

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

In the Matter of the Dependency of)	
)	No. 37062-3-III
H.S.W. and H.N.W.,)	(consolidated with
)	No. 37063-1-III)
)	
)	
)	UNPUBLISHED OPINION

KORSMO, J. — K.W. appeals from a Chelan County Superior Court dependency order that placed his two daughters with a family member. Because the evidence supports the court’s dependency and placement findings, we affirm.

FACTS

The two daughters were 15 and 11 at the time of the dependency hearing in 2019. K.W. had a history of drug dependency that dated to the mid-1990s. As a result, he had been through in-patient drug treatment in 1996, 2008, and 2016. He also had repeated brushes with the law during that period and continued to use controlled substances.

K.W.'s wife (the children's mother) died due to cancer in October 2018, leaving K.W. the sole parent of his minor children. At the time, he was on community custody due to a 2017 felony conviction, but was not complying with the testing and drug abstinence conditions and racked up 11 supervision violations. The children later would testify to their father's drug use, the presence of needles and drugs throughout their residence, and the presence of strangers who used drugs in the home.

Officers responded to the residence following a 911 call reporting that K.W. had a firearm. Officers also learned that he had a warrant outstanding for his arrest. K.W. refused to leave the house or to allow his youngest daughter to do so. Armed officers surrounded the residence and the ensuing standoff lasted 2½ hours. K.W. eventually surrendered and was incarcerated.

The standoff and ensuing incarceration led to a shelter care hearing; the children were sent to live with a relative in Tacoma. Dependency petitions were filed June 10 and the matter proceeded to a hearing on August 19, 2019. K.W. was not present.¹ His counsel sought a continuance due to both his client's request and his absence. The attorney was "somewhat uncomfortable representing" K.W. under the circumstances.

The court denied the continuance request and the hearing proceeded. When the plaintiff's case was complete, defense counsel was able to contact his client by telephone. K.W. personally requested a continuance of the hearing, blaming his absence due to a

mix-up of the hearing time. He asked to be permitted to appear the following day in person. The court again declined to continue the matter. K.W. then testified by telephone. At the conclusion of the hearing, the court found the children were dependent due to lack of a parent capable of adequately caring for them. K.W. was directed to engage in multiple services related to his drug dependency. The children were placed in the care of a relative in Tacoma.

K.W. timely appealed to this court. A panel considered his case without hearing argument.

ANALYSIS

K.W. presents three arguments. In order, we consider his contentions that the evidence did not support the dependency determination, the court erred in placing the children with a relative, and the court erred in not removing counsel.

Sufficiency of the Evidence

K.W. contends that the evidence does not support the dependency finding since he is a functioning drug addict.² Properly viewed, the evidence does support the finding.

¹ The attorneys believed that a warrant recently had been issued for K.W.'s arrest.

² K.W. assigns error to 14 findings related to the three issues. As all are supported by the evidence, we lump them together with the relevant legal argument and do not explain in detail why each one is supported by the evidence. It was appellant's obligation to explain why they were not supported by the evidence; his world view did not need to be accepted by the trial judge and is not the standard by which we consider his appellate challenges.

Well-settled standards govern our review. This court reviews the factual findings for substantial evidence and whether the findings support the conclusions of law. *In re Welfare of X.T.*, 174 Wn. App. 733, 737, 300 P.3d 824 (2013). “Substantial evidence exists if, when viewing the evidence in the light most favorable to the prevailing party, a rational trier of fact could find the fact more likely than not to be true.”³ *Id.* This court does not weigh the evidence nor the credibility of any witness. *Id.* “Because the trial court has the opportunity to hear the testimony and observe the witnesses, its decision is entitled to deference.” *In re Welfare of S.J.*, 162 Wn. App. 873, 881, 256 P.3d 470 (2011).

This petition was filed under RCW 13.34.030(6)(c), which provides that a child is dependent if there is “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.” A finding of actual abuse or neglect is not necessary to find a child dependent under that subsection; the danger of harm is sufficient. *In re X.T.*, 174 Wn. App. at 737. The trial court has “broad discretion” in determining whether there exists a risk of harm. *Id.* at 738.

