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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

JOHN H.,

Petitioner,

v.

THE SUPERIOR COURT OF CONTRA
COSTA COUNTY,

Respondent;

CONTRA COSTA COUNTY CHILDREN
AND FAMILY SERVICES BUREAU
et al.,

Real Parties in Interest.

A135864

(Contra Costa County
Super. Ct. No. J10-00812)

INTRODUCTION

John H. (Father) seeks writ review of an order terminating reunification services at the conclusion of the eighteen-month review hearing for his 8-year-old child and the setting of a hearing for a permanent plan for the child. (Cal. Rules of Court, rule 8.452; Welf. & Inst. Code, § 366.26.)¹ Father challenges the findings that reasonable services were provided by real party in interest Contra Costa County Children and Family Services Bureau (Bureau). Specifically, he argues that the social worker did not maintain adequate contact with him; the Bureau did not pay for the domestic violence program it recommended; the Bureau vindictively and without court order ended unsupervised visits

¹ Unless otherwise indicated, all statutory references are to the Welfare and Institutions Code and all rule references are to the California Rules of Court.

and only allowed less frequent supervised visits. Father also challenges the juvenile court's finding that return of the child would create a substantial risk of detriment to the safety, protection or physical or emotional well-being of the child. We shall affirm.

BACKGROUND

Detention. On December 17, 2010, the Bureau initiated the instant action by filing a petition pursuant to section 300, subdivision (b), alleging a substantial risk to the child due to the long history of domestic violence between Father and the child's mother. As to Father, the petition alleged that most recently, on November 12, 2010, Father pulled the mother's hair and slapped her face three separate times, put his hand on her neck and pinned her against the car seat, as she slapped him in the face. Father pushed the mother out of a moving vehicle, causing a skinned knee, numbness to her head where it hit the sidewalk and hurt buttocks. Father had been abusive to the mother throughout the relationship, but violence recently had escalated to approximately once a week. The violence increases dramatically when Father is under the influence of alcohol. The petition further alleged that Father has a chronic alcohol problem that seriously affects his ability to parent his child, including driving the child while under the influence of alcohol. The child was detained.

Detention/Jurisdiction Report. The combined detention/jurisdiction report filed by the Bureau on December 20, 2010, quoted the mother's statements to an investigating police officer, regarding the events forming the basis for the section 300 petition. The mother further stated that she was in a STAND (Stand Against Domestic Violence) shelter and wanted Father arrested and prosecuted and that she would never return to him. She stated that Father was more violent when he drank, that during the episode, the child was present and screaming at Father not to hurt his mother and that after she was pushed out of the moving vehicle, Father took off with the child. The mother said she was afraid of Father and would sign a restraining order. She provided a copy of the declaration she wrote for the restraining order to the investigating social worker.

Two weeks later, the investigating social worker interviewed Father, who appeared to be drunk during the interview. He denied drinking and denied all domestic

violence, stating he was not sure if the mother was back on drugs as she was acting delusional. The child told the social worker that his mother and Father fight and that he was afraid for his mother. The child had visibly decayed teeth. School officials reported the child had missed approximately 50 percent of school. There had been six prior referrals since 1999, involving mother and Father and mother seemed unable to protect the child.

The mother did not follow through with the restraining order. The mother's adult daughter (step-sister to the child) described domestic violence between Father and the mother from the time she was five years old. She described the abuse as physical, mental, and verbal. The mother had left Father numerous times, but always returned to him. The mother was easily manipulated by Father. Father and the mother lost their house about two years ago and since then, things had gone downhill with father drinking, not looking for work, and abusing the mother. The step-sister stated that the mother had asked her to come from Washington to get the child and take him with her.

The day of a team decision-making meeting at the Bureau's office, a plan was developed so that the mother could safely get the child from the motel room where he was staying with mother and Father and bring him to the office. The social worker received a call from the screening unit that Father had stated he was coming to the office to "get revenge." Upon arriving at the office for the meeting, mother related that as she was driving to the office with the child, his adult step-sister and her husband, Father sped past them as if he were going to intercept them at the office. They were visibly shaken. Mother said Father had told the child as he was leaving that if the child and mother left Father, Father would commit suicide.

Services offered to the parents at that point included the team decision-making meeting, early intervention outreach services, including completing an assessment on Father and providing referrals to a residential treatment program, to Alcoholics Anonymous (AA) meetings, domestic violence liaison services, education liaison services, STAND services, Parent Partner program, anger management services, the Family Stress Center, and a list of shelters.

