IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In re the Dependency of V.B., a minor, STATE OF WASHINGTON, DEPARTMENT OF SOCIAL AND HEALTH SERVICES, Respondent, v. CLIFFORD BARNES, Appellant.	)	NO. 66166-3-I DIVISION ONE UNPUBLISHED OPINION FILED: September 12, 2011

Lau, J. —VB's biological father, Clifford Barnes, challenges the trial court's order terminating his parent-child relationship. He argues (1) the Department of Social and Health Services failed to provide all necessary services to remedy his parental deficiencies, (2) conditions could be remedied so as to unite him with the child in the near future, and (3) continuation of the parent-child relationship does not clearly diminish the child's prospects for early integration into a stable and permanent home.

Because substantial evidence supports the trial court's findings, we affirm.

FACTS

VB was born on September 30, 2003. At the time, her mother Crystal Hahn was married to Ray Hahn. But no father's name appeared on VB's birth certificate. Clifford Barnes, later determined to be VB's biological father, had some interaction with VB for the first weeks of her life, but he established no further relationship. He also paid no child support, nor did he write VB letters.

In February 2008, VB was admitted into Seattle Children's Hospital for an abscess in her buttock. Because the mother's description of the abscess "did not fit the clinical picture" and due to "the history of the mother's boyfriend," Child Protective Services was contacted. Ex. 50. A dispositional order on February 8, 2008, found VB dependent as to Crystal Hahn, and Hahn later relinquished her parental rights. VB was removed from her mother's care on March 10, 2008, and placed with her maternal grandmother, Cheryl Richardson. Shortly after, VB was removed from Richardson's home because Richardson was living with a sex offender. In April 2008, VB was placed in foster care with her two siblings. In August 2009, VB was placed in a different home, with one of her siblings.

The Department was unable to locate Barnes. The court entered a default order in May 2008 establishing VB dependent as to Barnes and/or Ray Hahn. Department social worker Krista Erickson finally located Barnes in March 2010 in Department of Corrections (DOC) custody at Coyote Ridge Corrections Center. He was serving a sentence for failure to register as a sexual offender.

On Erickson's recommendation, the dependency court ordered Barnes to complete (1) a sexual deviancy evaluation and recommended treatment, (2) anger management treatment, (3) parenting classes, and (4) a psychological evaluation and recommended treatment. The court also ordered Barnes to resolve any criminal charges and outstanding warrants after his release from prison.

Erickson wrote to Barnes, listed the necessary services, and told him she would refer him to these services after he was released from prison. Barnes responded to the letter and asked about his daughter. In all, the Department sent six letters to Barnes offering him services, coordinating services through his prison counselors, speaking to Barnes on the phone, and arranging for paternity testing. Barnes completed parenting and anger management classes at Coyote Ridge. He had already completed moral reconation therapy.[1] Barnes's classifications counselor referred him to community college classes on child psychology and vocational math and writing skills. Barnes testified that he underwent a psychological evaluation at Coyote Ridge, but he failed to provide the Department with a copy. Coyote Ridge, however, offered no sexual deviancy treatment. Barnes's classification counselor explained that even if Barnes were transferred to a different institution, he would be low on the priority list for sex offender treatment because he had previously received it as a juvenile. Barnes completed a paternity test demonstrating he is VB's biological father. Barnes has an

[1] DOC classifications counselor Joni Gonzalez described moral reconation therapy as follows: "Moral reconation therapy is actually -- it's a thinking program. It allows offenders to process and kind of admit to themselves what they've done to be -- it requires a huge deal of honesty by the offenders in class." RP (July 26, 2010) at 67.

outstanding warrant for an unresolved third degree theft charge.

The trial court held a three-day termination fact-finding hearing from July 26-28, 2010. Despite a juvenile guilty plea admitting to child molestation as a fifteen-year-old and admitting in his own writing that he "touch[ed] an eight year old girl in her vaginal area on three occasion[s]," Barnes testified that he had not actually fondled the vaginas of two eight-year old girls, but rather was merely "playing house" and "acted like we had sex and I didn't go under no clothing." RP (July 26, 2010) at 19. He admitted he had an active warrant for a pending theft charge in Cowlitz County.

