IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In the Matter of the Dependency of R.A.M.R.-V.L., A minor.	)	No. 67872-8-I
	)	DIVISION ONE
STATE OF WASHINGTON, DEPARTMENT OF SOCIAL AND HEALTH SERVICES, Respondent,	)	UNPUBLISHED OPINION
v.	)	
ARTURO MARTINEZ, Appellant.	)	FILED: July 23, 2012

Grosse, J. — By order entered October 7, 2011, the trial court terminated the parental rights of appellant Arturo Martinez as to R.L., born September 5, 2005. Because the trial court's findings of fact are supported by substantial evidence from which a rational trier of fact could find the necessary facts by clear, cogent, and convincing evidence, we affirm the trial court's order.

To terminate a parent-child relationship, the State must establish the six elements set forth in RCW 13.34.180(1) by clear, cogent, and convincing evidence.[1] Those elements are

> (a) That the child has been found to be a dependent child;
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> (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

[1] In re Dependency of B.R., 157 Wn. App. 853, 864-65, 239 P.3d 1120 (2010); RCW 13.34.190(1)(a)(i).

> 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; . . .
>
> (f) That continuation of the parent and child relationship clearly diminishes the child's prospects for early integration into a stable and permanent home.[2]

Subsection (e) provides further, in relevant part:

> 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:
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> (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 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.[3]

"Evidence is clear, cogent, and convincing when the ultimate fact in issue is shown by the evidence to be highly probable."[4] We must affirm an order terminating parental rights if substantial evidence supports the trial court's

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[2] RCW 13.34.180(1)(a)-(f).
[3] RCW 13.34.180(1)(e)(i).
[4] B.R., 157 Wn. App. at 865 (internal quotations marks omitted) (citation omitted).

findings of fact in light of the degree of proof required.[5] We do not weigh the evidence or the credibility of witnesses,[6] but rather defer to the trier of fact on issues of witness credibility and persuasiveness of the evidence.[7]

Martinez challenges only the State's proof of the fifth statutory element, arguing that the State failed to prove there was little likelihood that R.L. could be returned to Martinez in the near future. The focus of this factor is "whether parental deficiencies have been corrected."[8] Martinez analogizes his behavior to that of the mother in In re Welfare of C.B.[9]

In C.B., the State removed the children from the mother's custody in September 2003. The court found the mother's three children dependent in November 2003. In December 2004, the State filed a termination petition, and after a hearing the trial court ordered the mother's parental rights terminated. At the hearing, the mother conceded that she was an unfit parent at the time the State removed her children. The mother eventually completed two parenting classes and started, but did not complete, an anger management class. The mother also had drug and alcohol problems. Initially her progress in battling these problems was slow, but after she was twice arrested for driving under the influence (DUI), the mother made remarkable progress in drug and alcohol programs. Her drug counselor testified that the mother was doing wonderfully in the program and was positive and focused, and the mother did not fail any drug

[5] In re Dependency of T.R., 108 Wn. App. 149, 161-62, 29 P.3d 1275 (2001).
[6] T.R., 108 Wn. App. at 161.
[7] In re Welfare of L.N.B.-L., 157 Wn. App. 215, 243, 237 P.3d 944 (2010).
[8] In re Dependency of K.R., 128 Wn.2d 129, 144, 904 P.2d 1132 (1995).
[9] 134 Wn. App. 942, 143 P.3d 846 (2006).

screens after August 2003. And, the State admitted that the mother was doing well in her recovery.[10]

On appeal, the court in C.B. reversed the trial court's order terminating the mother's parental rights. The court noted that the mother produced concrete evidence that she was improving and that the trial court found that the mother would likely improve. As to the timing of the improvement, the court noted that the only evidence as to timing was the State's evidence that the mother needed a 12-week anger management course. The court concluded that without evidence indicating how long it would take for the mother to improve, the State failed to meet its burden of showing that it was highly probable that there was little likelihood that conditions would be remedied so that the children could be returned to the mother.[11]

Relying on C.B., Martinez argues that, as in that case, there is concrete evidence here to show that he was making progress in services such as alcohol treatment and parenting classes. But several unchallenged findings of fact, which are verities on appeal,[12] belie Martinez's argument. In unchallenged findings, the trial court found that the court presiding at a November 2010 dependency review hearing found that Martinez "had made no progress toward correcting his parental deficiencies;" in May and June 2011, Martinez tested positive for cocaine and alcohol; in September 2010, Martinez was convicted of a DUI in violation of the terms of his 2007 DUI probation; in June 2011, Martinez

[10] C.B., 134 Wn. App. at 947-48, 959.
[11] C.B., 134 Wn. App. at 959-60.
[12] L.N.B.-L., 157 Wn. App. at 243.

acknowledged to R.L.'s maternal grandmother that he had been drinking and "was going to stay drunk until he had to go to jail" for the DUI conviction; in August 2011, Martinez entered the home of one of R.L.'s mother's friends uninvited, clearly intoxicated, holding an open beer, and demanding money; and he either refused most of the services offered to him by a social worker or reengaged the services only after the date of the termination hearing. In other unchallenged findings, the trial court found:

> 2.41 The father is an alcoholic who is not in sustained recovery. Since relapsing on alcohol and, on one occasion, using cocaine, he did not begin substance abuse treatment until earlier this week on October 4, 2011. He has not attended sober support meetings since the entry of Judge Fleck's order [which ordered him to do so] in 2010 and there is not [sic] evidence that he attended previously.
>
> 2.42 In August, 2011 the father was evaluated for the need for substance abuse treatment at Consejo. He is evaluated to need Intensive Out-Patient Treatment that typically lasts one year, followed by sober support meetings. This program cannot be completed while the patient is still denying a problem. The father has four (4) DUI convictions and continues to deny responsibility and/or culpability for all of them—claiming to have been wrongly accused in each instance.

These findings show that Martinez was not, as he argues, making progress in correcting his parental deficiencies, as was the mother in C.B. Even disregarding the length of the treatment he will need to address the antisocial personality disorder with which he was diagnosed, Martinez needs a year of substance abuse treatment followed by sober support meetings before he would be able to parent R.L. And, until Martinez stops denying his substance abuse problem, he will be unable to complete the program. A year-plus is not within

the "near future" of a child of R.L.'s age.[13]

Further, Martinez has failed to rebut the statutory presumption in RCW 13.34.180(e). The dispositional order was entered on February 14, 2006. All necessary services reasonably capable of correcting the parental deficiencies within the foreseeable future have been clearly offered or provided. The unchallenged findings set forth above establish that Martinez did not substantially improve his parental deficiencies within the 12 months following entry of the dispositional order. The presumption that arises under these circumstances—that there is little likelihood that conditions will be remedied so that the child can be returned to Martinez in the near future—has not been rebutted.

Substantial evidence supports the trial court's termination findings. We affirm.

Grosse, J.

WE CONCUR:

Leach, C.J.

Schindler, J.

[13] See T.R., 108 Wn. App. at 165-66 (one year is not the "foreseeable" or "near" future for a six-year-old child).