IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

IN RE DEPENDENCY OF D.K., I.K., S.K., and V.K.[†], Minor Children.	Consolidated Nos. 40203-3-II, 40206-8-II, 40213-1-II, 40216-5-II UNPUBLISHED OPINION

Hunt, J. — AK, a mother from whose custody the Department of Social and Health Services (the State) removed four children in July 2009, appeals the juvenile court's determination that the children are dependent under former RCW 13.34.030(6)(b) (abuse or neglect) and former RCW 13.34.030(6)(c) (absence of adequate caregiver) (2009).[1] AK argues that the juvenile court erred in entering specific findings of fact without supporting evidence, and in excluding testimony. We affirm.

[†] It is appropriate to provide some confidentiality in this case. Accordingly, it is hereby ordered that initials will be used in the case caption and in the body of the opinion to identify the parties and other juveniles involved.

[1] On July 26, 2009, the legislature recodified former RCW 13.34.030(5) as RCW 13.34.030(6). *See* Former RCW 13.34.030(5) (2008), *recodified as* RCW 13.34.030(6) (Laws of 2009, ch. 520, § 21). The texts of the pre-July 26, 2009 and post-July 26, 2009 versions are identical. The State filed its dependency petitions on July 13, 2009; the juvenile court entered its dependency rulings in December 2009. Therefore, we cite the version in effect as of July 26, 2009.

FACTS

I. Removal of Children from AK

In July 2009, the State took four children into protective custody: DK (born November 24, 1997); SK (born January 17, 1999); IK (born June 1, 2001); and VK (born January 27, 2003). The four children all had the same mother, AK.[2] The State took protective custody of the children based on allegations of AK's boyfriend Paul Daughtery's sexual abuse and exploitation. Daughtery had started dating and living with AK and her children during the summer of 2006.

A. Initial Investigation

On July 7, the State received a referral from AK's neighbor about six-year-old VK's allegations of sexual abuse after finding the child playing near some mailboxes on the side of the highway, some distance from home. The neighbor had come in contact with VK, who asked, "[C]an you do me a favor, can you help me?" I VRP at 7. When the neighbor asked what the favor was, VK replied, "[C]an you stop pa from bringing me - mens to me?" I VRP at 8. When the neighbor asked, "[W]hy?" VK replied, "[P]a brings mens to me to do blow jobs on 'em'." I VRP at 8. When the neighbor asked VK what she meant by that, VK put her finger in her mouth and said, "[T]hat's when a man puts his wee-wee in my mouth and yucky stuff comes out." I VRP at 8.

On July 9, Mason County Sheriff's detectives accompanied Child Protective Services

[2] Although AK and the father of these four children were married (at least as of the time of the dependency hearing in December 2009), the father was incarcerated when the underlying dependency action began. He has conceded that all four children are dependent, and he is not involved in this appeal.

(CPS) social worker Kerry Applegate and a second CPS worker to AK's house. At approximately 10:00 a.m., a child answered the door and told Detective Jeffrey Rhoades that AK was sleeping and that Daughtery was working outside. Talking with AK and Daughtery at the house and observing their behavior, it appeared to Rhoades that both were under the influence of some narcotic stimulant, and that AK's "marks" or "sores" on her body and "bouncing" demeanor were consistent with those of a methamphetamine user.[3] I Verbatim Report of Proceedings (VRP) at 79-80. Three of AK's children, DK, SK, and GK[4] were in the house "wrapped up in blankets watching TV." II VRP at 255. The other two children were with relatives in eastern Washington.

The yard was full of garbage and beer cans. Odoriferous mildew and black mold covered the home's ceilings and walls. The interior of the house also had exposed electrical wiring and piping. A hose from an outside propane tank ran into the house through a broken and "jagged" window. I VRP at 109. According to AK, sometimes AK, Daughtery, and the four girls would sleep in the house, while other times they would sleep in the trailer. The children offered different versions of their activities in the house and the travel trailer; but AK admitted during her testimony that the children had been sleeping in the house.

The CPS workers took the children into protective custody. The children described to Applegate "in detail" "some of the family gatherings where there was a lot of drinking, a lot of drugs, a lot of sexual behavior, a lot of children that had been molested." II VRP at 224. CPS

[3] Applegate believed that AK "perhaps had a hangover." II VRP at 202.

[4] GK is AK's child by a different father and is not a subject of this dependency.

searched for relatives to take custody of the children, but they all "had significant CPS history," and two of the children's aunts had had their own children removed from their custody. II VRP at 225.

