

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In the Matter of the Dependency of)	No. 67537-1-I
A.M.H., dob 9/22/04, and)	
A.D.H., dob 10/5/05,)	(Consolidated with No. 67538-9-I)
)	
Minor children,)	DIVISION ONE
)	
STATE OF WASHINGTON,)	
DEPARTMENT OF SOCIAL)	
AND HEALTH SERVICES,)	UNPUBLISHED OPINION
)	
Respondent,)	
)	
v.)	
)	
L.H.,)	
)	
Appellant.)	FILED: June 4, 2012

Schindler, J. — L.H. appeals the trial court’s order terminating parental rights to her two children, A.M.H. and A.D.H. L.H. argues that the Department of Social and Health Services (DSHS) failed to offer or provide the necessary services capable of correcting her parental deficiencies.¹ Because substantial evidence supports the

¹ For the first time on appeal, L.H. also claims that the failure to appoint counsel to represent A.M.H. and A.D.H. 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 L.H. did not ask the trial court to appoint an attorney to represent A.M.H. and A.D.H., we decline to consider this issue for the first time on appeal. RAP 2.5(a).

termination order, we affirm.

FACTS

L.H. is the mother and M.H. is the father of A.M.H., born on September 22, 2004, and A.D.H., born on October 5, 2005. The parents have an extensive history of drug and alcohol abuse and domestic violence. The father was first arrested for domestic violence against the mother in May of 2002. Since then, “numerous police reports . . . document high levels of conflict and no contact order violations.” L.H. has sustained multiple broken ribs and head injuries. A.M.H. and A.D.H. were exposed to the domestic violence between L.H. and M.H.

In 2007, Dr. William McKee diagnosed L.H. with post traumatic stress disorder (PTSD), major depression, panic disorder, and alcohol dependency. In December 2007, L.H. completed a substance abuse evaluation. L.H. reported an extremely high tolerance for prescription pain medication. The evaluation concluded the mother was drug dependent and recommended a two-year intensive outpatient program. In 2009, L.H. started using methamphetamine.

On June 20, 2009, L.H. used a baseball bat to destroy furniture in the family home and smash M.H.’s car. When police arrived, L.H. was rocking back and forth and mumbling to herself. The father said that L.H. threatened to harm him and the children. L.H. was charged with domestic violence malicious mischief in the first degree. A no-contact order prohibited L.H. from contacting M.H. until July 2012. L.H. violated this order immediately upon her release.

On August 6, 2009, Child Protective Services removed A.M.H and A.D.H. from

the home and placed the children in foster care. The children displayed significant mental health, emotional, and behavioral problems, including threats and acts of violence. Four-year-old A.M.H. called the social worker a number of offensive names and attempted to push her down a flight of stairs. A.M.H. threatened to kill a day care provider by breaking her legs with a baseball bat, then pouring gasoline in her mouth and lighting a match. A.M.H. was diagnosed with PTSD, separation anxiety, and aggression. Three-year-old A.D.H. was diagnosed with PTSD and engaged in inappropriate sexual touching. Both children required services which led to improvement in their behavior. The foster parents said that A.M.H. and A.D.H. were not toilet trained and required constant supervision and redirection.

On October 28, 2009, the court entered an agreed order of dependency. The court found A.M.H. and A.D.H. had 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 under RCW 13.34.030(5)(c).

The court found that L.H. and M.H. had an extensive history of domestic violence and numerous violations of no contact orders. The court found that the mother had significant mental health issues, including major depression, PTSD, panic disorder, and alcohol dependency. The court also found that L.H. had a history of substance abuse, including methamphetamine use, alcohol dependence, and high tolerance to prescription drugs.

The court ordered L.H. to obtain an updated drug and alcohol evaluation and

psychological evaluation with a parenting component, and participate in individual mental health counseling and parenting classes.

In November, DSHS social worker Bonnie Johannes sent L.H. a list of referrals for the court-ordered services, including a referral for a domestic violence assessment at Morgan Counseling.

In December, social worker Anne Sacquitne provided L.H. with referrals for the psychological evaluation, updated drug and alcohol evaluation, mental health counseling, and parenting classes. Sacquitne again provided L.H. with a referral to Morgan Counseling for a domestic violence assessment. L.H. told Sacquitne she was engaged in the program at the Domestic Abuse Women's Network (DAWN) and was attending a domestic violence support group on Tuesday nights, and another domestic violence support group in Wenatchee on Friday nights.

