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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

In re T.M. et al., Persons Coming Under  
the Juvenile Court Law.

HUMBOLDT COUNTY DEPARTMENT  
OF HEALTH AND HUMAN SERVICES,  
CHILD WELFARE SERVICES  
BRANCH,

Plaintiff and Respondent,

v.

T.M.,

Defendant and Appellant.

A142643

(Humboldt County  
Super. Ct. Nos. 1301131, 1301132  
& 1301133)

**I.**

**INTRODUCTION**

Appellant T.M. appeals from the juvenile court’s denial of his Welfare and Institutions Code section 388<sup>1</sup> petition seeking reunification services. The denial followed the juvenile court’s conclusion that it would be detrimental to the best interests of his children to provide reunification services to appellant. Appellant contends in this

<sup>1</sup> All subsequent statutory references are to the Welfare and Institutions Code. Section 388 provides that a party may petition the court to change, modify or set aside a previous court order. To prevail on a section 388 petition, the moving party must establish that new evidence or changed circumstances exist and the proposed change would promote the best interests of the child. (*In re J.T.* (2014) 228 Cal.App.4th 953, 965.)

appeal that the juvenile court's original November 2013 order denying him reunification services pursuant to section 361.5, subdivision (e)(1), violated the equal protection clause of the state and federal constitutions. He also contends for the first time that the failure to raise the equal protection argument earlier was the result of ineffective assistance of counsel.

We conclude appellant's failure either to appeal or to seek writ relief regarding the propriety of the order antedating the current July 21, 2014 order<sup>2</sup> denying him services precludes him from now challenging that order. Similarly, appellant's claim that his counsel was ineffective in failing to file an extraordinary writ from the court's original disposition order in November 2013 has been waived. Even if not waived, the claim fails on the merits because appellant cannot demonstrate he was prejudiced by an assumed ineffective assistance of counsel. We therefore affirm the juvenile court's denial of appellant's section 388 petition.

## **II.**

### **FACTUAL AND PROCEDURAL BACKGROUND**

In December 2012, appellant's three children were living with their mother (mother) when the Shasta County Department of Health and Human Services received a referral from Humboldt County about the children. Mother was addicted to methamphetamine and was staying in a battered women's shelter due to physical and mental abuse by appellant. Appellant was incarcerated on an attempted murder charge for stabbing his sister's boyfriend with a machete. The Shasta County Superior Court granted legal guardianship of the children to the maternal grandparents in April 2013.

At the initial detention hearing on May 16, 2013, appellant requested that the children be placed with him. The court denied the request and detained the children because there was "substantial danger to the physical health" of the children and they were "suffering severe emotional damage." The court found that the parents had

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<sup>2</sup> Appellant does not contend in this appeal that this latest order denying him services was not supported by substantial evidence or was an abuse of discretion.

substance abuse and anger control problems that placed the children at risk of harm. At the jurisdiction hearing on July 26, 2013, the court assumed jurisdiction over the children and ordered the case transferred to Humboldt County.<sup>3</sup>

**A. Appellant’s First Section 388 Petition**

In September 2013, appellant filed a section 388 petition arguing changed circumstances in that he anticipated soon being released from custody. Appellant requested the court order reunification services and stated he was now in a position to parent his children. The court held a combined two-day hearing on November 15 and 20, 2013, to consider both a disposition as well as appellant’s 388 petition. Appellant testified about his relationship with his children. He testified that he never used drugs and there was no domestic violence in the home. Appellant’s counsel argued that section 361.5, subdivision (e)(1) applied and it required the court to order reasonable services unless the court found by clear and convincing evidence that the services would be detrimental to the children. Counsel argued that it was in the best interests of the children for the court to order reunification services for appellant.

The court concluded that contrary to appellant’s version of events, he had contributed to the severe emotional disturbance, trauma and suffering of his children. The court stated that reunification services “are designed to address the issues which led to the assumption of jurisdiction by the juvenile court . . . . And conceptually, those problems, at least father’s share of them, simply don’t exist in his world.” For appellant, services are “unwanted, unneeded and would serve no apparent useful purpose.” The court found that it would be “traumatic, harmful and emotionally detrimental to the children to have them even visit their father, especially so in a jail or prison facility.”

