

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

In the Matter of the Welfare of	)	
K.R.B.-P.,	)	No. 67014-0-I
DOB: 9/26/09,	)	
Minor child.	)	DIVISION ONE
	)	
ROBERT TRUESDELL,	)	UNPUBLISHED OPINION
	)	
Appellant,	)	
	)	
v.	)	
	)	
STATE OF WASHINGTON,	)	
DEPARTMENT OF SOCIAL AND	)	
HEALTH SERVICES,	)	
	)	FILED: January 30, 2012
Respondent.	)	

Grosse, J — A court may terminate parental rights if it finds that the Department of Social and Health Services (Department) establishes the six statutory elements enumerated in RCW 13.34.180 by clear, cogent, and convincing evidence and that a preponderance of the evidence demonstrates that termination is in the best interests of the child. Because substantial evidence supports the court’s findings, and the father was unfit to parent at the time of termination, we affirm the order terminating this father’s parental rights.

**FACTS**

K was born to parents Robert Truesdell and Justine Purtell on September 26, 2009. Purtell and Truesdell met at an Alcoholics Anonymous (AA) meeting in the summer of 2008. Shortly thereafter, the two began a romantic relationship. Within a

month of starting AA, Truesdell was again using methamphetamine. While Purtell was dating Truesdell she began using methamphetamine for the first time. Truesdell was arrested within a month of their dating.

In May 2009, Putrell and Truesdell moved to Iowa. The couple stayed with various friends and Truesdell's mother. Their relationship was fraught with verbal domestic violence, which escalated when Truesdell found out that Purtell was pregnant. Purtell used methamphetamine while she was pregnant; and although Truesdell asked her not to, he still supplied her with the drug. After one particularly violent episode, Purtell called the police and Truesdell was arrested. He spent seven days in jail, and was released after posting a \$5,000 bond.

Approximately three weeks after Truesdell was released, he was arrested again for simple possession of methamphetamine. He immediately bonded out. Truesdell then stole anhydrous ammonia, a key ingredient in cooking methamphetamine. During a police chase, Truesdell threw the anhydrous ammonia out of the car and fled to Washington State where he was apprehended a few days later. Truesdell was convicted of manufacturing methamphetamine and received a mandatory sentence of 15 years. Truesdell's good behavior reduced the mandatory portion of the sentence to seven years, potentially making him eligible for parole or work release in April 2011. He is currently in Newton Correctional Facility in Iowa.

Purtell returned to Washington in June 2009. K was born in September 2009, six weeks early. K was placed in out-of-home care immediately following her birth. Purtell voluntarily placed K with the prospective adoptive parent who was currently

parenting K's half-sibling, pursuant to a third party custody agreement. Purtell testified that she intended to relinquish her parental rights to K once Truesdell's rights were terminated.

Truesdell testified that adoption could be in K's best interest. He testified that the current caregiver is wonderful and he does not object to the adoption. Rather, he wants K to be in his life and have visitation rights.

In prison, Truesdell completed a 12-week drug treatment program. He attends both AA and Narcotics Anonymous meetings once a week for a total of eight meetings a month. Truesdell testified that when released, he will have employment with a towing company owned by a family friend. When Truesdell was in Washington his longest period of employment was eight months. Much of his employment was at businesses owned by family friends. April 2011 would be the earliest he would find out that he was eligible for parole.

Truesdell sent letters to Purtell in violation of a no contact order. In one letter postmarked December 1, 2010, Truesdell wrote, "You can lie about Santa, even the Easter bunny, but don't lie about Daddy." Truesdell also sent a letter to Purtell with a picture of two guns crossed with Spanish words "para siempre."

Newton correctional counselor, Scott VerSteeg, did not perform any initial assessments on Truesdell. VerSteeg verified that Truesdell completed a 24-hour relapse prevention program. At the time of the hearing, Truesdell had not been evaluated for release by the counseling department. Truesdell was on the waiting list for the 48-hour batterer's program, spread over 12 weeks. Normally a person is not

even placed into that group until the mandatory portion of the sentence has expired and the parole board has done an initial review of that inmate. Truesdell would be required to complete the batterer's program before becoming eligible for release. Truesdell just started a life skills program. Truesdell also participated in a story book program that encouraged inmates to read stories taped on cassette to send to their children. VerSteeg was unaware that Truesdell had violated the no contact order and testified that such a violation would have an impact on the parole board's granting early release.

