IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In re Dependency of: T.A.T, b.d. 06/21/97. In re Dependency of: B.C.T, b.d. 11/22/98. In re Dependency of: R.N.T., b.d. 02/03/01. In re Dependency of: G.L.T., b.d. 11/11/05. In re Dependency of: R.D.T., b.d. 08/05/03. STATE OF WASHINGTON, DEPARTMENT OF SOCIAL AND HEALTH SERVICES, Respondent, v. BRIAN K. TAKACS and SARAH TAKACS, <u>Appellants.</u>	)	NO. 66341-1-I DIVISION ONE Consolidated with NOS. 66342-9-I, 66343-7-I 66344-5-I 66345-3-I 66445-0-I 66446-8-I 66447-6-I 66448-4-I 66449-2-I UNPUBLISHED OPINION FILED: November 28, 2011

Lau, J. — Brian and Sarah Takacs[1] appeal the order terminating their parental rights to their five children, TAT, BCT, RNT, RDT, and GLT. They contend that insufficient evidence supports the statutory factors of RCW 13.34.180(1) and .190.

[1] For clarity, we use the parties' first names.

Both parents challenge the trial court's findings that (1) continuation of the parent-child relationship clearly diminished the children's prospects for early integration into a permanent and stable home and (2) termination was in the children's best interests. Sarah also challenges the trial court's findings that (1) the Department of Social and Health Services (DSHS) offered or provided all necessary services and (2) there was little likelihood conditions could be remedied in the near future. Brian also raises a constitutional challenge to RCW 13.36.090, claiming the statute's funding provisions for relative versus nonrelative guardianships violate the Washington Constitution's privileges and immunities clause and the federal and state constitutions' equal protection guarantees.[2] Because substantial evidence supports the trial court's findings and Brian's constitutional challenge fails on justiciability grounds, we affirm.

FACTS

Brian and Sarah are the biological parents of TAT (dob 06/21/1997), BCT (dob 11/22/1998), RNT (dob 02/03/2001), RDT (dob 08/05/2003), and GLT (dob 11/11/2005). The family lived in a rental home that Sarah acknowledged "had some problems." Report of Proceedings (RP) (June 14, 2010) at 104. In October 2008, DSHS social workers visited the home and found the living conditions "deplorable." Ex. 1 at 3. The social workers found that the family had no source of income and below average food, nutrition, and personal hygiene. The house had broken windows, no running water, holes in the walls, a leaking roof, and a large pile of garbage in the front

[2] Under RAP 10.1(g)(2), Sarah incorporates by reference the assignments of error and arguments in Brian's opening and reply briefs regarding this issue.

yard. The social workers also voiced concerns about the parents' physical and mental health, prescription drug addiction, and Brian verbally abusing the children.

DSHS filed dependency petitions for all five children on October 9, 2008. The children were removed from their parents' custody and placed in foster homes on October 10, 2008. Initially, TAT and RDT were placed in one foster home, BCT and RNT were placed in another foster home, and GLT was placed in a third.[3] The children were behind in school and suffering from medical neglect. TAT and BCT were two years behind in school and BCT had an untreated communication disorder. GLT had untreated MRSA (methicillin-resistant Staphylococcus aureus) and TAT had untreated impetigo. RNT and RDT had scabs on their bodies. RNT suffered from severe dental neglect.

In December 2008, Brian and Sarah moved to Stanwood, where they resided rent free in a friend's home throughout the dependency. Sarah signed an agreed dependency and disposition order on January 8, 2009. The order required Sarah to sign current releases of information, notify DSHS about any problems accessing court ordered services, undergo psychological and drug/alcohol evaluation, participate in random urinalysis testing (UA), and attend a dependency process workshop. Following a contested hearing, the court entered dependency and dispositional orders as to Brian on February 24, 2009. The court found that Brian was not a capable parent and had

[3] The four boys were placed together in one foster home on June 19, 2010. GLT remains in a separate, preadoptive foster home.

neglected his children's minimum food, safety, education, and health needs.[4] The order imposed requirements similar to those in Sarah's order and also required Brian to participate in anger management assessment and counseling.