The last time Barnes saw VB, she was "maybe two weeks old." RP (July 26, 2010) at 24. He paid no child support for her. Barnes testified that he had completed anger management, parenting classes, moral reconation therapy, and a psychological evaluation. He also acknowledged that he had not yet completed a sexual deviancy course or resolved his pending warrant, and the earliest he could parent VB due to his incarceration was August 16, 2011. Barnes wanted Cheryl Richardson to care for VB until his release, and then he proposed to take over her care. Barnes testified that he did have a concern that Richardson was living with a sex offender, "but as long as Cheryl trusts him, then I don't have a worry and a doubt in my mind that she'd be in good hands." RP (July 24, 2010) at 31. After his release, Barnes planned to work and attend school. For child care, Barnes said he would "probably have my brother's girl friend come up and watch [VB]," although he did not know his brother's girl friend's name. RP (July 24, 2010) at 33. During his incarceration, Barnes sent no letters to VB.

DOC classification counselor Joni Gonzalez testified for the Department. She testified that Barnes's earliest release date was August 16, 2011, and latest release date was December 11, 2012. She testified that Barnes had never requested a transfer to a facility with a sexual deviancy program.

Seattle Mental Health case manager Glenn King also testified for the Department about family therapy sessions he conducted with VB at her home in 2010. He testified that he treated VB for high anxiety. He also testified that VB had inappropriate personal boundaries, attachment issues, and posttraumatic stress disorder.

Department case worker Krista Erickson also testified. Erickson testified that Barnes's sexual offenses and failure to register necessitated sexual deviancy treatment and that Barnes's history presented an "extreme risk" to VB. RP (July 27, 2010) at 22-23. She also testified that it would be detrimental to VB to place her with a parent who has an active warrant. Erickson also sent letters to Barnes describing services, including a letter with a copy of VB's individual service and safety plan.

Erickson described Barnes's parental deficiencies:

> That would be his criminal history past, including multiple violent charges against other people, the assault charges, the convictions – excuse me – the convictions against children is an extreme concern, his convictions of child molestation, other crimes against minors, his anger management issues. It appears that he has – that he is – it wasn't even his testimony. It appears that he may have a drug or alcohol abuse issue from the past and possible domestic violence issues from the past as well. His lack of parenting skills or abilities. He's never parented a child. And I have concerns that he has mental health issues as well which can significantly impact a child who's already suffering from her own mental health issues.

RP (July 27, 2010) at 38-39.

Erickson testified that the classes Barnes completed were insufficient. Like King, Erickson discussed VB's special needs, including depressive order, posttraumatic stress disorder, and inappropriate boundaries, including sexual behavior. Based on her training and experience, Erickson opined that VB needed permanency and that Barnes's parental deficiencies are long term and extremely significant and concerning. She also testified that the near future for VB was two months, that VB is adoptable, that continuing the parent-child relationship between VB and Barnes would lower VB's prospects for integration into a permanent home, and that termination was in VB's best interest.[2]

The court entered several unchallenged findings of fact, including:

> 1.18 There are no services that can remedy Mr. Barnes's unavailability to parent [VB] until, at a minimum, August 2011.
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> . . . .
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> 1.23 The father has substantial, ongoing, and persistent involvement in criminal behavior. The father's criminal behavior involves crimes of a sexual nature against minor children and crimes of a violent nature.
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> 1.24 The father has been convicted of felony Failure to Register as a Sex Offender three times (convictions in 2009, 2008, and 2004), Child Molestation in the 1st Degree (3 counts), Assault in the Fourth Degree with Sexual Motivation, Disorderly Conduct, Assault in the Fourth Degree, Furnishing Alcohol to a Fifteen-Year-Old Minor, and Burglary in the 2nd Degree.
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> . . . .
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> 1.26 The father has shown no understanding of the gravity for his sexual crimes against children. His victims included children as young as eight years old.
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> 1.27 The father has minimized his crimes against children. When asked to describe his crimes against children, he refused to admit he had fondled the vagina of an eight-year-old girl, a crime he pled guilty to, and indicated that he had "only" engaged in "dry humping" with his victim.
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> 1.28 The father has refused to admit that he committed assault with

[2] Crystal Hahn, social worker Paula Solomon, and former parole supervisor Cynthia Blue also testified for the Department. Cheryl Richardson testified for Barnes.

sexual motivation. The father indicated this crime did not occur; that it was no big deal, and that it was something he never needed treatment for.

. . . .

1.30 The father has never provided any financial support for [VB].

1.31 The father has never attempted to make contact with [VB] by phone. The father has never sent correspondence to [VB], even since the father has appeared in this dependency case. The father has never purchased gifts, clothing, diapers, or any other items for [VB].

1.32 [VB] has no relationship with her father. The father is a stranger to [VB].

. . . .

1.34 The father's housing and employment was unstable and transient from the time between [VB]'s birth and the time of the father's most recent incarceration in 2008 and is indicative of how his housing and employment will be upon his release from incarceration.

