

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

IN THE MATTER OF THE	)	
DEPENDENCY OF:	)	No. 63176-4-I
K.W.M., dob: 10/19/1997,	)	)
J.E.M., dob: 03/19/1999, and	)	)
J.J.E.M., dob: 08/23/2000,	)	) Consolidated with
	)	Nos. 63177-2-I, 63178-1-I,
Minor Children.	)	63371-6-I, 63373-2-I, and
	)	63374-1-I
KAREN LOU MODICA and DESMOND	)	
MODICA,	)	
	)	
Appellants,	)	
	)	
	)	
STATE OF WASHINGTON	)	
DEPARTMENT OF SOCIAL	)	UNPUBLISHED OPINION
AND HEALTH SERVICES,	)	
	)	
Respondent.	)	FILED: September 7, 2010

Schindler, J. — Karen and Desmond Modica appeal the decision terminating their parental rights to three of their twelve children, K.W.M., J.E.M., and J.J.E.M. Karen and Desmond contend that the trial court erred in finding the Department of Social and Health Services (DSHS) offered and provided all necessary and reasonably available services capable of correcting parental deficiencies within the foreseeable future, and that termination is in the best interest of the children. Desmond also argues that DSHS failed to

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provide housing referrals and did not prove there is little likelihood conditions would be remedied in the near future. Because the trial court's findings are supported by substantial evidence from which a rational trier of fact could find the necessary facts by clear, cogent, and convincing evidence, we affirm.

### FACTS

In 2006, Karen<sup>1</sup> and Desmond Modica had 10 children: K.W.A.M., age 15; K.J.M., age 14; K.I.M., age 13; K.W.M., age 9; J.E.M., age 7; J.J.E.M., age 6; K.A.M., age 5; J.O.E.M., age 3; K.R.C.M., age 2; and, K.Y.K.M., an infant.

Desmond has a lengthy history of domestic violence. In 2005, after a night of drinking together, Desmond punched Karen in the face, causing multiple facial fractures. Desmond was convicted by a jury of assault in the fourth degree, resisting arrest, and tampering with a witness. The court issued a no-contact order prohibiting Desmond from having contact with Karen.

When Karen gave birth to K.Y.K.M. on January 11, 2006, the baby tested positive for "cocaine metabolites." Karen missed scheduled appointments with the pediatrician on January 16 and 18. On January 18, Child Protective Services (CPS) received a referral from the health care providers. On March 17, CPS received a second referral from a public health nurse.

On April 26, a CPS social worker and a police officer went to Karen's

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<sup>1</sup> Karen is a member of the Roseau River Band in Canada. However, there is no dispute that the children are not Indian children as defined by the Indian Child Welfare Act, 25 U.S.C. §§ 1901-63.

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apartment to check on the baby, K.Y.K.M., who appeared to be fine. But the social worker expressed concern that the baby was hungry, and there was not enough food to feed the ten children. The social worker also noted that there were no beds, no tables, and no chairs in the apartment.

On July 2, 2006, CPS and the Auburn police responded to a report from a resident of the apartment complex that Karen had left her ten children alone for two days without any food. On July 7, DSHS filed a dependency petition. The State charged Karen with ten counts of criminal mistreatment and abandonment.

DSHS caseworker Sauda Porter made arrangements to place the four youngest children, K.A.M., age 5, J.O.E.M., age 3, K.R.C.M., age 2, and the infant, K.Y.K.M., in foster care in Sunnyside.<sup>2</sup> K.W.M., age 9, J.E.M., age 7, and J.J.E.M., age 6, were initially placed in foster care in the Puget Sound area. The three teenage children went to live with their paternal grandfather. On July 26, Karen failed to appear at a court hearing on the criminal charges. A bench warrant for her arrest was issued on August 2.

On November 1, Karen and Desmond entered into an agreed dependency order admitting that under former RCW 13.34.030(5) (2003), the children have “no parent, guardian, or custodian capable of adequately caring for the child[ren], such that the child[ren are] in circumstances which constitute a danger of substantial damage to the child[ren]'s psychological or physical

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<sup>2</sup> There were some other intervening placements for some of the children.

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development.”

The order of disposition required Karen to obtain a drug and alcohol evaluation and follow treatment recommendations, submit to a random urinalysis (UA) twice a week, attend parenting classes, obtain a psychological evaluation with a parenting component, and follow treatment recommendations. The order required Desmond to participate in a domestic violence treatment program, obtain a psychological evaluation with a parenting component, follow all treatment recommendations, submit to random UAs, and attend parenting classes. The order also required Karen and Desmond to maintain contact with DSHS and provided for an evaluation of and counseling for the children.

In November, DSHS caseworker Porter referred Karen and Desmond to Dr. Carmela Washington-Harvey to obtain a psychological evaluation. Porter also provided Karen with referrals for obtaining a drug and alcohol evaluation. Karen and Desmond met with Dr. Washington-Harvey, but Karen did not obtain a drug and alcohol evaluation.

