

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In the Matter of the Welfare of)	
D.L.C.,)	No. 68514-7-I
A minor child.)	
)	DIVISION ONE
STATE OF WASHINGTON,)	
DEPARTMENT OF SOCIAL AND)	UNPUBLISHED OPINION
HEALTH SERVICES,)	
)	
Respondent,)	
)	
v.)	
)	
KRISTINA COURTNEY,)	
)	FILED: January 28, 2013
Appellant.)	

Grosse, J. — In a termination of parental rights proceeding, the Department of Social and Health Services (the Department) must, inter alia, offer all court-ordered and necessary services to the parent and tailor the services to the parent’s needs. To meet this obligation, the Department must show either that it offered the parent remedial services but the parent did not avail herself of them, or that the parent waived her right to such services. The Department need not, however, offer services from which a parent is unable to benefit. And, where a parent is unwilling or unable to make use of the services, the Department is not required to offer still other services that might have been helpful. Even where the Department inexcusably fails to offer a service to a willing parent, termination is appropriate if the service would not have remedied the parent’s deficiencies within the foreseeable future. In this context, “foreseeable future” depends upon the age of the child.

Here, the Department offered Kristina Courtney substance abuse treatment services, but she refused to make use of them. The Department later arranged for a psychological evaluation, but Courtney refused to make herself available to the treatment provider. Even if the Department should have arranged for a psychological evaluation earlier than it did, the record shows that the treatment would not have remedied Courtney's parental deficiencies within the foreseeable future, as viewed from the perspective of a child of her son D.L.C.'s age. The trial court's finding as to the provision of services is supported by substantial evidence. The remainder of the trial court's findings that Courtney challenges are likewise supported by substantial evidence. Accordingly, we affirm the trial court's order terminating Courtney's parental rights to D.L.C.

FACTS

Kristina Courtney is the mother of D.L.C., born on June 13, 2006.¹ After D.L.C.'s birth, Courtney enrolled in the Growing Together program at Brigid Collins House in Bellingham. The program is for mothers with substance abuse problems and offers parenting classes, individual treatment plans, behavioral health programs, and other support programs for mothers. Courtney was enrolled in the program until July 2009 and, while enrolled, obtained her driver's license as well as a medical assistant certification. Also in 2009, Courtney successfully completed a parent-coaching program known as Parent Child Interaction Therapy (PCIT), offered at Brigid Collins.

¹ The trial court's unchallenged findings of fact are verities on appeal. In re Interest of J.F., 109 Wn. App. 718, 722, 37 P.3d 1227 (2001).

In July 2010, however, Child Protective Services removed D.L.C. from Courtney's custody and placed him in out-of-home care because Courtney was abusing drugs, had mental health issues, lacked stable housing, and was leaving D.L.C. in the care of others for extended periods.² Courtney stipulated that D.L.C. was dependent, and an order of dependency was entered in August 2010. In the dispositional order, the court ordered Courtney to seek public housing, attend parenting classes, complete a substance abuse evaluation, and engage in random urinalyses. Additionally, the court ordered Courtney to complete a mental health evaluation after 60 days of "documented sobriety."

Courtney's primary parental deficiency is substance abuse. The trial court's unchallenged finding describes Courtney's failure to engage in the substance abuse treatment services offered to her:

The mother has been recommended to engage in a six[-]month in-patient drug and alcohol treatment program. On March 22, 2011, she was admitted into such a program with New Horizon Care Centers (Isabella House) in Spokane. On April 1, 2011, she was discharged from the program as she chose to leave treatment prior to successful completion of the program. Since September 2010, the mother has failed to show for over thirty scheduled urinalysis (UA) submissions/tests. The result of failing to show is that these UAs are considered dirty/positive. The mother's most recent chemical dependency evaluation from October 26, 2011, recommended that she engage in detox services and continued to recommend in-patient treatment, but the evaluator Mark Ward referred her to intensive out-patient treatment in hopes that she would eventually engage in in-patient treatment. At the time of trial, the mother was non-compliant with her out-patient treatment services.

