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Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In the Matter of the Dependency of G.A. and L.A., Minor Children.	No. 81387-1-I (consolidated with Nos. 81412-5-I and 81413-3-I) DIVISION ONE UNPUBLISHED OPINION

APPELWICK, J. — The mother appeals an order terminating her parental rights to her daughters, L.A. and G.A. She argues that the trial court erred by: (1) finding that the Department offered her all necessary services, (2) finding that she had a parental deficiency related to her mental health, (3) finding that there was little likelihood that she could remedy her parental deficiencies in the near future, and (4) admitting L.A.'s and G.A.'s testimony at the termination trial. G.A.'s father also appeals the order which terminated his parental rights to G.A. He joins most of the mother's challenges and further claims that the trial court erred by finding that the continuation of his relationship with G.A. clearly diminishes G.A.'s prospects for early integration into a stable and permanent home. We affirm.

FACTS

As of December 2013, when L.A. and G.A. were removed from her care, the mother had four children, from oldest to youngest: Ge.A. (a son), L.A. (a daughter), J.A. (a son), and G.A. (a daughter). G.A.'s father (the father) is also the father of J.A. but not of the other children. At the time of the termination trial, L.A.'s

father was facing criminal charges for allegedly molesting L.A.[1]

The mother was born and raised in Mexico; she came to the United States when she was 19 and does not speak English. The mother had a tumultuous relationship with the father, who physically and sexually abused her. Additionally, the mother was aware for several years before she married him that the father admitted to sexually touching a young girl. The mother also had concerns that the father would sexually molest G.A. if he had the opportunity.

The mother has been involved with the Department of Children, Youth, and Families (Department)[2] since 2010. Since that time there have been a number of screened intakes involving allegations of chronic neglect of the children, mental health issues for the mother, and behavioral issues with Ge.A. In December 2013, the Department filed dependency petitions for all four children, and the children were removed from the mother's care. L.A. and G.A., who at the time were seven and two years old, respectively, have not lived with the mother since.

In March 2014, the juvenile court entered an order adjudging Ge.A., L.A., J.A., and G.A. dependent as to the mother based on agreed facts. The court also entered an order adjudging G.A. and J.A. dependent as to the father. The father did not admit to the facts in his dependency order but "acknowledge[d] that the

[1] L.A.'s father's parental rights to L.A. were terminated in August 2018, and he is not a party to this appeal.

[2] On July 1, 2018, the newly created Department of Children, Youth, and Families (DCYF) took over child welfare duties that were formerly the responsibility of the Department of Social and Health Services (DSHS). RCW 43.216.906. Accordingly, in this opinion, "Department" means DSHS before July 1, 2018, and DCYF on and after July 1, 2018.

Court would be able to find [those] facts by a preponderance of the evidence." The court later appointed Karen Deyerle as court appointed special advocate (CASA) for L.A. and G.A.[3]

According to the dependency orders,[4] the mother moved to domestic violence shelters on many occasions and, in 2011 and 2012, filed for protection orders against the father. Additionally, in January 2013, Ge.A.'s counselor reported that Ge.A. said the father had hit him multiple times. The mother also alleged that the father had physically assaulted both her and the children. The mother has been aware since 2011 that the father was investigated for sexually abusing L.A., and the mother spoke with police about the father molesting L.A. and her son.

The mother's dependency order recounted reports of the mother not intervening when Ge.A. was being violent toward his younger siblings, asking for a strait jacket to restrain Ge.A., and not providing adequate supervision at home. It also recounted reports of the mother not attempting to locate Ge.A. and J.A. when they left the home and were gone for hours, not following through with the children's appointments, dressing the children inappropriately for the weather,

[3] Deyerle has filed a brief on appeal. But, the CASA is not a party to the appeal and, thus, is not entitled to file a merits brief. In re Dependency of W.W.S., 14 Wn. App. 2d 342, 351-52, 469 P.3d 1190 (2020). We have discretion to consider briefs from nonparties under RAP 10.1(e) and (h), but Deyerle did not, as contemplated by those rules, seek authorization by motion before filing her brief. We deny the mother's and the father's motions to strike Deyerle's brief, but we nonetheless do not consider it.

[4] In its termination order, the trial court incorporated the findings of fact in the dependency and disposition orders. The parties do not challenge those findings, so they are verities on appeal. In re Dependency of M.S.R., 174 Wn.2d 1, 9, 271 P.3d 234 (2012).

having extreme mood shifts, and not following through with offered services. The juvenile court found that "[t]he mother is, at times, unable to perform basic care which leaves the children in an unhygienic physical condition." The court also found that "[i]t appears the mother may have a mental health condition that renders her incapable of routinely or consistently attending to her children's basic needs." Additionally, the court found that "[t]here are concerns about the safety of the children in the care of [the father]" due to past reports of domestic violence.

The juvenile court ordered an out-of-home placement for all four children. The court ordered the mother to complete a psychological evaluation with a parenting component and follow any treatment recommendations. It also ordered the mother to participate in individual mental health counseling and follow any treatment recommendations, and complete an age-appropriate parenting class. The court ordered the father to complete a domestic violence batterer's assessment, an age-appropriate parenting class, and a parenting assessment.

On July 5, 2014, the father completed a domestic violence assessment with Zoila Saritama, a Spanish-speaking domestic violence counselor at La Esperanza Health Counseling Services. Saritama assessed the father as a moderate risk, meaning that he could go back to the same abusive behavior without completing a one year domestic violence batterer's treatment. Saritama testified that she recommended a one year treatment program, but although the father began the program, he did not complete it. During the treatment, the father returned to his abusive behavior and committed an act of domestic violence against the mother.

In September 2014, the juvenile court entered an order directing that the mother's psychological evaluation be conducted by a "Dr. Ruddell" and stating, "[I]t is encouraged that a Spanish speaking evaluator assist in conducting the evaluation." The order was entered on the mother's motion, and it indicated that the mother had requested a "Dr. Antuña" to conduct her psychological evaluation in Spanish.

In January 2015, the Department referred the mother to Tania Hino, a Spanish-speaking parenting coach. Hino did not work with the mother for very long because she believed that the mother was not ready to engage in parent coaching. Hino observed that the mother frequently presented with a flat affect, was not engaged, and appeared to have no connection with her children. During her observations, Hino also noted that the children would make efforts to connect with their mother, but did not look to her for structure or guidance.

Hino later testified that she "felt like [the mother] needed a mental health evaluation or . . . some kind of disability evaluation because she didn't seem to be engaging in the parenting coaching." Hino testified that even though she spoke with the mother in Spanish, it did not seem like the mother understood her. Hino testified that she "talked to the social worker and recommended that [the mother get] a mental health evaluation, maybe some kind of attachment therapy . . . , and also [a] learning disability evaluation."

In April 2015, Dr. Alyssa Ruddell and Dr. Claudette Antuña completed a psychological evaluation of the mother, with a parenting component. The record reflects that Dr. Antuña provided six diagnoses, including posttraumatic stress

disorder (PTSD) and an unspecified neurocognitive disorder. However, neither Dr. Ruddell nor Dr. Antuña testified at trial, and the record does not reflect the full results of their evaluation or what, if any, recommendations they made.[5] Around the same time that the mother completed her evaluation with Drs. Ruddell and Antuña, the mother began parenting classes with Saritama at La Esperanza.

Following a May 7, 2015 dependency review hearing, the juvenile court found that the Department had "insured that the mother has services such as mental health counseling, parenting class, parenting coach and a psychological evaluation." The court also found, "The mother has continued to participate in services to the best of her ability. She has completed her psychological evaluation, and she has started to participate in her mental health counseling and parenting class. The mother did also participate in [sic] a parenting coach." The court found the mother's progress to be partial, noting, "Although the mother has participated in all of her services[, t]he mother's [PTSD] impair[s] her ability to appropriately parent or make good decisions with her children." The court also found that the father "is now in a relationship with the mother and does not express any concerns about the abuse that occurred in the home." And, it found that "[t]he Department

[5] A July 2019 letter from a Department social worker to the mother states, "You completed a psychological evaluation with parenting component with Dr. Alyssa Ruddell and Dr. Claudette Antuna [sic] from November 2014 – March 2015." It also states, "Drs. Ruddell and Antuna [sic] recommended you continue to have supervised visits and that you continue in counseling with a Spanish-speaking therapist." But, the letter was admitted over a hearsay objection for only the purpose of showing that the Department offered services to the mother. Similarly, in a May 2017 referral letter from a Department social worker to a neuropsychologist, the social worker described the April 2015 evaluation. But, that letter was admitted solely to show that the May 2017 referral was made.

is extremely concerned about their relationship, due to the extreme history of domestic violence."

In June 2015, Hereri Contreras, a Spanish-speaking family therapist, completed a parenting assessment of the father. Contreras's assessment consisted of parent-child observation sessions, interviews, and a home visit. Contreras was not able to consult any collateral contacts because none of the people the father named were willing to talk with Contreras. Contreras used various tools to assess the father's risk of committing child abuse. The father's scores indicated he had unrealistically high expectations of children that led to an increased risk of abusing them. Additionally, the father demonstrated no accountability, no remorse, and no ability to acknowledge the impact of his actions on others. Contreras later opined that the father posed a high risk of being a repeat offender.

During the parenting assessment, the father admitted that when he was 19, he touched a five year old in a sexual way. When asked about allegations of sexual abuse against L.A., he stated, " '[I]f it was in the records, then it happened.' " He told Contreras that he did not think there was anything wrong with his actions, as he did not mean to touch anyone inappropriately, and it was primarily about curiosity. The father exhibited no remorse regarding sexual abuse because he did not believe his actions were wrong. When asked if he would touch his own children again in a sexual way, he said he would not because the children could now talk and tell people what he did. Also, he did not think his actions had any impact on the children he touched.

Contreras concluded that until the father completed sexual deviancy treatment, he was a risk to the children's safety.

Meanwhile, on June 1, 2015, the mother and the father married.

On September 2, 2015, the juvenile court ordered the mother to complete the parenting instruction she had started at La Esperanza. The mother ultimately completed the recommended sessions in October 2015. Saritama, the parenting coach, later testified that she met with the mother one-on-one, and that the mother took more sessions than usual to complete the classes because she had difficulty understanding the material.

In its September 2015 order, the juvenile court also granted the CASA's request that the mother be ordered to complete additional services through the King County Sexual Assault Resource Center (KCSARC), as follows: "[The mother] shall participate in the 'Dando Voz' individual counseling program first, and then continue to participate in [Sexual Abuse Focused Education (SAFE)] instruction." The court found it "appropriate and necessary, given the repeated instances of abuse suffered by [L.A.], for the mother to obtain education regarding sexual abuse trauma, grooming behaviors, how to support [L.A.], and given [the mother's] recent marriage to [the father], how to protect all of her children from sexual abusers." Also, the court suspended the father's visitation with J.A. and G.A. pending the outcome of a sexual abuse risk assessment unless the parties could locate and agree to a visitation supervisor with expertise recognizing grooming behaviors.

On December 1, 2015, the mother, who at the time was pregnant, petitioned for an order protecting her from the father. In her petition, the mother declared that she feared for her physical and emotional safety and the safety of her unborn child. She described incidents of verbal abuse by the father, as well as incidents of property damage and theft that she believed he was responsible for. She also declared that the father threatened to hurt her if she did not have sex with him, and that she believed the father had sent someone to her home to kill or rape her. The superior court issued a one year protection order.

On December 2, 2015, the Department referred the mother to "Working Choices" for parenting instruction. Quinita Ellis, a Working Choices subcontractor, began providing parent coaching to the mother that month and worked with her through March 2016. Ellis did not speak Spanish, and she later testified she would have worked with the mother through an interpreter. Ellis conducted five sessions with the mother and, when later testifying, could not fully recall the level of the mother's participation. But, Ellis noted that the mother had an issue with following through on recommendations. Ellis recommended that the mother complete additional sessions so that she could have additional time to learn to apply the skills taught, as she did not demonstrate that ability after the initial sessions and appeared to have only minimal insight.

On January 5, 2016, the juvenile court held a permanency planning hearing. While a return to home had been the sole plan of permanency until then, the court ordered an alternative plan of adoption following the hearing.

On March 22, 2016, the Department referred the mother to additional parenting instruction with Working Choices. The record reflects that the mother participated in parenting instruction with an instructor named Isabel Estrada from May 2016 until May 2017. Estrada did not testify at trial, but according to her reports,[6] Estrada recommended that services continue because she "will need more time to educate mother about child safety in a way that she is able to process."

Meanwhile, in April 2016, the juvenile court ordered the father to participate in a sexual deviancy evaluation. The father never completed the evaluation.

In June 2016, the mother gave birth to A.R.A., a daughter. The father is A.R.A.'s presumed father. A.R.A. remained in her mother's care through the time of trial.

Sometime in 2016, the mother began working with Agustina Colombo Eiff, a bilingual therapist at KCSARC who provided trauma-specific services in Spanish through KCSARC's Dando Voz program. Colombo Eiff was aware of the mother's history of trauma and her symptoms. Colombo Eiff's assessment consisted of testing and interviews, and the mother expressed a history of abuse as a child within her family, and as an adult in intimate relationships. Colombo Eiff established that the mother was not truthful about the contact she had with the father, and that the mother had a poor ability to assess risk. This indicated that the mother might place herself in a harmful situation, and consequently place her children in a harmful situation as well. The mother was able to tell Colombo Eiff

[6] Estrada's reports were admitted by stipulation.

that her children were in the State's care, but was not clear as to the reasons why. The mother said she thought it was about the father's sexual abuse of the children.

The mother completed trauma-specific therapy with Colombo Eiff, and Colombo Eiff later testified she believed that the mother's symptoms of depression and PTSD resolved over the course of their work together. Colombo Eiff identified concerns about the mother exhibiting symptoms of psychotic behavior, and she recommended a psychiatric evaluation to follow up on those concerns. According to Colombo Eiff's later testimony, although KCSARC offers Spanish-language parenting education focused on helping the non-offending parent address the sexual abuse of their children, Colombo Eiff did not recommend that treatment because the mother reported she was receiving parent education elsewhere.

In August 2016, Ge.A. was placed with the mother for a trial return home. Ge.A. remained in the mother's care through the time of trial.

On October 5, 2016, the Department filed a dependency petition as to A.R.A. According to the petition, in late September 2016, the Department received an intake reporting that the mother had obtained money and the use of a car from the father, and that the mother and the father had had ongoing contact for the past several months. Also according to the petition, a Department social worker spoke with Colombo Eiff about the mother's continued contact with the father, and Colombo Eiff expressed concern because she was not aware of the contact until informed by the social worker. The petition also cited concerns raised by the visitation supervisor for A.R.A.'s older siblings about the mother not adequately maintaining safety during visits, requiring the visitation supervisor to step in. The

juvenile court held a shelter care hearing on October 6, 2016, and released A.R.A. to the mother. The juvenile court ordered the mother to remain in compliance with her ongoing mental health treatment, not have contact with the father, undergo a psychiatric evaluation, and participate in family preservation services. A.R.A.'s dependency was dismissed in January 2017.

Meanwhile, on December 1, 2016, the juvenile court entered an order that, among other things, (1) directed the parties to meet and create a safety plan for J.A. to return to his mother's home over winter break; (2) ordered that visitation continue to be monitored; (3) ordered the mother to participate in a neuropsychological evaluation and a psychiatric evaluation; (4) directed the mother to meet with family law facilitators at the King County Courthouse for assistance seeking legal separation or a dissolution of her marriage to the father; and (5) memorialized the mother's agreement to seek a protective order within the legal separation or dissolution case protecting her children from the father, and to comply with it.

On December 22, 2016, J.A. returned to the mother's care for a trial return home. J.A. remained in the mother's care through the time of trial. Around that time, Pamela Rago became the assigned social worker for the family after the previous social worker left the Department. Rago later testified that because J.A. was getting ready to return to his mother's home, Rago put the "Homebuilders" service in place. Rago explained that Homebuilders was an "intensive program that . . . work[s] on immediate goals and what they see that the parents need that can be successful in the home." Rago testified that Homebuilders was a service

that took place within the parent's home. She testified the Homebuilders provider met with the mother two or possibly three times per week and always had a Spanish interpreter present.

When Rago received the case, the mother was living in Duvall. The mother later relocated to the Federal Way Bethel Christian Campus Center. According to Rago's testimony, shortly after the mother relocated, Rago was notified by the Christian Center that there was a possibility of eviction due to Ge.A.'s behavior. The Department then provided the mother with Children's Crisis Outreach Response System (CCORS), which the CASA later described as "a service to help stabilize families who are having behavioral issues with their children." After CCORS finished, the Department provided in-home Positive Parenting Program (Triple P) services. Rago explained that Triple P "work[s] on specific parenting programs. It's weekly lessons, and then the parent works on those lessons and then they . . . come back and report to the provider." Rago later recalled that the mother first began working with the Triple P provider in early July 2017, and that the mother completed two rounds of Triple P.

Meanwhile, in May 2017, the Department referred the mother to Dr. Tedd Judd, a Spanish-speaking neuropsychologist with a specialty in cross-cultural work, for a neuropsychological evaluation. Dr. Judd evaluated the mother in July 2017. In doing so, he reviewed a multitude of materials and spent time directly interacting with the mother. He diagnosed the mother with a borderline intellectual disability, possibly related to childhood trauma. Specifically, the mother struggled with functioning and had impaired problem solving, which both have a negative

impact on parenting. Dr. Judd opined that the mother "had the ability to improve her executive functioning and that it was worthwhile to continue with such efforts but that it would be slow-going." He recommended among other things that services for the mother emphasize "a skill-building model through practice and repetition."

In August 2017, L.A. completed trauma-focused therapy and told her trauma narrative to the mother.

In December 2017, the juvenile court held another permanency planning hearing. The court found good cause not to require the filing of a termination petition, noting that Ge.A. and J.A. were in a trial return home with the mother, and the mother had recently finished in-home Triple P parenting services. The primary permanency plan for all four children remained a return home to the mother, with an alternative plan of adoption for J.A., L.A., and G.A.

In February 2018, the juvenile court, on the Department's motion, ordered the mother to participate in a psychiatric evaluation with Dr. JoAnne Solchany. Dr. Solchany completed the evaluation with the goal of assessing functioning, identifying effective treatment, and looking for risk factors in the parent-child relationship. According to her later testimony, Dr. Solchany believed based on the information she had at the time of her evaluation that the mother met the criteria for a delusional disorder.

In late March 2018, in the dissolution proceeding filed by the mother, the superior court entered a parenting plan for J.A., G.A., and A.R.A. In the parenting plan, the court ordered the father not to have any contact with the children. Pamela

Rago, the social worker assigned to the family from December 2016 through April 2018, later testified that she sent the mother a copy of the parenting plan, translated into Spanish, "[s]o that there was no confusion on [the mother]'s part on what the parenting plan said."

In April 2018, Rago's assignment as the family's social worker ended when she left the Department. It is unclear who replaced Rago as social worker immediately after her departure.

In May 2018, the superior court entered an order dissolving the mother's marriage to the father.

On June 8, 2018, the Department filed a termination petition as to L.A. and G.A. A week later, the juvenile court dismissed Ge.A.'s dependency. The next month, following a review hearing, the juvenile court changed the primary permanency plan for L.A. and G.A. to adoption.

In October 2018, Dr. Dana Harmon completed a psychological evaluation of the mother at the mother's request. According to Dr. Harmon's later testimony, one of the purposes of his evaluation was to do "a double-check on Dr. Solchany's diagnosis of a delusional disorder." Dr. Harmon diagnosed the mother with PTSD, borderline intellectual functioning, and a history of alcohol abuse. He did not see a basis for a diagnosis of delusional disorder but noted that other practitioners had concerns about delusions. Dr. Harmon testified that he was concerned Dr. Solchany's diagnosis reflected a misunderstanding of the mother's culture and, particularly, her Pentecostal faith.

On December 7, 2018, the juvenile court entered an "Agreed Order on Trial Reunification Plan" regarding L.A. and G.A. The order set forth an agreed visitation schedule for winter break through June 2019 with increasing periods of unsupervised—including overnight—visits as time went on. The order provided conditions for visitation, including "[n]o physical discipline of [L.A.] and [G.A.]" and "no contact between the mother or [L.A.], or [G.A.] with [the father] in any form—physically, verbally, by phone or text—while [L.A.] and [G.A.] are with their mother." The order also provided that if the visitation plan was successful, the Department would dismiss the termination petition, which was then set for trial on June 3, 2019. But, "[i]f the mother permits any form of contact or communication between [the father and L.A.] and/or [G.A.], then the . . . reunification plan will be void and the termination petition shall move forward."

In February 2019, the CASA filed an emergency motion to temporarily suspend the mother's visitation, alleging that L.A. and G.A. disclosed that the mother had left G.A. alone with the father and told the children to keep it a secret. On March 1, 2019, the juvenile court entered an agreed order temporarily suspending visitation until March 16, 2019.

