

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In re Dependency)	NOS. 67846-9-I
)	67847-7-I
A.B., b.d. 01/09/01)	(Consolidated Cases)
J.B., b.d. 04/22/98.)	
)	DIVISION ONE
STATE OF WASHINGTON,)	
DEPARTMENT OF SOCIAL AND)	
HEALTH SERVICES,)	
)	
Respondent,)	UNPUBLISHED OPINION
v.)	
)	FILED: September 10, 2012
JASON BUTCHER,)	
)	
Appellant.)	
)	

Lau, J. — Jason Butcher appeals the trial court’s order terminating his parental rights to his sons AB and JB, arguing that the record fails to support the trial court’s findings that the Department of Social and Health Services (DSHS) offered him all necessary services reasonably available to correct his parental deficiencies and that termination was in the children’s best interest. Because substantial evidence supports the court’s findings and because those findings support the conclusions of law

terminating Butcher's parental rights, we affirm.

FACTS

Jason Butcher is the biological father of two boys, AB and JB.¹ At the time of Butcher's parental rights termination trial, AB was 10 years old and JB was 13 years old. Butcher also has two biological daughters, TB and FS.

On September 17, 2009, police arrested 37-year-old Butcher after 15-year-old FS accused him of raping her during an overnight stay at Butcher's residence. Later that day, AB and JB were removed from Butcher's care and placed in protective custody. Butcher was initially confined in the Snohomish County jail² and remained incarcerated throughout the entire dependency proceeding.

On September 22, 2009, the court held a shelter care hearing. At that time, DSHS recommended that Butcher complete the following services: (1) domestic violence assessment, (2) drug/alcohol evaluation, (3) psychological evaluation with a parenting component, and (4) dependency process workshop. Because Butcher opposed the recommended services, they were not ordered, but "reserved."³ Ex. 3 at 6.

¹ Lisa Ringling, who is not a party to this action, is the biological mother of AB and JB. Ringling relinquished her parental rights through an order of termination entered July 21, 2011.

² Butcher was subsequently transferred to the Washington Corrections Center in Shelton. On December 1, 2010, Butcher was transferred to the Stafford Creek Corrections Center.

³ RCW 13.34.065(4)(j) states in part, "The court may not order a parent to undergo examinations, evaluation, or services at the shelter care hearing unless the parent agrees to the examination, evaluation, or service[.]"

On October 28, 2009, the court entered an agreed order finding AB and JB dependent pursuant to RCW 13.34.030(6)(c). Because Butcher again opposed DSHS's recommendation that he engage in a domestic violence assessment and drug/alcohol evaluation, those services were again reserved. The issue of whether Butcher should participate in a sexual deviancy evaluation was also reserved pending resolution of his criminal charges. Butcher was ordered to engage in a psychological evaluation with a parenting component and to follow all recommendations.

On January 21, 2010, following an initial dependency review hearing, the court ordered Butcher to engage in the following services: (1) a domestic violence assessment, (2) a drug/alcohol evaluation, (3) a psychological evaluation with a parenting component, and (4) a dependency workshop. As noted above, Butcher remained incarcerated at this time. Accordingly, at the May 6, 2010 interim review hearing, the court ordered DSHS to make best efforts to confer with Butcher's "detention representative" to determine what services were available to Butcher while incarcerated that are "comparable to what he has been ordered to engage in" and to "assist as able." Ex. 10 at 3.

On July 7, 2010, a permanency planning review hearing was held, and the court found that DSHS had made reasonable efforts to provide services to the family and eliminate the need for out-of-home placement of the children. The court further found that Butcher had not complied with court-ordered services and had failed to make progress toward correcting the problems that necessitated the children's placement in out-of-home care.