The court recognized its obligation under section 361.5, subdivision (e)(1) to order reunification services for an incarcerated parent unless it determined by clear and convincing evidence the services would be detrimental to the children. Thus, the court

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<sup>3</sup> All further proceedings in this case have taken place in the Humboldt County juvenile dependency court.

turned to those statutory factors bearing on the question of detriment, including: the ages of the children, their respective severe emotional disturbances, and the lack of evidence of bonding with the father. The court also considered the nature of appellant's crime and found "they don't get much more violent or serious," and concluded that appellant could be incarcerated for a long period of time. The court stated it could not predict the likelihood appellant would be released from custody in the reunification period. The court found that services would accomplish "little" because appellant's plan was for things to return to the way they were before he was arrested. Therefore, the court found that services would be detrimental to the children, and that they would "benefit from moving toward permanence."

The written dispositional order that followed the November hearing included the court's oral pronouncement that reunification services to either parent would not be in the best interests of the children. A permanent planning hearing under section 366.26 (.26 hearing) was set for March 17, 2014.

The court then advised appellant of his appellate rights: "To both of the parents, I will be ordering and have ordered a hearing pursuant to . . . section 366.26 . . . . And I'm directing your attorneys to advise you with respect to your appeal rights concerning the dispositional orders. In addition, to preserve your right to appeal from this order setting a [.]26 hearing . . . you must first seek an extraordinary writ using [J]udicial [C]oun[cil] forms JV-820 and JV-825 . . . . Failure to file a writ petition . . . will preclude you from obtaining subsequent review on appeal of the findings and orders of the court that I've made in setting the hearing under 366.26."

### **B. Appellant's First Appeal**

Although appellant timely filed a notice of intent to file a writ petition, he never actually filed a writ petition, and the case was dismissed by this court on January 6, 2014. Appellant then filed a notice of appeal on January 13, 2014, challenging the disposition order setting the .26 hearing. On June 23, 2014, appellant's appointed counsel, who remains his counsel on the current appeal, filed a "no issue statement" attesting there were no arguable issues on appeal. This court dismissed the appeal on August 6, 2014.

### **C. Appellant's Second Section 388 Petition**

In the meantime, on January 23, 2014, appellant filed a second section 388 petition in the juvenile court alleging changed circumstances. Appellant had been released from custody, and he requested reunification and for the court to vacate the impending .26 hearing. The petition stated: "Contrary to expectations of the Court, minor's counsel and county counsel, father was not sentenced to [a] lengthy prison term."

The Department argued that there were no changed circumstances that warranted appellant's request for family services. The report noted that father had been released from custody after pleading guilty to several serious felonies, including assault with a deadly weapon causing great bodily harm, concealing a dirk or dagger, burglary, false imprisonment, and bribing a witness. However, aside from his release from custody, appellant made no showing that it would be in the best interests of the children to provide him with reunification services now. Moreover, the Department concluded that reunification services could still be bypassed under section 361.5, subdivision (b)(12), based on his conviction for a violent felony.

The Department's section 366.26 report prepared in connection with the .26 hearing provided the following evaluation: "These children have all suffered serious emotional trauma due to living with the parents who were actively engaged in substance abuse, domestic violence, severe emotional abuse, and the ongoing abuse and neglect." The parents were found unfit and appellant was ordered to complete a case plan that included domestic violence and parenting courses but he has not participated in any services. The Department recommended the children be ordered into a permanent placement with the goal of adoption.

The court combined appellant's second section 388 petition and the .26 hearing into one hearing held on March 17 and 25, 2014. Appellant as well as his sister and mother testified at the hearing. Appellant testified he was not a drug addict and never engaged in domestic violence. He claimed mother lied about domestic violence in the home. He testified first that he was not aware of mother's drug problem but admitted on cross-examination that he tried to get her into treatment. Appellant described his criminal

case where he stabbed a man with a machete as “some minor charges.” Appellant’s mother and sister supported his claims.