Jurisdiction Hearing. A contested hearing was set and the mother filed objections to the jurisdiction report. She was again living with Father. Over her objection, the declaration she had prepared for the restraining order was entered into evidence. The declaration described the history of the abusive relationship since at least 1998, described the most recent incident and stated the mother's concern about the effect this abuse was having on her child, who had witnessed much of it. The declaration also stated that the mother had witnessed Father slapping the child in anger.

At the jurisdiction hearing, the mother testified she had had a memory loss and had confused the details in her declaration with that of a prior husband who had subjected her to domestic violence more than twenty years before.² The jurisdiction petition was sustained in its entirety.

Disposition and First Review. The disposition report dated May 3, 2011, related that the child was placed in a licensed foster care home in Contra Costa County. The child had dental work on his badly decayed teeth under anesthesia. He was developmentally on target. In foster care he was attending school regularly and beginning to catch up with his peers. His reading ability had improved greatly and he liked going to school.

The report observed that the parents were in denial about their level of domestic violence and Father's drinking. Father was argumentative and questioned what was being asked of him. He had failed to show the social worker any substantiated proof that he had attended AA meetings, despite his having been referred to them in January 2011, and telling the worker he was attending. Despite signing the domestic violence contract, both parents continued to deny the level of violence that permeated the relationship. The mother was compliant to whatever Father wanted. The child was described as thriving in his foster placement and enjoyed being with his parents for their visits. The court

² The reporter's transcript of the jurisdiction hearing was not provided as part of the appellate record. However, the trial court summarized the mother's testimony as part of the reasoning in his decision in this case. The same hearing officer had heard all of the contested matters in this case.

adjudged the child a dependent and authorized the Bureau to allow unsupervised visits with 72-hour notice to the child's attorney. The court adopted the Bureau's reunification plan, which included domestic violence and substance abuse programs and found the Bureau had made reasonable efforts to prevent the need for removal of the child.

The six-month status review report, prepared for October 27, 2011, related that mother was now maintaining that she had jumped from the car and had confused appellant with her first husband when reporting the incident to the police. Neither parent was involved in his or her recovery program or participating in a domestic violence program. At the conclusion of the review hearing, the court ordered the child to remain placed out of the parents' home and that visits must be supervised. Extended visits were not to be used until both parents were substantially complying with the domestic violence program. The court found that reasonable services had been provided to the parents.

Twelve and Eighteen Month Review. The Bureau's report submitted for the twelve-month review hearing set for February 10, 2012, recommended the court terminate family reunification services to both parents and set a section 366.26 hearing. The report related again that the mother had recanted her initial account of the incident where petitioner had pushed her out of the car in the child's presence and now claimed she had confused him with her first husband. The parents had found lodging in the home of a member of their church and were living there rent free. They had moved again in the last month to another home owned and inhabited by the church member without notifying the social worker—the third move since the initiation of the dependency. Father had found employment with another church member two weeks before and was working in a manufacturing plant in Oakland. Neither parent had advised the social worker of the details of the work situation. The mother was babysitting for the church member with whom she and Father lived, but they were not generating enough income to be self sufficient. The social worker had not seen sign-off sheets for petitioner's AA attendance or documentation of the mother's NA attendance. The parents had been seeing Diana Smith, a therapist, jointly, for domestic violence counseling, but they had fired her and then returned when they could not find another therapist who would see them for less

than the minimal payment they were being charged by therapist Smith. The child was doing well in foster care and had a successful visit with his half sister and her family. (The Bureau had begun evaluating the half sister's home in Washington state for possible placement.) The report identified services provided to the family, including: referrals to AA for Father; referrals to NA for the mother; parenting class referrals for both parents; bus and BART tickets to parents; referrals to STAND for anger management and domestic violence; face-to-face contact by the social worker with the child and the foster parent; transportation and supervision of visits; food resources; a low cost housing referral list; and consultation with service providers.

The report advised that visitation had been reduced to supervised visitation for one hour twice a month after Father engaged in highly inappropriate name calling and swearing on the telephone to both the foster caregiver and the social worker, related to his understanding of how visits were being arranged. Visits were somewhat inconsistent since one or the other parent has been unable to rearrange their schedules to see the child. Father was working through normal business hours and was unable to visit. The mother cancelled or postponed her visits for the same reason, but had managed to get to the office and the Bureau was able to rearrange the times and days to accommodate her. The parents were generally appropriate with the child during visits. The foster mother had arranged visits for the child and his paternal grandfather and they had occasionally gone together to lunch. The report noted that up to the time it was written, the parents had met frequently with the social worker.

