.M.M.A.'s great-grandmother, filed a petition seeking to be appointed guardian for the child. 2 RP 118, 123; CP 355-59. In 1990, Ms. Nurse was convicted of spousal abuse, a crime that permanently disqualified her as a placement resource for A.M.M.A. 3 RP 14.

Although Ms. Nurse did not approve of Mr. Monroe's past behavior, she felt he had been wrongfully accused and prosecuted. 2 RP 77. She believed she was able to calm Mr. Monroe down when he was in an "uproar." 2 RP 124. She testified she was able to "stand tall" and tell him no. 2 RP 131. The facts surrounding a June 2015 scheduled visit show otherwise.

At trial, Ms. Nurse testified that she had no idea that visits were only to occur for two hours. 2 RP 128. Ms. Nurse testified the social

worker, Ms. Judd, did not explain any of the visitation rules to her prior to the visits. 2 RP 144. She said Ms. Judd did not talk to her about the length of visits or the people who were allowed to be present during visits. 2 RP 145. This was contrary to the testimony offered by Ms. Judd. Ms. Judd testified that immediately following the court hearing authorizing Ms. Nurse to provide visit transportation, Ms. Judd met with Ms. Nurse. 3 RP 17. Ms. Judd told Ms. Nurse that visits were scheduled twice a month for two hours from 1:00 – 3:00 pm and they should stay that way. 3 RP 17. After some difficulties with the first visit on June 12, 2015, Ms. Judd again reminded Ms. Nurse that visits were to occur twice a month for two hours, from 1:00 – 3:00 pm. 3 RP 21-22.

At trial, Ms. Nurse testified that she was not upset about missed visit on June 26, 2015, because she knew she was late. 2 RP 130. She testified that when she called Mr. Monroe, she was not upset. 2 RP 131. The transcript of her phone call with Mr. Monroe indicates otherwise:

Ms. Nurse: [Y]our grandmother is so fuckin', fuckin' pissed. It's pathetic. I drove all the way out there Tony. All the way out there... They can't do this. ...

Mr. Monroe: Oh, I'm gonna kill her. I'm gonna kill her.

Ms. Nurse: (Unintelligible) I'll tell you to. ...

Mr. Monroe: I'm gonna fuck up his whole house. I got some hitters.

Ms. Nurse: Hey.

Mr. Monroe:: I don't care about none of that. I don't care about none of that. He crossed the line.

Ms. Nurse. Yeah. ...

Mr. Monroe: We can deal with him.
Ms. Nurse Yeah.

Ex. 32c, p. 2-3.

The conversation indicates Ms. Nurse did not calm Mr. Monroe down or “stand tall.” Instead, she agitated him, inflaming his anger.

Ms. Judd explained that she told Ms. Nurse that no one else should be with her during visits A.M.M.A.’s visits with Mr. Monroe at the prison and no one else should be present in her vehicle, and the dependency judge similarly told Ms. Nurse no one else should be with her. 3 RP 19-20. Ms. Nurse indicated she was aware that Ms. White, Mr. Monroe’s girlfriend, should not be with her during the visits. 2 RP 145.

During her testimony, Ms. Nurse denied that Ms. White was in the car with her on June 26, 2015. 2 RP 145. However, the transcripts from the telephone calls indicate that Brandi White was indeed present with Ms. Nurse as she drove to pick A.M.M.A. up for the June 26, 2015 visit with Mr. Monroe. Ex. 32a, p. 1-2; Ex. 32b, p. 2-5. Ms. White told Mr. Monroe that she had “been with your grandmother all day” because Ms. Nurse did not know how to get to the prison. Ex. 32b, p. 2-3. When Mr. Monroe, Ms. Nurse, and Ms. White were on a joint call, Mr. Monroe commented that Ms. White was “with my grandmother to pick up my son.” Ex. 32c, p. 10. Ms. Nurse did not correct him.

The guardian ad litem Ms. Yamashita explained that Ms. White had an extensive CPS history and she had not been approved to have unsupervised contact with A.M.M.A. 3 RP 102. She noted that Ms. Nurse was in court when the dependency trial court addressed visitation and indicated no other people should be present at visitation. 3 RP 101.

Ms. Nurse testified that Mr. Jackson, the relative placement, told her that the social worker did not want A.M.M.A. to go to Ms. Nurse's house, and she did not want Ms. Nurse to have anything to do with the child. 2 RP 123. However, Ms. Nurse testified she had unsupervised contact with the child anyway, because Mr. Jackson brought A.M.M.A. to her house. 2 RP 123. A.M.M.A. spent time alone at her house overnight around Christmas and during the day on July 4, 2015. 2 RP 149. Ms. Nurse testified that Ms. Judd never told her the baby couldn't be with her. 2 RP 150.

However, in August 2014, Ms. Judd notified Ms. Nurse that under Washington law, Ms. Nurse's conviction was a permanently disqualifying offense, and the Department could not allow her to have unsupervised contact with A.M.M.A. 3 RP 14. Ms. Yamashita expressed concern that Ms. Nurse had visits with A.M.M.A. prior to being authorized by the dependency court to provide transportation. 3 RP 101. She believed the relative caregivers and Ms. Nurse should have been aware that any

visitation, especially overnight visitation, had to be approved by the Department. 3 RP 101.

The OPD home study reported that Ms. Nurse indicated she would consider returning A.M.M.A. to Mr. Monroe if the situation warranted. 3 RP 100. The guardian ad litem, Ms. Yamashita, concluded that Ms. Nurse was offering to serve as a guardian to help her grandson, Mr. Monroe. 3 RP 100. She testified:

My concern is [A.M.M.A.]. He needs to be the one that we're focused on. And he needs a permanent forever home. Not one that is just there for him until dad gets out of prison and something else changes.

3 RP 100.

Ms. Yamashita expressed concern about Ms. Nurse's vulnerability to pressure and manipulation by Mr. Monroe. 3 RP 100-01. Although Ms. Nurse had been described as one who could calm Mr. Monroe, Ms. Yamashita concluded that the telephone transcripts revealed she did this by "placating him, by scurrying around to do whatever he directs." 3 RP 101; Ex. 32. She did not think this would be a healthy situation for A.M.M.A. 3 RP 101.

Ms. Yamashita felt any paternal placement would be vulnerable and at risk due to Mr. Monroe's behaviors. 3 RP 104-05. Mr. Monroe was not going to be in a position to parent for many years, he had been

disruptive to the child's placement, and he seemed to be more focused on his own needs, rather than his son's needs. 3 RP 105. Ms. Yamashita felt foster care placement was best for A.M.M.A. and she believed Mr. Monroe's parental rights needed to be terminated. 3 RP 105.

Ms. Judd believed it was in A.M.M.A.'s best interest to be adopted by his current caregivers. 3 RP 44. Based upon Mr. Monroe's manipulative, controlling, aggressive behavior, she felt it would be dangerous and detrimental to the child if Mr. Monroe continued to maintain a role in A.M.M.A.'s life. 3 RP 45. The trial court agreed, finding the evidence established it would not be in A.M.M.A.'s best interests to be placed with Ms. Nurse. CP 64 (FF 2 7).

Substantial evidence supports the trial court's finding that guardianship with Ms. Nurse was not in A.M.M.A.'s best interests. Ms. Nurse's conduct, testimony, and permanently disqualifying criminal conviction established she would not be a proper placement for the child.

3. *In re R.H.* does not provide authority for the father's argument that he should be allowed a continuance to search for other potential guardians.

Mr. Monroe argues that even though other relatives were not specifically designated in the guardianship petition, the trial court should have granted him a continuance so other potential family members could be fully and fairly considered as A.M.M.A.'s guardian. Br. of Appellant, p. 42.

Like before, *In re R.H.*, 176 Wn. App. 419, does not provide authority for his argument.

In *R.H.*, an aunt came forward as a potential guardianship placement for the children, completed necessary paperwork, and a home study had been initiated. *In re R.H.*, 176 Wn. App. at 424. The Department was in the process of approving the aunt for guardianship placement and it expressed optimism about being able to do so. *In re R.H.*, 176 Wn. App. at 429. On appeal, the court held the trial court abused its discretion in failing to grant a continuance to allow additional time for the Department to consider whether a guardianship with the aunt could be established. *In re R.H.*, 176 Wn. App. at 429. Here, the Department investigated willing relative placement resources and A.M.M.A. was successfully placed with relatives for over a year. However, at the time of the termination trial, there were no identified, appropriate guardianship placement options for the child.

Ms. Judd talked with Mr. Monroe's sister about placement, but the sister failed to complete and return the necessary forms. Asia Turner, the father's sister, lived in Georgia with her husband and two children. 3 RP 52. She had not seen her brother in over ten years. 4 RP 78. In July 2015, when A.M.M.A. was being removed from Mr. Jackson's home, Ms. Turner contacted Ms. Judd inquiring about A.M.M.A., asking what would happen to the child. 3 RP 51, 53. Ms. Judd explained that the placement

approval process for an out-of-state placement was conducted through the Interstate Compact on the Placement of Children (ICPC). 3 RP 51, 4 RP 65. Ms. Turner indicated she would discuss it further with her husband and get back to Ms. Judd. 3 RP 52. Ms. Turner never contacted Ms. Judd again and never requested additional information about placement or the ICPC process. 3 RP 52-53, 4 RP 65.⁴ Ms. Judd noted: “We speak to a lot of relatives who may inquire as to the child. But without a direct statement [requesting] placement, the Department – it’s a lengthy process to do an ICPC.” 3 RP 53.

At the termination trial, the judge asked Mr. Monroe’s attorney whether Mr. Monroe was asking the court to consider a third potential placement plan. 3 RP 55. The attorney responded indicating that a guardianship with Ms. Turner was not before the trial court, and the evidence was offered to address whether the Department made reasonable efforts in considering other relative placement options. 3 RP 54-56.

The Department made reasonable and continuing efforts to consider relative placement resources for A.M.M.A. In March 2014, when A.M.M.A. was first placed in licensed foster care, the Department used a relative search process to determine whether any relatives, paternal or

⁴ The father cites to an email his attorney sent to the social worker in July 2015. Br. of Appellant, p. 42-43. This email was included as an attachment to the father’s memorandum in opposition to termination. CP 119. It was not offered as an exhibit at trial and should not be considered by this Court.

maternal, were available to serve as a placement for A.M.M.A. 2 RP 105; 4 RP 70. For the majority of the dependency case, A.M.M.A. was placed in relative care. 3 RP 72. Mr. Monroe chose the relatives and, had there not been a safety risk due to Mr. Monroe's threatening behavior, the Department would not have requested removal of A.M.M.A. from the relative home. 3 RP 72.

At the time of Mr. Monroe's June 2015 phone threats, the relatives were working on an adoptive home study. 3 RP 73. The Department supported and encouraged the efforts, but after the threats, the Department concluded that any relative placement resources would be in jeopardy due to Mr. Monroe's controlling, aggressive, and manipulative behavior. 3 RP 73.

At trial, guardianship was simply not a viable option for A.M.M.A. The trial court correctly determined that guardianship was not in his best interests, this finding is supported by substantial evidence, and the order denying the appointment of a guardian should be affirmed on appeal.

4. Substantial evidence supported the trial court's finding that continuation of the parent-child relationship clearly diminished the child's prospects for early integration into a stable and permanent home

After concluding guardianship was not in A.M.M.A.'s best interest, the trial court determined that the Department established the remaining contested element set forth in RCW 13.34.180(1)(f). The trial

court found that “continuation of the parent-child relationship clearly diminishes the child’s prospect for early integration into a stable and permanent home.” CP 300 (FF 2 21). Substantial evidence supports this finding.

In establishing that RCW 13.34.180(1)(f) is met, the Department can prove prospects for a permanent home exist, but the parent-child relationship prevents the child from obtaining the placement. *In re A.C.*, 123 Wn. App at 250. When a child has potential adoption resources, as A.M.M.A. does, this statutory element is primarily concerned with the effect of the legal relationship between the parent and child as an obstacle to adoption. *In re A.C.*, 123 Wn. App. at 250.

At trial, A.M.M.A. was living in a stable home with caregivers who had been approved to adopt him. 3 RP 42. Ms. Judd believed it was in A.M.M.A.’s best interest to be adopted by his current caregivers. 3 RP 44. Based upon the father’s manipulative, controlling, aggressive behavior, she felt it would be dangerous and detrimental to A.M.M.A. if his father continued to maintain a role in his life. 3 RP 45. A.M.M.A.’s guardian ad litem believed any benefit A.M.M.A. gained by maintaining family connections was outweighed by safety concerns. 3 RP 109, 112. She believed A.M.M.A.’s safety, stability and permanency were more important. 3 RP 112. Substantial evidence establishes that A.M.M.A.’s

continuing relationship with his father prevented him from achieving the finality and permanency of adoption.

5. **Substantial evidence supports the trial court's finding that the father did not maintain a meaningful role in the child's life, the Department made reasonable, but unsuccessful, efforts to reunify the child and father, and there were no barriers to the father's service participation**

RCW 13.34.180(1)(f) was amended by laws of 2013, ch. 171, an act relating to the rights of parents who are incarcerated. The amendment added certain requirements to the final element of the termination statute.

The statute now provides:

That the continuation of the parent and child relationship clearly diminishes the child's prospects for early integration into a stable and permanent home. If the parent is incarcerated, the court shall consider whether the parent maintains a meaningful role in his or her child's life based on factors identified in RCW 13.34.145(5)(b); whether the department or supervising agency made reasonable efforts as defined in this chapter; and whether particular barriers existed as described in RCW 13.34.145(5)(b) including, but not limited to, delays or barriers experienced in keeping the agency apprised of his or her location and in accessing visitation or other meaningful contact with the child.

RCW 13.34.180(1)(f) (new language is emphasized).

The law required the trial court to consider (1) whether the father maintained a meaningful role in A.M.M.A.'s life;; (2) whether the Department made reasonable efforts; and (3) whether there were barriers to accessing visitation or meaningful contact with the child. *In re*

Dependency of A.M.M., 182 Wn. App. 776, 332 P.3d 500 (2014). The first and third considerations must be based on the six factors contained in RCW 13.34.145(5)(b).⁵

The trial court entered the following finding:

The court considered whether or not the father maintains a meaningful role in the child's life based upon the factors in RCW 13.34.145(b) and finds that the father has interacted with the child and has shown love and care, but this alone does not result in a meaningful relationship. The department made all reasonable efforts to reunify the child with the father, but these efforts were not successful. Services including a psychological evaluation and parenting assessment, counseling, anger management treatment, were offered despite the father's incarceration. There were not barriers to the father. The father had more visits than most courts would ever allow or order and the father found a way to sabotage all of that, including missing visits because of his own misconduct in prison.

CP 298-99 (FF 2 18).

⁵ The statute lists the factors as follows: (b) The court's assessment of whether a parent who is incarcerated maintains a meaningful role in the child's life may include consideration of the following: (i) The parent's expressions or acts of manifesting concern for the child, such as letters, telephone calls, visits, and other forms of communication with the child; (ii) The parent's efforts to communicate and work with the department or supervising agency or other individuals for the purpose of complying with the service plan and repairing, maintaining, or building the parent-child relationship; (iii) A positive response by the parent to the reasonable efforts of the department or the supervising agency; (iv) Information provided by individuals or agencies in a reasonable position to assist the court in making this assessment, including but not limited to the parent's attorney, correctional and mental health personnel, or other individuals providing services to the parent; (v) Limitations in the parent's access to family support programs, therapeutic services, and visiting opportunities, restrictions to telephone and mail services, inability to participate in foster care planning meetings, and difficulty accessing lawyers and participating meaningfully in court proceedings; and (vi) Whether the continued involvement of the parent in the child's life is in the child's best interest.

Mr. Monroe argues he maintained a meaningful role in the child's life, but he does not present argument challenging the trial court's findings regarding reasonable efforts or the lack of barriers. Br. of Appellant, p. 33-36. Since there is no argument presented regarding these challenges, his assignments of error are deemed abandoned. *Seattle School Dist.*, 90 Wn.2d 476.

The trial court is required to consider whether the incarcerated parent maintains a "meaningful role" in the child's life by way of the non-exclusive considerations outlined in RCW 13.34.145(5)(b); RCW 13.34.180(1)(f). RCW 13.34.180(1)(f) does not require that the court reach any particular determination regarding the nature and quality of the relationship between the parent and child, just that it be considered, based upon the factors set forth in RCW 13.34.145(5)(b). A consideration of the evidence ultimately means a weighing of facts and a resolution of that weighing. *In re Termination of M.J.*, 187 Wn. App. 399, 409, 348 P.3d 1265 (2015).

The trial court entered findings of fact on the issues relating to the relationship between Mr. Monroe and A.M.M.A. As set forth in RCW 13.34.145(5)(b)(i), the trial court considered Mr. Monroe's visits with the child. The evidence established Mr. Monroe would "come and go" during the first six months of A.M.M.A.'s life. 2 RP 43, 46. When A.M.M.A.

was six months old, Mr. Monroe was incarcerated, and he will remain in prison until 2021. 2 RP 6, 99-100. From March 2012 and March 2014, Mr. Monroe had one visit with A.M.M.A. 2 RP 49. After the dependency case was filed, he first visited with his son in October 2014. 3 RP 141. From October 2014 to June 2015, his visits with his son occurred in the prison. 3 RP 141. Initially, visits occurred twice a month for two hours per visit, reverted to once per month, and then returned to two times per month. 3 RP 141. During this time, Mr. Monroe had no more than 16 hours of visits with A.M.M.A. Ms. Judd characterized Mr. Monroe's role in A.M.M.A.'s life as minimal. 3 RP 40. He had been incarcerated for much of A.M.M.A.'s young life, and there was very little contact between them until the Department became involved. 3 RP 40. Ms. Judd did not believe the visits allowed Mr. Monroe to build his relationship with the child because they were so short. 3 RP 41.

Correctional personnel provided evidence under RCW 13.34.145(5)(b)(iv) highlighting the hundreds of infractions the father received while incarcerated, explaining the impact the father's misconduct had on his release date and his ability to maintain his placement in a less structured prison setting, thus impacting his availability for visitation.

RCW 13.34.145(5)(b)(vi) also allows the court to consider whether continued involvement of the parent in the child's life is in the child's best

interests. The court did so in this case, hearing the testimony from Ms. Judd and Ms. Yamashita that termination of parental rights was in A.M.M.A.'s best interests. 3 RP 44, 105.

The trial court properly considered whether the father maintained a "meaningful role" in A.M.M.A.'s life, as contemplated by RCW 13.34.145(5)(b), and determined the interactions alone did not result in a meaningful relationship. CP 298 (FF 2 18). The trial court's finding that the Department met its burden of proving RCW 13.34.180(1)(f) by clear, cogent and convincing evidence is supported by substantial evidence and should be upheld.

C. The Trial Court Properly Applied RCW 13.34.180(5)

The father argues that the Department failed to consider alternatives to termination as required by RCW 13.34.180(5). Br. of Appellant, p. 41-43. There was no error here. The father did not maintain a meaningful role in A.M.M.A.'s life, guardianship was not deemed an acceptable permanent plan for the child, and the evidence established termination was in the child's best interests.

RCW 13.34.180(5) provides:

When a parent has been sentenced to a long-term incarceration and has maintained a meaningful role in the child's life considering the factors provided in RCW 13.34.145(5)(b) and it is in the best interest of the child, the department should consider a permanent placement that allows the parent to maintain a relationship with his

or her child, such as, but not limited to, a guardianship pursuant to chapter 13.36 RCW.

On its face, the statute requires three prerequisites that must exist before application of the statute is triggered. First, the parent must be sentenced to a long-term incarceration. This prerequisite is present in the father's case, as he expected to be released from prison in 2021, certainly a long time in A.M.M.A.'s life. Second, the parent must have maintained a meaningful role in the child's life. This prerequisite is not present in this case, as argued above. Even if the father maintained a meaningful role, guardianship was not determined to be in A.M.M.A.'s best interests. The statute requires that an alternative to termination, such as a guardianship, must be in the child's best interest. The evidence and trial court's conclusions unquestionably reach the opposite result. The Department social worker and guardian ad litem agreed termination was in the child's best interest. 3 RP 44, 105. Termination of parental rights allowed A.M.M.A. to move on with his life. RP at 371. The trial court properly considered alternatives to termination, but they were not in A.M.M.A.'s best interest.

A child has a fundamental right to a safe, stable, and permanent home. RCW 13.34.020; *In re Welfare of H.S.*, 94 Wn. App. 511, 530, 973 P.2d 474 (1999). A child also has a right to speedy resolution of the

dependency and termination proceedings. RCW 13.34.020; *See also In re Welfare of Angelo H.*, 124 Wn. App. 578, 590, 102 P.3d 822 (2004).

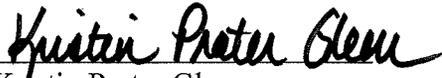
At the time of the termination trial, A.M.M.A. had lived in out-of-home care for 18 months. His current caregivers wished to adopt him. 3 RP 42. No evidence established that A.M.M.A would be returning to the father's care in the near future. A.M.M.A. was entitled to permanency of adoption and to a speedy resolution of the proceeding.

V. CONCLUSION

Substantial evidence supports the trial court's findings that guardianship was not in A.M.M.A.'s best interest, that substantial evidence supported the trial court's findings under RCW 13.34.180(1), and that termination of the father's parental rights was in A.M.M.A.'s best interests. Accordingly, the Department respectfully requests the trial court order be affirmed.

RESPECTFULLY SUBMITTED this 27th day of May, 2016.

ROBERT W. FERGUSON
Attorney General


Kristin Prater Glenn
Assistant Attorney General
WSBA No. 18152
115 E. Railroad Ave., Ste.306
Port Angeles, WA 98362
(360) 457-2711

CERTIFICATE OF MAILING

I certify that I served a copy of this on all parties or their counsel
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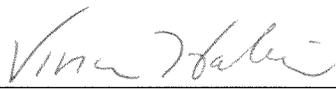
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Washington Appellate Project
1511 Third Avenue, Suite 701
Seattle, WA 98101

I certify under penalty of perjury under the laws of the state of
Washington that the foregoing is true and correct.

DATED this 27th day of May, 2016, at Port Angeles,
Washington.



Vivian Halicout
Legal Assistant