An initial progress review on April 30, 2009, revealed that Brian and Sarah complied with some of the court ordered services but failed to comply with others. After a September 16, 2009 permanency planning hearing, the court similarly found that the parents failed to complete certain services. Another permanency planning hearing on December 2, 2009, revealed additional parental deficiencies.[5] DSHS filed termination of parental rights petitions for each of the children on December 29, 2009.

The termination hearing took place over several days from June to October 2010. After hearing testimony from Brian, Sarah, social workers, the parents' psychological evaluators, visit supervisors, the children's guardian ad litem, a permanency planning specialist, and the children's therapists, the trial court ordered termination of both parents' parental rights as to all five children on November 19, 2010. The trial court made specific findings, including:

2.23 The children were removed due to the Department's concern for the

[4] This court upheld these findings on appeal.

[5] Sarah failed to return a financial/budget sheet, provide a family/child medical history form, follow the recommendations from the psychological evaluation, follow drug/alcohol treatment recommendations, participate in random UAs, participate in parenting classes, or obtain a safe living environment. Brian failed to notify the social worker about problems accessing court ordered services, attend a dependency process workshop, engage consistently in individual counseling, participate in parenting classes, complete an anger management assessment, complete a drug/alcohol evaluation, provide a financial/budget sheet, or provide a family/child medical history form.

> children's health, safety, and wellbeing, along with the parents' inability to properly parent, provide adequate housing, and follow through with services.
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> . . . .
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> 2.25 To a large extent, the neglect was because of the father's life-style choices for his family, which the mother did not challenge. The father is the dominant figure in the parents' marriage, and he makes the decisions and choices regarding how this family lives; the mother did not challenge the father's choices or decisions. In particular, the father chose to live in such a manner which resulted in the children's basic rights to basic nurture, physical and mental health, safety, and a safe and stable home to not be met.
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> . . . .
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> 2.29 Since being removed from their parents, the children have improved in almost every aspect of their lives. The children's academic performance has improved. The children's medical and dental needs are now being met. The children appear to be making progress emotionally and ` psychologically.[6]

Additional facts are discussed in the relevant sections below.

Constitutional challenge

Standard of Review

In Washington, "it is well established that statutes are presumed constitutional and that a statute's challenger has a heavy burden to overcome that presumption; the challenger must prove that the statute is unconstitutional beyond a reasonable doubt." Sch. Dists.' Alliance for Adequate Funding of Special Educ. v. State, 170 Wn.2d 599, 605, 244 P.3d 1 (2010). A court will not strike a duly enacted statute unless it is "'fully convinced, after a searching legal analysis, that the statute violates the constitution.'"

[6] The parents do not contest these findings. Unchallenged findings are considered verities on appeal. In re Dependency of J.M.R., 160 Wn. App. 929, 939 n.5, 249 P.3d 193 (2011).

Sch. Dists.', 170 Wn.2d at 606 (quoting Island County v. State, 135 Wn.2d 141, 147, 955 P.2d 377 (1998)).

When addressing a facial constitutional challenge, the court considers "whether the statute's language violates the constitution, not whether the statute would be unconstitutional 'as applied' to the facts of a particular case." Tunstall ex rel. Tunstall v. Bergeson, 141 Wn.2d 201, 221, 5 P.3d 691 (2000). "'[A] facial challenge must be rejected unless there exists no set of circumstances in which the statute can constitutionally be applied.'" Tunstall, 141 Wn.2d at 221 (alteration in original) (quoting In re Det. of Turay, 139 Wn.2d 379, 417 n.27 986 P.2d 790 (1999)).

