

NO. 75325-8

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

Court of Appeals
Division I
State of Washington

In re the Welfare of D.W.N.,

STATE OF WASHINGTON, DEPARTMENT OF SOCIAL AND
HEALTH SERVICES,

Respondent,

v.

M.N.,

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

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I. INTRODUCTION

D.W.N. is the seven-year-old son of the appellant mother M.N.¹ At the time of trial, he had lived in out-of-home care over two years, nearly one-third of his young life.

M.N. struggled with a substance abuse problem, mental health issues, and an inability to safely parent. The Department of Social and Health Services made continuing and repeated attempts to provide her with services to remedy her deficiencies, but M.N. failed to participate in all offered services. She failed to attend parenting classes, failed to submit to random UAs, and failed to attend a concurrently offered substance abuse evaluation and mental health services. No other reasonably available services could have remedied M.N.'s deficiencies in the near future.

D.W.N. needed stability and permanency, something his mother could not provide. He was living in a stable home with relatives who wished to adopt him. Termination of M.N.'s parental rights offered D.W.N. the permanency he desperately needed and deserved.

II. RESTATEMENT OF THE ISSUES

1. Whether substantial evidence supports the trial court's finding that all reasonably available services were offered or provided where the mother failed to participate in repeatedly offered services and a psychological evaluation would have been futile?

¹ This is the child's age at the time of trial. D.W.N. was born February 12, 2009. CP 87.

III. STATEMENT OF THE CASE

In January 2014, the Department of Social and Health Services filed a Dependency Petition alleging parental neglect of D.W.N. and seeking court intervention based upon the mother's acknowledged substance abuse and mental health issues and the inability of either parent to safely care for the child. CP 125-30. The Department sought out-of-home care for D.W.N. because his mother M.N. left him with unsafe and inappropriate people, she did not provide stable parenting, and she did not ensure the child attended school on a daily basis. RP 10, 19; Ex. 5 (Dependency Petition).

In March 2014, M.N. agreed that she was incapable of adequately caring for D.W.N. and that he should be placed in relative care with his maternal grandmother. RP 10. The Order of Dependency required M.N. to participate in services to address her identified parental deficiencies including her substance abuse, mental health concerns, and inability to parent. RP 9, 11, 16; Ex. 5 (Order of Dependency re: Mother, p. 6-7). The order required M.N. to complete a psychological evaluation with a parenting component and follow any recommendations; complete a substance abuse evaluation; complete random urinalysis testing; participate in mental health services, and complete age-appropriate parenting instruction. RP 11; Ex. 5 (Order of Dependency - Mother, p. 6-

7). The services remained consistent throughout the dependency RP 11; Ex. 5 (First Dependency Review Order, June 17, 2014, p. 11; Permanency Planning Order – Mother, December 16, 2014, p. 11; Dependency Review Order – Mother, June 23, 2015, p. 11; Permanency Planning Order², December 8, 2015, p. 11).

Department social worker Lisa Preece was assigned to D.W.N.'s case in March 2014, and she remained the assigned social worker at the time of the termination trial. RP 8. Ms. Preece had worked for the Department for two and one-half years, and she had ten years of experience working in a similar position for the State of Texas. RP 7.

At the beginning of the case, Ms. Preece regularly met with M.N. weekly or every other week. RP 20. At each meeting, Ms. Preece provided M.N. with a list of the court-ordered services, including a list of the appointments Ms. Preece made for her. RP 20. Ms. Preece gave M.N. an opportunity to ask questions during the meetings, she gave M.N. her phone number, and she was available to answer additional questions. RP 21. In the beginning of the case, M.N. contacted Ms. Preece by phone, and she appeared to understand the service requirements. RP 21-22.

²Though the December 8, 2015 order is captioned "Order After Hearing – Father," the order sets forth service requirements and addresses service compliance for the father and the mother. Ex. 5 (Permanency Planning Order).

In an effort to help M.N. learn to safely parent, Ms. Preece referred her to a Triple P parenting class. RP 19-20. In a Triple P class, a parent works directly with the provider to learn age-appropriate parenting skills. RP 20. The provider observes parent-child interaction and offers feedback and suggestions for improvement. RP 20. Ms. Preece met with M.N. several times to encourage and refer her to the class. RP 20. M.N. did not attend any of the parenting classes. RP 22.

