IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

In re the Welfare of: A.M.,[†] A Minor child.	No. 40381-1-II UNPUBLISHED OPINION

Hunt, J. — LK appeals the termination of her parental rights to two-and-one-half-year-old AM, who has been dependent and in foster care since birth. LK argues that (1) the juvenile court erred in admitting Exhibits 1 through 62 under ER 904; (2) her trial counsel rendered ineffective assistance when he failed to object to admission of dependency proceeding documents and failed to challenge experts' qualifications and the scope of their testimonies; and

(3) the State failed to show there was little likelihood that conditions would be remedied in the near future and that continuation of the parent-child relationship clearly diminished AM's prospects for early integration into a stable and permanent home. 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.

FACTS

I. Dependency

On July 19, 2007, a year before AM's birth, the juvenile court found LK's two older children, MK and SM,[1] dependent; allowed LK supervised visitation; and ordered LK to participate in services for chemical dependency, mental health issues, and parenting. LK received two psychological evaluations, individual therapy, drug and alcohol treatment, Parent Protection Group (PPG),[2] and parenting classes.

In August 2007, David B. Hawkins, ACSW, PhD, (1) conducted a psychological evaluation of LK; (2) diagnosed her with post-traumatic stress disorder, alcohol abuse, cannabis tendency, and narcissistic personality disorder; (3) recommended that she participate in group counseling, anger management treatment, a domestic violence support group, and Narcotics Anonymous meetings (to address her cannabis dependence); and (4) recommended that she continue supervised visitation with her children. Dr. Hawkins' evaluation also noted "several concerns that may mitigate against [LK] being a safe and effective parent," including: the history of domestic violence between LK and RM,[3] her anger, her narcissistic personality structure, and

[1] The dependency of MK was dismissed in May 2008; the juvenile court granted custody of MK to his father, Michael Chown. In April 2009, LK relinquished her parental rights to SM, who lives with LK's sister. At oral argument, LK's counsel pointed out LK in the back of the courtroom, holding her baby, apparently born since the termination proceedings at issue in this appeal.

[2] PPG consists of weekly hour-long intensive group sessions and accompanying homework addressing effective parenting.

[3] RM is LK's ex-husband and the father of AM; he is not a party to this appeal.

her inability to think of any way at all that her parenting could be improved. Ex. 14 at 11.

LK began these treatments but failed to complete any of the programs. Despite her case workers' warnings, in November 2007, LK married RM, AM's father, who was physically abusive and addicted to drugs. From February to August 2008, the Department of Social and Health Services (DSHS) offered therapy to LK, which sessions she attended irregularly.[4]

During her pregnancy with AM, LK tested positive for opiates and tetrahydrocannabinol (THC). Ex. 1. When AM was born on July 18, 2008, the State filed a dependency petition on grounds that AM would be at risk if sent home with either parent. LK agreed to a dependency order and the dispositional order contained the same requirements as in her earlier dependency orders for her older children. Since this time, AM has lived in a stable foster home; she has never lived with LK. For the first few months after AM's birth, LK visited every day. From September 25, 2008, to July 20, 2009, Linda Sisson supervised visits between LK with AM, with LK attending only about 50 percent of the time.[5] By February 2009, LK's visits with AM became inconsistent and infrequent; and when she did visit, LK exhibited a "flat affect" with low animation, few smiles, little eye contact, and "long periods of silence." I RP at 106.

Ten days after AM's birth, LK entered a one-year drug treatment program at Eugenia Center. While in this program, she continued to use drugs and tested positive for opiates, barbiturates, marijuana, and methamphetamine. In January 2009, DSHS gave LK another

[4] According to therapist Athena Grijalva, who later testified at the termination trial, LK attended only 7 of the 18 sessions scheduled over this 6-month period. She canceled or failed to show for seven sessions. The therapist canceled or changed four of those sessions. Rescheduling canceled appointments was difficult.

