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

In the Matter of the Dependency of	)	No. 67231-2-I
	)	consolidated with
J.L.G. III, dob 04/26/95,	)	No. 67232-1-I
J.L.G., dob 05/21/96,	)	No. 67233-9-I
J.L.G., dob 11/02/99,	)	No. 67234-7
J.L.G., dob 01/18/03,	)	No. 67235-5
	)	
Minor Children.	)	
	)	
	)	
STATE OF WASHINGTON, DEPARTMENT OF SOCIAL AND HEALTH SERVICES,	)	
	)	
Respondent,	)	
	)	
v.	)	
	)	UNPUBLISHED OPINION
CHANEL DEAUN GUY,	)	
	)	FILED: January 14, 2013
Appellant.	)	
	)	

Verellen, J. — Chanel Guy challenges the trial court's findings of fact, conclusions of law, and order terminating her parental rights to her youngest son and daughter.[1] Because the evidence supports the trial court's findings of fact, and its conclusions of law are consistent with those findings, we affirm.

FACTS

[1] Guy's two older children voluntarily withdrew their appeals in this matter after the trial court vacated the termination of Guy's parental rights as to them.

Chanel Guy is the mother of daughter J.L.G., born November 2, 1999, and son J.L.G., born January 18, 2003.[2] Guy agreed to the trial court's entry of dependency orders as to the two children on August 21, 2009.

The underlying dependency was premised upon Guy's extensive contact with Child Protective Services (CPS). Her history with CPS revealed a pattern of general child neglect. Her children lacked supervision, and repeatedly failed to attend school. The children repeatedly had poor hygiene. Guy failed to ensure that her children received medical and dental care.[3] Physical and verbal abuse of the children by the mother and father were also alleged. Guy's home was repeatedly found to be unclean and unsanitary. The children were repeatedly attended by the maternal grandmother, who was frequently alcohol intoxicated. Guy used illegal drugs, and there were allegations of drug use and drug dealing in the children's home. Her son was born positive for marijuana, and had respiratory problems.

During the dependency, Guy did not maintain consistent contact with her social workers and treatment providers. Guy's parent coach reported that Guy avoided contact with her, often missed scheduled appointments, and was difficult to connect with by telephone. Guy's social worker reported that Guy was extremely difficult to contact, and did not return telephone calls or letters.

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[2] The father to all four children consented to termination of his parental rights and is not a party to this appeal.

[3] Her daughter had not been seen by a physician since she was less than a year old, despite a history of ventricular septal defect, and despite the fact that the provider from the 2003 appointment recommended follow up. The daughter had never seen a dentist and was grossly behind schedule for her immunizations. Medical records indicated that the son had not been seen by a primary care provider since his first year of life until March 2009, and had never seen a dentist.

The court ordered Guy to engage in a number of services, including family preservation services (FPS), a psychosocial evaluation with a parenting component by Dr. Carmela Washington-Harvey, drug and alcohol evaluation and treatment, and random urinalysis.

Dr. Washington-Harvey diagnosed Guy with adjustment disorder and mild mental retardation.[4] Dr. Washington-Harvey concluded that Guy "will always need supervision, guidance, and support in her parenting, and it is unlikely that the mother will be able to parent alone without assistance."[5] Dr. Washington-Harvey's recommendations included a drug and alcohol evaluation and referral to the Department of Developmental Disabilities (DDD) or supplemental security income (SSI) for Guy to determine her eligibility for these services.

Guy does not contest that she failed to comply with court-ordered services.[6] She did not regularly attend outpatient drug and alcohol related services, missed many urinalysis (UA) appointments, did not complete the required 90 days of clean UAs, and did not complete recommended out-patient treatment. Guy acknowledges that she did not complete a parenting course until 16 months after the entry of her dispositional order. Guy's tendency to miss appointments also hindered her providers' ability to deliver

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[4] According to Dr. Washington-Harvey, Guy's composite IQ score of 57 placed her "at the lower extreme of below average." Clerk's Papers at 603.