In May 2019, Amy Holmes became the family's assigned social worker when the previous social worker went on medical leave. Holmes's primary role was to continually assess L.A. and G.A.'s safety, meet with the mother to assist with services, ensure that visits continued, and prepare court reports with a recommended permanent plan.

In August 2019, L.A. and G.A. were moved from the foster care placement where they had lived since September 2015 to a prospective adoptive home in Yakima. The mother also moved to the Yakima area during the summer of 2019.

A termination trial began on November 25, 2019, and continued over several days in November, December, January, and February. The trial court heard testimony from a number of witnesses, including the mother, Hino, Saritama, Ellis, Rago, Colombo Eiff, Holmes, Contreras, Dr. Judd, Dr. Solchany, Dr. Harmon, and the CASA. The father was represented by counsel at trial but did not personally appear. His whereabouts at the time of trial were unknown.

While examining the mother, the Department's attorney asked the mother why the trial reunification plan came to an end, and the mother responded, "As far as I know, [L.A.] did not want to return." The Department's attorney also asked, "When was the last time that [G.A.] went to [the father]'s home?" The mother responded, "Never." The Department subsequently indicated it intended to call L.A. and G.A. to testify to rebut the mother's testimony. The mother and the father both moved to exclude the testimony on the basis that the Department had not previously disclosed L.A. and G.A. as witnesses. The trial court denied the motions, and L.A. testified that during the trial reunification that began in late December 2018, she and G.A. went to the father's home three times, and G.A. spent the night twice. L.A. also testified that the mother took G.A. to the father's home, and L.A. went with them to drop G.A. off. L.A. testified that the mother asked L.A. to keep the visits between G.A. and the father a secret. G.A. also testified that the mother drove her to the father's house and that she spent the

night twice. G.A. testified that the first time, A.R.A. went with her, and the second time, both A.R.A. and J.A. accompanied her. G.A. testified that on both occasions, the children slept in the same bed as the father. G.A. also testified that the mother asked her to keep the contact with the father a secret.

The trial court ultimately terminated the mother's parental rights to L.A. and G.A. and the father's parental rights to G.A. The mother and the father each appealed, and we consolidated the appeals.

DISCUSSION

The mother contends that the trial court erred by finding that the Department offered her all necessary services to address her parental deficiencies. Additionally, the mother contends the trial court erred by admitting L.A.'s and G.A.'s testimony, finding that the mother had a parenting deficiency related to her mental health, and finding that there was little likelihood the mother could remedy her parental deficiencies in the near future.[7] The father joins most of the mother's challenges[8] and additionally argues that the trial court erred by finding that continuation of his relationship with G.A. clearly diminished G.A.'s prospects for

[7] The mother also assigns error to the trial court's findings that (1) the continuation of the mother's relationship with L.A. clearly diminishes L.A.'s prospects for early integration into a stable and permanent home, (2) the mother is currently unfit to parent L.A. and G.A., and (3) termination is in L.A.'s and G.A.'s best interests. But, she does not support these assignments of error with argument and authority, and thus, we do not consider them. See Holland v. City of Tacoma, 90 Wn. App. 533, 538, 954 P.2d 290 ("Passing treatment of an issue or lack of reasoned argument is insufficient to merit judicial consideration.").

[8] The father does not join the mother's claim that the Department failed to offer the mother adequate services to assist her in protecting herself and the children from abuse.

early integration into a stable and permanent home. As further discussed below, the mother's and the father's challenges fail.

I. Necessary Services

To terminate parental rights, the trial court must first find by clear, cogent, and convincing evidence that the Department satisfied the six statutory prerequisites to termination. In re Dependency of K.N.J., 171 Wn.2d 568, 576-77, 257 P.3d 522 (2011); RCW 13.34.180(1). "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) (internal quotation marks omitted) (quoting In re Sego, 82 Wn.2d 736, 739, 513 P.2d 831 (1973)).

Among the statutory prerequisites the Department must prove is that it "expressly and understandably offered or provided" all court-ordered and necessary services to the parent. RCW 13.34.180(1)(d). "A 'necessary service' is a service 'needed to address a condition that precludes reunification of the parent and child,' and may include counseling, mental health treatment, and educational programs." In re Parental Rights to D.H., 195 Wn.2d 710, 719, 464 P.3d 215 (2020) (internal quotation marks omitted) (quoting In re Parental Rights to K.M.M., 186 Wn.2d 466, 480, 379 P.3d 75 (2016)). To satisfy its obligation under RCW 13.34.180(1)(d), the Department "is required 'to identify a parent's specific needs and provide services to meet those needs.' " Id. at 727 (quoting In re Parental Rights to I.M.-M., 196 Wn. App. 914, 924, 385 P.3d 268 (2016)). Additionally,

"[w]ithin the prerequisite of RCW 13.34.180(1)(d), the services must be tailored to the needs of the individual." Id.

Nevertheless, the Department "need not afford futile services." In re Parental Rights to D.J.S., 12 Wn. App. 2d 1, 24, 456 P.3d 820 (2020). Accordingly, where, as here, the claim is that the Department failed to satisfy its obligation to provide all necessary services, the trial court can make a finding that the Department satisfied that obligation if the record establishes that additional services would be futile. Id.

On review, we will uphold the trial court's findings if they are supported by substantial evidence. In re Dependency of P.D., 58 Wn. App. 18, 25, 792 P.2d 159 (1990). "Substantial evidence" means "evidence in sufficient quantity to persuade a fair-minded, 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). We defer to the trial court on issues of conflicting testimony, credibility of the witnesses, and the weight or persuasiveness of the evidence. See In re Welfare of A.W., 182 Wn.2d 689, 711, 344 P.3d 1186 (2015).

Here, the mother contends that the trial court erred by finding that the Department offered her all services necessary to address her parental deficiencies. This is so, she asserts, because the Department (1) was required to consult with the Developmental Disabilities Administration (DDA) but did not do so and (2) did not otherwise tailor its services to meet Dr. Judd's recommendations related to the mother's intellectual needs. We disagree.

A. Consultation with DDA

RCW 13.34.136(2)(b)(i)(B) provides, "If a parent has a developmental disability . . . , and that individual is eligible for services provided by the [DDA], the [D]epartment shall make reasonable efforts to consult with the [DDA] to create an appropriate plan for services." The mother argues, relying on I.M.-M., that reversal is required because the Department was required to consult with DDA under this statute but did not do so.

In I.M.-M., a Department worker had issued a report stating that the mother's intelligence quotient (IQ) was 79 and she was " 'DD.' " 196 Wn. App. at 918. It was unclear whether "DD" stood for "developmentally disabled" or "developmentally delayed." Id. The mother later completed a psychological evaluation. Id. The evaluator determined that the mother was "significantly cognitively impaired," but he did not reach a final diagnosis because he never performed the applicable testing. Id. at 918-19. Thus, the evaluation did not resolve whether or not the mother was developmentally disabled or developmentally delayed. Id. at 923-24.