³ This standard also has been defined to mean that the evidence “is sufficient to persuade a rational, fair-minded person that the finding is true.” *Cantu v. Dep’t of Labor & Indus.*, 168 Wn. App. 14, 21, 277 P.3d 685 (2012).

K.W. argues that there was insufficient evidence that he was unable to care for the children, pointing out that the evidence only established past evidence of drug use rather than current use, the children were able to rouse him when he passed out, he made arrangements for neighbors to watch the children whenever he was incarcerated, and that police behavior during the standoff demonstrated that his youngest child was not in danger.

We agree with the trial court that K.W. was not able to care properly for the children due to his addiction, the source of his parenting deficiencies. Someone who is in thrall to alcohol and controlled substances necessarily is not in control of his own life and has a diminished ability to care for others. His own admission that he is a drug addict is sufficient evidence of current drug usage to support the court's findings on that topic, and his admission was amply supported by his daughter's testimony to his heroin and methamphetamine use in the home. And the need of his own children to awaken him in order to receive his care and attention speaks volumes about his abilities. The trial court had an adequate factual record to support its determination that K.W. was not adequately caring for his children

The remaining question is whether there was a substantial danger to the development of the children. We again agree that the trial court had an ample basis for

its finding and did not abuse its broad discretion. There was a large amount of evidence in the record that K.W. engaged in open, continuous drug use in the house and permitted strangers to use drugs in the home he shared with the children. The police standoff not only frightened the younger daughter, it occurred in large part because K.W. did not seem to recognize that his failure immediately to surrender led to the entire confrontation and put his child in danger. Officers understandably surrounded the residence where a known felon was reported to have a firearm and would not be leaving the child to the tender mercies of her armed father. While law enforcement showed remarkable restraint and waited K.W. out, the father's own actions caused the entire incident.

The constant drug use in the family home constituted a danger to the children, and no child should be forced to endure a police siege. Understandably, the court determined that K.W.'s behavior threatened the development of his children, with the siege "scarring" the younger daughter. The evidence was overwhelming.

The dependency finding is well-supported in the evidence.

Placement with Relative

K.W. also challenges the placement of the children with a relative in Tacoma, reiterating his previous argument that his care of the children was adequate and did not endanger them. As noted, the trial court had ample reason to believe otherwise.

An out-of-home placement for dependent children is appropriate when efforts have previously been made to provide the services needed to avoid removal and one of three other circumstances exist. RCW 13.34.130(6). Here, the trial court determined that the children's safety and welfare could not be protected at home and the danger of serious abuse or neglect was established by clear and convincing evidence. RCW 13.34.130(6)(c).⁴ The danger must be highly probable. *Id.* The trial court found that these conditions were established.

K.W. challenges both determinations. As noted previously, this court reviews factual findings for substantial evidence.⁵ *Welfare of X.T.*, 174 Wn. App. at 737. We review the placement decision for abuse of discretion. *In re Dependency of R.W.*, 143 Wn. App. 219, 223, 177 P.3d 186 (2008). Discretion is abused when exercised on untenable grounds or for untenable reasons. *State ex rel. Carroll v. Junker*, 79 Wn.2d 12, 26, 482 P.2d 775 (1971).

⁴ At the time this appeal was filed, these provisions were located at RCW 13.34.130(5), but the provisions were renumbered effective October 1, 2019. The parties cite to the current version of the statute, as do we.

⁵ K.W. argues that this finding is actually a conclusion of law. We disagree. The legislature has established the factual findings that must be made before a court can exercise its authority to place a child outside the home. RCW 13.34.130(6). Here, the court determined that the factual circumstances of RCW 13.34.130(6)(c) were present. That action is properly labeled a finding of fact.

