

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

IN RE THE DEPENDENCY OF J.L.C., d/o/b 03/29/99)	No. 64278-2-1
)	Consolidated w/ No. 65279-1-1
)	
T.L.C., d/o/b/ 04/19/03)	
)	
STATE OF WASHINGTON, DEPARTMENT OF SOCIAL AND HEALTH SERVICES,)	UNPUBLISHED OPINION
)	
Respondent,)	
)	
v.)	
)	
NIKKI COOPER,)	
)	
Appellant.)	FILED: <u>September 13, 2010</u>
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)	

spearman, j. – Nikki Cooper appeals the trial court orders terminating her parental relationship with her sons T.C. and J.C. She argues that she was not provided adequate services because the Department of Social and Health Services (Department) failed to refer her to the Department of Developmental Disabilities (DDD) until shortly before trial. But the Department presented evidence that DDD did not offer services to address Cooper’s parental deficiencies, which would require many more months of substance abuse treatment and at least two years of intense individualized therapy to remedy.

Because parental unfitness was established, the Department did not fail to provide necessary services capable of correcting parental deficiencies within the foreseeable future, and the trial court properly considered the best interests of the children, we affirm.

FACTS

On April 21, 2007, the Department received a Child Protective Services referral indicating that Nikki Cooper was neglecting her sons, four-year-old T.C. and eight-year-old J.C. When police conducted a welfare check that evening, they found two individuals with outstanding warrants hiding in the bathroom and drug paraphernalia lying in plain view. They also observed that the residence was kept in unsanitary conditions. A social worker conducted a home visit on April 24 and interviewed Cooper, who agreed to do a drug and alcohol assessment and submit a sample for urinalysis (UA). The UA was positive for cocaine. Cooper signed a safety plan and a voluntary service plan, in which she agreed to provide random UA samples for one month, inform the Department of her address and telephone number, follow recommendations of the drug and alcohol evaluation, and keep drug users out of her apartment.

On May 2, the social worker learned that J.C. had not returned to school. On May 10, Cooper left a voicemail with the social worker indicating she intended to move out of Washington but was willing to complete her drug and alcohol evaluation before she left. Cooper, who had since been evicted from her

apartment, did not provide a current address or telephone number. On May 11, 2007, the Department filed dependency petitions and law enforcement took the children into protective custody.

On May 18, the dependency court ordered Cooper to complete a drug and alcohol evaluation and submit to random UA testing. Cooper completed the assessment and began outpatient treatment at SeaMar, a substance abuse treatment program, in May. On October 5, 2007, Cooper signed an agreed order of dependency as to J.C.¹ and the court ordered Cooper to complete treatment, attend self-help meetings, submit to random UA testing, and participate in a parenting assessment. The order indicates that Cooper did not agree to participating in mental health counseling, a medication assessment, or parenting classes and that those services would be addressed at a contested hearing. On October 30, 2007, the dependency court ordered Cooper to participate in mental health counseling and medication management as well as a parenting class with a focus on parenting in recovery.

By letter dated November 21, 2007, the Department provided Cooper with referrals for parenting classes with several providers and mental health counseling at Compass Health. The Department advised Cooper that it would make a referral directly to an approved evaluator for a parenting assessment. Cooper attended a mental health assessment at Compass Health, reported to

¹ Because J.C. and T.C. have different fathers, their dependency orders were entered at different times. Neither father is a party to this appeal.

the evaluator that she did not need mental health treatment, and completed a withdrawal of request for services form on December 14, 2007. In January 2008, Cooper attended two sessions of a parenting class but did not complete the program.

Cooper successfully completed her drug and alcohol treatment at SeaMar on February 13, 2008. Shortly thereafter, Cooper began using cocaine and alcohol again. In March 2008, the Department referred Cooper to Evergreen Manor for another drug and alcohol evaluation. On May 14, 2008, Cooper signed an agreed order of dependency as to T.C. and the court ordered Cooper to complete drug and alcohol outpatient treatment, attend self-help meetings, submit to random UA testing, participate in a parenting assessment, and complete parenting classes with a focus on parenting in recovery. On June 11, 2008, the dependency court ordered Cooper to participate in mental health counseling and medication management. On August 4, 2008, Cooper completed a psychological evaluation with Dr. Ellen Walker Lind.

Cooper entered outpatient treatment at Evergreen Manor on July 11, 2008, failed to comply with treatment conditions, and was discharged on August 5, 2008 with a referral to inpatient treatment. Cooper entered inpatient treatment at Prosperity Counseling on September 5 and completed the program on October 3, 2008. Cooper began outpatient treatment at Evergreen Manor on November 5, tested positive for cocaine on November 10, and was discharged from treatment for noncompliance on January 8, 2009.

