

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

<b>In re the Matter of the Termination of M.G., C.G., A.G., and W.G., Minors.</b>	)	<b>No. 29178-2-III</b>
	)	<b>(cons. with Nos. 29179-1-III,</b>
	)	<b>29180-4-III, 29181-2-III)</b>
<b>STATE OF WASHINGTON,</b>	)	
<b>DEPARTMENT OF SOCIAL AND</b>	)	
<b>HEALTH SERVICES,</b>	)	
	)	
<b>Respondent,</b>	)	<b>Division Three</b>
	)	
<b>v.</b>	)	
	)	
<b>W.J.G.,</b>	)	
	)	
<b>Appellant.</b>	)	<b>UNPUBLISHED OPINION</b>
	)	

Sweeney, J. — This is a parental termination case. The essential issue before the court is whether the evidence supports the court’s findings. We conclude that it does and we affirm the court’s order terminating this father’s parental rights.

**FACTS**

W.J.G. is the father of M.G. (born October 20, 2005), A.G. (born June 6, 2003), W.G. (born January 10, 2002), and C.G. (born December 5, 1999). The Department of

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Social and Health Services (Department) removed the four children from Mr. G.'s and his wife's<sup>1</sup> custody in February 2006 over concerns regarding supervision, meeting the children's needs, and the mental health of the parents. The children have been in and out of foster care since that time. The court declared M.G., A.G., W.G., and C.G. dependent children as to Mr. G. in July 2006.

In August 2009, the State petitioned to terminate Mr. G.'s parental rights to the children because he had failed to make progress in correcting his parental deficiencies through the offered services. The State emphasized that Mr. G. was unfit to care for the children and that there was little likelihood that the conditions would be remedied in the near future. The case proceeded to hearing in the spring and early summer of 2010. Numerous service providers and social workers testified at trial about their interactions with Mr. G. and the children since early 2006.

#### Parental Deficiencies

Mr. G. participated in a parenting assessment with Janice Steinbach, a public health nurse, in March 2006. Mr. G. believed he did not have any parenting deficits or issues, but revealed to Ms. Steinbach that he had been physically and emotionally abused as a child by his father. Ms. Steinbach found this significant because people "tend to

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<sup>1</sup> Mr. G.'s wife has since relinquished her rights to the children and is not a party to this appeal.

model what we experience.” Report of Proceedings (RP) at 115. Mr. G. had not gone through any parent education or counseling and Ms. Steinbach was concerned he would develop the same type of parenting style as his father. She testified, however, that it is not 100 percent absolute that a parent abused as a child would continue that practice when he or she becomes a parent.

Mr. G. did not make himself fully available for the assessment, and as a result, Ms. Steinbach was not able to include observations of him with the children as part of her parenting assessment. Ms. Steinbach felt that Mr. G. was not receptive to her intervention. She testified that he always had an excuse for not being able to do the thing she had suggested. Accordingly, Mr. G. only allowed Ms. Steinbach in the home once a court order had been entered—explaining that he did not like people in his home.

Based on her limited testing, Ms. Steinbach discovered that Mr. G. had a problem with behavior management techniques. She noticed that he would ignore the children when they were good, but give them attention when they were misbehaving. But he scored in the good range on a nurturing quiz designed to assess the knowledge of techniques in behavior management. Mr. G. also tested in the average range for parenting ability, which meant he had an appropriate knowledge base of expectations. Ms. Steinbach concluded that Mr. G. had a good knowledge base, but he did not always use it.

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Since the March 2006 assessment, Ms. Steinbach had not tested Mr. G. to determine whether his parenting skills had diminished over time. She testified that it was possible he may have even improved in his parenting skills.

Mr. G. also participated in hands-on parenting services with Jean Wakeley, a Department home support specialist, from March to September 2006. Ms. Wakeley testified that because of Mr. G.'s resistance, she had to meet with the parents 14 times before she was actually able to start the active parenting program. Mr. G. had a difficult time with the dependency. He did not want anyone in his house. When Ms. Wakeley would come to their house, Mr. G. ignored her and always had an excuse to avoid their scheduled appointment.

Mr. G. was opposed to hands-on parenting training or educational type visits. When Ms. Wakeley would start with the program, Mr. G. argued about the methods used in the videos she showed and wanted to stop to discuss his disagreements. Both parents claimed they were already using those methods and called the Department liars for saying otherwise. The parents completed the program in just three sessions, or about 4½ hours. Ms. Wakeley testified the program generally takes 12 hours. She gave them certificates of completion nonetheless.

