

FILED
NOVEMBER 21, 2017
In the Office of the Clerk of Court
WA State Court of Appeals, Division III

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

In the Matter of the Parental Rights to)	No. 34758-3-III
)	(consolidated with
G.R.)	No. 34759-1-III)
_____)	
)	
In the Matter of the Parental Rights to)	UNPUBLISHED OPINION
)	
C.R.)	

PENNELL, J. — T.T. appeals a trial court order terminating her parental rights. We affirm.

FACTS

T.T.'s daughters were placed in dependency proceedings in Spokane County after being removed from their father's home. At the time the dependency proceedings started, T.T. was living in Nevada and had not seen her daughters for approximately two and one-half years.

The primary parental deficiency for T.T. was her lack of a healthy relationship with her daughters. During the dependency, the Department of Social and Health Services offered T.T. resources so she could visit her daughters, participate in phone calls and video conferencing, and attend therapy sessions in Washington. T.T.'s participation and contact with her daughters was inconsistent. This caused anxiety in both girls.

T.T. showed promise when she participated in services. However, her inconsistency and unreliability eroded what little relationship she had with her daughters. The girls exhibited anxiety over their relationship with their mother, hyper vigilance, and fear over the future. T.T. had a difficult time reading her daughters' emotions and responding appropriately. She showed minimal insight as to the effect her behavior had on her daughters.

During the last family therapy session, T.T. arrived 30 minutes late, causing the girls to become anxious and worried. One of the girls cried for 20 minutes after T.T.'s arrival. T.T. was unable to sooth the child until T.T. assured her that she was not mad at the child for wanting to stay with her foster parent. T.T. told the child she should stay in the foster parent's home. The family therapist testified that both girls reported they would prefer to remain with their foster parent. The therapist also stated it would take an extensive amount of time to repair T.T.'s relationship with her daughters and that it might

No. 34758-3-III; 34759-1-III
In re Parental Rights to G.R.

never happen.

In addition to her struggles forming a parent-child connection, T.T. also relapsed on methamphetamine at least twice during the dependency. Although T.T. was able to complete a chemical dependency program, she continued to test positive for unprescribed controlled substances.

A termination trial was held August 22-23, 2016. T.T. did not appear. The court terminated T.T.'s parental rights, and she appeals.

ANALYSIS

Because parents have a fundamental right to the care and custody of their children, a trial court that is "asked to interfere with that right should employ great care." *In re Welfare of M.R.H.*, 145 Wn. App. 10, 23, 188 P.3d 510 (2008). Termination of parental rights occurs only where two essential conclusions are made: (1) the parent is unfit, and (2) termination of the parent-child relationship is in the child's best interests. *In re Welfare of A.G.*, 160 Wn. App. 841, 843, 248 P.3d 611 (2011). T.T. challenges both aspects of the trial court's termination order.

Parental fitness

T.T.'s arguments focus on one aspect of the parental fitness test: whether continuation of the parent-child relationship clearly diminishes the children's prospects

No. 34758-3-III; 34759-1-III
In re Parental Rights to G.R.

for early integration into a stable and permanent home. RCW 13.34.180(1)(f). This factor must be proved by clear, cogent, and convincing evidence. *In re Welfare of A.B.*, 168 Wn.2d 908, 911-12, 232 P.3d 1104 (2010).

T.T. argues that because her daughters were doing well in the foster parent's home, and because she did not object to continued foster placement, the Department failed to show the necessity of termination. According to T.T., a less restrictive alternative, such as de facto parentage, could have met her daughters' needs while maintaining T.T.'s parental rights to visitation.

T.T.'s protestations are unpersuasive. The question before the trial court was whether continuation of parental rights would diminish the child's prospects for early integration into a stable *and permanent* home. Foster care placement is not permanent. RCW 13.40.020(12); *In re Dependency of A.D.*, 193 Wn. App. 445, 458-59, 376 P.3d 1140 (2016). T.T.'s continued legal relationship with her daughters was a barrier to adoption and to her daughters' sense of permanence.

The trial court did not err by failing to consider de facto parentage in lieu of adoption. This legal option was never presented. Even if a de facto parentage claim could be viable in the termination context, a trial court does not err by failing to consider the issue sua sponte. *See In re Dependency of K.S.C.*, 137 Wn.2d 918, 931-32, 976 P.2d

No. 34758-3-III; 34759-1-III
In re Parental Rights to G.R.

113 (1999) (termination court not required, sua sponte, to consider legal alternatives to termination).

Best interests of the children

The requirement that termination be in the best interests of the child need only be proved by a preponderance of the evidence. *In re Welfare of C.B.*, 134 Wn. App. 942, 952, 143 P.3d 846 (2006); RCW 13.34.190(1)(b). This is a fact-specific inquiry. *In re Welfare of Aschauer*, 93 Wn.2d 689, 695, 611 P.2d 1245 (1980). “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 while [the parent] sought to rehabilitate himself.’” *In re Dependency of T.R.*, 108 Wn. App. 149, 167, 29 P.3d 1275 (2001) (alteration in original) (quoting *In re A.W.*, 53 Wn. App. 22, 33, 765 P.2d 307 (1988)).

The trial court was presented with sufficient facts to justify termination. T.T.’s inconsistent engagement with her children during the course of the two-year dependency, her prolonged absence from her daughters’ lives, and her ongoing mental health and drug problems all justified the trial court’s conclusion that T.T.’s deficient relationship with her daughters was not apt to change anytime soon. The trial testimony was that T.T.’s relationship with her daughters would take an extensive amount of time to repair and

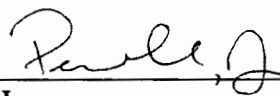
No. 34758-3-III; 34759-1-III
In re Parental Rights to G.R.

might never happen. Given the foregoing, substantial evidence supports the trial court's finding that termination was in the best interests of T.T.'s daughters.

CONCLUSION

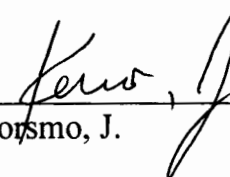
The orders terminating parental rights are affirmed.

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



Pennell, J.

WE CONCUR:



Korsmo, J.



Siddoway, J.