According to the report, Father had not addressed his anger management issues and had not sufficiently dealt with the domestic violence issue. Although Father had tested negative for alcohol and claimed to be participating in the Twelve-Step program of AA, he was unable to articulate even a minimal understanding of the program and had not given the social worker any attendance sign off sheets for the reporting period.

Neither parent was sufficiently involved in their case plan to warrant another six month of services.

The contested review hearing began on March 21, 2012 with social worker Simone Brooks testifying. However, at the continued hearing on April 18, Father moved to relieve his counsel. The motion was denied, but Father's attorney was relieved on her own motion. The process of appointing new counsel for Father and giving counsel time to prepare delayed the hearing until June 15, 2012, at which point it was started de novo.

The June 15, 2012 hearing was now deemed an eighteen-month review pursuant to section 366.22. The Bureau's recommendation to terminate services remained the same and the February 10 report previously submitted was considered by the court as the eighteen-month report. The Bureau submitted a memo dated June 12, 2012, in which the social worker stated there had been no changes since the February 10, 2012 twelve-month review report.

Parents submitted various documents at the hearing, which they claimed were a rental agreement and proof of attendance by both parents at AA and NA meetings. The Bureau submitted a report by the parents' treating therapist Smith.

The therapist's report related that the parents had begun treatment with her on August 11, 2011, after being referred by the facilitator of their parenting group. The parents informed the therapist that the Bureau became involved in their lives when it falsely alleged they had been involved in domestic violence, that their child had witnessed the incident, and that Father was driving drunk, without a driver's license, current registration or insurance. Asked by the therapist what treatment goals they wished to pursue, they stated the allegations were misconstrued or unfounded. They maintained that *none* of the allegations were, in fact, true. They therefore felt unsupported by social workers and could not understand why their child had been taken from them. They were willing to attend counseling to disprove any violence or chemical dependency in their marriage, past or present. Both parents jointly attended weekly therapy, but could not determine their treatment goals, due to their denial. The therapist's attempts to help them implement strategies by which to address the domestic violence, its impact on their child, their ongoing daily maintenance of twelve-step recovery, the importance of stability, proper parenting and general impulse control and anger

management “were met by both, with resistance, frustration, reticence, and denial.” Both Father and the mother insisted that Father had *never* had a drinking problem; he had not ingested any alcohol for some time due to his “recovery,” and that he had not been under the influence of alcohol at the time of the incident. They admitted to having an argument at the time of the incident, but insisted there had been no physical violence between them or in front of their child. They also maintained that during the whole of their 23-year relationship and ten year marriage, their disagreements had never included physical violence of any kind. When the therapist received the disposition report from the social worker, she tried to obtain clarification, engaging in on-going communication with social worker Brooks. The discrepancies between the “facts” presented by the parents and those documented by the Bureau included: the existence of a prior welfare history of previous referrals; Father’s history of physical and emotional abuse regarding the wife’s older daughters; Father’s history of ongoing, long-term physical violence, alcohol abuse, and recorded criminal background. When confronted with this information, both parents “explained” and refuted any violence, alcohol abuse, or past allegations as being completely false and without foundation. They also blamed the overzealousness of the social worker for limiting their visitation with the child and complained it was grossly unjust and unwarranted. In October, the therapist suggested a collaborative meeting between the parents, therapist and social worker in order to address treatment goals, compliance with the case plan and the consequences of continual denial. Father and the mother reacted by abruptly firing the therapist and expressing their anger and feeling of betrayal. They left mid-session, telling Smith she had not been able to “give them what they needed.” In addition, they had neither paid the therapist nor had they acknowledged her on-going support, including telemedicine, accommodating parents’ last minute cancellations, her consultations with their attorneys and the social worker, and extended sessions—all at no extra charge.

In late November, the parents re-contacted Smith, “desperately” seeking further therapeutic services. The therapist agreed, providing that they each agree to see her individually, to address the therapeutic goals without further resistance and with an open

mind, to participate in twelve-step compliant psychotherapy and to pay for therapy (past and present). Therapy resumed on December 14, 2011, two months since their last session. During the initial session, the parents expressed their willingness to do whatever it took to fully commit to individual therapy. Neither had seemed fully committed to the twelve-step recovery programs. They promised to pay the therapist and she presented them with invoices for the prior therapy.