Appellant’s counsel acknowledged that appellant had accepted a plea deal and was no longer in custody so he was available for meaningful reunification services. He argued appellant was living in a clean and sober house and attending substance abuse meetings. Appellant had also “signed himself up” for mental health and domestic violence counseling. Counsel argued that none of the children’s behavioral problems were due to appellant’s conduct.

Counsel for the minors argued that the appellant’s custody status was not the key issue; the primary issue was whether offering services to appellant would be detrimental to the children. Appellant had never completed any part of the case plan and although he signed up for substance abuse treatment, he had consistently denied substance abuse problems.

The court found that appellant’s sister was not credible and that appellant was “noncredible throughout his testimony.” Appellant was in denial about his criminal record, his substance abuse, and his relationship with mother. The court concluded: “With respect to the 388 . . . I think there is a change of circumstance as it relates to his ability to have meaningful reunification services. There are other circumstances that are significant that remain unchanged.” The evidence was “overwhelming” that it would not be in the best interests of the children either to have contact with appellant, or for him to have reunification services. “The experts have all said that the [children’s] problems, if not solely, in large part relate to treatment by dad, and he denies it.” The court said there was “no competent, credible evidence” that it would be in the best interests of the children for appellant to be provided reunification services. The court denied the section 388 petition and ordered a permanent plan of adoption for the children.

Appellant did not appeal the court’s denial of his section 388 petition or the court’s section 366.26 order.

#### **D. Appellant's Petition for Writ of Habeas Corpus and Third Section 388 Petition**

On June 18, 2014, appellant filed a petition for writ of habeas corpus in the juvenile court. The habeas petition argued that at the November 2013 hearing when the court issued its disposition order and order denying appellant reunification services it did so because he was incarcerated, in violation of the equal protection clauses of both the state and federal constitutions. The equal protection violation resulted because appellant was then subject to an evaluation for reunification services as set forth in section 361.5, subdivision (e)(1), while a parent who could afford bail would not be so limited. Appellant claimed that due to his counsel's error the issue was not properly preserved for review. Trial counsel submitted a declaration stating that although he filed a notice of intent to file a petition for an extraordinary writ following the disposition hearing, he failed to file the petition. "I declined to file the petition because I believed that the disposition orders could be reviewed on direct appeal." He stated that he later realized his mistake.

On the same date, appellant filed his third section 388 petition raising the same contentions as in the habeas petition. The petition argued the change in circumstance was "[c]ounsel inadvertently waived father's right to review of the order applying section 361.5, subdivision (e) to him. Believing that the matter could be raised on direct appeal, counsel did not file a writ petition." Appellant argued that section 361.5, subdivision (e)(1) violates the equal protection clause and he was improperly denied reunification services.

The Department filed an opposition to the section 388 petition and argued the third petition was an improper attempt to resurrect time-barred claims. As to the merits, it noted that appellant's equal protection argument was based on the faulty premise that he was denied services because he was incarcerated, when actually the court denied services because doing so would be detrimental to the children. The Department went on to observe that appellant not only failed to file a writ petition from the original November 2013 disposition order, he also failed to file an appeal from the March 2014 order setting

a permanent plan for the children and denying appellant's second section 388 petition for services.

The court held a hearing on both the habeas and (third) section 388 petitions on July 21, 2014. Appellant's counsel argued that the evidence in his declaration constituted changed circumstances to support the section 388 petition. Counsel argued if appellant had not been incarcerated then the court would not have considered the detriment issue and he would have been automatically provided with services. The Department argued that the section 388 petition was not timely because it was "asking to go back three hearings." The minors' counsel argued that it would not be in the children's best interests to provide services to appellant and he had presented no evidence to the contrary. As to appellant's equal protection argument, counsel noted that the Department works with incarcerated parents "all the time," and appellant's incarceration was not the reason he was denied services.