B. Shelter Care Hearing

AK did not appear at the shelter care hearing.[5] On July 9, all four girls were placed in a foster home. Their new foster mother noticed that the children did not recognize dangerous situations, "ha[d] no boundaries," and acted "very adult-like." II VRP at 221, 224. Eleven-year-old DK was very "parentifi[ed]," III VRP at 445, feeling and acting that it was her responsibility to look after her younger siblings. Ten-year-old SK "squint[ed]," I VRP at 141, and kept her "face . . . literally two or three inches, four inches" away from where she would write; it was "obvious . . . that [SK] had . . . a vision problem." I VRP at 142. SK told her foster mother that she "ha[d] been without her glasses for a year and a half." I VRP at 141.

C. Follow Up

On July 23, the State assigned the children to case worker Dorothy Jane Peterson. According to Peterson, AK did not respond to voice mails and letters from the State, and "in-person visits to [AK's] home [were] not . . . met with any sense of cooperation." I VRP at 101. Peterson offered AK "urinalysis testing, chemical dependency evaluation and follow-up and psychosocial parenting evaluation and follow-up," I VRP at 102; but AK did not appear for any of these services. And when Peterson asked AK three times to provide a urinalysis sample, AK

[5] AK claimed that she did not show up for the "shelter care hearing" because she did not have an attorney. II VRP at 225. Applegate, however, had advised her that CPS would provide an attorney for her at the hearing.

provided none.

The State did not schedule a "case conference"[6] or "shared planning meeting" with AK. I VRP at 160. When the State scheduled a "family team decision-making meeting,"[7] I VRP at 160, AK and Daughtery left after attending for only a few minutes, explaining it was because AK did not have an attorney present. AK also missed the first four State-arranged visits with her children, without notifying the State of her absences. Since that time, however, AK has been consistent with her visits.

II. Procedure

A. Dependency Petitions

On July 13, the State filed dependency petitions for each child. The petitions alleged that the children were dependent under both former RCW 13.34.030(5)(b) and (c) (2008), and set forth several allegations, including: (1) VK's telling her neighbor that Daughtery brought men to her (VK) for oral sex; (2) previous investigations of Daughtery and AK by CPS agencies in Washington and other states; (3) AK and the children's "nomadic lifestyle," CP (40203-3) at 383; (4) AK's leaving two-year-old IK with her (AK's) brother, a suspected sex offender, in June 2003 and IK's subsequently having blood in her diapers; (5) finding 15-month-old VK sucking on a syringe in June 2004; (6) AK's alleged drug use in June 2004; and (7) AK's refusal to participate

[6] A case conference "is normally a time agreed by all the parties to sit down and discuss what services might be appropriate for" a particular family. II VRP at 196.

[7] At a family team decision-making meeting, CPS "invite[s] the parents, family members and any other supportive families that could be a placement resource, be a support . . . to help in the case and to be part of the case." II VRP at 226.

in various state services offered since 1998.

The dependency petition also alleged AK's criminal history. She was convicted in 2003 for a fourth degree domestic-violence-related assault involving alcohol that occurred in 2001, and convicted in 2008 for driving under the influence of alcohol (DUI).

B. AK's History with Child Protective Services

AK has a significant history with CPS, dating back to 1998. During that period, she moved 16 times, living with her children in Kansas, North Dakota, Canada, and various locations in eastern and western Washington, spending less than a year in most places. During this time, there were eight referrals to various CPS offices, generally alleging AK's neglect or failure to supervise the children. The children also had missed substantial amounts of time at school: 35 to 50 days (depending on the child) in the 2007-2008 school year, and 20 to 28 days between March 20th and May 22nd of the 2008-2009 school year.

In 1998, CPS received an "information only" referral[8] based on domestic violence between AK and the father of the four children involved here. II VRP at 210. In March 2001, CPS received a referral that AK, DK, SK, and IK were living with AK's brother, a registered sex offender (VK was not yet born at this time); this referral resulted in "no finding."[9] II VRP at 211. A May 2002 referral alleged that AK, DK, SK, and IK were living in an Everett motel and that AK "was selling drugs, particularly methamphetamine." II VRP at 211. A December 2002

[8] An "information only" referral means the CPS "take[s] information on [the family]; however, there's no specific allegation of abuse and neglect." II VRP at 210.

