IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

IN RE THE DEPENDENCY OF:	No. 41195-4-II
L.T., A Minor Child.	UNPUBLISHED OPINION

Worswick, J. — RT,[1] LT's father, appeals the juvenile court's determination that LT was dependent under RCW 13.34.030(6)(c). RT argues that the juvenile court erred because (1) it drew impermissible inferences from RT's exercise of his Fifth Amendment right to remain silent when asked about his pending criminal charges, (2) it erroneously admitted and relied on LT's mother's written out-of-court statement, (3) sufficient evidence does not support its findings and conclusions, and (4) the Department of Social and Health Services (DSHS) did not meet its burden of proof under RCW 13.34.030(6)(c). We affirm.

[1] We refer to all parties by their initials to protect LT's anonymity.

FACTS

LT was born on March 22, 2009, to father RT and mother AB. RT and AB separated a few months after LT's birth. After the parents separated, they amicably divided their time caring for LT. LT would spend three or four days with one parent, followed by three or four days with the other parent.

On March 13, 2010, DSHS received two separate referrals. The first referral alleged that AB had dropped LT and had neglected to obtain medical care for him, and also that AB was a substance abuser and could not care for LT. The second referral alleged that both AB and RT had substance abuse problems.

On March 15, Michael Bucierka, a DSHS Child Protective Services investigator and LT's assigned social worker, interviewed RT in person and talked with AB on the phone. Bucierka and AB discussed AB's past and current drug use, as well as AB's mental health history. The next day, on March 16, Bucierka met AB in person at his office. AB told Bucierka that RT abused alcohol. AB stated that both she and RT had current prescriptions for Xanax and that RT did not abuse drugs. AB said that RT was violent toward her only when he had been drinking. AB specifically told Bucierka that RT abuses her and hits her when he drinks alcohol. Based on what AB told him, Bucierka believed that RT would black out while drinking alcohol, and would forget what had happened, and "[did] have issues." Report of Proceedings (RP) at 122. AB told Bucierka that she did not want RT to raise LT because RT is "very abusive towards females" and that was not the role model she wanted for LT. Bucierka referred AB to Oak Street Center for an assessment, which included scoring AB's probability of substance dependence disorder,

evaluating AB's mental health, and determining AB's chemical dependency.

Thomas Livermore, a chemical dependency professional at Oak Street, assessed AB on March 18, and diagnosed her with polysubstance dependence based on her "cannabis, benzodiazepines, and opiate" use. RP at 251. Livermore recommended that AB receive short-term intensive inpatient treatment, followed by aftercare. Livermore provided the evaluation results to Bucierka.

On March 24, Sequim Police Officers Randy Kellas and Paul Dailidenas and Sequim Police Sergeant David Campbell responded to a 911 hang-up call from RT's residence. While the officers were on their way to the residence, they received another 911 hang-up call. When Officer Dailidenas arrived and parked near RT's residence, Susan Morris, RT's neighbor, informed him that "a male and a female [had been] chasing each other down the road yelling at each other." RP at 330. When all three officers had arrived at the residence, Officer Kellas went to the alley at the back of the house while Officer Dailidenas and Sergeant Campbell went to the front door of the residence. From the back of the house, Officer Kellas heard a male voice yell, "I will punch you in the f***ing nose." RP at 293. Officer Kellas radioed the other two officers that he heard a male threatening to harm a female. Officer Dailidenas and Sergeant Campbell could hear a male and female yelling at each other but were unable to understand what they were saying. They then "heard a female screaming like she was being assaulted." RP at 332.

Officer Dailidenas and Sergeant Campbell entered the residence through the front door and announced their presence. The four people in the house were in the bedroom. LT's paternal grandmother, CT, came out of the bedroom holding LT, followed by AB. LT was crying. AB

was crying hysterically and appeared very upset. When RT came out of the bedroom, he was visibly upset, his face was flushed, his carotid artery was pulsing, his jaw and fists were clenched, and he was clammy to the touch.

Officer Dailidenas talked to RT outside while Sergeant Campbell interviewed AB and CT inside. RT informed Officer Dailidenas that he and AB were fighting because she was stealing his prescription medication.

AB told Sergeant Campbell that her wrist was sore and that RT had grabbed and injured her wrists because "she had taken his anxiety medication away from him because she felt that he was overmedicating on them, and he was angered by this." RP at 363. Because AB requested medical assistance, the officers called paramedics, who treated AB at the residence.

