IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In the Matter of the Dependency of C.L.C., dob 07/13/05,	)	No. 67207-0-I
A minor child,	)	(Consolidated with No. 67208-8-I)
K.C. and R.C.,	)	DIVISION ONE
Appellants,	)	UNPUBLISHED OPINION
v.	)	
STATE OF WASHINGTON, DEPARTMENT OF SOCIAL AND HEALTH SERVICES,	)	
Respondent.	)	FILED: May 21, 2012

Schindler, J. — The trial court terminated the parental rights of K.C. and R.C. to their five-year-old child C.L.C. K.C. and R.C. contend that the court erred in finding that the Department of Social and Health Services (DSHS) timely offered or provided all necessary services capable of correcting parental deficiencies. The parents also contend the court erred in finding there was little likelihood conditions could be remedied in the near future or that termination was in the child's best interest. In

addition, K.C. claims the court erred in finding she is currently unfit to parent C.L.C.[1] Because the court's findings are supported by substantial evidence from which a rational trier of fact could find the necessary facts by clear, cogent, and convincing evidence, we affirm the termination of parental rights, and lift the order staying the adoption of C.L.C. pending resolution of the appeal.

FACTS

C.L.C. was born on July 13, 2005. K.C. is the child's mother and R.C. is the father. The parents have a history of domestic violence and drug and alcohol abuse.

In September 2005, Child Protective Services (CPS) received a report about the impact of the parents' alcohol use on two-month-old C.L.C. The parents were reportedly drinking heavily four to five times a week and using methamphetamines. The CPS report states that the parents repeatedly left the child "buckled in his car seat 2 or 3 times a day for 1 to 1 ½ hours, at least 5 times a week." Despite repeated attempts, CPS was unable to contact the parents and closed the case.

In 2006, CPS began receiving reports about domestic violence between R.C. and K.C. In July 2006, R.C. was arrested for domestic violence assault of K.C. and attempting to elude the police. According to police reports, R.C. and K.C. argued while doing laundry at an apartment complex. When R.C. got in his car to leave, K.C. tried to take the car seat out of the car while holding C.L.C. in her arms. R.C. drove away,

[1] For the first time on appeal, K.C. and R.C. also claim that the failure to appoint counsel to represent C.L.C. violated due process. In In re Dependency of M.S.R., ___ Wn.2d ___, 271 P.3d 234 (2012), our supreme court held that the superior court has the discretion to appoint counsel where necessary, and that under the constitution, the statute RCW 13.34.100(6), and court rules, the "right to appointment of counsel is not universal," and the decision as to whether to appoint counsel is to be decided on a case-by-case basis. M.S.R., 271 P.3d at 245-46. Because neither K.C. nor R.C. asked the trial court to appoint an attorney to represent C.L.C., we decline to consider this issue for the first time on appeal. RAP 2.5(a).

knocking K.C. and C.L.C. to the ground and dragging them for a short distance. C.L.C. received a head injury and appeared to go in and out of consciousness. When a witness tried to help protect C.L.C., R.C. grabbed C.L.C. and drove off leaving skid marks on the pavement. The police pursued the car for approximately two miles. R.C. crossed the center line, swerved, and drove into the shoulder before coming to a stop. The police had to threaten R.C. with a taser before he would release C.L.C.

K.C. told the police that R.C. punched her and choked her earlier that day and he punched her every other day. K.C. signed a written statement describing what happened that day.

> We were having a good day [u]ntil we started doing laundry and thought I said something mean and he punched me in the arm early today and then when we were doing laundry he choked me while I had my son [C.L.C.] in my arms then he tried to take our laundry out and I told him no and then we started to fight outside of the apartment complex and that is when I tried to get the car seat out of the car and daiper [sic] bag but [R.C.] put the stuff back in the car and tried to grab our son away and then got into the car and I tried to grab stuff out of car again and the back door I grabbed and that is when he started to drive away by dragging me and my son. He has called me a bunch of names today like cunt, bitch, whore and then I told him to stop doing what he was doing but he wouldn't stop doing it. Then someone at the apartment complex grabbed my son the[n R.C.] took him away from the woman then drove away with our son in the front seat while someone tried to take our son out of the car from danger but he just drove away with [C.L.C.] our son in the front seat with [R.C.]