The Department also referred Courtney to Dr. Jason Prinster, a clinical

² Courtney was homeless at the time of the termination trial.

psychologist, for evaluation. Dr. Prinster evaluated Courtney in November 2011 and diagnosed her as having borderline personality disorder. Dr. Prinster testified that the most supported treatment for borderline personality disorder is dialectical behavioral therapy, or DBT, and that persons of Courtney's age typically show improvement after one to three years of DBT. But, Dr. Prinster opined that DBT would not be of significant benefit to Courtney as long as she was abusing drugs:

Ms. Courtney is significantly complicated by her drug dependence diagnosis so it places her into a high risk category of dual diagnosis. So my clinical opinion would be it would be very unlikely that her personality functioning would improve regardless of treatment while she's engaging in substance abuse.^[3]

Between Courtney's borderline personality disorder and her substance abuse, Dr. Prinster felt that the substance abuse was the greater problem. He testified that Courtney's mental health issues could not be effectively treated unless and until she became clean and sober. Accordingly, he recommended that treatment for Courtney's substance abuse be undertaken prior to treatment for her borderline personality disorder. Dr. Prinster estimated that Courtney would need 12 months of treatment before she showed significant improvements with respect to her borderline personality disorder and to be in full remission from substance abuse.

Sieneke Stevenson, a social worker with the Division of Children and Family Services, referred Courtney for DBT. Courtney did not, however,

³ During the evaluation with Dr. Prinster, Courtney repeatedly told him she was "drug sick" or "dope sick."

participate in the DBT services because the provider was unable to reach her at any of the telephone numbers she gave Stevenson. Because of this, the provider was unable to schedule DBT appointments with Courtney.⁴

In May 2011, the Department filed a petition for the termination of Courtney's parental rights to D.L.C. Following trial, the court entered an order in February 2012, terminating Courtney's parental rights to D.L.C.⁵ The court noted the substance abuse treatment services Courtney had been offered and found:

Despite the offering of these services, there has been little improvement in parental functioning. For a brief period between August and October 2011, the mother was engaging in some services and beginning to make some progress. However, at this time the mother has not made any progress in correcting her parental deficiencies, specifically the issues stemming from her chemical dependency. The mother is not capable of caring for [D.L.C.]

The court concluded that the Department established the six statutory requirements for termination by clear, cogent, and convincing evidence, including that all necessary services, reasonably available, capable of correcting the parental deficiencies within the foreseeable future, were expressly and understandably offered or provided; that there is little likelihood that conditions will be remedied so that D.L.C. can be returned to Courtney in the near future;

⁴ Stevenson testified: "The provider was never able to reach her at any of the numbers I had given her and I gave her a couple more numbers. Periodically Ms. Courtney would call in and give me new numbers where she might be able to be reached but she never was able to reach her to schedule an initial appointment."

⁵ The parental rights of D.L.C.'s alleged father were terminated in July 2011; the parental rights of any and all putative fathers were terminated in August 2011.

that continuation of the parent-child relationship clearly diminishes D.L.C.'s prospects for early integration into a stable and permanent home; and that termination of the parent-child relationship is in D.L.C.'s best interests. Courtney appeals.

ANALYSIS

Termination of parental rights is a two-step process. The first step focuses on the adequacy of the parents and requires proof by clear, cogent, and convincing evidence of the six elements set out in RCW 13.34.180.⁶ The second step focuses on the child's best interests and need be proved by only a preponderance of the evidence.⁷ If the first step is not satisfied, the court does not reach the second.⁸

The six elements involved in the first step are:

- (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[; and]

⁶ In re Dependency of K.N.J., 171 Wn.2d 568, 576, 257 P.3d 522 (2011).

