

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

In the Matter of the Dependency of )  
K.B-S., K.M.S., and K.L.S. )  
)  
STATE OF WASHINGTON, )  
DEPARTMENT OF SOCIAL AND )  
HEALTH SERVICES, )  
)  
Respondent, )  
)  
v. )  
)  
KEMONTAE SLAUGHTER, )  
)  
Appellant. )

No. 71566-6-I  
(consolidated with No.  
71567-4-I and 71568-2-I)

DIVISION ONE  
UNPUBLISHED OPINION

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APPELWICK, J. — Slaughter appeals from the trial court’s order terminating her parental rights to her three children. Slaughter argues that the court failed to consider the children’s stable placement with their maternal grandmother when it found (1) parental unfitness, (2) continuation of the parent-child relationship diminished the children’s prospects for permanency, and (3) termination of the parental relationship was in the children’s best interests. Substantial evidence in the record supports the court’s findings. We affirm.

**FACTS**

Kemontae Slaughter is the mother of three children: K.L.S., a daughter born in April 2004; K.M.S., a son born in November 2006; and K.B-S, a daughter born in March 2009. At the time of trial, the children were ages 9, 7, and 4. The youngest daughter, K.B.-S., was diagnosed with autism spectrum disorder and requires occupational, physical, and speech therapy and counseling. All three children have “high needs.”

In July 2010, the court entered an agreed order of dependency as to the mother. The dispositional order required the mother to participate in various services. For instance, the order required the mother to obtain a psychological evaluation with a parenting component, obtain a drug and alcohol evaluation and follow treatment recommendations, participate in weekly random urinalysis, and engage in individual mental health counseling. The dependency order authorized placement with the children's maternal grandmother, Francis Slaughter.

In 2012, more than two years into the dependency, the dependency court ordered that the permanent plan for the children should be permanent legal custody or adoption. To that end, Department of Social and Health Services (Department) home study licenser Susan Large conducted a home study on behalf of the Department to determine the suitability of permanent placement with the grandmother. An approved home study is a requirement for adoption.

Large's investigation led her to conclude that placement with the grandmother was not a viable long-term placement option for the children despite the grandmother's dedication to the children, her motivation, and the emotional stability she had provided. Large had concerns about the grandmother's physical and mental health and the strain she was suffering on both fronts in order to meet the needs of the three children. The grandmother had severe arthritis in her hips and back that left her "incapacitated on many days." The grandmother was in need of hip replacement surgery, but could not have the procedure until she quit smoking. The grandmother's doctor was concerned that she was not eating or sleeping well, was losing weight, and was "highly stressed and overwhelmed." According to the grandmother's doctor, the grandmother's

deteriorating mental health was even more critical than her physical health problems. The doctor believed that the grandmother's depression and anxiety were overwhelming her ability to take care of herself. The grandmother's longtime therapist told Large that the grandmother had not been able to attend regular sessions for several months due to lack of childcare.

Large also determined that the grandmother "really did not have a support system" and was financially insecure. In terms of parenting, Large believed that although the grandmother "was trying hard to be engaged with the children," the professionals who worked with the family reported, and the grandmother herself confirmed, that she was "quite overwhelmed." Large described the grandmother as "falling apart around the edges" and predicted that it was "quickly coming to the point where she was falling apart completely."

The Department did not officially deny the home study. Instead, when it became apparent the Department would not approve the study, the Department allowed the grandmother to withdraw the application.

In October 2012, the Department filed a motion to remove the children from the grandmother's home. The court denied the motion, but ordered that the mother could have no contact with the children unless supervised by the Department and ordered the grandmother to participate in a number of services.

In November 2012, the Department filed a petition to terminate parental rights.<sup>1</sup> The Department contended that the mother had not made progress toward correcting

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<sup>1</sup> The Department's petition also sought to terminate the rights of the fathers of the three children. The parental rights of the fathers of the two youngest children were terminated prior to trial. Following trial, the court terminated the parental rights of the

her parental deficiencies. The Department alleged that the mother did not follow through with any of the recommendations for mental health or substance abuse treatment. The Department also pointed out that the treatment provider who performed a psychological evaluation of the mother did not recommend reunification, and the mother had not been visiting the children.