[9] According to a CPS social worker, "some of the old referrals [do not have] any findings." II VRP at 211.

referral alleging possible sexual abuse also alleged that DK, SK, and IK were living with "an Uncle Greg"; this referral was deemed "unfounded." [10] II VRP at 212. In June 2003, CPS received a referral about possible physical and sexual abuse while the children were living with "Uncle Greg"; again, there was "no finding" on this referral. II VRP at 213.

A June 2004 referral alleged that a person had found IK "sucking on a syringe"; AK had refused a urinalysis test; and AK's "sober and clean housing program" had terminated her enrollment in the program.[11] II VRP at 213. This referral was "founded"[12] for "neglect." II VRP at 214. AK then sent the children to Kansas to live with her mother. In July 2004, AK refused to sign a "safety plan," to provide a urinalysis sample, or to provide her mother's address in Kansas. II VRP at 214.

In May 2007, CPS received a referral alleging that (1) "[AK]'s boyfriend was hitting the girls, punching them in the arm, grabbing them by the arm"; and (2) "[AK] may be using drugs with the boyfriend." II VRP at 215. This referral had "no finding." II VRP at 215. A September 2007 referral alleged that "one of the adults in the family" had given SK "a sleeping pill" and that SK had complained "that there was no food"; this referral was also "unfounded." II VRP at 215-16.

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[10] An "unfounded" referral means that it was "less [than] likely that" the allegations in the referral "happened." II VRP at 261. A referral may be unfounded because of a lack of evidence.

[11] According to AK, she refused to comply with the urinalysis test because she "wasn't going to try to stay [in the housing program] anymore anyways." IV VRP at 489.

[12] A "founded" referral means that it is "more [than] likely" that the allegations in the referral "occurred." II VRP at 261.

In October 2007, CPS investigated a referral alleging that "Misty," AK's sister, and "Sue," the children's paternal grandmother, were not supervising the children properly. II VRP at 216. During the dependency hearing, SK testified that she had witnessed her "Auntie Misty" put a "little glass thing that looked like a lamp" on her mouth "and then smoke came out." II VRP at 287. Although this referral resulted in an "inconclusive finding," a CPS social worker told AK that "Misty wasn't [a] reliable caregiver and [AK] needed to find a better day care for her children." II VRP at 217. In October 2008, another referral alleged that Misty was living with the family, that the house was dirty, and that the children were dirty, asking for food, and lacking supervision. This referral also lacked a finding.

A July 7, 2009 referral led to the investigation that precipitated the dependency at issue here. A later October 18 "information only"[13] referral, however, alleged that IK told "another little girl about dad should be clothed and that she'd seen [Daughtery] naked." II VRP at 218.

C. AK's Residences

Between 1998 and 2009, CPS recorded 16 different residential addresses for AK. She lived in Kansas during summer 2002; moved to Everett in late 2002; left her husband and moved back to Kansas in 2004; then moved to North Dakota, leaving the children with her mother for about a month; moved back to Washington state on October 31, 2005; moved from Soap Lake, Washington to Ephrata, Washington after meeting Daughtery in summer 2006; moved to Belcourt, North Dakota in November 2008,[14] after "sen[ding] the children [to North Dakota]

[13] This referral was informational only because, as of October 18, 2009, "the kids [we]re in care and [we]re safe." II VRP at 219.

[14] According to Daughtery, they moved this time because an 85 year-old man was stalking AK

ahead of time" to live with "their aunt and uncle,"[15] III VRP at 363; after retrieving the children, moved to Canada for five months[16]; moved the family to Everett, Washington in February 2009; and moved the family to Shelton, Washington in June 2009.

In May 2009, a neighbor in Shelton sold Daughtery a "travel trailer," I VRP at 20, in which AK's family lived for "two or three months." I VRP at 21. It had no electricity or running water; the family "would come across the street . . . and ask to fill up [water] jugs" at the neighbor's son's house. I VRP at 16. The neighbor also had a nearby one-bedroom house that she intended to rent to them and that Daughtery and the children were going to "fix[] up." I VRP at 19. The neighbor permitted the family to take showers at this house and to store food there to keep it cold. At some point, the neighbor found that "the kitchen [in the one-bedroom house] was a mess and there was beer cans all over the place," even though the neighbor told Daughtery not to drink at the house; and a few weeks later, "they were gone." I VRP at 20.

D. The Children's History—Schooling and Medical

During the 2007-08 school year, the family lived in Soap Lake, and DK, SK, and IK were enrolled at Soap Lake Elementary School. During this 8-month period, DK missed 35 days of school, SK missed 48 days, and IK missed 50 days. The record keepers at Soap Lake Elementary

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and had lit Daughtery's car on fire.

