FILED
JULY 21, 2020
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 Dependency of	)	
	)	No. 36857-2-III
M.A.S.C.,	)	
	)	
	)	UNPUBLISHED OPINION
	)	

KORSMO, J. — JC appeals from the termination of her parental rights to her son, MASC, primarily arguing that DSHS[1] did not understandably explain the services she needed to engage in. Since there is no indication that she did not understand the services offered to her, we affirm.

FACTS

MASC was born in October 2016 with special needs.[2] An investigation began in April 2017, due to a report that five-month-old MASC had been thrown down stairs by

[1] Department of Social and Health Services. DSHS changed its name in July 2018, to the Department of Children, Youth, and Families. We refer to the agency as DSHS in this opinion.

[2] MASC requires special hand braces to train his hand muscles, a special high chair to help him develop muscles so he eventually can sit up, and probably a stand up device to help train his muscles. He also has significant developmental disabilities.

his mother's boyfriend, CA.[3] DSHS discovered that CA, JC, and MASC lived in a small RV. JC agreed to intervention and a plan of safe care was developed to provide stable housing and nutrition for the child.

JC reported struggling with various conditions, including bipolar disorder, but refused treatment as well as parenting assistance. She also reported that she had been receiving SSI since age 9 due to her conditions.

Concerns arose about the mother's ability to follow through with the care plan due to her limited cognitive skills. She began resisting the process and cancelled appointments. A second referral 17 days later by medical staff indicated that mother and child were dirty, odorous, and hungry. JC, a frequent marijuana user, told a nurse that she would blow marijuana in her child's face to help him sleep. She also used the drug on the child's ear infections.

After conducting a safety meeting, DSHS removed the child from JC and filed a dependency action. The court found MASC dependent on July 19, 2017. The dependency order included a list of 22 items, many of them aspirational in nature.[4]

[3] CA is not the child's father. The father's rights were terminated at trial. He is not a party to this appeal.

[4] Examples included requirements such as having JC "demonstrate her ability to live a life that promotes independent living" or "demonstrate her ability to increase her positive self-image by strengthening her abilities to support herself."

JC visited MASC twice in May 2017, before moving to Boise to be with a boyfriend. She returned in July around the time of the dependency fact-finding and visited the child three times before returning to Boise. Her next visit with MASC was in September 2018, two months after giving birth to another child. In the following nine months, JC made 8 of 18 scheduled visits with MASC and, on some occasions, was unable to pay attention to her son due to attending to the infant.

Social workers had recommended that JC complete a chemical dependency assessment and all recommended treatment, participate in mental health assessment and counseling, complete a psychological evaluation and medication management, follow physician recommendations, explore developmental disabled services and Social Security services, attend regular visitation, complete parenting education, contact DSHS once a month, and complete all required consent forms. As far as DSHS was aware, JC did not access any Washington services during the course of the dependency.[5] DSHS provided JC with bus tickets to get from Boise to the Tri Cities, hotel rooms, and gas vouchers. DSHS also ordered her to undergo urinalysis testing and provide a hair sample, but she did not complete those requirements.

[5] Trial testimony indicated that Idaho briefly investigated the welfare of the newborn child and ordered services largely mirroring those specified by Washington. JC engaged in some of those services, but the Idaho action was dropped when the child appeared to be healthy.

By late June 2018, DSHS filed a petition to terminate the parent-child relationship. Assigned social worker Peggy Kunz testified that she had contacted JC between 3 and 11 times per month, primarily to discuss services and establish visitation. She also advised JC by letter in July 2018, about a reunification resource plan, a visit plan, and a case plan that listed all services ordered. Based on her contacts, Kunz believed that JC understood the information provided. DSHS referred JC to evidence-based parenting classes in Idaho so that JC could learn about MASC's special needs, but JC spurned the classes in favor of a non-evidence-based course offered by a Boise shelter. When referred to an evidence-based class at the shelter, JC declined to follow up.

The termination trial was held in early May 2019. JC did not testify, but a counselor indicated that JC had mental health issues including "delayed response" and "educational deficit." The extent of her disabilities was unknown, but there were concerns about her ability to safely parent MASC. However, she apparently was able to parent her healthy youngest child.

Counsel argued the case on the bases that JC, who had been married for two years, was a fit parent and had remedied her deficiencies. Counsel also argued that DSHS had not provided understandable services in light of JC's cognitive impairments.

The court found that JC was not a fit parent for purposes of caring for MASC due to his special needs. The court found that JC had not made any effort to complete

ordered services and that it was in the child's best interest to terminate the parent-child relationship in light of his significant disabilities and need for engaged parents.

JC timely appealed to this court. A panel considered her appeal without hearing argument.

ANALYSIS

JC principally argues that the trial court erred in finding that she was understandably offered all necessary services and, therefore, it was premature to find that conditions could not be remedied in the near future and that termination was in MASC's best interests.[6] We consider the necessary services argument before briefly turning to the two derivative claims.

Necessary Services Understandably Offered

The primary contention is that DSHS did not understandably offer necessary services in light of JC's cognitive difficulties. Although she correctly argues[7] that the aspirational language used is not conducive to straight-forward communication, she also fails to show that she did not understand what was expected of her.

[6] JC also assigns error to related findings of fact, but makes no attempt to argue the sufficiency of the evidence to support them. Other than to note that the challenged findings do find support in the record, we, too, will not otherwise address them.

[7] Her brief describes the findings as "verbose, convoluted, abstract, subjective, and confusing" as well as "flowery." Br. of Appellant at 16. We agree with several of those characterizations.