AB provided Sergeant Campbell with a written statement of what had happened. AB's signed, handwritten statement stated:

> On the morning of 3/24, [RT] was very inebriated on xanax [and] oxycontin. He kept babbling [and] nodding out [and] I was trying to talk to him about how I'm trying to get clean [and] he should do the same, but at that point he was just asking for sex [and] continuing to babble incoherently. I was worried about leaving [LT] with him [and] while he was nodded off at the kitchen counter I grabbed his pill bottle which contained xanax [and] oxycontin, ran to the bathroom, took out the oxycontin [and] flushed it down the toilet. Then I ran out the front door ([RT] was holding [LT]) intending to hide his xanax in the bushes, get in my car [and] drive away. Then [RT] pursued me. I was scared [and] ran away down the street. [RT] caught up to me, grabbed my arm, [and] tried to wrench the pill bottle out of my hand. I screamed, jerked my arm free, [and] ran back into the house—I had realized that he probably set [LT] on the floor in his haste to get his pills, so I was worried he might get into something. [RT] ran in the house after me, so I ran into the bedroom. He grabbed my arms, pushed me on the bed, took his pills, and when he saw the o.c. was not in there he began threatening to hurt me if I didn't tell him where it was. I told him I flushed it [and] he didn't believe me, continued to threaten me, [and] then grandma came in the room and he finally let go of me.

Ex. 1. AB's signature on this statement was accompanied by a certification that the statement was true under penalty of perjury.

The officers arrested RT for fourth degree assault domestic violence and took him into custody. The officers then contacted DSHS with a referral, stating that they had arrested RT for domestic violence and placed LT in protective custody.

On that same day, March 24, Bucierka responded to the officers' referral, went to the Sequim Police Department, saw LT, met with AB's mother and stepfather, and talked to AB privately. AB described what Bucierka called "a very graphic DV incident," describing what occurred that day, although she told Bucierka that RT had dragged her back into the house.[2] RP at 125. AB told him that she had grabbed RT's pills and ran out of the house, and that RT chased her. She also stated that after she threw RT's pills in the toilet, she told RT he was too impaired for LT to be with him. According to Bucierka, AB was coherent when describing the March 24 domestic violence incident. Bucierka mentioned that AB was having panic attacks but that she was able to calm herself down without any medication. At this time, DSHS had concerns because (1) it had already received two referrals and then received a third referral from law enforcement, (2) AB was making allegations against RT, and (3) AB's drug and alcohol evaluation indicated that she had "a very serious problem." RP at 126-27.

On March 26, DSHS filed a dependency petition on behalf of LT alleging that LT was dependent under former RCW 13.34.030(5) (2008).[3] At the dependency hearing, Officer Kellas,

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[2] RT did not object to Bucierka's potential hearsay testimony regarding his conversation with AB.

[3] The legislature recodified former RCW 13.34.030(5) as RCW 13.34.030(6) effective July 26, 2009. *See* Former RCW 13.34.030(5) (2008), *recodified as* RCW 13.34.030(6) (Laws of 2009,

Officer Dailidenas, Sergeant Campbell, Bucierka, Morris, and Livermore testified as described above.[4] Sergeant Campbell also testified that AB did not appear to be under the influence of intoxicants at the time she wrote her statement. Sergeant Campbell stated that he did not feel it was safe to leave LT with either AB or RT because AB claimed RT was overmedicated and they had both left the child alone in the residence while running down the street.[5]

AB's, RT's, and CT's testimonies at the dependency hearing differed significantly from their March 24 statements to the officers. AB admitted that she had serious past drug issues involving marijuana, methamphetamines, benzodiazepine, oxycodone, and opiates. AB denied that RT abused drugs. She testified that RT was a good parent and that he always made sure LT was safe and cared for. AB claimed that she could not remember what she told the officers following the March 24 incident because she had been coming down off opiates and benzodiazepines and her "memory of what happened on that day [was] very, very fuzzy." RP at

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ch. 520, § 21). Thus, the juvenile court should have cited to subsections (6)(b) and (c), not (5)(b) and (c). We cite to the recodified statute, RCW 13.34.030(6). RCW 13.34.030(6) states

> (6) "Dependent child" means any child who:
> (a) Has been abandoned;
> (b) Is abused or neglected as defined in chapter 26.44 RCW by a person legally responsible for the care of the child; or
> (c) Has no parent, guardian, or custodian capable of adequately caring for the child, such that the child is in circumstances which constitute a danger of substantial damage to the child's psychological or physical development.

