IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In re Dependency S.L.S., a minor, STATE OF WASHINGTON, DEPARTMENT OF SOCIAL AND HEALTH SERVICES, Respondent, v. THOMAS STOKES and SHARMILLA STOKES, Appellants.	)	NOS. 67901-5-I 67905-8-I (Consolidated Cases) DIVISION ONE UNPUBLISHED OPINION FILED: July 30, 2012

Lau, J. — Thomas and Sharmilla Stokes appeal the trial court's order terminating their parental rights to their now three-year old daughter SLS.[1] Thomas argues that the Department of Social and Health Services (DSHS) failed to show (1) little likelihood that conditions will be remedied so that the child can be returned in the

[1] We refer to the appellants by first names for clarity.

near future, and (2) that continuation of the parent-child relationship clearly diminishes the child's prospects for early integration into a stable and permanent home. Both parents argue DSHS failed to show that termination was in SLS's best interest. Because substantial evidence supports the trial court's findings, we affirm the termination order.

FACTS

Witnesses testified to the following facts. SLS was born prematurely on May 20, 2009, weighing less than two pounds. Her fragile state required a three-month hospital stay.

During this hospital stay, Child Protective Services (CPS) received the first of four referrals about SLS's parents, Sharmilla and Thomas Stokes. Hospital staff observed the mother's staggered gait, slurred speech, and difficulty concentrating on several occasions. The CPS social worker took no action at this time because the child was under the hospital's care. SLS was released into the parents' care in August 2009.

The next CPS referral occurred several weeks later. SLS and her parents lived in transitional housing, and the housing case manager reported that the parents were selling and abusing prescription drugs from their apartment and left the baby alone while they were in another part of the building. A social worker contacted the parents. Although the social worker had concerns that the apartment was dirty, SLS appeared adequately cared for at that time.

Not long after, CPS received a third referral regarding SLS's care. The parents' primary care physician reported concerns about the parents' increasing requests for and use of pain killers. The physician's report prompted a CPS investigation. A CPS

social worker made a referral to a public health nurse and developed a safety plan with the parents. The public health nurse expressed concerns to the parents that they allowed SLS to sleep on her stomach on soft bedding and allowed smoke near SLS, who had a premature airway for breathing. CPS closed the case in November 2009.

A fourth CPS referral occurred on December 7, 2009, when SLS was still only six months old. SLS's pediatrician observed Sharmilla falling asleep, failing to complete a simple form, and repeatedly asking the same question in the exam room. The pediatrician also advised Sharmilla that SLS required further medical testing, which the parents failed to facilitate.

Following the pediatrician's referral, CPS filed a dependency petition, and the child was placed in foster care. At a 72-hour shelter care hearing, the court returned SLS to the parents on the conditions that (1) the parents participate in urinalysis (UA) testing, (2) the parents keep SLS's medical appointments, and (3) the parents cooperate with the public health nurse and a Family Preservation Services (FPS) worker.

The nurse and FPS worker visited the family home on December 15, 2009, at three in the afternoon and observed poor living conditions. Despite the hour, the nurse and FPS worker apparently woke the parents, who belatedly answered the door wearing pajamas. The nurse was alarmed to see the baby lying on her stomach on soft bedding, despite prior warnings. The nurse and FPS worker observed other disturbing conditions in the home, including a strong smoke odor, cigarette packages and lighters in the bedroom, dishes used as ashtrays, prescription bottles on the floor, and a

prescription bottle and old, gray cereal in SLS's playpen.

The FPS worker visited the home again in January 2010, which also resulted in significant concerns. Thomas was falling asleep while eating. Both parents appeared under the influence of alcohol or drugs. Again, the house smelled of smoke. Thomas discussed his "nasty smoking habit," and his history in a gang. Sharmilla had an unrealistic understanding of her child's development, incorrectly believing SLS could crawl and talk. Due to Thomas's condition, the FPS worker was unable to adequately explain FPS's role and obtain signatures from the parents for necessary paperwork.

As a result of this visit, a social worker filed an emergency motion to remove SLS, which the court granted on January 7, 2010. The court placed SLS in foster care, where she has remained ever since. The court ordered the parents to participate in services, but the parents failed to follow through. They denied they had drug problems, declined to participate in drug or alcohol evaluations or treatment, and missed some of their UA tests. Thomas also missed visits with SLS on January 29 and February 1, 2010. He visited SLS on February 3, 2010, with Sharmilla, which was his last face-to-face visit with SLS. Thomas moved to Michigan on February 9, 2010, where he has lived ever since. Sharmilla visited SLS eight times between January 2010 and April 2010, but she also moved to Michigan in April 2010 and remained there until after the trial began in August 2011. The purported reason for the couple's move to Michigan was to care for Thomas's ill father—although Thomas's father denied this.