[5] DSHS cancelled LK's December 2008 visits because of inclement weather.

psychological evaluation, conducted by Jan G. Johnson, PhD. Dr. Johnson diagnosed LK with histrionic personality disorder and cannabis dependency. During this same time period, Eugenia Center discharged LK for nonattendance.

In April 2009, LK relinquished her parental rights to her elder daughter, SM, and agreed to a finding of dependency as to AM. In denial about her addictions, LK explained, "I was never willing to accept that I had these problems . . . that I needed help." I RP at 23. The juvenile court ordered her to attend treatment and to submit to random urinalysis. From July through December 2009, LK did not visit AM. According to guardian ad litem (GAL) Joyce Eileen Carr, AM does not recognize LK as her mother.

On August 17, 2009, the State filed a petition to terminate LK's parental rights to AM. The petition alleged that (1) AM's parents had not successfully completed any services offered to correct parental deficiencies; (2) "[t]hroughout the dependency, the parents have demonstrated an unwillingness to participate in and successfully complete services offered to correct parental deficiencies," CP at 3; and (3) "[t]he parents have not demonstrated the ability or the commitment to provide the child with a stable home." CP at 3. The juvenile court set the termination hearing for October 15, 2009.

In October 2009, LK pleaded guilty to unlawful possession of methadone and driving with a suspended license. The criminal court sentenced her to 53 days in jail. LK described her in-patient drug recovery program while in jail as "a turning point." I RP at 32. On October 15, 2009, LK opposed the termination and requested a court-appointed attorney. The juvenile court appointed counsel and reset the trial for January 20-21, 2010.

Upon release from jail in December 2009, LK joined a one-year program, "Set Addicts Free Eternally" (SAFE) family ministries, a religious-based residential program that helps women recover from addictions and behavior problems. II RP at 146. At SAFE, LK lived in a dormitory-style setting and participated in counseling, drug and alcohol support meetings, and a support group for domestic violence victims.

II. Termination

The three-day termination trial commenced on January 20, 2010. At the time of trial, LK had been living at and participating in the one-year SAFE program for 30 days; according to LK, she had been clean and sober for 105 days. She had also filed to dissolve her marriage to RM.

The State offered into evidence under ER 904 a binder containing documents from the dependency proceedings. *See* CP at 61-68; Ex. 1-62. Without objection, LK stipulated to the documents en masse and the trial court admitted all 62 exhibits. The State also called witnesses, including: psychologist Dr. Jan Johnson, guardian ad litem (GAL) Joyce Carr, and therapist Stacy Crutcher McFadden of the Parent Protection Group (PPG). LK testified and called witnesses.

The juvenile court found that (1) DSHS had expressly offered or provided LK with all reasonably available necessary services, capable of correcting her parenting deficiencies within the foreseeable future; and (2) it was unlikely that LK could correct her parenting deficiencies, especially her longstanding unresolved drug addiction and domestic violence issues, and repair her relationship with AM in the near future, if ever, given her history of failed attempts with three children.[6] The juvenile court terminated LK's parental rights as to AM.

[6] More specifically, the juvenile court found:

> Finding of fact (FF) 2.10: There is little likelihood that conditions will be

[7]

LK appeals the termination of her parental rights as to AM.[8]

ANALYSIS

I. Effective Assistance of Counsel

LK argues that her trial counsel rendered ineffective assistance (1) by failing to object to admission of Exhibits 1 through 62; and (2) in failing to challenge the qualifications of proffered experts or the scope of their testimony. These arguments fail.

A. Standard of Review

Washington law guarantees the right to counsel in termination proceedings. RCW 13.34.090(2); *In re Grove*, 127 Wn.2d 221, 237, 897 P.2d 1252 (1995). No definitive Washington case, however, has expressly held that we apply the same test for ineffective

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remedied so that the child can be returned to either parent in the near future.

FF 2.10K: [LK's] unresolved issues regarding her drug addiction and domestic violence are longstanding and it will take a significant amount of time for the mother to address those issues. The window of time in regard to the child's near future is much shorter than the amount of time the mother needs to address and resolve her parental deficiencies.