[5] Clerk's Papers at 603.

[6] Relevant unchallenged facts include: (1) a November 19, 2009 initial progress review order found Guy to be "in partial compliance" with court-ordered services and that her visitation with her children had been "infrequent"; (2) an April 1, 2010 permanency planning order found Guy in "partial compliance"; (3) an October 22, 2010 dependency review order found Guy "in compliance" but that she "had not made progress in correcting her parental deficiencies; and (4) an April 14, 2011 permanency planning order found Guy "in partial compliance" but that she "had not made progress in correcting her parental deficiencies." Clerk's Papers at 603.

services.

Guy failed to make progress in correcting her parental deficiencies. Guy does not contest the trial court's finding that she did not accept responsibility for her role in her children's removal.[7] And she does not challenge the finding that she could not apply the information she learned in parenting classes, and could not react appropriately to her children's needs.

Guy did not progress adequately in the services offered to her to enable her children to be returned to her care. At trial, Guy's parent coach asserted that Guy lacked the basic skills necessary to care for her children, and did not stay engaged with FPS for more than two weeks at a time.

The trial court terminated Guy's parental rights. Guy appeals.

DISCUSSION

Guy contends that the trial court erred in concluding that the State met its burden of proving the statutory elements of RCW 13.34.180 and.190, the prerequisites to an order terminating parental rights. These elements are:

> (a) That the child has been found to be a dependent child;
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> (b) That the court has entered a dispositional order pursuant to RCW 13.34.130;
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> (c) That the child has been removed . . . for a period of at least six months pursuant to a finding of dependency;
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> (d) That the services 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

[7] The court found, "There is significant concern that two years have passed since her three youngest children were removed from her care and that every witness questioned, including Ms. Guy, has noted that she has not accepted any responsibility for their removal." Clerk's Papers at 605.

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.[8]

Under RCW 13.34.190(1)(b), the court must determine that termination "is in the best interests of the child." Guy challenges the sufficiency of the evidence supporting RCW 13.34.180(1)(d) through (f) and RCW 13.34.190(1)(b).

In termination cases, the trial court's findings of fact will only be disturbed on appeal if they are not supported by substantial evidence.[9] Substantial evidence is evidence sufficient to persuade a fair-minded, rational person of the truth of the declared premise.[10]

Necessary Services Offered

Guy argues that the State failed to expressly and understandably offer or provide all reasonably available services capable of correcting her parenting deficiencies. Specifically, she contends that the Department of Social and Health Services (Department) failed to adequately refer her to DDD or SSI programs and failed to ensure that her service providers had prior experience working with developmentally delayed parents. We disagree.

The primary purpose of dependency proceedings is to allow courts to order remedial measures to preserve and mend family ties and to alleviate the problems that

[8] RCW 13.34.180(1).

[9] In re H.J.P., 114 Wn.2d 522, 532, 789 P.2d 96 (1990).

[10] World Wide Video, Inc., v. City of Tukwila, 117 Wn.2d 382, 816 P.2d 18 (1991) (quoting Bering v. Share, 106 Wn.2d 212, 220, 721 P.2d 918 (1986)).

prompted the State's intervention.[11] The services must be tailored to the needs of the individual parent.[12] However, if a parent is unwilling or unable to take advantage of services offered or provided, the Department is relieved of any obligation to provide additional services.[13]

Guy contends that DDD and SSI were necessary services, referring to Dr. Washington-Harvey's recommendations and to a November 19, 2009 court order instructing Guy to follow through with DD services. Guy argues that, given her diagnoses and IQ, the instructions she received regarding these services did not demonstrate that these services were "expressly and understandably offered" to her.