On August 18, 2010, Butcher entered an Alford⁴ plea to first degree incest for engaging in intercourse with FS. Butcher was convicted on October 8, 2010, and sentenced to 57 months' incarceration with 36 months' community custody. The court also ordered conditions upon release from prison, including requirements that he refrain from: (1) initiating or prolonging contact with minor children (excluding AB and JB) without the presence of an adult who is knowledgeable of his offense; (2) frequenting areas where minor children are known to congregate; (3) dating women or forming relationships with families who have minor children, as directed by the community corrections officer; and (4) remaining overnight in a residence where minor children live or are spending the night. At sentencing, Butcher's criminal history included a 1996 conviction for third degree rape of a child and a 2005 conviction for failure to register as a sex offender.

On November 23, 2010, at a regular review hearing in the dependency matter, the court found that Butcher had failed to sign current releases of information, to notify his social worker of obstacles to accessing court ordered services, to participate in the dependency process workshop, to complete domestic violence and drug/alcohol assessments, and to complete a psychological evaluation with a parenting component. The court ordered Butcher to engage in these services.

At the April 13, 2011 review hearing, the court found Butcher noncompliant. However, the court noted that Butcher's noncompliance was "not because he does not

⁴ North Carolina v. Alford, 400 U.S. 25, 91 S. Ct. 160, 27 L. Ed. 2d 162 (1970).

want to be involved with services, but because the court ordered services are not available to him due to his incarceration.” Ex. 14 at 5. The court again ordered the same four services.

The court held a two-day termination of parental rights trial on July 20-21, 2011. At trial, Butcher testified that he did not believe he had any sexual deviancy issues. He also testified that he completed two years of sex offender treatment following his 1996 conviction but did not know whether it helped. However, the court found that Butcher had been convicted of incest and child rape. The court also found that Butcher had impregnated his then-14-year-old girl friend when he was 20 years old. The court entered an order terminating the parent-child relationship between Butcher and AB and JB. Butcher appeals.

ANALYSIS

Parental rights are a fundamental liberty interest protected by the United States Constitution. Santosky v. Kramer, 455 U.S. 745, 753, 102 S. Ct. 1388, 71 L. Ed. 2d 599 (1982). In order to terminate a parent’s rights, the State must show by clear, cogent, and convincing evidence:

- (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. The presumption shall not arise unless the petitioner makes a showing that all necessary services reasonably capable of correcting the parental deficiencies within the foreseeable future have been clearly offered or provided. In determining whether the conditions will be remedied the court may consider, but is not limited to, the following factors:

(i) Use of intoxicating or controlled substances so as to render the parent incapable of providing proper care for the child for extended periods of time or for periods of time that present a risk of imminent harm to the child, and documented unwillingness of the parent to receive and complete treatment or documented multiple failed treatment attempts; or

(ii) Psychological incapacity or mental deficiency of the parent that is so severe and chronic as to render the parent incapable of providing proper care for the child for extended periods of time or for periods of time that present a risk of imminent harm to the child, and documented unwillingness of the parent to receive and complete treatment or documentation that there is no treatment that can render the parent capable of providing proper care for the child 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.

RCW 13.34.180(1).

Clear, cogent, and convincing evidence exists when the ultimate fact in issue is shown to be highly probable. In re Dependency of K.R., 128 Wn.2d 129, 141, 904 P.2d 1132 (1995); In re Welfare of H.S., 94 Wn. App. 511, 519, 973 P.2d 474 (1999). If the court finds that the State has met its burden under RCW 13.34.180, it may order termination if it then also finds by a preponderance of the evidence that termination is in the "best interests" of the child. RCW 13.34.190(2); In re Welfare of A.J.R., 78 Wn. App. 222, 228, 896 P.2d 1298 (1995).

The appellate court will affirm a termination order if the trial court's findings are supported by substantial evidence. In re Dependency of T.R., 108 Wn. App. 149, 161,

29 P.3d 1275 (2001). Because the fact finder has the advantage of observing the witnesses, deference to the trial court is particularly important in appellate review of termination decisions. K.R., 128 Wn.2d at 904.