Nevertheless, the Department did not further investigate the mother's apparent likelihood of a developmental disability. See id. at 923. We held that the Department's failure to investigate meant that the Department could not have satisfied its obligation to provide necessary services. Id. at 924. We observed, "Had the Department obtained a comprehensive mental health evaluation revealing a developmental disability diagnosis, it would have been statutorily obliged to refer [the mother] for services with the [DDA] and coordinate a care plan

[under] RCW 13.34.136(2)(b)(i)(B)." Id. Here, the mother relies on I.M.-M. to assert that "Dr. Antuña's early diagnosis of cognitive difficulty obliged the Department at least to explore whether [the mother] would be eligible for services from [the] DDA."

But, here, unlike in I.M.-M., the Department fully investigated the mother's apparent cognitive deficits. Specifically, the Department referred the mother to Dr. Judd, who performed and completed a neuropsychological evaluation. Consultation with the DDA would have been required "[h]ad the Department obtained a comprehensive mental health evaluation revealing a developmental disability diagnosis." I.M.-M., 196 Wn. App. at 924. However, although Dr. Judd found that the mother's IQ was only 77, he did not diagnose the mother as developmentally or intellectually disabled.[9] Instead, Dr. Judd diagnosed the mother as "borderline" intellectually disabled, implying that the mother did not cross the threshold into intellectual disability. Indeed, according to Dr. Judd, most definitions of "intellectually disabled" refer to "someone who has an IQ of 69 or lower as well as impairments in what are called adaptive abilities." And, the mother points to no other evidence in the record establishing that she was in fact developmentally disabled within the meaning of RCW 13.34.136(2)(b)(i)(B). Furthermore, although the mother argues the Department did nothing to explore

[9] The consultation requirement in RCW 13.34.136(2)(b)(i)(B) applies only when "a parent has a developmental disability according to the definition provided in RCW 71A.10.020." RCW 71A.10.020 directs the Department to promulgate rules that define qualifying conditions "in a way that is not limited to intelligence quotient scores as a sole determinant of these conditions." RCW 71A.10.020(5).

her eligibility for the DDA services, Lopez testified that she helped the mother complete and submit a DDA application.[10]

I.M.-M. is not on point, and we are not persuaded that the Department failed to investigate the mother's cognitive deficits or was required to consult with the DDA regarding the mother's case. See RCW 13.34.136(2)(b)(i)(B) (requiring consultation with the DDA only if a parent "has a developmental disability . . . and . . . is eligible for services provided by the [DDA]"); cf. In re Dependency of H.W., 92 Wn. App. 420, 421, 427-28, 961 P.2d 963 (1998) (Department failed to provide all necessary services where it did not refer mother who was developmentally disabled to the Division of Developmental Disabilities).[11]

B. General Tailoring

The mother next contends that even if the Department was not required to consult with the DDA, it still did not satisfy its "general obligation to tailor services to a parent's needs" in that it did not offer services tailored around Dr. Judd's

[10] The mother apparently did not seek an order from the juvenile court directing the Department to consult with the DDA. By contrast, the mother moved to have her psychological evaluation conducted by Dr. Antuña, moved for an order directing the Department to pay for her mental health services, moved for a Spanish-speaking parent coach, and sought relief from the juvenile court on a number of other matters.

[11] The Department filed a motion to supplement the record with evidence that the DDA determined the mother was ineligible for the DDA's services. The Department argued that supplementation was warranted because the DDA's denial of eligibility is material to the mother's claim that the Department failed to explore whether the mother was eligible for the DDA's services. RAP 9.11(a)(2) provides that supplementation is appropriate if, among other requisite factors, "the additional evidence would probably change the decision being reviewed." But, neither our analysis of that claim nor the outcome of this case depends on whether the mother was in fact eligible for the DDA's services. For that reason, we denied the Department's motion to supplement the record.

recommendations.[12] Although we agree that the Department did not satisfy its burden to prove that it tailored services around Dr. Judd's recommendations, the record establishes that such tailored services would have been futile. Accordingly, reversal is not required.

i. The Department Failed to Prove it Tailored Services Around Dr. Judd's Recommendations

Hino, the first parenting coach to work with the mother, testified that she suspected the mother had a learning disability. She also testified that she closed out her services with the mother in early February 2015 because she felt the mother needed more evaluations before continuing with parent coaching. And, she testified that she recommended to the Department social worker that the mother obtain a learning disability evaluation.

The Department ultimately did, as discussed above, fully investigate the mother's suspected cognitive issues by referring her to Dr. Judd for a neuropsychological evaluation. Dr. Judd later testified that he diagnosed the mother with a "borderline" intellectual disability. He testified that this could mean the mother would struggle when receiving parenting instruction, "particularly when those instructions are primarily verbal and not otherwise backed up with other

[12] In her opening brief, the mother relied solely on the Department's failure to consult with the DDA to argue that the Department did not satisfy its obligation to offer all necessary services. It was not until her reply brief that she argued the Department failed to satisfy its "general" tailoring obligation. We ordinarily will not address arguments raised for the first time in a reply brief. Cowiche Canyon Conservancy v. Bosley, 118 Wn.2d 801, 809, 828 P.2d 549 (1992). Nevertheless, because the Department argued in its response brief that it satisfied its general obligation to tailor services to the mother's cognitive limitations, we address the mother's rebuttal to that argument.

things that could help with her memory." Dr. Judd also testified that he concluded "that because of [the mother's] borderline intellectual functioning . . . it would be necessary to keep things primarily at a more concrete level and at a lower level of vocabulary . . . without a lot of theory, much more practical applications of learning."

Significantly, Dr. Judd's evaluation and recommendations came after the mother had already completed parenting instruction with Saritama, Ellis, and Estrada. To this end, Dr. Judd testified that the mother "tended to view parenting kind of as parenting knowledge or ideas more so than skill," and the training the mother had received at that point "had not yet penetrated to her to recognizing that she needed to actually do things as opposed to just know things." Dr. Judd also testified that "part of [his] recommendations in that regard . . . were to emphasize skill" and to place "further emphasis on a skill-building model, and a skill-building model through practice and repetition." Dr. Judd testified he also recommended that service providers working with the mother use "motivational interviewing" as a communication strategy and give the mother "consistent, frequent, and firm feedback about specific parenting behaviors."

Additionally, Dr. Judd recommended that the mother's mental health service providers address the mother's personality or mood issues with her in a way that helped her connect those issues with her ability to parent her children. Dr. Judd observed that although the mother had learned the importance of being able to self-calm and regulate her emotions, "that's as far as she had taken it from what I could see." Dr. Judd commended the mother for improving in this regard, but noted

that the mother had not yet reached the point of understanding that "once [she's] calm [she has] to do something that's good parenting. She only got as far as [being] able to control [her] emotional reactions." Dr. Judd testified that, accordingly, he made recommendations as to how providers could work with the mother on "[n]ext steps." Furthermore, Dr. Judd testified he recommended that service providers check the mother's understanding by having her explain things back or even write them down herself.

In short, the record reflects that Dr. Judd made a number of specific recommendations about how the services addressed to the mother's parenting skills should be tailored to meet her intellectual needs.

