IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In re the Welfare of:		**No. 29036-1-III**
	)	**(cons. w/Nos. 29037-9-III,**
S.N.F. and L.C.F.,	**)**	**29038-7-III, 29039-5-III)**
	)	
Minors.	**)**	
	)	**Division Three**
	)	
	)	
	)	**UNPUBLISHED OPINION**
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	)	

Sweeney, J. — To terminate parents' rights to their children, the State must show that parental deficiencies make a parent unfit and that the deficiencies persist even after the State had offered all necessary services. Here, the State proceeded to terminate the parental rights of a mother and a father. We conclude that the State made a sufficient showing of both current unfitness to parent and best interests of the child as to the mother but that the State failed to show that it had offered all necessary services to the father. We, therefore, affirm the judgment that terminated the mother's parental rights but reverse and remand for further proceedings as to the father.

FACTS

L.F. and T.G.[1] married in 1999. Their first child, L.C.F., was born December 14, 1999. L.C.F., like Mr. F., has benign familial chorea—a nervous system disorder. Mr. F., Ms. G., and L.C.F. moved from Washington to Georgia shortly after L.C.F.'s birth. Ms. G. and L.C.F. returned to Washington, where Ms. G. gave birth to S.N.F. on October 9, 2001. Mr. F. has never supported the children financially, has never seen S.N.F., and last saw L.C.F. in September 2001. Ms. G. divorced Mr. F. by default orders entered in 2002; the proceedings included a final parenting plan. That final parenting plan barred Mr. F. from having any residential time with the children because of abuse, neglect, abandonment, and domestic violence.

Ms. G. and the children lived in, but were evicted from, motels, trailers, and apartments, for domestic violence or failure to pay rent or failure to maintain sanitary living conditions. The Department of Social and Health Services (DSHS) got involved after one of the evictions to help find an appropriate place for L.C.F. and S.N.F. to stay while Ms. G. sought stable housing. DSHS offered Ms. G. transitional housing, educational assistance for the children, and mental health and family preservation services. Ms. G. agreed to a safety plan that placed the children with their grandmother

[1] We refer to the mother by her former name, T.G., the same name the trial court used in its final orders.

until Ms. G. could establish a stable and clean household. Ms. G. violated the safety plan when she took the children to a party in June 2006, where L.C.F. was found at 3:00 a.m. with duct tape around his head and neck.

In November 2007, employees at L.C.F.'s and S.N.F.'s elementary school expressed concerns to DSHS about the children's poor hygiene and lack of attendance. DSHS employees visited Ms. G. at the trailer where she and the children were living at the time. The trailer was dark, littered with garbage, and smelled of feces. The children's clothes were soiled. Ms. G. refused to sign a safety plan that addressed the children's education, nutrition, and hygiene. So DSHS petitioned for dependency and placed L.C.F. and S.N.F. in foster care. DSHS tried to find Mr. F. but was unsuccessful.

In January 2008, the trial court entered default dependency and disposition orders as to Mr. F. It also entered agreed orders of dependency and orders of disposition as to Ms. G. The court placed the children with their maternal grandmother. It also adopted DSHS's individual services and safety plan (ISSP) for Ms. G. as its disposition plan. That ISSP is not part of this record. But DSHS identified Ms. G.'s parenting deficiencies as unstable housing, mental health issues, educational neglect, and poor hygiene. 3 Report of Proceedings (RP) at 85-86. To cure these deficiencies, Ms. G. was required to (1) secure safe and stable housing, (2) submit to random urinalyses (UAs), (3) take prescribed mental health medication, (4) submit to a mental health evaluation and any recommended mental health counseling, (5)

engage in a parenting education assessment and any recommended parenting education, and (6) complete a domestic violence assessment. DSHS did not prepare an ISSP for Mr. F.

