

In re Dependency of K.D.S.
Dissent by C. Johnson, J.

No. 86124-2

C. JOHNSON, J. (dissenting)—Terminating parental rights is a drastic remedy. While in this type of case, the parent will likely never be able to provide his or her child with the needed care, few people have the skills or means necessary to adequately care for a child with such severe disabilities. This deficiency should not be a deciding factor in whether parental rights are terminated.

Moreover, RCW 13.34.180(1)(f) is about stability for the child. Courts have applied subsection (1)(f) in two contexts, neither of which applies here. The first is where the parent provides a destabilizing influence in the child's life. This occurred in *J.C.* where the mother told her children to behave or she would go out and get high. *In re Dependency of J.C.*, 130 Wn.2d 418, 924 P.2d 21 (1996). The second is where there is a possibility that the child will be adopted. This was the case in *A.V.D.* where the grandmother said she would adopt only if the parents' rights were

terminated. *In re Dependency of A.V.D.*, 62 Wn. App. 562, 815 P.2d 277 (1991).

In this case, as the trial court recognized, the likelihood that K.D.S. will be adopted is nonexistent. While the majority correctly points out that the State need not prove a stable and permanent home already exists, some evidence supporting a reasonable level of possibility must be shown. If not, subsection (1)(f) will be too easily presumed in other similar cases because adoption is always more likely once parental rights have been terminated. If subsection (1)(f) is too easily met, it becomes just a meaningless factor.

Perhaps recognizing this weakness, the majority delves into the record in search of evidence that Derek Gladin's continued relationship with K.D.S. harms her well-being. However, appellate courts should be hesitant to upset the trial court's important credibility and factual determinations, which it alone is uniquely qualified to make. This is especially true in termination proceedings where the legislature, recognizing the important constitutional issues at play, requires the State to meet a high burden of proof to terminate parental rights. Here, rather than finding the relationship harmed K.D.S., the trial court stated, "I don't see any harm to [K.D.S.] with supervised visits" and would have preferred, if it had the authority, to maintain Gladin's parental rights until a likely adoptive home surfaced. Verbatim

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Report of Proceedings (Apr. 19, 2010) at 543. The majority upsets the trial court's clear determinations.

In the end, K.D.S. will likely remain in a group home for the rest of her life. The faces in this group home will come and go. The only long-term and stable relationship in her life would have been with her father, who desires to retain a parental role in her life. Today's ruling too easily takes that relationship away.

The order of termination should be reversed.

AUTHOR:

Justice Charles W. Johnson

WE CONCUR:

Justice Debra L. Stephens

Justice James M. Johnson