K.C. entered into a safety plan with CPS. K.C. agreed to have a mental health and drug and alcohol evaluation, provide a random urinalysis (UA) for three months, and receive counseling for domestic violence victims. K.C. also agreed to continue to live with her mother until R.C. obtained a mental health evaluation and treatment, a substance abuse evaluation and treatment, and completed anger management. But

K.C. refused to request a no-contact order: "The mother stated that was unnecessary and appeared to minimize the domestic violence, insisting the father . . . 'will not hurt me or my child.' "

On August 20, 2006, the State charged R.C. with domestic violence assault of K.C. in the fourth degree and resisting arrest. At the arraignment, the court issued a no-contact order. K.C. immediately filed a motion to lift the no-contact order. The court held a hearing in early September to address K.C.'s motion to lift the no-contact order. K.C. testified in support of her motion. The State opposed the request. "After hearing testimony and review of [the] police report," the court denied the request to lift the no-contact order but allowed the "defendant and victim to have contact during counseling sessions." On January 18, 2007, R.C. pleaded guilty to domestic violence assault of K.C. in the fourth degree. At sentencing, the court granted K.C.'s motion to lift the no-contact order.

Approximately a year later, on August 27, 2007, the State charged R.C. with felony domestic violence assault of K.C. The certification for probable cause alleged that R.C. knowingly threatened to kill K.C. and "by words or conduct placed" K.C. in reasonable fear that the threat would be carried out.

According to police reports, the Monroe Police were dispatched to the maternal grandmother's residence in response to a report of a domestic violence assault. The father had already left and could not be located. K.C. said that while R.C. was driving and she and the child were passengers in the car, R.C. "became angry with her and told her he was going to grab a shoe lace off one of his shoes in the car and strangle

her in front of their son. He then said he wanted to crash their vehicle into a tree and kill all of them."

On August 31, 2007, a DSHS social worker made a home visit to check on C.L.C. and interview K.C. and the maternal grandmother. The social worker said that K.C. was "initially very defensive and unwilling to speak" with her. When the social worker asked about R.C., K.C. said that he had been in jail "since 8/27/07 'for harassment to me,' but she wasn't the one to call the cops, who she doesn't like." K.C. told the social worker that her mother called the police because K.C. was upset and crying. K.C. denied that R.C. assaulted her and insisted on staying with him.

> The mother denied being assaulted by the father in the 8/27/07 incident, saying the father hasn't assaulted her since a year ago. The mother said she refused the no contact order because the father didn't assault her; it was just a situation where "words flew." The mother said she plans to remain a family with the father; he will continue to pick up [C.L.C.] and spend time with them when he's out of jail. The mother believed the charges would be dropped. . . . The mother adamantly denied there would be another problem with father but said he does need help and had been doing anger management counseling.

K.C. refused to enter into a safety plan with CPS and refused to cooperate with the Snohomish County Prosecutor's Office.

After R.C. was released from jail in October 2007, the parents met with the DSHS social worker. R.C. said that he was engaged in domestic violence treatment but missed classes while in jail. The social worker asked the father to enter into a safety plan that required supervised visitation until he obtained drug and alcohol treatment and made progress in the domestic violence treatment program. According to the social worker, "[t]he mother was very vocal about her unwillingness to have the

father's visits supervised and the father then stated an unwillingness to agree."

At a meeting on October 22 with the DSHS "Safe Child Team," the parents acknowledged but minimized "some domestic violence" and the impact on C.L.C.

> The mother and father admitted to some domestic violence in their relationship but the mother stated this was a normal part of most relationships. Both parents downplayed the significance of domestic violence in front of the child and the risk to the child. Both grandmothers expressed concerns for the child's safety and welfare due to the parents' ongoing fighting and viewed the mother as also having an anger problem.

In December, the social worker received a copy of the father's domestic violence treatment evaluation. The evaluation notes that R.C. scored in the maximum risk range in the violence category of the assessment. Because the father admitted "using alcohol and methamphetamine prior to the [domestic violence] incident in 8/07," the program required verification " 'that he has completed treatment with a chemical dependency agency' " before allowing him to resume domestic violence treatment.

On December 12, DSHS filed a dependency petition. The petition alleged that C.L.C. was abused or neglected under RCW 13.34.030(5)(b), and that there was no parent capable of caring for him under RCW 13.34.030(5)(c) "such that the child is in circumstances which constitute a danger of substantial damage to the child's psychological or physical development."

K.C. and R.C. agreed to enter into an order of dependency under RCW 13.34.030(5)(c), and DSHS placed two-year-old C.L.C. with the maternal grandparents in Yakima. In the agreed order of dependency, the court required K.C. and R.C. to participate in a drug and alcohol assessment and treatment, comply with UA testing, attend anger management classes, and obtain a domestic violence assessment and treatment.