Mental Health

Mr. G. met with Dr. Paul Wert, a licensed clinical psychologist, for a general psychological assessment in February and March 2006. During the interview, Dr. Wert noted symptoms of anxiety in Mr. G. Mr. G. had a considerable stutter, which Mr. G. himself described as anxiety-related. Mr. G. said that the stuttering decreased when he was with people he knew. By the second interview, Mr. G. had started taking anti-anxiety medication, which Dr. Wert observed to be helping control the anxiety. Mr. G. reported that he felt somewhat improved.

Dr. Wert did not diagnose drug and alcohol use as an issue with Mr. G., even with knowledge of a 2004 driving while under the influence (DUI) conviction. Mr. G. reported that he drank very little and did not use drugs, which Dr. Wert had no way of independently disproving. Dr. Wert diagnosed Mr. G. with social anxiety disorder. He also diagnosed Mr. G. as socially avoidant, with paranoid and schizotypal features or traits. Mr. G. presented enough symptoms to warrant a diagnosis of a full-blown personality disorder, making a diagnosed personality disorder a “possibility.” RP at 154-55. Dr. Wert testified that Mr. G.’s personality traits are “enduring and tend not to change a great deal.” RP at 181.

Dr. Wert believed that Mr. G. was capable of participating to a limited extent in activities related to parenting. Dr. Wert was concerned, however, about Mr. G.’s reports

that he would experience depersonalization anxieties for periods of time, similar to amnesia, where he would lose hours or sometime even days. He believed that Mr. G.'s ability to parent could be improved if he continued to take his medication.

Dr. Wert also testified that it was possible Mr. G.'s other diagnoses could affect his parenting. He testified that being socially avoidant could get in the way of attending school events or other normal social things with the children. Dr. Wert explained that Mr. G.'s paranoid features could result in him relating his view of the world to the children in a way that could negatively impact them. Mr. G. also presented as self-absorbed sometimes, which Dr. Wert testified could also negatively impact the children. Dr. Wert's testimony did not appear to be based on any specific occurrences in Mr. G.'s parenting.

Other than taking medication, Dr. Wert did not recommend any specific treatment for Mr. G. He believed the other diagnoses were somewhat problematic, but the anxiety was the main problem. Dr. Wert had not had any contact with Mr. G. since March 2006 and had had no involvement with the family since the evaluation. He testified that it was certainly possible for Mr. G. to have gained control of his anxiety disorder by then. In observing Mr. G. at trial, Dr. Wert did not observe anything remarkable so far as motor control, such as when Mr. G. was shaking and nervous during their interviews.

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Mr. G. also met with Anabelle Payne, a mental health clinician, from May 2006 to July 2006 and then again from August 2006 to August 2007 to address his anxiety. Initially, Mr. G.'s anxiety level was such that he could not sit through a group session. As a result, his attendance at group sessions was poor. When asked how Mr. G.'s anxiety would manifest itself, Ms. Payne stated that Mr. G. would stutter, tremble, and when he became extremely anxious, he would get angry. She believed that anger was an issue for Mr. G.

In assessing Mr. G.'s progress in therapy, Ms. Payne testified that he did not meet any of his identified goals. She stated, however, that he was able to verbalize some insight into his issues toward the end of the treatment. He started taking ownership and acknowledging that he had some anger problems, although he still made excuses for why things happened to him. He also appeared to have some insight into the fact that there might be a cycle of violence given his history of domestic violence as a child. But Mr. G. told Ms. Payne that he did not believe the substance abuse and domestic violence perpetrator evaluations he had participated in were valid.

Mr. G. eventually told Ms. Payne he felt his anxiety was better and that he could participate in group sessions. She recommended he seek services in Spokane. In June 2007, Mr. G. informed Ms. Payne that he had discontinued taking his anxiety medication

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because he felt he had made progress and could independently manage his anxiety while in crowds of people. Although she did not observe Mr. G. in the community, Ms. Payne testified that Mr. G. was no longer stuttering in sessions and was able to make eye contact. She stated that he seemed less defensive and less reactive when she would bring up “hot topics.” RP at 258, 271.

Ms. Payne did not do any work with Mr. G. specific to parenting issues. She also did not work with him on domestic violence issues, but she did have concerns and encouraged him to follow up with the domestic violence perpetrator treatment recommendations. At the time of trial, she did not know anything about Mr. G.’s current situation.

#### Drugs, Alcohol and Domestic Violence

Halei Young was assigned as the social worker for the case in May 2006. At that time, three of the children were still placed outside of the home, but M.G., the youngest, had been placed back with Mr. G. and his wife. Ms. Young noted that Mr. G. had been taking part in parent/child assessments, psychological evaluations, and the Early Head Start program. He was not participating in any breath tests, urinalyses, or drug and alcohol evaluations as required by the original shelter care order. But her notes indicated that she was “happy” with his compliance.