On November 20, Dr. Washington-Harvey issued a psychological and parenting evaluation of Karen and Desmond. Dr. Washington-Harvey opposed returning the children to Karen until she complied with a number of requirements followed by another assessment.

It is not recommended that the children be returned until Ms. Modica and her immediate family members complete the following services. Upon completion of said services, a Family Assessment should be done that is informed by this evaluation and its recommendation whether or not to consider reunification for this family at that point in time:

- Anger management classes, domestic violence treatment program, drug treatment program, and parenting classes
- Individual, conjoint with her children, and marital counseling with her husband to assist ... them in reaching resolution for longstanding history of domestic violence and possible drug use. (**Note: Individual therapy for Ms.Modica should be informed by this evaluation.**)
- Marital counseling should also focus on clarification parental roles, mutual support in their parenting of their children
- Development of a Safety Plan that includes some form of monitoring by outside parties (school, etc.)
- Individual and conjoint therapy for the children in need of this mental services to assist them through play therapy or some other effective modality so as to allow them to address mental health or behavioral issues
- Secure stable housing and employment for the family<sup>3</sup>

In the psychological and parenting evaluation of Desmond,

Dr. Washington-Harvey also recommended against returning the children to him until he successfully completed a number of requirements. The evaluation states:

It is not recommended that the children be returned until Mr. Modica and his immediate family members complete the following services. Upon completion of said services, a Family Assessment should be done that is informed by this evaluation and its recommendation whether or not to consider reunification for this family at that point in time:

- Couple's as well as individual therapy to establish better rapport with each other, parent mutual support, mutually shared parenting responsibility, lines of communication and other marital issues that emerge in these sessions. (**Note: Desmond's individual therapy should be informed by this evaluation.**)
- Completion anger management, domestic violence treatment, parenting classes

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<sup>3</sup> Emphasis in original.

- Development of a Safety Plan that includes some form of monitoring by outside parties (school, etc.)
- Individual and conjoint therapy for the children in need of this mental services to assist them through play therapy or some other effective modality so as to allow them to address mental health or behavioral issues
- Secure stable housing and employment for the family<sup>4</sup>

In February, 2007, Karen pleaded guilty to four counts of criminal abandonment. The court sentenced Karen to two years of supervised probation.

At the dependency review hearing on February 17, the court found that Karen had “not demonstrated consistent measurable progress in meeting the dispositional plan requirements” and that she had “not addressed the issues which brought her children into care.” The order states Karen had “not submitted consistent UA’s” and did not regularly keep in contact with DSHS or provide information about services she had either participated in or completed. The court also found that Desmond did not regularly keep in contact with DSHS but was making some progress towards completing court-ordered services.

In March, Desmond was incarcerated for not complying with the terms of his probation. The criminal court found that Desmond willfully violated the conditions of his probation by using drugs.

In April, DSHS placed J.E.M., age 8, and J.J.E.M., age 6, with Desmond’s sister in Arizona. It is undisputed the two boys displayed severe emotional and behavioral issues. J.E.M. and J.J.E.M. were “angry, hid under

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<sup>4</sup> Emphasis in original.

their beds, threw items, and had severe tantrums.”

On May 4, Karen gave birth to an eleventh child, J.M. DSHS took J.M. into protective custody and filed a dependency petition. After DSHS removed J.M., Karen started using crack cocaine. At the end of May, Karen entered an outpatient drug treatment program, but she left the program in early July.

At the request of the DSHS caseworker, Robert Cox evaluated the four children living in foster care in Sunnyside: K.A.M., age 5; J.O.E.M., age 4; K.R.C.M., age 2; and K.Y.K.M., age 1.<sup>5</sup> In a report dated June 19, Cox, who is a child mental health therapist with the Yakima Nation Behavioral Health Program, concluded the children showed clinical signs of post traumatic stress disorder from “horrific abuse and neglect.” Based on the behavior exhibited by the children, Cox recommended suspending all visitation with the four children “immediately.” Cox also recommended the parents participate in therapy and assume responsibility for the abuse and neglect before resuming contact with the four children:

Given the children’s chronic history of horrific abuse and neglect, after getting reports from the foster homes about the degree of emotional deregulation experienced following visitations with parents and various sets of sibling[s], and having gathered clinical evidence of Post Traumatic Stress Disorder in three of the children, we are asking the following:

- Visits with biological parents be suspended immediately.
- That the parents begin some work with a certified Child Mental Health Specialist to understand their need to state unequivocally that the past abuses were [sic] their responsibility, that it was not the child’s fault and that they need to learn how to be “stronger” and protect their children.

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<sup>5</sup> Cox’s treatment program is open to members and descendents of Native American tribes.

Until this stage can be reached, there should be no face-to-face contact as the visitations are clearly retraumatizing the children.

- That the parents' therapist(s), work with us to gauge the readiness of both the parents, and the children, to resume contact.
- That a search for "healthy" relatives be conducted that are suitable contacts for these children, and that they meet with us to discuss some positive, structured types of contact.

In July, the criminal court issued three bench warrants for Karen's arrest.