During the next two months, the parents appeared to achieve a more informed understanding of the “legacy” of domestic violence and substance abuse. On February 2, 2012, the mother signed a document, written by the therapist, in which the mother stated that she knew she had been in “some denial about our past,” that Father had changed a great deal, but it was true that in the past, he had, upon occasion, slapped, pushed, pulled her hair and been physically and emotionally abusive to her and that she had been emotionally abusive to him as well. She also claimed that she was not trying to be dishonest or manipulative. In signing the statement, the mother stated, “nothing is more important than having my son back.”

A month later, on March 8, 2012, Father submitted a similar statement, also written by the therapist. Father admitted the relationship was destructive and dysfunctional. He wanted at times to lash out and the mother bore the brunt of his anger and frustration. He stated he regretted his acts of physical violence and that working with his church and recovery community, he had come to understand that he must always be mindful and work with others, of his impulses toward anger, confrontation, and anxiety. Neither parent’s written statement contained any mention of the child or the impact of their domestic violence on the child. Nor did either statement mention Father’s issues with alcohol abuse. The therapist related that Father had told her it was almost unbearable to admit his part in the physical and emotional abuse, but when confronted with the shame of admission or ongoing parenting of his son, there was no alternative.

On June 15, 2012, the contested eighteen-month hearing began. Father chose not to testify. Social worker Brooks testified at length. She testified that parents had made constant changes in the dates and times arranged for visits, which caused some visits to

be missed. She described their visitation as “hit or miss” and related that they had disrupted the visit schedule several times by cancelling or postponing at the last minute. Father was not able to take off work to attend daytime visits. There was no staffing available to supervise weekend or evening visits and the parents only wanted to see the child on the weekends. A few unsupervised visits had occurred in October or November 2011. However, unsupervised visits had been unsuccessful and the Bureau reduced visits to twice a month supervised visits when the parents became adversarial with the foster mother. In late October, Father became upset with the visit arrangements and became verbally aggressive to the social worker and foster mother on the phone, engaging in highly inappropriate name calling and swearing to both the foster caregiver and the social worker. The social worker related that during a October 24, 2011, telephone call to the social worker from mother about why the foster mother was stopping the parents from discussing visit dates with the child, Father took the phone and became verbally abusive to the social worker. She told him to get himself under control and calm down or she would end the conversation. He became even angrier, and continued to yell about how the foster mother was not in charge. The social worker ended the conversation. When the mother called back five minutes later, Father again took the phone and began yelling. The social worker attempted to interject, but Father shouted over her. When the social worker tried to ask Father what his issues were, he continued to yell and did not try to listen. Father kept repeating that visits were to be arranged by him, the social worker, and the child and that the foster mother should stay out of it. The next day during a call to the child, Father began asking the child about visitation and telling the child they would see him on Wednesday. When the child responded, “you will?” Father again became extremely angry and began yelling at the foster mother. On October 26, 2011, the social worker called the parents to tell them visits were being reduced to supervised visits twice a month. Both parents were very angry and Father started to shout again. He called Brooks’s supervisor complaining that Brooks had messed up the visits, but he took no responsibility for his verbal abuse. On that day the foster mother reported the child

had an episode of encopresis (voluntary or involuntary loss of bowel control in a toilet trained child) and that this usually occurred before or after visits.

In February 2012, Father was again verbally abusive on the telephone when the social worker told the parents she was trying to arrange visits. He would not listen to her and talked over her explanations. No unsupervised visits had been tried in the six months preceding the eighteen-month review hearing. Brooks confirmed that unsupervised visits were to be allowed only if parents were actively engaged in their case plan. Brooks testified that Father had only recently started coming to visits during the week. During visits, neither parent had done anything inappropriate toward the child. However, despite being told numerous times not to ask the child when he was told he would be seeing them, the parents both continued to quiz or badger the child regarding that issue and quizzing him about who else he was seeing or speaking to. This behavior by parents occurred as recently as the visit before the hearing. Father appeared to have no comprehension as to how this was inappropriate and harmful to the child. The parents promised the child that he would be returned to them soon, would live with them in the home where they were currently living, and would have a brother and sister (the landlady's children). The social worker opined that this caused anxiety for the child and demonstrated the parents lacked necessary understanding as to the child's emotional needs.

The social worker wanted parents to attend the STAND domestic violence program, and Father to attend a 52-week anger management class, but they claimed they could not afford it, so they were seeing Smith to deal with the case plan. Brooks did not believe that the mother had sufficiently dealt with the domestic violence and anger management part of her plan, as demonstrated by her failure to ever admit that the initial declaration she made regarding Father's pushing her out of the car was true and that her subsequent recantation and statement that she had confused him with a prior spouse was false. Further, mother had yelled at a social worker at a recent meeting concerning placement of the child. Father had never accepted responsibility for the child's removal.