Mr. F. contacted DSHS in November 2009. He lives in Georgia on Social Security income of $674 per month. He had been unable to find Ms. G. or the children, and he could not afford to travel to Washington. But he wanted custody of the children. DSHS initiated an interstate compact on placement of children with the state of Georgia in furtherance of Mr. F.'s request for placement. It also sent Mr. F. an ISSP that did not require Mr. F. to engage in any services. DSHS told Mr. F. to take parenting classes and to submit to a home study and a background check.

In December 2009, DSHS petitioned to terminate Ms. G.'s and Mr. F.'s parental rights to both children. The matter proceeded to trial. Mr. F. had submitted to a home study but had yet to receive the results, so DSHS's interstate compact with Georgia was not yet complete. He also sent DSHS letters to give to his children; DSHS did not give the letters to the children based on the advice of the children's therapists.

Ms. G. was living in temporary housing—a one bedroom apartment—with her new husband. She would qualify for a family unit if the children were returned to her. Ms. G. had failed to comply with DSHS's UA requirement; she missed about half of the random UAs she was asked to take. She had submitted to a domestic violence assessment shortly before trial, but she failed to

complete it. She also had failed to show for a parenting assessment in May 2008 and never completed one. DSHS referred Ms. G. to a 10-week parenting class, which Ms. G. had nearly finished by the time of the trial.

Ms. G. had submitted to a mental health evaluation by Dr. Catherine MacLennan in June 2008. Dr. MacLennan diagnosed Ms. G. with mild mental retardation, posttraumatic stress disorder (PTSD), anxiety disorder, and major depressive disorder. She recommended mental health treatment and medication. She also suggested that any services provided to Ms. G. should be offered orally, in writing, and pictorially because, in her opinion, a typical classroom setting would not be effective for Ms. G.

DSHS did not refer Ms. G. to anyone for mental health treatment because Ms. G. said she was already seeing a mental health counselor, Mary Day. Ms. Day evaluated Ms. G. in March 2009 and saw her twice for counseling in August 2009. She closed Ms. G.'s file after several cancellations and no shows between September and November of 2009. She did, however, transfer Ms. G. to another mental health counselor, Jana Neal. Ms. G. began seeing Ms. Neal in December 2009. At the time of trial in March 2010, Ms. G. was learning coping skills and building social support. She was taking medication regularly. She, nonetheless, continued to show symptoms of PTSD and depression and needed at least an additional year of counseling to apply the coping skills to her life.

Ultimately, the trial court entered orders terminating Ms. G.'s and Mr. F.'s parental rights to L.C.F. and S.N.F. It

found the six statutory factors in RCW 13.34.180(1) necessary to terminate parental rights:

> (a) That the child has been found to be a dependent child;
> (b) That the court has entered a dispositional order pursuant to RCW 13.34.130;
> (c) That the child has been removed or will, at the time of the hearing, have been removed from the custody of the parent for a period of at least six months pursuant to a finding of dependency;
> (d) 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;
> (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[; and]
> (f) That continuation of the parent and child relationship clearly diminishes the child's prospects for early integration into a stable and permanent home.

Clerk's Papers (CP) at 96-97. The court also found that termination was in the children's best interests. Both parents appeal.

DISCUSSION

The State must prove the six elements set out in RCW 13.34.180 to show that a parent is currently unfit to parent and that termination is in the child's best interest. RCW 13.34.190(1)(a), (b); *In re Welfare of A.B.*, 168 Wn.2d 908, 920, 232 P.3d 1104 (2010); *In re Dependency of S.M.H.*, 128 Wn. App. 45, 53, 115 P.3d 990 (2005). Both Ms. G. and Mr. F. contend that the evidence does not support an implicit finding that they are

unfit parents. They argue that the evidence does support the court's express findings that DSHS provided or offered them all services, that there is little likelihood their deficiencies will be remedied in the near future, or that the continuation of the parent-child relationship diminishes the children's prospects for early integration into a permanent and stable home. Ms. G. and Mr. F. also challenge the propriety and sufficiency of the finding that termination is in the children's best interests.