In August, the court also issued a bench warrant for Desmond's arrest.

On July 9, Porter sent a letter notifying Karen that visitation with the four children living in Sunnyside was suspended. Porter described the concerns expressed by Cox and the Court Appointed Special Advocate (CASA), and the steps the parents needed to take in order to resume visitation.

The Department has received requests' from the private agency in Sunnyside, the CASA and the mental health counselor to discontinue visits with the children residing in Sunnyside and by proxy, the children in Tacoma. Per the documentation, the children's behavior would indicate that the visits are traumatic. Per the mental health counselor, the children have been diagnosed with Post Traumatic Stress Disorder due to the lifestyle they were subjected to while in your care. This would include but is not limited to the violence witnessed between you and Desmond and the chronic neglect the children have experienced. The mental health counselor is asking that visits be discontinued "until you, the parents, begin working with a certified child mental health specialist to understand their need to state unequivocally that the past abuses where the parents responsibilities, that it was not the child's fault and that they need to learn how to be 'stronger' to protect their children. Until this stage can be reached, there should be no face-to-face contact as the visitations are clearly retraumatizing the children."

From July until the end of the year, Karen and Desmond did not attend



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the dependency court hearings, and did not have any contact with DSHS or their children. At the permanency planning review hearing in August, the court found that Karen had missed all scheduled visits with her children, failed to complete drug and alcohol treatment, and did not comply with the recommendation of Dr. Washington-Harvey to obtain individual and family counseling.

The court also found that Desmond had missed all scheduled visits, had not obtained individual and family counseling as recommended by Dr. Washington-Harvey, and did not have stable or safe housing. However, the court found that Desmond had completed a domestic violence perpetrator program and a ten-hour anger management class. The court ruled that, except for the three teenage children, the permanency plan should include adoption as the primary plan.

In September, caseworker Delcia Hoge replaced Porter. Hoge testified that she made regular, but unsuccessful, attempts to contact Karen and Desmond. In October, the court found the infant J.M. dependent.

In early November, Karen went to see Dr. Washington-Harvey without an appointment. Dr. Washington-Harvey believed Karen was suffering from serious ongoing depression. Later that month, Desmond also went to see Dr. Washington-Harvey without an appointment. Dr. Washington-Harvey said he was also severely depressed.

In January 2008, while Karen was incarcerated for violating the terms of

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her probation, Hoge was able to establish contact with her. As an alternative to incarceration, Karen agreed to enroll in a six-month inpatient drug and alcohol treatment program at Perinatal Treatment Services (PTS). While at PTS, Karen also participated in mental health counseling. DSHS made arrangements for Karen to resume weekly visits with the children living in the Puget Sound area.

That same month Hoge was also able to establish contact with Desmond for the first time. Hoge gave Desmond referrals for the court-ordered counseling and made arrangements for Desmond to spend time with the children living in the Puget Sound area. Desmond did not follow through with the referrals for counseling.

On April 8, DSHS filed a petition to terminate Karen's and Desmond's parental rights as to seven of their eleven children: K.W.M., age 10; J.E.M., age 9; J.J.E.M., age 7; K.A.M., age 6; J.O.E.M., age 5; K.R.C.M., age 3; K.Y.K.M., age 2.<sup>6</sup> DSHS alleged that all services capable of correcting parental deficiencies were offered or provided, including drug and alcohol treatment, parenting classes, domestic violence treatment, a psychological evaluation with a parenting component, and referrals for recommended treatment. DSHS alleged that "the parents have demonstrated an unwillingness to participate in and/or successfully complete services offered to correct parental deficiencies."

The petition describes Karen's history of substance abuse, neglect of

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<sup>6</sup> The three teenage children and the infant J.M. were subject to a separate dependency action.

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her children, her failure to complete the recommended counseling and drug and alcohol treatment, and her failure to stay in contact with DSHS. As to Desmond, the petition describes his lengthy history of domestic violence, substance abuse, neglect of the children, his failure to complete recommended individual and family counseling, his failure to stay in contact with DSHS, and his failure to provide secure, stable, and safe housing.

On April 14, while still in treatment at PTS, Karen gave birth to a twelfth child, K.M. DSHS allowed K.M. to remain with Karen while at PTS, and Karen continued to participate in mental health counseling at PTS. At the end of June, DSHS made arrangements to place K.W.M., age 10, with Desmond's sister in Arizona.

In July, Karen completed the inpatient portion of drug and alcohol treatment at PTS. PTS offered Karen the opportunity to stay for another month until she located housing and enrolled in an outpatient drug and alcohol program. Karen did not stay at PTS or enroll in an outpatient program. On July 16, DSHS placed K.M. in protective custody and filed a dependency action.