The parents agreed to dependency and dispositional orders on April 19, 2010. The parents agreed that SLS was dependent and should be placed in DSHS's care

because there "is no parent or guardian available to care for the child." FF 1.4; Ex. 1. The dispositional orders required the parents to sign releases of information for all treatment and prescribing providers, to inform all prescribing providers of prescription medications they were on and of any substance abuse treatment, to participate in a drug/alcohol evaluation or promptly engage in the recommendations of a DSHS approved Pain Management Clinic, to complete age-appropriate parenting classes; to participate in random UA testing two times a week, to work with a public health nurse upon reunification with the child, and to participate in Family Preservation Services once the child returned home.

Although the parents attended some parenting classes, they failed to document that they completed any services.[2] The court's unchallenged finding of fact 1.12 states that the parents completed no services while in Michigan.

The termination trial began in August 2011, with the parents participating by phone. After opening statements and Sharmilla's testimony, the court recessed trial until September 2011 in anticipation of settlement. The settlement failed. During this trial recess, Sharmilla moved to Spokane, Washington. She provided results for one UA test, but Thomas could verify no completed services. After hearing testimony from eight witnesses and considering 22 exhibits during a multiple day trial, the court

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[2] Sharmilla completed several UA testings while in Washington before the dependency but did not meet this requirement once she moved to Michigan. Thomas testified that he completed UA testings after the trial began, but provided no documentation. Although the parents argued at trial that this failure was due to the requirement's unfair expense, the court's unchallenged finding of fact 1.14 rejected that argument.

entered detailed findings of fact and conclusions of law and an order terminating the parent-child relationship between Sharmilla and Thomas Stokes and SLS.

ANALYSIS

Sharmilla and Thomas appeal the trial court's order terminating parental rights for SLS. Thomas argues that DSHS failed to show (1) little likelihood that conditions will be remedied so that the child can be returned in the near future, and (2) that continuation of the parent-child relationship clearly diminishes the child's prospects for early integration into a stable and permanent home. Both parents argue DSHS failed to show that termination was in SLS's best interest. DSHS argues that substantial evidence supports the trial court's findings. We agree.

We review an order terminating parental rights to determine whether substantial evidence supports the trial court's findings in light of the degree of proof required. In re Welfare of S.V.B., 75 Wn. App. 762, 768, 880 P.2d 80 (1994). Substantial evidence is "'evidence of sufficient quantity to persuade a fair-minded, rational person of the truth of the declared premise.'" World Wide Video, Inc. v. City of Tukwila, 117 Wn.2d 382, 387, 816 P.2d 18 (1991) (quoting Bering v. Share, 106 Wn.2d 212, 220, 712 P.2d 918 (1986)). We do not reweigh the evidence or pass on credibility. In re Welfare of C.B., 134 Wn. App. 942, 953, 143 P.3d 846 (2006). We accord great deference to the trial court's decision to terminate. C.B., 134 Wn. App. at 952. To grant a petition seeking termination of a parent-child relationship, a trial court must find the elements set forth in RCW 13.34.180(1)(a)-(f) established by clear, cogent, and convincing evidence.[3] RCW

[3] The elements are as follows:

13.34.190(1)(a); In re Dependency of K.R., 128 Wn.2d 129, 140-41, 904 P.2d 1132 (1995). The clear, cogent, and convincing evidence standard is satisfied when a court determines that the ultimate fact at issue is shown to be "highly probable." In re Welfare of Sego, 82 Wn.2d 736, 739, 513 P.2d 831 (1973). The court must then find, by a preponderance of the evidence, that termination is in the best interest of the child. RCW 13.34.190(2) (2010). Unchallenged findings are verities on appeal. In re Dependency of J.M.R., 160 Wn. App. 929, 939 n.5, 249 P.3d 193 (2011).

Likelihood of Remedying Conditions in the Near Future

Thomas challenges the court's finding that "there is little likelihood that conditions will be remedied so that the child can be returned to the parent in the near future" under RCW 13.34.180(1)(e).[4] The focus of this factor is "whether parental

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"(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. . . .

. . . .

"(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).

[4] This issue corresponds to the parents' assignments of error to findings of fact 1.18, 1.19, 1.20, 1.21, and 1.26, and conclusion of law 2.3. Although Sharmilla assigns error to these findings of fact, she presents no argument in support of these assignments of error. Accordingly, she waives any challenge relating to this factor.

deficiencies have been corrected." K.R., 128 Wn.2d at 144. A determination of what constitutes the "near future" depends on the age of the child and the circumstances of the placement. In re Dependency of T.L.G., 126 Wn. App. 181, 204, 108 P.3d 156 (2005). If all necessary services reasonably capable of correcting the parental deficiencies within the foreseeable future are offered or provided and the deficiencies are not substantially improved within 12 months of the dependency order, there is a rebuttable presumption that this factor is established. RCW 13.34.180(1)(e). The court found that such a presumption applied in this case. FF 1.18.