FF 2.11B: The court is not confident that [LK] will be able to address her parental deficiencies within the amount of time statutorily allowed given her history of failed attempts. The court is unable to find justification for giving [LK] additional opportunities to demonstrate that she is able to adequately parent when she has failed to correct her parental deficiencies in regard to her two older children and now this child.

CP at 89-90.

[7] The court also terminated the father's parental rights; but he is not party to this appeal.

[8] A commissioner of our court affirmed the superior court's termination order on September 14, 2010. On November 17, we granted LK's motion to modify the commissioner's ruling and scheduled the case for argument before a panel of judges.

assistance of counsel in civil parental termination cases that we apply in criminal cases.[9] Although the State incorporates language from *In re Dependency of Moseley*, 34 Wn. App. 179, 184, 660 P.2d 315 (1983), the State cites and apparently applies the criminal *Strickland*[10] standard here.

Thus, to establish ineffective assistance, LK must show that (1) her trial "counsel's representation was deficient, i.e., it fell below an objective standard of reasonableness based on consideration of all the circumstances"; and (2) her trial "counsel's deficient representation prejudiced [her case], i.e. there is a reasonable probability that, except for counsel's unprofessional errors, the result of the proceeding would have been different." *State v. McFarland*, 127 Wn.2d 322, 334-35, 899 P.2d 1251 (1995) (citing *State v. Thomas*, 109 Wn.2d 222, 225-26, 743 P.2d 816 (1987) (quoting *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984))). If LK's claim does not satisfy either element of the test, the inquiry ends. *State v. Hendrickson*, 129 Wn.2d 61, 78, 917 P.2d 563 (1996).

To provide constitutionally adequate assistance, "'counsel must, at a minimum, conduct a *reasonable investigation* enabling [counsel] to make informed decisions about how best to represent [the] client.'" *In re Personal Restraint Petition of Brett*, 142 Wn.2d 868, 873, 16 P.3d 601 (2001) (quoting *Sanders v. Ratelle*, 21 F.3d 1446, 1456 (9th Cir. 1994)). But "counsel's decisions regarding whether and when to object fall firmly within the category of strategic or

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[9] *In re the Welfare of J.M.*, 130 Wn. App. 912, 920, 125 P.3d 245 (2005), Division Three of our court notes, "No published Washington case has expressly held that *Strickland* applies to the performance of counsel representing parents in proceedings to terminate their parental rights. We do not pass on the issue directly." Although Division Three articulated no holding on whether a distinction exists between a "meaningful" standard of counsel's assistance and a "fair" standard, it noted, "We are not persuaded by the State's perceived distinction." *J.M.*, 130 Wn. App. at 922.

[10] *Strickland v. Washington*, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984).

tactical decisions". *State v. Johnston*, 143 Wn. App. 1, 19, 177 P.3d 1127 (2007) (citing *State v. Madison*, 53 Wn. App. 754, 763, 770 P.2d 662, *review denied*, 113 Wn.2d 1002 (1989)).

B. Choice Not To Object to Admission of Documents

When DSHS moved to admit the dependency proceeding documents into evidence at the termination trial, LK's counsel responded, "I reviewed the documents and filed no response to the [ER] 904 motion and so I have no objection to the State's motion." I VRP at 9. We agree with the State that LK's counsel likely made a strategic decision not to object to the State's offer of these dependency documents. "Legitimate trial strategy or tactics cannot be the basis for an ineffectiveness of counsel claim." *State v. Aho*, 137 Wn.2d 736, 745, 975 P.2d 512 (1999) (citing *State v. Garrett*, 124 Wn.2d 504, 520, 881 P.2d 185 (1994)). But where the reviewing court recognizes no conceivable purpose, counsel's failure to object is not legitimate strategy but rather is "incompetence of counsel justifying reversal." *State v. Madison*, 53 Wn. App. at 763 (citing *Strickland*, 466 U.S. 668); *Aho*, 137 Wn.2d at 745-46. Such is not the case here.

