



Services did not make reasonable efforts to prevent an out of home placement, offer preventive services that could have eliminated the need for out of home placement, and did not prove that J.R.P. would be in manifest danger of serious abuse or neglect if he remained in the home. We affirm.

## FACTS

Charles Peralta and Cynthia Rimel began their relationship in 2004 and have lived together since 2006. They remained a couple through at least the last day of trial.

Rimel gave birth to their daughter, J.V.S.R.P., on July 13, 2007. The Department of Social and Health Services (DSHS) removed her from the parents' care in July 2008. She was determined to be dependent in June 2009. When the parents did not comply with services or make sufficient progress in correcting their parental deficiencies, DSHS filed a petition to terminate parental rights. Judge Patricia Clark heard the termination trial in November and December 2010. Rimel eventually relinquished her parental rights. Judge Clark terminated Peralta's parental rights and entered findings of fact and conclusions of law. She cited Peralta's unspecified mental health issues, substance abuse problems, and inability or unwillingness to intervene when Rimel acted inappropriately.

In late 2009 or early 2010, Rimel became pregnant with their second child. Rimel was receiving methadone treatment, and continued to take methadone daily during her pregnancy. The couple did not notify DSHS of Rimel's pregnancy, and did not receive any prenatal care. Their son, J.R.P., was born approximately six weeks premature on September 17, 2010 and required morphine to withdraw from the methadone he received while in utero.

DSHS learned of J.R.P.'s birth when it received a concerned call from the hospital that Rimel was erratic and not emotionally stable, and that there had been conflict between Rimel and Peralta throughout their stay in the hospital. The State removed J.R.P. from the parents' care while Rimel was still hospitalized.

DSHS placed J.R.P. in the same foster home as his older sister and the parents were allowed supervised visits with him. A dependency fact-finding hearing was held in June 2011. Judge James Doerty presided.

DSHS established that Peralta has been receiving methadone treatment for his opiate addiction since 1999. He denies that he has an alcohol problem, but admitted to drinking despite his methadone use. He claims that he stopped drinking entirely two or three months prior to the dependency hearing, but he tested positive for alcohol use twice during that time period.

Further, a number of people involved in the dependency process testified for DSHS in support of dependency. Shawna Miller is the DSHS supervisor for both J.R.P. and J.V.S.R.P., and met with Rimel and Peralta approximately twenty times between November 2009 and the June 2011 dependency hearing. She explained that Rimel fixates and obsesses about J.R.P.'s health, even after being assured there is nothing wrong. For instance, Rimel believes J.R.P. is malnourished and that his foster parents were watering down his formula. Rimel claimed that J.R.P. must be starving because he had not had a bowel movement for four months. Further, Rimel thinks her children are being abused in foster care, and that Miller is involved in a conspiracy to cover up maltreatment of her children.

Miller also testified that Rimel calls frequently and there are some days or nights

when she receives five or six back to back voicemail messages from her. The messages are long, and she is very tangential. Miller may have a 45-minute conversation with Rimel, only to realize at the end of the conversation that Rimel just needs a replacement bus pass.

According to Miller, Peralta can sometimes be a calming influence on Rimel. Other times, he is explosive and angry. He has made personal attacks on Miller, insulted her, cursed at her, and stormed out of meetings. In contrast to Rimel, Peralta only calls Miller about once a month. The conversations vary in tone. He sometimes begins the conversation calmly, and then his voice escalates in volume and tone. But, Miller has also received calls where Peralta is very hostile and angry from the start. Miller has also heard Peralta in the background of Rimel's messages, screaming things like, "If you think that Momma's mad, Dad is very mad."

Miller was concerned about Peralta's drinking. Although Peralta alternately denies or minimizes his drinking, she could smell alcohol on his breath in some meetings. And, in some phone calls, he screams and slurs his words, giving Miller the impression that he is drunk.

Miller concluded that J.R.P. would be at risk if he was returned to the home. She cited Rimel's disorganization and inability to communicate, Peralta's drinking, and her belief that J.R.P. could easily be forgotten or damaged when the situation becomes chaotic. In particular, although she recognized that Peralta can sometimes be a positive influence on Rimel, she expressed concern that the parents occasionally feed off each other's anger and worry, and continue to get extremely chaotic. She stated that Peralta is so unpredictable that he is one of the few parents of whom she is fearful.