He blamed others. He had never admitted to the social worker the level of violence he had engaged in and had never admitted to his history of alcohol abuse.

Father had tested clean on his alcohol testing, but had missed three dates in February and three in March. The Bureau had arranged in early March for evening and weekend tests to accommodate Father's work schedule.

The social worker had not had face-to-face contact with Father for five to six months before the hearing as the parents had not initiated contact. She maintained it was the parents' job to initiate contact with the social worker.

Both parents had completed parenting classes. The parents had not shown her any relapse prevention plan, despite it being part of their case plan. Regarding Father's participation in a twelve-step program, the social worker had not been informed whether he had a sponsor. The social worker opined that the parents were still in chronic denial as to the level of domestic violence and its effect upon the child and that it would be dangerous to place the child with them.

The child had never asked to return to the parents. Rather, the child asked to stay with his half sister in Washington.

The mother also testified. She presented a rental agreement that she claimed was evidence that she and Father now had a stable residence. She complained that she kept trying to call the social worker on a weekly basis, but that the social worker never returned her calls. She testified that she was in therapy with Smith for domestic violence and admitted that she has a domestic violence problem. When asked how the case began, she explained: "we had a domestic violence, and *I thought he pushed me out of the car at the time.* Um, yeah, *I . . . jumped out of the car,* and I hit my head, and I called the cops, and I pressed charges, yeah." (Italics added.) When her attorney asked if she remembered testifying at the jurisdiction hearing, taking back her declaration, and testifying there was no domestic violence, the mother answered that she didn't remember. She also testified there had been no domestic violence between her and Father since the case began. She claimed to have a domestic violence prevention plan and that she was not fearful of Father. The mother denied she had discussed anything inappropriate with

the child at the last visit and denied that the parents had told him he would be coming home soon, as testified by the social worker.

When questioned about the counseling sessions, the mother maintained that she worked on anger management and how to keep arguments from escalating into explosive situations. She stated the child should be returned to her because she had been through counseling, that she and Father were different people now and past all the domestic violence. She stated that Father now had an AA sponsor and she thought he was working on step 7 of the 12 steps. She blamed the social worker for a mix-up that caused Father to miss his March tests. They visited their child twice a month and were working together on a plan to prevent domestic violence. She admitted she and Father had been cautioned by Brooks not to discuss the circumstances of the visit with her child, but did so anyway. She admitted lying to the therapist about the extent of the domestic violence at the beginning of therapy, but said the therapist had seen a tremendous break-through recently. Asked about firing the therapist, the mother contradicted the therapist's statement. The mother maintained that she and Father fired the therapist because the therapist had wanted to use their insurance under the child's Medi-Cal, which they thought was illegal. The mother claimed they paid the therapist and denied ever receiving a bill from the therapist.

On further exam, social worker Brooks testified the foster mother had informed her that the mother told the child in a phone conversation that the child would soon be placed with the father's sister; that at every visit the parents quizzed the child about whom he had seen and to whom he had spoken, despite repeated warnings to refrain from such questions. Brooks testified the therapist related that she had sent bills to the parents that they had not paid her.

Father did not testify, but adopted the mother's testimony as his own through the argument made by his attorney. Unlike the mother, Father's attorney did not ask to have the child returned, but asked the court to grant more services beyond the eighteen months or to consider long term foster care for the child.

The court ruled on June 20, 2012. Acknowledging that the case rested almost entirely on the credibility of the mother, the court found it could not place any credibility in her testimony. The court recalled that at the jurisdiction hearing, the mother had recanted her declaration regarding domestic violence, claiming memory loss and that she had confused Father with a prior husband who had abused her. The court had warned the parents then that if they did not seriously deal with their domestic violence issues, the child would not be returned. Although they went through the motions of therapy, the therapist's report disclosed nothing but manipulations, rather than a serious attempt to deal with the issues. This conclusion was based both on the therapist's report and the mother's testimony. The court found the mother had lied at the hearing about why she and Father fired the therapist. Concluding it was unable to place any reliance on any of the mother's testimony, including her claims to have stable housing and to understand the devastating effect that domestic violence had on the child, the court adopted the recommendations of the Bureau, including finding by clear and convincing evidence that the Bureau had provided or offered reasonable services to the parents which were designed to aid them in overcoming the problems which led to the initial removal and continued custody of the child and that return of the child to the parents' custody would create a substantial risk of detriment to the safety, protection or physical or emotional well-being of the child.