On July 8, Cox wrote a letter to Hoge "in response to the court's request for clarification concerning the needed responses of the parents' prior to contact or visitation" with the four children living in Sunnyside. Cox states that the parents needed to participate in therapy to determine whether they were willing to understand and accept responsibility for their behavior and its effect

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on the four children:

From a clinical perspective, it is clear that these children have been severely abused and neglected and therefore the first objective (by the Court, DSHS, and our program) has been to protect them from further harm. The second objective is to help the children cope with the fact that the abuse was not their fault, that “others” had the power to hurt them and did so for various reasons. The third objective is to identify which adults were responsible for the abuse (either directly or indirectly) and insure that any contact between the children and these adults is conducted in specific ways that reflect the treatment needs of the children. Until these adults are able, and willing, to take responsibility for their abusive history, it has been our consistent statement that unstructured contact will be damaging to the children. Over 13 months ago, I stated that if the parents are truly interested in helping their children they need to get into therapy and learn what needs to happen to help the children.

In the letter, Cox describes several models used to treat abused children “as well as attempting to ‘reconnect’ them to abusive parents,” and states that his program uses “a modified version of the Jay Haley-Cloe Madones family model, with the recent addition of the supportive techniques of [Trauma-Focused Cognitive Behavioral Therapy].” Cox explained:

This work takes between 8-12 months to complete once the parent or caretakers, indicate they are willing to accept responsibility for the abuse and engage in the treatment. It requires that the children be actively working with a qualified therapist, that the parents have their own therapist, and that both providers carefully coordinate the ensuing work.

Hoge contacted Cox about the recommendation that the parents engage in TFCBT in order to resume contact with the four children living in Sunnyside.

Cox suggested Hoge contact Lucy Berliner at Harborview Medical Center.

After speaking to Berliner, Hoge referred Karen and Desmond to her for the

parenting component of the counseling recommended by Cox.

Desmond did not attend his scheduled session with Berliner. Karen met with Berliner once, in July. Karen told Berliner that “the circumstances under which these four children were removed did not amount to neglect, that leaving the younger children with the older children was approved and appropriate,” and that the police “manufactured allegations of neglect.” Karen also denied that her children might have been affected by domestic violence, and did not believe that therapy with Berliner was necessary or beneficial. Berliner’s report states in pertinent part:

With specific reference to the issue of domestic violence and its impact on the four children, she denied that they had seen any domestic violence or that they might have been affected by the history of domestic violence. When asked to describe the history of domestic violence, she stated that there had been three incidents. The first occurred before she and Mr. Modica married and did not involve actual physical violence. The second involved an incident in which Mr. Modica became suspicious that she was involved in a relationship with another man and Mr. Modica slapped the other man and incidentally knocked her glasses off. The third, for which he spent five months in jail, was an incident in which they were arguing. She hit her face on an object causing injuries and then falsely accused him of causing the injury. She stated that during none of these occasions were the four children exposed to the violence.

In July and August, Desmond and Karen attended only two marital counseling sessions at Pacific Lutheran University.

In August, Karen moved into temporary housing at Sacred Heart Shelter in Seattle. DSHS allowed the three teenage children and the infant K.M. to live with Karen at Sacred Heart. In October, Karen was authorized to be away from

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Sacred Heart for one night. She stayed away an extra night without authorization, and was evicted from Sacred Heart. Karen agreed to place K.M. in foster care after she was evicted.<sup>7</sup> In October, DSHS placed the four children who were in foster care in Sunnyside with Karen's mother in Minnesota.

Karen entered an outpatient drug treatment program in October, but she was terminated from the program in early November.

The 15-day termination trial began in November. Twenty-three witnesses testified, including the two DSHS caseworkers, Dr. Washington-Harvey, Cox, Berliner, the CASA, and Desmond's sister.

Desmond's sister testified that after many months of counseling and effort, J.E.M. and J.J.E.M., and K.W.M. had largely overcome severe emotional and behavioral problems, and all three children were now excelling in school, sports, and extracurricular activities. The CASA testified in favor of terminating parental rights because Karen and Desmond refused to take responsibility for the behavior that led to the dependency. According to the CASA, the three children in Arizona and the four younger children recently placed in Minnesota required extensive therapy because of the trauma inflicted by the parents. The CASA testified that all three children living with Desmond's sister told her that they wanted to stay in Arizona.

At the time of trial, Karen was enrolled in counseling for domestic

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<sup>7</sup> The three oldest children resumed living with relatives.

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violence victims and was about to begin outpatient treatment in another substance abuse program. Karen had also participated in four sessions with Laura Merchant at Harborview Medical Center, but had cancelled two other scheduled sessions. Karen argued that removing the children caused their behavioral problems, that DSHS improperly delayed making appropriate counseling referrals, and that termination of her parental rights was unwarranted because of her recent progress.

At the time of trial, Desmond was in counseling to address domestic violence and had participated with Karen in the four sessions with Merchant. Desmond argued that termination of his parental rights was not warranted because of his progress in addressing domestic violence, and because DSHS failed to provide him referrals for housing or offer him appropriate counseling services until after filing the termination petition. Desmond and Karen both testified that they wanted to be together.

