IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON

In the Matter of the Dependency of M.I., d.o.b. 9/15/09, A Minor Child. IRA DAVID DECHANT, Appellant, v. STATE OF WASHINGTON, DEPARTMENT OF SOCIAL AND HEALTH SERVICES, Respondent.	No. 67501-0-I DIVISION ONE UNPUBLISHED OPINION FILED: April 23, 2012

Leach, C.J. — A trial court terminated Ira Dechant's parental rights to his biological child, M.I. Dechant argues that we should reverse the termination order because the Department of Social and Health Services (Department) failed to provide him with services. He also contends that substantial evidence does not support the trial court's findings that he lacked parenting experience and suffered from "possible mental health problems." We affirm.

Background

Dechant is the biological father of M.I. Dechant has a history of substance abuse and an extensive criminal history dating back to at least 1983.

Throughout this dependency, Dechant was largely unavailable and would disappear for long periods of time, mostly due to his frequent incarceration.

M.I. was born September 15, 2009, with possible in utero exposure to methadone. Three days after M.I. was born, the Department filed a dependency petition, alleging that M.I. was a dependent child and identifying Dechant as the purported father. At a shelter care hearing on September 22, the Department personally served Dechant with the dependency petition, and the court ordered him to establish paternity. Dechant later participated in a blood draw for genetic testing, which confirmed that he is M.I.'s biological father.

An agreed order of dependency was entered on October 28. The Department initially placed M.I. with his mother on the condition that she remain at Hope Place, a residential substance abuse treatment program. In May 2010, Hope Place discharged the mother for failing to comply with the program's requirements. The Department removed M.I. from his mother's care on July 23. According to the mother, Dechant visited her and M.I. on four occasions between September 2009 and May 2010, although Dechant claims that he saw them weekly during that same time period. Dechant does not dispute that he has not seen M.I. since M.I. was placed in out-of-home care. M.I. has never lived with Dechant, nor has Dechant ever parented M.I. on a full-time basis.

Dechant appeared at a dependency review hearing on June 30, 2010. Afterward, the court entered an order requiring Dechant to participate in a drug

and alcohol evaluation, weekly urinalysis screenings, and parenting classes. The court also ordered him to resolve all pending criminal matters and attend monthly meetings or otherwise make contact with his assigned social worker, Chris Cavanaugh.[1]

In July, Dechant pleaded guilty to malicious mischief. As a part of his sentence, he was ordered to undergo a drug and alcohol assessment as well as a mental health screening. He participated in neither. Dechant failed to attend the dependency review hearing in November, at which the court found that Dechant was not in compliance with court-ordered services. In addition to the previously ordered services, the court required him to attend a dependency workshop. The order listed Cavanaugh's telephone number so Dechant could call to arrange the services. Also in November, the Department filed a petition to terminate both parents' parental rights.

On January 3, 2011, police arrested Dechant on outstanding warrants. During a search incident to arrest, they found 1.1 grams of heroin in his possession. On January 11, 2011, Cavanaugh discovered that Dechant was incarcerated in the King County jail. Cavanaugh visited Dechant at the jail, where she provided him with the notice and summons for the termination hearing and a copy of the Individual Service and Safety Plan (ISSP), outlining the court-

[1] Additionally, the court ordered Dechant to "[e]stablish and maintain a safe, stable, drug/alcohol, and violence free living environment that is suitable for the child" and to "follow all recommendations of evaluators and service providers."

ordered services.[2] Additionally, Dechant received two letters from Cavanaugh leading up to the termination trial, detailing the court-ordered services with telephone numbers. Dechant never arranged to participate in any of the ordered services. Dechant did contact Cavanaugh once to ask about visiting M.I.[3]

In May, Dechant pleaded guilty to attempted heroin possession and three other separate offenses. He received a drug offender sentencing alternative and a 12-month sentence. Dechant was released from King County jail on May 27, 2011. The following week he participated in a drug screening and tested positive for heroin and marijuana.