The court therefore terminated family reunification services and set the matter for an August 24, 2012 section 366.26 hearing. Father filed the instant writ petition and on August 22, 2012, we stayed the section 366.26 hearing. No petition was filed on behalf of the mother.

DISCUSSION

I. The Bureau Offered Reasonable Services

Father challenges the finding that the Bureau provided reasonable services. Because the child was older than three years of age when he was removed, the Father was statutorily entitled to 12 months of services. (§ 361.5, subd. (a)(1)(A).)

Standards of Review

The court at every review hearing where a child is not returned must find, and in this case did find, that the Bureau had provided or offered the parent reasonable services, defined as services designed to aid the parent in overcoming the problems that led to the initial removal and continued custody of the child. (§ 366.21, subd. (e).) The case plan must be appropriate to the individual parent and based on the unique facts of that individual. (*In re Misako R.* (1991) 2 Cal.App.4th 538, 545.) “In almost all cases it will be true that more services could have been provided more frequently and that the services provided were imperfect. The standard is not whether the services provided were the best that might be provided in an ideal world, but whether the services were reasonable under the circumstances.” (*Id.* at p. 547.)

The juvenile court is required to have clear and convincing evidence when it finds the reunification services offered were adequate. However, we review that finding on appeal for substantial evidence. (*In re Alvin R.* (2003) 108 Cal.App.4th 962, 971.) “The issue of sufficiency of the evidence in dependency cases is governed by the same rules that apply to other appeals. If there is substantial evidence to support the findings of the juvenile court, we uphold those findings. [Citation.] We do not evaluate the credibility of witnesses, reweigh the evidence, or resolve evidentiary conflicts. Rather, we draw all reasonable inferences in support of the findings, consider the record most favorably to the juvenile court’s order, and affirm the order if supported by substantial evidence even if other evidence supports a contrary conclusion. [Citation.] The [petitioner] has the burden of showing the finding or order is not supported by substantial evidence. [Citation.]” (*In re L.Y.L.* (2002) 101 Cal.App.4th 942, 947.)

Hence, we review reasonableness of services offered by viewing the evidence in a light most favorable to the finding. So viewed, it is clear that substantial evidence supports the finding that reasonable services were offered by the Bureau.

Services provided by the Bureau to Father here included, but were not limited to: supervised visits, drug testing and rearranging testing to accommodate Father’s work

schedule, bus and BART passes, referrals to therapy for anger management and domestic violence treatment, referral to a parenting program and referral to a twelve-step program.

Father's Challenges to the Reasonableness Finding

1. Father first contends the Bureau did not maintain reasonable contact with him and the mother during the course of the service plan, referring to the testimony of social worker Brooks that she had not contacted the parents for “the past five to six months,” and that it was the parents’ job to initiate contact with the social worker.

Father relies upon language in *In re Riva M.* (1991) 235 Cal.App.3d 403, 414, finding that reasonable services were provided, despite the father’s claim that he was merely given a list of “ ‘ ‘dos and don’ts.’ ” The Court of Appeal observed, “[i]t is the job of [the county agency] to assist parents with inadequate parenting skills in remedying the sources of the problem, not to eradicate the problem itself. . . . [¶] [T]he record should show that the supervising agency identified the problems leading to the loss of custody, offered services designed to remedy those problems, *maintained reasonable contact with the parents during the course of the service plan*, and made *reasonable* efforts to assist the parents in areas where compliance proved difficult. . . .” (*Ibid.*, italics added.)

Somewhat similar to this case, in *In re Riva M.*, the worker had multiple contacts with both parents early in the dependency proceeding, but those contacts lessened as the case progressed—in that case due to the father’s failure to keep the agency informed of his whereabouts and because of his incarceration. (*Ibid.*) Nevertheless, the court found that reasonable reunification services had been provided. (*Ibid.*) We admit that the social worker’s statement that it was “the parents’ job to initiate contact with the social worker,” is somewhat troubling, as the onus is on the Bureau to attempt to maintain reasonable contact with the parents during the course of the plan.