1.36 Moral reconation therapy requires a participant to be honest about past transgressions. However, the father has continued to be dishonest about his crime of child molestation by denying that he touched an eight-year-old's vagina. As testified to by Joni Gonzales, a participant's failure to be honest after completing moral reconation therapy undermines the effectiveness of treatment.

1.37 The father acknowledges that he needs a sexual deviancy evaluation and treatment and that the service is not available at his current place of incarceration.

. . . .

1.41 [VB] has special needs. She has post-traumatic stress disorder, attachment disorder, and displays sexualized behavior. She requires a consistent parenting approach and a caregiver who is able to understand her needs, enforce appropriate boundaries, assist her in her recovery, and understand [VB]'s history of trauma, abuse, and neglect.

. . . .

1.43 The father poses a unique risk to [VB] because of [VB]'s behaviors and the father's sexual crimes against children.

1.44 The father is unavailable to parent [VB] for at least another year.

. . . .

1.53 Termination of the parent-child relationship between the father, Clifford Leon Barnes, and the child, [VB], is in the best interest of this child.

Based on these and other unchallenged findings, as well as challenged findings discussed below, the court terminated Barnes's parent-child relationship with VB.

Barnes appeals the court's order terminating his parental rights.

DECISION

An order permanently terminating the parent-child relationship may be entered when the statutory elements set forth in RCW 13.34.180(1)(a) through (f) are established by clear, cogent, and convincing evidence and the court finds by a preponderance of the evidence that termination is in the best interests of the child.[3]

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[3] RCW 13.34.190. RCW 13.34.180(1) provides in part:

"A petition seeking termination of a parent and child relationship . . . shall allege . . . :

"(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. 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. In determining whether the conditions will be remedied the court may consider, but is not limited to, the following factors:

"(i) Use of intoxicating or controlled substances so as to render the parent incapable of providing proper care for the child for extended periods of time or for periods of time that present a risk of imminent harm to the child, and documented unwillingness of the parent to receive and complete treatment or documented multiple failed treatment attempts; or

"(ii) Psychological incapacity or mental deficiency of the parent that is so severe and chronic as to render the parent incapable of providing proper care for the child for extended periods of time or for periods of time that present a risk of imminent harm to the child, and documented unwillingness of the parent to receive and complete treatment or documentation that there is no treatment that can render the parent capable of providing proper care for the child in the near future; or

Clear, cogent, and convincing evidence exists when the ultimate fact in issue is shown to be highly probable. In re Dependency of K.R., 128 Wn.2d 129, 141, 904 P.2d 1132 (1995). The appellate court will affirm the termination order if the trial court's findings are supported by substantial evidence in light of the degree of proof required. In re Dependency of T.R., 108 Wn. App. 149, 161, 29 P.3d 1275 (2001). Unchallenged findings of fact are verities on appeal. In re Interest of Mahaney, 146 Wn.2d 878, 895, 51 P.3d 776 (2002). Because the fact finder has the advantage of observing the witnesses, deference to the trial court is particularly important in appellate review of termination decisions. K.R., 128 Wn.2d at 144.

The first three statutory factors of RCW 13.34.180 were undisputed at trial and are unchallenged on appeal: VB was found dependent as to both parents, the court entered dispositional orders, and the children were removed from the parents' care for at least six months prior to the termination trial.

Services

Barnes argues the letters sent by the Department, the telephone contact the Department made with him, and the e-mail exchange between Erickson and Samples do not establish that the Department offered all necessary services. But we find

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"(iii) Failure of the parent to have contact with the child for an extended period of time after the filing of the dependency petition if the parent was provided an opportunity to have a relationship with the child by the department or the court and received documented notice of the potential consequences of this failure, except that the actual inability of a parent to have visitation with the child including, but not limited to, mitigating circumstances such as a parent's incarceration or service in the military does not in and of itself constitute failure to have contact with the child; 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."

Barnes's arguments unpersuasive.

RCW 13.34.180(1)(d) "requires the State to prove only that it provided the services that were necessary, available, and capable of correcting parental deficiencies within the foreseeable future." T.R., 108 Wn. App. at 164. For young children, "the foreseeable future" may be a matter of months. See, e.g., In re Welfare of Hall, 99 Wn.2d 842, 850-51, 664 P.2d 1245 (1983) (eight months not in foreseeable future of four-year-old); In re Dependency of P.A.D., 58 Wn. App. 18, 27, 792 P.2d 159 (1990) (six months not in near future of fifteen-month-old). There is no obligation to offer services that are futile. In re Interest of J.W., 111 Wn. App. 180, 43 P.3d 1273 (2002); T.R., 108 Wn. App. at 163; P.A.D., 58 Wn. App. at 26-27; In re Dependency of Ramquist, 52 Wn. App. 854, 861, 765 P.2d 30 (1988).