The termination trial took place in June 2011.[4] At that point, Dechant had spent only six weeks of 2011 out of jail. Dechant appeared for the termination trial in custody with an unknown release date. At the time of trial, M.I. was 21 months old and had lived in the same foster home for nearly a year. M.I. had developed a strong bond with his foster parents, who wished to adopt him.

Dechant, Cavanaugh, and M.I.'s guardian ad litem testified at the termination trial. Dechant testified that from July 2010 until Cavanaugh served him with the termination petition, he had no contact with the Department. Dechant said that after he was served, he called Cavanaugh "once or twice from

[2] An ISSP is produced by the Department and includes information regarding compliance with services, recommendations for new services, and an update on the parents and children.

[3] Cavanaugh did not recall this conversation and maintained that Dechant called her only once to ask about court dates.

[4] M.I.'s biological mother voluntarily relinquished her parental rights, and her rights are not a subject of this appeal.

the jail" because he wanted to see M.I. He denied discussing services with Cavanaugh, although he admitted that he had received her letters. Dechant was able to list the services he was required to participate in but said, "I don't know if they ordered it or just wanted me to complete it."

Cavanaugh testified that she was assigned to the case in December 2009. She said that from the time she received the assignment, she was unable to locate Dechant for nearly 13 months. In early 2010, Cavanaugh asked the mother for Dechant's contact information, and she gave Cavanaugh the telephone number of Dechant's parents. In July 2010, Cavanaugh contacted Dechant's parents at their residence to ask if they knew where Dechant was, but they had not seen him for several months. In November, Cavanaugh again attempted to locate Dechant, this time to serve him the termination petition. Social workers went to Dechant's last two known addresses but were unable to locate him either at those addresses or at his parents' house. Cavanaugh said that after the Office of Child Support told her that Dechant was incarcerated at King County jail, she spoke to him approximately four times. When Cavanaugh visited Dechant in jail, she gave him a copy of the ISSP and showed him the page with the service plan. Cavanaugh said that as she discussed the paperwork with Dechant, he followed along with his own copies. According to Cavanaugh, she sent letters to Dechant in April and May "to let him know that there were services that needed to be completed and asked him if there were any way we could do those services while he was incarcerated, to let me know

and we [could] try to work that out." Cavanaugh testified that Dechant told her he had not contacted the Department because M.I.'s mother told him not to. Cavanaugh stated that in her opinion, Dechant was currently unfit to parent M.I., and she would expect 6 months of sobriety and 9 to 12 months of participation in services before moving toward unsupervised visitation.

The trial court granted the Department's petition. In its order terminating Dechant's parental rights, the court made the following contested findings:

> 2.24 The father's parental deficiencies include a lack of parenting experience and a lack of insight and judgment as to the needs of the child.
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> . . . .
>
> 2.42 The father's parental deficiencies include possible mental health problems.
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> 2.43 All services ordered under RCW 13.34.136 have been expressly and understandably offered or provided, and all necessary services reasonably available, capable of correcting the parents' parental deficiencies within the foreseeable future, have been expressly and understandably offered or provided.

Dechant appeals.

Standard of Review

The United States Constitution protects parental rights as a fundamental liberty interest.[5] To terminate a parent's rights, the Department must satisfy a two-pronged test.[6] The first prong requires proof of the six factors enumerated in

[5] Santosky v. Kramer, 455 U.S. 745, 753, 102 S. Ct. 1388, 71 L. Ed. 2d 599 (1982).

[6] In re Dependency of K.N.J., 171 Wn.2d 568, 576, 257 P.3d 522 (2011).