[15] According to Daughtery and AK, in December 2008, he and AK went to Belcourt to pick up the children but the aunt and uncle would not return them.

[16] The aunt and uncle apparently followed the family up to Canada. According to Daughtery, he "had [AK's] aunt and uncle investigated by the CPS, the FBI and the Bureau of Indian Affairs for abuse," and the aunt and uncle were "quite adamant about doing bodily harm to [Daughtery]." III VRP at 408.

School also marked some of these absences as "unexcused" and others as "excused." I VRP at 51-52.

On March 20, 2009, all four children were enrolled at Garfield Elementary School in Everett. But two months later, on May 22, Garfield "disenroll[ed]" the children because they had missed 20 consecutive school days. I VRP at 46. The record keepers at Garfield Elementary School marked some of these absences as "unexcused" and others as "excused." I VRP at 51-52.

On April 2, 2009, a dentist examined VK and found a cavity and diagnosed her with a severe abscess that required a root canal. The dentist advised AK that VK would need to return for another appointment to complete the treatment but AK cancelled the follow-up appointment. Similarly, SK's dental records showed that an emergency room treated SK two weeks later on April 16, 2009, "with a severe toothache," "evaluat[ed]" as "a lesion around one of the root tips" and "an abscess." I VRP at 130. Again, the dentist advised AK to schedule a follow-up appointment; but AK never scheduled one.

When the State took custody of the children in July 2009, VK had missed her "chicken pox . . . vaccine," I VRP at 118; SK had missed the "measles, mumps and rubella," "the Hepatitis A," and "the varicella" (or chicken pox) vaccines, I VRP at 128; DK had missed the "Hepatitis A" and "the tetanus, diphtheria and pertussis" vaccines, I VRP at 128; and IK had no vaccine record available.

E. Dependency

On December 24, 2009, following a dependency hearing, the juvenile court found that the State had proved the following by a preponderance of the evidence: (1) the children "were

spending a great deal of time" in a home that "was totally unlivable and in deplorable condition," which "exposed" the children to "unsafe conditions" such as "black mold . . . no running water, only a small amount of electricity, and . . . tubing from a propane tank that was coming in the home through a broken window"; (2) this home "was an unsuitable living condition and [AK] did not provide a safe, physically adequate home for the children"; (3) "[AK] provide[d] no stability for the children"; (4) "[AK's] substance abuse [w]as a contributing factor to her negligent treatment and capability to parent"; (5) "[AK] ha[d] not taken reasonable steps to ensure that the children . . . attended school"; (6) "[AK] does [not] recognize the necessity of making sure the girls are properly treated for head-lice so that they don't miss so much school"; (7) "[t]aking the children out of school for [AK's] needs so she can continue her nomadic lifestyle is detrimental to [the children's] education and psychological health"; and (8) "[AK] neglected the children's medical and dental needs" and "vision care." CP (40203-3) at 17-20. The juvenile court also found, however, that the State did not prove "by a preponderance of the evidence" that the children had been "sexually exploited," but the juvenile court did find that AK had failed to "shield[]" the children "from the knowledge of sexual acts." CP (40203-3) at 17.

The juvenile court entered orders finding each child dependent under former RCW 13.34.030(5)(b) and (c).[17] AK appealed.

F. Appeal

[17] Five months before the juvenile court made its ruling, the legislature recodified former RCW 13.34.030(5) as former RCW 13.34.030(6), effective July 26, 2009. Technically, then, subsections (6)(b) and (c) controlled the juvenile court's ruling, not (5)(b) and (c). This distinction does not affect our analysis; nevertheless, for purposes of this opinion, we cite subsection (6) instead of subsection (5).

On October 21, 2010, a commissioner of our court considered AK's appeal on a motion on the merits and affirmed the juvenile court's ruling that the children are dependent under former RCW 13.34.030(6)(b). A panel of judges from our court granted AK's motion to modify the commissioner's ruling. The case then was set for consideration by a panel of different judges.

ANALYSIS

I. Dependency

AK first argues that the evidence is insufficient to support a dependency finding under RCW 13.34.030(6)(b) (dependency based on abuse or neglect) and former RCW 13.34.030(6)(c) (dependency based on absence of an adequate caregiver). Holding that the record contains substantial evidence to support the dependency under both statutory provisions, we affirm.

