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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT  
DIVISION FIVE

**In re S.S., a Person Coming Under the  
Juvenile Court Law.**

**D.S.,**

**Petitioner,**

**v.**

**SUPERIOR COURT OF DEL NORTE  
COUNTY,**

**Respondent,**

**DEL NORTE COUNTY  
DEPARTMENT OF HEALTH AND  
HUMAN SERVICES,**

**Real Party in Interest.**

**A136475**

**(Del Norte County  
Super. Ct. No. JVSQ 11-6077)**

Petitioner D.S. (mother) seeks extraordinary writ relief from a juvenile court order at the 12-month review hearing terminating reunification services for her daughter, S.S. (minor), and setting the case for a hearing under Welfare and Institutions Code section 366.26.<sup>1</sup> (Cal. Rules of Ct., rule 8.452.) She argues that the court should have offered her additional reunification services. We deny the petition.

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<sup>1</sup> Further statutory references are to the Welfare and Institutions Code unless otherwise specified.

## I. FACTUAL AND PROCEDURAL HISTORY

### A. *Background*

Mother is married to B.S. (father) and gave birth to the minor in June of 2000. The minor is a very intelligent and imaginative child who has been diagnosed with Asperger syndrome, which is on the autism spectrum. Father is also a highly intelligent person who has Asperger syndrome, though his condition was not diagnosed until later in life and he did not receive the intervention that a person diagnosed during childhood would receive.<sup>2</sup> Mother has a history of depression.

During the minor's life, the family has had a number of contacts with child welfare services for issues ranging from the mental health of the parents, drug and alcohol use by the parents, and general neglect. When the minor was a baby, she was declared a dependent and services were provided to the parents under a family maintenance plan until the dependency was terminated. Mother had lost custody of the minor's older half sibling in 1999, when her parental rights were terminated due to her failure to reunify.

The current dependency arose in 2011, when the minor was ten years old. At father's insistence, the family practiced a "nocturnal" lifestyle, going to sleep in the early

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<sup>2</sup> According to an informational sheet from KidsHealth.org that was attached as an exhibit to the social workers report for the dispositional hearing, "Asperger syndrome (AS) is a neurobiological disorder that is part of a group of conditions called autism spectrum disorders." It "is characterized by poor social interactions, obsessions, odd speech patterns, and other peculiar mannerisms. Kids with AS often have few facial expressions and have difficulty reading the body language of others; they might engage in obsessive routines and display an unusual sensitivity to sensory stimuli (for example, they may be bothered by a light that no one else notices,; they may cover their ears to block out sounds in the environment; or they might prefer to wear clothing made only of a certain material). [¶] Overall, people with AS are capable of functioning in everyday life, but tend to be somewhat socially immature and may be seen by others as odd or eccentric. [¶] Other characteristics of AS include motor delays, clumsiness, limited interests, and peculiar preoccupations. Adults with AS have trouble demonstrating empathy for others, and social interactions continue to be difficult. Experts say that AS follows a continuous course and lasts a lifetime. However, symptoms can wax and wane over time, and early intervention services can be helpful."

morning hours (4:00 a.m. to 5:00 a.m.), waking in the afternoon (1:00 p.m. to 3:00 p.m.), and staying awake at night. Father directed the minor's home schooling during his waking hours, but the family's unavailability during the day made it difficult for them to utilize services offered to the minor through the Regional Center or to make appointments relating to the home schooling program. The minor, though very bright, had behavioral issues and impaired social skills as a result of her Asperger syndrome, and the family's isolation limited her exposure to experiences that would promote her development in these areas. The father's failure to address some of his own behaviors relating to Asperger syndrome contributed to the family's isolation from the larger society.

In addition to the scheduling and socialization issues arising from the family's nocturnal lifestyle, there were also concerns about the minor's physical health and safety. The parents could not provide immunization records for the minor, and she had repeatedly missed medical appointments. The parents used alcohol and marijuana in the home (neither one having a medical marijuana card), and although the father believed the minor, at 10, was old enough to care for herself when her parents were asleep, the minor on one occasion pulled a stranger into the home. The home where the family lived had mold, mildew and sewer issues, and the parents refused to use heat in the house. The minor's hygiene was poor, with the parents setting a bad example.