The evidentiary record demonstrates that the Department made efforts to refer Guy to DDD services. In 2009, FPS worker Jennifer Gates attempted to assist Guy with her application for DDD services and began the paperwork. Gates made numerous phone calls and visits to Guy's home at scheduled appointment times, but was unable to complete the DDD paperwork due to lack of contact with Guy. Gates stopped working with Guy in July 2009 due to ongoing difficulty contacting Guy and Guy's repeated failure to attend appointments. On January 28, 2010, Department social workers Lula Smith and Kelly Russell sent a letter to Guy's home address instructing her to "[f]ollow through with DD services and application to see if you qualify for assistance: DSHS Developmental

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[11] In re Dependency of T.L.G., 126 Wn. App. 181, 203, 108 P.3d 156 (2005).

[12] In re Dependency of T.R., 108 Wn. App. 149, 161, 29 P.3d 1275 (2001).

[13] In re Dependency of Ramquist, 52 Wn. App. 854, 861, 765 P.2d 30 (1988). Moreover, the Department is not required to offer additional services when the services are unlikely to correct parental deficiencies within the foreseeable future and to offer such services would be an exercise in futility. In re Dependency of P.D., 58 Wn. App. 18, 26-27, 792 P.2d 159 (1990).

Disabilities information, the contact number 206-568-5700."[14] A March 15, 2011 letter the Department sent to Guy also listed "referral to DDD or SSI" as a service Guy needed to complete.[15]

In an April 14, 2011 permanency planning hearing order, the court described the Department's offer of DDD services to Guy as follows:

> Follow through with DD services and application . . . . [T]he Department has attempted to help the mother with enrollment in this service including providing an FPS worker who would have helped the mother to apply if she had engaged with this service.[16]

Guy contends that the facts of her case resemble those in In re Dependency of H.W.[17] and In re Dependency of T.L.G.[18] In H.W., the court reversed a termination where a parent with an IQ of 65 and learning challenges demonstrated a willingness and ability to correct her parenting problems, but "was never referred to [DDD]."[19] The parent's social worker "made absolutely no attempt to investigate what services might be available through DDD," because "DSHS's main focus was on providing services to the children involved."[20] The court also considered information that the parent was eligible to receive services through DDD:

> After oral argument on this appeal, the [c]ourt received the declaration of . . . a social worker . . . who has consulted with DDD on [the parent's] behalf and learned that [she] is eligible for DDD services, including enrollment in Family Support Services, an assisted-living program for disabled parents and their

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[14] Ex. 13.

[15] Ex. 63.

[16] Ex. 68 at 6.

[17] 92 Wn. App. 420, 961 P.2d 963 (1998).

[18] 126 Wn. App. 181, 203, 108 P.3d 156 (2005).

[19] H.W., 92 Wn. App. at 426.

[20] Id. at 426-27.

children.[21]

In T.L.G., the court reversed the termination of parental rights where the Department "never identified the parental deficiencies to be corrected," "no treatment services were offered," and there was no finding that the parents "would have been unable to benefit" from additional services had they been offered.[22] Significantly, because no services were ordered, the State was unable to demonstrate that the parents failed to make use of offered services, thereby relieving the State of its burden to offer additional services.[23]

The State argues that these cases are distinguishable. The State argues that in H.W., the mother was never referred to DDD services, while Guy expressly was referred and had a FPS worker ready to assist with her application. Moreover, the State claims the evidence supports the conclusion that service providers sufficiently tailored their services to accommodate Guy's needs.[24] The State also asserts that Guy's "own lack of engagement with her service providers and the Department social workers resulted in her missed opportunity to benefit" from DDD and SSI services.[25]

In contrast to H.W. and T.L.G., ample evidence supports the conclusion that Guy

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[21] Id. at 426 n. 7.

[22] T.L.G., 126 Wn. App. at 198, 203.

[23] Id. at 202.

[24] For example, recognizing Guy's difficulty with long-term scheduling, Department social worker Michelle Hetzel prepared a new service letter for each monthly meeting, making it "very clear what she needed to do," and "reviewed individually each item of that service letter in person with Ms. Guy to make sure she understood what was expected of her." Report of Proceedings (RP) (Mar. 15, 2011) at 570, 573.