AK assigns error generally to "the [juvenile] court['s] . . . finding [of] DK, SK, IK and VK [as] dependent," Br. of Appellant at 1, which the juvenile court based on former RCW 13.34.030(6)(b) and (c). AK also challenges one of the juvenile court's findings relating specifically to neglect.[18] Thus, although AK does not cite former RCW 13.34.030(6)(b) directly, we treat her argument as encompassing this statutory provision, which focuses on neglect and abuse as grounds for finding dependency.

The State responds that all four children are dependent under former RCW 13.34.030 (6)(b) in that: (1) "[AK] continually neglected the children's medical and dental needs," Br. of

[18] Although AK assigns error to several other juvenile court findings, she does not provide supporting argument. Accordingly, she has waived these assignments of error, and we do not further address them. *In re Dependency of M.S.D.*, 144 Wn. App. 468, 478 n.7, 182 P.3d 978 (2008).

Resp't at 10, by failing to obtain prescription glasses for SK, not taking VK and SK to the dentist for serious dental health issues, and failing to keep the children current on their immunizations; (2) the children were "living in deplorable conditions"; and (3) "[AK] neglected her children's basic needs when there was no food found in their house, there was no electricity, and there was not a working toilet." Br. of Resp't at 10.

A. Standard of Review

To evaluate a claim of insufficient evidence of dependency, we determine whether substantial evidence supports the trial court's findings of fact and whether the findings support its conclusions of law. *In re Dependency of C.M.*, 118 Wn. App. 643, 649, 78 P.3d 191 (2003). "Evidence is substantial if, when viewed in the light most favorable to the party prevailing below, a rational trier of fact could find the fact more likely than not to be true." *In re Dependency of M.S.D.*, 144 Wn. App. 468, 478, 192 P.3d 978 (2008). In making this determination, we do not weigh the evidence or the credibility of witnesses, which are the province of the trial court. *See In re Dependency of E.L.F.*, 117 Wn. App. 241 246, 70 P.3d 163 (2003).

B. Former RCW 13.34.030(6)(b)

Former RCW 13.34.030(6) provided:

> Dependent child means any child who:
> [. . .]
> (b) Is abused or neglected as defined in chapter 26.44 RCW by a person legally responsible for the care of the child;
> (c) Has no parent, guardian, or custodian capable of adequately caring for the child, such that the child is in circumstances which constitute a danger of substantial damage to the child's psychological or physical development.

Former RCW 26.44.020(1) (2009) defined abuse or neglect as:

> [S]exual abuse, sexual exploitation, or injury of a child by any person under circumstances which cause harm to the child's health, welfare, or safety, excluding conduct permitted under RCW 9A.16.100; or the negligent treatment or maltreatment of a child by a person responsible for or providing care to the child. An abused child is a child who has been subjected to child abuse or neglect as defined in this section.

Former RCW 26.44.020(13) (2009) defined negligent treatment or maltreatment as:

> [A]n act or a failure to act, or the cumulative effects of a pattern of conduct, behavior, or inaction, that evidences a serious disregard of consequences of such magnitude as to constitute a clear and present danger to a child's health, welfare, or safety, including but not limited to conduct prohibited under 9A.42.100 [endangerment with a controlled substance]. When considering whether a clear and present danger exists, evidence of a parent's substance abuse as a contributing factor to negligent treatment or maltreatment shall be given great weight.

1. Medical and dental needs

Substantial evidence supports the juvenile court's finding that AK neglected the children's medical and dental needs.[19] As Division One of our court noted in *In re E.L.F.*, failure to "consistently follow through with . . . medical appointments" by frequently cancelling appointments or simply failing to show up can contribute to a finding of neglect. *In re E.L.F.*, 117 Wn. App. at 249. AK failed to schedule and/or take VK and SK to follow-up appointments to complete treatment for serious dental problems, including abscesses, root canals, lesions, and cavities. In addition, she failed to obtain chicken pox, measles, tetanus, and Hepatitis A vaccines for three of the children, and SK had no prescription eyeglasses for over a year and a half, despite her extremely poor vision.