In October 2008, Dr. Faulder Colby conducted a parenting evaluation of R.C. and K.C. Dr. Colby notes that R.C. "has been involved, successfully, in treatment" and has "accessed or completed other required services." However, Dr. Colby expressed ongoing concerns related to the father's inattentiveness to others, and his history of domestic violence and drug use. The evaluation recommends R.C. "undergo an expanded fixed battery assessment of neuropsychological functioning."

In response to the question of whether R.C. has the ability to meet the child's needs and parent appropriately, Dr. Colby states:

> The Father was too focused upon his own agendas during the observation to make much note of [C.L.C.]'s expressed needs. The Father's history of substance abuse and domestic violence also suggest an inattentiveness to his family's needs. Assuming his treatments for domestic violence and substance abuse are successful, then he stands at least an average chance to change his ways. If not, then I suspect he will continue to focus upon his own needs over those of his child.

In the evaluation of K.C., Dr. Colby recommends DSHS change the primary plan to adoption because of the harm to the child caused by exposure to domestic violence.[2] Testing results indicated K.C. was at the "low average" range and performed "at levels consistent with her estimated intelligence." But Dr. Colby recommended a "more complete assessment of intelligence."

In the evaluation, Dr. Colby expresses concern about the mother's minimizing

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[2] The evaluation states, in pertinent part:

> [K.C.] is the 22-year-old mother of [C.L.C.] who was taken into custody by [DSHS] in late December 2007. He currently is placed in Yakima with relatives. The Mother has shown a consistent pattern of crying for help in domestic violence situations only to turn around and refuse to pursue formal charges against her husband. As a result, their son has repeatedly been exposed to domestic violence, putting him at substantial risk, as well. Testing found her to be presenting herself in the best light possible while reporting serious behavioral problems in her son. Additionally, there were signs of cognitive impairment. Recommendations were made with regard to additional assessment and being more formal about changing the primary plan to adoption if the Mother is not able to extricate herself from her current role as domestic violence victim.

the risks of domestic violence. The "Summary, Conclusions, and Recommendations" section of the report addresses the mother's attitude and denial of domestic violence.

> [K.C.] is the 22-year-old mother of [C.L.C.], a toddler who was removed from his parents' care after they repeatedly minimized domestic violence incidents and refused to sign portions of safety plans that would decrease the likelihood that he would continue to be exposed to potentially traumatic and dangerous situations. Drugs and/or alcohol were also involved, although the degree to which they were for the Mother was never clear to me. The Mother minimized the dangers to [DSHS], and she minimized them to me. In some of the documentation I reviewed, she even went so far as to claim that officers who had been called to her residence fabricated allegations of abuse and violence because they did not like her husband. Once the child was removed, the Mother did sign documents and get on course to complete recommended and required services, but it took the removal of her child to wake her up to the fact that [DSHS] and Law Enforcement were serious about protecting him from harm.
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> One of the greatest concerns of [DSHS] in the documentation I reviewed was the Mother's minimizing the risks that, in times of crisis, she (allegedly) reported she feared. These attitudes continued into the present assessment, with the Mother continuing to state that many of the facts that the police reports cited were blatantly untrue and that there was no danger toward her or her son from the father.

In response to whether K.C. has the ability to meet the needs of the child and parent appropriately, the evaluation states that her inability to "place her son's needs above her own" means she cannot keep C.L.C. safe.

> At this point, I have to say, Guarded. The Mother has, in the past, preferred keeping her family together over keeping her son safe. While she has insisted that the authorities have acted upon misinformation, that is the same argument that she made before the case was reopened and resulted in the present arrangement. Seeking an intact family cannot be put ahead of the safety of children. Part of her efforts may be directed at her own needs, realizing that she is better off financially in the marriage than without it. To the extent this is true, and she stays with a man with a known violence history, she is not focused enough upon [C.L.C.]'s needs. While she may be able, with proper parenting training, to learn how to make her child obey her, the greater worry is that she will not learn to place her son's needs above her own. Until she learns this lesson, she will not be able to keep him safe.

In March 2009, DSHS agreed to transition the child home to the parents by April 15 because "the parents have made sufficient progress in services, and . . . in understanding the dynamics of and risk factors associated with domestic violence," and "appear capable of safely parenting the child." On April 3, the court entered an order allowing C.L.C. to live with his parents subject to continued compliance with a number of conditions.

At the review hearing on April 23, the court found the parents were in substantial compliance with services. Subject to compliance with services and other mandatory conditions, the court continued the in-home placement of C.L.C. The order required K.C. and R.C. to continue to participate in services, ensure the child was available for health and safety visits, and "maintain a safe, stable, drug/alcohol free, and domestic violence free living environment that is suitable for [C.L.C.]"