Jennifer Johnson was the assigned social worker for J.V.S.R.P.'s case and subsequently was assigned to J.R.P.'s case. She supervised at least seven visits with J.V.S.R.P., and one visit with J.R.P. At the visitation with J.R.P., which occurred at 2:00 in the afternoon, Johnson smelled alcohol on Peralta's breath. She felt that unsupervised visitations with J.R.P. were not warranted, based on Rimel's fixations, Peralta's occasional support of Rimel's fixations, and Peralta's frequent failure to appropriately or timely intervene to calm Rimel.

Johnson's primary concerns as to Rimel were her failure to comply with mental health evaluations, her inability to maintain her own medical and mental health, and her inability to function in a manner that demonstrates she is capable of managing an infant child. Her primary concerns regarding Peralta were his minimization of his alcohol dependence, his noncompliance with mental health counseling, and his failure to intervene with Rimel.

Aron Kaipainen supervised visits with both J.V.S.R.P. and J.R.P. Rimel claimed J.R.P. was receiving watered down formula, and brought the issue up two or three times per visit. On one occasion, she took J.R.P.'s bottle to the bathroom to warm it up by running it under hot water. When she returned, the volume in the bottle was increased, and the formula was a different color. On another visit, Rimel thought J.R.P. had retina damage, and in yet another she claimed that J.R.P.'s teeth coming in was evidence that he was getting solid foods too soon. Because of her various concerns, Rimel had a hard time focusing on the visits. But, Kaipainen testified that when Rimel became fixated on some issue Peralta would normally try to change the subject or quell Rimel's concerns.

Lori Reynolds, J.R.P.'s CASA (Court Appointed Special Advocate), testified that Rimel and Peralta struggle with their own immediate needs. She explained that Peralta seemed to value his relationship with Rimel more than his relationship with J.R.P. And, she was concerned about Peralta's use of alcohol in conjunction with his methadone treatment, his unacknowledged problems with alcohol, and his dishonesty with his methadone treatment provider. Although Peralta was generally reserved when they met in person, she received late night phone calls in which his tone was different.

The trial court entered an order of dependency and disposition finding J.R.P. dependent, and ordering that he remain placed out of the home. It expressed concern about Rimel's substance abuse, mental health issues, and emotional instability. It also expressed concern about Peralta's substance abuse; his failure to deal with his own mental health issues, his sometimes explosive, unpredictable, and angry demeanor; and his inability to consistently intervene to help Rimel calm down. The trial court noted Peralta's denial about his substance abuse problem, his mental health issues, and the significance of Rimel's deficiencies. It determined that Peralta is not credible. Finally, the trial court found that the parents displayed dangerously poor judgment and poor decision making when they placed J.R.P.'s health at risk by actively hiding Rimel's pregnancy from DSHS and failing to receive any prenatal medical care.

The order incorporated the facts from Judge Clark's order terminating Peralta's parental rights as to J.V.S.R.P. Those facts included, in part, that Peralta does not acknowledge his problem with alcohol, mixes alcohol with methadone despite being advised that doing so is extremely dangerous, and that his substance abuse problem directly impacts his ability to be an appropriate, safe, and stable parent. Judge Clark

also found that Peralta has chronic, untreated mental health issues and incorrectly believes he does not need mental health treatment, and that his mental health issues directly impact his ability to be an appropriate, safe, and stable parent.

#### DISCUSSION

Parents have a fundamental liberty interest in the care and welfare of their children. In re Dependency of Schermer, 161 Wn.2d 927, 941, 169 P.3d 452 (2007). But, the State has an interest in protecting the physical, mental, and emotional health of children, as well. Id. A dependency is a preliminary proceeding that does not permanently deprive a parent of rights. In re Welfare of Key, 119 Wn.2d 600, 609, 836 P.2d 200 (1992). Dependency proceedings are designed help parents alleviate problems that led to State intervention and reunite families if appropriate. In re Dependency of T.L.G., 126 Wn. App. 181, 203, 108 P.3d 156 (2005).

