

No. 71241-1-I, Consolidated with
No. 71242-0-I and No. 71243-8-I

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

IN THE MATTER OF THE DEPENDENCY OF
G.G., JR., d/o/b 11/07/04, J.D.G., d/o/b 09/30/03, S.M.M., d/o/b 11/23/99,

DEPARTMENT OF SOCIAL AND HEALTH SERVICES,

Respondent,

v.

ITZEL JIMINEZ SALAZAR,

Appellant.

**MEMORANDUM OF AMICUS CURIAE LEGAL VOICE IN
SUPPORT OF APPELLANT'S MOTION FOR
RECONSIDERATION**

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I. INTRODUCTION

Amicus Legal Voice respectfully urges the Court to reconsider its Published Opinion dated December 1, 2014 (“Opinion”) because it could establish new and incorrect precedent that a mother is an unfit parent because she was a domestic violence victim. To amicus’s knowledge, the Court’s Opinion would represent the first time that a Washington appellate court has held, in a published opinion, that a parent’s history as a victim of domestic violence may render her unfit. The Court’s brief analysis of this issue on pages 17-18 of the Opinion also is not well-supported by the record in key respects and includes language which appears to blame Ms. Jiminez Salazar for abuse committed against her.

Amicus recognizes that the Court did not have the benefit of extensive briefing on this issue, which was one of many raised in the case. As a result, amicus believes that a closer examination of this issue is warranted and would be helpful to the Court, and would prevent new, potentially dangerous, precedent from being established on this issue. Reconsideration is further warranted because the portion of the Court’s Opinion that affirms the termination of Ms. Jiminez Salazar’s parental rights based in part upon “her history as a victim of domestic violence” is inconsistent with Washington State’s efforts to combat domestic violence.

II. IDENTITY AND INTEREST OF AMICUS

The identity and interest of amicus Legal Voice is set forth in its motion for leave to file an amicus brief, filed herewith.

III. ARGUMENT

A. The Court's Finding That "Her History as a Victim of Domestic Violence Put The Children At Risk" Unfairly Blames Ms. Jiminez Salazar.

The Court's Opinion states that "as the record reveals, [Ms. Jiminez Salazar's] history as a victim of domestic violence put the children at risk, and the children have required therapy to address the impact of this domestic violence." Slip Op. at 17. With all respect to the Court, this statement incorrectly blames Ms. Jiminez Salazar for violence committed against her, and is not well-supported by the record.

Stating that Ms. Jiminez Salazar's "history as a victim of domestic violence put the children at risk" wrongly suggests that Ms. Salazar is an unfit parent because *she* was a victim of abuse and that *she* is to blame for the fact that the children witnessed domestic violence committed against her. Finding that a victim of domestic violence is unfit to parent because of the crimes committed against her sends the message that the woman, not her abuser, is responsible for her victimization. This is plainly contrary to our system of justice. *See, e.g., Nicholson v. Williams*, 203 F. Supp. 2d 153, 252 (E.D.N.Y. 2002) ("[i]t desecrates fundamental precepts of justice to blame a crime on the victim.").

In this case, Ms. Jiminez Salazar disclosed that she had been a victim of domestic violence by her husband, Gerardo Guizar.¹ However,

¹ She disclosed this fact from the beginning of the dependency in June 2011. Ex. 1 at 4. Despite that fact, the Department initially offered no services for her to address her domestic violence victimization. RPII at 121. Services for her as a domestic violence victim were not ordered until May 2013, nearly two years into the dependency. Ex. 10 at 9.

she also reported that she ended her relationship with Mr. Guizar when her youngest children were one and a half and two and a half years old, which would place the end of the relationship in 2005 – eight years before the trial in this case. RPII at 39. She also obtained domestic violence protection orders against him and sought assistance from the police. CP 114 at 2.21, RPII at 40. In short, she successfully took action to end the relationship with the abuser and to protect herself and her children from his abuse.

The juvenile court made no finding that children were abused by Mr. Guizar during their relationship; instead, the court found that “[t]he children were exposed to domestic violence perpetrated by the father against the mother.” CP 114 at 2.20. There appears to be no evidence in the record demonstrating that Ms. Jiminez Salazar’s children witnessed further domestic violence against their mother after she ended her relationship with Mr. Guizar. Instead, Ms. Jiminez Salazar testified that “since I separated from my husband . . . my kids have never, ever seen me with another man.” RPII at 57.