Ms. Preece explained there had been reports that M.N. was using illegal substances and needed a substance abuse evaluation and random UAs. RP 22. Ms. Preece told M.N. she was requesting random UAs at Phoenix Recovery, she filled out the referral form, and M.N. understood the requirement. RP 22-23. Yet M.N. never submitted to a UA. RP 23.

Ms. Preece and M.N. had conversations about M.N.'s addiction. RP 23. Though she never told Ms. Preece what substances she was using, M.N. shared that she believed she needed inpatient treatment. RP 23. Ms. Preece made appointments for M.N. to attend a substance abuse evaluation at Phoenix Recovery. RP 21. She told M.N. of the scheduled appointments in person and on the phone. RP 24. Ms. Preece also told M.N. that the Phoenix Recovery referral was an open one; M.N. could go to the agency at any time, wait for an appointment no-show, and she would be seen for a substance abuse evaluation. RP 24. Though M.N. told Ms. Preece

“numerous times” that she would attend the scheduled appointments, she never appeared. RP 21. Ms. Preece explained M.N. “failed to appear at every appointment that she had for her evaluation.” RP 23.

M.N. indicated she had a traumatic childhood and suffered from depression. RP 25. Both in person and by phone, Ms. Preece told M.N. she needed to participate in mental health services. RP 25. M.N. understood this was a service the Department was requesting, and she did not express any resistance. RP 26. She was continuously ordered to participate in mental health services. Ex. 5 (Order of Dependency - Mother, p. 6-7; First Dependency Review Order, June 17, 2014, p. 11; Permanency Planning Order – Mother, December 16, 2014, p. 11; Dependency Review Order – Mother, June 23, 2015, p. 11; Permanency Planning Order, December 8, 2015, p. 11). Despite this fact, M.N. never participated in the offered mental health services. RP 26.

Ms. Preece did not refer M.N. for a psychological evaluation. RP 25. She explained the Department wanted M.N. to first participate in the substance abuse evaluation. RP 25. If the evaluator recommended inpatient treatment, the psychological evaluation would be offered after M.N. completed inpatient treatment. RP 25.

M.N. did not participate in parenting classes, a substance abuse evaluation, random UAs, or mental health services. RP 22-23, 26, 38.

Both Ms. Preece and D.W.N.'s court-appointed guardian ad litem were unable to identify any other services that could have been offered or provided to M.N. RP 36, 56. Ms. Preece explained:

I think that all of the services that we offered, had she completed, would help correct the parental deficiencies, and I don't see that there's any other services that we could have offered.

RP 27.

All services necessary to correct M.N.'s parental deficiencies had been offered. RP 36. Ms. Preece believed it would take M.N. a year to complete the court-ordered services if she started right away. RP 36-37. She did not believe D.W.N. should wait that long for permanency. RP 37.

D.W.N. had been living in out-of-home care for over two years, since January 2014. RP 10, 27. At the time of trial, he was living with his paternal grandmother and step-grandfather and had lived there 15 months. RP 29. These grandparents wished to adopt D.W.N. RP 30. Ms. Preece testified:

[P]ermanency for [D.W.N.] should outweigh the rights of keeping the parental rights intact. [D.W.N.] needs permanency. He needs someone who can – who will ...provide him a permanent long-term adoptive home, and these grandparents are willing to do that.

RP 37.

For the first six to eight months D.W.N. lived in care, M.N. visited him somewhat regularly. RP 30-31. Her visits were supervised by

contracted visitation supervisors. RP 31. Two of her visitation contracts were terminated because M.N. failed to show up for scheduled visits. RP 31. Each time a contract was terminated, M.N. met with Ms. Preece, discussed the visitation rules, including the need to appear for scheduled visits, and visits were then reinstated. RP 32-33. The third visitation supervisor terminated the visitation contract because M.N. slept through every visit, failing to interact with D.W.N. RP 31. After this contract was terminated, M.N. did not meet with Ms. Preece and did not request further visits. RP 34. M.N.'s last visited D.W.N. roughly 15 months prior to the termination trial. RP 34. No further visits occurred. RP 35.

