



In the Matter of the Dependency of v. State of Washington

2012 | Cited 0 times | Court of Appeals of Washington | June 18, 2012

UNPUBLISHED OPINION

Crystal Tampico appeals the order terminating her parental rights to her daughters, A.G.A and J.T.A. She specifically disputes the adequacy of the services offered by the Department of Social and Health Services (Department) and the juvenile court's finding that termination was in the children's best interests. We hold the termination order was supported by substantial evidence and affirm.

FACTS

Tampico is the mother of two girls, A.G.A. (D.O.B. 10/05/07) and J.T.A. (D.O.B. 12/10/09).¹ A.G.A. and J.T.A. currently reside in the same foster home.

Tampico is also the mother of C.T. (not a subject of this appeal), the dependent half-sibling of A.G.A. and J.T.A., who resides in relative care.

Tampico has a history of drug addiction and a criminal conviction for solicitation to possess methamphetamine. In October 2007, A.G.A. was born testing positive for methamphetamines. In July 2009, Tampico was arrested on a felony warrant for failure to appear on a controlled substance charge. She was living in her car with A.G.A. and C.T. at the time. The police placed the children in protective custody while Tampico was taken to jail. Tampico stated that she was pregnant and was not receiving prenatal care. After J.T.A. was born at home on December 10, 2009, the Seattle Fire Department took Tampico and J.T.A. to the hospital. J.T.A. tested positive for methamphetamine and was placed at Pediatric Interim Care Center (PICC), a facility for newborns recovering from exposure to drugs in utero, for treatment.

On February 19, 2010, A.G.A. and J.T.A. were found dependent and a dispositional order was entered pursuant to RCW 13.34.130. Tampico was ordered to participate in parenting classes at a provider approved by the Department; obtain a substance-abuse evaluation and participate in any recommended treatment; participate in a reunification assessment by the Foster Care Assessment Program (FCAP); and submit to random urinalysis (UA) testing three times per week.

Tampico was offered referrals for substance-abuse evaluations on multiple occasions and participated in three evaluations at different facilities. The first evaluation, which took place on October 29, 2007, (before the dependency began), recommended an intensive outpatient treatment program lasting at least six months. Because Tampico continued to use drugs, the second evaluation,



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on August 6, 2010, recommended a residential inpatient treatment program lasting at least six months. She was referred to facilities where she could receive substance-abuse treatment. One inpatient facility was suggested by her attorney; there, she could have potentially had her children placed in her care, but she was unwilling to enter that program because it would have restricted her contact with her boyfriend.

On September 3, 2010, Tampico entered Perinatal Treatment Services (PTS), a residential treatment facility designed specifically to treat addiction in pregnant women and mothers with young children. On September 7, she underwent a substance-abuse evaluation that, like her second evaluation, recommended that Tampico participate in a residential inpatient treatment program lasting at least six months. She left PTS after less than one week, against treatment advice, and resisted attempts by staff to keep her in treatment. At PTS, Tampico could have received mental health services, childcare services, and assistance in finding housing upon graduation. Despite continued attempts by her social worker and court-appointed special advocate (CASA) to help her engage in treatment, she did not re-engage in substance-abuse treatment.

Tampico had a standing referral to participate in UA testing throughout the dependency, at a facility she had chosen. She participated for the first 60 days of her initial 90-day referral but quit after her aunt told her to move out of the aunt's home. Tampico requested another referral in November 2010 and the social worker sent a referral to the provider, but she did not show up for a UA. In April 2011 Tampico requested another UA referral; the social worker confirmed there was an active referral and told Tampico to let her know if there was a problem in submitting her UAs; however, she did not re-engage in UA testing.

During the two months that J.T.A. was being treated at PICC, Tampico did not visit although she was permitted to do so. PICC required parents to submit clean UA tests in order to visit their children. Tampico was familiar with the rules because A.G.A. had also been placed at PICC at birth. When Tampico and J.T.A.'s father told social worker Melissa Hoogendorn they had problems visiting PICC, Hoogendorn called PICC and confirmed that the parents had clean UAs. She told J.T.A.'s parents they were allowed to visit PICC and gave them bus tickets, but they did not visit J.T.A.

After J.T.A. was released from PICC, Hoogendorn arranged supervised visits. J.T.A.'s parents were 45 minutes late to the first visit and missed the next three visits: Tampico cancelled one visit in advance, failed to appear for another, and arrived too late for the third visit to take place. Between February 2010 and April 2011, Tampico had only one visit with J.T.A. Tampico explained that she did not visit J.T.A. more during those 14 months because she "just wasn't able to juggle it," but stated she did not believe the lack of contact had any effect on J.T.A. Tampico stated at trial that when she left the treatment center, instead of being worried about her children and staying in treatment, she was focused on pursuing a relationship with A.G.A. and J.T.A.'s father.