[4] At the dependency hearing, RT did not object to Bucierka's testimony as to what AB had told him. Additionally, RT does not argue on appeal that the juvenile court should not have admitted Bucierka's potential hearsay testimony.

[5] RT did not object to Campbell's potential hearsay testimony at the dependency hearing and has not argued on appeal that this testimony should not have been considered.

23. She stated that she had lied in her written statement "because [she] was angry with [RT] and angry with what was going on." RP at 24. AB testified that there was no oxycontin in the prescription bottle she took from RT and that she did not flush any pills down the toilet. AB denied that RT had used any force to get the pills out of her hand. AB also denied telling Bucierka that RT had assaulted her in the past. AB stated that she had never used drugs in LT's presence or while she was caring for him.

During cross-examination of AB and over RT's objection, the juvenile court admitted AB's written statement for impeachment purposes, as a statement by a party opponent, and because it was relevant as to her state of mind during her testimony. Officer Dailidenas had used AB's statement to write his police report and also testified regarding the statement's content.[6]

RT testified that in 2007 he was convicted of driving under the influence (DUI), and charged with, but not convicted of, a second DUI in 2009. RT stated that he was prescribed Xanax for heart palpitations and anxiety. He denied taking oxycontin. When asked about the March 24 incident, RT invoked his Fifth Amendment right to remain silent. On direct examination, RT's counsel asked him whether he had touched AB "during that outside-of-the-house period," and RT responded, "No." RP at 320. On cross-examination, RT continued to deny that he had grabbed AB's arms or hands outside the house. RT acknowledged that he was charged with fourth degree domestic violence as a result of the March 24 incident. He also stated that he had been charged with first degree felony assault in February 2009.

[6] The juvenile court overruled RT and AB's hearsay objection because "it's admission of a party . . . opponent." RP at 336. On appeal, RT argues that "RT was further prejudiced by Officer Dailidenes testimony about AB's written statement," but he does not argue that it should not have been admitted because it was hearsay. Br. of Appellant at 19-20.

CT lived at the residence with RT. CT testified that on March 24 she was returning to the residence and saw RT and AB running to the front door of the house. When CT entered the house, AB and RT were arguing. CT testified that LT was in his crib when she entered the house. She heard RT accuse AB of taking his medication. CT testified that she did not see RT or AB strike or threaten each other. CT testified that on past occasions she saw RT hold AB's wrists to keep her from hitting him.

Bucierka testified about the potential risks to LT's health, safety, and welfare should he be returned to AB and RT. Bucierka believed that AB and RT's domestic violence incidents, alcohol and prescription drug abuse, and mental health issues created a very volatile situation and put LT at risk of getting hurt. Specific to RT's parental deficiencies, Burcierka was concerned with (1) RT's substance abuse issues based on his past DUI and AB's initial assertion that RT drinks and has blackouts, (2) the domestic violence incident, (3) RT's denial of a propensity for violence, and (4) RT's "minimizing interpersonal interactions with loved ones." RP at 130. Bucierka opined that it was "[a]bsolutely" in the best interest of the child to be found dependent. RP at 132.

The juvenile court ruled that LT was dependent as to AB and RT because "the child . . . has no parent, guardian or custodian capable of adequately caring for the child, such that the child is in circumstances which constitute a danger of substantial damage to the child's psychological or physical development" under RCW 13.34.030. Clerk's Papers (CP) at 13, 15.

On August 17, the juvenile court entered the following findings of fact:

> [2.2(1)] Mother is addicted to controlled substances.
> [2.2(2)] Mother has mental health issues that may or may not be connected with her drug use.
> [2.2(3)] The father and the mother, although not living together, have shared the raising of the child.
> [2.2(4)] Father has allowed the mother to care for the child during a period when she was unfit to care for the child, placing the child in danger.
> [2.2(5)] The father has engaged in domestic violence against the mother.
> [2.2(6)] There was an incident of domestic violence between the mother and the father on March 24, 2010 to which the child was exposed.
> [2.2(7)] Previous arguments have taken place between the parents with the child present.
> [2.2(8)] The mother's denials of the March 24, 2010 domestic violence incident are self-serving and not believable. Rather, her clear and cogent written statement made to police at the time of the incident is believable and deemed accurate.
> [2.2(9)] The father is currently awaiting trial on assault charges from the March 24, 2010 incident. He is also awaiting trial on First Degree Assault charges in Clallam County Superior Court. His refusal to discuss these incidents creates overwhelming concerns regarding his ability to control his anger and provide proper care for the child.
> [2.2(10)] There are concerns regarding the father's use of controlled substances. He has had two charges of DUI. The father has refused any services meant to alleviate that problem.