In orders entered in July 2012 and January 2013, the court found that the mother was not regularly visiting the children. In May 2013, a court order suspended the mother's visits due to concerns about the safety of the children.

The termination trial began on July 31, 2013. On the third day of trial, the court appointed special advocate (CASA) requested a continuance of the trial, in order to obtain a home study for the grandmother which, if supportive, would allow the CASA to file a petition for guardianship on behalf of the grandmother. The CASA noted that the grandmother recently had hip replacement surgery that addressed some of the previous concerns about her physical abilities. The court granted the motion to continue the trial.

The CASA program arranged for psychiatric nurse practitioner, Dr. Joanne Solchany, to conduct a new home study to assess placement with the grandmother. As with the Department-initiated study, Dr. Solchany did not recommend the grandmother as a permanent, long-term placement for the children. Dr. Solchany reached this determination based on concerns about the grandmother's ability to meet the needs of the children on her own and to effectively access and utilize the resources available to her. Dr. Solchany observed that the grandmother had no "backup plan" and that her

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father of the eldest child. This appeal challenges only the termination of the parental rights of the mother.

family members appeared to have “burnt out on supporting her.” Dr. Solchany recognized the bond between the grandmother and children and the positive aspects of the relationship and initially hoped that supportive services could assist with the “practicality and pragmatics” of taking care of the children and allow them to remain in the grandmother’s care. However, she ultimately determined that everything she could think of that might help had already been tried without success.

The trial resumed on November 25. Due to the outcome of the independent home study, the CASA did not file a guardianship petition on behalf of the grandmother.

The trial took place over 12 days. The court considered the testimony of more than 20 witnesses including social workers, mental health and substance abuse treatment providers, clinical psychologists, the grandmother, and the CASA, among others. Witnesses described the mother’s parental deficiencies, including mental health issues, lack of ability to control anger, untreated drug and alcohol issues, poor decision-making, and lack of parenting skills. Mental health professionals diagnosed the mother with various mental health issues including cognitive disorder, mood disorder, posttraumatic stress disorder, intermittent explosive disorder, and personality disorder with borderline, narcissistic, and antisocial traits. Witnesses also described the mother’s lack of compliance with treatment, difficulty in managing relationships, and controlling her anger.

The CASA did not agree with the results of Dr. Solchany’s home study and expressed the opinion that the children should remain in the grandmother’s care. The grandmother was the only witness to testify that the mother was currently able to parent the children and recommend reunification. The mother did not testify or appear at trial.

At the conclusion of the trial, the court determined that the mother had numerous parental deficiencies and there was little likelihood those deficiencies would be remedied in the near future. The court also determined that continuation of the parent-child relationship diminished the children's prospects for early integration into a stable and permanent home and that termination was in the best interests of the children. Based on the testimony of Large and Dr. Solchany, the court specifically found that remaining in the grandmother's care was not in the children's long-term best interests and that this fact weighed in favor of termination. The court entered an order terminating the mother's parental rights. The mother appeals.

#### DISCUSSION

"[A] parent has a constitutional due process right not to have his or her relationship with a natural child terminated in the absence of a trial court finding of fact that he or she is currently unfit to parent the child." In re Welfare of A.B., 168 Wn.2d 908, 920, 232 P.3d 1104 (2010). Moreover, to terminate parental rights, the Department must also first prove the six elements of RCW 13.34.180 by clear, cogent, and convincing evidence. In re Dependency of K.N.J., 171 Wn.2d 568, 576-77, 257 P.3d 522 (2011). Clear, cogent, and convincing evidence exists when the ultimate fact in issue is shown by the evidence to be highly probable. In re Dependency of K.R., 128 Wn.2d 129, 141, 904 P.2d 1132 (1995). The six requirements for terminating a parent child relationship 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 Department then must prove by a preponderance of the evidence that termination of parental rights is in the child's best interests. RCW 13.34.190(1)(b); A.B., 168 Wn.2d at 911.