During the trial DSHS provided Karen housing, but she was asked to leave because she refused to follow the residence's policies. DSHS provided Karen, the three teenage children, and K.M., with another housing alternative. Karen left K.M. alone for 24 hours in the room with the three teenage children. In another instance, Karen left the three teenage children with relatives and spent the night with K.M and Desmond in his van despite the court order barring Desmond from having overnight visitation with Karen while K.M. was in her care.

The court terminated Karen's and Desmond's parental rights as to the three children living with Desmond's sister in Arizona.<sup>8</sup> The court found that "all necessary services reasonably available, capable of correcting the parental deficiencies within the foreseeable future have been expressly and understandably offered or provided," that there was "no substantial improvement in parental deficiencies" despite two years in dependency, that there was little likelihood conditions would be remedied in the near future, and that termination was in the children's best interests.

The court entered detailed findings addressing the decision to terminate parental rights as to the three children living with Desmond's sister in Arizona.

1.40 In April 2007, [J.J.E.M.] and [J.E.M.] were placed with their paternal aunt who resides in the State of Arizona. [J.J.E.M.] and [J.E.M.] continue to reside in their paternal aunt's care. When the boys initially arrived in Arizona in April 2007, the boys suffered from severe behavioral issues. The boys were angry, hid under their beds, threw items, and had severe tantrums. At the time of trial, approximately 18 months later, the boys' behavior has drastically improved and the boys are doing well. Their sister [K.W.M.] arrived in April 2008, and is doing well. All three children are thriving in academics, sports, and other extracurricular activities and are supported with substantial structure at the paternal aunt's home.

1.41 The parent's have telephoned their children fewer than [sic] 10 times since their arrival in the State of Arizona.

1.42 The children have made two visits to Seattle to see their parents but expressed no reluctance leaving the visit and returning to their home in Arizona.

1.43 The parents have no significant involvement in their children's lives. The parent-child relationship is attenuated; weighing the fairly weak parent-child bond against the substantial need of the children for permanence, the court concludes that termination is in the best interest of [J.E.M., J.J.E.M., and

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<sup>8</sup> The court continued the trial to allow the parties to present additional evidence as to the four younger children who had been placed with Karen's mother in Minnesota.



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K.W.M.J.

Karen and Desmond appeal the order terminating their parental rights to K.W.M., J.E.M., and J.J.E.M.

## ANALYSIS

### Standard of Review

In order to terminate parental rights, DSHS must prove the six statutory elements of RCW 13.34.180(1) by clear, cogent, and convincing evidence, and show that termination was in the best interests of the child by a preponderance of the evidence. In re Dependency of H.W., 92 Wn. App. 420, 425, 961 P.2d 963, 969 P.2d 1082 (1998).

RCW 13.34.180(1) provides in part:

- (a) That the child has been found to be a dependent child;
- (b) That the court has entered a dispositional order pursuant to RCW 13.34.130;
- (c) That the child has been removed or will, at the time of the hearing, have been removed from the custody of the parent for a period of at least six months pursuant to a finding of dependency;
- (d) That the services ordered under RCW 13.34.136 have been expressly and understandably offered or provided and all necessary services, reasonably available, capable of correcting the parental deficiencies within the foreseeable future have been expressly and understandably offered or provided;
- (e) That there is little likelihood that conditions will be remedied so that the child can be returned to the parent in the near future. 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. . . .
- (f) That continuation of the parent and child relationship clearly diminishes the child's prospects for early integration into a

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stable and permanent home.

“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 Welfare of Sego, 82 Wn.2d 736, 739, 513 P.2d 831 (1973)). Where the needs of the child and the rights of the parent conflict, the needs of the child must prevail. In re Dependency of J.W., 90 Wn. App. 417, 427, 953 P.2d 104 (1998).

The deference paid to the trial court’s advantage of having the witnesses before it is particularly important in a parental termination proceeding. Consequently, this court will not weigh the evidence or the credibility of the witnesses. In re Sego, 82 Wn.2d at 736, 739-40, 513 P.2d 831 (1973). “If there is substantial evidence which the lower court could reasonably have found to be clear, cogent and convincing, an appellate court should not disturb the trial court’s findings.” In re Welfare of Aschauer, 93 Wn.2d 689, 695, 611 P.2d 1245 (1980).

If DSHS establishes the statutory elements of RCW 13.34.180, the court must then consider whether termination of the parent-child relationship is in the best interests of the child. RCW 13.34.190(2). Whether termination is in the best interests of the child must be proved by a preponderance of the evidence and determined based on the facts of each case. In re Aschauer, 93 Wn.2d at 695. Unchallenged findings are verities on appeal. In re Interest of J.F., 109

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Wn. App. 718, 722, 37 P.3d 1227 (2001).

Adequacy of Services

Karen and Desmond contend the trial court erred in finding DSHS offered or provided all reasonable and necessary services. DSHS has an obligation under RCW 13.34.180(1)(d) to offer and provide services capable of correcting parental deficiencies within the foreseeable future. DSHS must, at a minimum, provide a list of agencies or organizations that offer the court-ordered services. In re Dependency of D.A., 124 Wn. App. 644, 651, 102 P.3d 847 (2004). It is well-established that if a parent is unwilling or unable to make use of the services offered or provided, DSHS is not required to offer other services that might have been helpful. In re Dependency of T.R., 108 Wn. App. 149, 163, 29 P.3d 1275 (2001).