After the parents failed to comply with court ordered UA testing and avoided contact with the social worker, DSHS asked the police to check on C.L.C. On July 17, Snohomish County Sheriff's Deputy Daryl Hansmann went to the parents' home and spoke with K.C. R.C. was not at home. Deputy Hansmann said that when the mother opened the door, he smelled marijuana coming from inside the house. The deputy obtained a search warrant and found marijuana paraphernalia and a duffle bag outside the back door that contained a marijuana bong and a glass pipe.

R.C. and K.C. continued to avoid contact with the social worker. On July 29, DSHS requested the court remove C.L.C. from his parents' care based on their "behaviors and actions since the end of June 2009," including "avoiding contact with"

DSHS, refusal to comply with court-ordered services, and the marijuana paraphernalia found in the home. As a result of the failure to comply with the condition and to maintain contact with DSHS, and concerns about the safety of C.L.C., on July 31, the court terminated the in-home placement and ordered the parents to deliver the child to the maternal grandparents in Yakima.

At the review hearing on August 19, the court entered an order finding that "services offered or provided to the parent(s) have been unable to remedy the unsafe conditions in the home." The court found that returning C.L.C. to the care of his parents "would seriously endanger the child's health, safety, and welfare" because "the child cannot be protected adequately in the home." The court ordered K.C. to continue to attend domestic violence support groups, submit to random UA testing, and obtain another drug and alcohol assessment if she tested positive for drug or alcohol use. The father was ordered to continue domestic violence treatment and submit to random UA testing. The parents were required to maintain contact with DSHS. After agreeing to enter into a safety plan, the court allowed unsupervised visitations with C.L.C.

In November 2009, the maternal grandparents asked DSHS to remove C.L.C. from their care because K.C. and R.C. did not want to follow the court-ordered rules for visitation. According to the maternal grandmother, when K.C. and R.C. stayed with them in Yakima, C.L.C. had nightmares and wet the bed every night. When the parents did not stay with the maternal grandparents, C.L.C. had nightmares or wet the bed only after a visit or a phone call with the parents.

> The maternal grandparents report that when [R.C.] and [K.C.] were not residing in their home [the parents'] contact with [C.L.C.] was minimal. They report that after visits or telephone contact with [the parents, C.L.C.]

> would wet the bed and have nightmares, but that the nightmares were not as bad as they were when [the parents] were residing with them. When [R.C.] and [K.C.] were living with the maternal grandparents [C.L.C.] reportedly wet the bed nightly, had regular nightmares and would wake up screaming and crying. When [the parents] were not living there and were not engaging in contact with [C.L.C.] they reported he did not wet the bed or have nightmares.

DSHS placed C.L.C. with the paternal great grandparents in Gold Bar. C.L.C. lived with the paternal great grandparents from November 2009 until March 2010. K.C. and R.C. lived in a trailer on the property.

In March 2010, the court appointed a volunteer guardian ad litem (VGAL) to represent C.L.C. At the review hearing on March 2, the court found C.L.C. had been in out-of-home care for 15 out of 22 months and continued the concurrent permanency plan of returning the child to the parents or adoption. At the recommendation of DSHS, the court allowed unsupervised visitation of up to eight hours, ordered further cognitive testing, as well as individual couple's counseling. However, because of the length of time C.L.C. had been out of the home, DSHS informed the court that it "will be filing a termination petition and pursue concurrent planning on this case."

Later that month, the paternal great grandparents asked DSHS to remove C.L.C. from their care because of the "disruption" caused by the fighting between K.C. and R.C.

DSHS placed C.L.C. with his maternal grandparents in Yakima. C.L.C. attended a therapeutic preschool in Yakima. In April 2010, C.L.C. was diagnosed with "Reactive Attachment Disorder and Separation Anxiety Disorder involving his relationship with his parents."

In May, DSHS asked R.C. to obtain another domestic violence assessment. The assessment showed that the father continued to score in the maximum risk range for violence. The father agreed to participate in domestic violence treatment again. DSHS also referred the parents to Dr. Robin LaDue for another psychological evaluation and further testing.

In June, the police arrested R.C. for possession of marijuana. At the time of the arrest, R.C. also had an alcoholic energy drink and a stun gun set in the "on" position. R.C. was convicted of possession of marijuana. Later that month, the maternal grandparents asked DSHS to remove then four-year-old C.L.C. from their care. DSHS placed C.L.C. in foster care.

On July 1, DSHS filed a petition to terminate the parental rights of K.C. and R.C. However, DSHS continued to provide services to the parents, including supervised visitation and parenting coaching. The foster mother reported that C.L.C. was a "perfect angel" for the first month. But that after supervised visits with the parents began, C.L.C. physically attacked other children, damaged property, and threatened to harm himself.