The State argues, and the record supports, that LK's counsel likely decided not to object to admission of the dependency documents because his strategy was to concede and to deemphasize LK's past parenting deficiencies and then to focus instead on LK's recent positive progress in beginning to remedy these deficiencies. Counsel could reasonably have wanted the trial court to consider these exhibits—to contrast the past and present and to highlight how LK had changed, working diligently to remedy these past deficiencies—in order to persuade the trial court either to deny termination or at least to postpone the hearing to give LK more time to demonstrate her changed circumstances.

Our Washington Supreme Court's recent opinion in *State v Grier*, 171 Wn.2d 17, 246 P.3d 1260 (2011), weighs heavily in favor of holding trial counsel's performance effective here. In *Grier*, a unanimous court held that defense counsel's "all or nothing" approach in "failing" to request a lesser included offense instruction in a second degree murder trial was "a legitimate trial tactic and did not constitute ineffective assistance of counsel under the state or federal constitutions." *Grier*, 171 Wn.2d at 20. The Supreme Court explained:

> The threshold for the deficient performance prong is high, given the deference afforded to decisions of defense counsel in the course of representation. To prevail on an ineffective assistance claim, a defendant alleging ineffective assistance must overcome "a strong presumption that counsel's performance was reasonable." *State v. Kyllo*, 166 Wn.2d 856, 862, 215 P.3d 177 (2009). Accordingly, the defendant bears the burden of establishing deficient performance. *McFarland*, 127 Wn.2d at 335.
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> "When counsel's conduct can be characterized as legitimate trial strategy or tactics, performance is not deficient." *Kyllo*, 166 Wn.2d at 863; *State v. Garrett*, 124 Wn.2d 504, 520, 881 P.2d 185 (1994) ("*[T]his court will not find ineffective assistance of counsel if 'the actions of counsel complained of go to the theory of the case or to trial tactics.*'" (quoting *State v. Renfro*, 96 Wn.2d 902, 909, 639 P.2d 737 (1982))). . . . "*The relevant question is not whether counsel's choices were strategic, but whether they were reasonable*." *Roe v. Flores-Ortega*, 528 U.S. 470, 481, 120 S. Ct. 1029, 145 L. Ed. 2d 985 (2000).

Grier, 171 Wn.2d at 33-34 (emphasis added) (first alteration in original).

> Finally, "*[a] fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time*."

Grier, 171 Wn.2d at 34 (emphasis added) (alteration in original) (quoting *Strickland*, 466 U.S. at 689).

The *Grier* court makes the following additional observation, which clearly applies here:

> *Strickland* begins with a "strong presumption that counsel's performance

> was reasonable." *Kyllo*, 166 Wn.2d at 862. To rebut this presumption, the defendant bears the burden of establishing the absence of any "*conceivable* legitimate tactic explaining counsel's performance." *Reichenbach*, 153 Wn.2d at 130 (emphasis added). Although risky, an all or nothing approach was at least conceivably a legitimate strategy to secure an acquittal.

Grier, 171 Wn.2d at 42. Similarly here, in the parental termination context, we begin with a "strong presumption that counsel's performance was reasonable"; and to rebut this presumption, LK bears the burden of establishing the absence of any "conceivable legitimate tactic explaining counsel's performance." *Id*. Because LK fails to carry this burden to show deficient performance, we need not address the second prong of the ineffective assistance of counsel test.[11]

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[11] Nevertheless, we note that LK cannot meet the second prong of the test for ineffective assistance of counsel. *McFarland*, 127 Wn.2d at 334-35. Although some of the documents admitted may have been objectionable under ER 904 (c), their inadmissibility by other means has not been established. And we agree with the State that, in light of LK's own admissions to her previous parenting deficiencies, underlying the court's past finding of dependency as to AM, the admission of the dependency documents did not prejudice her case during her parental termination trial.