During trial, Ms. Young attempted to testify about a drug and alcohol evaluation and a domestic violence assessment for Mr. G. The actual evaluators, however, did not testify at trial. Mr. G. objected on hearsay grounds to much of the testimony regarding these services, their appropriateness, and the evaluation recommendations. The court allowed her to testify for the limited purpose of showing that she had a conversation with Mr. G. about the treatment recommendations, but it was not allowed as substantive evidence. Ms. Young testified that she believed, based on the assessments and recommendations, that drug and alcohol and domestic violence services were appropriate for Mr. G.

Ms. Young referred Mr. G. for a drug and alcohol assessment in July 2006, which he completed. However, he never followed through with the recommendations of the assessments. Mr. G. told her he did not believe the results were accurate and that he did not have a drinking problem. He agreed to do breath tests for the month of August 2006, which came back negative. Ms. Young testified that she talked to Mr. G. about participating in the recommended intensive outpatient services. Mr. G. objected to this testimony as hearsay on the ground that the recommendations had not been admitted in the testimony. Again, the court allowed the testimony, but only to show the kind of communications she had with Mr. G. Ms. Young testified that she referred Mr. G. to a

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different facility for a second drug and alcohol evaluation in April 2007.

Neither of the evaluations Mr. G. participated in were admitted into evidence. The court ruled that Mr. G.'s first chemical dependency evaluation could not be admitted into evidence and the witness from the evaluation provider could not testify because the witness was not the chemical dependency professional who had conducted the intake or the assessment of Mr. G. The court relied on *In re Welfare of J.M.*, 130 Wn. App. 912, 924-25, 125 P.3d 245 (2005) in concluding that a report of an expert cannot be admitted under the business records hearsay exception, and a witness cannot testify as to the written evaluation created by an absent witness, unless the parent has the opportunity to cross-examine the witness that actually drafted the report. For the same reason, the court denied admission of the assessment, evaluation, and recommendations from the second chemical dependency evaluation.

Mr. G. apparently continued to refuse drug and alcohol services. Ms. Young testified that she informed Mr. G. that his lack of participation in the recommended services would negatively affect the return of his children and would result in his visits being moved to the Department's office. Mr. G. became very angry at this and hit a window. Supervised visits had been occurring in the home at the time.

In September 2006, Mr. G. was arrested for threatening the life of a Department

employee. He was eventually convicted of misdemeanor harassment. Mr. G.'s wife obtained a protection order while Mr. G. was in jail in order to keep the children in their in-home dependencies. Mr. G. was never arrested for a domestic violence charge, and Ms. Young was not aware that he had ever been arrested on any domestic violence charge.

Because of his arrest and his wife's request for a protection order, Ms. Young believed a domestic violence perpetrator assessment was necessary. Mr. G. agreed to the assessment, but said he did not believe he needed one. Mr. G. participated in a domestic violence evaluation in June 2007. The State's witness, a certified domestic violence counselor at Social Treatment Opportunity Programs, testified that the Washington Administrative Code, which dictates the way their program is run, required a minimum of one year in their domestic violence perpetrator treatment program. The witness could not, however, testify as to whether or not Mr. G. needed counseling because she had not been the counselor who met with him.

Ms. Young then testified that after the evaluation, she told Mr. G. that one year of services had been recommended. Mr. G. again objected on the grounds that Ms. Young was neither an expert nor the person who performed the evaluation. The court allowed the testimony for the limited purpose of showing that a conversation between the two had

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occurred. Mr. G. did not agree to the recommendation.

#### Attachment to Children

Beginning in February 2006, Mr. G. participated in supervised visits with the children twice a week for two hours. In observing over 50 visits, Lori Erdman, visitation supervisor, testified that there were only two incidents where she intervened for safety reasons. The first incident occurred when she had to alert Mr. G. that M.G. was about to step off the top of a ladder. The other incident involved her putting an end to family “dog piles.” RP at 81-83. Each week, the father and children would do a “dog pile,” and one child always got hurt. Mr. G. never put an end to the activity, even though the children were getting hurt. Ms. Erdman testified, however, that Mr. G. was generally appropriate in his interactions with the children.

Following his arrest in September 2006, Mr. G. moved out of the family home in Newport and moved to Spokane. He later indicated that he wanted his court ordered visits to occur in Spokane. Ms. Young refused to accommodate the request. Ms. Young told Mr. G. that the visits had to occur at the Department offices in Newport. Visits could not occur at Mr. G.’s home in Spokane because he had failed to follow through with the recommended services. In addition, Ms. Young had concerns about the children’s transportation and school schedules. Ms. Young, however, did not terminate

the visits due to concerns for the children's safety.