The court reiterated that it did not find appellant's testimony at the prior hearing to be credible. "There ha[ve] been multiple findings of detriment. There's nothing that would change that. Clearly, having the father back in the children's lives or even to the extent of observing him to see whether these things are true would be very detrimental and clearly not in the children's best interest." The court concluded that there was no violation of equal protection, and it denied both the habeas and the section 388 petitions.

Appellant filed a notice of appeal from the denial of both the habeas and the section 388 petitions.<sup>4</sup>

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<sup>4</sup> Appellant has filed a companion petition for writ of habeas corpus raising the same equal protection claim. We summarily deny the habeas petition by separate order (A144364).

**III.**  
**DISCUSSION**

**A. Appellant’s Challenge to the November 2013 Order Denying Reunification Services and Raising Ineffective Assistance of Counsel Are Time-Barred**

Appellant’s opening brief begins by stating “[appellant] appeals here from the juvenile court’s denial of his request for reunification services with his three children.” He argues that the fact he was in custody allowed the juvenile court to deny him reunification services violating the equal protection clauses of the state and federal constitutions. Thus, while the current appeal purports to be from the juvenile court’s denial of his third section 388 petition, in actuality he is appealing from that court’s November 2013 order originally denying him reunification services.

Appellant was present at the November 2013 disposition hearing and advised by the court that he must file an extraordinary writ if he sought to challenge the court’s denial of reunification services, or the setting of the .26 hearing. (See *In re Charmice G.* (1998) 66 Cal.App.4th 659, 666-667 [the exclusive means of appellate review of an order setting a .26 hearing is a petition for an extraordinary writ].) Appellant’s counsel filed a notice of intent to file a writ petition, but failed to follow through with filing the writ. A separate notice of appeal was filed but later dismissed. He claims that the failure to pursue appellate review of the November 2013 ruling was the result of ineffective assistance of counsel.

Appellant’s current claims are untimely for several reasons. First, appellant could have filed a writ of habeas corpus alleging ineffective assistance of counsel after his counsel failed to file the extraordinary writ. (*In re Carrie M.* (2001) 90 Cal.App.4th 530, 534 [“a claim of ineffective assistance of counsel in connection with jurisdiction and disposition orders may be raised in a petition for writ of habeas corpus filed in connection with an appeal from the disposition order”].) In addition, if appellant had advised the juvenile court that his counsel failed to file the writ, the court could have rescheduled the .26 hearing and extended appellant’s time to file a writ petition if his concerns were

found to be valid. “Instead, [father] chose to remain silent throughout the juvenile court proceedings.” (*In re Meranda P.* (1997) 56 Cal.App.4th 1143, 1158 (*Meranda P.*.)

Since the original unchallenged November 2013 order denying appellant services was filed, appellant has filed two more section 388 petitions in the juvenile court, two appeals in this court, a petition for writ of habeas corpus in the juvenile court, and he has a pending petition for writ of habeas corpus in this court, all relating back to the original denial of reunification services in November 2013.

At this late stage in the dependency proceedings, appellant has forfeited review of his current claim challenging the denial of reunification services on equal protection grounds. (See *In re Jesse W.* (2001) 93 Cal.App.4th 349, 355 [“ ‘A challenge to the most recent order entered in a dependency matter may not challenge prior orders for which the statutory time for filing an appeal has passed.’ ”].)

In *Meranda P.* on an appeal from the order terminating her parental rights, the mother alleged she had received ineffective assistance of counsel since the initial detention hearing. The mother had not appealed any prior order or sought writ relief from the order setting the .26 hearing. (*Meranda P.*, *supra*, 56 Cal.App.4th at p. 1150.) “The principle—which for convenience we will identify as the ‘waiver rule’—that an appellate court in a dependency proceeding may not inquire into the merits of a prior final appealable order on an appeal from a later appealable order is sound. We decline to carve out an exception to it here even though the issues raised involve the important constitutional and statutory rights to counsel and to the effective assistance of counsel.” (*Id.* at p. 1151.)