However, in the circumstances of this case, Father has shown no prejudice whatsoever from the failure of the social worker to initiate face-to-face meetings with him toward the end of the reunification period. Father’s hostility toward and verbal abuse of the social worker and others likely contributed greatly to the social worker’s failure to initiate face-to-face contact with him regarding the reunification plan during the

five or six months before the eighteen-month hearing. Furthermore, it is apparent that the social worker did maintain *some* contact with the parents, as it was she who arranged and supervised visits during this time period. That the social worker was present and available to Father during this time, whether or not they spoke, is supported by her testimony that she had advised Father months before not to grill the child about arrangements for visits. She had explained to him why such behavior was inappropriate and harmful to the child, but Father would not stop. Exactly the same thing happened at the visit at the end of May—the month before the eighteen-month hearing.

Moreover, it appears Brooks remained in good contact with the therapist regarding the parents' progress toward reunification.

2. Father also contends the Bureau did not meet its obligation to provide reasonable services to remedy the *mother's* domestic violence issues where the worker testified she wanted mother to receive counseling at STAND, but the mother found the program “too expensive” for her to afford. Father maintains the Bureau was obligated to arrange and provide funds for the mother's enrollment in the STAND program. (Somewhat curiously, Father does not mention the worker's testimony that Father failed to enroll in the STAND program and that she believed the STAND program would have been important for Father, as it would have been appropriate for him to be with other men who battered their wives and girlfriends.) We believe Father has no standing to take issue with the services provided the mother, who has not filed a petition challenging those services. Moreover, Father cites no evidence that the Bureau was required not only to recommend the programs it judged to be most appropriate under the circumstances, but also to fund the parents' participation in this particular programs. (See § 16501, subd. (a)(1).)³

³ Section 16501, subdivision (a)(1) provides: “Child welfare services may include, but are not limited to, a range of service-funded activities, including case management, counseling, emergency shelter care, emergency in-home caretakers, temporary in-home caretakers, respite care, therapeutic day services, teaching and demonstrating homemakers, parenting training, substance abuse testing, and transportation. These service-funded activities shall be available to children and their

Whatever may be the case as to the mother's failure or inability to participate in the STAND program (and no evidence was presented as to the cost of that program), Father was provided ample opportunity to address his anger management and domestic violence issues through therapy with Smith, which was approved by the Bureau. Had the Bureau funded participation in the STAND program, given the level of denial by both parents, it is unlikely to have made much difference here. At the beginning of the case, the mother was referred to a STAND shelter. The program compelled her to arrange for a restraining order and she did so by preparing a declaration in support of that order, laying out in detail the history of Father's physical, verbal and emotional abuse. However, by the jurisdiction hearing, the mother was recanting the declaration, insisting incredibly that she had been confused and that it was a prior husband who had pushed her out of the car at some point long past.

3. Finally, Father challenges the reduction in visitation from a minimum of two times per month unsupervised visits to less frequent supervised visits. He complains that Brooks vindictively and unilaterally changed visitation to supervised and then drastically reduced visits to twice per month, minimizing his role in triggering that reduction as a "real or perceived interpersonal slight the worker experienced in regard to father." Father ignores that the court order upon disposition that visitation "*may*" be unsupervised at the discretion of the Bureau upon 72-hours notice to the child's attorney. At the November 2001 review hearing, the court ordered visitation limited to supervised visitation, with authorization for overnights if the parents were substantially involved in their domestic violence program. Parents were not seriously involved in their case plan at that time, as evidenced by Father's verbally abusive behavior that triggered the cessation of unsupervised visits and the "reduction" of visits to two visits per month. Instead, both parents continued to lie to their therapist about the extent of their domestic abuse problem and father's alcohol abuse. They also appear throughout the proceedings to ignore the

families in all phases of the child welfare program in accordance with the child's case plan and departmental regulations. Funding for services is limited to the amount appropriated in the annual Budget Act and other available county funds."

impact of their behaviors on the child. Unsupervised visits were terminated because Father's behavior indicated it was not safe for the child to be alone with him. His cursing and anger during phone calls with the social worker and foster parent and the child strongly support the conclusion that he had not dealt in a meaningful way with his dangerous propensity toward violence. In moving back to supervised visits and reducing visitation to twice a month, the Bureau did not deny Father reasonable reunification services, but acted in the child's best interest.