CP at 14-15. Regarding placement, the juvenile court ruled:

> [2.4] It is currently contrary to the child's welfare to return home. The child should be placed or remain in the custody, control and care of DSHS Agency for the following reasons:
> [T]here is no parent or guardian available to care for the child; and/or
> [T]he court finds by clear, cogent and convincing evidence that a manifest danger exists that the child will suffer serious abuse or neglect if the child is not removed from the home, and an order under RCW 26.44.063 will not protect the child from danger.
> . . .
> The child should be placed or remain in:
> Relative placement with maternal grandparents.

CP at 15.

The juvenile court also determined: "DSHS made reasonable efforts to prevent or eliminate the need for removal of the child from the child's home; but those efforts were unsuccessful because . . . [t]he health, safety, and welfare of the child cannot be adequately protected in the home." CP at 15-16 (Finding of Fact 2.5). RT appeals.

ANALYSIS

I. RT's Invocation of Fifth Amendment Privilege

RT argues that the juvenile court committed an error of law by drawing a negative inference from his exercise of his Fifth Amendment privilege against self-incrimination. We review errors of law de novo. *In re Dependency of P.P.T.*, 155 Wn. App. 257, 267, 229 P.3d 818 (2010). In support of his argument, RT attempts to distinguish the facts of *Ikeda v. Curtis*, 43 Wn.2d 449, 458, 261 P.2d 684 (1953). But *Ikeda* stands for the well-settled proposition that "'[w]hen a witness in a civil suit refuses to answer a question on the ground that his answer might tend to incriminate him, . . . the trier of facts in a civil case is entitled to draw an inference from his refusal to so testify.'" *State Farm Fire & Cas. Co. v. Huynh*, 92 Wn. App. 454, 462, 962 P.2d 854 (1998) (quoting *Ikeda*, 43 Wn.2d at 458) (alteration in original); *see also Baxter v. Palmigiano*, 425 U.S. 308, 318, 96 S. Ct. 1551, 47 L. Ed. 2d 810 (1976); *See King v. Olympic Pipeline Co.*, 104 Wn. App. 338, 351, 16 P.3d 45 (2000). Because dependency proceedings are civil in nature, the juvenile court may draw adverse inferences when a witness "refuses to answer a question on the ground that his answer might tend to incriminate him." *Huynh*, 92 Wn. App. at 462; *See In re Dependency of Grove*, 127 Wn.2d 221, 226, 897 P.2d 1252 (1995) (acknowledging that a dependency action is a civil action). Thus, contrary to RT's assertion, we

follow established precedent and hold that the juvenile court did not err in drawing an adverse inference from RT's refusal to answer questions regarding the March 24 domestic violence incident.

II. AB's Out-of-Court Statement

The juvenile court admitted AB's March 24 written statement because (1) "it's relevant as to her state of mind at the time of her testimony today," (2) "it's proper for impeachment," and (3) "it's also a statement . . . by a party opponent." RP at 43-44. RT contends that the juvenile court's factual findings erroneously relied on "AB's unsworn contemporaneous statement and [disregarded] her sworn testimony." Br. of Appellant at 16. DSHS responds that AB's written statement was admissible as (1) a prior inconsistent statement, (2) an excited utterance, or (3) impeachment evidence.

In addition to AB's written statement, RT argues that the juvenile court erroneously relied on Dailidenas's testimony about AB's written statement. But because the State presented the same evidence as was in AB's statement through the testimony of Officer Kellas, Sergeant Campbell, and Bucierka without objection, there is sufficient evidence to affirm the juvenile court's findings. We do not further address this argument.