RCW 13.36.090's Guardianship Provisions

Brian makes a facial challenge to RCW 13.36.090. The statute provides:

> (1) A relative guardian who is a licensed foster parent at the time a guardianship is established under this chapter and who has been the child's foster parent for a minimum of six consecutive months preceding entry of the guardianship order is eligible for a relative guardianship subsidy on behalf of the child. The department may establish rules setting eligibility, application, and program standards consistent with applicable federal guidelines for expenditure of federal funds.
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> (2) Within amounts appropriated for this specific purpose, a guardian who is a licensed foster parent at the time a guardianship is established under this chapter and who has been the child's foster parent for a minimum of six consecutive months preceding entry of the guardianship order is eligible for a guardianship subsidy on behalf of the child.

RCW 13.36.090. The statute became effective June 10, 2010, four days before the termination trial began in this case. Substitute H.B. 2680, 61st Leg., Reg. Sess. (Wash. 2010). The legislature enacted the guardianship statute in response to Congress's Fostering Connections to Success and Increasing Adoptions Act of 2008,

Pub. L. No. 110-351, 122 Stat. 3949, which provided for a new federal subsidy for relatives who are appointed guardians of foster children. Final B. Rep. on Substitute H.B. 2680, 61st Leg., Reg. Sess. (Wash. 2010). Under the act, the State must opt into the federal subsidy program and ensure that the child and the relative guardian meet certain qualifications. See Pub. L. No. 110-351, § 101. Washington has so done, and the new State legislation is designed to take advantage of these federal funds for relative guardians. Final B. Rep. on Substitute H.B. 2680. At the time of trial, DSHS did not fund nonrelative foster parent guardianships.

Brian claims the statute, in allowing DSHS to fund nonrelative guardianships only if amounts are appropriated for that specific purpose, "grants a mandatory subsidy to relative guardians only, and not to nonrelative guardians." Appellant's Br. at 12. He argues this violates the state constitution's privileges and immunities clause and the state and federal constitutions' equal protection provisions. Under RAP 10.1(g)(2), Sarah incorporates by reference the assignments of error and arguments set forth in Brian's opening and reply briefs regarding this issue.[7] The State contends that Brian's claim fails on justiciability, standing, and substantive grounds.

Justiciability

The State contends that Brian does not raise a justiciable issue relating to RCW 13.36.090. A controversy is justiciable if there is:

"'(1) . . . an actual, present and existing dispute, or the mature seeds of one, as

[7] On November 3, 2011, the State moved to strike Sarah's RAP 10.1(g)(2) notice to adopt Brian's constitutional arguments. Given our disposition of this case, we need not address the State's motion.

> distinguished from a possible, dormant, hypothetical, speculative, or moot disagreement, (2) between parties having genuine and opposing interests, (3) which involves interests that must be direct and substantial, rather than potential, theoretical, abstract or academic, and (4) a judicial determination of which will be final and conclusive.'"

To-Ro Trade Shows v. Collins, 144 Wn.2d 403, 411, 27 P.3d 1149 (2001) (quoting Diversified Indus. Dev. Corp. v. Ripley, 82 Wn.2d 811, 815, 514 P.2d 137 (1973)). All four justiciability factors must be present "to ensure that the court does not 'step[ ] into the prohibited area of advisory opinions.'" Wash. Educ. Ass'n v. Wash. State Pub. Disclosure Comm'n, 150 Wn.2d 612, 623, 80 P.3d 608 (2003) (alteration in original) (quoting Diversified, 82 Wn.2d at 815).

Applying these principles here, we conclude that Brian does not present a justiciable controversy. When trial began, TAT and RDT were in one foster home, BCT and RNT were in another, and GLT was in a third. The foster parents of BCT, RNT, and GLT were never mentioned as potential guardians. The foster parents of TAT and RDT were mentioned as potential guardians, but Brian's attorney admitted that a guardianship petition naming TAT and RDT's foster parents as prospective guardians for all four boys[8] had not been filed. To assist the court in determining whether the foster parents even wanted to be guardians, TAT's attorney, Robert Downey, telephoned them and reported to the court:

> Mr. Downey: Well, if I could proffer, as opposed to being a witness, I did speak to [the foster mother] and she said even with funding my husband and I have gone back and forth on this a lot, and at this time we're just not prepared to be a guardian. We want to be the foster parents and we can take care of these kids in that role, but when that – if the Department finds a better home, we'll just

[8] BCT and RNT were moved into TAT and RDT's foster home on June 19, 2010.