We review findings of fact supporting a trial court's decision to terminate parental rights for substantial evidence. *In re Welfare of C.B.*, 134 Wn. App. 942, 952-53, 143 P.3d 846 (2006). We do not reweigh the evidence or pass on credibility. *Id.* at 953. And we accord great deference to the trial court's decision to terminate. *Id.* at 952.

Necessary Services Offered or Provided

We first review the trial court's finding that DSHS provided or offered all court-ordered and necessary services capable of correcting the parents' deficiencies. The court must find that:

> All services ordered under RCW 13.34.136 have been offered or provided to the mother and father and all necessary services, reasonably available, capable of correcting the parental deficiencies within the foreseeable future have been offered or provided to the parents in an express and understandable manner.

CP at 92-93. And the court so found.

Services Provided or Offered to Mr. F.

The court found that DSHS initiated

an interstate compact agreement in furtherance of Mr. F.'s request for placement and requested that Mr. F. engage in parenting education:

> Because the Department was unable to locate the father for the majority of the dependency and because the father did not contact the Department until November, 2009, no services were provided to him prior to that date. Immediately upon making contact with the father, however, the caseworker requested that the father begin engaging in some form of parenting education in the state of Georgia where the father resides. The father also requested to be considered as a placement option and, therefore, the Department immediately initiated an interstate compact (ICPC) so that the states of Washington and Georgia could investigate the suitability of the father.

CP at 94.

Mr. F. contends DSHS identified no parental deficiencies that he needed to correct and, of course, then, neither offered nor provided him with any services. DSHS responds that the final parenting plan entered in Mr. F.'s and Ms. G.'s dissolution proceedings identified Mr. F.'s parental deficiencies. DSHS says it was also concerned that Mr. F. would not be able to provide a stable home because he cannot work, lives on a fixed income, has never parented a child, and has no transportation plan. DSHS claims it offered Mr. F. services when he lived in Washington but Mr. F. did not take advantage of the services. None of these concerns, however, made their way into a finding that Mr. F. had parental deficiencies. CP at 92-96.

The "services offered" requirement assumes that, before termination, the court has

found that a parent has deficiencies. *In re Interest of S.G.*, 140 Wn. App. 461, 468, 166 P.3d 802 (2007); *see* RCW 13.34.130(1), (3). On this record, the State has made no showing that Mr. F. had deficiencies. At best, we can only infer from other findings that Mr. F.'s deficiency is abandonment. The dependency orders show that DSHS could not locate Mr. F. and that the children were dependent only because they had "no parent, guardian or custodian capable of adequately caring" for them, not because they were abandoned, abused, or neglected. Exs. 5, 7. The list of Mr. F.'s parental deficiencies set out in the parenting plan as part of their dissolution proceeding is not sufficient. First, the dissolution was entered by default. And, just as significantly, the issues and the burdens of proof in this proceeding are markedly different than the dissolution proceeding. *Compare* RCW 13.34.180(1) (setting forth standards for termination of parental rights) *with* RCW 26.09.002 (stating that the child's best interests determines and allocates parental responsibilities in a dissolution proceeding) *and* RCW 26.09.184 (setting forth objectives and contents of a permanent parenting plan).

Even were we to assume that the trial court found Mr. F.'s deficiencies were abandonment and all the deficiencies DSHS claims, DSHS failed to offer or provide Mr. F. with services that could remedy these problems. The services DSHS offered Mr. F. in 1999 were for L.C.F. In 2009, DSHS told Mr. F. to take a parenting class and to submit to a criminal background check and a home study for an interstate compact. But "[w]hen the State suggests remedial services to a

parent, it has an obligation under RCW 13.34.180(4) to at least provide him . . . with a referral list of agencies or organizations which provide the services." *In re Welfare of Hall*, 99 Wn.2d 842, 850, 664 P.2d 1245 (1983). DSHS did not do that here.