Mr. G. did not have problems attending or arriving late to visits at first. But, between March and August 2007, Mr. G. attended only 14 out of what should have been 24 or 25 visits. In the summer of 2007, Mr. G. began to miss more visits because of work. His absences began to create some behavioral issues in the children, so Ms. Young asked Mr. G. to call prior to scheduled visits to confirm that he would be there. Mr. G. complied most of the time. Mr. G.'s last visit with his children before the termination hearings occurred on September 7, 2007. He told Ms. Young that he was "done." RP at 543. Mr. G. stated that all he ever wanted was for his children to be home with at least one of the parents, and at that time they had since been returned to his wife.

Ms. Young's last contact with Mr. G. occurred in April 2008. She sent him a letter regarding his services, encouraging him to clear up his warrants, and enclosed letters written by his children during counseling. Mr. G. informed her that he was not going to take part in the dependency anymore. Ms. Young transferred the case on September 1, 2008.

Department social worker Sandra Henderson was assigned the case in December 2008. When she received the case, the children were dependent but in the process of reunification. They still lived with their mother. Mr. G. had not been in contact with the

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Department, and his whereabouts was unknown. The Department was reviewing whether to close the case or continue to provide services. The Department, however, received a new Child Protective Services referral regarding the children's mother and started a new investigation.

Ms. Henderson tried but failed to locate Mr. G. Then, in March 2009, Mr. G. called Ms. Henderson. He was upset over a photograph he had seen of one of his sons with an earring. Mr. G. set up an appointment with Ms. Henderson, and gave her a phone number where she could contact him. He told her he was interested in being reunified with his children. Mr. G. came in for a meeting on April 1, 2009. He wanted to locate his children and get custody. Mr. G. appeared to be shaky and anxious during the meeting.

Mr. G. explained to Ms. Henderson that he stopped visiting his children to give his wife the chance to parent on her own, and now that it was apparent she was unable to do so, he wanted them back. He also told Ms. Henderson that he had completed all services, that his urinalyses were clean, that he did not have a problem with drugs, alcohol, or domestic violence, and that he was getting a new job. Ms. Henderson told him that based on his history, it would be very hard for him to obtain custody, but not completely impossible. She told Mr. G. that he would have to successfully complete all services if he

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wanted the Department to even consider placing his children with him.

Ms. Henderson talked with Mr. G. about the fatherhood project with Partners in Families and Children. Mr. G. told her that he could not participate in classes with other men because of his anxiety problems. Ms. Henderson also offered to hold a family team decision-making meeting. Mr. G. said that he would be there. Ms. Henderson scheduled the meeting and notified him about the date and time by calling the phone number he left with her and sending a letter to his last known address. Mr. G. did not appear at the meeting.

Ms. Henderson also made a referral to Partners in Families and Children and gave Mr. G. the phone number to call for an appointment. According to Mr. G., he never made it to his appointment at Partners in Families and Children because on his way, he injured his ankle. Ms. Henderson did not have personal contact with Mr. G. after their April 2009 meeting. He never contacted her again to request services or visits.

#### Parent-Child Relationships

The family met with Carol Thomas, child therapist, mental health specialist, and evaluator, in September 2006 to identify the nature and quality of the relationships and interactions between the parents and the children. The purpose of the session was to evaluate the relationships, not to make any recommendations. During Ms. Thomas's

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three hours with the family, she observed that the parents were a complete unit and co-parented well together. She noted that each parent was stronger than the other in different areas. Ms. Thomas testified that this was a positive thing as long as the parents were together. Because she did not observe the parents parenting separately, she could not speak to whether Mr. G. would have stepped up in the roles the mother usually fulfilled. The children appeared to have a very positive relationship with their father. Ms. Thomas had not had any contact with the family since her evaluation.

#### Special Needs of Children

At trial, Ms. Henderson identified the special needs of the children. All four of the children had some disorganized attachment issues and they were in counseling for those issues. C.G., age 10, had a low IQ and emotional problems. C.G. also had learning and language difficulties and needed special education beyond what the school could offer him. W.G., age 8, was of average intelligence but had boundary issues that required stability, permanence, and consistency in order to develop normally. A.G., age 6, had attention deficit hyperactivity disorder and some emotional issues. M.G., age 4, also had boundary issues. M.G. had not had an IQ test, but appeared to be of normal intelligence. However, because of his behavior he needed an extra caregiver to watch him constantly to prevent him from doing dangerous things.