During the 15 month period of time prior to trial, with one exception, Ms. Preece had no contact with M.N. RP 34. In January 2015, Ms. Preece talked briefly with M.N. in the courtroom. RP 34. Ms. Preece testified:

I talked to her about the importance of her participating in services if she wanted to be a part of her child's life, that [D.W.N.] missed her, and that I would help her, if she would just come in and talk to me, I would help her get the services set up that she needed.

RP 34-35.

M.N. indicated she understood, but they had no further contact. RP 34-35. Ms. Preece believed it was in D.W.N.'s best interest for M.N.'s

parental rights to be terminated so the grandparents could adopt him. RP 39. The guardian ad litem agreed. RP 56.

A termination trial was held on May 11, 2016. RP 1, 3. The father voluntarily relinquished his parental rights and a termination order was entered May 11, 2016. RP 3-5; CP 155-58. The mother did not appear for the trial. RP 3-4, 6; CP 87. At the conclusion of the hearing, the trial court entered an order terminating the mother's parental rights. RP 67-68; CP 52-56. She timely appeals.

IV. ARGUMENT

A. **The Decision Of The Trial Court Is Supported By Substantial Evidence And Should Be Upheld**

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 and finds that termination is in the best interests of the child. 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).

Satisfaction of these six statutory elements is an implicit finding of parental unfitness, satisfying the due process requirement that the trial court must find parents currently unfit before terminating parental rights. *In re K.N.J.*, 171 Wn.2d at 577; *In re Dependency of K.R.*, 128 Wn.2d 129, 141-42, 904 P.2d 1132 (1995). The court must also find that termination is in the best interests of the child. *See* RCW 13.34.190(2). 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).

This court must consider both the fundamental rights of the parent to the care and custody of the child and the child's rights to health and safety. *In re Dependency of M.H.P.*, 184 Wn.2d 741, 779, 364 P.3d 94 (2015). A biological parent's interest in the care and custody of her child

is generally protected by the Due Process Clause of the Fourteenth Amendment of the federal constitution. *Santosky v. Kramer*, 455 U.S. 745, 753, 102 S. Ct. 1388, 71 L. Ed. 2d 599 (1982); *In re Welfare of Sumey*, 94 Wn.2d 757, 762, 621 P.2d 108 (1980). However, the parent's right to custody is not absolute and must be weighed against the responsibilities of the state to protect the child and the child's rights to safety and well-being. See, e.g., *Lehr v. Robertson*, 463 U.S. 248, 103 S. Ct. 2985, 77 L. Ed. 2d 614 (1983); *In re Dependency of I.J.S.*, 128 Wn. App. 108, 116, 114 P.3d 1215 (2005).

In juvenile dependency and termination actions, the child's rights are defined by statute and take priority over conflicting rights of the parent. RCW 13.34.020; *In re Dependency of J.B.S.*, 123 Wn.2d 1, 863 P.2d 1344 (1993). The statute recognizes that the rights of a dependent child include the rights to physical and mental health, safety, and basic nurture, which includes the right to 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). Where the parent's interests conflict with the child's rights to basic nurture, physical health, mental health, and safety, the rights of the child prevail. RCW 13.34.020; *In re Welfare of Seago*, 82 Wn.2d 736, 738, 513 P.2d 831 (1973).

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. 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 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). In the case below, the court applied the clear, cogent, and convincing evidence standard as the burden of proof. The clear, cogent, and convincing standard is satisfied if the ultimate facts in issue are shown by the evidence to be highly probable. *In re K.S.C.*, 137 Wn.2d at 925.

The mother does not dispute that five statutory elements required for termination, RCW 13.34.180(1)(a), (b), (c), (e) and (f) were established at trial. Brief of Appellant (Br. Appellant) at 1. In addition, she does not challenge the trial court's finding that termination is in D.W.N.'s best interests. Br. Appellant at 1.

B. There Is Substantial Evidence In The Record To Support The Trial Court's Finding That All Reasonably Available Services Were Offered Or Provided, And There Were No Additional Services That Could Be Offered To Remedy M.N.'s Parental Deficiencies In The Foreseeable Future

RCW 13.34.180(1)(d) requires the Department to prove that it has offered and provided "all necessary services, reasonably available, capable of correcting the parental deficiencies within the foreseeable future." RCW 13.34.180(1)(d). M.N. argues the Department failed to provide the court-ordered psychological evaluation. Br. Appellant at 11-12, 16. Because M.N. failed to remedy her identified parental deficiencies, failed to participate in the services offered, and failed visit D.W.N. for over a year, the evaluation would have been futile.