Jennifer Lee, the state's social worker, was assigned Truesdell's case in September 2010. She testified that she spoke with VerSteeg, to find out what services Truesdell was utilizing at the prison. Because Truesdell was incarcerated out-of-state, the Department was limited in the services and visitation it could offer Truesdell. Truesdell was using all the services available to him, but those services did not meet the Department's criteria. Services available to Truesdell included 12-step meetings, batterer's prevention, and relapse prevention. Truesdell was on the wait list for the batterer's program. While Truesdell participated in the relapse prevention treatment, the treatment assessment did not comply with the American Society of Addiction Medicine (ASAM) certification standards required by the Department. Lee testified that Truesdell would require additional services on his release because of his repeated incarceration, domestic violence, and drug and alcohol use.

Lee attempted to arrange random urinalysis testing for Truesdell, but was unable to do so. VerSteeg testified that random urinalysis testing was performed only if there was a report of drugs in a particular unit. VerSteeg gave Lee the name of another

contact in the prison with whom she could possibly arrange testing. Despite multiple telephone calls, she was unable to connect with anyone who could provide urinalysis testing for Truesdell.

At the time of the termination hearing, the earliest possible review for Truesdell to be considered for parole was in March 2011. If released, he would be under the supervision of the Iowa Board of Paroles unless an interstate compact agreement was reached to permit his parole to be supervised in Washington. At the time of the hearing, Truesdell still had the potential of having to serve his entire 15-year sentence.

K was 15 months old and had had no contact with Truesdell. Truesdell has not provided any child support or visited K during the pendency. Lee testified that the earliest release date for Truesdell is a very long time period for 15-month-old K. Additionally, Lee noted that Truesdell could comply with Department's requirements for at least another year. K has been with the adoptive parent and her half-sister for her entire life, and her stability lies there. Lee felt it was in K's best interest to terminate Truesdell's parental rights because he is incarcerated and still has many issues to address. Even if classes were offered in prison, Lee testified that she would want to see his successful participation in classes outside of incarceration and in particular Lee would like to see clean urinalysis tests while Truesdell was not incarcerated.

Tami Hillman, the guardian ad litem (GAL) appointed for K, conducted an independent investigation recommending that parental rights be terminated. Hillman acknowledged that it was difficult to perform a parenting assessment on someone who is incarcerated. The GAL does not usually recommend prison visits as they are

unsettling to the children. In this case, such visits were inappropriate as K has a lower immune system and traveling might adversely impact her. Hill posited that Truesdell's long-standing criminal issues interfered with his ability to be a contributing member of society, let alone a parent. If the mother had not chosen to voluntarily terminate her parental rights, Hillman would have recommended that they be terminated. The GAL testified that delaying termination was not in K's best interests.

In its oral ruling terminating Truesdell's parental rights, the court placed great weight on Truesdell's testimony that he wanted K to know who her father was, and not that he wanted his daughter with him. The court noted that the goal is to return the child to the parent, not to allow the parent to continue a relationship with the child. The court also made it evident that the mother's decision to terminate if and when the father's rights were terminated had no impact on its decision. Four months later, the Department presented findings of facts and conclusions of law formally terminating Truesdell's parental rights. Truesdell appeals.

#### ANALYSIS

"[A] parent has a constitutional due process right not to have his or her relationship with a natural child terminated in the absence of a trial court finding of fact that he or she is currently unfit to parent the child."<sup>1</sup> Under Washington's statutory scheme, the court considering a petition to terminate parental rights uses a two-step process. The first step focuses on the adequacy of the parent.<sup>2</sup> The Department must prove the six statutory elements listed in RCW 13.34.180(1)(a)–(f) by clear, cogent,

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<sup>1</sup> In re Welfare of A.B., 168 Wn.2d 908, 920, 232 P.3d 1104 (2010).