In April 2010, L.H. completed a combined mental health, drug, and alcohol evaluation with Robert Ewanio at Coastal Treatment Services Inc. Ewanio concluded that L.H. needed treatment for alcohol and drug dependence, bipolar disorder, PTSD, and possible borderline personality disorder. Ewanio recommended weekly individual counseling sessions for at least a year. In addition, Ewanio recommended psychotherapy with a therapist specializing in dependence on prescription medication and other mental health issues. L.H. entered the outpatient treatment program at Coastal to address her mental health and chemical dependency issues.

After cancelling a number of appointments, L.H. completed a psychological evaluation with a parenting component with Dr. Ellen McAtee in May. Dr. McAtee

diagnosed L.H. with drug and alcohol dependence, as well as PTSD. Dr. McAtee also diagnosed L.H. with dependent personality disorder with self-defeating personality traits, and borderline personality traits. Dr. McAtee noted in her report that L.H. refused to release the results of the substance abuse evaluation. Dr. McAtee found that L.H.'s "problems with substance abuse in addition to her psychological problems, including her need to be dependent on a man who was abusive to her, as well as her physical aggressiveness toward him, raises serious concern about her ability to parent her children."

Dr. McAtee recommended inpatient chemical dependency treatment, followed by intensive outpatient treatment for one to two years. Dr. McAtee also recommended long-term psychotherapy once or twice per week for a minimum of two years "to deal with the issues of dependency, self-centeredness, victimization, and the other problems that exist for her." Dr. McAtee concluded that L.H. should not attempt to work on parenting issues until she addressed drug dependence and mental health issues.

Based on Dr. McAtee's recommendations, Sacquitne provided L.H. with a number of referrals. L.H. told Sacquitne she was participating in domestic violence treatment at DAWN and Eastside Domestic Violence. But L.H. would not sign a release to verify that she was engaged in these programs. Sacquitne sent L.H. additional information about a free support group for parents who have been victims of domestic violence. Sacquitne also referred L.H. to the Foster Care Assessment Program (FCAP). FCAP referred L.H. to the Harborview Center for Sexual Assault and Traumatic Stress (Harborview).

L.H. attended 10 counseling sessions at Coastal Treatment Services. After cancelling a number of appointments and failing to comply with the requirement of urinalysis, L.H. stopped treatment at Coastal. L.H. said that she was transferring to a different treatment program. In August, Coastal discharged L.H. from the program, stating her prognosis was “[p]oor.” L.H. then asked Sacquitne if she could attend substance abuse treatment at Recovery Centers of King County (RCKC) in Kent. Sacquitne said she could not refer L.H. because M.H. was engaged in treatment at RCKC.

In September 2010, L.H. began trauma-focused cognitive behavioral therapy with social worker Shelly Griffiths at Harborview. Griffiths focused on crisis intervention and helping L.H. to develop coping skills for dealing with PTSD and domestic violence. L.H. told Griffiths that in addition to the cognitive behavior therapy, she planned to see a psychiatrist she had seen in the past, “Dr. Nguyen.” Throughout therapy with Griffiths, L.H. was in contact with M.H. M.H. called L.H. from jail and wrote her letters. Griffiths informed L.H. that therapy should stop until L.H. was no longer in contact with her abuser. L.H. assured Griffiths that she had stopped responding to M.H.’s attempts to contact her and asked to continue treatment.

That same month, L.H. obtained a chemical dependency assessment at Sound Mental Health. Mental health provider Monica Tolliver-Scott recommended inpatient treatment. L.H. refused to participate in inpatient treatment and did not attend scheduled counseling sessions.

In October, Court Appointed Special Advocate (CASA) Cheryl Forbes went to

visit M.H. at his home. M.H. had recently been released from jail. Forbes found L.H. at M.H.'s home. L.H. was unresponsive and Forbes called for aid. Police arrested M.H. for violating the no-contact order with L.H. While M.H. was in jail, L.H. wrote him a letter saying she wanted to hear his voice, that she would send him money, and that she was trying to have the no-contact order lifted but that she did not want to see him again.

Over the course of the 20-month dependency, L.H. visited A.M.H. and A.D.H. inconsistently, often arriving late or cancelling visits. At times she appeared to be under the influence of drugs or alcohol. On December 7, DSHS filed a petition to terminate the parental rights of L.H. and M.H.

