

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

No. 41603-4-II

IN RE THE DEPENDENCY OF:

ArF,[†]

a minor child.

UNPUBLISHED OPINION

Hunt, P.J. — AF, mother of ArF, appeals a Grays Harbor County Juvenile Court order of dependency. She challenges the juvenile court’s finding of aggravating circumstances. The State concedes that there is not an adequate basis for the aggravating-circumstances finding. Agreeing with AF and accepting the State’s concession, we remand to the juvenile court for appropriate action in the dependency proceeding consistent with no aggravating-circumstances finding.

FACTS

ArF was born on August 13, 2010. At that time, there was a dependency for his mother’s other two children based on her long-term drug and alcohol addiction and mental illness and on the concomitant unsafe conditions in the home and medical neglect of the children. Because of these circumstances, the Department of Social and Health Services (Department) filed a

[†] It is appropriate to provide some confidentiality in this case. Accordingly, it is hereby ordered that initials will be used in the case caption and in the body of the opinion to identify the parties and other juveniles involved.

dependency petition for ArF on August 17, 2010, and removed him from his mother's custody that same day.

The juvenile court terminated AF's parental rights to her two older children on October 27, 2010. It held a dependency hearing for ArF on December 1, 2010, during which the court (1) found aggravated circumstances based on the "prior termination of [AF's] parental rights and [her] failure to correct deficiencies," Clerk's Papers at 78 (order of dependency); and (2) directed the Department to file a termination petition as to ArF, which included terminating further services to AF and visitation with ArF. AF appeals.

ANALYSIS

AF argues that there is not an adequate basis for the juvenile court's aggravating-circumstances finding. The State concedes this deficiency and agrees that we should remand to the juvenile court for appropriate action in the dependency proceeding absent this unsupported finding of aggravating circumstances. We accept the State's concession.

A court may order the State to file a termination petition of a parent-child relationship if the State establishes the "existence of aggravated circumstances," RCW 13.34.132(4), and three other requirements.¹ At ArF's dependency hearing, the State produced evidence that (1) AF had failed to complete available treatment ordered under chapter 13.34 RCW; (2) such failure had

¹ RCW 13.34.132(1)-(3) imposes the following additional requirements:

- (1) The court has removed the child from his or her home pursuant to RCW 13.34.130;
- (2) Termination is recommended by the supervising agency;
- (3) Termination is in the best interests of the child;

We note that in 2011, the legislature amended this statute in Substitute Senate Bill 5656. Laws of 2011, ch. 309, § 28. This minor amendment, however, does not affect the pertinent language of the statute for purposes of this case.

resulted in prior terminations of AF's parental rights to her other children; and (3) AF had failed to effect significant change between those terminations and this dependency hearing. *See* RCW 13.34.132(4)(g).² Recently, however, we vacated the parental termination orders entered for AF's other two children.³ *In re the Welfare of R.F-D. and J.F-D.*, No. 41430-9-II, 2011 WL 1565362, at *1 (Wash. Ct. App. Apr. 20, 2011).⁴ Because those prior terminations no longer exist, they can no longer serve as a basis for supporting the juvenile court's order to the Department to file a petition for termination of AF's parental rights to ArF.

Accordingly, we vacate the juvenile court's finding of aggravating circumstances and its order to file a termination petition, and we remand for further action in ArF's dependency

² RCW 13.34.132(4)(g) provides:

In determining whether aggravating circumstances exist by clear, cogent, and convincing evidence, the court shall consider [the] . . . [f]ailure of the parent to complete available treatment ordered under [chapter 13.34 RCW] . . . , where such failure has resulted in a prior termination of parental rights to another child and the parent has failed to effect significant change in the interim.

We note that in 2011, the legislature amended this statute in Substitute Senate Bill 5656. Laws of 2011, ch. 309, § 28. This minor amendment, however, does not affect the pertinent language of the statute for purposes of this case.

³ We vacated these two orders as to AF's other children because they had resulted from a parental termination trial at which the juvenile court had required AF to proceed pro se, without having knowingly and voluntarily waived her right to counsel on the record. *See In re Dependency of G.E.*, 116 Wn. App. 326, 333, 65 P.3d 1219 (2003) (“[W]hen the child's indigent parent has appeared, we hold that a waiver of the right to counsel in dependency and termination proceedings must be expressed on the record and knowingly and voluntarily made.”).

⁴ We cite this unpublished decision solely because its facts bear directly on the juvenile court's decision, the State's later concession of error, and our disposition in the instant case.

No. 41603-4-II

proceeding consistent with this opinion.

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.

Hunt, P.J.

We concur:

Van Deren, J.

Johanson, J.