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WA State Court of Appeals, Division III

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

In the Matter of the Dependency of	)	
	)	No. 32915-1-III
M.G.	)	
	)	
	)	UNPUBLISHED OPINION
	)	

SIDDOWAY, C.J. — After a 14-month dependency and a day-long trial, the trial court entered an order terminating L.K.'s parental rights to her daughter M.G. L.K. appeals the order, arguing the court erred when it found the State provided her with all necessary services to correct her parental deficiencies; when it found there was little likelihood that L.K.'s parental deficiencies could be remedied so that M.G. could be returned to her in the near future; when it found termination of parental rights was in M.G.'s best interest; and finally, when it failed to enter a finding that L.K. was currently unfit. Because there was no error, we affirm.

FACTS

L.K. is the mother of M.G., a girl born on March 1, 2003. M.G.'s father is unknown. In May 2013, L.K. was homeless and M.G. was living with L.K.'s cousin. During the nine months M.G. lived with L.K.'s cousin, M.G.'s medical, dental, and

counseling needs were neglected. L.K.'s cousin was unable to provide M.G. with access to these services because she did not have custody of M.G. As a result, a finding of neglect was entered against L.K.

On May 20, 2013, the Department of Social and Health Services took M.G. into protective custody, and a dependency petition was filed the next day. Before the petition for dependency was filed, the social worker met with L.K. and L.K. admitted to having a substance abuse problem.

The order of dependency was entered on July 31, 2013. The order identified L.K.'s parental deficiencies as substance abuse and neglect. The State referred L.K. to The Center for Alcohol and Drug Treatment—an inpatient, detox, and outpatient rehabilitation service in Wenatchee, Washington—for completion of a chemical dependency evaluation. L.K. admitted she had a substance abuse problem. Specifically, she acknowledged abusing alcohol and that she "needed treatment." Report of Proceedings (RP) at 15, 120. L.K. was diagnosed as having a continuing alcohol dependency. L.K. attended three sessions of intensive relapse prevention therapy. Eventually, because L.K. was unable to stay sober, she requested a change to inpatient therapy. The provider set up a bed date for L.K. in November 2013, but on the day she was to be admitted, L.K. did not show up.

In November, an arrest warrant related to a separate bail jumping charge was issued for L.K.'s arrest. To avoid being arrested, L.K. stopped attending visits with M.G.

and stopped participating in court ordered services. L.K. had no contact with M.G. from November 2013 until she was arrested on the warrant in July 2014.

At the end of June 2014, before L.K. was arrested, the State filed a petition seeking to terminate L.K.'s parental rights to M.G. There was a potential permanent family wanting to adopt 11-year-old M.G.

In October 2014, a termination trial was held and L.K.'s parental rights were terminated. L.K. now appeals the trial court's order terminating her parental rights. Additional facts will be included below as necessary.

ANALYSIS

"The fundamental liberty interest of natural parents in the care, custody, and management of their child does not evaporate simply because they have not been model parents or have lost temporary custody of their child to the State." *Santosky v. Kramer*, 455 U.S. 745, 753, 102 S. Ct. 1388, 71 L. Ed. 2d 599 (1982). Because parents have a fundamental liberty interest in the custody and care of their children, the State may terminate parental rights "'only for the most powerful [of] reasons.'" *In re Welfare of S.J.*, 162 Wn. App. 873, 880, 256 P.3d 470 (2011) (alteration in original) (internal quotation marks omitted) (quoting *In re Welfare of A.J.R.*, 78 Wn. App. 222, 229, 896 P.2d 1298 (1995)).

Washington uses a two-step process to determine whether to terminate parental rights. *In re Welfare of A.B.*, 168 Wn.2d 908, 911, 232 P.3d 1104 (2010). "The first step

focuses on the adequacy of the parents and must be proved by clear, cogent, and convincing evidence." *Id.* (footnote omitted). The State must affirmatively prove each of six statutory elements listed in RCW 13.34.180(1). RCW 13.34.190(1)(a)(i). RCW 13.34.180(1) provides:

> (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. [1]

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[1] RCW 13.34.180(1)(f) further provides:

> If the parent is incarcerated, the court shall consider whether a 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.