III. Juvenile Court's Findings

RT challenges the juvenile court's findings of fact 2.2(4), 2.2(5), 2.2(6), 2.2(9), 2.2(10), and its conclusions of law 2.3, 2.4, and 2.5.[7] RT argues that the findings do not support the

[7] RT and the juvenile court mischaracterize conclusions of law denoted as findings of fact under numbers 2.3, 2.4, and 2.5 as "findings." "We review conclusions of law mislabeled findings of fact de novo as conclusions of law." *Abbey Rd. Group, LLC v. City of Bonney Lake*, 167 Wn.2d 242, 265, 218 P.3d 180 (2009).

juvenile court's dependency order. We disagree with RT and affirm the juvenile court's findings of fact, its dependency determination, and its placement decision.

A. Standard of Review

To establish a child's dependency, DSHS must show by a preponderance of the evidence that the child is dependent under RCW 13.34.030. RCW 13.34.110(1). Under RCW 13.34.030(6)(c), a dependent child means any child who

> [h]as no parent, guardian, or custodian capable of adequately caring for the child, such that the child is in circumstances which constitute a danger of substantial damage to the child's psychological or physical development.

We review a claim of insufficient evidence in a dependency case to determine whether substantial evidence supports the trial court's findings of fact and whether those findings support the court's conclusions of law. *In re Dependency of E.L.F.*, 117 Wn. App. 241, 245, 70 P.3d 163 (2003). Evidence is substantial if, when viewed in the light most favorable to the party prevailing below, a rational trier of fact could find the fact in question by a preponderance of the evidence. *E.L.F.*, 117 Wn. App. at 245. Preponderance of the evidence means "more likely than not to be true." *In re Dependency of M.S.D.*, 144 Wn. App. 468, 478, 182 P.3d 978 (2008). We treat unchallenged findings of fact as verities on appeal. *In re Interest of J.F.*, 109 Wn. App. 718, 722, 37 P.3d 1227 (2001).

We do not weigh the evidence or assess witness credibility. *E.L.F.*, 117 Wn. App. at 245. A dependency determination under RCW 13.34.030(6) does not require proof of actual harm, only a danger of harm. *In re Dependency of Schermer*, 161 Wn.2d 927, 951, 169 P.3d 452 (2007). When determining whether to enter a dependency order, a juvenile court has broad

discretion to consider all the facts and evaluate the risk of harm. *Schermer*, 161 Wn.2d at 951-52. We review a juvenile court's placement decision in a dependency proceeding for an abuse of discretion. *In re Dependency of A.C.*, 74 Wn. App. 271, 275, 873 P.2d 535 (1994).

B. Unchallenged Findings of Fact

RT does not challenge the following findings of fact:

> [2.2(1)] Mother is addicted to controlled substances.
> [2.2(2)] Mother has mental health issues that may or may not be connected with her drug use.
> [2.2(3)] The father and the mother, although not living together, have shared the raising of the child.
> [2.2(7)] Previous arguments have taken place between the parents with the child present.
> [2.2(8)] The mother's denials of the March 24, 2010 domestic violence incident are self-serving and not believable. Rather, her clear and cogent written statement made to police at the time of the incident is believable and deemed accurate.

As noted above, these unchallenged findings of fact are verities on appeal. *J.F.*, 109 Wn. App. at 722.

C. Juvenile Court's Challenged Findings

i. Finding of Fact 2.2(4)

Finding of fact 2.2(4) states, "Father has allowed the mother to care for the child during a period when she was unfit to care for the child, placing the child in danger." CP at 14. RT argues that because he and AB testified that AB never did drugs while caring for LT and RT "never saw AB when she appeared to be on drugs," evidence does not support this finding. Br. of Appellant at 9.

RT has not challenged the juvenile court's findings that AB was addicted to controlled

substances and that she has mental health issues and that RT and AB shared caring for LT. There was abundant testimony regarding AB's history of drug use and abuse. AB's March 18 urinalysis was positive for oxycodone and marijuana. When LT was placed into protective custody on March 24, it was clear that AB had been actively using drugs. RT testified that he was concerned about LT being with AB while AB was using drugs but as long as AB went to classes and was able to get clean, then AB should be able to care for LT. Moreover, RT knew AB used marijuana and was with her when she was arrested for possessing methamphetamines. The evidence of AB's drug abuse, RT's knowledge of AB's drug use, and the testimony that AB and RT shared the responsibilities of raising LT, supports a finding that RT allowed AB to care for LT when she was unfit to care for him. Thus, viewing the evidence in the light most favorable to DSHS, we hold that substantial evidence supports finding of fact 2.2(4).

ii. Findings of Fact 2.2(5) and 2.2(6)

Finding of fact 2.2(5) states, "The father has engaged in domestic violence against the mother." Finding of fact 2.2(6) states, "There was an incident of domestic violence between the mother and the father on March 24, 2010 to which the child was exposed." CP at 14. Substantial evidence supports both of these challenged findings.