RCW 13.34.180(1).[7] The Department must prove these factors by clear, cogent, and convincing evidence.[8] Clear, cogent, and convincing evidence exists when the evidence shows that an ultimate fact in issue is highly probable.[9] If the Department satisfies the first prong, the court proceeds to the second prong, determining if termination is in the child's best interests.[10] The Department must prove this second prong by a preponderance of the evidence.[11]

If substantial evidence supports the trial court's findings, we must affirm the termination order.[12] "Substantial evidence is evidence sufficient to persuade a fair-minded rational person of the truth of the declared premise."[13] In this review, we do not make credibility determinations or weigh the evidence.[14] Unchallenged findings of fact are verities on appeal.[15] Whether a termination

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[7] K.N.J., 171 Wn.2d at 576. The six statutory factors are (1) the child has been found to be a dependent child; (2) the court has entered a dispositional order pursuant to RCW 13.34.130; (3) 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; (4) the services rendered 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; (5) there is little likelihood that conditions will be remedied so that the child can be returned to the parent in the near future; and (6) continuation of the parent and child relationship clearly diminishes the child's prospects for early integration into a stable and permanent home.

[8] K.N.J., 171 Wn.2d at 576-77.

[9] In re Dependency of K.R., 128 Wn.2d 129, 141, 904 P.2d 1132 (1995).

[10] RCW 13.34.190(1)(b).

[11] In re Welfare of A.B., 168 Wn.2d 908, 911, 232 P.3d 1104 (2010).

[12] In re Dependency of T.R., 108 Wn. App. 149, 161, 29 P.3d 1275 (2001).

[13] In re Welfare of C.B., 134 Wn. App. 942, 953, 143 P.3d 846 (2006).

[14] C.B., 134 Wn. App. at 953.

order satisfies statutory requirements is a question of law that we review de novo.[16]

Analysis

Dechant argues the Department failed to prove that it offered or provided him all reasonably available, necessary services capable of correcting his parental deficiencies within the foreseeable future.[17] We disagree. If a parent is unwilling or unable to make use of available services, the Department is not obligated to offer other services.[18] The Department is also not required to offer or provide services that would be futile.[19]

Here, the trial court's uncontested findings establish that Dechant failed to make regular contact with the Department and was absent for months at a time, making himself unavailable to complete services. After Dechant established his paternity, the court ordered him to participate in a number of services. The Department, however, was not able to offer or provide Dechant services for a year because his whereabouts were unknown. During this time, the Department made several efforts to contact him. When Cavanaugh finally located Dechant at the King County jail in January 2011, she told him that he was expected to

[15] In re Welfare of C.B., 134 Wn. App. 336, 349, 139 P.3d 1119 (2006).
[16] K.N.J., 171 Wn.2d at 574.
[17] RCW 13.34.180(1)(d).
[18] In re Dependency of Ramquist, 52 Wn. App. 854, 861, 765 P.2d 30 (1988).
[19] T.R., 108 Wn. App. at 163; In re Dependency of P.D., 58 Wn. App. 18, 26-27, 792 P.2d 159 (1990); Ramquist, 52 Wn. App. at 861.

complete the court-ordered services and showed him where in the ISSP those services were listed. Cavanaugh also provided Dechant with her telephone number for the express purpose of setting up those services. After that initial meeting, Cavanaugh sent Dechant two letters with detailed information about the services he was required to complete. Dechant contacted Cavanaugh to request information about visitation and court dates, demonstrating that he knew how to reach her when he wanted to.

Despite the Department's efforts to locate him when he was missing and then communicate with him once he was found, Dechant did not participate in any remedial services. The record establishes that this is so because Dechant either chose not to participate in the dependency process or was unable to because he was incarcerated. Under these circumstances, the Department was not required to do more. Substantial evidence supports the finding that the State proved by clear, cogent, and convincing evidence that the Department offered or provided all necessary and reasonably available services capable of correcting Dechant's parental deficiencies in the foreseeable future.