Tampico appears to have had some weekend visitation with A.G.A. from the time dependency began



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in February 2010 until April 2011, although according to one of the trial court's findings of fact she did not visit A.G.A. at all between March 2010 and January 2011.²

In April 2011, Tampico's relationship with A.G.A. and J.T.A.'s father ended and she sought to focus on consistent visitation. Visitation with both children was arranged through a contracted provider; however, the provider ceased supervision in mid-May after Tampico missed three visits without canceling in advance. Another visitation contract began under which she saw A.G.A. and J.T.A. twice a week, but that contract was terminated in June 2011 after Tampico failed to confirm three visits. The social worker made another visitation referral, and Tampico agreed to sign the visitation contract so visits could resume, but by the time of trial in July Tampico had not gotten around to doing so, explaining, "I kind of just didn't try and get stuff together." During her visits, Tampico had difficulty attending to more than one child at a time, seemed to lose interest in interacting with the children after about 80 minutes, and showed a lack of bonding with J.T.A.

The Department deemed Tampico's progress during the dependency to be unsatisfactory and filed a termination petition in June 2011. Following a trial, the juvenile court entered findings of fact and ordered Tampico's parental rights as to A.G.A. and J.T.A. terminated on July 21, 2011. Tampico appeals.

DISCUSSION

Tampico seeks reversal of the termination order, claiming the Department failed to show that (1) all necessary services were offered or provided under RCW 13.34.180(1)(d) and (2) termination was in A.G.A. and J.T.A.'s best interest under RCW 13.34.190(2). We disagree as to both claims and hold substantial evidence supports the termination order.

This court reviews an order terminating parental rights to determine whether substantial evidence supports the trial court's findings in light of the degree of proof required. In *re Welfare of S.V.B.*, 75 Wn. App. 762, 768, 880 P.2d 80 (1994). We do not reweigh the evidence or pass on credibility. In *re Welfare of C.B.*, 134 Wn. App. 942, 953, 143 P.3d 846 (2006). We accord great deference to the trial court's decision to terminate. *Id.* at 952. To grant a petition seeking termination of a parent-child relationship, a trial court must find the elements set forth in RCW 13.34.180(1)(a)-(f) established by clear, cogent, and convincing evidence.³ RCW 13.34.190(1)(a); In *re Dependency of K.R.*, 128 Wn.2d 129, 140-41, 904 P.2d 1132 (1995). The clear, cogent, and convincing evidence standard is satisfied when a court determines that the ultimate fact at issue is shown to be "highly probable." In *re Welfare of Sego*, 82 Wn.2d 736, 739, 513 P.2d 831 (1973). The court must then find, by a preponderance of the evidence, that termination is in the best interest of the child. Former RCW 13.34.190(2) (2010).

We first address Tampico's claim that services did not meet RCW 13.34.180(1)(d) because the Department failed to (1) provide a voicemail line, (2) sufficiently encourage her to continue in substance-abuse treatment, and (3) provide housing assistance.⁴ The Department must show that it



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offered the required services and the parent failed to engage in them, or that the parent waived his or her rights to such services. S.V.B., 75 Wn. App. at 770. Services must be tailored to the individual parent's needs. In re Dependency of T.R., 108 Wn. App. 149, 161, 29 P.2d 1275 (2001). At a minimum, the Department must provide a list of agencies that provide the services. In re Welfare of Hall, 99 Wn.2d. 842, 850, 664 P.2d 1245 (1983). The court may also consider any service received, from whatever source, if it relates to the potential correction of a parental deficiency. In re Dependency of D.A., 124 Wn. App. 644, 651-52, 102 P.3d 847 (2004). Even in cases where a service has not been adequately offered, termination is appropriate if the service would not have remedied parental deficiencies in the foreseeable future. T.R., 108 Wn. App. at 164.

First, Tampico points to the Department's failure to provide her with a free telephone service, claiming it would have improved her ability to communicate with the Department given her unstable housing. She contends the Department was aware of communication issues early in the dependency, as shown by social worker Carole Johnson's testimony that Tampico's frequent changes of residence meant the Department often did not have a working telephone number for her. But Tampico does not specifically identify how a lack of communication prevented her from engaging in her court-ordered services. UAs were arranged at the site of her choice but she did not go consistently. She declined one treatment facility, and left the other facility after less than a week. Furthermore, the record shows that Tampico had means of communication available to her, including a prepaid cell phone. She made calls to-and received calls from-multiple parties, including social workers, CASAs, and visitation supervisors. At Tampico's suggestion, the social worker also successfully left messages with Tampico's mother. Tampico was able to schedule in-person meetings with the social worker and CASA, though she did not make it to all of the meetings. At trial, she acknowledged that she was able to communicate by mail or go to the social worker's office. Tampico also used the internet and had an email address. The record does not support her contention that communication impediments were to blame for her failure to adequately participate in services.