The Department again provided referrals to parenting classes, mental health counseling, and drug and alcohol treatment in December 2008. The Department petitioned for termination of Cooper's parental rights on December 31, 2008. In February 2009, Cooper completed a drug and alcohol assessment at Evergreen Manor. In April 2009, Cooper began the recommended intensive outpatient treatment. In May 2009, Cooper returned to Compass Health but again refused mental health services. In April or May 2009, the Department referred Cooper to DDD for assessment.

At the termination trial in June 2009, Cooper's drug and alcohol treatment counselor Sarah Bates of Evergreen Manor testified that Cooper was compliant with treatment and had had excellent attendance since May 22, 2009. Bates reported a fair prognosis for Cooper maintaining sobriety and believed she would be able to manage increased stress if she had appropriate support. Bates testified that she did not see a need for Cooper to be in a treatment group especially for patients with developmental disabilities and testified that she had referred Cooper to a special needs class in May 2008, but Cooper chose to stay in Bates's group rather than travel the additional distance to Everett.

Social Worker Aaron Robins testified that he acts as an advocate for parents involved in dependencies and that he offered to help Cooper access services but she did not request any assistance besides bus tickets.

Dr. Lind testified that although Cooper's scores on intelligence tests could

support a diagnosis of mild mental retardation, a diagnosis of borderline intellectual functioning was more appropriate based on Cooper's high functioning and independence. Dr. Lind also diagnosed Cooper with a dependent personality disorder and recommended individual therapy, in addition to substance abuse treatment, daily involvement in a recovery program, and supervised housing. Dr. Lind testified that in order to overcome the danger to her children caused by the combination of her substance abuse, personality disorder, and low intellectual functioning, Cooper would have to complete at least two years of individual therapy while maintaining complete sobriety and a very stable environment. Dr. Lind identified the prognosis for Cooper maintaining a sufficiently stable environment and developing and demonstrating appropriate parenting skills as very poor.

DDD Intake and Eligibility Supervisor Chris Osborn testified that he had not yet received enough information to determine whether Cooper qualified for DDD services. Osborn testified that qualifying individuals must have been tested at a certain IQ level before age 18 and must have a qualifying score on a test of adaptive functioning, which he described as a measure of "social adaptive self-help activities of daily living." [VRP 6/24/09 84] Osborn testified that DDD provides services to qualifying individuals including case management services, personal care assistance, therapies and behavior management support for families of developmentally disabled children, and funding for community care as

an alternative to institutionalization. Osborn testified that DDD does not offer any specialized drug and alcohol treatment or therapy for personality disorders and that DDD would soon discontinue a parenting program that it had offered in the past.

Cooper testified that she had five older children, of which three were raised by relatives and two had been adopted with Cooper's agreement. Although Cooper admitted to having a drinking problem that contributed to her separation from her older children, she claimed that she agreed to relinquish her rights to two of her older children because she "wasn't stable," meaning she "didn't have [her] own place at the time." [VRP 6/23/09 12] Cooper testified that her source of income was a monthly Social Security Income Disability payment she receives through a payee for a "slow learning disability." [VRP 6/23/09 25] Cooper testified that she has no problems with personal care, housecleaning, grocery shopping, cooking or transportation. Cooper also testified that she did not need an assisted-living situation or someone to help her to keep appointments or arrange transportation.

By the time of trial, Cooper had completed a parenting class at the YMCA and claimed that she found it beneficial and that she intended to go back for another class. Although Cooper testified that she was attending Alcohol Anonymous meetings twice a week, she admitted that she did not have a sponsor, she had never advanced beyond step 1 and she could not identify the

steps. Cooper also testified that she did not believe that she had any parental deficiencies and that she did not need drug or alcohol treatment, parenting classes, mental health counseling or medication, individual therapy, or a structured housing environment.

Defense witness Dr. Kenneth Asher, a clinical psychologist, testified based on a document review that Dr. Lind should have further explored the possibility that Cooper was developmentally disabled before diagnosing a personality disorder. Dr. Asher recommended further testing of Cooper's adaptive functioning to confirm or rule out a developmental disability, followed by "intensive developmentally functionally appropriate training and intervention" [VRP 7/1/09 41] for six to nine months, after which Cooper could be assessed for improvement in her overall adaptive functioning and her parenting skills. Dr. Asher also testified that Cooper would be required to maintain sobriety and be willing to participate in the services.