⁷ In re Welfare of A.B., 168 Wn.2d 908, 911, 232 P.3d 1104 (2010).

⁸ In re A.B., 168 Wn.2d at 911.

....

(f) That continuation of the parent and child relationship clearly diminishes the child's prospects for early integration into a stable and permanent home.^[9]

Courtney challenges the trial court's findings regarding elements (d), (e), and (f) as well as the trial court's finding that termination of her parental rights was in D.L.C.'s best interests. Our review of these findings is limited to determining whether they are supported by substantial evidence.¹⁰ Evidence is substantial if it is sufficient to persuade a fair-minded person of the truth of the declared premise.¹¹ The trial court has the opportunity to hear the testimony and observe the witnesses. Accordingly, the trial court's decision is entitled to deference, and we do not weigh the evidence or judge the credibility of the witnesses.¹²

RCW 13.34.180(1)(d)

Courtney argues that the trial court erred in finding that the Department offered her all necessary services because it did not provide a psychological evaluation until 15 months after the dependency was established. She argues that she should have been offered treatment simultaneously for her substance abuse and her mental illness. We disagree with Courtney.

The Department is required to offer all court-ordered and necessary services, and must tailor the services to the parent's needs.¹³ To meet this

⁹ RCW 13.34.180(1).

¹⁰ In re Welfare of C.B., 134 Wn. App. 942, 952-53, 143 P.3d 846 (2006).

¹¹ In re C.B., 134 Wn. App. at 953.

¹² In re C.B., 134 Wn. App. at 953.

¹³ In re Dependency of D.A., 124 Wn. App. 644, 651, 102 P.3d 847 (2004).

burden, the Department must show either that it offered the parent remedial services but the parent did not avail herself of them, or that the parent waived her right to such services.¹⁴ The Department is not, however, required to offer services from which a parent is unable to benefit.¹⁵ And, when a parent is unwilling or unable to make use of the services provided, the Department is not required to offer still other services that might have been helpful.¹⁶

Here, Courtney does not challenge the trial court's findings that she failed to successfully complete inpatient substance abuse treatment at Isabella House in Spokane, that she failed to show for over 30 schedule UA tests, and that at the time of trial she was "non-compliant with her out-patient treatment services." Further, the record shows that Courtney did not make herself available to the DBT provider to which she was referred for treatment. The necessary services were offered; Courtney was unwilling to make use of them.

Courtney argues that her situation is analogous to that in In re the Termination of S.J., and that pursuant to that case, she should have been offered simultaneous treatment for her substance abuse and her mental illness.¹⁷ In re S.J. is, however, distinguishable. In that case, the court in its dispositional order required the mother to complete a substance abuse evaluation and treatment, submit to random UA testing, complete a psychological evaluation and participate in mental health services, join a domestic violence victims'

¹⁴ In re Welfare of S.V.B., 75 Wn. App. 762, 770, 880 P.2d 80 (1994).

¹⁵ In re Dependency of T.R., 108 Wn. App. 149, 163, 29 P.3d 1275 (2001).

¹⁶ In re T.R., 108 Wn. App. at 163

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

program, participate in a parenting assessment, and establish a safe, clean, drug-free home. The mother began individual counseling and improved her ability to identify symptoms of a bipolar episode and to get the help she needed, began supervised visitation with her child, and enrolled in a parenting education program. Despite the mother's progress in remedying her parental deficiencies, the Department petitioned to terminate the mother's parental rights because she had not secured suitable housing or progressed in her relationship with her child.¹⁸

The mother continued to work on her parental deficiencies and successfully graduated from a drug treatment outpatient program. According to the mother, she would have been successful sooner had her mental health issues been addressed at the same time she was receiving drug treatment. Upon her completion of the program, the mother remained clean and sober. She also successfully enrolled in school, obtained a job, attended domestic violence and parenting classes, and cared for her new baby.¹⁹

The mother and the child began therapeutic visitation, but the visits were eventually suspended because of the harmful impact the visits were having on the child. The child had detached from the mother and attached to the foster parents. After the termination trial, the court found that despite the fact that the mother had been offered numerous services, she had failed to repair her relationship with the child. The court terminated the mother's parental rights.²⁰

On appeal, the mother argued that the Department failed to tailor services

¹⁸ In re S.J., 162 Wn. App. at 876-77.