The trial court's findings of fact describe the services DSHS offered and provided to Karen and Desmond:

1.9 Services ordered under RCW 13.34.130 have been expressly and understandably offered or provided and all necessary services reasonably available, capable of correcting the parental deficiencies within the foreseeable future have been expressly and understandably offered or provided, including the requirements that the mother participate in a drug and alcohol evaluation and follow recommended treatment; complete random urinalysis two times per week; participate in a psychological evaluation and follow recommended treatment; participate in parenting classes; participate in individual, marital, and conjoint counseling; and maintain safe, stable housing.

1.10 Services ordered under RCW 13.34.130 have been expressly and understandably offered or provided and all necessary services reasonably available, capable of correcting the parental deficiencies within the foreseeable future have been expressly and understandably offered or provided, including the

requirements that the father participate in a state certified domestic violence treatment program; participate in a drug and alcohol evaluation and follow recommended treatment; complete random urinalysis two times per week; participate in a psychological evaluation and follow recommended treatment; participate in parenting classes; participate in individual, marital, and conjoint counseling; and maintain safe, stable housing.

...

1.20 Pursuant to the dispositional order of November 2006, the parent's [sic] were to follow all recommended treatment of their psychological evaluations. Recommendations from the psychological evaluation included requiring the mother and father to engage in individual, marital, and conjoint counseling.

1.21 The father has participated in two individual counseling sessions, and the mother has not participated in any sessions. The parents completed two marital counseling sessions.

Karen and Desmond's primary argument is that clear, cogent, and convincing evidence does not support the trial court's findings that DSHS offered or provided necessary services because DSHS did not make a referral for Cognitive Behavior Therapy (CBT) as recommended by Dr. Washington-Harvey and Cox until shortly before the termination trial.

Contrary to the premise of their argument, Dr. Washington-Harvey did not recommend CBT in the November 2006 psychological and parenting evaluations of Karen and Desmond. Dr. Washington-Harvey recommended Karen and Desmond participate in and complete individual counseling, "conjoint [counseling] with [their] children," and marital counseling to resolve their "longstanding history of domestic violence and possible drug use." Dr. Washington-Harvey also noted that some of the children might benefit from individual therapy and conjoint therapy "to assist them through play therapy or

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some other effective modality so as to allow them to address mental health or behavioral issues.”

In his initial report in June 2007, Cox did not specifically identify CBT. Cox recommended that the parents “begin some work with a certified Child Mental Health Specialist” to understand how to accept responsibility for past abuse and neglect of the children. Cox specifically identifies CBT for the first time in his July 8, 2008 letter in response to the court’s request to clarify the steps necessary before the parents might resume visitation with the four children living in foster care in Sunnyside.

Moreover, there is no dispute that Karen and Desmond did not initially engage in drug and alcohol treatment. Karen did not submit consistent UAs, and admittedly started using crack cocaine after K.M. was born. Desmond also admitted that he had “a dirty UA” for cocaine and alcohol in December 2006 and was in jail for most of January 2007.

DSHS caseworker Porter testified that she did not initially provide counseling referrals because Karen and Desmond were not clean and sober and Karen needed to obtain drug treatment before engaging in counseling. Dr. Washington-Harvey also confirmed it was premature to start counseling before Karen was clean and sober:

Q So, Dr. Washington-Harvey, do you think it’s important that somebody be clean and sober when they start marriage counseling or individual counseling?

A Yes, I do.

Q Why?

A Because you need to have your faculties about you to

participate in the therapeutic sessions. Otherwise, it's the therapist that's doing all the work, and ... he or she is not reaching the client.

Q So, would agree [sic] that if Mrs. Modica didn't complete her inpatient program until July of this year [2008], about 21 months after your evaluation, that it would have been premature for her to start individual and marriage counseling?

A I would agree to that if she were indeed using.

Q Okay. Well, even if she wasn't using.

A Yes, I would be concerned.

Furthermore, Karen and Desmond did not have any contact with DSHS or follow through with any court-ordered services from July 2007 until January 2008. Nonetheless, on July 9, Porter sent a letter to Karen and Desmond giving them referrals to four mental health counselors. DSHS caseworker Hoge also kept trying to contact Karen and Desmond. Hoge testified that in December 2007 she left voice messages with referrals to three counseling agencies, but Karen did not respond. Hoge was able to reestablish contact in January 2008, after Karen was incarcerated for violating the terms of her probation. Karen then started inpatient drug and alcohol treatment at PTS.

Hoge testified that between September 2007 and February 2008 she left voice mail messages for Desmond an average of three times a month and made referrals for counseling services in a voice mail in December 2007. According to Hoge, Desmond would occasionally return the calls to express his frustration, but he did not follow through with obtaining services. Desmond finally agreed to meet with Hoge in February 2008. Hoge discussed the recommendations made by Dr. Washington-Harvey and Cox, and the need for

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Desmond to complete the court-ordered services.