Amicus has been unable to locate substantial evidence in the record supporting the Court’s statement that the children required therapy specifically to address witnessing domestic violence committed against their mother.² Even if they had, it would establish a dangerous precedent in Washington to hold that the trauma children may experience by

² Indeed, the age of the youngest two children would suggest they would have little if any memory of witnessing domestic violence against their mother. RPII at 39.

witnessing their mother's victimization would be a proper basis to find a mother to be an unfit parent or to suggest that she put the children at risk by being a domestic violence victim. If that were the case, thousands of domestic violence survivors in Washington would be at risk of losing their children due to crimes committed against them by abusive partners. Other courts have held that it is improper for the state to remove children from their mother because they witnessed their mother being abused by an intimate partner. *See, e.g., Nicholson v. Williams*, 203 F. Supp. 2d 153 (E.D.N.Y. 2002) (successful challenge to the New York child protective agency's policy and practice of removing children who witnessed domestic violence). Simply put, "[a]ccusing battered mothers of neglect aggravates the problem because it blames the mother for failing to control a situation which is defined by the batterer's efforts to deprive her of control." *Id.* at 201.

B. The Court's Finding That Ms. Jiminez Salazar Was "Involving Herself in Risky Relationships That Had the Potential for Harm to Her and Her Children" Is Not Supported by the Record and Ignores the Reality of Domestic Violence.

The only other incident of domestic violence committed by an intimate partner against Ms. Jiminez Salazar that is described in the record occurred in March 2012, when Ms. Jiminez Salazar reported that she had been assaulted by Hector Antoro Ramirez. RPII at 58-59. Ms. Jiminez Salazar described the domestic violence committed by Mr. Ramirez against her in March 2012 as follows:

[H]e wanted to be with me. I told him no. And after my husband, I made the decision and I've been sticking with the decision that anybody that puts their hands on me – any men that puts their hand on me, I will not put up with it. I will not let that happen. He did not only try to put his hand on me, he tried to scare me into me thinking – I don't think he was going to do it – just try to put fear in me that he was going to do something to me with a knife.

Id. at 59. Aside from Ms. Jiminez Salazar's testimony, there appears to be little other evidence in the record about this incident.

Despite the skeletal information about this incident in the record, the Court's Opinion discussed and analyzed this incident as follows:

[A]s noted above, Salazar was involved in a domestic violence incident in March 2012 where she again associated with an abusive man. As she admitted, "he saw the abused woman that I was in the past, because those guys can spot that," further demonstrating that she was still involving herself in risky relationships that had the potential for harm to her and her children.

Slip Op. at 17-18. The Court also described this incident by stating Ms. Jiminez Salazar was "involved in a domestic violence incident where she was found to be intoxicated." *Id.* at 18. The Court's brief discussion and analysis of this issue is highly problematic for multiple reasons.

First, the Court does not properly acknowledge that Ms. Jiminez Salazar was a *victim* of abuse, but instead states that she "associated with an abusive man," involved herself in a "risky relationship," and was "involved in a domestic violence incident" where she was intoxicated. This language amounts to victim-blaming. For example, if Ms. Jiminez Salazar had been raped by Mr. Ramirez rather than threatened by him with

a knife, it would be unimaginable for a court to state that she had been “involved in a rape where she was found to be intoxicated.”

It is also deeply troubling and improper to suggest that Ms. Jiminez Salazar’s “admission” that “I think he saw the abused woman that I was in the past, because those guys can spot that” could constitute substantial evidence that she was “still involving herself in risky relationships that had the potential for harm to her and the children.” Op. at 18. This analysis entirely ignores the realities of domestic violence. Abusers do not come with labels; they do not necessarily behave abusively in relationships outside the home, and they give potential victims no warning of future violence inside the home. There is no evidence in the record to suggest that Ms. Jiminez Salazar had reason to suspect that Mr. Ramirez would be abusive; her statement above simply appears to reflect her insights *after* she was abused by him. In any case, there is no evidence in the record that her children were present during this incident or that she continued a relationship with Mr. Ramirez after he abused her. The fact that Ms. Jiminez Salazar was abused once by Mr. Ramirez, after which she ended the relationship, simply cannot constitute substantial evidence that Ms. Jiminez Salazar was “still involving herself in risky relationships that had the potential for harm to her and the children.”

Moreover, a psychological evaluation of Ms. Jiminez Salazar by Dr. Michael O’Leary in April 2013 found that “Ms. Salazar appears, at this point, to be able to participate in safe and healthy relationships on a consistent basis and not expose her children to unnecessary danger from

others.” Ex. 22 at 19. To be sure, Dr. O’Leary also opined that “Ms. Salazar’s parenting deficits relate to lack of vigilance and a tendency to be overly dependent and conflict avoidant” and that the “potential long-term impact, should these deficits not be remedied, would likely be a choice in men who might present a risk to the children” (*id.* at 18) and recommended that she participate in a women’s domestic violence support group *Id.* at 19. Ms. Jiminez Salazar testified at trial that she attended support groups and explained at trial what she had learned.³ RPIV at 19-22.

