

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

In the Matter of the Dependency of)	No. 67563-0-I
)	
S.R.J., d.o.b. 12/14/08,)	
)	
Minor Child.)	
)	
WASHINGTON STATE DEPARTMENT)	
OF SOCIAL AND HEALTH SERVICES,)	
)	
Respondent,)	
v.)	
)	
NEENA S. HENDERSON,)	UNPUBLISHED OPINION
)	
Appellant.)	FILED: August 20, 2012
)	

Ellington, J. — In this termination of parental rights case, Neena Henderson contends the Department of Social and Health Services (Department) failed to establish the necessary elements of RCW 13.34.180(1)(d)-(f) by clear, cogent, and convincing evidence. Specifically, Henderson argues the court erred in finding that a referral for recommended child-parent therapy was timely made and that termination was in the child’s best interests. Substantial evidence supports the court’s findings, however, and we therefore affirm.

BACKGROUND

S.J. was born on December 14, 2008. She is the child of Neena Sunflower Henderson and Rodd David Jackson, who married in 2007 and live together. S.J. was removed from Henderson's care the day after she was born and has lived in adult/fictive kin care since then.¹

In June of 2008, Henderson had entered into an agreed order of dependency for S.J.'s two older siblings, R.S.J and S.W., who were removed because of risks posed by Henderson's chronic mental illness.² The Department recommended services for Henderson during her pregnancy with S.J. In November 2008, Dr. Joanne Solchany performed a psychiatric evaluation. She diagnosed Henderson with psychotic and bipolar disorders, and recommended mental health therapy, medication therapy, and child-parent therapy for a minimum of a year. Additionally, she recommended a safety plan involving a reliable primary caregiver/co-parent who could intervene in the event Henderson's mental health became unstable.

S.J. was born in December. From January 5 to January 13, 2009, Henderson was hospitalized for mental health treatment. Social worker Kristina Wright made a referral for a bonding and attachment parenting assessment for Henderson in February 2009. Later that month, however, Henderson was arrested for domestic violence

¹ S.J.'s guardian is the daughter of Henderson's father's former girlfriend.

² R.S.J. now lives with his paternal grandmother pursuant to a third-party custody agreement, and S.W. lives with his father (who is not Rodd Jackson) pursuant to a parenting plan.

against her mother, was briefly jailed, and was then hospitalized at Western State Hospital until May 2009.³

A default dependency order as to Rodd Jackson was entered on February 25, 2009. Agreed dependency and dispositional orders as to Henderson were entered on April 22, 2009. The dispositional order required Henderson to participate in a mental health program and to follow all recommendations regarding treatment and medications. The order also required Henderson to maintain a safe, stable, clean, and drug/alcohol-free living environment, maintain regular contact with her social worker, and sign release forms for confidential documents related to case planning. Orders after review hearings in May and August 2009 required Henderson to submit to a domestic violence assessment and engage in outpatient treatment at Sound Mental Health.

From July 2008 to January 2010, social worker DanVonique Reed managed R.S.J's and S.W.'s cases. He testified that Henderson's compliance with services was sporadic, and that he did not make a referral to child-parent therapy because he did not believe Henderson's mental health was stable enough for the therapy to be effective.

In June 2009, Henderson received a psychiatric evaluation from Dr. Mary Bartels of Sound Mental Health. Dr. Bartels diagnosed Henderson with schizoaffective or bipolar disorder and prescribed antipsychotic medication, which she believed would be necessary for the "foreseeable future."⁴ Between June of 2009 and June of 2011,

³ This was Henderson's fourteenth hospitalization for mental health treatment since age 14.

⁴ Report of Proceedings (RP) (July 13, 2011) at 570-71.

Bartels met with Henderson approximately 10 times. Bartels expressed concerns in her treatment notes about Henderson's compliance with medication, and later testified that Henderson was not compliant with her treatment plan.

Martin Knutson was Henderson's counselor and case manager at Sound Mental Health. Knutson testified that he had never seen her "actively symptomatic,"⁵ and that her insight had improved with treatment, although he agreed that her goal, to be free of medication, could be reason for concern about her insight. Henderson's treatment plan included monthly case management, weekly individual therapy, monthly medication management, and weekly group therapy. Henderson failed to appear for appointments between September 28, 2009 and February 4, 2010. Knutson reduced the frequency of individual therapy from weekly to monthly, and did not enroll Henderson in group therapy. Henderson cancelled appointments in August, October, and December 2010.