An updated drug and alcohol assessment that was completed in September recommended that R.C. participate in an intensive out-patient relapse prevention treatment program.

In late 2010, licensed mental health counselor Christin LaRue conducted a parenting evaluation addressing the relationship between C.L.C. and his birth parents and his foster parents, as well as a visitation assessment. At the first appointment with

K.C. and R.C., they argued loudly while in the waiting room. R.C. then refused to sign the consent forms and left. When R.C. returned, LaRue said he was angry and behaved in an intimidating manner.

In the parenting evaluation, LaRue states that C.L.C. had a strong emotional bond with the parents and that K.C. and R.C. "exhibited significant improvements and skills that they have learned through parenting education." However, LaRue concluded that the bond C.L.C. had with his parents was likely a "traumatic bond" and that the visits with his parents "contribute to the severity of behavioral symptoms [C.L.C.] exhibits."

The additional psychological evaluation and testing by Dr. LaDue was not completed until January 2011 because the parents missed or rescheduled appointments. In the evaluation of R.C., Dr. LaDue concluded that he had cognitive deficits that "suggest [he] would have trouble learning from past experiences." While testing also suggested evidence of cognitive deficits for K.C., it also showed "areas of strength." Consistent with the previous psychological evaluation conducted by Dr. Colby, Dr. LaDue also expressed concerns about K.C.'s ability to keep C.L.C. safe.

> [K.C.] is impulsive and immature. It is likely to be difficult for her to put [C.L.C.]'s needs ahead of her own. She is likely to be self-centered and seek self-gratification without regards [sic] to others needs. It is apt to be difficult for [K.C.] and maintain a safe environment on her own or with her husband. As previously noted, [K.C.] may not fully recognize the impact her behavior would have on her son. It is important for [K.C.] to receive parenting coaching and to have ongoing support to ensure she is able to provide adequately for [C.L.C.]

Dr. LaDue concluded that the parents would have difficulty in providing an emotionally and physically safe environment for C.L.C., "as it will require a complete

change of lifestyle as well as being able to be proactive in making life decisions."

> These problems are the same as those [the parents have] had for the duration of this dependency. It will be important for ongoing and intensive support if [C.L.C.] is returned to his parents. There are significant risks in this situation as neither parent has much in the way of personal resources and needs extra support to maintain any progress that has been made. These risks include:
>
> - Domestic violence
> - Residential instability
> - Continuing dependence on others
> - Vocational difficulties
> - Difficulties with daily affairs.

While Dr. LaDue notes that the parents had participated in many services, Dr. LaDue states that it would be difficult for them "to obtain and sustain change without ongoing wrap around services." Although Dr. LaDue also noted the father's self-reported diagnosis of attention deficit hyperactivity disorder (ADHD), Dr. LaDue did not recommend medication for ADHD.

In February 2011, DSHS arranged five sessions of parenting coaching with Esther Patrick. The parents cancelled two of the scheduled sessions. According to Patrick, R.C. was very controlling and angry, and K.C. appeared passive, afraid, and victimized by him. At the session that took place right before the termination trial began, Patrick asked to meet with the mother alone. In response, the father became extremely angry and aggressive. Patrick said that R.C. left but then returned and yelled at her, saying he did not want K.C. to talk to Patrick without him. Patrick said that because R.C. was acting in a threatening and intimidating manner, she called security. Patrick concluded that despite the services provided, neither parent had made progress in resolving the domestic violence issues. "Because [the mother] does

not appear to keep herself safe from harm, it is not likely that she will be able to safely parent her son. . . . [T]he reunification of [C.L.C.] does not appear reasonable at this time."

On April 8, the VGAL submitted a report to the court addressing the parents' domestic violence and drug and alcohol abuse, and the safety of C.L.C. The VGAL describes the placement and visitation history during the dependency, as well as the services provided and the educational and developmental needs of the child. Because of the failure of the parents to address "the parental deficits that brought [C.L.C.] into protective custody," the length of time C.L.C. had been out of the home, and the child's desperate need for permanency, the VGAL recommended termination of parental rights.