¹⁹ In re S.J., 162 Wn. App. at 877.

²⁰ In re S.J., 162 Wn. App. at 877-78.

to her needs because, despite knowing that she suffered from a mental illness, the Department took a sequential approach and did not refer her to mental health services until after her treatment for substance abuse. She argued that the delay in receiving mental health services contributed to the deterioration of her once-strong bond with her child. In reversing the order terminating the mother's parental rights, the court on appeal placed great significance on the fact that the mother succeeded in inpatient drug treatment soon after she received mental health services despite having failed three times in the previous year. Thus, the record suggested that the mental health services helped the mother get sober. The court agreed with the mother that her attachment-relationship with the child may not have deteriorated if she had earlier completed treatment.²¹

Unlike Courtney, the mother in S.J. fully engaged in the services offered to her. Courtney refused to engage in drug treatment services that were offered to her. She left inpatient treatment prior to successfully completing the program, did not engage in outpatient treatment, and failed to show for over 30 scheduled UAs which, because of her failure to show, were deemed positive. Because of Courtney's demonstrated unwillingness to make use of the services provided, the Department was not required to offer still other services that might have been helpful. And, the Department eventually did offer Courtney a psychological evaluation and referred her to DBT treatment. Again, however, she failed to make use of the treatment offered.

Further, "even where the State inexcusably fails to offer a service to a

²¹ In re S.J., 162 Wn. App. at 881-84.

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."²² Here, even if Courtney had made use of the offered drug treatment and had been willing to engage in mental health treatment had it been offered simultaneously with the drug treatment, termination would nevertheless still have been appropriate because the combined mental health treatment and drug treatment would not have remedied Courtney's deficiencies in the foreseeable future, taking into account D.L.C.'s age. "A matter of months for young children is not within the foreseeable future to determine if there is sufficient time for a parent to remedy his or her parental deficiency."²³ For example, a year is well beyond a six-year-old's foreseeable future;²⁴ eight months is not in the foreseeable future of a four-year-old.²⁵ Here, the shortest estimate of when Courtney, with perfect attendance at all necessary services, would be able to correct her parental deficiencies was six to nine months.²⁶ At the time of the trial in January 2012, D.L.C. was five years old; the dependency order was entered in August 2010. Even assuming Courtney was a "willing" parent and fully and completely engaged in the services the Department offered with perfect attendance, the services would not have remedied her parental deficiencies within the foreseeable future, as viewed from D.L.C.'s perspective.

The trial court's finding that the services ordered under RCW 13.34.136

²² In re T.R., 108 Wn. App. at 164.

²³ In re Welfare of M.R.H., 145 Wn. App. 10, 28, 188 P.3d 510 (2008).

²⁴ In re T.R., 108 Wn. App. at 164.

²⁵ In re Welfare of Hall, 99 Wn.2d 842, 851, 664 P.2d 1245 (1983).

²⁶ Dr. Prinster estimated the time at 12 months.

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 is supported by substantial evidence.

RCW 13.34.180(1)(e), (f)

Courtney argues that the trial court's findings that there is little likelihood that conditions will be remedied so that D.L.C. could be returned to her in the near future and that continuation of the parent-child relationship clearly diminishes D.L.C.'s prospects for early integration into a stable and permanent home are not supported by substantial evidence. While Courtney challenges the trial court's findings on these issues, she fails to support her challenges with specific argument or citation to the record. We generally do not consider such unsupported challenges.²⁷ Further, our review of the record, coupled with those findings of the trial court that Courtney does not challenge, shows that substantial evidence supports each of the trial court's findings Courtney challenges as to these two statutory factors.