Molly Phillips, a mental health therapist specializing in young children, worked with all four of Mr. G.'s children, but never met Mr. G. Ms. Phillips testified that some of the initial treatment with the children addressed trauma from the parent's domestic violence. The reports of domestic violence came from the children. Ms. Phillips testified that when C.G. first came to see her, C.G. said that his father would get angry, and "seemed like the Incredible Hulk and that it was scary." RP at 687-88. C.G. told her they would get disciplined when Mr. G. was angry.

Ms. Phillips also testified that if the children were moved into Mr. G.'s care, the impact would be mostly negative because they had not had a relationship with their father for three years. She believed that the children were doing well and enjoying their foster placements. Ms. Phillips testified that the children had good families now and the stress of moving would be similar to taking a child out of a safe, secure, happy home.

Ms. Henderson did not believe, in her professional opinion, that placement with Mr. G. would be possible based on his history and the needs of the children. Ms. Henderson testified that Mr. G. would probably not be able to fill the children's needs or care for them, as evidenced by his inability to complete services over six years. The children's current foster parents were also beginning the process of adopting them, which Ms. Henderson believed was a good idea. Ms. Henderson testified that termination of

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Mr. G.'s parental rights was in the best interests of all four children.

#### Parenting Resources

At the time of the termination hearings, Mr. G. was living in a two bedroom apartment, and had been there for about a year. He also worked at the same apartment complex he lived in as a maintenance supervisor. He had held that job for about one year, and his supervisor testified that Mr. G.'s evaluations were good. Mr. G. testified that although he was on call for his job 24 hours a day, seven days a week, there were at least five people in the complex who could watch the children while he took care of his job.

Mr. G. further testified that he quit participating in services because he felt that every time he completed a service, the Department would require additional services or treatment. And that frustrated him. Mr. G. also explained that when he and his wife married, they agreed that if they broke up, she would retain sole custody of the children in order to avoid a custody battle. Mr. G. testified that he only backed out of trying to regain custody in order to keep his word.

Mr. G. also testified that he had not seen his children since late summer 2007 because after requesting that visits occur in Spokane, he received a letter from Ms. Young notifying him that his visits had been temporarily suspended. He further testified that

when he contacted Ms. Henderson in spring 2009 about visitation with the children, he was told the only way he could reestablish visitation was if the children's counselor said it would not be detrimental to the children. The Department never set up visitation.

Mr. G. testified that he moved to Spokane because it was uncomfortable staying in Newport, where his wife lived, because he was no longer allowed to see her. He believed that moving to Spokane had helped him break his dependency on medications for stress and anxiety. On cross-examination, Mr. G. was asked about his domestic violence and drug and alcohol assessments. Mr. G. testified that based on his assessments in 2007, he was supposed to participate in further counseling. He disagreed with the recommendations and refused further counseling.

#### Trial Court's Decision

The trial court terminated Mr. G.'s parental rights to all four of his sons after concluding that the six statutory factors in RCW 13.34.180(1) had been met by clear, cogent, and convincing evidence. The court specifically identified four deficiencies that made Mr. G. unfit to parent the children:

There is little likelihood Mr. [G.'s] current parental unfitness—reflected in possible anxiety in raising his sons with their individual needs, limited day-to-day resources to care for his sons, untreated chemical dependency and domestic violence problems, and gradual reintroduction into their lives—will be remedied so the children can be returned to his care in the near future.

Clerk's Papers (CP) at 131. The court

further found that Mr. G.'s lack of diligence in completing service programs gave rise to a rebuttable presumption that he probably would not improve his deficiencies in the near future:

It has been some forty-five months following entry of the dispositional orders, and Mr. [G.] has not substantially improved his parental deficiencies which also give rise to a rebuttable presumption that there is little likelihood that conditions will be remedied so the children can be returned to him in the near future.

CP at 131. And the court found that “[i]t is in the best interests of the children to have their father’s parental rights terminated.” CP at 131.

Mr. G. appeals.

## DISCUSSION

### Contentions—Parental Unfitness

Mr. G. contends that his anxiety did not prevent him from parenting and was under control at the time of trial. Mr. G. contends that his day-to-day resources were adequate to care for his children. He argues that they include steady employment at an apartment complex where he also had appropriate housing and a supportive community of coworkers. Mr. G. contends there was no evidence admitted that he suffered from substance abuse or domestic violence. He argues that the court’s findings were based on inadmissible hearsay, ultimately admitted for limited, non-substantive purposes. Finally,

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Mr. G. contends that any lack of attachment between him and his children does not constitute a parental deficiency or unfitness.