The Department argues that it tailored services to meet these needs. It asserts that "[t]he Antuña and Ruddell evaluation recommended that [the mother] participate in counseling with a Spanish speaking therapist" and "[c]onsistent with this recommendation, the Department referred [the mother to] parenting educators and therapists who were Spanish speaking." But, the record does not reflect whether Dr. Ruddell and Dr. Antuña's psychological evaluation, which had been court-ordered before Hino voiced concerns about a possibility of a learning disability, actually addressed that concern.[13] Additionally, neither Dr. Ruddell nor Dr. Antuña testified. Consequently, the record does not reveal whether or to what extent the Ruddell/Antuña evaluation addressed Hino's concerns about a possible learning disability. Nor do we know whether any services offered as a result of the

[13] We observe that the Department's referral letter to Dr. Judd states that the Ruddell/Antuña evaluation "was not very detailed regarding the neurocognitive disorder" with which Drs. Ruddell and Antuña diagnosed the mother.

evaluation addressed Hino's concerns. Without that answer, the mere evidence that the mother was evaluated by Drs. Ruddell and Antuña does not constitute substantial evidence that the Department adequately investigated the mother's cognitive issues at the time. Cf. In re Parental Rights to M.A.S.C., 197 Wn.2d 685, 689, 486 P.3d 886 (2021) ("Where [the Department] has reason to believe that a parent may have an intellectual disability, it must make reasonable efforts to ascertain whether the parent does in fact have a disability."). Therefore, the fact that the Department referred the mother to Spanish-language counseling does not persuade us that the Department tailored its services to the mother's cognitive needs.

The Department next points out that Jocelyn Savage, who completed a foster care assessment of L.A. in November 2015, recommended live in-person coaching based on the cognitive deficits noted in the Ruddell/Antuña report. The Department then points out that it provided the mother with live parenting instruction in Spanish with Hino, with Saritama, and through Working Choices. The Department also points out that Hino provided the mother with " 'the simplest handbook' " written in Spanish with " 'very simple reading' " that contained pictures. And, the Department points out that Saritama spent extra time with the mother and would read to her, ask if she understood, and explain things differently if needed.

But, Dr. Judd's recommendations went beyond providing the mother with simple materials and spending additional time with her. For example, Dr. Judd also recommended emphasizing a skill-building model without a lot of theory and, instead "much more practical applications of learning." He also recommended that

service providers use motivational interviewing, emphasize practice and repetition, and check the mother's understanding by having her explain things back or write them down herself. Furthermore, the mother's instruction with Hino, Saritama, and through Working Choices all occurred before Dr. Judd evaluated the mother and provided his recommendations. Although it is possible that the instruction the mother had already received complied with Dr. Judd's recommendations, the record does not reflect whether that was the case. The Department does not point to any evidence of what, if anything, the Department did in response to those recommendations, including whether it shared them with the mother's service providers. Indeed, and significantly, the record reflects that the mother would have started in-home Triple P services around the time that Dr. Judd completed his evaluation. But, the Triple P provider did not testify, so the record does not establish whether that provider took Dr. Judd's recommendations into account. And, the Department points to no evidence that a parent coaching in compliance with Dr. Judd's recommendations was not reasonably available. See RCW 13.34.180(1)(d) (Department's obligation to provide services extends only to "reasonably available" services).

In short, the Department did not satisfy its burden to prove that the services it provided to the mother—specifically the services intended to address her parenting skills—were tailored to the mother's individual cognitive needs.

ii. Services Tailored Around Dr. Judd's Recommendations Would Have Been Futile

As discussed, the Department need not provide futile services. D.J.S., 12 Wn. App. 2d at 24. To this end, the trial court made a finding that offering additional services to the mother would be futile. This finding is supported by substantial evidence.

Specifically, the trial court found that the mother's parental deficiencies were mental health issues affecting safe parenting, an inability to provide for her children's needs, an inability to protect her children from the risk of sexual abuse, and an inability to parent all five of her children together. But, the key issue resulting in termination of the mother's rights to L.A. and G.A. was her failure to keep her daughters safe from potential abuse—not her general parenting skills. Indeed, by December 2016, L.A. and G.A.'s brothers had been returned to the mother's care, and they remained in her care through the time of the termination trial. Additionally, the Department agreed to a trial reunification plan for L.A. and G.A. with increasing periods of unsupervised visitation, provided that termination would move forward if the mother was unable to comply with conditions prohibiting contact between the father and the girls. Furthermore, when asked about the basis for her continued concerns about the mother's ability to parent L.A. and G.A., Holmes, who was then the assigned social worker, repeatedly cited reports of the father's abuse and Holmes's belief that the mother would give the father access to the girls. And, in support of termination, the trial court made numerous findings related to the father's history of abuse, the danger the mother's continued

relationship with him posed to L.A. and G.A., and the failure of the trial reunification due to the mother's allowing prohibited contact to occur.

Yet, the record establishes that despite being offered and provided services to help her protect L.A. and G.A. from abuse, the mother failed to improve over the course of a lengthy dependency with regard to her ability to protect her daughters.

Specifically, and contrary to the mother's contention that substantial evidence does not support a finding that she had a parental deficiency related to her mental health,[14] the record shows the mother's mental health issues played a role in her inability to keep L.A. and G.A. safe from potential abuse. Holmes opined that among the mother's parental deficiencies were "[m]ental health issues that affect her ability to safely parent her children." When asked to elaborate, Holmes testified that the mother "continues to minimize the seriousness of the issues in her family" and that Holmes was "[c]oncerned that [the mother] does not grasp the gravity of the effects on her children of sexual abuse." And, Dr. Judd testified that the mother exhibited certain features of a personality disorder and that they would impact her parenting by affecting "the love relationships that she is in and who she

[14] The mother contends this is so because the trial court based its finding solely on Dr. Solchany's delusional disorder diagnosis. But, the termination order does not suggest that this diagnosis was the sole basis for the trial court's finding. And, when conducting a substantial evidence review, our review is based on the entire record from the trial court proceeding. Dixon v. Fiat-Roosevelt Motors, Inc., 8 Wn. App. 689, 695, 509 P.2d 86 (1973). Also, even though Drs. Judd and Harmon did not see a basis for a delusional disorder diagnosis, "[s]o long as substantial evidence supports [a] finding, it does not matter that other evidence may contradict it." In re Marriage of Burrill, 113 Wn. App. 863, 868, 56 P.3d 993 (2002).

brings into the household in a literal and figurative sense to interact with the children."

The record also shows that the Department offered services to help the mother keep her children safe from abuse. The Department provided the mother with trauma-specific therapy through KCSARC's Spanish-language Dando Voz program. Colombo Eiff, the mother's KCSARC therapist, later testified that in her work with the mother, they discussed "issues pertaining to sexual violence such as grooming behaviors by offenders—particularly that." Colombo Eiff herself did not refer the mother to KCSARC's educational program for non-offending parents. But, the court ordered the mother to complete that program for the specific purpose of educating her about how to protect her children from sexual abusers. And, Lidia Lopez, who was the social worker assigned to the case from August 2015 through March 2016, testified that she referred the mother "for the non-offending parent program at [KCSARC]." But, the mother did not complete the program. This is despite the mother's declaration that she agreed to participate in that program, a court order directing her to complete it, and a service letter, which Holmes testified she went over in person through a translator and also sent to the mother in Spanish, reminding the mother that she had yet to complete the program.