Amicus submits that Ms. Jiminez Salazar’s “history as a victim of domestic violence” and her allegedly “poor relationship choices” cannot be properly regarded as grounds to find that she is an unfit parent. *See, e.g., In re Dependency of B.R.*, 157 Wn. App. 853, 293 P.3d 1120 (2010) (reversing termination order that was based upon mother’s “poor choices” in partners). She is not to blame that she was a victim of domestic violence, and the record shows that she took strong protective actions to prevent harm to her children when she was abused by intimate partners. To disregard this evidence and punish Ms. Jiminez Salazar for actions taken by her abusers would be unjust.⁴

³ While the court found that Ms. Jiminez Salazar did not participate in DV support groups prior to September 2013, DV support groups were not ordered as a service in this case until May 2013 (Ex. 10 at 9), and it appears the first time the Department provided Ms. Jiminez Salazar with a written service letter than included contact information for DV agencies was in July 2013. Ex. 16 at 2.

⁴ The Court further stated that “despite having an abusive relationship with her mother, [Ms. Jiminez Salazar] chose to continue that relationship and placed her children in her

C. Finding That a Parent’s Status As a Victim of Domestic Violence Renders Her Unfit Is Contrary to Washington’s Laws and Policies Against Domestic Violence and Further Endangers Victims and Their Children.

Washington State has a clear public policy of preventing domestic violence and assuring that victims of domestic violence receive the “maximum protection from abuse which the law and those who enforce the law can provide.” RCW 10.99.010 (domestic violence is “a serious crime against society”). This policy includes protecting domestic violence survivors and their children and holding domestic violence perpetrators accountable. *See, e.g., Danny v. Laidlaw Transit Servs., Inc.*, 165 Wn.2d 200, 221, 193 P.3d 128, 138 (2008) (“[I]t is the public policy of this state to prevent domestic violence by encouraging domestic violence victims to escape violent situations, protect children from abuse, report domestic violence to law enforcement, and assist efforts to hold their abusers accountable.”). In the absence of actual harm or imminent threat of harm to the children, terminating the parental rights of domestic violence victims because of the crimes committed against them contravenes this clear policy.

mother’s home, putting them at risk of further harm.” Op. at 18. In the context of the Opinion, this statement oddly appears to equate a parent-child relationship as a “choice” akin to a person’s choice of intimate partners. In any case, her past decisions to permit her mother to care for the children at various times (decisions that appear to be motivated by a variety of reasons, including economic necessity), does not appear to relate to her present fitness as a parent. As noted earlier, Dr. O’Leary opined that Ms. Jiminez Salazar “appears, at this point, to be able to participate in safe and healthy relationships on a consistent basis and not expose her children to unnecessary danger from others.” Ex. 22 at 19.

Such action will also have the practical result of discouraging domestic violence victims from taking steps necessary to protect themselves, like calling the police, requesting emergency medical care, obtaining protective orders, or confiding in neighbors. This would create an untenable situation in which a survivor like Ms. Jiminez Salazar who takes protective actions to stop domestic violence – actions that are encouraged by Washington’s domestic violence policies – would later be faulted in dependency or termination proceedings for her “poor relationship choices” or “history as a victim of domestic violence.” This is inconsistent with Washington State’s considerable efforts to provide resources and safeguards to victims and survivors of domestic violence.⁵

The message to domestic violence victims in Washington is clear: the law is here to protect you and to help you protect yourself and your family from future abuse. This message will be undermined if domestic violence victims fear that exercising the options provided by the State will result in losing their children. Forcing a mother to choose between taking steps necessary to protect herself and her children, on one hand, and the risk that the State will intervene in her relationship with her children, on

⁵ See, e.g., RCW 26.50.060 (Washington’s Domestic Violence Prevention Act, which allows victims to obtain civil protection orders against their abusers); RCW 40.24.010 (Washington’s address confidentiality program); RCW 50.20.050(1)(b)(iv) (Safeguards relating to unemployment compensation for persons who are forced to leave their employment to protect themselves or their family from domestic violence); RCW 59.18.575 (Protections against penalties for lessees who are forced to break residential leases in order to escape domestic violence).

the other hand, could have dangerous or disastrous consequences. *See Nicholson*, 203 F. Supp. 2d at 204.

IV. CONCLUSION

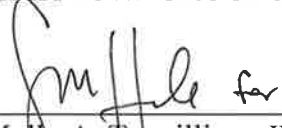
The Court's Opinion that Ms. Jiminez Salazar's "poor relationship choices" and her "history as a victim of domestic violence" makes her an unfit parent simply cannot stand. Not only does it unfairly blame Ms. Jiminez Salazar for the actions of her abusers, but it has potentially profound implications for other mothers in Washington who are victims of domestic violence. For this reason, Amicus Curiae Legal Voice respectfully requests that the Court reconsider its Opinion in this case.

DATED this 24th day of December, 2014.

Respectfully submitted,

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The undersigned certifies under the penalty of perjury according to the laws of the State of Washington that on this date I caused to be served via electronic mail (by agreement) a copy of the foregoing document upon on the following individual:

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