“To permit a parent to raise issues which go to the validity of a final earlier appealable order would directly undermine [the] dominant concerns of finality and reasonable expedition.” (*Meranda P.*, *supra*, 56 Cal.App.4th at p. 1152.) A reversal at this point, of whatever nature, would require the juvenile court on remand to “literally commence the dependency anew.” (*Ibid.*) “[A]uthorizing parents to attack final appealable orders by means of an appeal from a subsequent appealable order would sabotage the apparent legislative intention to expedite dependency cases and subordinate,

to the extent consistent with fundamental fairness, the parent’s right of appeal to the interests of the child and the state.” (*Id.* at p. 1156, fn. omitted.)

The waiver rule applies equally to an appellant’s belated claims of ineffective assistance of counsel. This court has interpreted *Meranda P.* to mean “late consideration of ineffective assistance claims defeats a carefully balanced legislative scheme by allowing a back-door review of matters which must be brought for appellate review by . . . writ at the setting hearing stage or by earlier appeals, that is, before the point is reached where reunification efforts have ceased and the child’s need for permanence and stability become paramount to the parent’s interest in the child’s care, custody and companionship. [Citation.]” (*In re Janee J.* (1999) 74 Cal.App.4th 198, 208 (*Janee J.*))

The waiver rule, however, will not apply if there is some defect that fundamentally undermined the dependency process that prevented the parent from availing himself of the protections of the process. (*Janee J., supra*, 74 Cal.App.4th at pp. 208-209.) “[I]t follows that resort to claims of ineffective assistance as an avenue down which to parade ordinary claims of reversible error is also not enough and that it is never enough, alone, to argue that counsel rendered ineffective assistance by not raising potentially reversible error on . . . writ review of a setting order.” (*Id.* at p. 209.) There is nothing in this record warranting a finding that appellant was prevented from pursuing the claims he now asserts because of a procedural defect that fundamentally undermined the dependency process and prevented him from doing so earlier.

For these reasons, we conclude that appellant is now time-barred from challenging either the November 2013 order denying him reunification services, or a claim that his earlier failure to do so resulted from ineffective assistance of counsel.

**B. On the Merits, There Was No Prejudice Resulting from Counsel’s Failure to Challenge the November 2013 Order**

Even if we consider appellant’s ineffective assistance of counsel claim, we conclude there was no prejudice to appellant, assuming counsel’s conduct fell below the prevailing standard of care. To demonstrate ineffective assistance of counsel, appellant is required to demonstrate both that counsel’s representation fell below an objective

standard of reasonableness and resulted in prejudice. (*In re Kristin H.* (1996) 46 Cal.App.4th 1635, 1667–1668.) “Thus the parent must demonstrate that it is ‘reasonably probable that a result more favorable to the appealing party would have been reached in the absence of the error.’ [Citation.]” (*Id.* at p. 1668.) It is not necessary to examine whether counsel’s performance was deficient before evaluating prejudice. (*In re N.M.* (2008) 161 Cal.App.4th 253, 270.)

Appellant makes two claims regarding ineffective assistance. He argues that but for counsel’s error in failing to file the writ, he would have not been denied reunification services with his three children. He further argues counsel’s failure to file the writ precluded him from raising his equal protection claim. We conclude that the juvenile court did not abuse its discretion in denying the section 388 petition because appellant failed to show that reunification would promote the best interests of the children, and that he was not denied equal protection under the law.

### ***1. Section 388 Petition***

“Under section 388, a parent may petition to change or set aside a prior order ‘upon grounds of change of circumstances or new evidence.’ (§ 388, subd. (a)(1); see Cal. Rules of Court, rule 5.570(a).) The juvenile court shall order a hearing where ‘it appears that the best interests of the child . . . may be promoted . . .’ by the new order. (§ 388, subd. (d).) Thus, the parent must sufficiently allege *both* a change in circumstances or new evidence *and* the promotion of the child’s best interests. [Citation.]” (*In re G.B.* (2014) 227 Cal.App.4th 1147, 1157, fn. omitted.)