The dependency court entered extensive findings of fact including the following unchallenged findings:

1.63. Ms. Cooper has a long standing, deep seated substance abuse problem that remains a parental deficiency at the time of this trial.

...

1.65. During this dependency, DSHS offered extensive drug/alcohol assessment and treatment services. Assuming Ms. Cooper makes consistent progress, it will be many months before Ms. Cooper's drug/alcohol addiction would be suitably controlled to allow DSHS to explore placing her children back in her care.

...

1.67. There is little likelihood that Ms. Cooper's parental deficiency caused by her drug use will be ameliorated in the near future.

1.68. Ms. Cooper's historical pattern of poor judgment is evidence [sic] by her long history of instability in her various relationships. She has been unable, as a result of her poor decisions to parent any of her seven children.

...

1.71. The court finds credible, and adopts as a finding, Dr. Asher's testimony that Ms. Cooper's actions demonstrate that she is not able to adequately determine what may or may not be a risk to her children.

1.72. Dr. Lind credibly diagnosed Ms. Cooper with a dependent personality disorder.

1.73. Although Dr. Asher did not concur in that diagnosis, his testimony supports the conclusion that Ms. Cooper has a parental deficiency with respect to her ability to make safe judgments with respect to her children.

1.74. Both Dr. Lind and Dr. Asher believe, and this court adopts as a finding, that Ms. Cooper needs long term intensive individual therapy.

1.75. Whether as a result of a personality disorder or an adaptive pattern of behavior necessitated by low cognitive function, Ms. Cooper is highly likely to continue making poor judgments with respect to her children. The court finds Dr. Lind's estimation of two years of services to address this parental deficiency to be credible, during which Ms. Cooper would have to remain clean and sober.

1.76. It is highly unlikely that Ms. Cooper's parental deficiency in this area will be remedied in the near future.

...

1.79. Ms. Cooper is highly independent and possesses basic life skills. She is capable of managing her own care, transportation, and access to services.

...

1.83 Given the length of time that these children have been out of care, their ages, their developmental, emotional, and education needs, their negative reactions to visitation, the near future for these children is within, at most, the next six months.
[CP 47-50]

The court also found that Cooper would probably not qualify for DDD

services, that DDD does not have services available to correct Cooper's parental deficiencies, that an earlier referral to DDD would not have made a difference, that the Department had provided all necessary services, reasonably available, that are capable of correcting Cooper's parental deficiencies, and that there is little likelihood that Cooper's parental deficiencies could be remedied such that the children could be returned to her care. The court also determined that termination of Cooper's parental rights was in the best interests of T.C. and J.C. and signed orders terminating the parent-child relationship between Cooper and the boys.

Cooper appeals.

ANALYSIS

To obtain an order terminating the parent-child relationship, the State must prove six statutory elements to establish unfitness of the parent by clear, cogent and convincing evidence. RCW 13.34.190; In re Welfare of A.B., 168 Wn.2d 908, 925, 232 P.3d 1104 (2010). RCW 13.34.180(1) provides the following six elements:

- (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 ...; and

(f) That continuation of the parent and child relationship clearly diminishes the child's prospects for early integration into a stable and permanent home.

If these elements are established, RCW 13.34.190 then requires that the State prove by a preponderance of the evidence that termination of the parent-child relationship is in the child's best interest. In re A.B., 168 Wn.2d at 925 (trial court must resolve question of parental unfitness before addressing child's best interests).

Because the advantage of having observed the witnesses is particularly important in deprivation proceedings, deference is paid to the trial judge's credibility determinations and resolution of factual disputes. In re Welfare of Aschauer, 93 Wn.2d 689, 695, 611 P.2d 1245 (1980). If there is substantial evidence that the lower court could reasonably have found to be clear, cogent, and convincing, an appellate court will not disturb the trial court's findings. In re Dependency of H.J.P., 114 Wn.2d 522, 532, 789 P.2d 96 (1990); Aschauer, 93 Wn.2d at 695.

The statute requires that the Department offer or provide services

“capable of correcting the parental deficiencies within the foreseeable future. . . .” RCW 13.34.180(1)(d). To meet its statutory burden, the State must tailor the services it offers to meet each individual parent's needs. In re Dependency of T.R., 108 Wn. App. 149, 161, 29 P.3d 1275 (2001). This includes tailoring services to a parent's disability. See In re Welfare of A.J.R., 78 Wn. App. 222, 229-30, 896 P.2d 1298 (1995) (upholding termination of parental rights where the State provided services which were modified to accommodate the parents' specific disabilities); In re Dependency of H.W., 92 Wn. App. 420, 426, 961 P.2d 963 (1998) (reversing termination of parental rights where there was “absolutely no attempt to investigate what services might be available through DDD.”).