In January 2011, L.H. entered Providence Saint Peter Hospital for "detoxification from benzodiazepine" and was released two days later. On January 26, L.H. entered inpatient treatment at Prosperity Counseling and Treatment Services Inc. L.H. denied using drugs but tested positive for amphetamine, methamphetamine, Oxazepam, hydrocodone, and hydromorphone. L.H. left treatment two days later. In February, L.H. obtained a chemical dependency assessment at New Traditions. The assessment recommended inpatient treatment. L.H. attended some outpatient sessions but refused inpatient treatment.

In April, L.H. was three sessions away from completing the first portion of cognitive behavioral therapy treatment with Griffiths when she stopped attending counseling sessions. Griffiths terminated L.H. from the program in May. Griffiths asked L.H. to contact her when she was ready to return to treatment. L.H. did not contact

Griffiths.

The termination trial began on July 11. The trial lasted six days. A number of witnesses testified, including L.H., M.H., Sacquitne, Dr. McKee, Griffiths, CASA Forbes, Ewanio, and care providers for A.M.H. and A.D.H. The trial court admitted over 100 exhibits.

Sacquitne testified that she was in contact with L.H. every month and believed L.H. was receiving domestic violence treatment. Dr. McKee testified that he urged L.H. to enter inpatient chemical dependency treatment and mental health therapy. Dr. McKee testified that in January 2010, L.H. told him that she was participating in counseling for domestic violence. L.H. testified that she engaged in domestic violence treatment with several service providers. “I’ve been to many places to get help for domestic violence. I’ve gone to DAWN. I’ve gone to East Side Domestic violence. And then I have been at Harborview . . . [a]nd Coastal.”

On the third day of trial, M.H. relinquished his parental rights to the children. The CASA testified that throughout the dependency, she visited the children each month and had ongoing and frequent contact with the mother. The CASA testified that the mother is not capable of providing adequate care for the children, nor will she be capable of doing so in the foreseeable future, and recommended termination.

The court terminated L.H.’s parental rights to her children. The court entered extensive and detailed findings of fact on the order terminating the parent-child relationship. The court found that the mother was “not currently engaged in any services to address her parental deficits of substance abuse, untreated [PTSD], and

Bipolar Disorder.” The court found that L.H. “was repeatedly discharged from her services either by her failure to accurately disclose information or because she failed to attend the services that were offered.” The court concluded that the mother’s failure to follow through with services for two years “demonstrates that she is not likely to follow through with services in the near future to address her parental deficits.”

The court found that because the mother failed to address her significant chemical dependency and mental health issues, there is little likelihood that these conditions could be remedied within the near future of the children. The court found there is no dispute that L.H. is a victim of domestic violence and the “severity and duration of the mother’s victimization is so significant that it is difficult to comprehend.” But the court rejected the mother’s claim that DSHS did not offer services to address her victimization. The court found that DSHS offered or provided all necessary services to L.H. but she failed to follow through with referrals and misrepresented her engagement in services.

2.26 The mother reported that she was engaged in the appropriate and offered domestic violence services at DAWN and Eastside Domestic Violence. The social worker relied upon the mother’s representations, which turned out to be false.

2.27 The mother is a victim of domestic violence. During the pendency of the dependency she made very modest and inconsistent effort to follow up on offered services for domestic violence victims and no meaningful effort to avail herself of offered/ordered services for mental health and/or substance abuse.

...

2.63 The mother has not engaged with a psychiatrist. The mother repeatedly told providers she was aware of the need for psychiatric services and had a provider she could go to. The mother told Monica Tolliver-Scott she was going to Dr. Nguyen at Valley Medical Center for psychiatric intervention. Ex. 60. The mother also told other providers she had not seen Dr. Nguyen while the dependency was pending.

The court concluded DSHS established the statutory requirements to terminate parental rights by clear, cogent, and convincing evidence, and that termination was in the best interest of the children.

ANALYSIS

Standard of Review

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) sets forth the six elements:

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

Evidence is clear, cogent, and convincing “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)² (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).

If DSHS establishes the statutory elements of RCW 13.34.180(1), 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)(b). Whether termination is in the best interests of the child must be proved by a preponderance of the evidence and

² (Internal quotation marks and citation omitted.)

determined based on the facts of each case. In re Welfare of Aschauer, 93 Wn.2d 689, 695, 611 P.2d 1245 (1980). Unchallenged findings are verities on appeal. In re Interest of J.F., 109 Wn. App. 718, 722, 37 P.3d 1227 (2001).