Although Daughtery and AK offered excuses for some of the missed appointments,

[19] CP (40203-3) at 20 (VK); CP (40206-8) at 21 (DK); CP (40216-5) at 20 (I.K); CP (40213-1) at 20 (SK).

apparently they did not persuade the trial court. It is well-settled that we do not weigh the credibility of witnesses. *In re E.L.F.*, 117 Wn. App. at 245. Thus, the only questions before us are whether substantial evidence supports the trial court's findings of fact and whether the findings support its conclusions of law. *In re Dependency of M.P.*, 76 Wn. App. 87, 90, 882 P.2d 1180 (1994). Taken in a light most favorable to the party prevailing below (the State), we hold that a rational trier of fact could find it was more likely true than not that AK's history of repeated failures to ensure that her children received vital medical treatment demonstrated "a serious disregard of consequences of such magnitude as to constitute a clear and present danger to a child's health, welfare, or safety." *In re M.S.D.*, 144 Wn. App. at 479 (quoting former RCW 26.44.020(15)).

2. Dangerous living conditions

Dangerous living conditions also support the juvenile court's dependency ruling. "Failing to protect a child from danger can provide the basis for a finding of dependency." *In re M.S.D.*, 144 Wn. App. at 480. AK admitted at trial that the children were sleeping in a house that Applegate, Rhoades, and others observed as having black mold; exposed electrical wiring and piping; a propane tank with a tube going inside the house through a broken, jagged window; and garbage strewn about. And AK concedes on appeal that "[t]here is no dispute that at the time the children were taken, the house was not in livable condition." Br. of Appellant at 17.

But AK argues that, by the time of the dependency hearing, she and Daughtery had made the house livable. Although the record supports this assertion, *see* III VRP at 342-47, 370-71, AK's argument does not provide grounds for reversing the juvenile court's dependency ruling; the

improved condition of the house *after* the State took custody of the children does not outweigh the substantial additional evidence supporting the dependency ruling.[20] The "unlivable" conditions of the home at that time and the other factors that the trial court considered, as we have noted throughout this opinion, support the juvenile court's findings of abuse and neglect as grounds for dependency under former RCW 13.34.030(6)(b).

3. AK's substance abuse

Former RCW 26.44.020(13) included in its definition of "negligent treatment or maltreatment" for dependency purposes "evidence of a parent's substance abuse as a contributing factor to negligent treatment or maltreatment"; this subsection further decrees that such substance abuse "shall be given great weight" in determining whether a parent's "pattern of conduct, behavior, or inaction" "evidences a serious disregard of consequences of such magnitude as to constitute a clear and present danger to a child's health, welfare, or safety."

Here, the juvenile court found that "[AK's] substance abuse is a contributing factor to her negligent treatment and capability to parent." CP (40203-3) at 18. Although AK asserts that "[t]here was no evidence to this effect," Br. of Appellant at 10, she concedes that she has convictions for an alcohol-related assault and for driving a DUI, and that she once used crack cocaine with her ex-husband. As our Supreme Court has explained, "[P]ast history is a factor that a court may consider in weighing a parent's current fitness." *In re Dependency of J.C.*, 130

[20] That these improvements may be relevant in future hearings does not affect our holding here. The apparent legislative purpose for dependency proceedings is to provide the parents with services, opportunity, and reasonable time to remedy parenting deficiencies, such as dangerous living conditions, before determining whether it will ultimately be necessary to terminate parental rights in order to protect the children's welfare. RCW 13.34.180(1)(d); RCW 13.34.136.

Wn.2d 418, 428, 924 P.2d 21 (1996).

Although AK is correct that the record does not show that the children were present when she smoked crack cocaine with her ex-husband or when she committed her alcohol-related crimes, a dependency ruling based on abuse and neglect under former RCW 13.34.030(6) "does not require evidence of *actual harm*, only clear and present danger to the child[ren]'s health, welfare and safety." *In re Dependency of H.S.*, 135 Wn. App. 223, 233, 144 P.3d 353 (2006) (emphasis added) (quoting *In re Interest of J.F.*, 109 Wn. App. 718, 731, 37 P.3d 1227 (2001)), *aff'd*, *In re Dependency of Schermer*, 161 Wn.2d 927, 169 P.3d 452 (2007). AK's substance abuse presented such a danger. For example, when Rhoades and Applegate arrived at the dilapidated house, they found a child answering the door at 10 a.m. When AK came to the door, she looked like she had just woken up and beer cans were lying around the home. Rhoades and Applegate both believed AK was under the influence of an intoxicant.[21] In addition, CPS found "likely," II VRP at 261, a 2004 allegation that someone had found IK sucking on a syringe.