To challenge the court's findings on the "little likelihood" factor, Thomas relies on C.B., 134 Wn. App. 942. C.B. is distinguishable from this case. In C.B., the mother demonstrated that she completed chemical dependency programs, and presented evidence from her counselors and friends that her prognosis was good and that she was a different person. The State even conceded at trial that "'she is doing what she is supposed to be doing . . . .'" C.B., 134 Wn. App. at 956 (quoting report of proceedings). The State also failed to present any evidence that it would take the mother more than a year to improve enough to be reunited with her children. C.B., 134 Wn. App. at 956.

To demonstrate his progress, Thomas relies only on his own testimony that he

Cowiche Canyon Conservancy v. Bosley, 118 Wn.2d 801, 809, 828 P.2d 549 (1992). And even if Sharmilla did not waive this challenge, we conclude substantial evidence supports the challenged findings.

worked with his physician to reduce his medication intake, received treatment at a pain clinic, submitted to UA testing, and enrolled in a parenting class. But even if the court had found this testimony about Thomas's last minute efforts to engage in services credible, Thomas fails to show the parental deficiencies could be remedied in the near future. No counselors or physicians testified to support his arguments. And DSHS presented substantial testimony to the contrary. Dr. Toivola testified that Thomas was not amenable to treatment for prescription drug use because he did not admit to any drug problem.[5] Dr. Toivola opined that even if Thomas began addressing his parental deficiencies, it would take a year to be able to parent. Dr. Toivola also testified that Thomas had no relationship with SLS because he had not visited her for nearly two years, which constituted most of her life. And unchallenged finding of fact 1.12 states, "The Stokes did not obtain any of the ordered services in Michigan." We conclude substantial evidence supports the court's finding that there was little likelihood conditions would be remedied so the child could be returned to the parent in the near future.[6]

Prospects for Early Integration into a Stable and Permanent Home

[5] A dispute arose at trial over testimony Dr. Toivola provided before he swore or affirmed that his testimony was truthful. The court denied a motion to strike the testimony, and the parents assign no error to that ruling. Finding of fact 1.10 makes clear that the court did not rely on this testimony in its decision. Dr. Toivola's testimony referenced in this opinion all occurred after he affirmed his testimony was truthful.

[6] To the degree that Thomas offers argument sufficient to support his assignments of error to findings of fact 1.19, 1.20, and 1.21, our review of the record demonstrates that substantial evidence supports these findings.

Where, as discussed above, DSHS proves the allegation in RCW 13.34.180(1)(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," it "necessarily follows" that continuation of the parent-child relationship diminishes the child's prospects for early integration into a permanent home. In re Dependency of J.C., 130 Wn.2d 418, 427, 924 P.2d 21 (1996).[7]

And even if the evidence supporting the RCW 13.34.180(1)(e) finding was not dispositive, substantial evidence supports the court's finding that continuation of the parent-child relationship clearly diminishes the child's prospects for early integration into a stable and permanent home. SLS's current placement is foster care, which is a temporary arrangement.[8] In re Dependency of A.V.D., 62 Wn. App. 562, 569, 815 P.2d

[7] This issue corresponds to Thomas's challenges to findings of fact 1.22 and 1.26, and conclusion of law 2.3. Finding of fact 1.22 states, "Both parents love their daughter. However, their testimony that they currently have a strong relationship with their child and that she hasn't been out of their lives 'that long' cannot be reconciled with reality. Twenty months may not be much in the life of an adult. It is virtually all of [SLS's] life. To deny this Petition on the hope that the parents will follow through and obtain the necessary services clearly diminishes [SLS's] prospects for early integration into a stable and permanent home and is not in the best interests of [SLS]." Finding of fact 1.26 states, "The child's parents are unfit to parent this child." Sharmilla assigns error to these findings of fact but provides no argument in support of the assignment. Accordingly, she waives the issue. Cowiche Canyon, 118 Wn.2d at 809. And even if Sharmilla did not waive this challenge, we conclude substantial evidence supports the challenged findings.

[8] Thomas relies on In re the Welfare of S.V.B., 75 Wn. App. 762, 775, 880 P.2d 80 (1994). S.V.B. involved a guardianship with a relative. "[A] standard guardianship can provide the kind of safe and stable environment that rises to the level of permanency." In re Dependency of A.C., 123 Wn. App. 244, 253, 98 P.3d 89 (2004). But unlike S.V.B., no guardianship has been established for SLS, and continuation of the parental relationship prevents SLS from being adopted.