> help with the transition. So guardianship for these people at this time is not an option.
>
> The Court: And that would be true even if they have the funding?
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> Mr. Downey: And I specifically told them if we have funding, even an equivalent, and they said no, our role is as foster parents.
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> . . . .
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> The Court: So apparently the petition based upon that proffer is moot. The court doesn't have to make a ruling.

RP (June 14, 2010) at 14.

Neither parent objected to the court's conclusion that the guardianship petition was moot at that point, and neither the parents nor their attorneys ever filed a guardianship petition. The only petition before the court was DSHS's termination of parental rights petition. Brian claims that both a permanency specialist and a social worker testified that TAT and RDT's foster mother (later the foster mother of all four boys) would consider a guardianship if it were funded. But permanency specialist Marti Bartlett did not testify about any communication with the foster mother. Social worker Stephen DiMarco testified that he talked to the foster mother and she would consider such an option but could not do it for free. The record does not reveal when DiMarco spoke with the foster mother about guardianships. But the record undisputedly shows that on the first trial day, the foster parents declined to serve as the boys' guardians even if funding were available. A trial court is not required to consider guardianships or other alternatives to termination if such remedies are not appropriately before the court, i.e., a petition has not been filed. In re Dependency of K.S.C., 137 Wn.2d 918, 930, 976 P.2d 113 (1999).

Here, Brian fails to demonstrate an actual present dispute or the mature seeds

of one.[9] Neither Brian nor Sarah presented a guardianship petition or potential guardians to the court. The parents' claimed interests are hypothetical and speculative. Because Brian raises no justiciable controversy, we decline to reach the merits of his constitutional challenge to RCW 13.36.090.[10]

Termination of parent-child relationship

Standard of Review

Parental rights are a fundamental liberty interest protected by the United States Constitution. Santosky v. Kramer, 455 U.S. 745, 753, 102 S. Ct. 1388, 71 L. Ed. 2d 599 (1982). In order to terminate a parent's rights, the State must show by clear, cogent, and convincing evidence

> (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

[9] We do not address whether Brian's claim meets the remaining justiciability requirements.

[10] See State v. Rodgers, 146 Wn.2d 55, 60, 43 P.3d 1 (2002) (discussing the "well-established rule of judicial restraint that the issue of the constitutionality of a statute will not be passed upon if the case can be decided without reaching that issue"). Aside from justiciability, "[t]he standing doctrine requires that a plaintiff must have a personal stake in the outcome of the case in order to bring suit." Sabey v. Howard Johnson & Co., 101 Wn. App. 575, 584, 5 P.3d 730 (2000). To challenge the constitutionality of a law, the challenger must show that "the particular action complained of has operated to the person's or party's own prejudice." High Tide Seafoods v. State, 106 Wn.2d 695, 701, 725 P.2d 411 (1986). Here, because Brian failed to file a guardianship petition or present potential guardians to the court, he cannot show that he has personally suffered injury or prejudice due to RCW 13.36.090's subsidy provisions. Brian also fails to cite to any authority permitting him to assert his constitutional claims on behalf of dependent children or their parents in general. Thus, Brian lacks standing to bring his constitutional claims.

> months pursuant to a finding of dependency;
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> (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;
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> (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:
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> (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
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> (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
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> . . . .
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> (f) That continuation of the parent and child relationship clearly diminishes the child's prospects for early integration into a stable and permanent home.