[25] Resp't's Br. at 20. The State also argues that, unlike the facts in H.W., in Guy's trial, Hetzel testified that Guy was unlikely to qualify for services due to her relatively high functioning level. See Resp't's Br. at 23.

was unwilling to attend classes and receive services, and failed to make use of offered services, including a referral to DDD. Significantly, the evidence supports the conclusion that FPS provider Gates was willing and able to assist Guy in applying for DDD services, but did not complete the application because Guy was unwilling to attend appointments and return telephone calls. Ample evidence also demonstrated that Guy made it extremely difficult for other service providers and social workers to make contact with her by not returning calls, not clearing her over-full voice-mail box to allow callers to leave messages, and by missing scheduled appointments. Moreover, Guy did not complete her required drug and alcohol treatment, repeatedly missed UA appointments, and took 16 months to complete required parenting classes.

Unlike the parents in H.W. and T.L.G., Guy's behavior provides sufficient evidence to support a trial court conclusion either that: (1) the State was relieved of its burden to offer additional services such as DDD or SSI because Guy was unwilling or unable to take advantage of services actually offered or provided;[26] or (2) that neither service would be capable of correcting Guy's parenting deficiencies given her refusal to engage in services.

In addition, at trial, Department social worker Michelle Hetzel testified that Guy was likely not eligible for DDD services, even if she had applied:

> DDD has a very limited scope, and especially in budget cutbacks, it is even smaller. They have a very few number of services that they offer. And my past experience in walking parents through the DDD application or trying to get the services . . . almost the only folks that they're serving are folks who are in wheelchairs with severe cognitive delays who cannot do basic self-care. And they provide basic self-care for folks who can't, for example, cook for themselves or bathe themselves or get themselves on a bus. But people of the functioning level that Ms. Guy is, there's little to no resource that they are functionally providing, in my experience working with them.[27]

[26] See Ramquist, 52 Wn. App. at 861.

In contrast, Guy argues she is eligible for services, citing statutory provisions establishing the DDD and regulations it employs to determine eligibility.

Guy's argument does not make any distinction between the recommendation of DDD services and SSI benefits. Guy focuses her argument on the need for DDD services in particular, and provides no authority to that she was separately entitled to SSI benefits. Dr. Washington-Harvey recommended referral to DDD or SSI, in the disjunctive. Guy's suggestion that reversal is required even if the Department adequately offered DDD because it failed to offer SSI services is not persuasive.

Substantial evidence supports the trial court's conclusion that the State met its burden of offering the DDD services that Dr. Washington-Harvey recommended.

Likelihood Conditions Would Be Remedied

Guy argues that because all necessary services were not offered, the State also failed to meet its burden of showing little likelihood that conditions would be remedied in the near future. However, substantial evidence supports the trial court's finding as to this element.

RCW 13.34.180(1)(e) requires the State to prove that there is little likelihood that conditions will be remedied so that the child can be returned to the parent in the near future. The focus of this factor is whether parental deficiencies have been corrected.[28] The time frame for determining the "near future" must be determined from the perspective and needs of a developing child, depending on the child's age and circumstances of his or her placement.[29]

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[27] RP (Mar. 15, 2011) at 639.

[28] T.R., 108 Wn. App. at 165.

[29] In re A.W., 53 Wn. App. 22, 32, 765 P.2d 307 (1988); T.L.G., 126 Wn. App. at

Department social worker Hetzel expressly testified that she did not believe conditions could be remedied in the near future: "In my professional opinion, there's little likelihood that the Mother could remedy the parental deficiencies in six months, that anything would be different in this situation six months from now than it is currently."[30] Hetzel testified the same would be true in 12 months.

Guy's parental deficiencies were identified as including drug use, inability to maintain a clean home, lack of supervision of children, lack of adequate hygiene for the children, and lack of medical and dental care for the children. Services to correct these deficiencies were available to Guy, including FPS, drug and alcohol treatment, mental health treatment, and an assessment to determine her eligibility for DDD services.