The State responds that the findings of the trial court should not be disturbed on appeal because the State presented substantial evidence that support the trial court's findings and proved the allegations by clear, cogent, and convincing evidence. The State argues that there was little likelihood that the conditions relevant to the father's parenting issues would be remedied so that the children could be placed with him in the near future. It contends that the trial court had substantial evidence before it to conclude Mr. G. needed substance abuse and domestic violence treatment without relying on inadmissible hearsay evidence. It also contends the trial court did not base its findings on these issues on inadmissible hearsay. The State points to Mr. G.'s own admissions of mental health problems and anger control issues as evidence of parental deficiencies. The State contends that Mr. G. failed to correct his deficiencies despite the Department's offer of numerous services.

Again, Mr. G. disagrees. He responds that the State improperly relies on several facts that do not amount to parental deficiencies. He argues that the fact that he was abused as a child is not a parental deficiency. Mr. G. argues that neither his threats to the social worker nor the resulting protection order are evidence of a parental deficiency. He

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argues that his acknowledgement of the services ordered is not an admission of parental deficiencies. He argues that the testimony from the children's therapist is inadmissible hearsay. Finally, Mr. G. again argues that the absence of a current attachment between him and the children is not a parental deficiency.

#### Standard of Review

We review the record to decide whether the trial court's findings are supported by substantial evidence. *In re Welfare of A.G.*, 155 Wn. App. 578, 588, 229 P.3d 935 (2010). In other words, we determine whether there is enough evidence to support the statutory elements necessary to terminate the parent-child relationship. *Id.* We do not weigh the evidence or credibility of witnesses. *Id.*

#### Termination

A parent has a fundamental right to the care and custody of his or her children. U.S. Const. amends. V, XIV; Wash. Const. art. I, § 3. But the right is not absolute. *In re Welfare of Young*, 24 Wn. App. 392, 395, 600 P.2d 1312 (1979). The primary consideration in a termination proceeding is the welfare of the children. *Young*, 24 Wn. App. at 395. A child's right to basic nurture, physical and mental health, and safety should always prevail over the legal parental rights of a parent. RCW 13.34.020. It is the court's role to balance these rights in deciding whether termination is appropriate.

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To terminate a parent's right to his or her children, the State must show that current parental deficiencies make that parent unfit and that the deficiencies persist even after the Department has offered all necessary services. RCW 13.34.180(1); *In re Welfare of A.B.*, 168 Wn.2d 908, 919-20, 232 P.3d 1104 (2010). The State must establish all six elements set forth in RCW 13.34.180(1) by clear, cogent, and convincing evidence to prove unfitness. *A.G.*, 155 Wn. App. at 589. The only element at issue here is:

(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.

RCW 13.34.180(1).

After all the statutory elements are established, the State must then show that termination is in the children's best interests. Former RCW 13.34.190(2) (2000). The State needs to prove that termination is in the children's best interests only by a preponderance of the evidence. *In re Welfare of C.B.*, 134 Wn. App. 942, 952, 143 P.3d 846 (2006).

Substantial Evidence: Current Parental Deficiencies

Mr. G.'s main contention on appeal is that the evidence does not support the trial court's finding of parental deficiencies. He contends the State failed to prove that he had any parental deficiencies. He argues that it is impossible for services to remedy a parenting problem that was never proved in the first place. *See In re Interest of S.G.*, 140 Wn. App. 461, 468-69, 166 P.3d 802

(2007) (“[w]ithout a problem, there can be no solution”).

Here, the court identified four problems and then concluded that they made Mr. G. unfit to parent. The court found that Mr. G. had (1) anxiety issues in raising the children with their individual needs, (2) limited day-to-day resources to care for the children, (3) untreated domestic violence and chemical dependency problems, and (4) an inability to be gradually reintroduced into the children’s lives. The court found that all four deficiencies, coupled with Mr. G.’s failure to remedy them through the services offered, rendered him an unfit parent. We need only find substantial evidence for one deficiency in order to find substantial evidence for the finding that Mr. G. is currently unfit to parent.

First, Mr. G. had mental health issues. Dr. Wert is a clinical psychologist. He testified that Mr. G. had a social anxiety disorder that caused him to stutter to the extent that he could not speak. Dr. Wert found that Mr. G. experienced periods of “depersonalization anxiety,” during which he would “lose minutes or hours or—from what [Mr. G.] told me, sometimes even days.” RP at 155. Dr. Wert concluded that these symptoms could interfere with Mr. G.’s ability to parent. Dr. Wert also testified that Mr. G. had a socially avoidant and paranoid personality that could also interfere with his ability to care for his children. Dr. Wert testified that Mr. G.’s personality traits are



“enduring and tend not to change a great deal.” RP at 181.