Although the Constitution protects parental rights, a parent does not have an absolute right to the custody and care of a child, and the paramount consideration in a termination proceeding is the welfare of the child. In re Welfare of Young, 24 Wn. App. 392, 395, 600 P.2d 1312 (1979). Where the rights of a child conflict with the legal rights of a parent, the rights of the child should prevail. RCW 13.34.020. A child's right to basic nurturing includes the right to a safe, stable, and permanent home and a speedy resolution of dependency proceedings. RCW 13.34.020; H.S., 94 Wn. App. at 539; In re Dependency of C.R.B., 62 Wn. App. 608, 615, 814 P.2d 1197 (1991).

RCW 13.34.180(1)(d) "requires the State to prove only that it provided the services that were necessary, available, and capable of correcting parental deficiencies within the foreseeable future." T.R., 108 Wn. App. at 164. The State has no obligation to offer futile services. In re Interest of J.W., 111 Wn. App. 180, 43 P.3d 1273 (2002); T.R., 108 Wn. App. at 163; In re Dependency of P.A.D., 58 Wn. App. 18, 792 P.2d 159 (1990); In re Dependency of Ramquist, 52 Wn. App. 854, 861, 765 P.2d 30 (1988).

Although imprisonment alone does not justify terminating parental rights, the trial court may consider the "causes and frequency of imprisonment" in a termination proceeding. In re Interest of Skinner, 97 Wn. App. 108, 120, 982 P.2d 670 (1999). In addition, where the record establishes that the offer of services to an incarcerated parent would be futile, the court may find that all reasonable services have been

offered. In re Welfare of Ferguson, 32 Wn. App. 865, 869-70, 650 P.2d 1118 (1982), rev'd on other grounds, 98 Wn.2d 589, 656 P.2d 503 (1983); In re Welfare of Sego, 82 Wn.2d 736, 740, 513 P.2d 831 (1973); Skinner, 97 Wn. App. at 120; In re Dependency of J.W., 90 Wn. App. 417, 426, 953 P.2d 104 (1998). See In re Welfare of M.J.H., 145 Wn. App. 10, 25, 188 P.3d 510 (2008) (rejecting father's argument that the trial court erred in terminating his parental rights because DSHS failed to offer him services during his incarceration); In re Dependency of Ramquist, 52 Wn. App. 854, 861, 765 P.2d 30 (1988) (“[A] parent's unwillingness or inability to make use of the services provided excuses the State from offering extra services that might have been helpful.”).

Offer of Sexual Deviancy Services

Butcher makes two arguments related to sexual deviancy services. First, Butcher contends that DSHS failed to offer a sexual deviancy evaluation while he was in the Snohomish County Jail or the Washington Corrections Center in Shelton. Butcher argues that such an evaluation was necessary to determine whether his minor sons were at risk, given that his past victims were exclusively teenage females. If his sons were found not to be at risk, Butcher reasons, then the court had insufficient evidence upon which to find that he was “in need of sexual deviancy treatment.” Finding of Fact (FF) 2.18. Butcher's argument is unconvincing. Regardless of the likely gender of Butcher's potential future victims, Butcher's documented sexual deviancy poses some risk to any child in his care. We conclude that substantial evidence supports the court's finding that sexual deviancy treatment was necessary.

Second, Butcher argues that DSHS failed to offer sexual deviancy services

tailored to treat an offender who denies commission of his offense. DSHS social worker Kelli Hogan testified that she offered sexual deviancy treatment to Butcher and that Stafford Creek provided this service. Stafford Creek Classifications Counselor Michael Weber testified that he twice offered sex offender treatment to Butcher. On both occasions, Butcher declined because he denied a sexual deviancy problem. According to Weber, Butcher's denial rendered him ineligible for treatment. Butcher himself understood that he could not simultaneously maintain his innocence while participating in the program.

It has been established that "a parent's unwillingness or inability to make use of the services provided excuses the State from offering extra services that might have been helpful." Ramquist, 52 Wn. App. at 861; P.A.D., 58 Wn. App. at 26. Although Butcher speculates that a different type of service might exist that could treat his sexual deviancy without requiring him to admit his offense, he points to nothing in the record suggesting the availability of such a service.