RCW 13.34.180(1)(a-f); RCW 13.34.190(1)(a). 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); In re Welfare of H.S.,

94 Wn. App. 511, 519, 973 P.2d 474 (1999).

> 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. Deference paid to the trial judge's advantage in having the witnesses before him is particularly important in deprivation proceedings. . . .

In re Welfare of Aschauer, 93 Wn.2d 689, 695, 611 P.2d 1245 (1980); K.S.C., 137 Wn.2d at 925.[11] The Court of Appeals will not weigh the evidence or the credibility of the witnesses. In re Welfare of Sego, 82 Wn.2d 736, 739–40, 513 P.2d 831 (1973). If the court finds that the State has met its burden under RCW 13.34.180, it may order termination if it also finds by a preponderance of the evidence that termination is in the best interests of the child. RCW 13.34.190(2); In re Welfare of A.J.R., 78 Wn. App. 222, 228, 896 P.2d 1298 (1995).[12]

Although parental rights enjoy constitutional protection, a parent does not have an absolute right to the custody and care of a child; the paramount consideration in a termination proceeding is the child's welfare. In re Welfare of Young, 24 Wn. App. 392, 395, 600 P.2d 1312 (1979). Where the rights of a child conflict with the legal rights of a parent, the rights of the child should prevail. RCW 13.34.020. A child's right to basic

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[11] Substantial evidence is "'evidence of sufficient quantity to persuade a fair-minded, rational person of the truth of the declared premise.'" World Wide Video, Inc. v. City of Tukwila, 117 Wn.2d 382, 387, 816 P.2d 18 (1991) (quoting Bering v. Share, 106 Wn.2d 212, 220, 712 P.2d 918 (1986)).

[12] In this case, Brian challenges on substantial evidence grounds the trial court's findings of fact 2.57, 2.58, 2.59, 2.61, 2.63, 2.65, 2.70, and 2.71, as well as conclusions of law 3.3 and 3.4 "to the extent [they] could be considered a Finding of Fact." Appellant's Br. (Brian) at 3. Sarah challenges the court's findings of fact 2.27, 2.28, 2.30, 2.35, 2.36, 2.38, 2.54, 2.56, 2.61, 2.64, 2.65, 2.70, and 2.71, as well as conclusions of law 3.3 and 3.5. Appellant's Br. (Sarah) at 1.

nurturing includes the right to a safe, stable, and permanent home and a speedy resolution of dependency proceedings. RCW 13.34.020; H.S., 94 Wn. App. at 530; In re Dependency of C.R.B., 62 Wn. App. 608, 615, 814 P.2d 1197 (1991).

Adequacy of Services Offered or Provided[13]

Sarah argues that because DSHS did not offer to pay for her individual mental health counseling, it failed to prove by clear, cogent, and convincing evidence that it provided all necessary, reasonably available services. DSHS contends nothing required it to pay for Sarah's mental health counseling because she failed to exhaust funding options or request funding from DSHS.

When Sarah signed an agreed dependency and disposition order in January 2009, she agreed to complete a psychological evaluation with a parenting component and follow all recommendations. Dr. Carmela Washington-Harvey, a certified forensic mental health evaluator, performed Sarah's evaluation and recommended "Individual Therapy from a licensed mental health therapist that uses Cognitive Behavioral Therapy as one of [sic] form of treatment." Ex. 41 at 8. The trial court incorporated this recommendation into its September 16, 2009 permanency planning hearing order. This order, as well as previous and subsequent orders, required Sarah to notify DSHS about problems accessing services and to provide DSHS with budget sheets.

At the September 16, 2009 permanency planning hearing, the court found that

[13] This issue encompasses Sarah's challenge to findings of fact 2.30 and 2.35.

Sarah notified DSHS about access problems, turned in a budget sheet, and participated in individual counseling. But during its December 2, 2009 contested permanency planning hearing, the court found that Sarah's compliance had declined:

> [The mother] has not returned financial/budget sheet; has not provided family/child medical history; has not followed recommendations of psychological evaluation; has not followed drug/alcohol treatment recommendations; has not participated in random UAs; has not obtained a safe, appropriate living environment; has not participated in parenting classes.