> [The parents] have not been successful in correcting any of the parental deficits that brought [C.L.C.] into protective custody. It appears from Dr. LaDue's report that in order for the [parents] to have a significant chance of being able to safely parent [C.L.C.] they would need <u>continual</u> intensive services in place to assist them for an <u>indefinite</u> period of time. Even then, it appears highly questionable if they would be able to successfully parent [C.L.C.]
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> Considering that the family was involved in Voluntary Services for approximately 18 months before [C.L.C.] was taken into protective custody [C.L.C.] has been involved with [DSHS] for approximately 5 years out of the 5 ½ years of his life. [C.L.C.] will be 6 years old in July 2011. This is far too long and it appears that the chronic instability he has experienced has taken a toll on him. He desperately needs and deserves permanency. I am recommending that [R.C. and K.C.]'s parental rights be terminated so that [C.L.C.] can be made available for adoption.[3]

The termination trial began on April 6, 2011. The trial lasted several days and the court admitted into evidence over 100 exhibits, including the VGAL report. A number of witnesses testified at trial, including K.C., R.C., LaRue, Patrick, the DSHS

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[3] (Emphasis in original.)

social worker, police officers, and Dr. LaDue. The court entered extensive and detailed findings of fact in the order terminating the parental rights of K.C. and R.C. to five-year-old C.L.C.

The court found that "referrals were made for the services ordered, and the parents have more or less participated in the services." The court also found that "[n]o other services capable of correcting the parental deficiencies in the foreseeable future

have been identified." In addressing the domestic violence, the court found:

> Despite the mother's participation in domestic violence victims groups, and the father's completion of a domestic violence perpetrators program the parents show little to no insight into the domestic violence issues they are dealing with and have dealt with. Despite all evidence to the contrary in the record they deny that there is or has been domestic violence in their relationship other than a few verbal disagreements.
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> . . . The evidence from the mother's prior contact with law enforcement clearly supports the conclusion that in addition to an extreme level of verbal conflict that there has been, based on the parents' statements at the time, physical violence and threats as well.

The court concluded the parents were currently unfit to parent C.L.C.

> The parents are currently unfit to parent. The services provided to date appear to have had little impact on the parents' ability to provide a safe, secure, drug and alcohol free home for [C.L.C.] The parents show little insight into the issues impacting their parenting of [C.L.C.]

The court also found that the parent-child relationship clearly diminishes the child's prospect for integration into a stable and permanent home. The court noted that C.L.C. had bonded with his foster family, and concluded there was a need to proceed quickly to prevent further harm and allow C.L.C. to have a "safe, stable home."

ANALYSIS

<u>Standard of Review</u>

In order to terminate parental rights, the six statutory elements set forth in RCW 13.34.180(1) must be established by clear, cogent, and convincing evidence. RCW 13.34.180(1) requires DSHS to prove:

> (a) That the child has been found to be a dependent child;
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> (b) That the court has entered a dispositional order pursuant to RCW 13.34.130;
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> (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;
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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;

(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. . . .

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

"Clear, cogent, and convincing evidence exists when the ultimate fact in issue is shown by the evidence to be 'highly probable.' " In re Dependency of K.R., 128 Wn.2d 129, 141, 904 P.2d 1132 (1995)[4] (quoting In re Welfare of Sego, 82 Wn.2d 736, 739, 513 P.2d 831 (1973)). Where the needs of the child and the rights of the parent conflict, the needs of the child must prevail. In re Dependency of J.W., 90 Wn. App. 417, 427, 953 P.2d 104 (1998). Proof of the six statutory elements establishes that the parents are currently unfit and satisfies due process. In re Dependency of K.N.J., 171 Wn.2d 568, 576-77, 257 P.3d 522 (2011).

If DSHS establishes the statutory elements of RCW 13.34.180, the court must then consider whether termination of the parent-child relationship is in the best interests of the child. RCW 13.34.190(1). Whether termination is in the best interests of the child must be proved by a preponderance of the evidence and determined based on the facts of each case. In re Welfare of Aschauer, 93 Wn.2d 689, 695, 611 P.2d 1245 (1980).

The deference paid to the trial court's advantage of having the witnesses before

[4] (Internal quotation marks and citation omitted.)

it is particularly important in a parental termination proceeding. Consequently, this court will not weigh the evidence or the credibility of the witnesses. Sego, 82 Wn.2d at 739-40. "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." Aschauer, 93 Wn.2d at 695.[5] Unchallenged findings are verities on appeal. In re Interest of J.F., 109 Wn. App. 718, 722, 37 P.3d 1227 (2001).[6]

Services Capable of Correcting Parental Deficiencies in the Foreseeable Future

K.C. and R.C. assert that because further cognitive testing was not provided until 2010, DSHS did not prove that all necessary services were provided or that services were adequately tailored to meet their needs. Both RCW 13.34.180(1)(d) and former RCW 13.34.231(4) (2000) require DSHS to offer or provide services that are capable of correcting parental deficiencies within the near future. 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 Interest of J.W., 111 Wn. App. 180, 187, 43 P.3d 1273 (2002); In re Dependency of T.R., 108 Wn. App. 149, 164, 29 P.3d 1275 (2001). Further, "even where the State inexcusably fails to offer a service to a willing parent, . . . termination is appropriate if the service would not have remedied the parent's deficiencies in the foreseeable future." T.R., 108 Wn. App. at 164.