Guy does not challenge the trial court's factual findings that she: did not regularly attend her outpatient drug and alcohol related services; did not accept responsibility for her role in her children's removal; could not apply the information she learned in parenting classes; and failed to make progress in correcting her parental deficiencies.

Especially in view of these unchallenged findings, ample evidence supports the trial court's determination that there was little likelihood conditions would be remedied in the near future.

Prospects for a Stable and Permanent Home

Guy asserts that her relationship with her children was positive, that she demonstrated commitment to her children by participating in visitation, and that the family was well-bonded. On this basis, she claims that the trial court erred in finding that her

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[30] RP (Mar. 15, 2011) at 587.

relationship to her son and daughter was so harmful or disruptive as to clearly diminish the children's prospects of early integration into a stable home.

This disputed element is defined in RCW 13.34.180(1)(f), which requires a finding "[t]hat continuation of the parent and child relationship clearly diminishes the child's prospects for early integration into a stable and permanent home."

The State argues that the language "early integration" emphasizes a limited time frame for establishing permanency, and that a child will not have a permanent home "'until [his or her] parents resume custody or their parental rights are terminated and [the child] is adopted.'"[31]

At trial, Department social worker Hetzel testified that the son and daughter would have improved prospects for adoption if Guy's parental rights were terminated. Hetzel explained the basis for her opinion:

> When we have what's called foster-to-adopt families, they're families that are open to both foster care and adoption. They're families that can serve both roles. Some families are willing to do that, but it's a very tough balance, where the child's there temporarily, but you don't know about permanently. And a child cannot be permanently placed or make those permanent family bonds, attachment bonds, until they're legally free and able to be adopted.[32]

There was substantial evidence supporting the trial court's findings.

Best Interests of Children

Guy argues that the trial court erred in determining that termination was in the children's best interests. Specifically, she asserts that the children were well bonded to

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[31] Resp't's Br. at 37 (quoting In re Dependency of A.V.D., 62 Wn. App. 562, 569, 815 P.2d 277 (1991)).

[32] RP (Mar. 15, 2011) at 586-87.

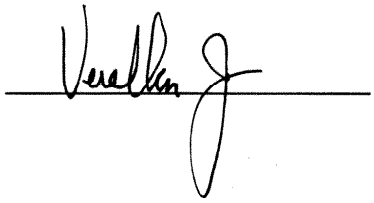
Guy and to each other, and that there was "no evidence that continued contact between Ms. Guy and her children was harmful."[33] Most of Guy's arguments focus on her oldest daughter, who is no longer party to this appeal.

Whether termination of parental rights is in the best interests of a child is based on the specific facts of each case.[34] The dominant consideration is the moral, intellectual, and material welfare of the child, and the parental relationship itself is subordinate to these interests.[35]

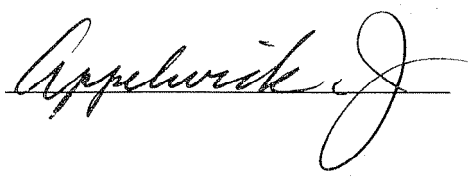
The State argues that each of the children has special needs and developmental issues that require regular attention, and that Guy is unable to meet these needs. Evidence supporting this conclusion included the facts of the dependency, Guy's failure to progress in services and in remedying her parental deficiencies, the uncertainty of the children's future, and the children's need for permanence.

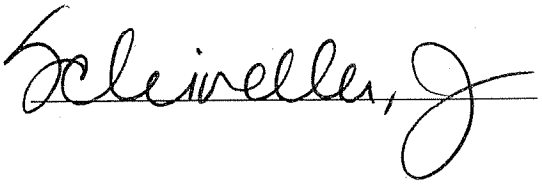
Substantial evidence supports the trial court's determination that termination was in the children's best interests.

Affirmed.



WE CONCUR:





[33] Appellant's Br. at 32.

[34] In re Dependency of A.M., 106 Wn. App. 123, 131, 22 P.3d 828 (2001).

[35] In re Adoption of Lybbert, 75 Wn.2d 671, 674, 453 P.2d 650 (1969).