DSHS in Washington has no authority over the services provided in Georgia. But nothing here shows DSHS tried to determine what services were available to Mr. F. It pursued an interstate compact with Georgia in response to Mr. F.'s request for placement, not to remedy a deficiency. Regardless, the interstate compact on placement of children does not apply to parental placements. *In re Dependency of D.F.-M.*, 157 Wn. App. 179, 193-94, 236 P.3d 961 (2010), *review denied*, 170 Wn.2d 1026 (2011). The evidence, then, does not support the finding that DSHS provided or offered all court-ordered and necessary services capable of correcting Mr. F.'s deficiencies.

Services Provided or Offered to Ms. G.

Ms. G. also contends that DSHS failed to show that it provided her with all court-ordered services because no direct evidence shows which services the court ordered. The dependency and disposition orders state that the trial court ordered Ms. G. to participate in the services listed in the ISSP that DSHS prepared for Ms. G. That ISSP is not part of the record. But "circumstantial evidence is as good as direct evidence." *Rogers Potato Serv., LLC v. Countrywide Potato, LLC*, 152 Wn.2d 387, 391, 97 P.3d 745 (2004). And reasonable inferences from the social worker's testimony and the termination petition suggest that the ISSP required (and the

court ordered) that Ms. G. obtain stable housing, submit to random UAs, take prescribed psychological medication, submit to a mental health evaluation and any recommended mental health counseling, engage in a parenting education assessment and any recommended parenting education, and complete a domestic violence assessment. CP at 8-9; 3 RP at 87-112. There is, then, sufficient evidence of the services that the court ordered.

Ms. G. further contends that the record does not show DSHS offered all other necessary services. She argues that DSHS (1) did not provide or offer mental health treatment tailored to her needs, (2) failed to provide parenting education tailored to her needs, and (3) unreasonably refused to refer her for a second mental health evaluation until she completed a domestic violence evaluation.

DSHS referred Ms. G. to Dr. MacLennan for a mental health evaluation and helped her apply for state medical benefits so she could pay for medication. Dr. MacLennan recommended mental health therapy, which DSHS did not offer because Ms. G. was already in mental health therapy. Ms. G. does not explain why DSHS should have provided a referral for a service in which she was already engaged and from which she was apparently benefitting. So the failure to offer mental health therapy does not undermine the finding that DSHS offered all reasonable services. *In re Welfare of M.R.H.*, 145 Wn. App. 10, 25, 188 P.3d 510 (2008).

DSHS scheduled Ms. G. for a

parenting assessment. Ms. G. did not keep the appointment and was never assessed. DSHS, nevertheless, referred Ms. G. to a parenting class at a local church upon her request. Ms. G. is correct that services provided during a dependency must be tailored to that parent's needs. *In re Dependency of T.R.*, 108 Wn. App. 149, 161, 29 P.3d 1275 (2001). And the record suggests Ms. G. needed services to be provided through pictures and written and spoken word. But Ms. G's unwillingness to make use of the parenting assessment excused DSHS from offering services that might have been helpful. *In re Dependency of Ramquist*, 52 Wn. App. 854, 861, 765 P.2d 30 (1988). And the parenting class Ms. G. attended appears to have been helpful in any event. Ms. G. was focused during class, asked questions, and wrote down everything the teacher said. She also was able to engage in one-on-one conversations with the teacher after class and borrowed a book that addressed questions she had about her son's development. The class was tailored to some, but not all, of Ms. G.'s specific needs but she nonetheless benefitted.

Lastly, Ms. G. requested a second mental health evaluation in mid-2009. She slaims she took medication regularly and was mentally stable. DSHS asked Ms. G. to submit to a domestic violence evaluation first because it was "a piece to the puzzle of the evaluation." 3 RP at 113. Ms. G. primarily argues that DSHS improperly used the domestic violence evaluation to prevent her from accessing the psychological evaluation. No evidence or authority supports this argument. The court ordered Ms. G. to complete a domestic violence assessment whether it

was a piece to the mental health evaluation or not. Ms. G. repeatedly refused to engage in the assessment even before DSHS made it a pre-condition to a referral for a second mental health evaluation. Ms. G.'s non-compliance, then, relieved DSHS of its duty to provide other helpful services, including a second mental health evaluation. *Ramquist*, 52 Wn. App. at 861.