Although imprisonment alone does not necessarily justify terminating parental rights, the trial court may consider the causes and frequency of imprisonment in a termination proceeding. In re Interest of Skinner, 97 Wn. App. 108, 120, 982 P.2d 670 (1999). Where the record establishes that the offer of services to an incarcerated parent would be futile, the court may find that all reasonable services have been offered. In re Welfare of Ferguson, 32 Wn. App. 865, 869-70, 650 P.2d 1118 (1982), rev'd on other grounds, 98 Wn.2d 589, 656 P.2d 503 (1983); In re Sego, 82 Wn.2d 736, 740, 513 P.2d 831 (1973); Skinner, 97 Wn. App. at 120; In re Dependency of J.W., 90 Wn. App. 417, 426, 953 P.2d 104 (1998).

Barnes argues the Department never tried to provide him with services or offered him information about where he could find such services, and he challenges the

relevant factual findings. Specifically, Barnes points to the absence of sexual deviancy treatment at Coyote Ridge and the Department's failure to attempt to secure a possible transfer for him so he could undertake this treatment.

The Department has no control over where Barnes is imprisoned or the services available at the institution where his is incarcerated. The Department and DOC are separate government agencies, and the Department has no authority over what services are available in prison. The Department met its statutory obligations by communicating with Barnes and investigating the availability of services during his incarceration. See In re Welfare of M.R.H., 145 Wn. App. 10, 25, 188 P.3d 510 (2008) (rejecting father's argument that the trial court erred in terminating his parental rights because DSHS failed to offer him services during his incarceration); Ramquist, 52 Wn. App. at 861 ("[A] parent's unwillingness or inability to make use of the services provided excuses the State from offering extra services that might have been helpful."). The Department bears no responsibility for arranging Barnes's transfer, particularly where Barnes himself requested no such transfer.

The Department also bears no obligation to provide services that are futile. Barnes does not dispute the court's finding that he could not parent VB for at least another year. Because Barnes faced an extended period of incarceration and was unavailable to parent for at least another year, any further services would have been futile. Because Coyote Ridge offered no sexual deviancy treatment, Barnes does not establish that the lack of referrals while he was in prison would have made any difference in his ability to actually complete the required services.[4]

For the same reason, Barnes's argument that the Department failed to assist him in resolving the warrant prior to his release from prison is unavailing.

Little Likelihood Conditions Will Be Remedied in Near Future

Barnes also argues that the Department failed to demonstrate that little likelihood exists conditions will be remedied so that VB could be returned to him in the near future. He argues the court should not have applied the presumption that arises due to a failure to "substantially improve parental deficiencies within twelve months following entry of the dispositional order"[5] because he only received four months' notice about the juvenile court's requirements before the termination trial.

We need not address whether the court improperly applied the presumption. The focus of this factor is "whether parental deficiencies have been corrected." K.R., 128 Wn.2d at 144. A determination of what constitutes "near future" depends on the child's age and the circumstances of the placement. In re Dependency of T.L.G., 126 Wn. App. 181, 204, 108 P.3d 156 (2005); see Hall, 99 Wn.2d at 850-51 (eight months is not within foreseeable future of four-year-old); P.A.D., 58 Wn. App. at 27 (six months

[4] We find Barnes's claim that he needed no sexual deviancy treatment without merit. The court correctly assessed his criminal record, which included sexual crimes against children. His convictions for failure to register also occurred more recently. Also, it is clear the court did not assume the allegations against Barnes in a 2002 protection order were true. The court handwrote the word "alleged" in its finding of fact describing this order: "In 2002, the father was subject to a domestic violence protection order due to alleged sexual violence against a girlfriend." FF 1.25.

[5] RCW 13.34.180(1)(e) provides in part: "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."

not in near future of fifteen-month-old); In re Dependency of A.W., 53 Wn. App. 22, 32, 765 P.2d 307 (1988) (one year not in near future of three-year-old). Incarceration itself is not equivalent to parental unfitness, but a parent's inability to perform his or her parental obligations because of continuing incarceration is relevant to the child's welfare and can justify a finding that reunification is not likely in the near future. In re Dependency of J.W., 90 Wn. App. 417, 426, 953 P.2d 104 (1998).

According to Erickson's testimony, the "near future" for VB was only two months. Due to his incarceration, Barnes could not have cared for VB for over a year. With or without the presumption, it is undisputed that conditions remain such that VB could not be returned to Barnes in the "near future."