Finally, Holmes was asked if she was aware of any services the Department could offer the mother to teach her about the risk of allowing the father to have access to L.A. and G.A., other than the KCSARC services the Department had offered. Holmes responded that she was not.

In short, and contrary to the mother's contentions otherwise, substantial evidence supports a finding that the Department offered the mother the necessary and reasonably available services to help her protect L.A. and G.A. from abuse.

Moreover, the record also establishes that, regardless of the mother's mental health issues or borderline intellectual functioning, she subjectively understood the risk the father posed to L.A. and G.A. The record also establishes that the mother understood she should not expose L.A. and G.A. to the father. Specifically, it is a verity on appeal that the mother was aware of the father's history of abuse and believed he posed a risk to her daughters:

> [The mother] has had a tumultuous relationship with [the father], which has consisted of [the father] physically and sexually abusing her. [The mother] has been aware for several years that [the father] admitted to sexually touching a young girl. She was also aware since 2011 that [the father] was investigated for sexually abusing [L.A.] She could not recall whether she was ever worried about [L.A.] being a victim, but she did file for a protection order for [L.A. The mother] recalls speaking with police about [the father] molesting [L.A.] and her son. [The mother] has had concerns that [the father] would sexually molest [G.A.] if he had the opportunity.

Additionally, the mother petitioned for an order of protection from the father during the dependency proceeding, stating that she believed the father intended to rape or kill her and that she feared for her safety and the safety of her children. Later, she declared to the juvenile court that she believed the father "wants to abuse [G.A.]," and, "I don't want him near my daughter." And, according to Estrada's report, the mother "stated that she doesn't want her children[']s father around them, she has realized that he is a danger," and "[s]he doesn't want to expose her children to this potential danger."

Nevertheless, and despite being offered services to assist her in protecting L.A. and G.A. from potential abuse, the record reflects that the mother did not substantially improve in that regard. The trial court made an unchallenged finding that the mother "still married [the father] and gave him access to both girls" despite knowing of the father's abusive history and being concerned he would molest G.A. The court also made an unchallenged finding that the mother's safety risk to L.A. was "very evident when [the mother] would continue to have contact with [L.A.]'s father . . . and . . . encourage [L.A.] to also have contact . . . in spite of the fact that [the mother] knew there was an order preventing contact that was supposed to protect [L.A.]"

Colombo Eiff, the mother's counselor at KCSARC, testified that she remained concerned that the mother "does not grasp the gravity of the effects on her children of sexual abuse." Colombo Eiff also testified that the mother was not truthful about the contact she had with the father. And, the record establishes that nearly five years into the dependency, the mother not only took L.A. and G.A. to the father's home, she allowed G.A. to spend the night and then instructed the children to lie about it. The mother facilitated this contact despite having entered into an agreed order expressly prohibiting such contact.

iii. Conclusion

The record establishes that whatever the mother's mental health issues or intellect, she understood the risk that the father posed to L.A. and G.A. and that she was not to allow contact between them and the father. Yet, the mother not only allowed that contact to occur—she facilitated it and directed the children to lie

about it. For these reasons, the record establishes that services tailored around Dr. Judd's recommendations would have been futile relative to the need to terminate based on the mother's failure to protect the children. Thus, the trial court did not err in finding that the Department offered or provided the mother all necessary and reasonably available services.

II. Admission of L.A.'s and G.A.'s Testimony

In August 2019, the trial court entered a pretrial conference order directing the parties to, "[i]f not yet completed," exchange witness lists by October 11, 2019. By then, the Department had already filed its first witness list. The Department later filed a first amended witness list on October 21, 2019, and a second amended list on November 8, 2019. The mother contends that because L.A. and G.A. were not listed as witnesses on any of these lists, the trial court erred by allowing them to testify. She argues further that reversal is required because L.A.'s and G.A.'s testimony is the only competent evidence of their contact with the father during the trial reunification period. We disagree.

The civil rules permit the court to impose sanctions on parties that violate the court's discovery orders. See CR 37(b)(2). Such sanctions may include "prohibiting the disobedient party from introducing designated matters in evidence." CR 37(b)(2)(B). "[A] trial court has broad discretion as to the choice of sanctions for violation of a discovery order." Burnet v. Spokane Ambulance, 131 Wn.2d 484, 494, 933 P.2d 1036 (1997). "Such a 'discretionary determination should not be disturbed on appeal except on a clear showing of abuse of discretion, that is, discretion manifestly unreasonable, or exercised on untenable grounds, or

for untenable reasons.' " Id. (quoting Associated Mortg. Invs. v. G.P. Kent Constr. Co., 15 Wn. App. 223, 229, 548 P.2d 558 (1976)).

The mother's challenge to the trial court's admission of L.A.'s and G.A.'s testimony fails for two reasons. First, the mother chiefly relies on Dempere v. Nelson, in which we affirmed the trial court's exclusion of testimony from a witness who was not disclosed until 13 days before trial. 76 Wn. App. 403, 405-06, 886 P.2d 219 (1994), abrogation recognized by Deutscher v. Gabel, 149 Wn. App. 119, 141 n.23, 202 P.3d 355 (2009) (Dwyer, J., dissenting). But Dempere involved an expert witness who had not even been identified until the date of the disclosure. Id. at 405. Here, by contrast, the witnesses are fact witnesses whose identities have been known to all parties all along because they are the very children around whom the proceeding revolves. Cf. id. (observing that trial court excluded expert witness after opposing party argued it would be prejudiced by having to conduct additional discovery and find countering experts, thus resulting in delay). Furthermore, we held in Dempere that "[a] trial court does not abuse its discretion when it excludes witnesses for a willful violation of a discovery order." Id. at 406. It does not follow that a trial court must exclude a witness for a willful violation of a discovery order. Dempere is distinguishable and not persuasive.

Second, the mother does not establish that the trial court's decision to allow L.A. and G.A. to testify constituted an abuse of discretion. Although the trial court allowed L.A. and G.A. to testify, it carefully limited the scope of L.A.'s and G.A.'s testimony to testimony rebutting the mother's specific assertion that the father did not have contact with the children during the trial reunification. The court also gave

the parties the opportunity to interview L.A. and G.A. before they testified and asked the Department to share information about its anticipated line of questioning with the other parties before the interview. It also indicated it would be "happy to weigh in" if any additional issues arose based on the interview.

Furthermore, just as the mother argues the Department would have known in advance the likely substance of the mother's testimony, the mother would have known in advance the likely substance of the children's testimony. Specifically, the mother points out that her testimony should have been no surprise to the Department because it was consistent with her earlier denials to a Child Protective Services (CPS) investigator. But, the CPS investigation was triggered by alleged disclosures by L.A. and G.A. themselves. And, as discussed, the mother's ability to protect L.A. and G.A. from abuse was central to this proceeding. Thus, we are unpersuaded by the mother's assertion that she was prejudiced by the Department's delay in disclosing that it would call L.A. and G.A. as witnesses, and we conclude the trial court did not abuse its discretion. Cf. King County Local Civil Rule 4(j) (vesting the trial court with discretion to allow undisclosed witnesses to testify at trial "for good cause and subject to such conditions as justice requires"); Buckner, Inc. v. Berkey Irr. Supply, 89 Wn. App. 906, 914, 951 P.2d 338 (1998) ("In general, court rules 'contain a preference for deciding cases on their merits rather than on procedural technicalities.' " (quoting Vaughn v. Chung, 119 Wn.2d 273, 280, 830 P.2d 668 (1992))).