LK argues that her case is similar to the circumstances in *J.M.*, where counsel's ineffective assistance prejudiced the parent's case because the trial court relied on unchallenged expert reports as substantive evidence, without their live testimony and cross examination, thereby resulting in a failure of due process. *J.M.*, 130 Wn. App. at 923. *J.M.* does not apply to the different circumstances here. In *J.M.*, only the social worker and the GAL testified; there was no live expert testimony from professionals who had evaluated the parent directly and on whose written reports the trial court heavily relied. Moreover, JM's counsel not only failed to object to evidence, he also failed to cross-examine the State's witnesses, failed to call any witnesses on behalf of his client, made "no attempt to defend [the mother's] position or to attack the State's position" and, instead, "simply took the State's evidence at face value and recited that his client disagreed." *J.M.*, 130 Wn. App. at 925.

Here, in contrast, both the psychologist and therapist who had evaluated and worked with LK testified at the termination trial and were subject to adequate and able cross examination by LK's counsel, which highlighted for the trial court LK's positive progress in remediating her previous parenting deficiencies. Further distinguishing LK's case from *J.M.*, LK not only testified on her own behalf, admitting many of the statements she now challenges as irrelevant hearsay, but also her counsel called and elicited testimony from four witnesses to bolster LK's case.

C. Cross-Examination of Expert Witnesses

LK further argues that trial counsel's representation was deficient in failing to challenge the qualifications of proffered experts or the scopes of their testimonies. As the State correctly notes, LK's trial counsel not only thoughtfully cross-examined these State witnesses but also defended LK's position by offering witnesses and evidence supporting her position that her parental rights should not be terminated. As with counsel's decision whether to object to evidence, the extent of cross-examination is a matter of judgment and strategy. *Johnston*, 143 Wn. App. at 20 (citing *In re Pers. Restraint of Davis*, 152 Wn.2d 647, 720, 101 P.3d 1 (2004)).

LK argues that effective counsel would have challenged (1) the testimony of psychologist Jan Johnson on multiple grounds, including whether the testing used should have been limited to clinical, rather than forensic, purposes and whether and to what extent the clinical personality disorders described applied specially to LK;[12] and (2) the scope of therapist Crutcher-McFadden's and GAL Joyce Carr's[13] testimonies as well as Crutcher-McFadden's credentials.[14] The record

[12] In her appellant's brief, LK cites several articles on psychology regarding the accuracy of Dr. Johnson's statements about LK's mental state and the background of the tests used. But those articles and studies are not in the record before us on appeal; nor were they presented to the juvenile court. Thus, we do not consider the articles or studies.

[13] More specifically, LK points to trial counsel's failure to object to GAL Carr's testimony on grounds that she violated RCW 13.34.105(1) by giving opinion testimony and by not conducting an independent investigation of AM's best interests. But LK does not specify what portion of Carr's testimony was opinion, rather than fact. Instead, LK contends that Carr's testimony was based on her personal bias that "a child who has been in foster care for 18 months should never be reunited with her mother." Br. of Appellant at 26. In support of this assertion, LK cites II RP at 39, where Carr testified, "[T]his child needs permanence . . . to not terminate would mean that she would not remain in that only home possibly and I think to take her from that home would be very disruptive and perhaps very traumatic as a young child." These statements do not give rise to LK's assertions.

shows, however, that LK's counsel reasonably cross-examined these witnesses. The record does not show that counsel's performance fell outside the range of reasonable representation. *Johnston*, 143 Wn. App. at 20. Moreover, Crutcher-McFadden's testimony about LK being histrionic mirrored the testimonies of Drs. Hawkins and Johnson, two psychologists who independently evaluated her. LK having failed to satisfy the deficient performance prong of the test for ineffective counsel, we need not address the prejudice prong. *State v. Hendrickson*, 129 Wn.2d 61, 78, 917 P.2d 563 (1996), *overruled on other grounds by Carey v. Musladin*, 549 U.S. 70, 127 S. Ct. 649, 166 L. Ed. 2d 482 (2006).

We hold that LK fails to show that trial counsel rendered ineffective assistance on any of the grounds she alleges.