Jan Steinbach, a public health nurse, also testified that Mr. G. had significant symptoms of anxiety. She stated that Mr. G.’s “whole body shook, he stuttered, his eyes were very wide open.” RP at 593. Ms. Steinbach referred Mr. G. for mental health counseling to address the issues. Anabelle Payne, a mental health clinician, testified that Mr. G. exhibited “stuttering, trembling, a lot of somatic bodily manifestations and—when he would become extremely anxious it seemed like he’d have more increased anger, kind of posturing.” RP at 249-50. Ms. Payne thought anger was an issue for Mr. G.

Mr. G. openly displayed his anger on several occasions. Halei Young was one of the Department’s social workers. She testified that Mr. G. once got angry and punched a window next to her. And Mr. G. was also arrested for threatening the life of another Department social worker and was subsequently convicted of harassment. Mr. G.’s wife obtained a no-contact order against him. Mr. G. moved out of the family home and Ms. Young requested a domestic violence assessment. Molly Phillips is a mental health therapist specializing in young children. She testified that one of the children said Mr. G. would often get angry, and “seemed like the Incredible Hulk and that it was scary.” RP at 687-88. The child told Ms. Phillips they would get disciplined when Mr. G. was angry.

Mr. G. contends that by the time of trial he was an average parent who had

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surmounted his social anxiety and established a stable life to share with his children. Br. of Appellant at 23. He argues that the isolated instances of mental instability and anger do not amount to a parental deficiency. Mr. G. is correct that individually the pieces of evidence do not amount to anything, but when looked at as a whole, substantial evidence supported the finding that his mental health and anger issues amounted to parental deficiencies. *See State v. Hill*, 123 Wn.2d 641, 644, 870 P.2d 313 (1994) (substantial evidence exists where there is a sufficient quantity of evidence in the record to persuade a fair-minded, rational person of the truth of the finding).

Second, Mr. G. was relatively stable but he had limited day-to-day resources available to care for the children. Mr. G. had been living in the same apartment and had maintained the same job for almost a year by the time of the termination trial. He worked as a maintenance technician onsite at the same apartment complex. Mr. G. testified that he had several people within the complex who could care for the children while he worked. However, Sandra Henderson, a Department social worker, testified that the children had special needs and behavioral issues that required extra caregivers. Ms. Steinbach testified that she had concerns regarding Mr. G.'s parenting ability. She believed that he did not understand how children need boundaries, supervision, or attention. So, despite Mr. G's current stability, substantial evidence supported the finding

that his lack of resources (including parenting knowledge) was a parental deficiency.

Third, Mr. G. had substance abuse and domestic violence issues. Mr. G. acknowledged that he had a DUI conviction in 2004. Mr. G. also indicated at trial that he had participated in a number of services, including anger management and drug and alcohol assessments, in an attempt to comply with court requirements. However, the contents of the evaluations, the opinions of the evaluators, and the evaluation recommendations were not introduced into evidence. The court did allow testimony from Ms. Young for the purpose of showing that she had spoken with Mr. G. about the treatment recommendations. Ms. Young testified that she believed, based on the assessments and recommendations, that drug and alcohol and domestic violence services were appropriate for Mr. G. So, despite the fact that the reports were not admitted as evidence and the actual evaluators did not testify, Mr. G.'s and Ms. Young's testimony provided substantial evidence that Mr. G.'s substance abuse and domestic issues amounted to a parental deficiency.

Fourth, Mr. G. could not be gradually reintroduced into the children's lives. His last visit was with the children before the termination hearings occurred on September 7, 2007. He voluntarily ended visits with the children for nearly three years. Then in April 2009, Mr. G. requested that visits begin again but never really attempted to set them up.

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Molly Phillips is a mental health therapist specializing in young children. She testified that if the children were moved into Mr. G.'s care, the impact would be mostly negative because they had not had a relationship with their father for three years. She stated that the children were doing well and enjoyed their foster placements. Ms. Phillips testified that the children had good families now and the stress of moving would be similar to taking a child out of a safe, secure, happy home. So, given the age of the children, their respective behavioral and mental health issues, and the fact that Mr. G. had been absent for most of their lives, there is substantial evidence that the inability for reintroduction was a parental deficiency.

In sum, the four deficiencies found by the court are supported by substantial evidence. We then must determine whether the State proved there was little likelihood of conditions being remedied in the near future and, ultimately, whether Mr. G. was properly found unfit to parent.

Substantial Evidence: Little Likelihood of Remedy

Mr. G. does not dispute the trial court's findings that the State proved elements (a) through (d) and (f) of RCW 13.34.180(1). He only challenges element (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.” RCW 13.34.180(1)(e). Mr. G. contends that substantial

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evidence does not support the trial court's finding. He argues that he was an average parent at the time of the termination hearing and was in total control of his mental health issues.

