IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In the Matter of the Dependency of M.R.S.H., DOB: 7/08/2009, a minor child.	)	DIVISION ONE
	)	No. 67148-1-I
TIANA HALPIN,	)	
Appellant,	)	UNPUBLISHED OPINION
v.	)	
STATE OF WASHINGTON, DEPARTMENT OF SOCIAL AND HEALTH SERVICES,	)	
Respondent.	)	FILED: July 23, 2012

Dwyer, J. — Tiana Halpin appeals from the trial's court order terminating her parental rights to her daughter, M.R.S.H. Halpin contends that her right to due process was violated because, she asserts, the court-appointed special advocate (CASA) appointed to represent M.R.S.H.'s best interests was not independent from the State and did not conduct an independent investigation. She further contends that the trial court erred by determining (1) that all services

reasonably available and capable of correcting her parental deficiencies were expressly and understandably offered or provided to her and (2) that there is little likelihood that her parental deficiencies would be remedied such that M.R.S.H. could be returned to Halpin's care in the near future. However, the record does not support Halpin's contention that the CASA lacked independence or failed to properly perform her duties. Moreover, substantial evidence supports the trial court's findings that the statutory elements necessary to terminate Halpin's parental rights were established by competent proof. Accordingly, we affirm.

I

Halpin's daughter, M.R.S.H., was born on July 8, 2009. The Department of Social and Health Services removed M.R.S.H. from her mother's care shortly after birth because hospital staff reported that Halpin was not functioning well. Halpin has a history of severe mental health issues, drug addiction, and domestic violence. Prior to M.R.S.H.'s birth, Halpin's parental rights to each of her other seven children had been terminated.

M.R.S.H., who has never lived with either of her biological parents, has several serious health issues that require careful monitoring. Since birth, she has had three "seizure-like" episodes that may have been caused by acid reflux, a condition from which M.R.S.H. suffers and for which she takes twice daily medication. M.R.S.H. also suffers from eczema, which requires meticulous care

and multiple applications daily of “Crisco” to her skin. M.R.S.H. has a heart defect and several developmental delays. She also has dysphagia, a condition that makes swallowing difficult and puts her at risk for breathing food into her lungs. To avoid aspirating, M.R.S.H. must only drink fluids that have been thickened. As a result of her medical needs, M.R.S.H. “requires vigilant care.”

On August 19, 2009, M.R.S.H. was found dependent as to Halpin. The trial court entered an order of dependency and a dispositional order setting forth the services in which Halpin was required to participate in order to correct her parental deficiencies. Halpin was ordered (1) to engage in domestic violence victim’s counseling, (2) to participate in individual mental health counseling, follow any treatment recommendations, and continue “medication management” with her doctor, (3) to participate in an age-appropriate parenting class, and (4) to participate in a psychological evaluation with Dr. JoAnne Solchany and follow any treatment recommendations. She was further ordered to authorize the release of information between her service providers and the parties to the dependency action.

Halpin complied with portions of the dispositional order. She participated in both domestic violence counseling and individual mental health counseling. She additionally engaged in “two phases of a parenting class, parent-child psychotherapy and other useful services that have contributed to an improvement in her functioning and circumstances.” However, Halpin did not

follow Dr. Solchany's recommendation, following her psychological evaluation, that she engage in psychotherapy, notwithstanding the fact that Halpin's social worker had referred her to an agency that could provide such services.[1] Moreover, during the dependency period, Halpin withdrew the authorization for release of information, thus precluding the Department from learning about the services in which she was participating and "limit[ing] the Department's ability to ensure [that Halpin] was being offered appropriate treatment."

On July 20, 2010, the State filed a petition for termination of Halpin's parental rights, contending that Halpin had "demonstrated an inability to successfully benefit from services offered to correct parental deficiencies." The State noted that Dr. Solchany had diagnosed Halpin with posttraumatic stress disorder, delusional disorder, and personality disorder not otherwise specified. The State further relayed Dr. Solchany's report that Halpin's "history of trauma and events is often incoherent and inconsistent and that she often presents different stories regarding one event." Halpin, the State asserted, was "unable to read [M.R.S.H.'s] cues or respond to them in an accurate way and . . . tended to overwhelm [M.R.S.H.], causing [M.R.S.H.] to withdraw and avoid her."