II. Satisfaction of Statutory Requirements

LK next argues that the State did not meet its burden to show the following statutory elements required for parental termination under RCW 13.34.180(1): (1) that conditions are unlikely to improve in the near future;[15] and (2) that continuing the dependency would harm AM's prospects for integration into a permanent home. We disagree.

[14] More specifically, LK argues that trial counsel failed to challenge Crutcher-McFadden's credentials under RCW 18.83.070(2)-(4). LK contends that because Crutcher-McFadden is not a licensed psychologist, she could not testify about "pseudo 'therapy'" or that LK is histrionic. Br. of Appellant at 23 (quoting II RP at 17). But Crutcher-McFadden did not claim to be a licensed psychologist; on the contrary, she testified that she holds only a bachelor's degree in psychology and is a registered counselor.

[15] LK argues that in addressing this factor, the State presented and the trial court improperly relied on her past deficient performance, overlooking her recovery at the time of trial and likelihood that her deficiencies would be remedied within six to twelve months.

A. Standard of Review

As RCW13.34.190(1)(a) provides, the trial court may enter an order terminating all parental rights to a child only if the State proves the six statutory elements contained in the RCW 13.34.180(1) by clear, cogent, and convincing evidence. *In re Dependency of S.M.H.*, 128 Wn. App. 45, 53, 115 P.3d 990, *review denied*, 156 Wn.2d 1001 (2005). The evidence is clear, cogent, and convincing if the State shows that the ultimate fact in issue is "highly probable." *In re Dependency of K.R.*, 128 Wn.2d 129, 141, 904 P.2d 1132 (1995) (internal quotations omitted).

Additionally, the State must show by a preponderance of the evidence that termination of the parent-child relationship is in the child's best interest. *S.M.H.*, 128 Wn. App. at 54; RCW 13.34.190(1)(b). We will uphold a trial court's factual findings when substantial evidence supports those findings. *In re Welfare of S.V.B.*, 75 Wn. App. 762, 768, 880 P.2d 80 (1994). Substantial evidence is evidence sufficient to persuade a fair-minded rational person of the truth of the declared premise. *Bering v. SHARE*, 106 Wn.2d 212, 220, 721 P.2d 918 (1986), *cert. denied*, 479 U.S. 1050, 107 S. Ct. 940, 93 L. Ed. 2d 990 (1987).

Two of the six statutory elements for termination of parental rights are at issue here: (1) that "there is little likelihood that conditions will be remedied so that the child can be returned to the parent in the near future," RCW 13.34.180(1)(e); and (2) the effect of continuing the dependency, and postponing parental termination, on the child's prospects for integration into a permanent home. RCW 13.34.180(1)(f).

B. Likelihood That Conditions Will Be Remedied in Near Future

1. Burden of proof and standard of review

Whether a parent has corrected her deficiency is central to determining whether the State has proved "there is little likelihood that conditions will be remedied so that the child can be returned to the parent in the near future." RCW 13.34.180(1)(e); *K.R.*, 128 Wn.2d at 145. The statute provides:

> That there is little likelihood that conditions will be remedied so that the child can be returned to the parent in the near future. A parent's failure to substantially improve parental deficiencies within twelve months following entry of the dispositional order shall give rise to a rebuttable presumption that there is little likelihood that conditions will be remedied so that the child can be returned to the parent in the near future. The presumption shall not arise unless the petitioner makes a showing that all necessary services reasonably capable of correcting the parental deficiencies within the foreseeable future have been clearly offered or provided.

RCW 13.34.180(1)(e).[16]

Even where the evidence shows that the parent may eventually be capable of correcting

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[16] In making the determination under this section of the statute, the trial court may consider the following factors:

> (i) Use of intoxicating or controlled substances so as to render the parent incapable of providing proper care for the child for extended periods of time or for periods of time that present a risk of imminent harm to the child, and documented unwillingness of the parent to receive and complete treatment or documented multiple failed treatment attempts;
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> (ii) Psychological incapacity or mental deficiency of the parent that is so severe and chronic as to render the parent incapable of providing proper care for the child for extended periods of time or for periods of time that present a risk of imminent harm to the child, and documented unwillingness of the parent to receive and complete treatment or documentation that there is no treatment that can render the parent capable of providing proper care for the child in the near future.