Henderson began supervised visitation with S.J. and R.S.J. in August 2009. Visitation supervisors described her behavior with the children as sometimes appropriate and at other times giving serious concern, such as when she appeared lethargic and was laughing and talking to herself, failed to perceive physical danger to the children, became confrontational, or appeared to be under the influence of drugs or alcohol. One supervisor testified she would never have left S.J. unsupervised with Henderson.

In September 2010, Henderson's mother-in-law reported that Henderson's odd behavior was causing her to fear for her own and R.S.J.'s safety. Henderson was

⁵ RP (July 18, 2011) at 607-08.

taken for an emergency mental health assessment but was not hospitalized.

On November 30, 2010, Henderson was referred to child-parent therapy with Catherine Brewe. The referral was not made earlier because of Henderson's "active" mental health issues.⁶ The therapy began in January 2011 and focused on improving her reflective functioning (ability to perceive and respond to the child's individual needs), boundary and limit-setting, and consistency in parenting.

Henderson was "highly motivated" and made progress during the first six months of therapy,⁷ which was expected to last for 12 to 18 months. The efficacy of the therapy depended on Henderson's ability to participate, including the amount of time she and S.J. could spend together. But Henderson resisted weekly visits, citing the demands of her schedule, and requested biweekly visits instead. The therapist testified that parents with severe bipolar disorder are often unable to be effective parents without mental health treatment, medication, and social support.

On December 10, 2010, the Department filed a petition seeking termination of Henderson's parental rights, alleging she had not completed services offered to correct her parental deficiencies. Rodd Jackson's parental rights were terminated by default order on February 28, 2011. Henderson's trial began on July 6, 2011.

Henderson's social worker cited Henderson's mental health as her primary parental deficiency, along with her "lack of understanding of her mental health."⁸ She

⁶ RP (July 11, 2011) at 343.

⁷ RP (July 12, 2011) at 528.

⁸ RP (July 11, 2011) at 383.

noted that Henderson did not have a full-time co-parent, and that Rodd Jackson should not fill that role because of his history of substance abuse and domestic violence and because his parental rights had been terminated. She had provided Henderson with housing referrals, but Henderson gave no indication she was willing to live apart from Jackson.

The court-appointed special advocate (CASA) testified that Henderson's mental health problems prevented her from being a permanent parent. Both the CASA and the social worker testified that Henderson could not address her parental deficiencies in a timely fashion, that S.J. would be at risk in Henderson's care without supervision, and that it was in S.J.'s best interests for Henderson's parental rights to be terminated.

On July 21, 2011, the court terminated Henderson's parental rights. According to the court's unchallenged findings, Henderson suffers from "a psychological incapacity or mental deficiency that is so severe and chronic as to render the mother incapable of providing proper care for the child for extended periods of time."⁹ She has been committed to mental health hospitals 14 times, has been repeatedly diagnosed with bi-polar disorder, psychotic disorder, and psychoaffective disorder, does not have insight into her mental health issues and is not compliant with therapy or medication. Her disordered thinking and poor decision making place the child at risk, but she does not recognize a need for treatment or medication. At one supervised visit, she showed significant decompensation, "including running out into the road, falling asleep during the visit, . . . exhibiting paranoia, and failing to supervise the child such that the child

⁹ Clerk's Papers at 312 (Finding of Fact 1.63).

injured herself twice during the visit.”¹⁰ Further, Henderson insists on residing with Jackson and believes he poses no risk to the child.

The court found that “RCW 13.34.180(1)(e)(ii) applies to the mother . . . [who] suffers from a psychological incapacity or mental deficiency that is so severe and chronic as to render [her] incapable of providing proper care for the child for extended periods of time, and there is a documented unwillingness of the mother to receive and complete treatment,”¹¹ such that there is little likelihood conditions will be remedied in the near future. These findings also were not challenged.