In evaluating a claim of insufficiency of the evidence in a dependency proceeding, this court determines whether substantial evidence supports the trial court's findings of fact and whether those findings of fact support the trial court's conclusions of law. In re Dependency of C.M., 118 Wn. App. 643, 649, 78 P.3d 191 (2003). Evidence is substantial if, viewed in the light most favorable to the prevailing party, a rational trier of fact could find the fact by a preponderance of the evidence. In re Dependency of E.L.F., 117 Wn. App. 241, 245, 70 P.3d 163 (2003). The legislature has determined that in balancing the legal rights of parents against the rights of the child, the rights, health, and safety of the child shall be the paramount concern. RCW 13.34.020; Schermer, 161 Wn.2d at 942. This court does not reweigh the evidence or evaluate witness credibility. In re Welfare of C.B., 134 Wn. App. 942, 953, 143 P.3d

846 (2006).

To find a child dependent, the State must prove by a preponderance of the evidence that the child meets the statutory definition of dependency under RCW 13.34.030(6). E.L.F., 117 Wn. App. at 245. RCW 13.34.030(6)(c) provides that a child is dependent if he or she “[h]as no parent, guardian, or custodian capable of adequately caring for the child, such that the child is in circumstances which constitute a danger of substantial damage to the child’s psychological or physical development.” The State does not need to “stay its hand until actual damage to the endangered child has resulted.” In re Welfare of Frederiksen, 25 Wn. App. 726, 733, 610 P.2d 371 (1979).

After a fact-finding hearing on a dependency petition, the court may enter a disposition placing the child out of his home if it finds that (1) reasonable efforts have been made to prevent the need for removal and preventive services have been offered or provided and have failed to prevent the need for removal; and (2) DSHS proved by clear, cogent, and convincing evidence that a manifest danger exists that the child will suffer serious abuse or neglect if the child is not removed from the home. RCW 13.34.130(5).

Disposition orders, including the decision of whether to place the child outside the home are reviewed for an abuse of discretion. In re Dependency of A.C., 74 Wn. App. 271, 275, 873 P.2d 535 (1994). A trial court abuses its discretion when its decision is manifestly unreasonable or based on untenable grounds. State v. Lormor, 172 Wn.2d 85, 94, 257 P.3d 624 (2011).

The parents’ arguments focus on the trial court’s findings regarding Peralta’s



substance abuse and mental health issues. Although they offer some argument that the findings themselves are not supported by substantial evidence, the crux of their argument is that there is insufficient evidence to support the conclusion that Peralta presents a danger of substantial damage to J.R.P.

I. Substantial Evidence

Peralta assigns error to 19 findings of fact, claiming that they are not supported by substantial evidence. But, Peralta's argument only challenges eight findings of fact: 2.2w, 2.2u, 2.2v, 2.2y, 2.2aa, 2.3, 2.4, and 2.5. Of those eight, findings of fact 2.3, 2.4, and 2.5 are, respectively, the court's conclusions that J.R.P. is dependent, that J.R.P. should remain in DSHS's custody, and that DSHS made reasonable efforts to prevent the need to remove J.R.P. from the home. Rimel assigns error to 27 findings of fact, claiming that they are not supported by substantial evidence. But, she only offers argument regarding the trial court's finding of fact 2.4, that it is contrary to J.R.P.'s welfare to return home. Otherwise, she simply incorporates Peralta's argument. An assignment of error that is unsupported by argument is considered waived. State v. Goodman, 150 Wn.2d 774, 782, 83 P.3d 410 (2004).

A. Substance Abuse

The parents first argue that finding of fact 2.2w is not supported by substantial evidence. Finding of fact 2.2w provides:

Charles Peralta is currently enrolled in opiate replacement chemical dependency treatment at Therapeutic Health Services ("THS"). As of June 10, 2011 he is in compliance with the opiate replacement program at THS which includes daily methadone doses, attends individual chemical dependency appointments, breathalyzer tests, and random urinalysis. However, there is no evidence that THS has considered Mr. Peralta's alcohol abuse into his chemical dependency treatment. THS was not

aware that Mr. Peralta had 2 positive ETG UAs [Ethyl glucuronide urine alcohol tests] on 5/24/11 and 5/27/11. There was no evidence Mr. Peralta has received any sort of treatment for his reliance upon alcohol.

They challenge only one sentence of this finding: “[T]here is no evidence that THS has considered Mr. Peralta’s alcohol abuse into his chemical dependency treatment.” They argue that the finding is contrary to the record, citing Peralta’s testimony that he discussed alcohol with his THS counselor, and that his counselor knew that he continued to drink alcohol until two or three months before the dependency hearing.