"Where the trial court has weighed the evidence, review is limited to ascertaining whether the findings of fact are supported by substantial evidence, and if so, whether the findings support the conclusions of law and the judgment." In re Dependency of P.D., 58 Wn. App. 18, 25, 792 P.2d 159 (1990). Substantial evidence is evidence that is in sufficient quantity to persuade a fair-minded and rational person of the truth of the declared premise. In re Welfare of T.B., 150 Wn. App. 599, 607, 209 P.3d 497 (2009). The determination of whether the findings of fact are supported by substantial evidence "must be made in light of the degree of proof required." P.D., 58 Wn. App. at 25. Where the proof required is clear and convincing, "the question on appeal is whether there is substantial evidence to support the findings in light of the highly probable test."

Id. We defer to the trial court's credibility determinations when reviewing an order terminating parental rights. T.B., 150 Wn. App. at 607.

I. Parental Unfitness

The mother expressly concedes that the statutory factors RCW 13.34.180(a), (b), (c), (d) and (e) were met. She claims, however, that in light of her decision to allow her mother, a fit custodian, to temporarily raise her children, there was insufficient evidence to establish her current parental unfitness.

As an initial matter, the placement of the children with the maternal grandmother was the result of the court's dispositional order in 2010 which placed the children in dependency status. Although it was an agreed order, placement of the children with the grandmother was not solely the result of the mother's decision.

And, leaving aside the question of the grandmother's fitness, the fitness or suitability of the children's placement outside the home is not relevant to the determination of whether the parent is fit at the time of the termination trial. Although the mother challenges the court's conclusion that she is "currently unfit to parent" the three children, numerous unchallenged factual findings amply support the conclusion. For example, the court found as follows:

2.24 There is little likelihood that conditions will be remedied by Ms. Slaughter so that the children can be returned to her in the near future. Ms. Slaughter has failed to substantially improve her parental deficiencies within twelve months following the entry of the dispositional order therefore the rebuttable presumption that there is little likelihood that conditions will be remedied so that the children can be returned in the near future applies and that presumption was not overcome by the mother.

2.25 Dr. O' Leary opined that Ms. Slaughter has a number of parental deficiencies including a lack of ability to provide a consistent and



adequately organized home environment that provides predictability. She would not be able to provide the necessary routine schedules for her high needs children. Her cognitive problems are a barrier to learning more appropriate parenting techniques.

2.26 Dr. O'Leary observed Ms. Slaughter presenting as aloof and with little nurture towards her children.

2.27 Dr. O'Leary testified that Ms. Slaughter would need to participate in mental health treatment for a minimum of one and a half years and consistently be on psychiatric medications for three years in order to address her mental health issues.

2.28 Evidence presented at trial was clear that the mother suffers from a mood disorder and has significant cognitive impairment that affects her development of parenting skills, yet the mother refuses to follow through with mental health treatment to work on her mood disorder.

2.29 Ms. Slaughter struggles with uncontrollable anger. This anger has been directed at the children, employees at Childhaven, family members, social workers, treatment providers, and others with whom she comes into contact. Her angry outbursts witnessed by those who tried to work with Ms. Slaughter caused fear for the safety of her children.

2.30 Ms. Slaughter was ordered to move out of the maternal grandmother's home where the children were placed in order to protect the children's safety.

The mother challenges only the following finding of fact:

CASA Sharon Green spent numerous hours working on the children's case. She met frequently with the children. She appeared at court hearings and Department planning meetings. Ms. Green provided testimony in support of the above findings including her opinion that Ms. Slaughter and [the father] are not capable of providing adequate care to [the children] at this time.

The mother apparently contends that, because the CASA supported placement with the grandmother and the CASA's view on the matter of future placement did not coincide with the court's finding that the grandmother was not a suitable long-term placement, the CASA's testimony did not support the "above" findings. But the "above" findings include not only findings about future placement with the grandmother, but also the

findings about the mother's fitness to parent and the ultimate finding that "remaining with the mother . . . is not in the best interests of the children."

While the CASA expressed some ambivalence on the issue of termination, recognizing that termination would ultimately result in the Department's ability to remove the children from the grandmother's home, her testimony on the mother's current fitness to parent was not equivocal. The CASA testified that the mother was not currently capable of providing "adequate care" for the three children, not capable of understanding and meeting their physical and emotional needs, and not able to "protect" them or appropriately parent the children. The record supports the court's finding about the CASA's testimony. And the findings as a whole support the court's conclusion that the mother was currently not fit to parent the three children.