<sup>2</sup> In re Welfare of A.B., 168 Wn.2d at 911.

and convincing evidence: (1) the child had been found dependent, (2) the court had entered a dispositional order, (3) the child had been removed from the parent's care for at least six months, (4) the Department had offered or provided all ordered services and all necessary services, reasonably available, capable of correcting parental deficiencies in the foreseeable future, (5) there was little likelihood conditions would be remedied so that the child could be returned to the parent in the near future, and (6) continuation of the parent-child relationship clearly diminishes the child's prospects for early integration into a stable and permanent home. Proof of these six elements is an implicit finding of unfitness, satisfying the due process requirement that a court find a parent unfit before terminating the parent-child relationship.<sup>3</sup> The second step focuses on the child's best interests and must be proved by a preponderance of the evidence.<sup>4</sup>

The deference paid to the trial court's advantage in having the witnesses before it is particularly important in parental termination proceedings.<sup>5</sup> Thus, if there is substantial evidence that the trial court could reasonably have found to be clear, cogent, and convincing, an appellate court should not disturb the trial court's findings.<sup>6</sup> Whether termination is in the best interests of the child must be determined based on the facts of each case.<sup>7</sup>

Here, the child was found dependent on November 2, 2009 as to Purtell and on May 11, 2010 as to Truesdell. Dispositional orders were entered on the corresponding dates and the child was removed from parental custody at birth and for longer than six

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<sup>3</sup> In re Dependency of K.N.J., 171 Wn.2d 568, 577, 257 P.3d 522 (2011).

<sup>4</sup> In re Dependency of K.N.J., 171 Wn.2d at 577.

<sup>5</sup> In re Aschauer, 93 Wn.2d 689, 695, 611 P.2d 1245 (1980).

<sup>6</sup> In re Aschauer, 93 Wn.2d at 695.

<sup>7</sup> In re Aschauer, 93 Wn.2d at 695.

months. Thus, the first three criteria of RCW 13.34.180(1)(a)–(c) were met.<sup>8</sup>

Truesdell first argues that the Department failed to prove that it provided him with all necessary services. In particular, he contends that the Department’s failure to arrange urinalysis testing while he was in prison is evidence of the Department’s failure to provide necessary services.

To establish this statutory element, the State must prove that it has offered or provided “all necessary services, reasonably available, capable of correcting the parental deficiencies within the foreseeable future.” RCW 13.34.180(1)(d). For young children, “the foreseeable future” may be a matter of months. See, e.g., In re Welfare of Hall,<sup>9</sup> (eight months not in foreseeable future of 4-year-old); In re Dependency of P.A.D.,<sup>10</sup> (six months not in near future of 15-month-old). Here, substantial evidence demonstrated the social worker attempted to establish urinalysis testing, but was unable to do so. The Department has no control over where Truesdell is imprisoned or the services available at the institution where he is incarcerated. The Department of Social and Health Services (Department) and the Department of Corrections (DOC) are separate government agencies, and the Department has no authority over what services are available in prison in Washington, let alone Iowa. The Department met its statutory obligations by communicating with Truesdell and investigating the availability of services during his incarceration. See In re Welfare of M.R.H.,<sup>11</sup> (rejecting father’s

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<sup>8</sup> Additionally, we note that although Truesdell assigns error to the first three findings, he does not present any facts or arguments to dispute them and thus has abandoned the challenge by failing to present argument. See In re Welfare of L.N.B.-L., 157 Wn. App. 215, 243, 237 P.3d 944 (2010).

<sup>9</sup> 99 Wn.2d 842, 850-51, 664 P.2d 1245 (1983).

<sup>10</sup> 58 Wn. App. 18, 27, 792 P.2d 159 (1990).

<sup>11</sup> 145 Wn. App. 10, 25, 188 P.3d 510 (2008).



argument that the trial court erred in terminating his parental rights because the Department failed to offer him services during his incarceration).

Further, it is not at all clear that providing Truesdell urinalysis testing during his incarceration was a service “capable of correcting parental deficiencies.” RCW 13.34.180(1)(d). Lee indicated that urinalysis during incarceration does not necessarily establish a commitment to sobriety; such testing is most critical after release. Indeed, given evidence that Truesdell used methamphetamine within a month of starting AA and was convicted of possession and manufacture after his clean and sober date, Truesdell likely would require continued testing upon release to confirm that he would refrain from using drugs outside of incarceration.

Even if urinalysis was capable of correcting parental deficiencies, RCW 13.34.180(1)(d) only requires the Department to provide the services that are capable of doing so “within the foreseeable future.”<sup>12</sup> Lee testified that it would require at least a year of services prior to any possible reunification; while Truesdell estimated it would take him a year to be ready to parent K. Because Truesdell would be imprisoned for at least four more months and possibly the remainder of his 15-year sentence, the court properly determined that no services were capable of correcting parental deficiencies in the foreseeable future as that term applies to a 15-month-old child.<sup>13</sup>

Truesdell next contends that the State failed to prove that permitting his relationship with his daughter to continue would diminish K’s prospects for early

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<sup>12</sup> In re Dependency of T.R., 108 Wn. App. 149, 164, 29 P.3d 1275 (2001).