In order to terminate a parent-child relationship, the State must prove the six elements of RCW 13.34.180(1)[8] by clear, cogent, and convincing evidence. *In re Dependency of K.N.J.*, 171 Wn.2d 568, 576-577, 257 P.3d 522 (2011). The major element at issue in this appeal is the fourth element:

> 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.

RCW 13.34.180(1)(d). "Clear, cogent, and convincing evidence exists when the ultimate fact in issue is shown by the evidence to be 'highly probable.'" *In re Dependency of K.R.*, 128 Wn.2d 129, 141, 904 P.2d 1132 (1995) (quoting *In re Sego*, 82 Wn.2d 736, 739, 513 P.2d 831 (1973)). "The court's factual findings must be upheld if supported by substantial evidence from which a rational trier of fact could find the necessary facts by clear, cogent, and convincing evidence." *In re Dependency of K.S.C.*, 137 Wn.2d 918, 925, 976 P.2d 113 (1999). "Substantial evidence exists if the record contains evidence of sufficient quantity to persuade a fair-minded, rational person of the truth of the declared

[8] The State must present evidence establishing that (1) the child has been found to be dependent, (2) the court has entered a dispositional order, (3) the child has been removed from the custody of the parent for at least six months, (4) all the necessary services have been afforded to the parent to correct the parental deficiencies, (5) there is little likelihood of remedying the parental deficiencies, and (6) continuation of the parent-child relationship clearly diminishes the child's prospects of permanent placement. RCW 13.34.180(1).

premise." *World Wide Video, Inc. v. City of Tukwila*, 117 Wn.2d 382, 387, 816 P.2d 18 (1991).

JC argues that the verbose and abstract language of the service requirements, when coupled with her disabilities, substantially deviated from the statutory requirement that the services be "understandably offered." RCW 13.34.180(1)(d). We agree with her general argument that more is not better and that vague or subjective language does little to convey information and, more commonly, will confuse rather than enlighten. Directives to engage in conduct should use simple, unadorned language: "Undergo a chemical dependency evaluation and complete any treatment ordered;" "Attend and complete parenting skills class," etc.

Our general agreement with her criticisms does not, however, mean that we agree with her conclusion. Although there is a lot of fluff in the directives, there is substance that was conveyed in language that was understandable. JC does not seriously contest the fact that certain services were ordered, but she claims that the language did not take into account her disabilities. However, there is no indication in the record that she had any communication difficulties that resulted in her failure to understand what was expected of her. The unrebutted testimony of Ms. Kunz was that JC understood the services offered. There was no contradictory testimony. The trial court's finding that the services required were "understandably offered" is supported by the record.

The record also supports the court's determination that JC failed to engage in the services. JC made little or no effort to engage in services related to the MASC dependency, and briefly engaged in services related to her newborn in Idaho. When directed by Washington case workers to engage in a parenting class at her Idaho shelter that specifically related to MASC, she declined to participate and, instead, went to an unapproved generic class.

The dependency was open two years by the time of trial. Although JC's lifestyle had improved due to a marriage and spousal support, she made no effort to obtain the skills necessary to parent MASC. Instead, she moved away from him and started a new life in Boise and made no genuine effort at reuniting with the child. She needed to acquire a large number of skills, but in two years had done next to nothing.

The court did not err in determining that JC was understandably told about the services she needed.

Remaining Factors

In light of her belief that she was not properly offered all necessary services, JC argues that it was premature for the trial court to find that she could not timely remedy her parenting deficiencies and that it was in the best interests of MASC to sever the parent-child relationship. Since we disagree with her services argument, her remaining claims necessary fail.

If a parent is unable to resolve their deficiencies within twelve months after the court has declared a child dependent, a rebuttable presumption arises 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). The focus of this factor is whether the parent has corrected the identified deficiencies. *In re Welfare of M.R.H.*, 145 Wn. App. 10, 27, 188 P.3d 510 (2008). The presumption does not arise unless a showing is made that all necessary services capable of correcting the parental deficiencies have been clearly offered. *See* RCW 13.34.180(1)(e). If the presumption applies, the burden of production shifts to the parent. *In re Welfare of T.B.*, 150 Wn. App. 599, 608, 209 P.3d 497 (2009).

The focus here is whether the parent is able to provide for the child's specific, individual needs. *In re K.M.M.*, 186 Wn.2d 466, 491-492, 379 P.3d 75 (2016). A parent's "unwillingness to avail herself of remedial services within a reasonable period is highly relevant to a trial court's determination as to whether the State has satisfied RCW 13.34.180(1)(e)." *T.B.*, 150 Wn. App. at 608.

Once the court determines that DSHS satisfied its requirements under RCW 13.34.180(1), parental rights may be terminated if doing so is in the best interests of the child. RCW 13.34.190(1)(b). DSHS has the burden of proving the termination is in the best interest of the child by a preponderance of the evidence. *In re K.M.M.*, 186 Wn.2d at 479.

JC's failure to engage in the services offered during the 24 months of the dependency, let alone develop the skills necessary to parent a seriously disabled child, establishes that she was unlikely to remedy the problems in a reasonable period of time. The child could not returned to her in the near future. RCW 13.34.180(1)(e). MASC had significant needs that could only be met by motivated and skilled parent advocates. The court understandably concluded that it was in the best interests to sever the parent-child relationship. Neither parent could care for the child nor was it likely they could do so in the foreseeable future.

The court did not err in terminating the parent-child relationship. The judgment is 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.

Korsmo, A.C.J.

WE CONCUR:

Lawrence-Berrey, J.

Melnick, J.