III. Little Likelihood of Remediation in Near Future

As a prerequisite to termination, the Department must 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." RCW 13.34.180(1)(e). "A determination of what constitutes the near future depends on the age of the child and the circumstances of the placement." In re Dependency of T.L.G., 126 Wn. App. 181, 204 108 P.3d 156 (2005).

RCW 13.34.180(1)(e) provides for a rebuttable presumption that applies when a parent is unable to substantially improve within 12 months after entry of the dependency dispositional order:

> A parent's failure to substantially improve parental deficiencies within twelve months following entry of the dispositional order shall give rise to a rebuttable presumption 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 presumption shall not arise unless the petitioner makes a showing that all necessary services reasonably capable of correcting the parental deficiencies within the foreseeable future have been clearly offered or provided.

RCW 13.34.180(1)(e).

Here, the trial court made the following findings with regard to the mother's likelihood of remediation:

> 2.99 Because [the father] and [the mother] failed to substantially improve their parental deficiencies within twelve months following the entry of the dispositional orders, it is presumed that there is little likelihood that conditions will be remedied so that [L.A.] or [G.A.] can be returned to [the mother] in the near future . . . . Given the specific facts and the lengthy time during which the children have remained in foster care, and the extensive amount of time during which the parents have continued to be offered and provided services, this presumption applies in this case.

> 2.100 Due to the children's ages and the length of time they have been in foster care, the foreseeable future is a limited length of time and should be measured at most by days, and certainly not by months or years. Neither parent's parental deficiencies will be corrected in the foreseeable future as evaluated from the children's point of view and age. The timeline for these parents to correct their deficiencies does not meet the children's timeline.

The mother argues that the trial court's finding that RCW 13.34.180(1)(e) was satisfied is unsupported by the evidence for two reasons. First, she asserts that the trial court relied solely on the statutory presumption even though it does not apply. Second, she argues the trial court erred by finding that the near future for L.A. and G.A. should be measured by mere days.

But, as to the mother's first argument, even when the statutory presumption applies, it merely shifts the burden of production to the parent. T.B., 150 Wn. App. at 608. The Department still bears the ultimate burden to "convince the trial court that it is highly probable that the parent would not improve in the near future."[15] Id. Therefore, we need not decide whether the trial court erred by concluding the presumption applied here. This is so because even if the trial court did err, the nature of our review would be the same: To determine whether substantial evidence in the record supports the trial court's ultimate finding that RCW 13.34.180(1)(e) was satisfied.

As to the mother's second argument, substantial evidence supports the trial court's finding that the near future was measurable by days. Specifically, the trial

[15] The mother seems to suggest that the trial court misinterpreted the presumption as shifting the burden of proof to the parent. But, she points to nothing in the record that suggests the trial court misunderstood the effect of the presumption.

court made an unchallenged finding that G.A. "needs to be able to bond and trust adults, and form healthy relationships at her age and not experience any further harmful delay in achieving permanence." (Emphasis added.) The trial court also made unchallenged findings that L.A. and G.A. "need permanency now" and that L.A. "wants this all to be over now." And, the trial court made an unchallenged finding that "the children should have a permanent and stable home as soon as possible." The foregoing findings, which are verities on appeal, see M.S.R., 174 Wn.2d at 9, establish that L.A. and G.A. needed immediate permanency. Accordingly, they support the trial court's finding that for L.A. and G.A., the near future was the immediate future. Cf. In re Welfare of C.B., 134 Wn. App. 942, 954, 143 P.3d 846 (2006) (child's need for sense of permanency relevant to determining near future).

The mother points out that our cases suggest that the length of a child's near future is generally shorter for young children. But, the determination of a child's near future is a determination of fact, not a determination of law. Cf. State v. Saint-Louis, 188 Wn. App. 905, 923, 355 P.3d 345 (2015) ("[T]he law provides no numerical standard to measure the foreseeable future."), aff'd, 186 Wn.2d 103, 376 P.3d 1099 (2016). Here, L.A. and G.A. had been dependent for more than five years, and the trial court found that they had a need for immediate permanency. Additionally, and as discussed, the mother knowingly exposed L.A. and G.A. to potential abuse over the course of the lengthy dependency, despite being offered necessary services. Under these circumstances, it was not error for

the trial court to find that there was little likelihood that the mother's deficiencies would be remedied so that the children could return home in their near future.

IV. Integration Into a Stable and Permanent Home

As a final matter, the father contends that the trial court erred by finding that "[c]ontinuation of the parent-child relationship between [the father] and [G.A.] clearly diminishes the child's prospects for early integration into a stable and permanent home." See RCW 13.34.180(1)(f) (requiring as a condition to termination that the trial court find that "continuation of the parent and child relationship clearly diminishes the child's prospects for early integration into a stable and permanent home."). We disagree.

The Department can satisfy the "integration into a stable and permanent home" prerequisite "by showing that 'a permanent home exist[s] but the parent-child relationship prevents the child from obtaining that placement.' " In re Dependency of A.D., 193 Wn. App. 445, 458, 376 P.3d 1140 (2016) (alteration in original) (quoting In re Welfare of R.H., 176 Wn. App. 419, 428, 309 P.3d 620 (2013)). Here, the record reflects that a permanent home exists: Holmes testified that L.A. and G.A.'s current placement is considered an adoptive home. Additionally, the trial court made an unchallenged finding, which is a verity on appeal, that L.A. and G.A. "cannot be adopted unless parental rights are terminated." Substantial evidence in the record and the trial court's unchallenged finding support the trial court's determination that continuation of the legal relationship between the father and G.A. clearly diminishes her prospects for early integration into a stable and permanent home. Cf. A.D., 193 Wn. App. at 458

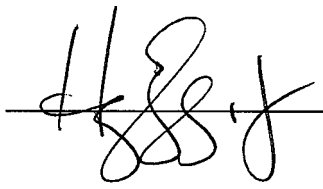
(holding that RCW 13.34.180(1)(f) was satisfied where the trial court made an unchallenged finding that "[t]he children are currently in a foster home that has expressed a desire and willingness to adopt the children.").

The father disagrees and asserts the trial court's finding was in error because termination of his relationship with G.A. would also end the father's child support obligations with regard to G.A. The father argues that maintaining his relationship with G.A. solely for the purpose of allowing him to continue monetarily supporting her "enhances—rather than diminishes—G.A.'s prospects for integrating into a stable and permanent home with her mother and siblings." But, "[s]o long as substantial evidence supports [a] finding, it does not matter that other evidence may contradict it." Burrill, 113 Wn. App. at 868. The father's assertion fails.

We affirm.

Appelwick, J.

WE CONCUR:



Chun, J.