The juvenile court is in the best position to resolve the conflict in the testimony and to judge the credibility of the witnesses. *State v. Thomas*, 150 Wn.2d 821, 874, 83 P.3d 970 (2004), *abrogated in part on other grounds by Crawford v. Washington*, 541 U.S. 36, 124 S. Ct. 1354, 158 L. Ed. 2d 177 (2004). AB and RT denied that RT assaulted AB on or before March 24. Bucierka, Morris, and the responding officers testified about the domestic violence issue.

Specifically, Bucierka testified that (1) before the March 24 incident, AB had told him that RT abuses and hits her when he drinks alcohol; and (2) on March 24, AB described to Bucierka a "very graphic DV incident," including that RT chased AB out of the house, grabbed her, and dragged her back into the house after she grabbed his pills. RP at 125. Morris testified that she had seen a female running down the road and saw the male grab the female. Officer Kellas testified that on March 24 he heard a male voice yell "I will punch you in the f***ing nose." RP at 293. Sergeant Campbell testified that AB requested medical assistance for her sore wrist and informed him that RT had grabbed her wrists during the March 24 incident. Despite AB's and RT's contrary testimony, the juvenile court resolved the conflicting testimony by finding that the domestic violence incident had occurred. Substantial evidence supports the juvenile court's findings of fact 2.2(5) and 2.2(6).

iii. Finding of Fact 2.2(9)

Finding of fact 2.2(9) states "[t]he father is currently awaiting trial on assault charges from the March 24, 2010 incident. He is also awaiting trial on First Degree Assault Charges in Clallam County Superior Court. His refusal to discuss these incidents creates overwhelming concerns regarding his ability to control his anger and provide proper care for the child." CP at 15. RT challenges only the negative inference drawn from his assertion of his Fifth Amendment right to not answer questions relating to the March 24 incident and an alleged first degree assault. As we discussed above, because dependency proceedings are civil in nature, the juvenile court did not err by drawing an adverse inference from RT's refusal to answer questions regarding his pending criminal charges.

iv. Finding of Fact 2.2(10)

Finding of fact 2.2(10) states, "There are concerns regarding the father's use of controlled substances. He has had two charges of DUI. The father has refused any services meant to alleviate that problem."[8] CP at 15. Sergeant Campbell testified that AB had told him that her wrist was sore because RT grabbed her when she took "his anxiety medication away from him because she felt that he was overmedicating on them, and he was angered by this." RP at 363. Sergeant Campbell testified that one of the reasons he did not feel it was safe to leave LT with RT was because AB claimed RT was overmedicated.[9] But at both her March 16 meeting with Bucierka and at the dependency hearing, AB denied that RT abused drugs. The juvenile court is in the best position to resolve the conflict in the testimony and to judge witness credibility. *Thomas*, 150 Wn.2d at 874-75. Thus, when viewed in the light most favorable to DSHS, substantial evidence supports the juvenile court's finding that "[t]here are concerns regarding the father's use of controlled substances." CP at 15.

D. RCW 13.34.030(6)(c) Dependency Ruling

Next, RT challenges the juvenile court's conclusion 2.3 that LT was dependent as to AB and RT because LT "has no parent, guardian or custodian capable of adequately caring for the child, such that the child is in circumstances which constitute a danger of substantial damage to

[8] RT does not challenge the part of this finding that reads, "The father has refused any services meant to alleviate that problem." CP at 15. It is therefore a verity on appeal. *J.F.*, 109 Wn. App. at 722.

[9] RT did not object to this testimony during the dependency hearing and does not argue on appeal that it was error to admit it.

the child's psychological or physical development" under RCW 13.34.030(6)(c). CP at 15. His challenge fails.