*B. Dependency Proceeding—Jurisdiction and Disposition*

On May 17, 2011, the Del Norte County Department of Health and Human Services (Department) filed a petition alleging that the minor was a dependent child under section 300, subdivisions (b) and (j). The court found jurisdiction, sustaining allegations that: (1) chronic marijuana abuse by the parents impaired their ability to care for the minor; (2) the minor was at risk of medical neglect based on the parents' repeated failure to keep her medical appointments; (3) the minor had allowed strangers into the home while the parents were sleeping during the day, and had not received available Regional Center services due to the family's nocturnal lifestyle, the practice of which had left the minor socially isolated from peers and her community; (4) the home in which the

family resided was unhealthy due to mold and mildew saturation, a broken sewer pipe under the floor that was emitting foul odors, and the parents' refusal to heat the interior; (5) the parents were aware of the conditions in which the minor was living but continued to allow the minor to live in those conditions; (6) the parents' history of involvement with child welfare services includes a prior adjudication of dependency for the minor and the termination of mother's parental rights to the minor's half-sibling in 1999; and (7) pre-placement preventive services had been offered to the family but had not been effective.

At the disposition hearing held in July 2011, the minor was removed from her parents' custody and placed with her paternal grandmother and stepgrandfather, with whom she had been residing since the filing of the dependency petition. Reunification services were provided to the parents under a plan that included components of visitation, mental health counseling, and the maintenance of a healthy, stable home.

### *C. Six-Month Status Review*

After moving to her grandparents' home, the minor began attending public school and seeing a counselor to help her deal with some of her behaviors and reactions to stress. Her problematic behaviors improved and she did quite well academically. Her grandparents were described as "very involved and devoted" by the Court Appointed Special Advocate (CASA) assigned to the minor's case.

Meanwhile, the parents' primary concern was their residence. They had moved to a new apartment but claimed they were being harassed by neighbors who ran their dryers all night and had been told by the property manager they could only have one cat rather than the three they owned. The parents visited the minor regularly. Father and the grandmother had a contentious relationship, often disagreeing about what was best for the minor.

Tod A. Roy, Ph.D. conducted a psychological evaluation of the parents in preparation for the six-month status review hearing. His report states, "Their history, however, from the case's inception . . . when [the minor] was born to the present has been notable for their lack of participation in any offered services from family service organizations. Their non-compliance and failure to participate was always explained due

to one or the other's health concerns, outright refusals, or rationalizations of their behavior. A final assessment identified unsatisfactory participation or progress gaining parenting skills, a risk of [the parents] isolating themselves from mainstream/conventional lifestyle experiences, and problems managing their resources. These issues are as relevant today as they were 11 years ago." Dr. Roy noted the family's nocturnal lifestyle and described parents' relationship as involving a "co-dependent avoidant lifestyle centered on [father's] needs. [Father] uses his intellect to resist and defend against any change to their routine. Of course this routine makes them unavailable to engage or attend appointments other than in the late afternoon when the business world is winding up their operations of the normal working day. [Father] feels strongly that any and all service agencies and their personnel should accommodate his schedule."

At the six-month review hearing held in March 2012, the court continued the minor in her placement with her grandparents and set the case for a 12-month review hearing.

#### *D. 12-Month Status Review*

A new social worker was assigned to the case. The status report prepared by that worker for the 12-month review hearing advised the court that the parents had been participating in services since March 2012, attending parenting classes and meetings with the Department and other interested parties to address safety issues. The parents were noted to have been on time for their visits with the minor (tardiness having been an issue in the past), and those visits were going well.

In an addendum report filed August 23, 2012, the social worker recommended that the minor be returned to her parents' custody under a family maintenance plan. The report stated that the parents had continually engaged in counseling since March 2012; that mother's affect had noticeably improved and she was able to vocalize her own needs; that parents had participated in counseling with the minor, whose counselor stated she was "pleasantly surprised" by the parents, of whom the grandmother had said negative things; that the parents, according to the minor's counselor, were focused on the minor's

needs whereas the grandmother was more focused on the parents; and that the parents had been utilizing Regional Center services with the minor and had been implementing the parenting skills they had learned.

The social worker recognized that the grandmother had played a positive role in the minor's life, helping her to utilize community resources, enhancing her independence, and preparing her for adulthood; without the grandmother's influence, in the opinion of the social worker, the minor "would not be the young lady she is today."