Here, although there are additional considerations when a parent is incarcerated, L.K. does not challenge the trial court's finding that continuation of the parent child

"Clear, cogent and convincing evidence exists when the evidence shows the ultimate fact at issue to be highly probable." *In re Dependency of K.S.C.*, 137 Wn.2d 918, 925, 976 P.2d 113 (1999).

"The second step focuses on the child's best interests and need be proved by only a preponderance of the evidence." *A.B.*, 168 Wn.2d at 911 (footnote omitted); RCW 13.34.190(1)(b). The court may reach the second step only if the elements of the first step have been satisfied. *A.B.*, 168 Wn.2d at 911.

We review an order terminating parental rights de novo. *In re Dependency of K.N.J.*, 171 Wn.2d 568, 574, 257 P.3d 522 (2011). "The court's factual findings must be upheld if supported by substantial evidence from which a rational trier of fact could find the necessary facts by clear, cogent, and convincing evidence." *K.S.C.*, 137 Wn.2d at 925. Evidence is "substantial" if it is sufficient to persuade a fair-minded person of the truth of the fact at issue. *S.J.*, 162 Wn. App. at 881. "The trial judge has the advantage of having the witnesses before him or her, and deference to the findings is of particular importance in deprivation proceedings." *K.S.C.*, 137 Wn.2d at 925.

Here, the trial court found that the State established each of the six elements of RCW 13.34.180(1) by clear, cogent, and convincing evidence. The court further found

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relationship clearly diminishes M.G.'s prospects for early integration into a stable home.

that termination of parental rights was in M.G.'s best interest and entered an order terminating L.K.'s parental rights to M.G.

On appeal, L.K. raises four issues for review. She argues the trial court erred when it found that she was offered all necessary services; when it found that there was little likelihood that conditions would be remedied so that M.G. could be returned to her in the near future; when it found that termination of parental rights was in M.G.'s best interest; and finally, when it failed to make a finding of current parental unfitness. We address each argument in turn.

A. Necessary services

In order to terminate parental rights, the State must prove that it offered all necessary services capable of correcting the specific parental deficiencies within the foreseeable future. RCW 13.34.180(1)(d). "The services offered must be tailored to each individual's needs," *In re Dependency of T.R.*, 108 Wn. App. 149, 161, 29 P.3d 1275 (2001), and they must be offered in a timely manner, *S.J.*, 162 Wn. App. at 881-83.

"[A] parent's unwillingness or inability to make use of the services provided excuses the State from offering extra services that might have been helpful." *In re Dependency of Ramquist*, 52 Wn. App. 854, 861, 765 P.2d 30 (1988) (citing *In re Welfare of Ferguson*, 41 Wn. App. 1, 6, 701 P.2d 513 (1985)). In other words, where the record establishes that offering additional services would be futile, the court may find that

all reasonable services were in fact offered. *In re Welfare of M.R.H.*, 145 Wn. App. 10, 25, 188 P.3d 510 (2008).

At the termination trial in October 2014, the court determined that the State offered L.K. all services reasonably necessary to correct her parental deficiencies. Now, on appeal, L.K. argues that the State should have provided her with housing assistance, assistance in finding employment, bonding and attachment therapy, and a parenting assessment.

Here, the order of dependency was entered on July 31, 2013. L.K.'s parental deficiencies were identified as substance abuse and neglect. L.K. was ordered to participate in visitations, a psychological exam, a drug and alcohol evaluation, a parenting class, and random UAs (urinalyses). The State referred L.K. to Dr. Catherine MacLennan for the psychological evaluation and to The Center for the drug and alcohol assessment. Random UAs were set up at The Center.

L.K. participated in the court ordered chemical dependency evaluation in September. At the evaluation, she indicated that she had been abstinent from alcohol for approximately two weeks. Contrary to her assertion, though, L.K.'s UA from the date of the evaluation tested positive for ethanol.