## II. Diminishing Prospects

The mother contends that the court erred in finding that continued dependency diminished the children's prospects for integration into a permanent and stable home. Again, RCW 13.34.180 (1)(f) requires the Department to prove that continuation of the parent and child relationship clearly diminishes the child's prospects for early integration into a stable and permanent home. The main focus of this statutory factor is the parent-child relationship and whether it impedes the child's prospects for integration, not what constitutes a stable and permanent home. The State does not have to prove that a stable and permanent home is available at the time of termination. In re Dependency of K.S.C., 137 Wn.2d 918, 927, 976 P.2d 113 (1999).

The court made the following findings addressing this statutory factor:

2.48 The children were removed from Ms. Slaughter's home over three years ago. The mother has had limited contact with the children by her choice to not engage in services required to regain visitation and has not substantially improved her parental deficiencies so that the children can be returned to her residence within the near future.

2.49 After more than three years in dependency status and limited prospects for improving parental deficiencies, further delay for an unspecified period of time clearly diminishes the children's prospects for early integration into a stable and permanent home.

2.50 The children have prospects for adoption at the present time, which includes a placement where all three might be able to live together.

The mother challenges findings 2.49 and 2.50. She points out that the children were stable while living with the grandmother and that no prospective adoptive family had yet to meet the children. Therefore, the mother contends the Department failed to prove that continuation of the parent and child relationship clearly diminished the children's prospects for early integration.

The social worker assigned to the children's case at the time of trial testified that the children had "prospects for adoption." She said there were potential parties interested in adopting the children in spite of the special needs, and that a "current family" was interested in potentially adopting all three children. The social worker conceded that no prospective family had met the children or made a "100 percent commitment" to take all three. She explained that the Department was reluctant to introduce a family to the children until the issue of termination was resolved and the children were legally free for adoption. The testimony supports the court's finding that the children have prospects for adoption.

As to the claim that continued dependency did not undermine the children's stability because their placement with the grandmother was stable, this court rejected a similar argument in In re Dependency of A.V.D., 62 Wn. App. 562, 569, 815 P.2d 277 (1991). In that case, the father also argued that the Department failed to prove that continuation of the parent and child relationship clearly diminished his child's early integration into a stable and permanent home because his child was placed with her maternal grandmother with whom she had lived since birth. Id. The father conceded that he was not currently able to care for his child and was only truly interested in retaining visitation rights. Id. Nevertheless, he maintained that continuation of the relationship would not disrupt the stability and permanency of the child's placement. Id.

This court disagreed and explained:

Although she is being cared for by a close relative, [the child] is still a dependent child in foster care. As long as she is in foster care, her living situation will by definition remain temporary. She will not have a permanent home until her parents resume custody or their parental rights are terminated and she is adopted. Thus, while [the father's] assertion that [the child's] placement with her grandmother is a stable one is accurate, it does not undercut the trial court's determination that continuing his parental rights inhibits her ability to be integrated, as an adopted child, into that home.

A.V.D., 62 Wn. App. at 569-70.

As A.V.D. illustrates, a stable placement should not deprive a child of the benefit of a legally permanent home. Here, the children had been living with their grandmother for more than three years at the time of trial. But, the children's placement with the grandmother, although stable, was not permanent. And the facts supporting this factor are even more compelling here where it does not appear that the Department will consider the grandmother as a prospective adoptive placement. Accordingly,

substantial evidence supports the court's finding that continuation of the parent-child relationship clearly diminishes the early integration of the children into a stable and legally permanent home.

### III. Children's Best Interests

The mother claims the Department failed to establish that termination of parental rights was in the best interests of the children because of the "strong and positive" bonds between both the children and grandmother and between her and the children. This court affords a trial court broad discretion in making the "best interests" determination, and its decision receives great deference on review. In re Welfare of Young, 24 Wn. App. 392, 395, 600 P.2d 1312 (1979). Whether termination is in a child's best interests is based on the particular facts and circumstances of each case. A.V.D., 62 Wn. App. at 572. When a parent has failed to rehabilitate over a lengthy dependency period, a court is fully justified in finding termination to be in a child's best interests rather than leaving the child "in the limbo of foster care for an indefinite period" while the parent seeks further rehabilitation. In re Dependency of T.R., 108 Wn. App. 149, 167, 29 P.3d 1275 (2001) (quoting In re Dependency of A.W., 53 Wn. App. 22, 33, 765 P.2d 307 (1988)).