Yet, despite her ongoing substance abuse and her alcohol-related prior criminal convictions, AK repeatedly refused to provide a urinalysis sample between the time the State took her children into custody and the time of the dependency hearing. Following her 2003 conviction for assault, AK entered a one-year outpatient treatment program for substance abuse. After completing this treatment, she did not engage in any follow-up care or support groups. Nor did she undertake additional treatment after her 2008 DUI conviction. AK later admitted that the

[21] It appeared to Rhodes that AK was under the influence of methamphetamine. Applegate believed AK had a "hangover." II VRP at 202.

State has offered her services since 1998, but she had not participated in any of them.

Viewed in the light most favorable to the State, substantial evidence supports the juvenile court's findings that: (1) AK continued to have a substance abuse problem that presented negative consequences to the health and safety of her children; (2) it is "more likely than not to be true"[22] that "the cumulative effects" of AK's "pattern of conduct, behavior, or inaction . . . evidences a serious disregard of consequences of such magnitude as to constitute a clear and present danger to a child's health, welfare, or safety";[23] and (3) the children are dependent under former RCW 13.34.030(6)(b).

C. Former RCW 13.34.030(6)(c)

The juvenile court further found that VK, SK, IK, and DK are "dependent according to [former] RCW 13.34.030[(6)]. . . (c), in that . . . [they] ha[ve] no parent, guardian, or custodian capable of adequately caring for [them], such that [they] [are] in circumstances which constitute damage to . . . [their] psychological or physical development."[24] AK argues that the juvenile court erred in ruling that the children are dependent under former RCW 13.34.030(6)(c) because (1) the State "did not prove AK was not capable of adequately caring for her children, or that her parenting deficiencies constituted a danger of substantial damage to them," Br. of Appellant at 16-17; (2) "by the time of the dependency factfinding, the house was completely livable," Br. of

[22] *In re M.S.D.*, 144 Wn. App. at 478.

[23] Former RCW 26.44.020(13) (2009).

[24] CP (40203-3) at 20 (VK); CP (40206-8) at 21 (DK); CP (40216-5) at 20 (I.K); CP (40213-1) at 20 (SK).

Appellant at 17; and (3) her "history of substance abuse" is not evidence that support's the juvenile court's finding of dependency. Br. of Appellant at 18. As we have already explained in the previous section of this analysis, AK's second and third arguments fail. Thus, in this section we address only her first argument.

The State points to the following facts that proved AK inadequately cared for her children: (1) the deplorable condition of the house at the time the State took the children into custody; (2) AK's behavior and appearance at that time, including her apparent intoxication; (3) the children's needs for "individual therapy," Br. of Resp't at 13;[25] (4) the children's significant periods of absences from school; (5) the CPS's investigation of an allegation that the children shared a residence with a registered sex offender in March 2001; (6) the CPS's investigation of allegations of the children's suffering sexual abuse in December 2002; and (7) the CPS's investigation of additional allegations of sexual abuse in June 2004 after AK left one of the children with AK's brother, who was a suspected sex offender.

In addition to being relevant to the risk of danger posed to the children's health, safety, and welfare,[26] the following facts in the record are also relevant to AK's ability to care adequately for her children under former RCW 13.34.030(6)(c): (1) AK's failure to follow through with critical dental and medical appointments for her children and to provide her

[25] Former CPS social worker Tara Sol testified at the dependency hearing that she had worked with the children "to help [them transition] into foster care and to work with the kids on the individual level." III VRP at 444. According to Sol, all four children exhibited behavioral issues such as attention deficit; lack of impulse control; and, regarding DK, not "know[ing] how to be a kid herself" because she "has been put in a . . . parenting role." III VRP at 447.

[26] *See* former RCW 13.34.030(6)(b).

children with timely vaccinations;[27] (2) AK's history of substance abuse and failure to demonstrate her abstinence from substance abuse; (3) AK's admitted refusal to engage, not just in urinalysis samples, but in *any* services that the State offered (which can provide the basis for terminating a parent-child relationship under RCW 13.34.180(1)(d)); (4) AK's repeated relocations of her family;[28] (5) A.K's decisions to leave the children in the care of adults who were unfit for supervision, such as "Misty," whom SK allegedly witnessed apparently ingesting a narcotic, II VRP at 287; and (6) A.K's failure to "shield[]" her children from knowledge of sexual acts, CP (40203-3) at 17. FF 2.3.[29] Again, viewed in a light most favorable to the State, these facts support the trial court's finding that it is "more likely than not" that the children have

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[27] AK disputes the juvenile court's finding that she does not "recognize the necessity of making sure the girls are properly treated for head-lice so that they don't miss so much school." CP (40203-3) at 19, FF 2.4(i). Assuming, without deciding, that substantial evidence does not support this finding, other substantial evidence in the record demonstrates that AK's inadequate parenting abilities presented a danger to the children's health, safety, and welfare.