Dechant contends that Cavanaugh improperly expected him to contact her and express an interest in engaging in services. He believes the Department bears the burden of offering or providing services, and the parent has no duty to seek them out. Dechant cites In re Welfare of Hall[20] for this proposition. There, several caseworkers suggested that Hall take courses or

[20] 99 Wn.2d 842, 664 P.2d 1245 (1983).

read books on parenting but did not offer or provide any training or counseling in parenting skills.[21] The court reiterated that the statute requires the Department to affirmatively offer services and held, "When the State suggests remedial services to a parent, it has an obligation under RCW 13.34.180(4) to at least provide him or her with a referral list of agencies or organizations which provide the services."[22] The court noted, "This is not a case where a parent refused services or referrals which were actually offered."[23] While the Department here did not list specific organizations and agencies for Dechant to contact, neither did it simply suggest that Dechant improve his parental deficiencies. The Department provided him with a list of services and Cavanaugh's telephone number to call to arrange those services. Therefore, the record demonstrates that the Department affirmatively offered services to Dechant. It was Dechant who refused or failed to pursue the services that the Department actually offered. These facts distinguish this case from Hall.

Even if we were to decide that the Department failed to provide the necessary services to Dechant, termination is still appropriate if the services would not have remedied his deficiencies in the foreseeable future.[24] The foreseeable future varies with the child's age.[25] For young children, the foreseeable future may mean a matter of months.[26] Here, the trial court

[21] Hall, 99 Wn.2d at 850.
[22] Hall, 99 Wn.2d at 850.
[23] Hall, 99 Wn.2d at 850.
[24] T.R., 108 Wn. App. at 164.
[25] T.R., 108 Wn. App. at 164.

determined that Dechant's parental deficiencies could not be remedied in the foreseeable future and entered the following uncontested findings:

> 2.59 If the father were to start services today, the [Department] social worker would expect to see 9-12 months of stability, sobriety and participation in services before considering moving to unsupervised visits and reunification with the father. That is too long for the child to wait.
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> 2.60 The near future for the child is now. At the time of trial, the child was 21 months old. He has been the subject of a dependency proceeding his entire life. He has been in foster care for the past 11 months, more than half his life.

Based on these findings, which are supported by substantial evidence in the record, termination was appropriate.

Next, Dechant claims that substantial evidence does not support the trial court's findings that his parental deficiencies included a lack of parenting experience and "possible mental health problems." Assuming, without deciding, that substantial evidence does not support these findings, Dechant cannot demonstrate prejudice. A trial court may terminate a parent's rights only after the Department proves the six statutory factors and establishes that termination is in the child's best interest. Here, the only factor Dechant challenges on appeal is the adequacy of services. Having determined that his argument regarding services has no merit, the State established all six statutory factors. Nor does Dechant contest the finding that termination was in M.I.'s best interest.

[26] See, e.g., Hall, 99 Wn.2d at 850-51 (finding eight months not in foreseeable future of four-year-old); P.D., 58 Wn. App. at 27 (finding six months not in foreseeable future of fifteen-month-old).

The trial court's findings, therefore, support its ultimate decision to terminate Dechant's parental rights. Additionally, the trial court identified other parental deficiencies in its findings and did not rely solely on what it considered his lack of experience and "possible mental health problems." In fact, the trial court focused on Dechant's drug use and vast criminal record and was mainly concerned with the safety risk those deficiencies posed to M.I. Dechant has not shown that the trial court's decision would have been different without the findings he contests. Dechant suffered no prejudice.[27] Any error was harmless. We reject his claim.

Conclusion

Dechant has not established that the Department failed to offer him services or that the findings he challenges affected the trial court's termination decision. We affirm.

Leach, C.J.

WE CONCUR:

Appelwick, J.

Dwyer, J.

[27] We also reject Dechant's assertion that the proper remedy is to remand in order to allow the trial court to strike the portions of the termination order that he claims are not supported by evidence in the record. He has cited no authority for the proposition, so we assume that he has found none. DeHeer v. Seattle Post-Intelligencer, 60 Wn.2d 122, 126, 372 P.2d 193 (1962).