The goal of a dependency hearing is to determine the child's welfare and his best interests. *In re Welfare of Aschauer*, 93 Wn.2d 689, 695, 611 P.2d 1245 (1980); *In re Welfare of Becker*, 87 Wn.2d 470, 476, 553 P.2d 1339 (1976). To declare a child dependent, the trial court must find by a preponderance of the evidence that the child meets one of the statutory definitions of dependency. RCW 13.34.110(1); *In re Welfare of Key*, 119 Wn.2d 600, 612, 836 P.2d 200 (1992), *cert. denied*, 507 U.S. 927, 113 S. Ct. 1302, 122 L. Ed. 2d 691 (1993). Our Supreme Court "has discussed the importance of retaining the relatively lenient preponderance standard in a dependency proceeding, noting that dependency has the important function of allowing state intervention in order to remedy family problems and provide needed services." *Schermer*, 161 Wn.2d at 942.

RT argues that "[t]his finding is based on the unsupported constituent findings that RT is not capable of adequately caring for LT." Br. of Appellant at 14. But substantial evidence supports the juvenile court's finding 2.2, and these findings support the determination that RT is not capable of adequately caring for LT, such that LT is in circumstances that constitute a danger of substantial damage to his psychological or physical development. The findings demonstrate that (1) AB was addicted to controlled substances and had mental health issues; (2) RT and AB shared raising LT; (3) RT allowed AB to care for LT when AB was unfit; (4) both RT's pending domestic violence assault charges as a result of the March 24 incident, and his pending first degree assault charges resulting from a separate incident, created concerns regarding his anger

and tendency for violence; (5) LT was exposed to the March 24 domestic violence incident; and (6) RT's past and pending DUI charges create a concern regarding his potential substance abuse. These findings support the juvenile court's conclusion that RT's inability to care for LT would place LT in "danger of substantial damage to his psychological or physical development." CP at 15.

Moreover, Bucierka testified that AB's and RT's domestic violence incidents, alcohol and prescription drug abuse, and mental health issues created a very volatile situation that put LT at risk of harm. When determining whether to enter a dependency order, a juvenile court has broad discretion to consider all the facts and evaluate the risk of harm. *Schermer*, 161 Wn.2d at 951-52. Thus, we hold that sufficient evidence supports the juvenile court's findings of fact and conclusions of law.

E. Placement Findings

RT also challenges the juvenile court's conclusion 2.4 that "it is currently contrary to the child's welfare to return home" because "there is no parent or guardian available to care for the child and/or . . . the court finds by clear, cogent, and convincing evidence that a manifest danger exists that the child will suffer serious abuse or neglect if the child is not removed from the home," and that "[t]he child should be placed or remain in [r]elative placement with maternal grandparents." CP at 15. RT argues that "[t]he Legislature has determined that it is in the best interest of a child to live at home with a willing and capable parent absent evidence of abuse or neglect." Br. of Appellant at 14. Additionally, RT states that "there is no clear, cogent and convincing evidence of anything beyond a single incident that, while regrettable, presented no

danger to the child, then or now."[10] Br. of Appellant at 15. We disagree.

RCW 13.34.130(3) states:

> Placement of the child with a relative or other suitable person as described in subsection (1)(b) of this section shall be given preference by the court. An order for out-of-home placement may be made only if the court finds that reasonable efforts have been made to prevent or eliminate the need for removal of the child from the child's home and to make it possible for the child to return home, specifying the services, including housing assistance, that have been provided to the child and the child's parent, guardian, or legal custodian, and that preventive services have been offered or provided and have failed to prevent the need for out-of-home placement, *unless the health, safety, and welfare of the child cannot be protected adequately in the home, and that:*
> (a) *There is no parent or guardian available to care for such child*;
> (b) The parent, guardian, or legal custodian is not willing to take custody of the child; or
> (c) *The court finds, by clear, cogent, and convincing evidence, a manifest danger exists that the child will suffer serious abuse or neglect if the child is not removed from the home and an order under RCW 26.44.063 would not protect the child from danger*.

CP at 15 (emphasis added). Here, the juvenile court determined the placement of LT based on RCW 13.34.130(3)(a) *and* (c).