The court concluded that continuation of the parent-child relationship between S.J. and Henderson would clearly diminish S.J.’s prospects for early integration into a stable and permanent home, and that termination of the parent-child relationship is in the best interest of the child.

DISCUSSION

A biological parent has a fundamental liberty interest in the care, custody, and control of her child.¹² However, this fundamental right is not absolute; the State has both a right and an obligation to intervene to protect a child when a parent’s actions or inaction endangers the child’s physical or emotional welfare.¹³

When the court finds that the six statutory elements set forth in RCW 13.34.180

¹⁰ Clerk’s Papers at 308 (Finding of Fact 1.36).

¹¹ Clerk’s Papers at 312 (Finding of Fact 1.63).

¹² Santosky v. Kramer, 455 U.S. 745, 753, 102 S. Ct. 1388, 71 L. Ed. 2d 599 (1982); In re Dependency of A.V.D., 62 Wn. App. 562, 567, 815 P.2d 277 (1991).

¹³ In re Sumey, 94 Wn.2d 757, 762, 621 P.2d 108 (1980); A.V.D., 62 Wn. App. at 567.

are established by clear, cogent, and convincing evidence, and that termination is in the best interests of the child, it may enter an order terminating parental rights.¹⁴ Clear, cogent and convincing evidence exists when the ultimate fact in issue is shown by the evidence to be highly probable.¹⁵ We give deference to the trial court's findings, and we do not make credibility determinations or weigh the evidence.¹⁶ Unchallenged findings of fact are verities on appeal.¹⁷ Whether a termination order satisfies statutory requirements is a question of law we review de novo.¹⁸

Henderson assigns error to only 10 of the 71 findings of fact. Her primary allegation is that the Department failed to prove that all necessary services were offered pursuant to RCW 13.34.180(1)(d) because it failed to provide timely child-parent therapy.¹⁹

Adequacy and Timeliness of Services

The Department must provide all court-ordered and necessary services, and

¹⁴ RCW 13.34.190; In re Dependency of K.R., 128 Wn.2d 129, 140-41, 904 P.2d 1132 (1995).

¹⁵ K.R., 128 Wn.2d at 141.

¹⁶ In re Dependency of C.B., 134 Wn. App. 942, 952-53, 143 P.3d 846 (2006).

¹⁷ Id. at 954.

¹⁸ In re Dependency of K.N.J., 171 Wn.2d 568, 574, 257 P.3d 522 (2011).

¹⁹ The requirements of RCW 13.34.180(1) that Henderson alleges are not satisfied are “(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 . . . ; and (f) That continuation of the parent and child relationship clearly diminishes the child’s prospects for early integration into a stable and permanent home.”

must tailor the services to each parent's needs.²⁰ To meet its burden, the Department must show either that it offered the parent remedial services but that the parent did not avail herself of them, or that the parent waived her right to such services.²¹ However, the Department is not required to offer services from which a parent is unable to benefit.²² And “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, which depends upon the age of the child.”²³

Henderson argues the Department failed to timely offer child-parent therapy, which she alleges would remedy her parenting deficiencies. She argues that “protracted delay” in providing therapy recommended by Dr. Solchany in late 2008 and not provided until November 2010 precludes the court's finding that all necessary services were properly offered under RCW 13.34.180(1)(d).

We reject this argument. First, child-parent therapy does not address severe chronic mental health problems or lack of insight into them, which are Henderson's primary parental deficiencies. Second, the referral was delayed because Henderson was hospitalized for the first months of 2009 for an acute mental health crisis that included an arrest for assaulting her mother, and from May 2009 to late 2010, she was not stable in her mental health or consistent with her treatment plan.

²⁰ In re Dependency of D.A., 124 Wn. App. 644, 651, 102 P.3d 847 (2004).

²¹ In re Dependency of S.V.B., 75 Wn. App. 762, 770, 880 P.2d 80 (1994).

²² In re Dependency of T.R., 108 Wn. App. 149, 163, 29 P.3d 1275 (2001).

²³ Id. at 164.