Even if DSHS inexcusably failed to offer Ms. G. a service, termination is appropriate if the service would not have been capable of correcting her deficiencies in the foreseeable future. *T.R.*, 108 Wn. App. at 164. Here, the record shows Ms. G. was unwilling to address all her deficiencies. Providing or offering only those tailored services in which Ms. G. was willing to engage, then, would not have been capable of correcting *all* her deficiencies. The court found that, before and after the dependency, DSHS offered or provided Ms. G. transitional housing, mental health services, family preservation services, domestic violence services, parenting education, a psychological evaluation, transportation assistance, visitation, and financial assistance. Ms. G. accepted some services and refused others, all to no avail.

The State proved that Ms. G is presently unfit to parent and that the State has provided all necessary services to try to correct those deficiencies.

Likelihood Ms. G.'S Deficiencies Will Be Remedied

Ms. G. challenges the sufficiency of the trial court's findings to support the element 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). This statutory element focuses on whether any parental deficiencies have been corrected. *T.R.*, 108 Wn. App. at 165. The court found that Ms. G. continues to struggle with unstable housing and mental health deficiencies. The court found that Ms. G. was unlikely to consistently engage in necessary treatment because of her history of failing to follow through with services.

The record shows that Ms. G. refused or failed to attend services, from domestic violence and parenting assessments to visits with her children. The record also shows that Ms. G. has failed to deal with her mental health issues. Ms. G's therapist testified that, as of March 2010, Ms. G. continued to exhibit symptoms of PTSD and depression and needed at least one more year of therapy. Finally, testimony shows that she has continued to move from place to place since the dependency began, staying no longer than a few months in any one place. She has been homeless; she has lived at friends' houses, in a trailer with no running water, in transitional housing, and in mental health housing. At the time of trial, Ms. G. was again living in temporary government housing. There is no evidence that Ms. G. had a plan for stable housing when temporary housing ran out.

The "near future" generally depends on the age of the children and the placement circumstances in each individual case. *C.B.*, 134 Wn. App. at 954. But sometimes a statutory rebuttable presumption sets the

near future at one year beyond the entry of the dispositional order. RCW 13.34.180(e). "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." RCW 13.34.180(1)(e). Ms. G. had not substantially improved her situation in the 26 months from the entry of the dispositional orders in January 2008 to the termination trial in March 2010. Ms. G., then, failed to produce evidence rebutting the presumption that there is little likelihood that conditions will be remedied so S.N.F. and L.C.F. can be returned to Ms. G. in the near future.

Continuation of Relationship Diminish Prospects for Early Integration

Ms. G. argues that no evidence shows the children would be adopted earlier but for her legal relationships with the children. She also argues that no evidence shows the children would be adopted before she can remedy her deficiencies and that the "little likelihood" finding is not evidence that the continuation of her relationship with her children will diminish their prospects for early integration into a stable and permanent home.

DSHS does not have to show that early adoption is certain or that a stable and permanent home is (or is not) available at the time of termination in order to prove that continuation of the parent-child relationship would be harmful. *In re Dependency of K.S.C.*, 137 Wn.2d 918, 927-29, 976 P.2d

113 (1999). RCW 13.34.180(1)(f) focuses on whether continuation of the parent's legal relationship impedes the children's prospects for adoption. *In re Dependency of P.P.T.*, 155 Wn. App. 257, 268, 229 P.3d 818, *review granted*, 170 Wn.2d 1008 (2010). And a finding that continuation impedes adoption prospects "necessarily follows from an adequate showing of the allegation" that there is little likelihood that conditions will be remedied so that the child can be returned to the parent in the near future. *In re Dependency of J.C.*, 130 Wn.2d 418, 427, 924 P.2d 21 (1996).