Because M.N. suffered from depression and had a traumatic childhood, the Department offered her mental health services. RP 25. These services were offered concurrently with a substance abuse evaluation, but M.N. failed to participate. RP 26. She remained unfit to parent D.W.N. at the time of trial. CP 90 (Unchallenged Finding of Fact (FF) 2.15)³. The Department made continuing and repeated offers of services, including concurrently offered substance abuse and mental health

³ Unchallenged trial court findings are considered verities on appeal. *In re Interest of Mahaney*, 146 Wn.2d 878, 51 P.3d 776 (2002); *See, e.g., In re Interest of J.F.*, 109 Wn. App. 718, 722, 37 P.3d 1227 (2001) (parent who had not challenged particular findings of fact was deemed to have stipulated to said findings).

services, but D.W.N. refused to accept them. Substantial evidence established a psychological evaluation would have been futile.

To meet its burden under RCW 13.34.180(1)(d), the Department must show that it offered or provided the parent the required services and that the parent either failed to engage or waived her right to such services. *In re Welfare of S.V.B.*, 75 Wn. App. 762, 770, 880 P.2d 80 (1994). The Department fulfills its duty by providing all “necessary services” or by demonstrating that the services would be futile. *In re the Matter of B.P.*, ___ Wn.2d ___, 376 P.3d 350, 353 (2016). The services offered or provided must be tailored to the individual parent’s needs. *In re Dependency of T.R.*, 108 Wn. App. 149, 161, 29 P.3d 1275 (2001); *In re Dependency of P.A.D.*, 58 Wn. App. 18, 29, 792 P.2d 159, *review denied*, 115 Wn.2d 1019 (1990). The court may consider any service received, from whatever source, if it relates to the potential correction of a parental deficiency. *In re Dependency of D.A.*, 124 Wn. App. 644, 651-652, 102 P.3d 847 (2004).

This statutory requirement to offer corrective services does not contemplate an entirely one-way process, and a parent’s unwillingness or inability to avail herself of remedial services within a reasonable period is highly relevant to a court’s determination of whether the elements of RCW 13.34.180 are established. *In re Dependency of C.T.*, 59 Wn. App. 490, 499, 798 P.2d 1170 (1990), *review denied*, 116 Wn.2d 1015 (1991);

In re P.A.D., 58 Wn. App. at 26. If a parent is unwilling or unable to make use of the services offered or provided, the Department is not required to offer other services that might have been helpful. *In re Dependency of S.M.H.*, 128 Wn. App. 45, 54, 115 P.3d 990 (2005); *In re T.R.*, 108 Wn. App. at 163.

In this case, substantial evidence supports the trial court's finding that the Department offered all reasonably available, necessary services in an attempt to correct the mother's parental deficiencies. The mother failed to participate in the offered services, including mental health services to address her depression and early childhood trauma, was unable to make necessary change in a timely manner, and remained unfit to parent at the time of trial. Her deficiencies remained consistent and unchanged, and additional services would be futile.

1. Reasonably available services were offered to remedy D.W.N.'s identified deficiencies, but she failed to comply

M.N.'s parental deficiencies included a substance abuse problem, mental health issues, and an inability to safely parent D.W.N. RP 16, 19. In an attempt to remedy these deficiencies, M.N. was ordered to participate in mental health services, a substance abuse evaluation, random UAs, a psychological evaluation with a parenting component, and an age-appropriate parenting class. RP 11.

From March 2014 to May 2016, M.N. failed to complete a substance abuse evaluation, failed to complete a parenting class, failed to submit to random UAs, and failed to participate in mental health services. RP 11, 21-23, 26. M.N. expressed a need for inpatient treatment, and the social worker Lisa Preece asked M.N. to concurrently participate in mental health services until the substance abuse evaluation was completed. RP 25. Ms. Preece planned to refer M.N. for a psychological evaluation after the substance abuse evaluation was completed. RP 25. If inpatient treatment was recommended, Ms. Preece indicated she would refer M.N. for a psychological evaluation after she completed inpatient treatment. RP 25. But whether or not inpatient treatment was recommended, mental health services were available to M.N. throughout the substance abuse evaluation and treatment process, if she chose to participate. Since March 2014, the dependency trial court consistently found that M.N. failed to comply with court-ordered services. Ex. 5 (First Dependency Review Order, June 17, 2014, p. 6; Permanency Planning Order – Mother, December 16, 2014, p. 6; Dependency Review Order – Mother, June 23, 2015, p. 6; Permanency Planning Order, December 8, 2015, p. 6).