Although L.K. showed promise of progress during the first few months of the dependency, she actively participated in services for only two months. While the State arranged a bed date for L.K. so she could receive inpatient treatment for her addictions,

L.K. chose to discontinue her participation in services. In November 2013, when the warrant for her arrest was issued, L.K. disappeared. With the exception of two phone calls L.K. made to the social worker, neither the social worker nor the service providers saw or heard from L.K. for the next eight months, until her arrest in July 2014.

L.K.'s argument that the State should have expended additional resources to assist her in obtaining employment and housing is not well taken. The State offered L.K. the necessary resources to assist L.K. with her chemical dependency problems. Until this problem was corrected, services that might have been necessary to correct other parental deficiencies would have been rendered useless. Dr. Catherine MacLennan, a licensed psychologist, testified that "treatment for the chemical dependency . . . needed to be taken care of before anything else [was] going to be effective with helping [L.K.]—helping her learn to be—to be an adequate enough parent." RP at 70-71. Further, L.K. disappeared, making herself unavailable to participate in the allegedly necessary additional services. Expending additional resources to assist L.K. in obtaining employment or housing before L.K. was sober or had dealt with her arrest warrant would have been futile.

L.K.'s absence from all services after November 2013 tended to indicate an unwillingness to engage in the services offered by the State. *See Ramquist*, 52 Wn. App. at 861. The State provided L.K. with resources to assist with her chemical dependency, as well as resources to assist in improving her parenting skills. Substantial evidence supports the finding that L.K. chose not to engage in the services offered, and as a result

adding additional services would have been futile. The court did not err in finding L.K. was provided all necessary services reasonably available.

B. Likelihood conditions would be remedied

Before a court may terminate a parent's rights, the department must prove "[t]hat there is little likelihood that conditions will be remedied so that the child can be returned to the parent in the near future." RCW 13.34.180(1)(e). "If the State offers or provides all necessary services reasonably capable of correcting parental deficiencies within the foreseeable future and the parent does not substantially improve within a year of the dependency order, a presumption arises that the State has established RCW 13.34.180(1)(e)." *In re Welfare of T.B.*, 150 Wn. App. 599, 608, 209 P.3d 497 (2009). "A parent's unwillingness to avail herself of remedial services within a reasonable period is highly relevant to a trial court's determination as to whether the State has satisfied RCW 13.34.180(1)(e)." *Id.* "A determination of what constitutes the near future depends on the age of the child and the circumstances of the placement." *In re Dependency of T.L.G.*, 126 Wn. App. 181, 204, 108 P.3d 156 (2005).

We treat unchallenged findings of facts as verities on appeal. *In re Interest of J.F.*, 109 Wn. App. 718, 722, 37 P.3d 1227 (2001).

L.K. argues that the trial court erred in finding the State satisfied its burden of proof under RCW 13.34.180(1)(e). She argues that this finding was premature because the State did not offer all necessary services. She further argues that M.G. could have

been returned to her after she was released from jail and completed a 28-day inpatient rehabilitation program and that this potential reunification could take place in approximately 4 months—within the near future of an 11-year-old.

Here, the court's findings of facts indicate that the order of dependency was entered in July 2013. At the conclusion of the termination hearing, the trial court found that L.K.'s "primary" parental deficiency was substance abuse. Clerk's Papers (CP) at 63. L.K. did not engage in the intensive relapse prevention program recommended for her. L.K. failed to enter the inpatient treatment scheduled for November 2013. L.K. admitted to using methamphetamine in February 2014. L.K. never participated in the court ordered UAs. The court found that L.K. became sober "only after being incarcerated." CP at 64. Finally, the court found that L.K.'s "failure to substantially improve parental deficiencies within twelve months following entry of [the] dispositional order" gave rise to the rebuttable presumption that there is little likelihood that conditions will be remedied so that M.G. could be returned. *Id.*

At the time of the termination trial in October 2014, L.K. had been sober for 3 months; she was incarcerated for the entirety of that time. While L.K. was scheduled to be released from incarceration 3 months later and was prepared to enter a 28-day inpatient rehabilitation program, Dr. MacLennan opined that L.K. "was not interested in

treatment and not interested in changing." RP at 68.[2] She further testified that even if L.K. were released from jail in 3 months, it would take "at least a year" for L.K. to remedy her psychological and substance abuse issues and be safe to parent. RP at 76. At the time of trial, M.G. was 11 years old and there was testimony that the near future for M.G. was 6 months. Finally, Dr. MacLennan testified that the likelihood of L.K. changing in the foreseeable future such that M.G. would be able to return to her was "[v]ery poor." RP at 78.