Here, we have concluded that sufficient evidence supports the finding that there is little likelihood that Ms. G.'s deficiencies will be remedied so that the children can be returned to her in the near future. That evidence, then, also supports the finding that continuation of Ms. G.'s relationships with her children will diminish the children's prospects of early integration into a stable and permanent home. *J.C.*, 130 Wn.2d at 427. The finding is, therefore, justified.

Currently Unfit

Ms. G. and Mr. F. next contend that no evidence supports the necessary finding that they are currently unfit to parent. The trial court here did not explicitly find either parent currently unfit to parent. But we can "infer the omitted finding if—but only if—all the facts and circumstances in the record (including but not limited to any boiler plate findings that parrot RCW 13.34.180) clearly demonstrate that the omitted finding was actually intended, and thus made, by

the trial court." *A.B.*, 168 Wn.2d at 921.

Individually tailored and boiler plate findings on the six factors in RCW 13.34.180 show the trial court here intended to find that both Ms. G. and Mr. F. are currently unfit to parent. The findings show the trial court believes that Mr. F. abandoned his children and continues to have no contact with them and that Ms. G. has failed to correct her housing and mental health deficiencies. We conclude that substantial evidence supports the implicit finding that Ms. G. is currently unfit to parent but that it does not support the implicit finding that Mr. F. is currently unfit.

As we have concluded, there is no evidence that Mr. F had deficiencies in the past or that he has current deficiencies that prevent him from parenting. Mr. F. has had no contact with his children for the last decade but now wants custody of them. We cannot conclude that DSHS gave Mr. F. an opportunity to have a relationship with the children and therefore cannot conclude that the necessary showing of parental unfitness has been made. RCW 13.34.180(1)(e)(iii).

In sum, DSHS produced substantial evidence of the parental unfitness necessary to terminate Ms. G.'s parental rights to L.C.F. and S.N.F. This record does not, however, support the court's decision to terminate Mr. F.'s parental rights to the children. "[A] judgment terminating parental rights cannot stand absent a [supported] finding of current parental unfitness." *A.B.*, 168 Wn.2d at 927. We, therefore, reverse the trial court's

orders terminating Mr. F.'s rights.

Termination in the Child's Best Interests

Finally, Ms. G. challenges the trial court's finding that termination is in L.C.F.'s and S.N.F.'s best interests.

After a court finds that DSHS has satisfied the six statutory factors in RCW 13.34.180(1), it then determines whether termination is in the best interest of the child. RCW 13.34.190(1)(b). Only if the first prong is satisfied may the court reach the second prong. *S.G.*, 140 Wn. App. at 470; *C.B.*, 134 Wn. App. at 952.

The last question for us, then, is whether substantial evidence shows that termination of Ms. G.'s parental rights is in the children's best interests. "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.'" *T.R.*, 108 Wn. App. at 167 (alteration in original) (quoting *In re A.W.*, 53 Wn. App. 22, 33, 765 P.2d 307 (1988)). Ms. G. has been unable to stabilize her housing or remedy her mental health issues during a two-year dependency. Her inability to rehabilitate, alone, supports finding that termination is in the children's best interests. Both children need stability to manage their behavioral or physical problems. And stability is something Ms. G. cannot provide them.

The record, then, supports the finding that termination of Ms. G.'s rights is in L.C.F.'s and S.N.F.'s best interests. And

the findings support the court's ultimate decision to terminate Ms. G.'s rights to both children. We, then, affirm the termination of Ms. G.'s parental rights but reverse the termination of Mr. F.'s parental rights and remand for further proceedings.

A majority of the panel has determined that 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.

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Sweeney, J.

WE CONCUR:

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Kulik, C.J.

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Brown, J.