[28] AK argues that the juvenile court "ignore[d] the testimony of AK and [ ]Daughtery, explaining the reasons for these moves," Br. of Appellant at 11, which AK asserts "were motivated by a concern for the children's safety, and the remainder were motivated by the competing needs of a large family and economic necessity." Br. of Appellant at 13. Again, we do not weigh the evidence or the credibility of witnesses. *See In re E.L.F.*, 117 Wn. App. at 245. Instead, we ask merely whether it is "more likely than not" that the record supports the juvenile court's findings. *In re M.S.D.*, 144 Wn. App. at 478. The juvenile court had the opportunity to evaluate AK's and Daughtery's professed motives for the family's geographical relocations and the children's absences from school, as well as conflicting evidence such as Rhoades's deposition testimony that AK and Daughtery actually left North Dakota because of accusations that they were neglecting the children. The juvenile court rejected AK's and Daughtery's explanations, and substantial evidence supports the juvenile court's ruling.

[29] AK argues that VK learned what a "blow job" is" from "one or more of her older sisters, who learned the information from a friend," and it is "unreasonable to penalize" AK for this. Br. of Appellant at 9. But SK testified that no one told VK what a blow job was. II VRP at 284-85. Again, we do no weigh the credibility of witnesses. And substantial evidence supports the juvenile court's finding.

"no parent, guardian, or custodian capable of adequately caring for" them and "[they] [are] in circumstances which constitute damage to . . . [their] psychological or physical development." Former RCW 13.34.030(6)(c) (2009). Accordingly, we hold that substantial evidence supports the juvenile court's dependency rulings.

II. Excluded Testimony

AK next argues that the juvenile court erred by excluding portions of CPS supervisor Kat Scheibner's and Daughtery's testimonies. Assuming, without deciding, that excluding this evidence was error, any error was harmless because it did not affect the outcome of the dependency hearing. An error is harmless if "within reasonable probabilities, had the error not occurred, the outcome of the trial would have been materially affected." *State v. Cunningham*, 93 Wn.2d 823, 831, 613 P.2d 1139 (1980).

The first excluded testimony that AK challenges is that of Kat Scheibner, a CPS social worker who supervised the CPS workers involved in the State's removal of the children from AK's custody. AK asked Scheibner whether CPS had made findings concerning the July 9, 2009 referral of VK's allegations of sexual abuse. The juvenile court sustained the State's objection to the testimony as irrelevant.

The record before us on appeal does not contain a formal offer of proof as to the substance of this portion of Scheibner's excluded testimony. The record does contain, however, two exhibits that the juvenile court did not admit as evidence or allow Scheibner to reference in her testimony: letters from the CPS dated July 23, 2009, and October 14, 2009, stating that CPS determined the July 7, 2009 referral was "founded," II VRP at 261, as to the neglect allegations

but "unfounded," II VRP at 261, as to the sexual abuse allegations. These excluded CPS determinations mirror the juvenile court's decision, namely that the State demonstrated abuse and neglect of the children, but failed to establish sexual abuse. Thus, any testimony from Scheibner about these CPS's findings would have matched the juvenile court's determination based on other evidence received during the dependency hearing and, therefore, did not affect the outcome of the trial.

Similarly, AK argues the juvenile court erred by excluding testimony when AK asked Daughtery about a letter he had received from the State dated October 14, 2009; the juvenile court sustained the State's objection that this letter would go to the question of whether the July 7, 2009 referral was founded or unfounded. This letter from the State stated that the sexual abuse allegations in the July 7, 2009 referral were "unfounded." Although referring to ER 704, the juvenile court excluded this letter on the same grounds as it had excluded similar CPS letters. As we noted above in connection with the excluded portions of Scheibner's testimony about the CPS letter, the juvenile court found that the State failed to establish the allegations of sexual abuse, even without this portion of Daughtery's testimony and the State's October 14, 2009 letter. Thus, AK has not demonstrated any probability that Daughtery's excluded testimony would have altered the hearing outcome. We hold, therefore, that any error in excluding these

portions of Scheibner's and Daughtery's testimonies was harmless.

We affirm.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

Hunt, J.

We concur:

Penoyar, C.J.

Johanson, J.