Ex. 21 at 3. Sarah began counseling, first with Chris Haguewood and then with Aaron Fong. Despite Fong's recommendation that Sarah continue with counseling, she stopped attending.

Social workers testified that Sarah failed to provide them with financial information or request funding for counseling. Social worker George Nelson, who worked on the parents' case from July 2009 through January 2010, wrote letters to Sarah that incorporated Washington-Harvey's recommendations, addressed the budget worksheet requirement, and referred Sarah to several agencies and individual therapists. Nelson specifically instructed Sarah to fill out a budget sheet "in case there are any changes in your income or resources that you would like the Department to consider regarding funding support" and notified her that failure to do so would likely delay funding approval. Ex. 31 at 1; Ex. 32 at 1.

Nelson testified, "[I]t was [Sarah's] responsibility to give me direction on [which agency or counselor] she wanted to use, and then I would make the referral for funding if need be." RP (Aug. 3, 2010) at 122-23. Sarah mentioned a therapist's name, who

she was seeing, but never signed a release of information to allow Nelson to contact the therapist. Nelson also testified that Sarah and Brian never updated their budget form to allow DSHS to make a new needs determination. Social worker Stephen DiMarco, who took over the case in January 2009, testified that Sarah never provided him with documentation of her medical conditions or state benefits.

Sarah testified that the social workers denied her request for DSHS funding, and she did not follow up with counseling because she "kind of got discouraged." RP (Aug. 5, 2010) at 156-58. Nelson testified that Sarah never contacted him for funding or other help to obtain services. If asked, he would have funded such services.

Sarah challenges the adequacy of services. The termination statute requires that DSHS offer or provide all necessary, reasonably available services "capable of correcting the parental deficiencies within the foreseeable future . . . ." RCW 13.34.180(1)(d). To meet its statutory burden, DSHS must show that it offered the required services and the parent failed to engage in them or that the parent waived his or her right to such services. In re Welfare of S.V.B., 75 Wn. App. 762, 770, 880 P.2d 80 (1994). DSHS 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). 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, 187, 43 P.3d 1273 (2002); T.R., 108 Wn. App. at 163; In re Dependency of P.A.D.,

58 Wn. App. 18, 30-31, 792 P.2d 159 (1990); In re Dependency of Ramquist, 52 Wn. App. 854, 861, 765 P.2d 30 (1988).

The trial court found:

> 2.30 There is clear, cogent, and convincing evidence that all 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 parents' parental deficiencies within the foreseeable future, have been expressly and understandably offered or provided to the parents.
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> . . . .
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> 2.32 Services offered to the mother have included the dependency process workshop, drug/alcohol evaluation and treatment, random UA monitoring, parenting classes, psychological evaluation and treatment, Domestic Violence Victims Support Groups, intensive outpatient services, self-help groups, counseling, and casework management.
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> . . . .
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> 2.35 The mother participated in some services early on in the case, including a drug and alcohol evaluation and a psychological evaluation. . . . [T]he mother chose not to participate in her psychological evaluation treatment recommendations. . . . The Department made repeated offers of services to the mother, and she chose not to engage in the available services. The court did not find the mother's excuses for not engaging in her services credible.

Substantial evidence supports these findings. DSHS made repeated efforts to provide Sarah with counseling services. As discussed above, DSHS made referrals to agencies and therapists and repeatedly reminded Sarah to update her financial information for funding purposes. The disputed issue of whether Sarah requested funding for counseling comes down to a credibility determination by the trial court. As the reviewing court, we cannot weigh the evidence or the credibility of the witnesses. Sego, 82 Wn.2d at 736. Ample evidence supports the trial court's conclusion that DSHS offered or provided all necessary, reasonably available services.