The trial court held a 12-day trial, at which 24 witnesses testified, in March and April 2011. Following the trial, the trial court granted the State's

[1] Many of the facts in this opinion are based upon the trial court's findings of fact in the order terminating Halpin's parental rights. On appeal, Halpin assigns error to 72 of the trial court's 154 findings of fact. After a review of the record, we determine that sufficient evidence supports the trial court's findings. Those findings that are not challenged are verities on appeal. In re Dependency of M.S.R., 174 Wn.2d 1, 9, 271 P.3d 234 (2012).

petition, thus terminating Halpin's parental rights as to M.R.S.H.

The trial court found that Halpin's testimony "lacked credibility" and that her "answers to questions were frequently non-responsive, argumentative and hostile." The court further found that Halpin "fabricates" and that her assertions "are self-servingly false." The court determined that Halpin's "difficulties with progress in her services . . . were caused in part by [her] failure to comply with the release of information requirements of the dispositional order." The trial court additionally found that, although Halpin had successfully completed many of the ordered services, she had not "begun the court ordered psychotherapy" recommended by Dr. Solchany.

The court determined that Halpin had "failed to substantially improve a primary parental deficiency in more than a year and a half" and that her "deficiency is a psychological incapacity so severe and chronic as to render [her] incapable or unwilling to learn how to care for [M.R.S.H.'s] severe on-going medical needs." The court found that the ordered psychotherapy, which had not yet begun, would require two years, and that two years "is not in the near future" for M.R.S.H., who was less than two years old at the time. Moreover, the court determined, Halpin still struggled with "emotional disregulation" daily and was "barely able to care for herself." Thus, the court found, "[t]he constellation of [Halpin's] own complicated and demanding needs coupled with [M.R.S.H.'s] circumstances is together a barrier that [Halpin] simply does not have the ability

with any amount of service support to overcome."

Halpin appeals from the trial court's order terminating her parental rights.

II

Halpin first contends that her right to due process was violated because, she asserts, the CASA was not independent from the State and failed to conduct an independent investigation.[2] Relatedly, Halpin contends that the appearance of fairness doctrine was violated due to the CASA's testimony regarding her relationship with the Department. On each account, we disagree.

It is well-established that parents have a fundamental liberty and property interest in the care and custody of their children. U.S. Const. amends. V, XIV; Wash. Const. art. I, § 3; Santosky v. Kramer, 455 U.S. 745, 753, 102 S. Ct. 1388, 71 L. Ed. 2d 599 (1982); In re Custody of Smith, 137 Wn.2d 1, 13-14, 969 P.2d 21 (1988). "The due process clause of the Fourteenth Amendment protects a parent's right to the custody, care, and companionship of [his or] her children." In re Welfare of Key, 119 Wn.2d 600, 609, 836 P.2d 200 (1992). Because termination of the parent-child relationship abridges this fundamental right, "[p]arental termination proceedings are accorded strict due process protections." In re Matter of Darrow, 32 Wn. App. 803, 806, 649 P.2d 858 (1982). Nevertheless, a parent does not have an absolute right to the custody and care

[2] Halpin additionally asserts that M.R.S.H.'s right to due process was violated by the CASA's alleged lack of independence and failure to conduct an independent investigation. The State contends that Halpin does not have standing to assert a violation of M.R.S.H.'s due process rights. We need not resolve this dispute, given the reasoning underlying our resolution of the other issues presented.

of a child, and the paramount consideration in a termination proceeding is the welfare of the child. In re Welfare of Young, 24 Wn. App. 392, 395, 600 P.2d 1312 (1979). "When the rights of basic nurture, physical and mental health, and safety of the child and the legal rights of the parents are in conflict, the rights and safety of the child should prevail." RCW 13.34.020. The child's rights include "the right to a safe, stable, and permanent home and a speedy resolution" of dependency and termination proceedings. RCW 13.34.020.

In such proceedings, the trial court must appoint a guardian ad litem (GAL) for the child who is the subject of the proceeding unless good cause renders such appointment unnecessary. RCW 13.34.100(1). The GAL's role is to "represent and be an advocate for the best interests of the child." RCW 13.34.105(1)(f). In order to do so, the GAL must "investigate, collect relevant information about the child's situation, and report to the court factual information regarding the best interests of the child." RCW 13.34.105(1)(a). In representing the child's best interests, the GAL must "maintain independence, objectivity and the appearance of fairness." Guardian ad Litem Rule (GALR) 2(b). The GAL must additionally "make reasonable efforts to become informed about the facts of the case and to contact all parties." GALR 2(g). The GAL "may make recommendations based upon an independent investigation regarding the best interests of the child, which the court may consider and weigh in conjunction with the recommendations of all of the parties." RCW 13.34.105(1)(e).