II. Substantial Evidence Supports the Detriment Finding

Father next challenges the court's finding that return of the child would create a substantial risk of detriment to the safety, protection or physical or emotional well being of the child.⁴

Usually, when a child is removed from a parent, the child and parent are entitled to 12 months of family reunification services, which may be extended to a maximum of 18 months. (§ 361.5, subd. (a)(1)(A).) At the eighteen-month status review hearing, “[t]he court shall order the return of the child to the physical custody of his or her parent . . . unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent . . . would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The social worker shall have the burden of establishing that detriment. . . . The failure of the parent . . . to participate regularly *and make substantive progress in court-ordered treatment programs shall be prima facie evidence that return would be detrimental.* In making its determination, the court shall review and consider the social worker's report and recommendations . . .; shall consider the efforts or progress, or both, demonstrated by the parent . . . and the extent to

⁴ At the outset, we note that at the eighteen-month hearing, Father never requested return of the child to his custody. Rather, he requested additional services or that the child be placed with his sister. As a general rule, a party may not assert new theories on appeal that were not raised at the trial court level. (*Ernst v. Searle* (1933) 218 Cal. 233, 240-241; 9 Witkin, Cal. Procedure (5th ed. 2008) Appeal, § 407, pp. 466-467.) However, the mother did request the return of the child below and, although her attorney filed a “no issues” statement here, because mother appeared to testify on behalf of Father as well as herself, we will proceed to the merits of Father's argument.

which he or she availed himself or herself of services provided . . . ; and shall make appropriate findings pursuant to subdivision (a) of Section 366.” (§ 366.22, subd. (a), italics added.) A parent must do more than simply comply with the technical requirements of the reunification plan. The court must also consider the progress the parent has made towards eliminating the conditions leading to the out-of-home placement. (*In re Dustin R.* (1997) 54 Cal.App.4th 1131, 1143.)

This record contains substantial evidence that Father failed to substantially comply with his case plan.

Father points out that the standard of section 366.26, subdivision (a), “must be construed as a fairly high one. It cannot mean merely that the parent in question is less than ideal, did not benefit from the reunification services as much as we might have hoped, or seems less than capable than an available foster parent or other family member.” (*David B. v. Superior Court* (2004) 123 Cal.App.4th 768, 789.) “We are looking for passing grades here, not straight A’s.” (*Id.* at p. 790.)

Father asserts that the parents had visited regularly with the child, who enjoyed the visits; that they were appropriate with the child throughout the visits; that both had participated in anger management and domestic violence counseling with Smith; that father had tested negative for illegal substances; that both had actively participated in NA-AA meetings, that he had obtained full-time, gainful employment, and that the parents were living in a single family home with a bedroom available for the child. He also refers to testimony of the social worker that she was not aware of any domestic violence between the parents during the course of the dependency proceeding.

Father ignores the court’s finding that mother’s testimony was completely *not credible* as to the supposed new-found insights of the parents regarding domestic violence, that they were no longer in a state of denial regarding their domestic violence, that they now had stable housing, a source of income, and that the child would be safe with them. Instead it found—and the evidence provided by Smith’s notes and the mother’s testimony supported—that both parents had merely gone through the motions of consulting with a therapist. The court found the therapist-written statements signed by

the parents regarding their belated admission of their domestic violence history “manipulative.” There was ample reason to believe their housing was not stable and, despite Father’s asserted current sobriety, that he had not addressed or even admitted his alcohol dependency, but was merely going through the motions. Even in the 11-th hour statement acknowledging the domestic violence, Father never acknowledged the impacts or effects of his behaviors upon the child. Father’s verbally violent and abusive behavior toward the social worker and the foster mother and even on the phone with his son, further substantiate the court’s determination that no real progress had been made toward alleviating the problems that first brought the child into the dependency. Having found that both parents had consistently lied throughout the course of the proceedings, the court found it would be dangerous to return the child to them. Credibility determinations are for the trier of fact and substantial evidence supports the court’s determinations here.

Moreover, had the court believed that Father had suddenly gained new insight into his violent and abusive behavior, the history of domestic violence between the parents and his alcohol abuse, it would still have been warranted in finding a substantial risk of detriment to the child in returning to Father’s custody on the basis that such minimal progress was “too little, too late.” Father’s genuine admission that he and the mother had a domestic violence problem would have been only the first step toward realizing the goal of eliminating the problems leading to the child’s out-of-home placement. The court could surely conclude on the evidence before it that Father had failed to make substantive progress in the treatment programs ordered by the court.

Substantial evidence supported the trial court’s determination that return to Father’s custody would be detrimental to the child.

DISPOSITION

The petition is denied on the merits. (*Kowis v. Howard* (1992) 3 Cal.4th 888, 894 [barring later challenge by appeal].) Our stay of the section 366.26 hearing is dissolved. Our decision is immediately final as to this court. (Cal. Rules of Court, rule 8.490(b)(3).)

Kline, P.J.

We concur:

Lambden, J.

Richman, J.