In 2008, Dr. Colby conducted a psychological evaluation and testing of K.C. and

[5] The State concedes that the trial court erroneously found that C.L.C. was dependant under RCW 13.34.030(6)(c). But there is no dispute that the parents agreed to entry of a dependency order under RCW 13.34.030(6)(b).

[6] K.C. and R.C. do not challenge the findings that establish that elements (a) through (c) of RCW 13.34.180 were met.

R.C. and suggested further cognitive testing. By March 2009, the parents had substantially complied with services, including a drug and alcohol assessment and treatment, UA testing, domestic violence treatment, attendance at domestic violence victim support sessions, parenting evaluations, anger management training, and a "parenting in recovery" class. Accordingly, DSHS recommended returning C.L.C. to the parents and in April, the court entered an order returning C.L.C. to his parents. The court did not order additional cognitive testing until after C.L.C. was removed from his parents in August 2009.

Although Dr. LaDue suggested that the presentation of information through concrete and visual methods might be more effective, Dr. LaDue concluded that the parents were not able to put C.L.C.'s needs before their own in order to provide a safe home environment. Dr. LaDue states that the parents were not able "to obtain and sustain change without ongoing wrap around services." The record does not support the argument that the court erred in finding DSHS provided services capable of correcting parental deficiencies in the near future. The record shows that any cognitive deficits K.C. or R.C. may suffer did not significantly affect their ability to access, understand, comply with, or benefit from services.

Relying on In re Welfare of C.S., 168 Wn.2d 51, 225 P.3d 953 (2010), the parents also claim DSHS did not provide them with the opportunity to attend counseling sessions with C.L.C. or counseling to address C.L.C.'s behavioral issues.

In C.S., the mother corrected her substance abuse problem but her parental rights were terminated based on her alleged inability to address her child's special

needs. C.S., 168 Wn.2d at 55. Although DSHS provided the foster parents with training to effectively deal with the child's ADHD, oppositional-defiant disorder, obsessive-compulsive disorder, and sensory integration disorder, DSHS did not offer the mother this training. C.S., 168 Wn.2d at 55-56.

Here, unlike in C.S., termination was based on ongoing domestic violence and the inability to provide a "stable, safe, and adequate home" for C.L.C. because of the inability to address ongoing domestic violence. The court's findings state, in pertinent part:

> Despite the mother's participation in domestic violence victims groups, and the father's completion of a domestic violence perpetrators program the parents show little to no insight into the domestic violence issues they are dealing with and have dealt with. Despite all evidence to the contrary in the record they deny that there is or has been domestic violence in their relationship other than a few verbal disagreements.
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> . . . .
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> . . . The father's recent reaction to Ms. Patrick's request to work with the mother alone also tends to confirm that not only is there domestic violence consistent with that, but also an effort on the father's part to control the mother's behavior and interactions with others. He was clearly extremely uncomfortable with the mother having contact with Ms. Patrick on her own. The dispute in the reception area of Ms. LaRue's office, to whom they were referred for an attachment assessment, also reflects a high level of conflict even at a time when they knew they were there to be observed and evaluated. Ms. LaRue describes a fairly significant conflict. It was surprising in terms of the level of verbal conflict, and unusual in Ms. LaRue's experience.

Based on the inability to resolve the domestic violence issues, the court concluded the parents could not provide a safe and adequate home for C.L.C.

> The parents are not prepared to provide a stable, safe, and adequate home for [C.L.C.] at present. The parents have clearly not resolved the domestic violence issues which have already negatively impacted [C.L.C.] There is little prospect for the parents to solve the problem because while they are going or have gone through the motions with domestic violence services, they do not really believe there is a domestic violence problem.

They think they just have disagreements or disputes that are comparable to those of other people.

R.C. argues that DSHS should have assisted him in obtaining medication for ADHD. In 2008, the father told Dr. Colby that he used Ritalin and Concerta in the past for ADHD. In 2011, R.C. told Dr. LaDue that he stopped taking medication for ADHD because he no longer had insurance and could not afford it. Neither Dr. Colby nor Dr. LaDue recommended ADHD medication. Dr. LaDue testified at trial that medication for ADHD would have no impact on the father's learning abilities.

Substantial evidence supports the finding that the State proved by clear, cogent, and convincing evidence that all necessary and reasonably available services capable of correcting R.C. or K.C.'s parenting deficiencies in the foreseeable future were offered or provided.