After Cox specifically identified CBT in his July 8, 2008 letter to the DSHS caseworker clarifying the necessary steps to resume visitation with the four children living in Sunnyside, Hoge referred Karen and Desmond to Berliner for CBT.

But when Karen met with Berliner in July, Berliner concluded that Karen was not ready for CBT because she refused to acknowledge she needed counseling. Berliner's report states:

She disputes the entire basis for DCFS involvement in their family. Any type of therapy requires that there be some level of problem recognition and some readiness and willingness to engage in a change process. Problem recognition and readiness to change were not evident in this encounter.

Desmond did not keep his appointment with Berliner.

Karen and Desmond assert that In re Dependency of T.L.G., 126 Wn. App. 181, 203, 108 P.3d 156 (2005), supports their argument that the court erred in finding that DSHS proved that it offered or provided necessary services. T.L.G. does not support their argument.

In T.L.G., DSHS never identified the parental deficiencies that needed to be corrected, and the record did not support the trial court's finding that the parents caused "the long delay in obtaining the evaluations through their manipulation." T.L.G., 126 Wn. App. at 201.

In contrast, here, Dr. Washington-Harvey clearly identified the parental deficiencies and DSHS offered or provided the court-ordered services to

correct those deficiencies, including drug and alcohol treatment and counseling referrals. Dr. Washington-Harvey recommended individual counseling and joint counseling with the children but did not recommend CBT. Accordingly, the court did not order DSHS to provide CBT, and DSHS provided referrals to the parents for individual and marital counseling.

Moreover, neither parent made any attempt to engage in counseling until 2008, approximately two years after the children had been removed from their care.<sup>9</sup> After Cox specifically recommended CBT in July 2008, DSHS referred Karen and Desmond to Berliner. Karen met with Berliner once in July but was not interested in CBT, and Desmond did not meet with Berliner at all.

Desmond also asserts the evidence does not support finding that his failure to provide safe and stable housing is a parental deficiency, or that DSHS offered or provided services to remedy that deficiency. In support of his argument, Desmond points to the court's findings that the parents failed to find suitable housing. But the findings expressly state that housing is not a parental deficiency. Rather, the findings address the decisions the parents made shortly before and during trial that jeopardized their housing, which, coupled with their parental deficiencies, placed their children at risk.

1.30 The parents have failed to obtain suitable housing for the entire family. It is unlikely the parents will be able to obtain housing suitable for all 12 children any time soon.

1.31 The parents' lack of housing, while not a parenting deficiency itself has been due to repeated poor decisions they

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<sup>9</sup> Hoge testified that around May 2008, Desmond said he had called one of the providers on the list that she had given him, but the treatment provider did not take medical coupons.



have made. These decisions, combined with a lack of progress in correcting their parental deficiencies of domestic violence and, in the mother's case, substance abuse, are continued risk to the children.

Furthermore, in the order terminating Desmond's parental rights, the court squarely identifies domestic violence as the primary parental deficiency:

1.16 ... The father completed a state certified domestic violence treatment program through "It Takes a Village" with Patricia Bishop in 2007. The treatment provided did not correct the father's parental deficiency.

...  
1.18 The father's continued denial of domestic violence makes clear that the father's domestic violence treatment program did not correct this parental deficiency.

Substantial evidence supports the trial court's findings that DSHS offered or provided all court-ordered and necessary counseling services capable of correcting parental deficiencies in the foreseeable future.

Likelihood of Remedying Parental Deficiencies in the Near Future

Desmond contends the trial court erred in finding that there is little likelihood conditions would be remedied in the near future so that the children could be returned to his care. The focus of this statutory element is whether the parent's identified deficiencies have been corrected. In re Welfare of M.R.H., 145 Wn. App. 10, 27, 188 P.3d 501, review denied, 165 Wn.2d 1009 (2008), cert. denied sub nom. Hurd v. Washington, 129 S. Ct. 1682, 173 L. Ed. 2d 1046 (2009).

Here, the court found in pertinent part:

1.16 The father was convicted of assault domestic violence in 1990. The father was again convicted of assault domestic

violence, including witness tampering, in 2005. The father completed a state certified domestic violence treatment program through “It Takes a Village” with Patricia [sic] Bishop in 2007. The treatment provided did not correct the father’s parental deficiency.

1.17 At trial, the father denied he assaulted the mother and stated that the mother’s declaration provided to the court regarding the incident in 2005 was incorrect. The father has never admitted to his domestic treatment provider or counselor that he struck his wife in the face, notwithstanding that jury found him guilty beyond a reasonable doubt.

1.18 The father’s continued denial of domestic violence makes clear that the father’s domestic violence treatment program did not correct this parental deficiency.

1.19 The father’s continued denial of domestic violence makes clear that there is little likelihood conditions will be remedied so that the children can return to the parent’s care within the near future.