Former RCW 13.34.180(1)(e).

parenting deficiencies, termination is still appropriate where the deficiencies likely will not be corrected within the "near future." *In re Dependency of A.W.*, 53 Wn. App. 22, 32, 765 P.2d 307 (1988) *review denied*, 112 Wn.2d 1017 (1989). What constitutes the "near future" depends on the age of the child and the placement circumstances. *In re Welfare of C.B.*, 134 Wn. App. 942, 954, 143 P.3d 846 (2006). The termination statute provides a reasonable timeframe: Failure to improve substantially within 12 months of the dispositional order of dependency creates a rebuttable presumption that there is little likelihood of remedy in the "near future" such that the child can return to the parent. RCW 13.34.180(1)(e).

The State filed the petition to terminate LK's parental rights to AM on August 17, 2009. The trial began in late January 2010, five months later; thus, the statutory rebuttable presumption that "there is little likelihood that conditions will be remedied" did not arise as would have been the case if the trial had begun 12 months later. RCW 13.34.180(1)(e). Accordingly, without benefit of the statutory presumption, the State retained the burden to show by clear, cogent, and convincing evidence that it was highly probable LK would not have sufficiently improve her parenting deficiencies in the near future. *C.B.*, 134 Wn. App. at 955-56.

On appeal, we give deference to the juvenile court before which the witnesses and parties appeared; and we inquire whether substantial evidence supports the trial court's findings in light of the applicable burden of proof. *C.B.*, 134 Wn. App. at 952-53. Substantial evidence exists where the evidence persuades a fair-minded rational person that LK would not improve conditions in the near future. *C.B.*, 134 Wn. App. at 953.

2. LK's parenting prognosis as to AM

Both at trial and on appeal, LK acknowledged her unfitness as a parent during much of AM's dependency period. *See* I RP at 27; Br. of Appellant at 7. Focusing now on a turning point she experienced while jailed for Driving While License Suspended (DWLS) and possession of methadone, however, LK argues that the juvenile court erroneously relied on her poor past performance when it entered Finding of Fact 2.10[17] and found AM dependent. LK relies on *C.B.* to argue that, when the mother is making significant improvement, the juvenile court should focus on her current situation to assess the likelihood of success. *C.B.*, 134 Wn. App. at 947. This argument fails.

Like LK, the mother's parenting deficiencies in *C.B.* involved drug and alcohol addictions as well as anger management and parenting skill issues. *C.B.*, 134 Wn. App. at 948. Although CB's mother's participation and performance in the several mandated services lacked perfection, she eventually completed two parenting classes, made "remarkable" progress in an inpatient drug treatment program she entered in lieu of jail, and entered and had almost completed a 90-day outpatient program at the time of the termination proceeding. *C.B.*, 134 Wn. App. at 948. In reversing the termination order in *C.B.*, we noted that (1) the mother had not failed any drug screenings, had completed a chemical dependency program, and had a recent positive visitation with her children; and (2) the State had presented no evidence that the mother's residence was unsafe, conceded that she was improving, and failed to meet its burden to show that she could not improve sufficiently within one year of the dependency order. *C.B.*, 134 Wn. App. at 956-57.

[17] In Finding of Fact 2.10, the trial court concluded, "There is little likelihood that conditions will be remedied so that the child can be returned to either parent in the near future." CP at 89 [FF 2.10].

Furthermore, the mother in *C.B.* had made significant progress in her addiction treatment and was doing "wonderfully" in outpatient treatment by the time of the termination trial. *C.B.*, 134 Wn. App. at 948.