<sup>13</sup> In re Interest of Skinner, 97 Wn. App. 108, 120, 982 P.2d 670 (1999) (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).

integration into a stable and permanent home. RCW 13.34.180(1)(f). But this necessarily follows from an adequate showing that there is “little likelihood that conditions will be remedied so that the child can be returned to the parent in the near future.”<sup>14</sup> Further, the theoretical possibility that Truesdell may someday correct conditions sufficiently to provide a safe and stable home is not enough to delay K’s right to permanency in her parental relationship. By the time of trial, K had spent her entire life in out-of-home care. Truesdell has had no contact with K since her birth. It is the legal relationship between parent and child, not the personal relationship. Here, K has been placed in a potential adoptive home and it is the only home that she has known for her entire life. A delay in termination to accommodate Truesdell time to permit him to rectify his deficiencies would result in the child being almost four years of age before a second dependency trial could be held. Substantial evidence supported the trial court’s conclusion that continuation of a relationship with Truesdell would diminish K’s prospects for early integration into a stable and permanent home.

Lastly, Truesdell challenges the trial court’s finding supporting the conclusion that terminating his parental rights is in K’s best interests. Once the six statutory factors in RCW 13.34.180(1) are proved by clear and convincing evidence, then the trial court must also find by a preponderance of the evidence that termination of parental rights is in the child’s best interests.<sup>15</sup> The best interests of a child must be decided on the facts and circumstances of each case.<sup>16</sup>

Finding of Fact 2.13 provides in part:

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<sup>14</sup>In re Dependency of T.R., 108 Wn. App. at 166.

<sup>15</sup> In re Welfare of A.B., 168 Wn.2d at 911.

<sup>16</sup> In re Dependency of A.V.D., 62 Wn. App. 562, 572, 815 P.2d 277 (1991).

The testimony was unclear as to when the father would likely be released from prison. The court calculates his earliest possible release date and return to Washington State where he might have a residence established is, under the best of all circumstances, mid-to-late July 2011 and the father could be incarcerated for the remainder of his 15 year prison sentence. It is unclear as to whether or not the father will require drug and alcohol services, parenting instruction, mental health services or domestic violence services upon his release due to a lack of evaluations that were unable to be completed while incarcerated. It is likely some services will be required based upon the Father's history of being incarcerated on several occasions, the admitted act of domestic violence in response [to] the mother's domestic violence, and the fact that he provided the mother with methamphetamine while she was pregnant. The father has additionally demonstrated a series of short work employment, that is not a stable, gainful employment history. He has never established a safe, stable and independent residence, and has spent most of his adult life "couch-surfing." Finally, in his trial testimony the father did not express a desire that the child actually be returned to his care, and stated that it might be in the child's best interests to be adopted. His intentions are that the child just "know who he is" and have some contact with him but not to parent the child full time.

This finding is supported by substantial evidence. The testimony showed that Truesdell had sporadic employment with his longest term of employment lasting approximately eight months. Much of that employment was obtained through family friends. Truesdell himself testified that the adoption would be a good idea for K, and that he was just looking for K to know who he is. The social worker testified that due to Truesdell having been incarcerated most of his adult life, the support services that he would need to continue on a path which would make him a stable parent would take at least a year after his release and arrival in Washington. The Department, mother, and GAL all agreed with Truesdell that adoption would be best for the child.

Parents do not have an absolute right to the custody and care of a child; the paramount consideration in a termination proceeding is the welfare of the child.<sup>17</sup>

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<sup>17</sup> 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.<sup>18</sup> A child's right to basic nurturing includes the right to a safe, stable, and permanent home and to a speedy resolution of dependency proceedings.<sup>19</sup>

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<sup>18</sup> RCW 13.34.020.

<sup>19</sup> RCW 13.34.020; In re Welfare of H.S., 94 Wn. App. 511, 530, 973 P.2d 474 (1999); In re Dependency of C.R.B., 62 Wn. App. 608, 615, 814 P.2d 1197 (1991).

The trial court is affirmed.

Grosse, J.

WE CONCUR:

Schiveller, J.

Cox, J.