2. A psychological evaluation could not remedy M.N.'s deficiencies in the foreseeable future

The Order of Dependency required M.N. to:

Complete a psychological evaluation with a parenting component with a Department-approved provider and follow any recommendations for further services. Contact the Department to request a referral be made for the evaluation.

Ex. 5 (Order of Dependency – Mother, p. 6, ¶ 4.5).

The requirement continued in the subsequent review hearing orders. Ex. 5 (First Dependency Review Order, June 17, 2014, p. 11; Permanency Planning Order – Mother, December 16, 2014, p. 11; Dependency Review Order – Mother, June 23, 2015, p. 11; Permanency Planning Order, December 8, 2015, p. 11). There was no evidence M.N. requested a referral for a psychological evaluation. In all orders, the dependency court found that the Department made reasonable efforts to provide services and was in compliance with the court order. Ex. 5 (First Dependency Review Order, June 17, 2014, p. 6; Permanency Planning Order – Mother, December 16, 2014, p. 6; Dependency Review Order – Mother, June 23, 2015, p. 6; Permanency Planning Order, December 8, 2015, p. 6).

The Department referred M.N. for a substance abuse evaluation and mental health services, but not a psychological evaluation. RP at 25. Department social worker Lisa Preece planned to refer M.N. for a psychological evaluation after the substance abuse evaluation was

completed. RP 25. M.N. offers speculative argument, but does not point to any evidence in the record that establishes a psychological evaluation would have improved her chances for success in substance abuse treatment, corrected her parental deficiencies, or improved her ability to function as a parent.

RCW 13.34.180(1)(d) only requires that the Department provide services that are necessary, available, and capable of correcting parental deficiencies in the foreseeable future. *In re T.R.*, 108 Wn. App. at 164. The Department is not required to provide a particular service when there is no evidence that service would improve the person's ability to parent. *See In re T.R.*, 108 Wn. App. at 162-163 (the Department is not required to provide family counseling in the absence of evidence it will correct a parenting deficiency).

Even when the Department "inexcusably fails" to offer services to a parent, termination will still be deemed appropriate if the services would not have remedied the parent's deficiencies in the foreseeable future, a period of time that depends upon the age of the child. *In re T.R.*, 108 Wn. App. at 164. When the record establishes the offer of services would be futile, as it does here, the juvenile court can find that the Department offered all reasonable services. *In re Welfare of M.R.H.*, 145 Wn. App. 10, 25, 188 P.3d 510 (2008).

The record shows that even if the Department should have arranged for a psychological evaluation earlier than it did, the evaluation would not have remedied M.N.'s parental deficiencies within the foreseeable future. Given M.N.'s fairly complete failure to access services while this case was pending, along with the seriousness and pervasiveness of her parental deficiencies, a psychological evaluation was not reasonably capable of correcting M.N.'s parental deficiencies within the foreseeable future. The necessary services were offered; M.N. was simply unwilling to make use of any of them. It would have been futile to offer M.N. additional services, and DSHS was not obligated to do so.

3. *In re S.J.* can be distinguished on its facts

M.N. contends the Department's failure to provide a psychological evaluation contributed to her inability to timely correct her parental deficiencies. Br. Appellant at 12. However, in advancing this argument, her reliance on *In re the Termination of S.J.*, 162 Wn. App. 873, 256 P.3d 470 (2011), is misplaced.

In *In re S.J.*, the child was removed from his mother's care due, in part, to the mother's drug use. Under the agreed dependency order, the mother was required to complete a substance abuse evaluation and treatment, submit to random urinalysis testing, complete a psychological evaluation, and participate in mental health services. *In re S.J.*, 162 Wn.