But, the only evidence on this issue came from Peralta, not THS. The trial court determined that Peralta is not a credible witness. Still, even when taking his testimony as entirely truthful, Peralta’s testimony established only that he told THS he drank alcohol. He did not testify that his methadone treatment included treatment for his alcohol abuse. During the time Peralta claimed he was not drinking alcohol at all, he tested positive for alcohol consumption twice. There is no evidence that THS was aware of those positive tests. The trial court’s finding is supported by substantial evidence. There is no evidence that THS altered Peralta’s methadone treatment to include treatment for his alcohol abuse, and Peralta’s alcohol use could not have been treated if THS did not know the true extent of his abuse.

The parents also challenge finding of fact 2.2u, that Peralta’s alcohol use combined with methadone “is concerning as it relates to the parenting” of J.R.P.; finding of fact 2.2aa that the parents’ phone calls were evidence of intoxication, substance abuse, mental instability, or very poor judgment; and finding of fact 2.2v, that Peralta “does not recognize the negative impact [of] his alcohol use” and “is in denial of his problem with alcohol.” They argue that these findings are unsupported insofar as

they characterize Peralta's present condition.

Past history is a factor that the trial court may consider when determining current fitness and whether substance abuse will be remedied in the future. In re Dependency of J.C., 130 Wn.2d 418, 427-28, 924 P.2d 21 (1996). But, the State cannot rely solely on past substance abuse to prove current unfitness when the evidence shows the parent is responding to treatment. C.B., 134 Wn. App. at 957-58. The parents argue that DSHS cannot rely on Peralta's past abuse, because he had not consumed alcohol for the several months before the dependency hearing and that his THS providers indicated he was in compliance with his treatment program.

But, Peralta tested positive for alcohol use twice just three weeks before the dependency hearing, and his assertions that he had not been drinking for two to three months prior to the hearing carry little weight in light of the trial court's finding that he is not credible. This case does not call for us to determine how recent alcohol use must be to count as "present," but here there is substantial evidence that Peralta's substance abuse was ongoing. Further, this case is not like J.C. and C.B. Those cases were both termination cases that considered whether it was likely that the parents could remedy their substance abuse problems in the near future. J.C., 130 Wn.2d 420, 425; C.B., 134 Wn. App. at 946, 953, 956. That is not the question presented in this dependency case. Dependency and termination proceedings have different objectives, statutory requirements, and safeguards. Key, 119 Wn.2d at 609.

B. Mental Health Issues

The parents make a conclusory statement that these findings "are minimal and not supported by a preponderance of the evidence." But, the trial court admitted into

evidence the findings of fact and conclusions of law terminating Peralta's parental rights as to J.V.S.R.P. In that proceeding, Judge Clark entered specific findings that Peralta has chronic, untreated mental health issues and refuses to make any progress toward adequately addressing the issues. Those findings are substantial evidence to establish Peralta's mental health issues by a preponderance of the evidence. The trial court found that "[t]here is no evidence that [Peralta] has made progress addressing his mental health issues and concerns established by Judge Clark in December . . . 2010" and that his "late night ranting and raving phone calls" are evidence of mental instability or other issues. This finding was supported by his failure to participate in a mental health evaluation to which he was referred and by his conduct with DSHS staff both in person and in phone calls and phone messages.

## II. Dependency Finding and Placement

### A. DSHS's Reasonable Efforts to Provide Services

DSHS has a duty to offer all reasonably available services that are needed to correct parental deficiencies. T.L.G., 126 Wn. App. at 198. Peralta claims DSHS failed to make reasonable efforts to limit Rimel's contact with J.R.P. or offer Peralta services to help him deal with Rimel's mental health issues. He first argues that the trial court did not consider entering a temporary restraining order pursuant to RCW 26.44.063. But, RCW 26.44.063 deals with temporary restraining orders to prevent sexual or physical abuse. Those concerns are not implicated in this case.