Next, Tampico contends the Department did not provide sufficient encouragement for her to continue in services after she left treatment at the beginning of the dependency, failing to capitalize on her early efforts to become drug-free. While Tampico's argument does not bear on the adequate provision of services, the record shows in any event that her social worker encouraged her in meetings and by letter. CASA James Hall also testified that he regularly encouraged her to engage in services in order to improve her chances of reunification with her children.

Tampico also contends the Department was required to provide her with housing assistance in order to facilitate her participation in services. She points out that Hoogendoorn and Johnson were aware of her housing issues but did not refer her to housing resources. She further notes she was able to obtain federal Section 8 housing⁵ through her own efforts, but not until five months before the termination trial. This argument is without merit. First, concrete housing assistance may be ordered by the juvenile court at dependency review hearings, but only when homelessness is a significant factor delaying permanency for the child and when funds have been appropriated for that purpose.



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RCW 13.34.138(4). Tampico's primary parental deficiency was drug addiction, and she does not appear to have sought an order for housing assistance from the dependency court. Second, Tampico was provided with a referral for a six-month inpatient treatment program that would have assisted her with transitional housing after successful completion of the program, but she abandoned that program. At some point after Tampico left, she informed Johnson that she was waiting for Section 8 housing assistance, which she ultimately obtained. Finally, even during the months that she had Section 8 housing, Tampico still did not participate in services.

We now turn to Tampico's contention that the quality of her visits with her children showed that termination was not in A.G.A. and J.T.A.'s best interests. She notes that visitation supervisor Rachel Dawley, who observed visits in April and May 2011, testified that there were no issues of risk of harm to the children when visiting with Tampico and that both girls were happy and excited about visiting with their mother. Dawley testified that Tampico was "one of the better parents" whose visits she had supervised, and described her strong bonding behaviors with her daughters.

While Tampico's positive visits during the dependency are to be commended, they do not show, in light of the other evidence, that termination was not in A.G.A. and J.T.A.'s best interests. When a parent has not corrected parental deficiencies during the course of a dependency, a court is "fully justified in finding termination is in the child's best interests." *In re Dependency of A.W.*, 53 Wn. App. 22, 33, 765 P.2d 307 (1988). Again, Tampico's primary parental deficiency was substance abuse. The record demonstrates that she was not successful in complying with services to cure this deficiency.⁶

In sum, substantial evidence supports the juvenile court's conclusions that all of the elements of RCW 13.34.180(1) were met and that termination was in A.G.A.'s and J.T.A.'s best interests.

Affirmed.

WE CONCUR:

1. The father of A.G.A. and J.T.A. had his parental rights terminated by separate action on June 28, 2011.
2. While she challenges this finding on appeal, she does not support her challenge with specific argument or citation to the record. Therefore it is not well taken. *In the Matter of the Estate of Lint*, 135 Wn.2d 518, 532, 957 P.2d 755 (1998).
3. The elements are as follows: (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



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so that the child can be returned to the parent in the near future. [. . .] (f) That continuation of the parent and child relationship clearly diminishes the child's prospects for early integration into a stable and permanent home. RCW 13.34.180(1).

4. Tampico also claims the Department improperly restricted visitation in the absence of a court finding that such limitation was necessary to protect her daughters' health, safety, or welfare. She concedes, however, that visitation is not a "service" for purposes of RCW 13.34.180(1)(d) and acknowledges that she cannot argue that any limitation of visitation resulted in a failure of proof under the termination statute. In *In re Dependency of T.H.*, 139 Wn. App. 784, 792-93, 162 P.3d 1141 (2007), this court stated that while "[a] party appealing a termination order may argue that an improper denial of visitation relates to one or more" of the termination elements, visitation is not a required service and a dependency court's orders on visitation are not reviewable in a termination appeal where the parent does not argue that those orders are related to the termination elements. Here, as in *T.H.*, Tampico has not demonstrated that her visitation is specifically linked to any of the statutory criteria for termination. Therefore, we will not consider her arguments related to visitation as part of this appeal.

5. United States Housing Act of 1937 § 8, 42 U.S.C. §1437f (2007).

6. The evidence at trial also did not establish that Tampico complied with the court-ordered parenting classes. She testified that she completed a parenting class in 2011, without Department approval of the provider, but did not provide verification of participation to the Department, the CASA, or to the court during trial.