In determining whether there is little likelihood of conditions being remedied, the court must consider whether identified deficiencies have been corrected. *A.G.*, 155 Wn. App. at 590. This assumes that specific parental deficiencies actually have been identified and proven by substantial evidence. *In re A.W.*, 53 Wn. App. 22, 29, 765 P.2d 307 (1988). Termination is appropriate where the identified deficiencies will not be corrected in the near future, regardless of a parent's long term ability to correct the deficiencies. *A.G.*, 155 Wn. App. at 590.

The length of time allowed for correcting parental deficiencies truly depends on the child's age and current living situation. *Id.* "Although 1 year may not be a long time for an adult decision maker, for a young child it may seem like forever." *Id.* (quoting *A.W.*, 53 Wn. App. at 32). Accordingly, "[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).

Here, the court found that the statutory presumption applies. CP at 131. Mr. G. does not challenge this part of the court’s finding. We then accept it as true. *In re Dependency of B.R.*, 157 Wn. App. 853, 865-66, 239 P.3d 1120 (2010). Nevertheless, there is substantial evidence that Mr. G. persisted in his resistance to remedial services to the point that remedy was unlikely. The Department repeatedly offered parenting assessments, chemical dependency assessments and treatment, domestic violence assessments, and mental health assessments to no avail. The children could not be placed with Mr. G. in the near future.

Mr. G. has consistently refused to work with community providers on issues associated with parenting. He resisted the services of Ms. Steinbach and, as a result, she was not able to include observations of him with the children as part of her parenting assessment. Ms. Steinbach testified that Mr. G. was not receptive to her intervention. She testified that he always had an excuse for not being able to do the thing she had suggested. Accordingly, Mr. G. only allowed Ms. Steinbach in the home once a court order had been entered—explaining that he did not like people in his home.

Mr. G. also resisted the intervention of home support specialist, Jean Wakeley, by behaving rudely and eventually walking out of the room. Ms. Wakeley testified that Mr. G. was “very opposed to hands-on parenting training or education.” RP at 630. Mr. G.

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also refused drug/alcohol services because he did not agree with the result of his assessment. When told that his refusal to participate could affect his chances of regaining custody of the children, he became angry and punched a window. Mr. G. always had excuses.

Mr. G. eventually quit counseling services altogether because he believed they were unnecessary. Mr. G. also quit visiting the children for several years. Department social workers continued to send Mr. G. letters encouraging him to participate in services and referring him to treatment providers. Mr. G. later attempted to regain custody of the children but, again, he failed to pursue the recommended services. He indicated that he could not participate in certain services because of his serious anxiety problems. He had stopped taking any medications.

In sum, the record supports the court's conclusion that Mr. G. remained an unfit parent at the time of trial. It had been some 45 months since the entry of the original dependency orders and Mr. G. had not improved his parental deficiencies. And, given Mr. G.'s pattern of denying issues and refusing services, it was unlikely that he was going to remedy his deficiencies in the near future. Substantial evidence supported the finding of unfitness.

Termination in the Child's Best Interests

Mr. G. challenges the trial court's finding that termination is in the children's best interests. He contends that the court's determination that termination was in the children's best interests was premature because the State failed to first prove each element of RCW 13.34.180(1) by clear, cogent, and convincing evidence. Mr. G. contends that the trial court erred in terminating his parental rights in light of the history of strong bonds and loving interactions between him and his family.

The State responds that all of the children have significant issues that require substantial involvement from caregivers and service providers. The State argues that it would negatively impact the children to remove them from their foster families. The State believes that Mr. G.'s inability to function in social situations and his demonstrated lack of commitment to his children, are certainly reasonable grounds for the trial court to conclude that termination of parental rights was in the children's best interests.

The final question, then, is whether substantial evidence shows that termination of Mr. 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.'" *In re Dependency of T.R.*, 108 Wn. App. 149, 167, 29 P.3d 1275 (2001) (alterations in original) (quoting *A.W.*, 53 Wn. App. at



33). Mr. G. has been unable to remedy his mental health issues and other parenting deficiencies for over three years. His inability to rehabilitate, alone, supports finding that termination is in the children’s best interests. But substantial evidence further indicates that Mr. G. has an inability to function in social situations and that this is detrimental to his ability to parent. He also has demonstrated a general lack of commitment to the children.

All four children have significant issues that require substantial involvement by caregivers. They need stability to manage their issues, both behavioral and physical. Mr. G. cannot provide stability. The testimony showed that it would be extremely disruptive to remove the children from their “safe, secure, happy home[s].” RP at 686. The record, then, supports the finding that termination of Mr. G.’s rights is in the best interests of the children. We therefore affirm the judgment of the court terminating the parental rights to these children.

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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Korsmo, A.C.J.

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Brown, J.