Second, Peralta argues DSHS did not, prior to the entry of the disposition order, offer Peralta services to help him cope with Rimel and effectively parent in light of her mental health issues. He argues that the trial court should have found that such

services were required before entering a disposition order that placed J.R.P. outside of the home. But, during the proceedings regarding J.V.S.R.P., and during the time between J.R.P.'s birth and the dependency hearing in this case, Peralta was offered services to remedy his deficiencies. He has systematically failed to take advantage of those services. He was ordered to participate in a substance abuse evaluation with THS. But, he continued to drink alcohol and tested positive for alcohol use twice in the months leading up to the dependency fact-finding. He was offered mental health counseling. But, after stating at the fact-finding that he had been participating in mental health counseling, he then conceded that the counseling was with "[n]obody in particular. It was just self-help things." DSHS scheduled two appointments for Peralta to participate in a mental health assessment with a parenting component.<sup>1</sup> He did not show up for either appointment. These services were the necessary service referrals to begin to address his deficiencies. Peralta has failed to make a good faith effort to participate in counseling to correct his deficiencies. Further, he continues to deny the full extent of Rimel's deficiencies and believes her to be a good mother capable of parenting. DSHS satisfied its duty to refer Peralta to necessary services.

Finally, Rimel argues that DSHS failed to make reasonable efforts to prevent the need for an out-of-home placement, because it did not provide the parents with J.R.P.'s medical records in response to their various concerns.<sup>2</sup> She argues that had they been

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<sup>1</sup> The record indicates DSHS scheduled a third appointment and advised Peralta to attend. However, the record does not disclose whether or not he kept the third appointment. Peralta does not argue that he did.

<sup>2</sup> Rimel also argues the trial court's statement that the parents were presented with "medical evidence that contradicts their speculative concerns" is not supported by evidence. The trial court's finding is supported to the extent that the parents were told there was no medical basis for their concerns.

provided medical documentation, their fears would have been alleviated and their parental deficiency would have been remedied. There was no evidence to substantiate the harms they feared existed. The parents were repeatedly informed that there was no merit to their concerns. Rimel believed DSHS was involved in a conspiracy against her. DSHS was reasonable in informing Peralta and Rimel that their concerns were unwarranted. The irrational fear is evidence of the deficiency in parental judgment. Further, Rimel has not provided any authority that providing records is the type of “services” contemplated by RCW 13.34.130(5).

B. Danger of Substantial Damage

The ultimate question in this case is whether DSHS presented substantial evidence to support the dependency finding which requires evidence of a danger of substantial damage to J.R.P. Dependency as to Rimel is not disputed. However, the parents’ arguments suggest Peralta’s substance abuse and mental health issues do not establish a danger of substantial damage, and the dependency finding was therefore erroneous. Contrary to that characterization, Peralta’s substance abuse and mental health issues do establish a danger of substantial damage, and they were not the only factors considered.

1. Substance Abuse

With regard to Peralta’s substance abuse, the parents assert that no expert testified that combining alcohol with methadone could be dangerous, and that there was no evidence produced that Peralta drank other than in moderation. But, Judge Clark determined that Peralta has chronic substance abuse issues, is addicted to opiates, is an untreated alcoholic, does not acknowledge his problem with alcohol, and

chooses not to receive treatment for his alcohol problem. In that order, Judge Clark cited evidence that Peralta left frequent voicemail messages while under the influence of alcohol. In one finding, Judge Clark discussed Peralta's simultaneous use of alcohol and methadone:

Mr. Peralta mixes alcohol with methadone. Mixing alcohol with methadone is extremely dangerous, as both alcohol and methadone are nervous system depressants, and mixing the two can result in exacerbating the intoxicating effects of the other and can lead to slowed breathing and possibly death. Mr. Peralta has been advised of the dangers of mixing alcohol with methadone and has insisted he can continue to drink alcohol on a regular basis while he uses methadone on a daily basis.

In conclusion, Judge Clark determined that "Peralta's substance abuse issues directly impact his ability to be an appropriate, safe, and stable parent to his children."

The parents should not be surprised that the trial court took notice of this previous order, which established Peralta's substance abuse issues, the dangerous effect of mixing methadone and alcohol, and the negative effect his substance abuse has on his parenting abilities. Further, Peralta's substance abuse issues are not isolated incidents that related only to J.V.S.R.P. Rather, his behavior continued after J.R.P. was removed. He continued to leave voicemail messages late at night in which he sounded intoxicated. A DSHS supervisor and social worker smelled alcohol on his breath at meetings and visitations. He continued to deny that he has an alcohol problem and has consequently not received treatment. He claims that he stopped drinking two or three months prior to the dependency hearing, but tested positive for alcohol twice during that period. In short, his substance abuse problem continued. While discussing Peralta's parenting abilities, Miller, Johnson, and Reynolds all

expressed concerned about his drinking. DSHS provided sufficient evidence for a rational trier of fact to find by a preponderance of the evidence that Peralta's substance abuse affected his parenting ability and posed a risk of substantial damage to J.R.P.