Likelihood of Remedying Conditions in the Near Future[14]

Sarah alleges that DSHS failed to prove that her deficiencies could not be remedied in the near future as required by RCW 13.34.180(1)(e). This statutory factor concerns "whether parental deficiencies have been corrected." In re Dependency of K.R., 128 Wn.2d 129, 144, 904 P.2d 1132 (1995). If the State offers or provides all services capable of correcting parental deficiencies and the parents do not substantially improve within 12 months of the dependency order, a rebuttable presumption arises that this factor is established. RCW 13.34.180(1)(e).

Sarah's argument fails for two reasons. First, Sarah's contention is based on her argument that DSHS "deni[ed] crucial services" when it did not pay for her individual therapy. Appellant's Br. (Sarah) at 24. Sarah claims, "Where the Department denies crucial services, it follows the Department cannot prove there is little likelihood the situation would change given proper provision of those services." Appellant's Br. (Sarah) at 24. As discussed above, Sarah's failure to provide necessary services claim lacks merit, so her RCW 13.34.180(1)(e) argument based on that claim also lacks merit.

Next, substantial evidence in the record supports the trial court's finding that there is little likelihood that conditions will be remedied such that the children can be returned to Sarah in the near future. Eighteen months elapsed between entry of Sarah's disposition order in January 2009 and the termination trial. Social worker

[14] This issue corresponds to Sarah's challenge to findings of fact 2.36, 2.38, and 2.54.

Nelson testified that during the time he worked on the case, Sarah failed to complete several court ordered services. Nelson estimated that it would take three to five years for Brian and Sarah to correct their parental deficiencies. Social worker DiMarco estimated it would take Sarah 12-18 months to correct her deficiencies. Dr. Washington-Harvey estimated it would take someone like Sarah about six months to correct parental deficiencies but qualified that statement by noting the treatment must be constant and the parent must admit to the deficiencies. Sarah failed to engage in several court ordered services throughout the dependency period, despite DSHS's repeated attempts to help her comply. Sarah's substantial failure to comply provided the trial court with sufficient evidence to find that Sarah was not committed to change and that her deficiencies could not be remedied in the near future.

Prospects for Early Integration Into a Stable and Permanent Home[15]

Both parents challenge the trial court's finding that continuation of the parent-child relationship clearly diminishes the children's prospects for early integration into a stable and permanent home under RCW 13.34.180(1)(f). Brian presents no argument in support of his assignment of error, and accordingly, he waives it. Cowiche Canyon Conservancy v. Bosley, 118 Wn.2d 801, 809, 828 P.2d 549 (1992). Sarah's contention is based in part on her argument that DSHS "deni[ed] crucial services" when it did not pay for her individual therapy. Appellant's Br. (Sarah) at 24. But as discussed above, Sarah's argument that DSHS denied necessary services lacks merit. To the extent her

[15] This issue corresponds to Brian's challenge to findings of fact 2.57, 2.58, and 2.59 and both parents' challenge to finding of fact 2.61.

RCW 13.34.180(1)(f) argument rests on that claim, it also lacks merit.

Sarah then argues, "No witness disputed the parents had found appropriate housing, and the State's own expert estimated [she] could be a capable parent within six months of engagement in services." Appellant's Br. (Sarah) at 25. But the trial court's finding that RCW 13.34.180(1)(f) is satisfied logically follows from a finding that there is little likelihood conditions will be remedied in the near future. In re Dependency of J.C., 130 Wn.2d 418, 427, 924 P.2d 21 (1996). Moreover, the evidence amply demonstrates that termination was necessary to allow the children to integrate into stable, permanent homes. Social worker George Nelson testified that continuation of the parent-child relationship diminished the children's prospects for early integration into a permanent home. He noted that if the children were legally free, the pool of potential adoption placements would increase, providing more possibilities for the children. Permanency planning specialist Marti Bartlett also testified that continuation of the parent-child relationship would hamper DSHS in finding permanent homes for the children.