...

1.22 The conjoint counseling with the children, as recommended by Dr. Washington-Harvey, the children’s therapist Bob Cox, and ordered by the court, had not yet begun nor was it likely to begin in the near future.

1.23 The parents had at least one opportunity to participate in these counseling sessions sooner.

...

1.32 The lack of engagement and non-compliance of both the mother and the father shows there is little likelihood conditions will be remedied for the children to return to their parents’ care within the near future.

If all necessary services reasonably capable of correcting parental deficiencies within the foreseeable future are offered or provided, a parent’s failure to substantially improve parental deficiencies within 12 months after entry of the disposition order gives rise to a rebuttable presumption that there is little likelihood the children can be returned to the parent in the near future.

RCW 13.34.180(1)(e); In re M.H.R., 145 Wn. App. at 27.

Desmond disputes the finding that he did not rebut the statutory presumption. Desmond also disputes the finding that he continued to deny he had perpetrated domestic violence. Desmond asserts the evidence shows that he attended domestic violence and anger management classes, and was actively participating in therapy to address his history of domestic violence.

The evidence supports the finding that, despite completion of a domestic violence class and recent therapy, Desmond did not accept responsibility for the domestic violence. Dr. Washington-Harvey testified that it is “pivotal” for a domestic violence perpetrator to acknowledge his actions in order to break the cycle of domestic violence. Desmond’s domestic violence class instructor testified that Desmond did not acknowledge that he had committed any physical abuse. And despite his domestic violence conviction in 2006, at trial, Desmond continued to deny that he had assaulted Karen. Desmond testified that he only “shrugged her off.” The evidence supports the trial court’s finding that Desmond had not addressed his history of domestic violence sufficiently to be ready, in the near future, to parent the three children who were living with his sister in Arizona.

Substantial evidence supports the court’s findings that there is little likelihood Desmond would be able to remedy his parental deficiencies so that the children could be returned in the near future.<sup>10</sup>

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<sup>10</sup> In a recent decision, our Supreme Court held that the trial court must enter an explicit finding that the parents are currently unfit. In re Welfare of A.B., 168 Wn.2d 908, 232 P.3d 1104 (2010). When the record does not contain an explicit finding, the appellate court may “imply or infer the omitted finding if-but only if-all the facts and circumstances in the

Best Interests of the Children

Karen and Desmond also challenge the trial court's finding that termination of their parental rights to K.W.M, J.E.M., and J.J.E.M. is in the children's best interests.

A child has a fundamental right to a safe, stable, and permanent home and the speedy resolution of a dependency or termination proceeding.

RCW 13.34.020. When a parent has not been able to overcome parental deficiencies during a lengthy dependency, a court is justified in finding that termination is in the child's best interests. In re Dependency of S.M.H., 128 Wn. App. 45, 60, 115 P.3d 900 (2005).

Here, the record supports the court's finding that Karen and Desmond have had "no significant involvement" for approximately two years in the lives of the three children placed in Arizona, and that a permanent placement was in the children's best interests. The undisputed findings establish that when J.E.M. and J.J.E.M. were first placed with Desmond's sister in Arizona they exhibited severe emotional and behavioral problems. By the time of trial, the two boys and K.W.M. were "thriving in academics, sports, and other extracurricular activities." The CASA also testified that each of the three children told her he or she wanted to remain in Arizona with Desmond's sister.

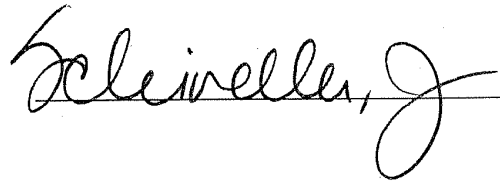
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record (including but not limited to any boiler plate findings that parrot RCW 13.34.180) clearly demonstrate that the omitted finding was actually intended, and thus made, by the trial court." In re A.B., 168 Wn.2d at 921. Here, while there was no explicit finding of current parental unfitness, the facts and circumstances in the record clearly show Karen and Desmond were currently unfit to parent the three children placed in Arizona.

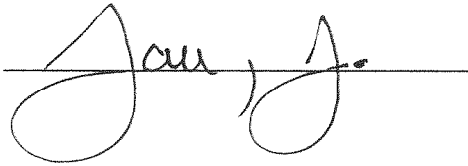
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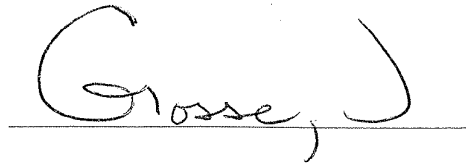
The parents' failure to overcome their parental deficiencies over the course of the lengthy dependency, coupled with the undisputed findings, support the trial court's determination that termination was in the children's best interests.

We affirm.

Handwritten signature of Schweitzer, J. in cursive script, written over a horizontal line.

WE CONCUR:

Handwritten signature of Jan, J. in cursive script, written over a horizontal line.

Handwritten signature of Grosse, J. in cursive script, written over a horizontal line.