We review a juvenile court’s denial of a section 388 petition for abuse of discretion. (*In re Jasmon O.* (1994) 8 Cal.4th 398, 415.) We “may not disturb the decision of the trial court unless that court has exceeded the limits of judicial discretion by making an arbitrary, capricious, or patently absurd determination. [Citation.]” (*In re E.S.* (2011) 196 Cal.App.4th 1329, 1335.)

At the disposition hearing, the court undertook a detailed analysis of those factors identified in section 361.5, subdivision (e)(1) bearing on the issue of whether an incarcerated parent should be denied reunification services. Contrary to appellant’s

version of events, the juvenile court found that he had contributed to the severe emotional disturbance, trauma and suffering of his children. The court stated that reunification services “are designed to address the issues which led to the assumption of jurisdiction by the juvenile court . . . . And conceptually, those problems, at least father’s share of them, simply don’t exist in his world.” By appellant’s own self-assessment, services were “unwanted, unneeded and would serve no apparent useful purpose.” The court found that it would be “traumatic, harmful and emotionally detrimental to the children to have them even visit their father, especially so in a jail or prison facility.”

After hearing testimony from appellant at the combined second section 388/.26 hearing, the juvenile court concluded that, while there was a change in circumstances because appellant had been released from custody, “other circumstances that are significant that remain unchanged.” The court concluded there was “no competent, credible evidence” that it would be in the best interests of the children for appellant to be provided reunification services.

At the hearing on appellant’s third section 388 petition and habeas petition, the court again concluded that it was not in the best interests of the children to provide reunification services for appellant. The court stated “[t]here ha[ve] been multiple findings of detriment. There’s nothing that would change that. Clearly, having the father back in the children’s lives . . . would be very detrimental and clearly not in the children’s best interest.”

The record amply supports the juvenile court’s findings and conclusions as to this issue. Thus, there was no abuse of discretion in finding that reunification services were not in the children’s best interests and in denying each and every section 388 petition. In light of this conclusion, and based on appellant’s failure over multiple hearings to show reunification was in the best interests of his children, we find no prejudice in counsel’s failure to file an extraordinary writ with this court after the disposition hearing. (See *In re Nada R.* (2001) 89 Cal.App.4th 1166, 1180 [a court may reject an ineffective assistance claim if the party fails to demonstrate that but for trial counsel’s failings, the result would have been more favorable to the defendant].)

## ***2. Equal Protection Claim***

In addressing the merits of appellant's equal protection argument, we conclude that it lacks merit, and therefore, he was not prejudiced by his counsel's failure to raise the issue earlier via writ petition or appeal. To reiterate that contention, appellant asserts that section 361.5, subdivision (e)(1) violates the equal protection clause because it treats similarly situated parents differently: a parent who can afford bail is entitled to services, while a parent who cannot afford bail is denied services. This argument misstates the statute and ignores the legitimate legislative intent in setting forth a separate subdivision dealing with parents in the dependency system who are incarcerated.

Section 361.5 subdivision (e)(1) provides in relevant part: "If the parent or guardian is incarcerated . . . the court shall order reasonable services unless the court determines, by clear and convincing evidence, those services would be detrimental to the child." (§ 361.5, subd. (e)(1).) Incarcerated parents must generally be provided reasonable services. (*Fabian L. v. Superior Court* (2013) 214 Cal.App.4th 1018, 1030 (*Fabian L.*)) "This statute reflects a public policy favoring the development of a family reunification plan even when a parent is incarcerated." (*Mark N. v. Superior Court* (1998) 60 Cal.App.4th 996, 1011-1012.) Therefore, the statute begins with a presumption that incarcerated parents are entitled to reunification services. Where a parent is incarcerated, the court must consider a number of factors to determine if services might delay permanency and be detrimental to the child. (*Fabian L.*, at pp. 1030-1031.)