Notwithstanding this positive influence, the social worker believed reunification had been complicated by the poor relationship between the father and the grandmother: "[Parents] have demonstrated a behavior change and a willingness to put [the minor's] needs first. Unfortunately for this family there have been many obstacles to overcome and outside influences that have been a hindrance. . . . [¶] The most powerful hindrance is the relationship between [father] and his mother [grandmother]. There seems to be conflict between [father] and [grandmother] that goes back to [father's] childhood and is prevalent in his adulthood. [Father] and [grandmother] constantly have disagreements with raised voices in front of [the minor]. . . . The Department is truly concerned for [the minor] as this causes stress for her. . . . The Department believes [grandmother] has influenced service providers with unfounded accusations and deep seeded [sic] family dynamics to prevent reunification of [the minor] with her parents."

Other circumstances caused the social worker to be concerned about the parents' treatment during the dependency case. The CASA was recommending that the minor remain in her grandparents' home, but had not seen the parents' new home and had shared confidential information about the case with the grandmother. A special education teacher at the minor's school had contacted the social worker to tell her she had received a call from the grandmother asking her to write a letter to the court asking to stop visitation with the parents due to the effect it was having on the minor's behavior. The teacher thought that the minor had been acting out recently because she was stressed about the school year ending, and that to attribute the behavior to the parents was speculation. The social worker also believed that a representative from the Regional

Center had been confrontational with the parents and had been reluctant to provide services to the parents and the minor in the parents' home.

At the 12-month status review hearing, the Department and the parents asked the court to return the minor to the parents under a family maintenance plan. The attorney representing the minor was opposed, and cross-examined the social worker extensively about her conclusion that the parents had cured the problems leading to the dependency. In particular, counsel questioned the social worker about the parents' ability to follow through with their stated intention of continuing the minor's participating in school and the other activities that everyone agreed were critical to her socialization. The social worker suggested that the parents, who did not have a car, could rely on friends and public transportation. She indicated that the mother had been making progress in waking up earlier.

The mother did not testify at the hearing, but the father took the stand and explained that if the minor were returned to them, they would try to get her into a routine involving her school and extracurricular activities, although they would probably give her more undirected time than she was receiving at her grandparents. He acknowledged that they would have to make arrangements for her transportation to and from school and appointments, possibly from Dial-a-Ride, the school district itself, or public transportation. Father continued to have an unusual sleep cycle that would make it difficult for him to make early morning appointments, but the mother was able to get up in the morning and do what would be necessary to get the minor to school. He and the grandmother disagreed about the way in which a child should be raised, with the grandmother believing it was very important for a child to be in school. Father believed the CASA assigned to the case was biased because she had spent very little time with the parents compared to the grandparents and had made little effort to understand them or their way of raising the minor.

The minor testified that she wanted to continue living with her grandparents because she knew they would get her to school and she worried that her parents would not. She still wanted to see her parents, but not all the time: "I think that three days a

week is definitely enough. [¶] . . . [¶] And not all day for those three days. I believe I should have about three hours of visitation on Monday, Wednesday and Friday.” When the minor lived with her parents, the home was “uninhabitable” and she had been very bored because her father was always on the computer and her mother did not understand the imagination games she liked to play. After the move to her grandparents, she was able to attend school for the first time, and really enjoyed the interaction with other people. The minor’s primary concern was being able to continue attending public school, but she was also worried about being bored at her parents because they gave her less time on the computer and her mother did not understand imagination play at all. She also liked her bedroom at her grandparents’ house better than the room she would have at her parents’ house.

Dr. Kimberly Smalley, the Autism specialist for the Regional Center, testified that in-home services had been provided before the minor was removed from her parents, but they did not adequately participate. She described the minor as “brilliant, gifted, talented,” but needing assistance with her socialization. If returned to her parents, it was likely the minor would have to attend a new school, which would not be a problem academically, but would erase a lot of work that had been done getting a certain peer group to accept her. The father was eligible for services through the Regional Center due to his own autism, but he was responsible for devising his own program. His original plan was to continue studying Arabic so he could write for an Egyptian periodical; his most recent plan is to “live where I want my family and I to live, and to be healthy.” Dr. Smalley was concerned that the minor, who was doing so well in her current situation, would lose the gains she had made if she was placed with her parents in a more isolated situation.

After considering the opinions of the social worker, the CASA and Dr. Roy, the court terminated reunification services and set the case for a hearing under

section 366.26.<sup>3</sup> It noted that Dr. Roy’s psychological evaluation had concluded the mother and father were not able to adequately parent their special needs child, who would require continuing serious work with respect to her socialization. The court observed that in her grandmother’s care, the minor had progressed from “almost zero social skills” to “maybe a functioning 8 or 9 year old, although she’s 12, and there’s big changes coming including puberty and a whole raft of problems that have to be dealt with, Dr. Roy says the parents are incapable.” It also noted, “Mother’s passive. She didn’t even testify in this hearing. She basically lets the father run the household. [¶] And the history, the evidence in this case shows, although they have had 11, 12 months of services, this is supposedly a 12-month review, there were services provided before the court took jurisdiction, so like what reason do we have to believe this is going to get any better?” The court found that “return of the child to the parents would create a substantial risk of detriment to the safety, but more particularly the emotional and educational well-being of the child.”

## II. DISCUSSION

Mother argues in her writ petition that the court should have ordered additional reunification services, rather than terminating services and setting the case for a selection and implementation hearing under section 366.26. We disagree.<sup>4</sup>

For a child over the age of three, “court-ordered services shall . . . end[] 12 months after the date the child entered foster care . . . .” (§ 361.5, subd. (a)(1).) An exception permits the court to extend services up to a maximum of 18 months “if it can be shown,

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<sup>3</sup> Minor’s counsel indicated that at the hearing under section 366.26, the court should consider the options of guardianship and long-term foster care as possible permanent plans.

<sup>4</sup> Although both parents argued in the juvenile court that the minor should be returned to their custody, mother’s petition seeks additional reunification services rather than the immediate return of the minor. The Department has responded to the petition by filing a notice of “No Opposition to [Mother’s] Petition for Extraordinary Writ,” which states: “Although the Del Norte Superior Court ruled against the Department’s recommendations in this matter, the Department does not wish to file an objection to this ruling.”

at the [12-month review hearing], that the permanent plan for the child is that he or she will be returned and safely maintained in the home within the extended time period.” (§ 361.5, subd. (a)(3).) A court may order services for this additional period “only if it finds that there is a substantial probability that the child will be returned to the physical custody of his or her parent . . . within the extended time period or that reasonable services have not been provided to the parent . . . .” (*Ibid.*; see *In re Alanna A.* (2005) 135 Cal.App.4th 555, 564.)

Mother does not suggest in her petition that she was denied reasonable services; hence, the only question is whether there was a substantial probability the minor would be returned to her within the extended time period if additional services were offered. The 12-month review hearing was held in August 2012, 16 months after the minor entered foster care, allowing for only an additional two months of services after the 12-month hearing. The court was therefore obligated to consider whether the problems leading to the dependency could be remediated with an additional two months of services. (See *Tonya M. v. Superior Court* (2007) 42 Cal.4th 836, 845-846.)

The juvenile court concluded that the answer to this question was “no,” a determination we review for abuse of discretion. (See *V.C. v. Superior Court* (2010) 188 Cal.App.4th 521, 528; *In re Michael S.* (1987) 188 Cal.App.3d 1448, 1460.) Under this highly deferential standard, we affirm the court’s order unless it was arbitrary, capricious, or patently absurd, or exceeded the bounds of reason. (See *In re Stephanie M.* (1994) 7 Cal.4th 295, 318-319.)

The record shows the minor to be a bright and unusual child with many strengths and talents. She also has a disorder that significantly impairs her ability to socialize with others. This is not simply a matter of optimizing peer popularity; without adequate intervention, her disorder could interfere with her ability to engage in major life activities such as attending college, getting a job, and forming friendships. The court could reasonably conclude that the parents, who have their own mental health issues and preoccupations, would be unable to ensure that the minor receives the help she needs to thrive and mature, and that an additional two months of counseling and parenting classes

would not fundamentally change their ability to parent. Although the social worker who appeared on behalf of the Department at the 12-month status review hearing believed the parents were making progress and could assume custody over their daughter, that view was contradicted by the CASA, the psychologist who evaluated the parents, and the representative of the Regional Center.

In concluding that the juvenile court did not abuse its discretion, we do not suggest that detriment to a child can be established simply because the parents lead a somewhat unconventional life. Here, the court was considering the future of a minor whose disorder makes it difficult for her to fit in socially, but who had grown by leaps and bounds since going to live with a grandparent who is able to give her consistency, routine and exposure to the outside world. Parents expressed a willingness to keep the minor in school and maintain some of the extracurricular activities that were helping her, but the court could reasonably conclude that in light of their history, they would be unable to meet their daughter's special needs and assist her in her social development.

### III. DISPOSITION

The petition is denied. In the interests of justice, this decision shall be immediately final as to this court. (Cal. Rules of Ct., rules 8.452(i) & 8.490(b)(3).)

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NEEDHAM, J.

We concur.

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JONES, P. J.

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BRUINIERS, J.