Barnes also had an extensive criminal history. The court properly considered this history to determine whether Barnes could correct his parental deficiencies in the near future. The court reasonably concluded that even on release, Barnes would need additional time and treatment to correct his parental deficiencies. The court properly determined this could not have occurred in the near future.

Barnes also argues that the court should not have faulted him for failing to prove he obtained a psychological evaluation without a demonstration it was necessary. But Erickson testified that the Department psychological evaluation has "a parenting component" and "sometimes even includes a parent/child observation." RP (July 27, 2010) at 60. Based on his criminal history and the absence of a relationship with VB, we reject Barnes's argument that such a service was unnecessary.[6]

[6] Barnes argues this case is like T.L.G., 126 Wn. App. 181, but the case is

Likelihood of Early Integration Into Permanent Home

Barnes also argues that the Department failed to prove continuance of his relationship with his daughter clearly diminishes her prospects of early integration into a permanent home. Barnes focuses on finding of fact 1.47, which states that his relationship with VB "lowers" her prospects of early integration, rather than the statutory requirement that the relationship "clearly diminish" such prospects.

This element focuses on the impact of an ongoing legal relationship as an obstacle to adoption of the child. In re Dependency of A.C., 123 Wn. App. 244, 250, 98 P.3d 89 (2004). A finding that continuation of the parent-child relationship diminishes a child's prospects for early integration into a stable and permanent home necessarily follows from a showing that there is little likelihood that conditions will be remedied so the child can be returned to that parent in the near future. In re Dependency of J.C., 130 Wn.2d 418, 924 P.2d 21 (1996).

Although finding of fact 1.47 uses the term "lowers" rather than "clearly diminishes," substantial evidence supports the court's findings, and those findings support the conclusion that this element was met. As discussed above, the father's parental deficiencies could not be remedied in the near future. From this finding, the conclusion that continuation of the parent-child relationship clearly diminishes VB's prospects for early integration into a stable and permanent home necessarily follows.

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inapposite. In T.L.G., we stated, "Current psychological evaluations were undoubtedly important, but it is unclear why no mental health services could be provided pending the evaluations . . . ." T.L.G., 126 Wn. App. at 200. Here, the Department offered a psychological evaluation to Barnes, but the service was unavailable due to his incarceration.

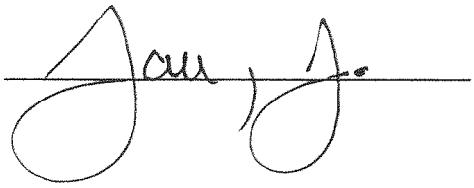
Erickson also testified that continuing the parent-child relationship between VB and Barnes lowered VB's prospects to integrate into a permanent home.

Barnes also challenges the court's finding of fact 1.52: "The child's father is unfit to parent this child." But the record supports the court's determination that Barnes is unfit to parent VB. Barnes has substantial, ongoing, and persistent involvement in criminal behavior, including sexual crimes against children. Unchallenged finding of fact (FF) 1.23. The father's testimony minimized his crimes, and his testimony contradicted his own words on a plea agreement for sexual molestation. The father's crimes also did not all occur in the distant past; rather, his three convictions for failure to register all occurred as an adult. The record also supports the court's conclusion that Barnes does not have the decision-making capability to parent VB. For example, he trusts Cheryl Richardson to care for VB while she is living with a level-three sex offender. And he has no real plan to care for VB while he works and attends school. The court found Barnes's testimony not credible. And significantly, Barnes has no relationship with VB.

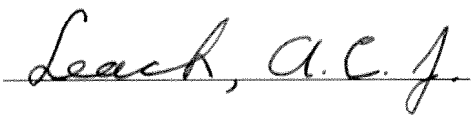
The record also amply supports the conclusion that a more permanent home is necessary for VB to receive adequate care. Erickson and King testified that VB has special needs, including care for posttraumatic stress disorder, attachment disorder, and sexualized behavior. Erickson testified that VB needs permanency and parents who can enforce appropriate boundaries. Substantial evidence supports the court's finding that Barnes is unfit to parent VB.

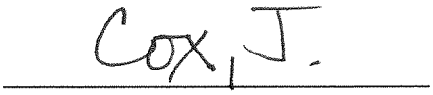
CONCLUSION

The record supports the court's determination that the elements required for a termination are satisfied.[7] The termination of the parental rights of Clifford Barnes is affirmed.



WE CONCUR:





[7] Barnes does not challenge the court's finding of fact that termination of the parent-child relationship is in the best interests of the child.