Here, the CASA appointed to discharge the duties of a guardian ad litem fully complied with the requirements set forth by statute and court rule. The CASA testified that, in investigating the case, she had extensive conversations with M.R.S.H.'s foster parents and her caregivers at Childhaven, where M.R.S.H. received therapeutic child care many days per week. She visited with M.R.S.H. multiple times during the dependency period, attending medical appointments, observing M.R.S.H. at Childhaven, and visiting her foster parents' home. She additionally reviewed extensive reports from Halpin's service providers. The CASA testified that she spent between 5 and 35 hours per month working on M.R.S.H.'s case.

Nevertheless, Halpin contends that the termination proceeding was unfair because, she argues, the CASA violated her duties to remain impartial and to perform an independent investigation of the case. Halpin asserts that this alleged lack of independence violated her due process rights and the appearance of fairness doctrine. In so contending, Halpin relies upon fragments of the CASA's testimony at the termination proceeding—in particular, the CASA's statement that she was "kind of part of the Department [of Social and Health Services]." Halpin implies, based upon such fragments of testimony, that the CASA was biased in favor of the State and, therefore, did not fulfill her obligations of "independence, objectivity and the appearance of fairness." GALR 2(b).

In so doing, Halpin takes the CASA's testimony out of context and disregards other testimony in which the CASA explains her role as representing M.R.S.H.'s best interests. When questioned regarding her role, the CASA explained that she is "the advocate for minor children. I'm basically their voice in court, and I try to look at reports and report to the court what I think is—or what I determine might be the best interest of the child." The CASA further explained that part of her role is to ensure that the Department follows court orders and refers parents to the appropriate services. She stated that her "main focus . . . is the child," but that she "usually work[s] very closely with the Department . . . to make sure that the services that have been discussed are being provided to the parents." Thus, it is clear that the CASA understood that her role was to "represent and be an advocate for the best interests of the child," as set forth in RCW 13.34.105(1)(f).

Moreover, considered in context, the CASA's statement that she was "kind of part of the Department" does not indicate bias or a lack of independence. The CASA made this statement in response to a question regarding Halpin's request, during the dependency period, that the Department contact her only through her attorney. The CASA was asked: "Given Ms. Halpin's request of the Department not to have direct contact with her, did you feel that you were somehow—in some way also kind of hindered or cautious because she had issued that rule?" She responded: "Yes. I figured when the

Department could not have contact with her, I'm kind of part of the Department, so I felt apprehensive about further being in contact with her." The CASA further explained,

> [i]n the past when I was the CASA for the other four boys of hers, she hasn't been very receptive to my talking with her, so I kind of held back and made most of my conversations with the Department to make sure that [Halpin] was getting the services that were available.

She later clarified, "I work for the CASA program, but I try to work with the Department to make sure that the services that everybody is agreed on are being provided." The CASA additionally testified that, even had the Department recommended that M.R.S.H. be returned to her mother's care, she would still have recommended termination of Halpin's parental rights.

Halpin further faults the CASA for not visiting Halpin's home or speaking with her directly outside of court. However, given the circumstances, the CASA reasonably believed that communicating directly with Halpin was not the best approach to ensure that Halpin received the necessary services. Moreover, as part of her investigation, the CASA on three occasions observed interactions between Halpin and M.R.S.H.—once at the library, once at one of M.R.S.H.'s many medical appointments, and once at Childhaven. The CASA did not violate her duty to "make reasonable efforts to become informed about the facts of the case and to contact all parties." GALR 2(g).

Notwithstanding Halpin's assertion that the CASA improperly believed

that she was "part of" the Department, the record is devoid of evidence indicating that the CASA lacked independence or objectivity in fulfilling her duties to M.R.S.H. Moreover, it is the trial court—not the CASA—that considers the recommendations of all of the parties in a termination proceeding and determines whether termination is appropriate. See RCW 13.34.105(1)(e). There is no indication, and Halpin does not contend, that the trial court was biased. See RCW 13.34.090 (party in a termination proceeding has the right "to an unbiased fact finder"); see also In re Marriage of Bobbitt, 135 Wn. App. 8, 28, 144 P.3d 306 (2006) ("'Judges understand that the GAL presents one source of information among many . . . and can without difficulty separate and differentiate the evidence they hear.'" (quoting In re Guardianship of Stamm, 121 Wn. App. 830, 841, 91 P.3d 126 (2004))). Moreover, Halpin is incorrect that the CASA's testimony indicates that she was aligned with the Department.