We conclude that substantial evidence supports the court's findings that sexual deviancy treatment was a necessary service and that DSHS offered all necessary services reasonably available and capable of correcting Butcher's parental deficiencies within the foreseeable future. RCW 13.34.180(d).

Offer of Psychological Evaluation

Butcher challenges the court's finding that while DSHS did not offer Butcher a psychological evaluation with a parenting component between October 2009 and September 2010 (while he was incarcerated in the Snohomish County jail), it did offer

an evaluation after October 2010. DSHS social worker Kelli Hogan testified that she contacted Stafford Creek to inquire whether a psychological evaluation was available. Michael Weber informed her that no such evaluation was available. Hogan also testified that she reviewed a provider list for that geographical area, and she determined that no service providers were available to provide this service in the prison. Substantial evidence thus supports the finding that DSHS offered or provided all necessary services reasonably available and capable of correcting Butcher's parental deficiencies within the foreseeable future. RCW 13.34.180(d). Moreover, even if DSHS failed to offer the service, Butcher fails to establish that a psychological evaluation would have adequately addressed his parental deficiencies. Due to the necessity of sexual deviancy treatment discussed above, any offer of a psychological evaluation would have been futile.

Best Interests

Butcher argues that termination of his parental rights is not in his sons' best interests and challenges the court's finding that "the children do not have a significant bond with their father." FF 2.23. Although Butcher testified that he had "[d]aily" contact with the children, RP (July 20, 2011) at 79, he had custody of the children for less than a month before his arrest. Before that time, the children lived with their mother. Based on our review of the record, we conclude that the court's finding is supported by substantial evidence.

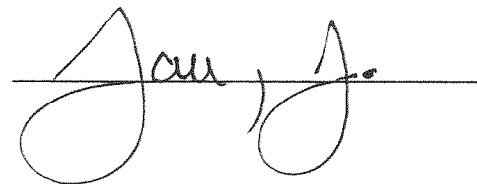
As noted above, imprisonment alone is insufficient to terminate the parent-child relationship, but the court may consider the causes and frequency of imprisonment in a

termination proceeding. Skinner, 97 Wn. App. at 120. Butcher's criminal history includes two convictions for sex-related offenses against children. As the volunteer guardian ad litem (VGAL) noted in her report, these offenses had "spillover" effects on AB and JB, even though they were not direct victims. Ex. 157 at 7. Both boys were in the apartment during one of the incidents for which Butcher was convicted, and one boy was in the apartment during the second. The VGAL's report also indicated that Butcher's manipulation and grooming behaviors created a "conflicting world" for the boys. Ex. 157 at 7.

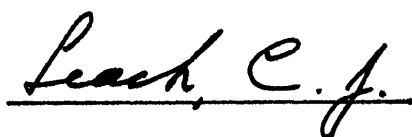
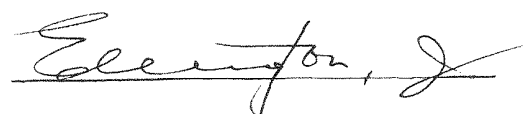
Butcher's conditions upon release, as mentioned above, will severely restrict his ability to parent his children safely and adequately. The boys will be at risk of losing their father to future incarceration if placed in his care. The trial court did not err in finding that termination was in the children's best interests.

CONCLUSION

Because substantial evidence supports the trial court's findings and because those findings support the court's conclusions, we affirm the trial court's order terminating the parent-child relationship between Butcher and his sons AB and JB.

A handwritten signature in black ink, appearing to read "Jau J", written over a horizontal line.

WE CONCUR:

A handwritten signature in black ink, appearing to read "Peach, C. J.", written over a horizontal line.A handwritten signature in black ink, appearing to read "Eberington, J.", written over a horizontal line.

67846-9-I, 67847-7-I/12