Here, the court specifically found:

2.51 The court has given careful consideration long and hard to the question of whether termination is in the children's best interests and has searched for the wisdom to and strength to do the right thing by [the children] After this careful consideration this Court concludes that remaining with the mother and in [the oldest daughter's] case also with her father is not in the best interests of the children.

2.52 After hearing testimony from Dr. Solchany and DSHS Home Study worker Suzanne Large, the Court has learned that maintaining the

children in the care of Francis Slaughter, maternal grandmother, is not in their best interests. This factor weighed in favor of granting termination.

2.53 Ms. Francis Slaughter has struggled to meet her own needs while struggling to meet the high needs of the three children. For example, the children were seven months late getting to the dentist, and [the youngest daughter] who needs special shoes does not have them because they were left in a storage unit that Ms. Francis Slaughter has not accessed by the time of trial.

Based on these findings, the court concluded that termination of the parental relationship with the mother was in the best interests of each of the three children.

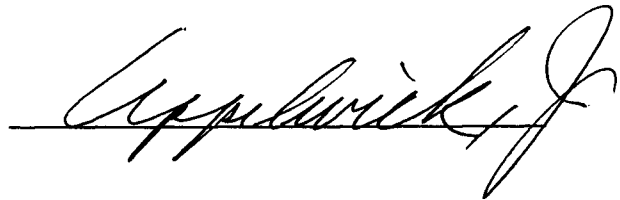
The mother challenges findings 2.52 and 2.53, citing the testimony of several witnesses, including the CASA, who addressed the benefits of the relationship between the grandmother and children. She also cites the CASA's testimony that the two oldest children stated a preference to reunite and live with their mother.

The court's findings do not refute or deny the relationship the children have with their grandmother or mother. The preponderance of the evidence nevertheless supports the trial court's finding that termination was in the children's best interests. The court's unchallenged findings demonstrate that the mother's untreated mental health issues and uncontrollable anger prevented her from parenting her children. She does not dispute the trial court's findings that these deficiencies further prevented her from meeting her children's needs and rendered her incapable of providing adequate care for the children. Ample testimony, including the CASA's testimony, supports the findings and they are verities on appeal.

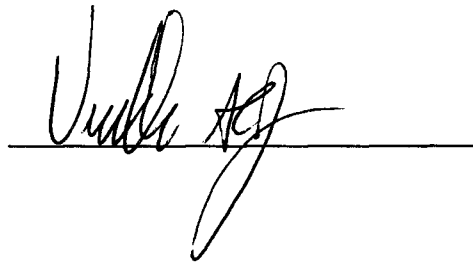
With respect to whether the children should remain with the grandmother in the future, the court's findings are in accordance with the opinions expressed by both Large and Dr. Solchany. Both witnesses concluded that, for a variety of reasons, the

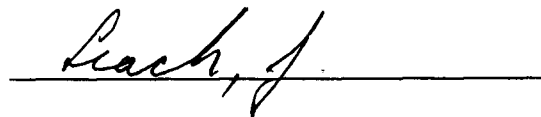
grandmother is unable to adequately meet the substantial needs of the children. It is not the role of this court on appeal to reweigh the evidence or judge the credibility of the witnesses. See In re Welfare of C.B., 134 Wn. App. 942, 953, 143 P.3d 846 (2006). Despite the CASA's contrary opinion, the evidence in the record supports the court's determination that long-term placement with the grandmother is not in the children's best interests. As the court noted, this finding weighed in favor of termination because the children would be legally free for adoption as a result of termination and would likely be removed from the grandmother's care in favor of a long-term adoptive home.

Substantial evidence supports the trial court's decision that termination of parental rights is in the best interests of the children. Accordingly, we affirm the court's order.

  
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WE CONCUR:

  
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