RT is correct that in determining placement, the best interests of the child are the court's paramount concern. *In re Dependency of J.B.S.*, 123 Wn.2d 1, 10, 863 P.2d 1344 (1993). But a trial court should not allow the rights of the biological parents to override a child's best interests when determining placement under the dependency statute. *J.B.S.*, 123 Wn.2d at 8. Because each dependency case is largely dependent upon its own facts and circumstances, the criteria for

[10] RT also argues that the juvenile court erred in not properly filling out the dependency order. RT claims the juvenile court left portions of the form blank in error. But he does not provide any authority for why the juvenile court needed to fill in the blank lines. It appears that none of the dependency reasons relied on in the juvenile court's order required additional information to be provided; furthermore the portions of the order that contain blank lines were not checked. Thus, RT's argument fails.

establishing the child's best interests are not capable of exact specification. *Aschauer*, 93 Wn.2d at 695.

Additionally, we review the juvenile court's placement decision in a dependency proceeding for an abuse of discretion. *A.C.*, 74 Wn. App. at 275. The trial court has broad discretion and is allowed considerable flexibility to receive and evaluate all relevant evidence to reach a decision recognizing both the welfare of the child and the parents' rights. *In re Welfare of B.D.F.*, 126 Wn. App. 562, 574, 109 P.3d 464 (2005).

The juvenile court can find a child dependent without waiting for actual harm to occur; a "danger" of harm is sufficient. RCW 13.34.030(6)(c); *see also Schermer*, 161 Wn.2d at 951. Even when there is no evidence that a child has suffered actual harm, a parent's serious disregard of potential harmful consequences can establish a clear and present danger to a child's health, welfare, and safety. *J.F.*, 109 Wn. App. at 730-31.

The March 24 incident presented danger to LT, because the testimony demonstrated that when both parents ran out of the house in the middle of a violent argument, they left LT unattended, which presented a "danger of harm." RCW 13.34.030(6)(c). Additionally, testimony showed that RT had alcohol and controlled substance abuse issues. It is also clear that RT allowed AB to care for LT while AB was chemically dependent on cannabis, benzodiazepines, and opiates. Bucierka testified that LT's health, safety, and welfare would be in jeopardy if LT was returned to either parent's home. Specifically, Bucierka believed RT had "some type of substance abuse issue," and he was concerned about RT's drinking, the domestic violence incident, and RT's minimization of all the reasons that caused Bucierka concern. RP at 129-30.

Based on the juvenile court's findings of fact, all of which are supported by substantial evidence, DSHS demonstrated that RT is not a capable parent and it is in LT's best interest to be placed with the maternal grandparents while DSHS offers services to AB and RT. Because the juvenile court did not abuse its discretion, we affirm the juvenile court's placement with the maternal grandparents.

F. Reasonable Efforts

RT also challenges the juvenile court's conclusion 2.5 that "DSHS made reasonable efforts to prevent or eliminate the need for removal of the child from the child's home; but those efforts were unsuccessful because . . . [t]he health, safety, and welfare of the child cannot be adequately protected in the home." CP at 15-16. RT argues that DSHS did not make any effort to avoid removing LT from his home. We disagree.

RT has does not challenge the part of finding 2.2(10) that states, "The father has refused any services meant to alleviate [his controlled substances] problem." CP at 15. This finding is therefore a verity on appeal. The fact that RT has refused services to alleviate his controlled substances problem shows that DSHS has made reasonable efforts to prevent or eliminate the need to remove LT from RT's home.

Moreover, under RCW 13.34.130(3), the juvenile court need not find that DSHS made reasonable efforts to prevent or eliminate the need for removing the child from his home if "the health, safety, and welfare of the child cannot be protected adequately in the home, and . . . [t]here is no parent or guardian available to care for such child." RCW 13.34.130(3). And as we discussed above, the record supports the juvenile court's finding that neither parent could care for

LT without placing LT's health, safety, and welfare at risk.

We affirm the juvenile court's determination that DSHS made reasonable efforts to prevent the removal of LT from LT's home and, even if they had not, RCW 13.34.130(3) was satisfied because LT's health, safety, and welfare would have been jeopardized if returned to either parent's home.

IV. RT's Juvenile Criminal History

RT argues that the juvenile court relied on his juvenile criminal history in its findings. But RT fails to state which finding impermissibly relied on his contacts with police as a juvenile and, thus, we do not address this argument. *See* RAP 10.3(a)(6).

We affirm the juvenile court's order of LT's dependency as to RT.

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

Worswick, J.

We concur:

Hunt, J.

Penoyar, C.J.