There was substantial evidence to support the court's finding that there was little likelihood that conditions could be remedied so that M.G. could be returned to L.K. in the near future.

C. Best interest of the child

If a trial court concludes that the State has established the factors of RCW 13.34.180(1) by clear, cogent, and convincing evidence, it must then consider whether terminating parental rights is in the best interest of a child. In order to terminate parental rights, the State must establish by a preponderance of the evidence that termination is in the best interest of the child. RCW 13.34.190(1)(b). Whether termination of parental rights is in the best interest of the child is a fact specific inquiry. *In re Welfare of Aschauer*, 93 Wn.2d 689, 695, 611 P.2d 1245 (1980). Further, "[w]here a parent has

[2] This opinion was based on a Personality Assessment Inventory L.K. took in 2013.

been unable to rehabilitate over a lengthy dependency period, a court is 'fully justified' in finding termination in the child's best interests rather than 'leaving [the child] in the limbo of foster care for an indefinite period while [the parent] sought to rehabilitate himself.'" *T.R.*, 108 Wn. App. at 167 (second and third alterations in original) (quoting *In re Dependency of A.W.*, 53 Wn. App. 22, 33, 765 P.2d 307 (1988)).

Here, the trial court determined that terminating L.K.'s parental rights was in M.G.'s best interest. L.K. argues that insufficient evidence supported the trial court's finding. At trial, there was testimony that terminating L.K.'s parental rights would be in M.G.'s best interest because it would permit M.G. to be adopted and foster permanency in M.G.'s life. Further, L.K. had been unable to rehabilitate over the period of the dependency and there was testimony that she needed to participate in additional rehab before being able to safely parent M.G. The trial court did not err in finding that the State proved by a preponderance of the evidence that termination of L.K.'s parental rights was in M.G.'s best interest. *See id.*

D. Parental unfitness

"[A] parent has a due process right not to have the State terminate his or her relationship with a natural child in the absence of an express or implied finding that he or she, at the time of trial, is currently unfit to parent the child." *A.B.*, 168 Wn.2d at 918. "[W]hen an appellate court is faced with a record that omits an explicit finding of current parental unfitness, the appellate court can imply or infer the omitted finding if—but only

if—all the facts and circumstances in the record . . . clearly demonstrate that the omitted finding was actually intended, and thus made, by the trial court." *Id.* at 921. To meet its burden of proof in establishing a parent is currently unfit, the State must prove by clear, cogent, and convincing evidence that the parent's deficiencies prevent him or her from providing the child with "'basic nurture, health, or safety.'" *In re Welfare of A.B.*, 181 Wn. App. 45, 61, 323 P.3d 1062 (2014) (quoting RCW 13.34.020).

L.K. argues that reversal is required because the trial court did not make an express finding that she is currently unfit to parent and the record does not indicate that the trial court intended to make that finding.

Here, the trial court made findings indicating that L.K. was currently unfit to parent. The court found "[L.K.'s] primary current deficiency that prevents the child from being safely placed with her is substance abuse." CP at 63. The court also found that "[L.K.] has neglected the needs of her child and does not recognize those needs. The child yearns for a full time mother and [L.K.] is not ready to be that mother. [L.K.] does not care about her child's suffering. The child's emotional needs cannot be met by [L.K.]." CP at 64. While the trial court did not expressly state that L.K. was currently unfit, the findings supported by the record indicate that the court intended to make such a finding. L.K.'s parenting deficiencies prevent her from providing M.G. with basic nurture, health, or safety. The record supports the trial court's intended finding that L.K. was currently unfit to parent.

We affirm.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

Siddoway, C.J.

WE CONCUR:

Brown, J.

Fearing, J.