RCW 13.34.190(1)(b)

If the Department establishes the six 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.²⁸ Whether termination is in the best interests of

²⁷ In re Matter of Estate of Lint, 135 Wn.2d 518, 532, 957 P.2d 755 (1998) ("It is incumbent on counsel to present the court with argument as to why specific findings of the trial court are not supported by the evidence and to cite to the record to support the argument.").

²⁸ RCW 13.34.190(1)(b).

the child must be proved by a preponderance of the evidence and determined based on the facts of each case.²⁹ “Where a parent has been unable 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.’”³⁰

Courtney has been unable to remedy her substance abuse issues or her mental health issues since the dependency order was entered in August 2010. As the trial court found in an unchallenged finding, at the time of the termination trial, Courtney had made no progress in correcting her parental deficiencies, particularly her substance abuse issue. Courtney’s inability to rehabilitate, alone, supports the trial court’s finding that termination of the parent-child relationship is in D.L.C.’s best interests. Additionally, testimony of other witnesses attested to the fact that five-year-old D.L.C., who was in his third foster home at the time of the termination trial, needs to be adopted. Social worker Stevenson testified that termination is in D.L.C.’s best interests because his current foster placement was at risk of ending because of his behavioral issues, he needs to be integrated into a stable and permanent home, and Courtney is not capable of providing that needed stability. And, Erin Smith, D.L.C.’s court-appointed special advocate, testified:

A So [D.L.C.] also is at a point where he absolutely cannot afford anymore to not have a consistent place to live to call home and to understand who his guardians are. In my opinion [termination of Courtney’s parental rights is] the only chance to be

²⁹ In re Welfare of Aschauer, 93 Wn.2d 689, 695, 611 P.2d 1245 (1980).

³⁰ In re T.R., 108 Wn. App. at 167 (quoting In re Dependency of A.W., 53 Wn. App. 22, 33, 765 P.2d 307 (1988)).

able to stabilize and to be able to really start to grow and have a foundation and understand who he is in the world. He's been really confused about that and still is.

Q You said he cannot afford anymore; what do you mean by that?

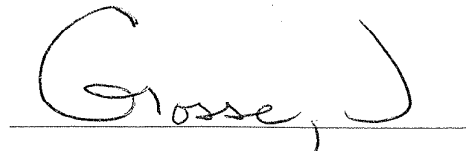
A I mean that there's a lot of really significant concerns with his behavior, that part of all of that is trying to help him understand, have a sense of security in where he is living and where he is going to live and he doesn't have that. So without that as a basic foundation he can't work on all of the other things.

Q So why move towards termination and adoption now? Why not wait another three months or six months?

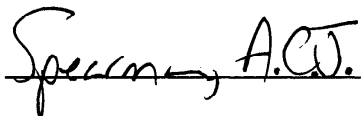
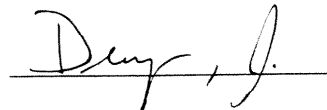
A Because another three or six months is just going to prolong -- he's already very confused. His behaviors are really out of control for most of his, all of his foster care placements. His confusion about who is his parents, you know, sobbing about parents that he never had. I mean, all of it. He is at a critical point as a five-year-old that needs to have some of this foundation laid now. And he can't afford to wait if maybe Ms. Courtney will decide to get sober in six, twelve months. He can't afford to continue to bounce from home to home.

The record amply supports the trial court's finding that termination of Courtney's parental rights is in D.L.C.'s best interests.

Affirmed.

A handwritten signature in cursive script that reads "Grosse, J." is written above a horizontal line.

WE CONCUR:

A handwritten signature in cursive script that reads "Sperry, A.W." is written above a horizontal line.A handwritten signature in cursive script that reads "Day, J." is written above a horizontal line.