App. at 875. The Department did not refer the mother to mental health services or a psychological evaluation for six months because the agreed dependency order provided the psychological evaluation was not to be conducted until the mother was sober. *In re S.J.*, 162 Wn. App. at 876. During this time, the mother made three unsuccessful attempts to complete substance abuse inpatient treatment. *In re S.J.*, 162 Wn. App. at 876.

When the mother ultimately completed the psychological evaluation, she was diagnosed with bipolar disorder and borderline intellectual functioning. *In re S.J.*, 162 Wn. App. at 876. After the evaluation, the mother actively started participated in counseling sessions. *In re S.J.*, 162 Wn. App. at 876. Despite her earlier failures, these sessions led to improvement and successful completion of inpatient treatment. *In re S.J.*, 162 Wn. App. at 882. Thereafter, the mother remained sober, implemented the suggested parenting skills, and established a safe, clean, drug-free home. *In re S.J.*, 162 Wn. App. at 877, 883.

However, in *S.J.*, despite the mother's progress in remedying her parental deficiencies, the Department petitioned to terminate her parental rights because she had not secured suitable housing or progressed in her relationship with her child. *In re S.J.*, 162 Wn. App. at 877. The mother argued she would have been successful sooner had her mental health issues been addressed at the same time she was receiving drug treatment,

and the delay led to deterioration of her once-strong bond with her child. *In re S.J.*, 162 Wn. App. at 877. Division III found the mother's inability to complete inpatient treatment was linked to her bipolar disorder, and if the Department had offered her treatment sooner, she would have been able to recover in time to properly parent and bond with her child. *In re S.J.*, 162 Wn. App. at 882. The court determined that the State failed to provide timely mental health services and reversed the termination order. *In re S.J.*, 162 Wn. App. at 882, 884.

In re S.J. is distinguishable from this case for two reasons. First, the mother in *S.J.* received no mental health counseling until eight months after her child was removed. Here, M.N. received multiple referrals for substance abuse evaluations *and* to mental health counseling programs. RP 20-21, 24-25. Mental health services were offered concurrently, not consecutively, with substance abuse services. Second, while the mother in *S.J.* actively engaged in mental health sessions and implemented suggested parenting skills, M.N. consistently failed to engage in the offered services. RP 22-23, 26, 38. M.N. did not access the services that were ordered throughout the dependency; she missed all her appointments. RP 21-23, 26. This case and *In re S.J.* significantly differ on their facts, and *In re S.J.* does not require this Court to find the Department failed to offer M.N. all necessary services.

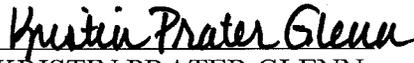
Here, there was no showing a psychological evaluation would remedy M.N.'s parental deficiencies in the foreseeable future, and the record establishes offering such an evaluation would be futile. D.W.N. was seven years old at the time of trial and had lived in out-of-home care for nearly one-third of his life. For over two years, M.N. was repeatedly offered services in an attempt to remedy her identified deficiencies. She failed to participate in services, including concurrently offered substance abuse and mental health services. She was unable to meet D.W.N.'s needs, and her untreated parental deficiencies presented a significant barrier to reunification. Substantial evidence establishes the trial court correctly determined that that all reasonably available, necessary services were offered or provided to M.N., and the Department met its burden under RCW 13.34.180(1)(d).

V. CONCLUSION

D.W.N. deserved a safe, stable, and permanent home. The evidence before the trial court overwhelmingly established such a home was not possible with his mother M.N. Substantial evidence supports the trial courts findings under RCW 13.34.180(1), and the finding that termination of the mother's parental rights was in D.W.N.'s best interests. Accordingly, the trial court order should be affirmed.

RESPECTFULLY SUBMITTED this 12th day of October, 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 document on all parties or their
counsel of record on the date below as follows:

ELECTRONICALLY FILED:

FILED ELECTRONICALLY TO:

Richard D. Johnson, Court Administrator,
Court of Appeals, Division I
One Union Square
600 University Street
Seattle, WA 98101-4170

COPY via Email to:

Dana M. Nelson
Nielsen, Broman and Koch
1908 E. Madison Street
Seattle, WA 98122
nelsond@nwattorney.net
Sloanej@nwattorney.net
Attorney for the Appellant

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

DATED this 12th day of October, 2016, at Port Angeles,
Washington.



VIVIAN HALICOUT
Legal Assistant