Likelihood of Remedying Conditions in the Near Future

The parents challenge the court's finding that "[t]here is little likelihood that conditions will be remedied so that the child can be returned to the parents in the near future" under RCW 13.34.180(1)(e). The focus of this factor is "whether parental deficiencies have been corrected." K.R., 128 Wn.2d at 144. A determination of what constitutes the "near future" depends on the age of the child and the circumstances of the placement. In re Dependency of T.L.G., 126 Wn. App. 181, 204, 108 P.3d 156 (2005). If all necessary services reasonably capable of correcting the parental deficiencies within the foreseeable future are offered or provided and the deficiencies are not substantially improved within 12 months of the dependency order, there is a rebuttable presumption that this factor is established. RCW 13.34.180(1)(e). The court's findings expressly address the foreseeable near future in this case:

A year or more is not the foreseeable future for a five-year-old child who

> has already been out of his parents' care for most of the past three years of his life, and continuously since August 1, 2009. By law a permanent plan is to be achieved if at all possible within 15 months of removal from the home. More than twice that period has elapsed.

Substantial evidence supports the court's finding that absent "wrap around services," it would be at least a year or more before the parents would be able to provide an adequate and safe home for C.L.C.

> Considering all the evidence in this case the inevitable conclusion is that it would be a year or more, if ever, before the parents would be able to provide a fairly adequate and safe home for [C.L.C.] which is all the law requires for a return home. The more likely conclusion is that they would never be able to do so without the continuous involvement of CPS and law enforcement, and a continual need for provision of services.

Best Interest of the Child

The parents challenge the court's finding that it is in the best interests of C.L.C. to terminate their parental rights. The parents argue that C.L.C. is strongly bonded to his parents and wants to stay with them.

The dominant consideration in determining the best interests of the child is the child's welfare and the parental relationship is subordinate to this consideration. J.W., 90 Wn. App. at 427. "When a parent has not been able to address parental deficiencies over a lengthy dependency, a court is 'fully justified' in finding termination is in the child's best interests." In re Dependency of S.M.H., 128 Wn. App. 45, 60, 115 P.3d 990 (2005) (quoting In re A.W., 53 Wn. App. 22, 33, 765 P.2d 307 (1988)).

The court found that although the parents love C.L.C., it was in C.L.C.'s best interest to terminate the parental relationship.

> Weighing all the evidence the court concludes by a preponderance of the evidence that the best opportunity for [C.L.C.] to grow and bond and to be safe is to terminate the parental rights and expect that with the help of Ms.

> LaRue and what appear to be capable foster parents that he can learn to attach to them whether or not he is given assistance in that process by his parents. . . . The amount of time the case has gone on and the failed attempt to return home has caused further harm to [C.L.C.] and impacted his ability to bond and have a safe stable home. To continue the dependency would only make it more difficult.

The court's finding that termination was in C.L.C.'s best interest is supported by substantial evidence.

Currently Unfit

K.C. also argues that the State did not prove that she is currently unfit to parent C.L.C. at the time of the termination trial. A parent has a due process right not to have the relationship with a natural child terminated in the absence of a finding of current unfitness to parent the child. In re Welfare of A.B., 168 Wn.2d 908, 920, 232 P.3d 1104 (2010).

K.C. argues that because she completed services and demonstrated an understanding of the impact of domestic violence on C.L.C., the record establishes she is fit to parent. The record does not support K.C.'s argument. The court found:

> The evidence from the mother's prior contact with law enforcement clearly supports the conclusion that in addition to an extreme level of verbal conflict that there has been, based on the parents' statements at the time, physical violence and threats as well. There are statements, including at least one that appears to have been written by the mother in her own hand, indicating that she has been injured. There are statements to law enforcement that she had been physically assaulted which she now seems to indicate were simply incorrect representations by law enforcement. It is unlikely that every one of her encounters with law enforcement led to gross misrepresentations of her statements to them. In addition, she displayed a bruise on one occasion. The mother's attempts to portray the altercation at the laundromat as simply a misunderstanding were not credible.

Substantial evidence supports the finding that K.C. was not able to protect

C.L.C. from the domestic violence between the parents. At trial, K.C. continued to minimize the domestic violence. K.C. described the domestic violence in her relationship with R.C. as verbal "disagreements," and testified that the police reports documenting physical violence and threats were fabricated.

We affirm the order terminating the parental rights of K.C. and R.C. and lift the order staying the adoption of C.L.C. pending resolution of the appeal.

Schindler, J.

WE CONCUR:

Dwyer, J.

Cox, J.