Because the CASA properly performed her duties and remained independent, we will not, on this basis, reverse the order terminating Halpin's parental rights.

III

Halpin next contends that the trial court erred by determining that the State had proved by clear, cogent, and convincing evidence that there is little likelihood that the conditions that led to the removal of M.R.S.H. from her care will be remedied in the near future. Halpin also asserts that, in making this

determination, the trial court erroneously employed the statutory presumption shifting to her the burden of proving that the conditions would be so remedied. We disagree.

Where the trial court has weighed the evidence, our review is limited to determining whether the court's findings of fact are supported by substantial evidence and whether those findings support the court's conclusions of law. In re Dependency of P.D., 58 Wn. App. 18, 25, 792 P.2d 159 (1990). "'Substantial evidence' is evidence in sufficient quantity to persuade a fair-minded, rational person of the truth of the declared premise." In re Welfare of T.B., 150 Wn. App. 599, 607, 209 P.3d 497 (2009). The determination of whether the findings of fact are supported by substantial evidence "must be made in light of the degree of proof required." P.D., 58 Wn. App. at 25. Where, as here, the proof required is clear and convincing, "the question on appeal is whether there is substantial evidence to support the findings in light of the highly probable test." P.D., 58 Wn. App. at 25. Moreover, we defer to the trial court's credibility determinations on appeal from an order terminating parental rights. T.B., 150 Wn. App. at 607.

Before a trial court may terminate parental rights, the State must prove by clear, cogent, and convincing evidence the six statutory factors set forth in RCW 13.34.180(1). One such factor requires the trial court, prior to terminating parental rights, to determine that "there is little likelihood that conditions will be remedied so that the child can be returned to the parent in the near future."

RCW 13.34.180(1)(e). The focus of this factor is "whether the identified [parental] deficiencies have been corrected." In re the Welfare of M.R.H., 145 Wn. App. 10, 27, 188 P.3d 510 (2008). What constitutes the "near future" depends upon the age of the child who is the subject of the termination proceeding; "[a] matter of months for young children is not within the foreseeable future to determine if there is sufficient time for a parent to remedy his or her parental deficiency." M.R.H., 145 Wn. App. at 28.

"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." RCW 13.34.180(1)(e). However, this presumption arises only where the State demonstrates "that all necessary services reasonably capable of correcting the parental deficiencies within the foreseeable future have been clearly offered or provided." RCW 13.34.180(1)(e). The statute provides that "[i]n determining whether the conditions will be remedied the court may consider, *but is not limited to*," three statutory factors. RCW 13.34.180(1)(e) (emphasis added); see also RCW 13.34.180(1)(e)(i)-(iii). One of the three factors that the trial court may consider is a

> [p]sychological 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.

RCW 13.34.180(1)(e)(ii).

Here, the trial court determined that the statutory presumption set forth in RCW 13.34.180(1)(e) applied because Halpin had "failed to substantially improve a primary parental deficiency in more than a year and a half." The court found that her "deficiency is a psychological incapacity so severe and chronic as to render [Halpin] incapable or unwilling to learn how to care for [M.R.S.H's] severe on-going medical needs." The trial court determined that the psychotherapy that Halpin would require "will take at least two years and it has not yet begun." The court further determined that two years "is not in the near future" for M.R.S.H., who was not even two years old when the hearing occurred.[3] Finally, the trial court found that the services set forth in the dispositional order had been "expressly and understandably offered or provided" to Halpin.

Halpin challenges the trial court's finding that there is little likelihood that her parental deficiencies could be remedied in the near future such that M.R.S.H. could be returned to her care. She asserts that the trial court improperly applied the statutory presumption set forth in RCW 13.34.180(1)(e) because, she contends, she had made significant progress in addressing her

[3] The social worker involved with this case testified that, due to M.R.S.H.'s young age, six months was her "near future."

parental deficiencies, she was not unwilling to receive mental health treatment, and she did not receive the necessary services capable of correcting her deficiencies. Halpin additionally asserts that she was receiving the individual psychotherapy recommended by Dr. Solchany and ordered by the court. Finally, she contends that there is no evidence that her mental health problems rendered her incapable of caring for M.R.S.H.