In contrast, although at the start of the termination trial, LK had been clean and sober for 105 days and had been in her residential treatment program for 30 days, unlike the mother in *C.B.*, LK had not yet begun her planned, one-year intensive out-patient program at Eugenia Center to address her drug and alcohol addiction more fully; in fact, her first mental health counseling appointment for this out-patient program was scheduled for the week after the termination trial. Dr. Johnson testified that LK's successful engaging in services and appearing to integrate the material might be successful only in the short term and not the long term. Similarly, Crutcher-McFadden was doubtful about the prognosis for LK's long-term success, despite her substantial recent progress before the termination trial. Testimony at trial was that LK's "late" progress was unlikely to succeed into the future because of an underlying "character disorder," especially against the backdrop of her many failed previous attempts to sustain progress for a long enough period of time to be able to parent AM. Br. of Resp't at 10.

The trial court here expressly acknowledged LK's progress and commitment to improving her parenting skills, stating:

> I'm optimistic and I'm frankly hopeful that what she's got going now, with respect to her determination that she's going to make this work that she's found faith and that she has expressed that faith is going to help her to get through this situation. I'm very optimistic and hopeful that will work for her.

III RP at 88. Nevertheless, it ruled that this progress, though encouraging, was too little too late for AM. Although LK presented evidence that she was improving, the State's evidence, other

than past performance, persuaded the trial court that LK's parenting improvement would not be sufficient within the near future for AM. "When it is eventually possible, but not imminent, for a parent to be reunited with a child, the child's present need for stability and permanence is more important and can justify termination." *In re C.B.*, 134 Wn. App. at 958-59. We hold that substantial evidence supports the juvenile court's finding.

C. Effect of Continuing Dependency on Prospects for Permanent Home Integration

When the Department 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) (alteration in original).

LK notes that AM's foster parents are providing a stable placement and want to adopt her even without a condition that the State quickly sever her relationship with AM. Although acknowledging this encouraging fact, the State correctly responds that the pertinent question is whether continuing an attempt to forge a relationship with LK stands in the path of AM's achieving favored early permanence, namely adoption into her foster family. This statutory factor "is mainly concerned with the continued effect of the *legal* relationship between parent and child, as an obstacle to adoption; it is especially a concern where children have potential adoption resources." *In re Dependency of A.C.*, 123 Wn. App. 244, 250, 98 P.3d 89 (2004).

Early permanent placement is favored by state and federal law and carries its own value, which is that the speedy resolution of any dependency or termination proceedings promotes the

goal of providing children with safe, stable, and permanent homes. *In re Dependency of T. R.*, 108 Wn. App. 149, 159, 29 P.3d 1275 (2001). The State has been offering LK opportunities to remedy her parenting deficiencies, including her drug dependency, since before AM was born. At the time of the termination trial, one and one-half years had elapsed since the State had removed AM from LK at birth, waiting for LK to become a fit parent for AM; and it had been more than two and one-half years that the State had been offering LK similar services, from before the time the juvenile court found LK's two older children dependent in 2007. In all those years, LK had repeatedly failed to follow through with the many programs the State offered.

In short, at the time of this termination trial, LK had yet to sustain long term progress in remedying her parenting deficiencies, especially in demonstrating an ability to provide a safe and stable home for AM. Moreover, LK still had one year of an outpatient drug treatment program to enter and to complete after the termination trial. Expert testimony at the termination trial predicted that, despite LK's laudable progress in the recent months just before trial, the chances were 95 percent that this short term success would not persist long term.

As the juvenile court aptly noted, LK's recent positive progress, while laudable, came too late for AM, who had been waiting her whole short life for her mother to demonstrate that she could correct her parenting deficiencies, which included periods during which LK did not even visit AM. LK herself admitted failure during most of the dependency to remedy these deficiencies. Moreover, AM did not recognize LK as her mother, had never lived with LK, and had bonded with her foster family. The record supports the juvenile court's decision not to postpone the dependency any longer so that AM could integrate into a permanent family during

her formative years.[18]

[18] Although LK's efforts may have come too late for AM, perhaps LK's positive progress will persist long enough into the future to enable her to parent her fourth child, for whom it may not be too late.

We hold, therefore, that substantial evidence supports the juvenile court's finding that continuation of LK's parent-child relationship will diminish AM's prospects for early integration into a permanent home.

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.