In *In re Joshua M.* (1998) 66 Cal.App.4th 458 (*Joshua M.*), the father alleged that section 365.1, subdivisions (b)(10) and (b)(12) violated the equal protection clause because those subdivisions discriminated against indigent parents who could not afford to pay for reunification services on their own. "Under the equal protection clause, '[a] classification "must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike.'" ' [Citation.] However, only where the state has adopted 'a classification that affects two or more similarly situated

groups in an unequal manner’ are equal protection rights implicated. . . .” (*Id.* at p. 473, quoting *In re Eric J.* (1979) 25 Cal.3d 522, 530, italics omitted.)

In part, the court in *Joshua M.* relied on the reasoning in *In re Christina A.* (1989) 213 Cal.App.3d 1073 (*Christina A.*), where no equal protection violation was found. *Christina A.* involved the constitutionality of section 361.5, subdivision (b)(2), which permits denial of reunification services where the parent is mentally incapable of utilizing the services. The *Christina A.* court held: “We perceive no improper purpose underlying the statute. The stated purpose of section 361.5, subdivision (b) is to exempt from reunification services those parents who are unlikely to benefit. This purpose is related to that of the juvenile law itself—to ensure the well-being of children whose parents are unable or incapable of caring for them by affording them another stable and permanent home within a definite time period. Although the goal of the juvenile law is to reunite children with their parents whenever possible, this reunification must be accomplished within 18 months from the time the child is originally taken from his or her parents’ custody. (§ 366.25, subd. (a).) This strict time frame, in turn, is a recognition that a child’s needs for a permanent and stable home cannot be postponed for an extended period without significant detriment. [Citations.]” (*Id.* at pp. 1079-1080.) Section 361.5, subdivision (b) was rationally related to these purposes and it was reasonable for the state to distinguish between individuals who could benefit from the services and those who could not. (*Christina A.*, at pp. 1079-1080.)

For purposes of reunification services incarcerated parents and nonincarcerated parents are not similarly situated in their ability to access services and interact with their children. Obviously, incarcerated parents have restrictions placed upon them by the criminal justice system. Section 361.5, subdivision (e)(1) was designed “to address reunification services in cases where parents are not at liberty to come and go or to schedule activities as they please.” (*Edgar O. v. Superior Court* (2000) 84 Cal.App.4th 13, 18.) The fact that the parent is confined must be considered in evaluating the best interests of the child.

Therefore, section 361.5, subdivision (e)(1) does not deny services to incarcerated parents, it simply requires the court to consider whether reunification with a parent in custody is in the children's best interests. As respondent asserts, an incarcerated parent begins at the same starting point as any other parent with a presumption that reunification services should be provided. We adopt the reasoning of *Joshua M.* and *Christina A.* and reject appellant's equal protection claim. As explained in *Christina A.*, the goal of juvenile law is for reunification to be accomplished within a limited time frame and consideration of a parent's custody status is rationally related to this purpose. The statute bears a rational relationship to the purposes of the dependency law to protect children and reunify families when possible, but also of exempting from reunification services those parents who are unlikely to benefit from them.

If the parent's custody status changes, as it did here, section 388 provides a mechanism for the court to evaluate the changed circumstances and order services. (*Renee J. v. Superior Court* (2001) 26 Cal.4th 735, 750 [even in the face of a finding under section 361.5, subdivision (e) that reunification services are not in the best interests of the child while the parent is incarcerated, a section 388 petition remains an available mechanism to modify the order].) In fact, the juvenile court revisited the issue of whether appellant should be provided with services after he was released from custody on two subsequent occasions and made findings that it was not in the best interests of the children for services to be provided.

Application of section 361.5, subdivision (e)(1) here did not violate the equal protection clause.

#### **IV.**

#### **DISPOSITION**

The court's order denying appellant's section 388 petition is affirmed.

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RUVOLO, P. J.

We concur:

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RIVERA, J.

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STREETER, J.

A142643, *In re T.M.*