Contrary to Halpin's contention, however, sufficient evidence supports both the trial court's finding and the court's application of the statutory presumption. Although Halpin was engaged in individual psychotherapy at the time of the hearing, she had not begun this therapy until late December 2010, nine months after Dr. Solchany's March 2010 recommendation that Halpin receive such therapy—and just a few months before the termination hearing. The therapist providing this treatment testified regarding Halpin's multiple mental health problems, including binging and purging, "ranting," and "mood dysregulation." She furthered testified that such therapy can usually be completed in one to two years and that Halpin would likely require at least a year of therapy. Moreover, Dr. Solchany testified at trial that she did not believe that the therapy in which Halpin was engaged would sufficiently address her serious underlying mental health issues. She testified that, in her opinion, Halpin's prognosis for the future was "very poor." Thus, the record demonstrates that Halpin had not fully complied with the services required by the dispositional

order and had not corrected the mental health problems identified as a parental deficiency.

Halpin additionally asserts that the State failed to clearly offer or provide "all necessary services reasonably capable of correcting the parental deficiencies within the foreseeable future," as required in order for the statutory presumption to apply.[4] RCW 13.34.180(1)(e). She contends that the State did not offer her the services needed to educate and train her concerning M.R.S.H.'s medical problems. Such services, Halpin suggests, would include supervised visitation outside of Childhaven and the opportunity for Halpin to care for M.R.S.H. herself.[5] The trial court determined that such visitation does not constitute a "service" required to be provided and that Halpin had failed to take advantage of many opportunities—including attending M.R.S.H.'s various medical appointments and communicating with M.R.S.H.'s foster mother regarding M.R.S.H.'s needs—to learn how to care for M.R.S.H.

Halpin cites to In re Welfare of C.S., 168 Wn.2d 51, 225 P.3d 953 (2010), in support of her contention that training regarding M.R.S.H.'s medical needs is

[4] Halpin separately contends that the trial court erred by determining that the State had expressly and understandably offered or provided all necessary and reasonably available services capable of correcting her parental deficiencies within the foreseeable future, one of the six statutory factors that must be proved in order to terminate the parent-child relationship. See RCW 13.34.180(1)(d). Because we address this contention in conjunction with Halpin's assertion regarding the statutory presumption set forth in RCW 13.34.180(1)(e), we do not separately address it herein.

[5] However, Halpin additionally asserts that "M.R.S.H.'s medical problems are not a parental deficiency," suggesting that the trial court should not fault her for her inability to care for M.R.S.H. due to M.R.S.H.'s unique needs. But the trial court did not determine that M.R.S.H.'s medical problems were a parental deficiency; rather, the court determined that Halpin's mental health problems—which are a parental deficiency—were particularly problematic given the level of care that M.R.S.H. requires.

a "service" that must be provided. There, our Supreme Court held that the termination of a mother's parental rights to her child was not warranted on the basis that the mother could not address the special needs of the child, who had been diagnosed with attention deficit hyperactivity disorder (ADHD). C.S., 168 Wn.2d at 53. However, the only parental deficiency identified in that case was the mother's substance abuse—a deficiency that she had corrected. C.S., 168 Wn.2d at 53. Moreover, the State provided training to the child's foster mother in order to enable her to effectively deal with the child's behavioral problems; the State provided no such training to the child's mother. C.S., 168 Wn.2d at 55-56.

In contrast, here, M.R.S.H.'s foster mother received no special training on how to care for M.R.S.H.; rather, she learned to do so by attending countless medical appointments and being exceptionally attentive to M.R.S.H.'s needs. Furthermore, although "[t]here may be situations where visitation is part of a required service," such as a parenting class, visitation itself does not correct parental deficiencies and is, therefore, not a "service" that must be provided. In re Dependency of T.H., 139 Wn. App. 784, 792, 162 P.3d 1141 (2007). Halpin was provided numerous opportunities to learn how to care for M.R.S.H., including visitation at Childhaven and attendance at M.R.S.H.'s medical appointments. Substantial evidence supports the trial court's finding that Halpin was offered such opportunities, "but she failed to make use of them."

Halpin completed several of the services required by the dispositional

order, and these services undoubtedly enabled her to improve her life. Nevertheless, Halpin did not timely participate in the court-ordered psychotherapy, and her severe mental health problems—identified as a parental deficiency in the dispositional order—were still present at the time of the termination hearing. The trial court did not err by determining that Halpin is not a safe or fit parent for M.R.S.H. and, thus, terminating her parental rights.

Affirmed.

Dwyer, J.

We concur:

Cox, J.

Grosse, J.