Substantial evidence supports the trial court's finding that continuation of the parent-child relationship clearly diminished the children's prospects for early integration into permanent homes. The trial court did not err in making this finding.

Children's Best Interests[16]

[16] This issue corresponds to Sarah's challenge to findings of fact 2.27, 2.28, 2.54, 2.56, and 2.64 and conclusion of law 3.5, Brian's challenge to finding of fact 2.63 and conclusion of law 3.4, and both parent's challenge to findings of fact 2.65, 2.70, and 2.71 and conclusion of law 3.3.

Brian and Sarah dispute the trial court's finding that termination is in the children's best interests.

The trial court is afforded broad discretion in making a "best interests" determination, and its decision will receive great deference on review. Young, 24 Wn. App. at 395. The best interests of a child must be decided on the facts and circumstances of each case. In re Dependency of A.V.D., 62 Wn. App. 562, 572, 815 P.2d 277 (1991). When a parent has failed to rehabilitate over a lengthy dependency period, a court is fully justified in finding termination in the child's best interests rather than leaving the child "in the limbo of foster care for an indefinite period" while the parent seeks further rehabilitation. T.R., 108 Wn. App. at 167.

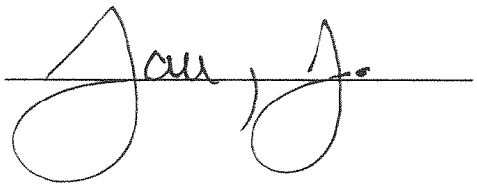
Although the children had a strong and loving bond with Brian and Sarah, the record supports the trial court's determination that Brian and Sarah were not capable of parenting them. By the time trial began, the parents had made no significant progress on completing court ordered services. Numerous witnesses—including social workers Helen Lippert, Stephen DiMarco, and George Nelson, permanency planner Marti Bartlett, attorney guardian ad litem Jeremy Yates, and Dr. Washington-Harvey—testified that Brian and Sarah were unfit parents and termination was in the children's best interests. Nelson also stated that the children's best interests required termination of parental rights as to all of the children.

The children's mental health counselors offered neutral opinions on whether termination was in the children's best interests, mainly because they did not know the

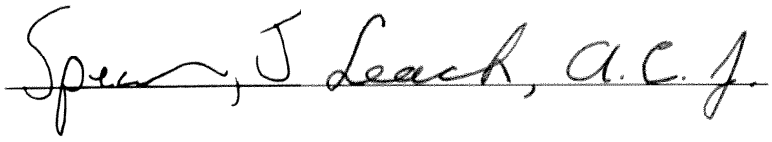
parents. But the counselors stated that it was in the children's best interests to have stable and permanent homes. Given the ample parental deficiency evidence here, the decision that termination was in all of the children's best interests falls well within the trial court's broad discretion.[17]

CONCLUSION

Because Brian's constitutional challenge fails on justiciability grounds and substantial evidence supports the trial court's termination findings, we affirm.



WE CONCUR:



[17] In her appellate brief, Sarah did not specifically argue in support of her challenges to findings of fact 2.27, 2.28, and 2.54 (regarding her mental health, dependency on Brian, inability to put the children's needs above Brian's, and the risk of neglect if the children are placed back in either parent's care or custody). See RAP 10.3(6) (requiring appellate briefs to contain "[t]he argument in support of the issues presented for review, together with citations to legal authority and references to relevant parts of the record."). Given the other evidence of neglect and counselor/doctor testimony about Sarah's mental and emotional state, our review of the record nevertheless shows substantial evidence supports each of those findings. Sarah also failed to challenge finding of fact 2.52 ("The mother's psychological evaluation . . . indicated that the mother lacked the necessary emotional intelligence that would allow her to process/evaluate her environment or social situations that would result in her making good decisions for both she and her children."). Unchallenged findings are considered verities on appeal. In re J.M.R., 160 Wn. App. at 939 n.5.