The record supports both findings. There was evidence that prior to the standoff, K.W. was offered both an evaluation and drug monitoring through the community custody portion of the felony sentence. K.W. failed to comply with the sentence requirements and, hence, was the subject of an arrest warrant that fueled the standoff. He was then incarcerated, leading to the need to place the children somewhere outside of the parentless home. This constituted substantial evidence that the State was attempting to provide the necessary drug evaluation and treatment K.W. needed to be an effective parent. His failure to engage in the services required additional steps be taken.

The same evidence discussed in the first argument also supports the court's finding that the children would not be safe living with K.W. The evidence of ongoing drug usage leading to diminished adult functioning and resulting in a police standoff presented clear and convincing evidence that the children were in danger if left in their untreated father's care. Used hypodermic needles about the house, strangers ingesting drugs on the premises, a father who was regularly under the influence of both alcohol and controlled substances, and including a child in a totally unnecessary armed police standoff, all point to a home where children were in danger. The father was not only endangering his children, he was making no efforts to safeguard them. The court's determination that they were in danger was very amply supported by the evidence.

The remaining question is whether the trial court abused its discretion in continuing the children's placement with a relative in Tacoma. The court had very tenable grounds for doing so. The father was incarcerated when the children initially were removed and, at the time of the hearing, was about to become incarcerated again due to the outstanding arrest warrant. K.W. could not meet his basic reporting obligations and declined to comply with his sentence obligations. There was no reason to believe that he would be in a position to attempt parenting any time soon. He was making no effort to undertake the steps necessary to regain control of his life even though he risked incarceration for not acting. This was an out-of-control man who was not in a position to care for his children.

The children were enrolled in school in Pierce County and apparently were thriving there. It was reasonable to leave them in that stable situation rather than return them to the uncertainties of life with K.W., even if he had shown some effort to address his problems. Since he had not made any effort, the placement decision was relatively easy. The relative placement was working, while K.W. had not attempted to start the difficult road to recovery and again undertake his parental role.

The court had very tenable reasons for placing the children with a relative. There was no abuse of discretion.

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Attorney Conflict

Lastly, K.W. argues the trial court erred in not allowing his attorney to withdraw. Since there was no request to withdraw, and no evidence in the record that counsel needed to do so, there was no error.

RPC 1.16 requires an attorney to seek to withdraw from representation when continued representation would lead to a violation of the Rules of Professional Conduct. A court appointed attorney may not withdraw without an order of the court. CR 71(b). The trial court's decision on a withdrawal request is reviewed for abuse of discretion. *Kingdom v. Jackson*, 78 Wn. App. 154, 158-159, 896 P.2d 101 (1995). Whether a conflict of interests exists is a question we review de novo. *State v. O'Neil*, 198 Wn. App. 537, 542-543, 393 P.3d 1238 (2017).

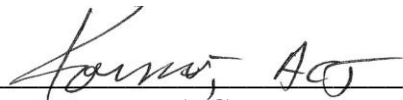
The record is utterly devoid of evidence that there was a conflict of interest. Counsel feared he may have a "conflict" representing his client in the client's absence, but he never identified a conflict of interest as the problem. Even at that, his client did appear and testify by telephone. Whatever concerns the attorney may have had, they appear to have revolved around the client's absence rather than some factor relating to the attorney-client relationship. As pointed out by the State, the attorney and client had met four days before the hearing, yet no motion to withdraw based on a perceived conflict of interest was ever filed.

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The trial court did not abuse its discretion since it was never called on to act. This court has no record on which to determine whether a conflict of interest existed. In short, K.W.'s argument is nothing but speculation. There is no showing of error.

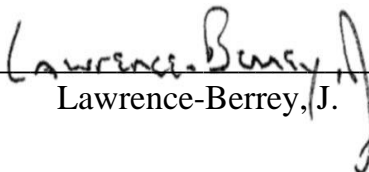
Affirmed.

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.

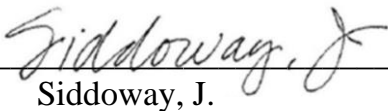


Korsmo, A.C.J.

WE CONCUR:



Lawrence-Berrey, J.



Siddoway, J.