Henderson's comparison of her case to In re Dependency of T.L.G.²⁴ and In re Termination of S.J.²⁵ is unpersuasive. T.L.G. involved parents whose parenting deficiencies were never clearly identified by the Department and who were not offered mental health services over the course of a two-year dependency,²⁶ because such services were conditioned on a psychological evaluation, the protracted delay of which "cannot be laid solely (or even mostly) at the feet of the parents."²⁷ When the evaluation was finally completed, the parents, though "hostile, difficult to work with, and resistant to services,"²⁸ completed the services offered, including anger management and parenting classes. Moreover, they made independent efforts to obtain services, called the caseworker and the court to complain about the delay, filed a formal complaint with the Department ombudsman, hired a private social worker to help them reunify with their children, and asked the court to authorize a counselor they located nearer their home on Whidbey Island.²⁹

In S.J., the State failed to provide needed mental health services, requiring a "sequential approach" in which the mother had first to address her substance abuse problem.³⁰ But in fact, the parenting deficiencies and the substance abuse were related to mental health issues. After failing three times in a year to complete inpatient drug

²⁴ 126 Wn. App. 181, 108 P.3d 156 (2005).

²⁵ 162 Wn. App. 873, 256 P.3d 470 (2011).

²⁶ T.L.G., 126 Wn. App. at 205.

²⁷ Id. at 201.

²⁸ Id. at 202.

²⁹ Id.

³⁰ S.J., 162 Wn. App. at 881-82.

treatment, she succeeded soon after receiving mental health services.³¹

These cases are not similar to Henderson's. More analogous is In re Dependency of T.R.³² There, a mother whose problems included disorganization, lack of insight, confusion, and psychological instability received a variety of services during six years of working with the Department.³³ She contended, however, that because family therapy recommended by a psychologist to facilitate possible reunification of the siblings was not provided, the Department had not offered all necessary services.³⁴ We concluded in T.R. that "[t]he evidence does not indicate that family counseling would have improved [the mother's] ability to function as a parent."³⁵ Like Henderson, the mother in T.R. was offered multiple services over a period of years, but "[d]espite this, her attendance was intermittent and her progress minimal."³⁶ The reunification of the family was "never more than a theoretical possibility," and family counseling would not have addressed the primary parenting deficiencies that prompted the termination.³⁷

Here, over several years of services directly addressing her primary parenting deficiencies, Henderson has demonstrated intermittent attendance and minimal progress, and there is no evidence that absent improvement in her mental health, child-parent therapy could correct these deficiencies or improve Henderson's ability to

³¹ Id.

³² 108 Wn. App. 149, 29 P.3d 1275 (2001).

³³ T.R., 108 Wn. App. at 162.

³⁴ Id. at 162-63.

³⁵ Id. at 163.

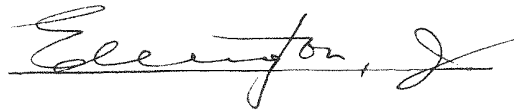
³⁶ Id. at 164.

³⁷ Id. at 163.

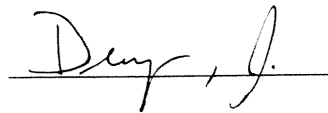
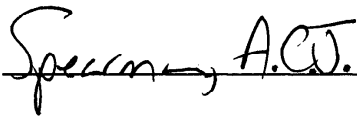
function as a parent.

Substantial evidence supports all the findings challenged by Henderson. The State has proved by clear, cogent, and convincing evidence that all necessary and reasonably available services capable of correcting her parenting deficiencies in the foreseeable future were offered or provided. Further, Henderson does not challenge the finding that she “will not remedy her parental deficiencies in [S.J.]’s near future.”³⁸ When there has been an adequate showing that there is little likelihood that conditions will be remedied so that the child can be returned to the parent in the near future, the finding that continuation of the parent-child relationship clearly diminishes the child’s prospect for early integration into a stable and permanent home “necessarily follows.”³⁹ Substantial evidence supports the court’s finding that S.J.’s best interests were served by terminating Henderson’s parental rights.

Affirmed.



WE CONCUR:



³⁸ Clerk’s Papers at 312 (Finding of Fact 1.64).

³⁹ T.R., 108 Wn. App. at 166 (internal quotation marks omitted) (quoting In re Dependency of J.C., 130 Wn.2d 418, 427, 924 P.2d 21 (1996)).