277 (1991). Social worker Lisa Nielsen testified that SLS cannot be adopted unless she was legally freed. The argument fails.

Best Interest of the Child

The parents both claim that termination is not in the child's best interest.[9] But substantial evidence supports the trial court's findings.

The trial court is afforded broad discretion in making a "best interests" determination, and its decision will receive great deference on review. In re Welfare of Young, 24 Wn. App. 392, 395, 600 P.2d 1312 (1979). The best interests of a child must be decided on the facts and circumstances of each case. In re Dependency of A.V.D., 62 Wn. App. 562, 572, 815 P.2d 277 (1991). When a parent has failed to rehabilitate over a lengthy dependency period, a court is fully justified in finding termination in the child's best interests rather than leaving the child "in the limbo of foster care for an indefinite period" while the parent seeks further rehabilitation. In re Dependency of T.R., 108 Wn. App. 149, 167, 29 P.3d 1275 (2001).

Because the parents could not meet SLS's safety and health needs, she was placed in foster care at the age of seven months. Extensive testimony supports the parents' inability to care for SLS. CPS social worker Cynthia Matthiesen observed a dirty and smoke-filled home, SLS sleeping in soft bedding on her stomach despite previous warnings, and a prescription bottle and old cereal in the child's playpen. Court-appointed special advocate Kate Weinstein observed Sharmilla nearly drop SLS

[9] This issue corresponds to the parents' challenge to finding of fact 1.27 and conclusions of law 2.2 and 2.3.

during a visit. FPS provider Jennifer Gates testified that the parents appeared under the influence and could not concentrate. Social worker Lisa Nielsen reported that the parents missed visits, that Sharmilla slept at a visit, and that the parents failed to complete services. This led to the agreed order of dependency. And as discussed above, the parents have failed to complete services necessary to address these deficiencies.

The failure to address these deficiencies led trial witnesses to conclude termination was in SLS's best interest. Weinstein opined that the parents failed to comply with court-ordered services, had no bond with their daughter, and that termination was in SLS's best interests. Dr. Toivola testified that the parents abused prescription drugs, had no relationship with SLS, and that even if the parents worked hard to address their parental deficiencies, they would need a year to be able to adequately care for SLS. Dr. Toivola also testified that SLS has special needs, including physical therapy for gross motor skills and doctor visits for her heart.

Sharmilla asserts she has a "special bond" with SLS. But Sharmilla references testimony about a visit that occurred in April 2010, approximately one and a half years before the termination trial. SLS has lived with foster parents since January 2010. Dr. Toivola testified that SLS has no bond with her biological parents, who have not visited SLS since April 2010.

Sharmilla also asserts that she made recent efforts to rectify her problems. She points to her return to Washington and her commitment to refrain from certain medication. But Sharmilla fails to demonstrate that the court's best interest

determination is erroneous. She documented no completed services and did not visit SLS face to face for approximately a year and a half prior to trial.

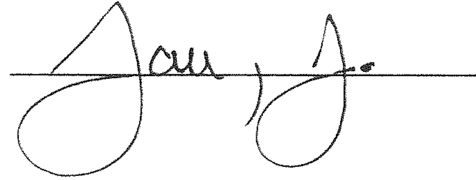
Thomas argues that DSHS presented no evidence that SLS would find continued foster placement distressing while the parents obtained documentation of completed services and completed other necessary services. But DSHS was not required to prove that the foster placement was distressing. Rather, a child has a right to a safe and stable and permanent home and the speedy resolution of the dependency case. RCW 13.34.020. Thomas had over 16 months to document any progress toward addressing parental deficiencies, as well as a nearly month-long recess during trial. Although he testified that he reduced his reliance on prescription drugs, he failed to demonstrate that he completed court-ordered services. In light of all of the evidence, DSHS met its burden.

Both parents also point to the court's finding that they loved their daughter. The court indeed found, "Both parents love their daughter." FF 1.22. But SLS is entitled to a safe and stable permanent home. And when a parent has not corrected parental deficiencies during the course of a dependency, a court is "fully justified in finding [termination is in the child's best interests]." In re Dependency of A.W., 53 Wn. App. 22, 33, 765 P.2d 307 (1988). We conclude substantial evidence supports the court's finding that termination was in the best interest of SLS.[10]

CONCLUSION

[10] Given our disposition, we deny the parents' motions to stay execution of termination order under RAP 18.13A(k).

Because substantial evidence supports the court's findings, we affirm the order terminating the parent-child relationship between Thomas and Sharmilla Stokes and SLS.



WE CONCUR: