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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

D.H.,

Petitioner,

v.

THE SUPERIOR COURT OF SAN
MATEO COUNTY,

Respondent;

SAN MATEO COUNTY HUMAN
SERVICES AGENCY et al.,

Real Parties in Interest.

A139602

(San Mateo County
Super. Ct. No. 81521)

INTRODUCTION

Two weeks after the minor was ordered placed in the custody of her presumed father D.H., the minor alleged he sexually abused her. The juvenile court issued a protective custody order, and this court ordered a stay of the order placing the minor with D.H. The San Mateo County Human Services Agency (Agency), in turn, filed a Welfare and Institutions Code section 387¹ petition alleging sexual touching and risk of acute stress disorder, and the minor filed a section 388 petition seeking reversal of the custody order. After the Agency struck the touching allegation, the court granted both petitions. The court also determined D.H. had received more than 12 months of reunification services and set the matter for a section 366.26 hearing.

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

D.H. has filed the instant writ petition challenging the juvenile court's adequate services determination and order setting a section 366.26 hearing. We conclude substantial evidence supports the court's findings of adequate services and substantial risk of detriment, and therefore deny the petition.

FACTUAL AND PROCEDURAL BACKGROUND

We set forth the background of this case in our opinion in case number A138121, and thus quote from that opinion²:

“In June 2011, the Agency filed a section 300 petition regarding K.R. and her half siblings, who were then living with their mother. The petition alleged failure to protect based on the mother's substance abuse and involvement in domestic violence. K.R., then three years old, was detained and placed in a foster home.

“The following month, the Agency filed an amended petition identifying K.R.'s alleged father and alleging his whereabouts were unknown. Following a contested hearing, the juvenile court sustained the amended petition. On August 15, the court declared the minor a dependent child, found ‘continuance at home would be contrary to [her] welfare,’ and committed her to the care, custody and control of the Agency.

“In the meantime, on August 1, D.H. contacted the social worker and requested placement of the minor and her half brothers. D.H. stated he and the mother ‘began dating when [K.R.] was born and had known each other for a few months prior. [D.H.] stated they met in Merced County when he drove a bus for a program that brought people to church on Friday evenings.’ The Agency indicated it was ‘assessing the situation, but there are concerns about [D.H.'s] mental health and substance abuse history as well as the situation with his own children.’

“On October 18, D.H. filed a ‘De Facto Parent Statement.’ In it, he indicated he was the ‘Step Dad trying to get all 3 kids back per CPS since July.’ As to K.R., he stated he had been her stepfather for over three years, and that she lived with him from August 2008 through September 2010, and from April 2011 through May 2011. D.H. also

² On our own motion, we take judicial notice of our opinion in case No. A138121. (See Evid. Code, § 451, subd. (a).)

indicated he had responsibility for the day-to-day care of the minor during those dates. He stated, 'I met [K.R.] the day she was born I am the only father she has ever know[n].' In an attached letter, D.H. stated the children had been living in his studio apartment for two months 'prior to [Mother's] eviction and Jennifer Toler (Da[ly] City CPS) did come see and approved of the children staying here before they moved in.' He also attached a September 13, 2011, letter from the Agency stating 'approval of your home for placement of the above named children is [r]escinded, the denial or rescission of approval of your home is based upon the following: [¶] (a) The[] dwelling in which you currently reside (studio) would not provide sufficient space for the three children, and their respective ages/sex.'

"The court set D.H.'s request for de facto parent status for hearing on February 8, 2012, the date previously set for the six-month review hearing. At the hearing, the court appointed counsel for D.H. and continued the issue of de facto parent status until March 9. The hearing was apparently continued twice more, until May 3. At the hearing, the court ordered supervised visits between the minor and D.H., and again continued the issue of de facto parent status until June 7.

"Two supervised visits occurred in May, which the social worker described as 'appropriate.' The Agency indicated it was 'opposed to the de facto parent request,' but was in agreement with continuing visitation because 'the visits have been appropriate.' The Agency also observed the minor 'does not appear to have a connection with [D.H.] although she was raised by him for the first two [and a] half years of her life.'

"In preparation for the June 7 hearing, D.H.'s attorney filed a trial brief seeking 'presumed father' status. At the hearing, the court granted D.H.'s request for de facto parent status, and continued the issue of presumed father status until July 19.

"D.H. had two more supervised visitations with the minor in June, which the social worker again described as 'appropriate.' The social worker indicated D.H. was 'more aware of the child's cues as when the child wants to move on to another activity. . . . The child . . . appears to build rapport with [D.H.] as she continues to have visitation.' The social worker also spoke with D.H., who told her he lived with the minor

for the first two and a half years of her life, and cared for her while Mother worked. He stated the minor's 'well-being was his main concern and that he did not want the mother's children in foster care, as he is willing to care for [them] and provide them with a stable home.' In addition, the social worker spoke with the mother about D.H., and she indicated she was 'in agreement with [D.H.] being declared the presumed father of the child The mother stated that the child . . . recognizes the name [D.H.] as being her dad.' The Agency agreed D.H. should be granted de facto parent status (which had already been granted). It also stated, 'it appears that [D.H.] is also a potential presumed father for the child' and recommended the court declare him "to be the presumed father of [K.R.]."

"At the July 19 hearing, the court found D.H. to be the minor's presumed father. No party objected. The minor's counsel merely observed D.H. was 'aware that this matter has been pending for some time, and he would like an opportunity to participate in services.' The court ordered the Agency to prepare a reunification plan for D.H. and continued the matter until August 21.

"In its August 20 report, the Agency stated 'In regards to [D.H.] the presume[d] father . . . [, the] Agency respectfully recommends that the Matter be set for a continued hearing to address services for [D.H.]. The[re] has not been enough time to address [D.H.'s] protective capacity especially around contact with the mother, to address [D.H.'s] mental health state as he has indicated th[at] he was 5150'd and that he was on psychotropic medications and to address any other services that he may need t[o] assist with facilitating reunification.' The Agency recommended termination of services to Mother, supervised visitation with D.H. and continuing the matter of services for D.H. until September 11. In an addendum report filed the following day, the Agency recommended the minor and D.H. 'participat[e] in, [and] successfully complete, a program of counseling/psychiatric therapy as directed by the social worker, with specific treatment to be based upon an assessment completed by an approved therapist,' and that D.H. participate in a mental health evaluation.

“At the August 21 hearing, the court terminated services to Mother and ordered D.H. to participate in counseling/psychiatric therapy as directed by the social worker, a parenting class, dyad therapy, and therapeutic visitation. The court also ordered D.H. to participate in a mental health evaluation, and authorized unsupervised visitation with the minor ‘when deemed appropriate by the Agency.’

“Approximately one month later, D.H. had his first unsupervised visit with the minor. After five minutes, D.H. called the foster mother because K.R. was crying and he could not console her. D.H. had three more unsupervised visits with the minor, with the foster mother in attendance. The minor, then four years old, told the social worker she did not want to visit D.H.

“D.H. also participated in five ‘collateral’ therapy sessions with the minor’s therapist between September 14, 2012 and November 6, 2012. When the social worker informed the therapist the Agency was not recommending placement with D.H., the therapist stated ‘this might change when Dyad Therapy occurs between the child and [D.H.]’

“Psychologist Robin Press conducted a psychological evaluation of D.H. He tested in the high average range of intelligence. In her report, Dr. Press concluded his ‘character is fundamentally collaborative, altruistic and kind. He is prone to blame himself for problems rather than to find fault with others. His motives for caring for [K.R.] appear genuinely humane. . . . He has achieved a stable sobriety and has also managed to achieve stability in his mood although he still struggles with experiences of apathy, dysphoria, detachment, emotional deadness and a sense of physical malfunction. . . . [D.H.] tests as capable as functioning as loving, responsible, stable parent to this child at this time. He would be considered a safer parent if he returned to AA meetings at this time and if he agreed to seek treatment at any time in the future if his symptoms of depression worsened.’

“In the Agency’s December 12 status review report, the social worker indicated a dyad therapy session with D.H. and K.R. occurred on November 16, 2012. The therapist reported the minor ‘ “did not allow [D.H.] into her play until the very end of the

session.”’ The therapist recommended a bonding study. The social worker told the therapist the court had ordered that dyad therapy occur more than once a week, but the therapist responded ‘this was [my] clinical decision.’ The social worker also indicated that despite the court’s August 21 order, she had not referred D.H. to a parenting class and had not referred him for therapeutic visitations.

“The 18-month review hearing, as well as D.H.’s placement request, was heard over eight days between December 21, 2012, and January 28, 2013. During this time period, the minor’s attorney, on January 22, 2013, filed a section 388 ‘motion’ to set aside D.H.’s presumed father status ‘based upon new information obtained through testimony at trial.’

“On March 7, 2013, the court denied the section 388 motion, ruling it did ‘not state new evidence for a change of circumstances that is in the best interests of the child’ and the testimony at the review hearing was simply an ‘increased level of specificity . . . not new information.’ The court also found the reunification services provided to D.H. ‘were reasonable in the context of this case.’ The court further found the Agency had not met its burden of establishing, either by substantial evidence or clear and convincing evidence, that returning the minor to D.H.’s custody would create a substantial risk of detriment to her, and ordered a “transitional return” over a 30-day period.” (*In re K.R.* (Jan. 31, 2014, A138121) [nonpub. opn.])

The first overnight visit of the transitional return occurred a week later, on March 16. D.H. testified the child vomited on herself and wet the bed during the night. The social worker was to pick her up at a Starbucks, and the foster mother was told not to be there. Nevertheless, the foster mother appeared and demanded to know why the minor did not have her “mini luggage.” D.H. was upset and asked the social worker why the foster mother was there and allowed to yell at him. The social worker stated the foster mother was not yelling, but was “stern” and “firm.” The foster mother went into the Starbucks, then “abruptly” came out again and in the minor’s presence “stated in a firm voice” the luggage belonged to her daughter, and her daughter had also lent the minor a

toy. The foster mother later reported the minor wet the bed during her nap that day, which had “never happened before with a nap.”

A second overnight visit was scheduled to begin on March 22. The transfer was to take place at the mental health program clinic following a “transitional” therapy session with the minor and her foster mother, where they “could talk about some of the feelings that might come up around . . . her transition back to [D.H].” There was a confrontation between the foster mother and D.H., who was again upset that the foster mother was there during the transfer. One of the psychiatric social workers testified she was at the office on that day, and observed the minor crying and very sad. The minor was with D.H., who appeared angry and said “what was going on with [the minor] was all [the therapist’s] fault.” The minor appeared “very distressed and sad,” and the psychiatric social worker observed D.H. did not attempt to sooth her. The minor’s therapist, Marian Sanchez, indicated the minor “was very clingy” with the foster mother and began crying. Sanchez accompanied the minor and D.H. in the elevator to leave the building. While in the elevator, D.H. stated “ ‘you are doing this to [the minor]’ and ‘I am going to ask for a new individual therapist for [the minor].’ ” The minor “had her head down and was silent.” The therapist stated she “is concerned that [D.H.] did not take into account how his behavior would affect my client, [the minor].”

When the minor returned from the three-night visit with D.H., she vomited during dinner. That evening, while in the bathtub, the foster mother reported the minor said D.H. had touched her “gina,” meaning vagina.

On April 1, the social worker and a police officer interviewed the minor at her foster home. The minor said she had told her foster mother D.H. touched her, and demonstrated it was in her crotch area. She told the officer it was over her clothing, she had told D.H. she did not like it, and he had stopped. She also was asked “if anyone had told her what to say or that if she knew someone was going to come over and talk to her and she stated, ‘Yes, my [foster] mommy told me.’ ” The same day, a forensic interview of the minor was conducted. Officer Boyajian watched the interview, which was recorded. Officer Boyajian observed the minor seemed intelligent and was interactive

with the interviewer, until the subject of D.H. was raised. Then, “she would change the subject or would just not answer the questions.” During that interview, the minor did not state any inappropriate touching occurred.

Also on April 1, a nurse practitioner conducted a forensic examination of the minor and concluded there was “definite evidence of sexual abuse and/or sexual contact,” based on an “abrasion-pinpoint on hymen fossa junction.” The minor’s counsel filed a section 388 petition the same day seeking postponement of order placing the minor with D.H. “until the investigation is complete.” A second forensic examination was conducted on April 3. The reviewing physician indicated “There is an area of the hymen that has a brown lesion on it. The examiner noted it to be an abrasion. On my review it appears brown and irregular, more similar in appearance to normal pigmentation, such as a nevus (‘freckle’ or ‘mole’). It appears the same on both dates, which makes this less likely to represent trauma. There is one more exam scheduled to review this finding again.”

A second forensic interview was conducted of the minor on April 3. This time, the minor denied being touched in the vaginal area by anyone except the doctor or her foster mother when bathing her. The minor stated she did not want to go to D.H.’s house because “she sleeps with him and because she goes there and then doesn’t go back to her mommy’s house.” The CASA reported the minor had told her during a visit a week earlier, on March 23, that D.H. slept in the bed with her.

On April 5, the Agency filed an ex parte application for a protective custody order regarding the minor, which the juvenile court granted that day. The same day, the minor’s counsel filed in this court a petition for writ of supersedeas and request for immediate stay of the order placing the minor with D.H. We issued an order directing “that part of the San Mateo Juvenile Court’s order of March 7, 2012 . . . placing the minor, K.R., in the care of her presumed father, D.H., is hereby stayed with immediate effect, subject to further order of this court.”

On April 10, a third forensic examination of the minor was conducted. Dr. Tricia Tayama reported, “The exam appears normal, with pigmented nevus, without signs of

trauma.” A review of the exam photographs with another physician was scheduled for April 23.

The following week, the juvenile court set the minor’s section 388 petition for hearing and suspended visitation with D.H. pending the hearing. The Agency then filed a supplemental section 387 petition alleging sexual abuse and that placement with D.H. “places her at risk of acute stress disorder.”

At the hearing on June 14, David Brodzinsky, Ph.D. testified as an expert on child attachment on behalf of minor. He testified “disrupted attachment creates great stress, in some cases trauma . . . in the child.” “Long term, there is a significant risk for longer term problems. But the impact of longer term problems has a lot to do with the quality of care being offered in the new home. We have treatment techniques now that can help children to recover. Although research shows that recoverability is not inevitable and often not complete.” Brodzinsky testified the “constellation of symptoms [the minor had] . . . suggested heightened stress for her.” He opined the most important characteristic of a caregiver is “the consistent pattern to be emotionally attuned to the child. . . . [¶] . . . [¶] [T]he failure of a parent to be . . . emotionally attuned will make it that much more difficult to deal with the disruptive effects of the severing of an attachment. And that disruptive effect will continue in one form or another, undermining development.” Brodzinsky also testified, based on his assessment of the minor with her foster mother on two occasions, that the minor “views [the foster mother] as her psychological parent, at this point in time. . . . [¶] She certainly interacts with her in the ways that we see children interact with people with whom they have a trusting relationship.” He did not evaluate the minor in relationship to D.H. at that time, and could not “speak to the quality of the attachment.” He testified that in the “best-of-all possible scenarios, post transition, then probably the long-term problems are . . . not as likely to occur as they might otherwise. In other words, less than 50 percent chance.”

The minor’s preschool teacher testified the minor had been a student of hers since October 2012. She described the minor as a “really happy . . . well-adjusted little girl.” From March 7, the date of the order returning her to D.H., and the end of March, the

teacher observed “when she was getting picked up . . . she would just have some kind of anxiety about it. . . . [¶] . . . I noticed her chewing on her lip a little bit, you know, and a little more aggressive behavior.” The minor also urinated on herself, which the teacher thought “was just more anxiety thing, because she’d never done it before.” From the end of March until April 16, the date on which she testified, the teacher indicated the minor “seems a little more adjusted, happier,” and had not urinated on herself during that time. The teacher also testified the class was making father’s day cards, and the minor told her “I don’t want to make the Father’s Day card, because I don’t want to go back to him.”

The minor’s therapist, Marian Sanchez, reported the minor had “shown regression” during the transition period, including baby talk, pulling at her lip, and during therapy sessions, “putting a blanket over her head reporting that she just wants to hide.” The therapist opined the minor’s “mental health issues put her at risk for acute stress disorder as evidenced by her fear and helplessness and avoidance of transitioning to the presumed father,” and concluded “I believe her emotional well being is placed at risk due to her current response to her transitions.”

Clinical psychologist Robin Press testified as an expert in “the field of child psychology and attachment theory.” She performed a psychological evaluation of D.H. and prepared a proposal for further attachment between the minor and D.H. She noted D.H. had an older daughter with whom he had no relationship. Press testified “I had speculated that [the minor] most likely had a secure attachment to [D.H.], given what I know from evidence about [his] personality, which is that he is extraordinarily empathetic, stable, caring, consistent, and focused on other people rather than himself. He has all the psychological ingredients to provide for a child’s secure attachment. [¶] Did I observe them? No. [¶] So that was a leap. But, based on what I know from his personality, which is evidence based, I did make that leap.” In her proposal for further attachment, Press recommended dyad therapy commencing with four individual sessions with the minor and an “experienced child psychologist” and “a minimum of four dyad therapy sessions” for the minor and D.H., “although the total number of sessions should

be left to the clinician's discretion." She also recommended two to four parenting sessions for D.H., as well as "any transfers should be made by a neutral party."

Richard Geisler, Ph.D., a forensic and clinical psychologist, conducted a psychological evaluation of D.H. "to assess his risk for committing a sex offense." He concluded D.H. "is at low risk for committing any future sex offenses. Notably, there is no evidence he meets the criteria for Pedophilia—or any other sexual paraphilia, for that matter. This 50-year-old man has no record of past sex offenses against any population—adult or children."

On June 18, the court ordered two supervised therapeutic visits between the minor and D.H. The visits occurred on August 5 and August 7. During one visit, D.H., gave the minor a "laser light" which the private investigator videotaping the visits deemed inappropriate.

The director of the minor's preschool reported on August 7, the minor engaged in two unprovoked acts of aggression. She pushed another child off the bridge of a playground structure, and hit another child in the face. The next day, the minor fell and hurt herself. When another child came to help her, the minor said "No" and hit her.

On August 12 and August 15, Dr. Brodzinsky conducted a bonding study between D.H. and the minor. He observed the minor did not show "any typical fear reactions" in D.H.'s presence. She did not, however, return D.H.'s greeting, approach him, or affirmatively engage him in play. "There was no initiative on her part of any physical or verbal affection." The minor allowed D.H. to hug her at the end of the session, but she "didn't really respond with a mutual hug." When Brodzinsky had D.H. leave the room to "observe any separation issues," the minor "didn't acknowledge it" and "readily engaged [Dr. Brodzinsky] in play." Brodzinsky asked the minor if she wanted to tell him anything, and she responded "[M]ommy said I should tell you that I want to live with her not with [D.H.]." Brodzinsky concluded "to the extent that there is a bond, and there is a question whether it really would be classified as attachment. It's relatively weak and doesn't afford her the level—the kind of security that we would hope for or that [I] certainly saw in the observation with [foster mother]." "She can be comfortable with him

in play. . . . She doesn't like to be touched at this point by him. And she's not seeking him for the kind of engagement that we ordinarily see in a securely attached child with a caregiver. . . . For certain help there is a functional kind of engagement, meaning if she needs help with something, she's familiar with him, she knows him enough, she is comfortable enough to ask him. He's not a stranger. And she can accept his help and she can accept a certain playfulness with him and enjoy it."

A week later, on August 23, the juvenile court granted both the Agency's section 387 petition (amended to delete the sexual abuse allegation) and the minor's section 388 petition. The court ordered the transition plan be halted and the minor not be placed in D.H.'s custody. The court found "there is new evidence before the Court which the Court deems as dramatic, not temporal, not simple anxiety, but dramatic evidence that this transition plan was a disaster [¶] It was the Court's hope that, in fact, [the minor] was exhibiting simple anxiety, but that was not the case. And this is a child who has said on many occasions that she does not want to live with [D.H.] The Court is not considering that because . . . [the] child's preference is not the deciding factor; however, her body is—is clearly reflecting that by her emotional response to being with [D.H.]."

After reviewing the DVDs of the supervised visitations between the minor and D.H., the court concluded there was clear and convincing evidence that "there is a substantial danger to [the minor's] physical health, safety, protection, or physical or emotional well-being if she were returned to the home of [D.H.]." The court also found true the allegations in the amended section 387 petition by a preponderance of the evidence.

The court terminated reunification services and visitation with D.H. and set the matter for a section 366.26 hearing on November 13. D.H. filed a petition for extraordinary writ, and on October 16, this court ordered the section 366.26 hearing stayed.

DISCUSSION

The Petitions

Agency's Supplemental Section 387 Petition

D.H. contends no substantial evidence supports the juvenile court's grant of the Agency's amended section 387 petition. While acknowledging the minor "had some adverse symptoms in the transition," he maintains these were not sufficient to "establish the high level of detriment required to sever the parent-child custodial relationship."

Section 387 provides in part: "An order changing or modifying a previous order by removing a child from the physical custody of a parent . . . and directing placement in a foster home . . . shall be made only after noticed hearing upon a supplemental petition. (§ 387, subd. (a).) "The supplemental petition . . . shall contain a concise statement of facts sufficient to support the conclusion that the previous disposition has not been effective in the . . . protection of the child" (§ 387, subd. (b).) "[T]he issue at the adjudication hearing on a supplemental petition is limited to the question whether the previous disposition was effective in the rehabilitation or protection of the child. . . . [A] hearing under section 387 must be bifurcated into (1) an adjudicatory hearing on the merits of the allegations in the petition and (2) a disposition hearing on the need for the removal of the child from his or her current level of placement." (*In re Javier G.* (2006) 137 Cal.App.4th 453, 460.)

"When a section 387 petition seeks to remove a minor from parental custody, the court applies the procedures and protections of section 361. [Citation.] Before a minor can be removed from the parent's custody, the court must find, by clear and convincing evidence, '[t]here is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home, and there are no reasonable means by which the minor's physical health can be protected without removing the minor from the minor's parent's . . . physical custody.' (§ 361, subd. (c)(1); see *In re Javier G.*, *supra*,] 137 Cal.App.4th 453, 462) [¶] A removal order is proper if it is based on proof of (1) parental inability to provide proper care for the minor and (2) potential detriment to the minor if he or she remains with the

parent. [Citation.] The parent need not be dangerous and the minor need not have been harmed before removal is appropriate. The focus of the statute is on averting harm to the child.” (*In re T.W.* (2013) 214 Cal.App.4th 1154, 1163.) “The only fact necessary to modify a previous placement is that the previous disposition has not been effective in protecting the child.” (*Id.* at p. 1161.) We review the juvenile court’s findings for substantial evidence. (*Ibid.*)

Ample evidence supports the juvenile court’s findings here. The first two transitional visits and their aftermath demonstrated serious detriment to the minor’s emotional well-being. D.H., himself, testified the minor vomited on herself and urinated in bed during the first transitional visit. She continued to decompensate after the visit, urinating on herself at school, engaging in uncharacteristic aggressive behavior with other children, and hiding under a blanket during therapy. In addition, Dr. Brodzinsky testified the child had a “relatively weak” bond to D.H., “to the extent there is a bond,” and she did not want to be touched by him or to seek him out to initiate play. Brodzinsky also testified a parent with a history of mental health problems and alcohol abuse, as D.H. had, presents a concern about that parent’s capability to be emotionally attuned to the child care, which would be required to form an attachment. In short, the juvenile court’s findings that its previous order was not effective in protecting the minor and return of the minor to D.H. would cause substantial danger to her emotional well-being is solidly grounded in the record.

Minor’s Section 388 Petition

D.H. maintains the juvenile court abused its discretion in granting the minor’s section 388 petition, “[f]or the same reasons why the section 387 order must be reversed.” Since we have determined the juvenile court did not err in granting the Agency’s section 387 petition, we need not elaborate further as to the minor’s section 388 petition, particularly since the standard of review of a section 388 ruling (abuse of discretion) is more deferential than that applicable to a section 387 petition (substantial evidence). (*In re Mickel O.* (2011) 197 Cal.App.4th 586, 616.) We additionally note

that, as required under section 388, the lion's share of the evidence on which the minor's instant section 388 petition was based, was, indeed, "new" evidence. (§ 388.)

Reasonableness of Services

D.H. contends the Agency failed to provide him with reasonable services, thus making it improper to set a section 366.26 hearing. He also maintains he was denied his substantive due process rights by the Agency's actions.

"Generally, a parent is entitled to 12 months of reunification services when the child is at least three years of age on the date of removal from parental custody. (§ 361.5, subd. (a)(1).) The juvenile court shall not refer a case to a permanency planning hearing unless it has been shown by clear and convincing evidence that reasonable services have been provided. (§ 366.21, subd. (g).)" (*In re Mark L.* (2001) 94 Cal.App.4th 573, 584–585.)

The Agency is required to formulate a plan for reunification of the child and parent and to provide to the parent reasonable reunification services "that [a]re designed to aid the parent or legal guardian in overcoming the problems that led to the initial removal and the continued custody of the child." (§ 366.21, subd. (e).) The " '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 (such as helping to provide transportation and offering more intensive rehabilitation services where others have failed).' [Citation.]" (*David B. v. Superior Court* (2004) 123 Cal.App.4th 768, 794.) Reunification services must be tailored to the unique needs of the particular family. (*Id.* at p. 793.) We review a finding that reasonable reunification services have been provided for substantial evidence. (*Id.* at p. 795.)

In our opinion in appeal No. A138121, we concluded the Agency provided reasonable reunification services from the time D.H. was found to be the presumed father until March 7, 2013, the date of the order returning the minor to his custody. (*In re K.R.*, *supra*, A138121.) After that, the Agency formulated a transition plan, which included

therapy sessions and overnight visits over a month-long period. The transition plan was cut short, however, following the allegations of sexual abuse. When those allegations proved inconclusive, the court ordered two supervised therapeutic visits between the minor and D.H. In sum, there was substantial evidence D.H. was provided services tailored to the evolving circumstances and designed to facilitate the return of the minor to his custody.

D.H. broadly complains the Agency and juvenile court “interfered with his ability to obtain custody, recognition as the presumed father, receipt of counsel, and receipt of timely and reasonable reunification services.” His primary complaint, however, is the Agency’s failure to immediately place the minor with him after she was detained (given that the Agency had approved his home for temporary stays) and failure to immediately commence reunification services. Section 309, however, only requires the Agency to immediately release a detained child to “the child’s parent, guardian, or responsible relative” unless certain conditions exist. (§ 309, subd. (a).) D.H. was not, at the outset of the dependency proceeding, a parent, guardian, or responsible relative, nor did he even identify himself as such at that point. He filed a de facto parent statement on October 18, 2011, was appointed counsel on February 8, 2012, and did not seek presumed father status until June 2012. On this record, we cannot say he was denied his due process rights.

D.H. also maintains the juvenile court’s section 366.26 order was based on a “misunderstanding of the amount of time father had received services.” At the August 23 hearing, the court stated: “As it relates to the dispositional recommendations, the Court finds that there is not a substantial probability of return within the next six months. [¶] And as noted . . . reunification services are not offered to the presumed father, [D.H.], as he has already received more than 12 months of services for the child.” The parties agree D.H. received approximately 6.5 months of actual reunification services.

However, any misperception as to the time of services has no consequence here given the maximum time period for services, which is 24 months from the date a minor is removed from the parent’s custody. (§ 361.5, subd. (a)(4).) Here, the child was removed

from her mother's custody and placed in foster care on August 15, 2011. Thus, the maximum two-year period in which reunification services could be provided ended *prior* to the court's order of August 23, 2013, setting the section 366.26 hearing.³ D.H. did not begin receiving reunification services, nor was he entitled to, until July 19, 2012, when the court found him to be the minor's presumed father.⁴ D.H.'s failure to seek presumed father status earlier did not operate to toll the two-year maximum reunification period. (See *In re Zacharia D.* (1993) 6 Cal.App.4th 435, 452.)

DISPOSITION

The petition under 366.26, subdivision (*l*), is denied. This decision is final immediately as to this court. (Cal. Rules of Court, rule 8.490(b)(2)(A).) The stay of the hearing under section 366.26 ordered on October 16, 2013, is dissolved forthwith.

Banke, J.

We concur:

Margulies, Acting P. J.

Dondero, J.

³ The minor concedes the court erroneously applied the clear and convincing evidence standard when it should have applied the preponderance of the evidence standard to the determination of whether to offer additional reunification services to D.H. As the minor notes, however, the maximum time frame in which reunification services could be provided had expired, so any error was harmless.

⁴ Reunification services must only be provided to the mother and "statutorily presumed father." (§ 361.5, subd. (a).) Nevertheless, even prior to finding D.H. to be the presumed father, the court ordered visitation with the minor in May 2012.