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

The only statutory element L.H. challenges on appeal is whether all necessary services reasonably capable of correcting her parenting deficiencies within the foreseeable future, have been expressly and understandably offered or provided as required under RCW 13.34.180(1)(d). L.H. asserts DSHS did not provide or offer any domestic violence services.

DSHS has a duty to provide all necessary services tailored to each parent's needs. In re Dependency of D.A., 124 Wn. App. 644, 651, 102 P.3d 847 (2004). In determining whether adequate services have been provided, "the court may consider any service received, from whatever source, bearing on the potential correction of parental deficiencies." D.A., 124 Wn. App. at 651-52.

L.H. argues that because DSHS did not offer or provide necessary services to address domestic violence victimization, the parental rights termination order must be reversed. The record does not support L.H.'s argument that she was not offered or

provided domestic violence treatment.

The record shows that L.H. was offered a number of services to address domestic violence and related mental health issues. When DSHS initially referred L.H. for a domestic violence assessment, L.H. told DSHS social worker Sacquitne that she was engaged in domestic violence treatment at DAWN and a support group in Wenatchee. L.H. later told Sacquitne she was engaged in domestic violence treatment at Eastside Domestic Violence. Sacquitne believed that L.H. was engaged in domestic violence services despite her refusal to sign a release of information. Consistent with her representations to Sacquitne, at trial, L.H. testified that she received domestic violence treatment at DAWN and Eastside Domestic Violence. L.H. also admitted that she received domestic violence treatment at Harborview. The focus of cognitive behavioral therapy at Harborview was the domestic violence L.H. experienced and the resulting PTSD and major depression.

The record also shows that L.H. did not complete the treatment at Harborview. The court also ordered L.H. to follow Dr. McAtee's recommendations to engage in long-term psychotherapy to address her mental health issues around dependency, self-centeredness, victimization, and other mental health issues. Nonetheless, L.H. did not do so. It is well established 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).

The cases L.H. relies on, In the Matter of the Dependency of T.L.G., 126 Wn. App. 181, 108 P.3d 156 (2005), and In re Welfare of C.S., 168 Wn.2d 51, 225 P.3d 953

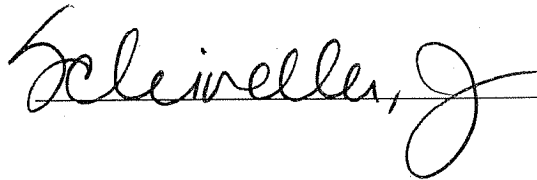
(2010), are distinguishable. In T.L.G., DSHS did not identify specific parental deficiencies and provide obviously needed mental health and anger management for over a year while waiting for a long-delayed psychological evaluation. T.L.G., 126 Wn. App. at 203.

In C.S., although the mother was able to address her substance abuse, 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 C.S.'s special needs, DSHS did not offer the mother the same training. C.S., 168 Wn.2d at 55-56.

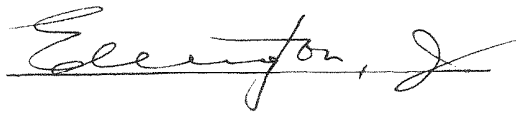
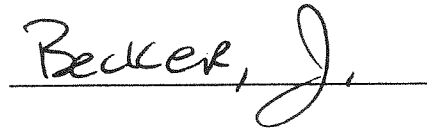
Unlike in T.L.G. and C.S., DSHS timely offered L.H. an array of services to address her parental deficiencies, including domestic violence and related mental health treatment. The focus of counseling at Harborview was domestic violence. Recognizing that L.H. was a victim and perpetrator of domestic violence, Dr. McAtee concluded one to two years of intensive psychotherapy was necessary to address her issues of dependency, self-centeredness, and victimization. Ewanio recommended that L.H. engage in a dual treatment program to address mental health issues and drug dependence for at least a year. L.H. refused these services while maintaining that she was receiving domestic violence treatment at DAWN and Eastside Domestic violence. Although L.H. was engaged in counseling at Harborview, she stopped going to counseling sessions and did not complete the program.

In summary, substantial evidence supports the trial court's finding that DSHS provided all necessary services capable of correcting the domestic violence victimization suffered by L.H.

We affirm the order terminating the mother's parental rights to A.M.H. and A.D.H.

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WE CONCUR:

Handwritten signature of Eberly, J. in cursive script, written over a horizontal line.Handwritten signature of Becker, J. in cursive script, written over a horizontal line.