It is well settled that additional services that might have been helpful need not be offered when a parent is unwilling or unable to make use of the services provided. In re Dependency of S.M.H., 128 Wn. App. 45, 54, 115 P.3d 990 (2005); In re Interest of J.W., 111 Wn. App. 180, 43 P.3d 1273 (2002); In re T.R., 108 Wn. App. at 163; In re Dependency of P.A.D., 58 Wn. App. 18, 792 P.2d 159 (1990); In re Dependency of Ramquist, 52 Wn. App. 854, 861, 765 P.2d 30 (1988). For example, more intensive or more extensive counseling is not required where the parent has not consistently participated in counseling and it would take years to make a marked improvement. In re J.W., 111 Wn. App. at 187 (further services not required where parent had not seen her counselor for four months, missing counseling was not important to her,

likelihood of success was low and “years” of counseling would be required to make marked improvement.)

Cooper contends that the Department failed to fulfill its duty under RCW 13.34.180(1)(d) to provide all necessary services to remedy her parental deficiencies. In particular, she claims the Department failed to make a timely referral to DDD and challenges the following findings:

1.54. DDD does not have services available to correct Ms. Cooper’s parental deficiencies that were not already available through DSHS community service providers.

...

1.80. DSHS has offered or provided Ms. Cooper with all necessary services, reasonably available, that are capable of correcting her parental deficiencies.

1.81. The services uniquely available through DDD would not have corrected Ms. Cooper’s parental deficiencies. DSHS offered or provided Ms. Cooper those services reasonably available and necessary to correct her parental deficiencies. Services from DDD, even had DSHS offered them earlier and even if Ms. Cooper had qualified would not have made a difference.

[CP 46, 49-50]

But Cooper does not challenge the trial court findings indicating that her parental deficiencies were her substance abuse problem and dependent personality disorder or her lack of ability to make safe judgments with respect to her children. Cooper does not challenge the trial court’s findings that she is “capable of adequately participating in the regular drug/alcohol treatment programs” and refused to attend a group for people with developmental delays.

[CP 45 (Finding of Fact 1.45)] Cooper does not challenge the trial court’s

findings that her dependent personality disorder or lack of ability to make safe judgments creates an additional parental deficiency or that it will take a minimum of two years of intensive individual therapy to address this deficiency. And Cooper does not challenge the trial court findings that she repeatedly refused mental health services and did not request assistance from her social worker to access those services, despite her social worker's offers of assistance.

Most significantly, although DDD supervisor Chris Osborne testified that it was premature to say whether DDD had any services that would be helpful to Cooper before her qualification for services was established and that at a minimum she would have a case worker to act as an advocate, he also testified that DDD does not offer any specialized drug or alcohol treatment or any specialized form of therapy for personality disorders. This evidence provides substantial support for the challenged findings.

And Cooper's reliance on In re H.W. is misplaced. In In re H.W., the Department was aware of the mother's special needs and resistant learning style throughout the dependency but failed to refer her to DDD for potentially available services, despite her participation in intensive services tailored to her disabilities and her willingness to learn. In re H.W., 92 Wn. App. at 426. Here, several witnesses, including social worker Aaron Robins, were surprised to learn that Cooper had low IQ scores because Cooper "functions very, very well" in her daily activities. [VRP 6/25/09 66] And the Department presented evidence that

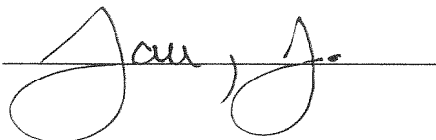
Cooper refused certain services and that DDD did not offer specialized services to address Cooper's particular parenting deficiencies, particularly her chemical dependency and dependent personality disorder. Under the circumstances, the trial court properly found that the Department offered or provided all necessary services, reasonably available, capable of correcting Cooper's parental deficiencies within the foreseeable future whether or not she would have been determined to be eligible for DDD services.

Cooper also contends that the trial court determination that termination of her parental rights was in the children's best interests was premature because the State failed to establish the elements of RCW 13.34.180(1). Because Cooper's challenge to the trial court's findings regarding those elements fails, this claim fails as well. Cooper does not challenge the trial court's finding that T.C. and J.C. need permanence and stability that Cooper cannot provide within the next six months. The trial court did not err in concluding that termination of the parent-child relationship is in the children's best interests.

Affirmed.

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WE CONCUR:

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No. 64278-2-I/16
Consolidated w/ No. 65279-1-I