2. Mental Health Issues

The parents argue that, "mental illness is not, in and of itself, proof that a parent is unfit or incapable. The court must examine the relationship between the mental condition and parenting ability" and "children may not be removed from their homes merely because their parents are mentally ill." T.L.G., 126 Wn. App. at 203.

This is not a case where J.R.P. was removed merely because of Peralta's mental health issues. After finding that Peralta had chronic, untreated mental health issues and refused to make any progress toward adequately addressing the issues, Judge Clark determined that Peralta's mental health impacted his ability to be an appropriate, safe, and stable parent. Relying on those findings and the evidence since that proceeding, the trial court here determined that Peralta had failed to make progress toward remedying his mental health issues. These findings are sufficient to establish a nexus between Peralta's mental health issues and a danger of substantial damage to J.R.P.

3. Peralta's Inability to Protect J.R.P. from Rimel

Peralta also argues that DSHS did not present sufficient evidence to overcome the legislative preference that J.R.P. should stay in the family home, because its evidence was insufficient to show a manifest danger that the child would suffer serious abuse or neglect if left in the home.

Rimel has significant substance abuse and mental health issues that render her



unable to take care of J.R.P. by herself. During her hospitalization after delivering J.R.P., she left the hospital to obtain methadone without informing the hospital of her whereabouts. Also during her hospital stay, a security officer responded to a call about an argument between Peralta and Rimel. The officer intervened and calmed the parents down. Almost nine months later, in the middle of the night, Rimel called the officer's place of employment three times, talked about her methadone use, and said she remembered the officer by his tattoo. While testifying at the dependency hearing, Rimel's answers were nonresponsive and tangential. Her mood and emotions escalated quickly and rapidly, and she was unable to complete her testimony due to deteriorated mental health. She seems to have an obsession with methadone, uses it in combination with other medications, and continued to use it while pregnant with J.R.P.

Peralta is devoted and committed to Rimel and has not indicated that he intends to parent J.R.P. without her. Thus, the issue is not only whether Peralta can care for J.R.P., but also whether he can be a sufficiently stable force for J.R.P. against potential harms from Rimel. The evidence indicates that he cannot.

As a starting point, it is problematic that Peralta does not fully acknowledge Rimel's deficiencies. When Rimel is agitated, Peralta can sometimes intervene and calm her. Other times, he fails to calm her or does not attempt to intervene at all. In some cases, he supports her unreasonable fixations. In general, Peralta is unpredictable and can be explosive and angry.

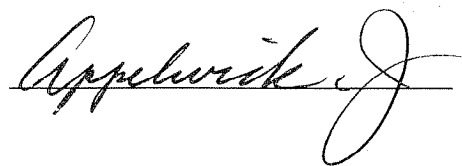
As a couple, they have been unable to keep and maintain appointments. Although Rimel in particular fixates and obsesses over medical issues, they both do so

to an extent that is not within normal parameters. For instance, they both believed at different points that J.R.P. was malnourished, that he was lactose intolerant, and that he was having convulsions in response to immunizations, despite the fact that they were informed there was no merit to those assertions. They actively hid Rimel's pregnancy, and put J.R.P. in danger by failing to receive prenatal care.

He claims that, even if not always successful at deescalating Rimel's concerns, he had the capacity to not engage Rimel when she is preoccupied with unhealthy concerns, and that he testified he would remove J.R.P. from the situation if he thought J.R.P.'s safety was at risk. But, even though Peralta sometimes soothed Rimel's concerns, he supported them at other times. Peralta's testimony that he would remove J.R.P. if he was in danger carries little weight in light of the trial court's findings that he is not credible and that he does not fully appreciate the severity of Rimel's deficiencies.

These factors provide substantial evidence for the trial court's dependency finding. Likewise, the trial court's finding that J.R.P. would be in manifest danger of serious abuse or neglect if he was not removed from the home is supported by clear, cogent, and convincing evidence.

We affirm.



WE CONCUR:

