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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

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

J.L.,

Petitioner,

v.

THE SUPERIOR COURT OF ALAMEDA  
COUNTY,

Respondent,

ALAMEDA COUNTY SOCIAL  
SERVICES AGENCY,

Real Party in Interest.

A142870

(Alameda County  
Super. Ct. No. OJ130210394)

**I.**

**INTRODUCTION**

J.L. seeks review by extraordinary writ of a juvenile court order setting a Welfare and Institutions Code section 366.26 hearing for his young daughter, C.C. (the minor).<sup>1</sup> We grant the petition because the record does not contain substantial evidence that J.L. was provided adequate reunification services.

<sup>1</sup> All further statutory references are to the Welfare and Institutions Code unless otherwise stated.

## II.

### STATEMENT OF FACTS

#### A. The Petition and Detention

When the minor was born in June 2013, she and her mother (Mother) tested positive for methamphetamine. Hospital staff developed additional concerns about Mother, who had trouble waking up to feed the minor and needed to be reminded to attend to the baby's needs. The hospital contacted the Alameda County Social Services Agency (the Agency) and arrangements were made to take the minor into emergency custody. Sandra Theis, an emergency services social worker, visited Mother at the hospital the day after the minor was born. Mother identified J.L. as a potential father but said she was unsure and that she would provide the Agency "with names of other possible fathers."

Mother told Theis that she moved out of J.L.'s home in August 2012, leaving two children she previously had with J.L., S. and J., ages two and one, respectively. Mother said J.L. had been violent with her in the past and that there was a current restraining order which applied to her but not to their children. Theis questioned Mother's decision to leave her children with a man who she claimed was violent towards her. Mother responded that J.L. was never abusive toward the children and that he is a good father.

Theis interviewed the maternal grandmother at her home, which was clean and well-furnished and had been set up for the minor. The grandmother was willing to have the minor and Mother live in her home or to raise the minor alone if Mother was unable. She was not in contact with her two grandchildren S. and J. who lived with J.L. because she did not get along with him.

Theis also went to visit J.L., who said he did not come to the hospital because nobody told him about the minor's birth. J.L. was calm and cooperative. S. and J. were clean, well dressed, appeared healthy, and were affectionate with J.L. and with their paternal relatives who lived across the street. J.L. admitted to fighting with Mother in the past, although he blamed her for instigating some of the conflicts. J.L. thought the minor could be his but he was not certain.

When the minor was discharged from the hospital, she was placed in foster care. A few days later, the Agency held a team meeting with Mother and the maternal grandmother. The team agreed to keep the minor in temporary foster care while the maternal grandmother's home was assessed as a potential placement. The next day, J.L. called the Agency and spoke to Heather Giezendanner, the first of a series of social workers assigned to the minor's case. J.L. said he was not sure if he was the minor's father; Mother had told him the baby was his, but she told other people he was not the father. J.L. was using unemployment payments to provide for his children's needs. He could not get food stamps or other aid because Mother took those benefits. J.L. was considering trying to get legal custody of his children but was concerned the court would deny his request because he was on probation. He stated that he was in compliance with his probation, that he took monthly drug tests, and had completed anger management and a parenting class.

On June 11, 2013, the Agency filed a juvenile dependency petition on behalf of the minor pursuant to section 300, subdivisions (b) [failure/inability to protect] and (g) [failure to provide support], which was supported by the following allegations: When the minor was born, she and Mother tested positive for methamphetamine; hospital staff had concerns about Mother's ability to care for the baby; Mother had three other children who were not in her care because of her substance abuse<sup>2</sup>; there was a history of domestic violence between Mother and J.L., who was the minor's alleged father; J.L. was not willing to provide care for the minor because he did not know if he was her biological father.

The detention hearing was held on June 12, 2013. J.L. did not receive prior notice of this hearing. The minor was formally detained from Mother. The issue of paternity was deferred after Mother identified two potential fathers, J.L. and another man named Jose R., neither of whom attended the minor's birth or were named on her birth

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<sup>2</sup> Mother's six-year-old son lived in Napa with his father, who had filed for sole custody.

certificate. The court ordered the Agency to provide both alleged fathers with notice of the proceedings.

On June 20, the Agency placed the minor in the maternal grandmother's home.

### **B. Jurisdiction and Disposition**

The jurisdiction/disposition hearing was scheduled for late June but continued until July 2013 for good cause. The Agency recommended that the court declare the minor a dependent and afford reunification services to Mother, but that no services be provided to either alleged father "unless and until they establish a legal basis for receiving those services."

The Agency social worker had met with Mother a few times. Mother reported that she tried to reduce her drug use when she learned of her pregnancy but that she relied on methamphetamine and marijuana as a way to deal with stress. Through Mother, the Agency learned that J.L. was on probation because of a drug possession charge that resulted from a search by police who were called to break up a physical altercation between J.L. and his father. To resolve the criminal matter, J.L. completed a year-long anger management program and a period of house arrest. Mother said the restraining order was added on to that matter. Mother also reported that J.L. had quit drinking when their son was born and that she felt he was a good father.

The Agency social worker had one conversation with J.L. during this reporting period, on June 20, 2013. J.L. said he and Mother had a verbal agreement that he would care for their two children and reiterated that he was not sure if he was the minor's father. He reported that he had never been charged with domestic violence but admitted he and Mother had a history of physical and verbal altercations. He also confirmed Mother's statement that the restraining order had been added on to an unrelated drug charge. J.L. expressed concern about attending court proceedings because if he was the minor's father, that would be evidence that he had violated the restraining order, and if he was sent to jail for that violation, there would be nobody to care for his children.

A case plan attached to the jurisdiction/disposition report contains one service objective for J.L. and Jose R.: to establish paternity.<sup>3</sup> However, this report was never sent to J.L. Furthermore, although the Agency report stated that a notice of the jurisdiction/disposition hearing was mailed to J.L., the proof of service filed by the Agency does not confirm that statement. However, as noted above, the hearing date was continued to July and the Agency mailed notice of the continued hearing to J.L., although he did not appear.

At an uncontested jurisdiction/disposition hearing, Mother submitted to the court's jurisdiction pursuant to amended petition allegations to the effect that her recent substance abuse impacted her ability to care for the minor; she and J.L. had a history of domestic violence; and J.L. was currently unwilling to provide for the minor because he did not know if he was her biological father. The minor was adjudged a dependent of the juvenile court and reunification services were extended to Mother. The court found that J.L. and Jose R. were alleged fathers and the Agency was not required to provide reunification services to them unless and until they established a legal basis for those services.

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

The six-month review hearing was set for December 12, 2013. The Agency recommended that the dependency be continued, services to Mother be terminated, and a permanency planning hearing be set with a goal of adoption by the maternal grandmother. Mother had not participated in any services and had indicated to the social worker that she “was not prepared to engage in her Case Plan activities.” The Agency opined that the maternal grandmother was “the most feasible relative able to meet the minor’s needs . . . and [was] currently prepared and motivated to move forward with adoption.” An adoption assessment had been completed and, the Agency reported, “it appears that the child will be adopted with a relative, the maternal grandmother . . . .”

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<sup>3</sup> The Agency reported that it had initiated a search for Jose R., but had no other information about him.

The Agency report does not reflect any effort by the social worker to communicate with J.L. during this phase of the minor's dependency case. J.L. had contacted the Agency in November and left a message. The social worker left a return message and mailed J.L. a letter notifying him about the review hearing and providing a referral for legal assistance.

On December 12, 2013, J.L. filed a "JV-505 Statement Regarding Parentage" (Statement), which requested that the court appoint an attorney for him and order a DNA test to determine whether he was the minor's parent. The Statement was completed in handwriting and signed by J.L. and by an attorney. According to his Statement, J.L. had offered to provide food, clothes and diapers for the minor and whatever else she needed, but Mother refused his offers, telling him he was not the minor's father. J.L. also reported that he had custody of two children who could be the minor's siblings and requested that the court provide visitation.

The same day that J.L. filed his Statement, he and his attorney appeared at the six-month review hearing.<sup>4</sup> The record does not contain a transcript of that hearing, but the minute order reflects that the court ordered a paternity DNA test for J.L. and that the status review was continued because Mother contested the Agency recommendations. The contested review was conducted on February 10, 2014, before the results of the paternity test were known.<sup>5</sup> The court found Mother received reasonable services but made no progress on her case plan. Mother's services were terminated, the Agency was granted discretion to arrange supervised visits for J.L., and the court scheduled a section 366.26 hearing for June.

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<sup>4</sup> In its opposition to the present petition, the Agency states that J.L. was appointed counsel at the six-month review hearing. However the record does not contain any evidence that the court appointed counsel for J.L. at that hearing or at any other time. The only record evidence regarding this issue reflects that J.L. used an Agency referral to obtain legal advice and assistance.

<sup>5</sup> All further date references occurred in calendar year 2014.

#### **D. J.L.'s Request for a Change of Status**

On April 7, J.L. filed a section 388 petition to change the prior juvenile court order that J.L. was only an alleged father and therefore not entitled to services. On a "JV-180 Request to Change Court Order," J.L. stated that he had maintained contact with the Agency throughout the proceedings, that he took steps to determine his legal rights, and that a March paternity test found there was a 99.9 percent probability that he was the minor's biological father. Therefore, J.L. requested that the court vacate the section 366.26 hearing date and provide him with reunification services including visitation.

In a supporting declaration, J.L. stated he was the minor's biological father and requested elevation to presumed father status. J.L. stated that he wanted to fulfill his parental responsibilities to the minor, to be her father, and for her to live with him and her two siblings who were already in J.L.'s care. J.L. also stated that Mother had left him before he knew she was pregnant. Later, she denied J.L. was the baby's father. Nevertheless, J.L. offered help and support which Mother rejected. After the Agency removed the minor from Mother, J.L. asked for visitation, but the social worker told him "to wait until the paternity test results became known."

The Agency did not formally respond to J.L.'s petition. Instead, it filed a "Due Diligence Report," which requested that the court make three findings. First, the Agency requested a finding that it had made a reasonable effort to locate Mother, who had lost contact with the Agency, and that future notices for Mother could be mailed to the maternal grandmother. Second, the Agency requested that the court find that J.L. was the minor's biological father based on the results of the paternity test, and that Jose R. was excluded as a father. Finally, the Agency requested that the section 366.26 hearing date be maintained.<sup>6</sup>

On April 15, the court held a hearing to address the Agency's "Due Diligence Report" and J.L.'s section 388 petition. The court found that the Agency could serve

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<sup>6</sup> In its opposition to the writ petition, the Agency erroneously states that the Due Diligence Report requested a finding that J.L. was not a presumed father.

future notices for Mother on her attorney; that Jose R. was excluded as the father and not entitled to future notices; and that J.L. was the minor's biological father. The matter was then continued for a contested hearing on J.L.'s request to change his status.

The Agency did not file a formal opposition to J.L.'s section 388 petition, but it did sign a joint contested hearing statement which identified the disputed issue as J.L.'s "paternity status," specifically, whether he met the requirements for presumed father status and, if not, whether the court should provide him services as a biological father or a "Kelsey dad."<sup>7</sup>

The contested hearing was held on April 25. Again, the record contains no transcript of that hearing. The minute order reflects that the court found that there was "a factual basis for granting" J.L.'s petition. The order also states: "JV-180 petition filed by the father is granted. [¶] The Agency is to provide the father with family reunification services." The court vacated the section 366.26 hearing and gave the Agency discretion "to facilitate unsupervised contact between the child and the father."

#### **E. 12-Month Status Review Report**

Approximately two months later, the Agency prepared a 12-month status review report recommending that services to J.L. be terminated and that the court schedule a section 366.26 hearing with a goal of adoption by the maternal grandmother. The was prepared by Agency social worker Michelle Morineau. Morineau, who signed the report on June 27, had been assigned to this case on May 21. Morineau advised the court that "[t]he position of the father on this matter is not known, however it is likely that he will not be in agreement with today's recommendations." She also reported that the minor was in an appropriate placement with the maternal grandmother, who was "very motivated" to move forward with adoption if J.L. was unable to reunify.

The Agency report stated that J.L. did not comply with his case plan which required that he participate in weekly drug testing and attend a 12-step program. The social worker previously assigned to this case made referrals for these services and J.L.

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<sup>7</sup> See *Adoption of Kelsey S.* (1992) 1 Cal.4th 816 (*Kelsey S.*).

failed to provide Morineau with proof of compliance. The report also stated that J.L. visited with the minor during this reporting period but provided no information about the extent or quality of those visits. However, Morineau reported that after she took over the case, she scheduled an appointment for J.L. to attend an orientation meeting with an outside service provider where J.L. would have been allowed to continue his supervised visitation. J.L. did not attend that meeting or subsequent appointments that were scheduled for him.

The Agency report contained inconsistent and incomplete information about J.L.'s parental status. Initially, the report identified J.L. as an "alleged" father. Elsewhere, the report acknowledged that on April 15, the court found that J.L. was the minor's biological father and that on April 25 the court ordered that J.L. was to receive services. However, the report did not discuss the contest regarding J.L.'s parental status or the court's resolution of that contest.

A case plan that had been updated in anticipation of the 12-month review was attached to the Agency report. The plan set forth a single goal: adoption by a relative. The Agency set forth three "client responsibilities" for J.L.: individual counseling; substance abuse testing; and participation in a 12-step program. The case plan was signed by Morineau and her supervisor but it was not signed by J.L..

## **F. The Contested Review Hearing**

A contested status review hearing was held on July 30, August 22, and August 26. The Agency submitted the 12-month status review report, which was admitted into evidence, but did not offer any other evidence in support of its recommendations. However, the minor's appointed counsel called Michelle Morineau as a witness and J.L. testified on his own behalf.

### ***1. Michelle Morineau's Testimony***

Morineau described herself as the "Family Reunification" worker for the minor's case. Her first contact with J.L. was in November 2013, when he called to request a paternity test. During that earlier stage, Morineau was handling the minor's case because the court had ordered services for Mother. However, after Mother's services were

terminated in February 2014, Morineau transferred the case to the “Adoptions Unit.” The matter was reassigned to Morineau after the court ordered that J.L. was to receive family reunification services, although the reassignment did not actually coincide with the court’s order.

After J.L. was granted services on April 25, an Agency “adoption worker” continued to handle the minor’s case until late May. Morineau testified that the adoption worker established J.L.’s case plan and subsequently informed Morineau that J.L. was required to participate in weekly drug testing, twice weekly NA/AA [Narcotics Anonymous/Alcoholics Anonymous] classes and to continue his visitation. Morineau explained that she did not make referrals for these services because they were already in place when she took over the case. According to Morineau, the adoption worker informed J.L. of his obligations under the case plan, made the referral for drug testing and provided J.L. with a sign-in sheet so he could document his compliance. However, Morineau had not received proof that J.L. participated in drug testing, NA or AA.

Morineau testified that the adoption worker told her J.L. had not consistently visited the minor. The visitation plan established by the adoption worker was for twice weekly supervised visits between J.L. and the minor. Morineau had been informed that J.L. attended three visits and cancelled one, and that another “ended up being cancelled” because J.L. was 20 minutes late. The adoption worker also made a referral for J.L. to The Gathering Place, an organization that provides support in connection with supervised visitation. After Morineau took over, she scheduled an orientation at The Gathering Place for June 11 so J.L. could “continue to have” weekly visits with the minor while Morineau took a 10-day vacation from June 13 until June 23. However, J.L. missed that appointment and two rescheduled appointments. Therefore, Morineau testified, “no visits took place in June.” J.L. did attend an orientation on July 3, and resumed his visits with the minor, although he cancelled one visit in July.

Morineau testified that before this case was transferred back to her, J.L.’s visits took place at the Agency and were supervised by the adoption worker. However, after Morineau took over, visits were supervised by The Gathering Place. Thus, Morineau

never observed a visit between J.L. and the minor. In fact, she admitted at the hearing that she had not met J.L. in person until that very day. However, Morineau testified that she had “witnessed” the child’s relationship with her maternal grandmother. The minor’s counsel attempted to elicit testimony from Morineau about that relationship, arguing it was relevant to show they had formed a bond which would make it difficult for the baby to bond with someone else. The court sustained an objection to that testimony.

Under cross-examination, Morineau testified she had no more than three telephone conversations with J.L.. She left him a message in early June notifying him that he was not in compliance with his case plan. She never visited his home and did not review the case plan with him during their telephone conversations. However, she testified that the file reflected that the adoption worker had J.L. sign his case plan. Morineau, who never talked to J.L. about his history of drug use or any other subject, was informed by the adoption worker that J.L. had a history of substance abuse.

## ***2. J.L.’s Testimony***

J.L. testified that the first Agency worker who interacted with him in this case was a man named Teof. The court identified Teof Martinez as the adoption worker who handled the case before it was transferred to Morineau. Teof came to J.L.’s home and talked with him about a case plan but did “[n]ot exactly” tell J.L. what he had to do. Instead, Teof “recommended” that J.L. could do some things but said he did not know if the requirements would change once the case was transferred to Morineau. J.L. explained that he interpreted Teof’s comments as telling him that “it wasn’t guaranteed that I was going to have to do all of that or what I was going to do exactly.”

J.L. also testified that Teof set up a visitation plan. During the period that Teof supervised the visits, J.L. recalled missing two appointments, one he cancelled ahead of time and the other he did not actually miss but was cancelled because he was late due to unanticipated traffic caused by an automobile accident. After Teof transferred the case to Morineau, J.L. had to wait approximately one month before he could have another visit with his daughter. Eventually, J.L. contacted Morineau who told him that he had to attend an orientation. J.L. testified that he missed the first meeting because Morineau

told him that she was going to call him back to confirm the appointment but she never did. He missed the second appointment because he did not receive a message that the orientation had been rescheduled until after the meeting was supposed to take place. J.L. estimated that he left five or six messages before the orientation was finally rescheduled for him by a woman named Alma.

J.L. did not realize that the Agency believed he was not in compliance with their requirements until he received a packet of material about the 12-month review hearing. J.L. testified that he was not opposed to drug testing or going to NA and that he would comply with any court order to participate in those programs. He testified that he had unanswered questions about what the Agency wanted him to do, about “the whole . . . everything.” He definitely wanted the minor to be placed in his care and for her to live together with her brother and sister.

Near the end of J.L.’s testimony, the court asked whether he recalled signing “the case plan.” J.L. responded: “Yes, I do with Teof.” However, the court observed that J.L. had not signed the case plan that was in the file and asked J.L. whether he had signed a document that looked like the case plan. J.L. responded that he had not. The court asked what J.L. thought he was committing to do when he signed the document provided by Teof. J.L. responded: “I was signing a referral, I think. I think it was a referral for drug testing; but he told me that that could change.” J.L. testified that he did schedule an appointment to talk with someone about drug testing but missed that meeting and had not yet rescheduled. J.L. also testified that he had attended one NA meeting but nobody had ever asked him to submit written proof of his attendance.

### ***3. The Juvenile Court Rulings***

At the conclusion of J.L.’s testimony, the court asked the parties whether J.L.’s status was that of a “biological father.” J.L.’s counsel responded that he was a “*Kelsey S. dad.*” But the court observed that the Agency report characterized J.L. as a biological father and asked the parties for assistance clarifying the record. The Agency’s counsel directed the court to a finding in the April 15 minute order stating that J.L. was a biological father but neglected to mention that the April 15 matter was continued for a

contest regarding J.L.'s parental status and that the court subsequently *granted* J.L.'s section 388 petition.

The hearing was continued for argument and, at that continued hearing, the Agency and the minor's counsel both premised their arguments on the assumption that J.L. was a "mere" biological father. After the matter was submitted, the court found that the Agency had provided J.L. with reasonable reunification services. To support this finding, the court summarized the case as follows: J.L. asked for services, his request was granted at the end of April, he signed a case plan on June 14 and a copy of that plan was mailed to him. The Agency then made referrals to services which J.L. testified were not objectionable but nevertheless failed to do. The Agency also offered J.L. visitation but he failed to attend his orientation. In light of these events, the court concluded J.L. did not avail himself of the reunification services that were offered by the Agency.

The court also found that J.L. received notice of the hearings in this case and had the opportunity to participate but did not take the opportunity until very late in the case. As examples, the court attributed the delay in securing a paternity test to J.L. who was afraid of being charged with violating the restraining order. Then, after paternity was established, J.L. asked for services but failed to participate in his case plan activities between "April and July 10th."

The court adopted most of the Agency recommendations, but denied its request for a finding that J.L. had made no progress. Instead, the court found that "[h]is progress has been minimal, not quite partial, but he has done something and I don't question the sincerity of his love for the child, but I have to operate under certain rules and they are fairly specific." Ultimately, the court found that J.L. failed to demonstrate his ability to comply with his plan objectives "even in this short time frame." In this regard, the court stated: "I will note that this shorten[ed] time frame since [J.L.] was granted services late in these proceedings in my view gave him an advantage. It compressed into a short period of time the Court's ability to measure the consistency and level of participation he chose to pursue." Since J.L. did not demonstrate compliance even for that short period of

time, the court concluded there was no substantial probability that the minor could be returned to his custody if services were extended until the 18-month review.

The court's findings and orders were recorded in an August 26 order which states, among other things, that the Agency provided reasonable services, and that J.L.'s progress was "minimal." The dependency was continued, services to J.L. were terminated and a section 366.26 hearing was scheduled for December 18.

### III.

#### DISCUSSION

The issue is whether the juvenile court's finding that the Agency afforded reasonable reunification services to J.L. is supported by substantial evidence. (*In re Alvin R.* (2003) 108 Cal.App.4th 962.) "The remedy for a failure to provide reasonable reunification services is an order for the continued provision of services, even beyond the 18-month review hearing. [Citation.]" (*Id.* at p. 975, fn. omitted; *In re Taylor J.* (2014) 223 Cal.App.4th 1446, 1453.) To properly evaluate the quality of the reunification services the Agency provided, we must first consider the evidence regarding J.L.'s parental status.

##### A. J.L.'s Parental Status

In dependency proceedings, judicial determinations of parentage are governed by the Uniform Parentage Act (UPA), Family Code section 7600 et seq. (*In re Jesusa V.* (2004) 32 Cal.4th 588, 603.) "[T]he need to establish a father's status in a dependency proceeding is pivotal; it determines the extent to which he may participate in the proceedings and the rights to which he is entitled. [Citation.] [¶] The UPA distinguishes between 'alleged,' 'biological,' and 'presumed' fathers. [Citation.] 'A man who may be the father of a child, but whose biological paternity has not been established, or, in the alternative, has not achieved presumed father status, is an "alleged" father. [Citation.]' [Citation.] 'A biological or natural father is one whose biological paternity has been established, but who has not achieved presumed father status . . . .' [Citation.]" (*In re M.C.* (2011) 195 Cal.App.4th 197, 211-212; see also *In re Zacharia D.* (1993) 6 Cal.4th 435, 449, fn. 15.) " 'Presumed father status ranks highest.' [Citation.] Presumed fathers

are vested with greater parental rights than alleged or biological fathers. [Citation.] ‘[O]nly a presumed . . . father is a “parent” entitled to receive reunification services under [Welfare and Institutions Code] section 361.5,’ and custody of the child under Welfare and Institutions Code section 361.2. [Citations.]” (*In re M.C.*, *supra*, 195 Cal.App.4th at p. 212.)<sup>8</sup>

A man can qualify for presumed father status under one of several rebuttable presumptions set forth in Family Code section 7611. Under that statute, a man is presumed to be the natural father of a child if he is married to, or has attempted to marry, the child’s mother when the child is born, or he has received the child into his home and he holds the child out as his natural child. (Fam. Code, § 7611.)

Alternatively, “a man may acquire all of the rights of a presumed father without meeting the requirements of any of the statutory presumptions. Under *Kelsey S.* [*supra*, 1 Cal.4th at page 213,] ‘an unwed biological father who comes forward at the first opportunity to assert his paternal rights after learning of his child’s existence, but has been prevented from becoming a statutorily presumed father under section 7611 by the unilateral conduct of the child’s mother or a third party’s interference’ acquires a status ‘equivalent to presumed parent status under section 7611.’ [Citations.]” (*In re D.A.* (2012) 204 Cal.App.4th 811, 824; see also *V.S. v. M.L.* (2013) 222 Cal.App.4th 730,

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<sup>8</sup> Section 361.5, subdivision (a) states that except in circumstances not relevant here, “whenever a child is removed from a parent’s or guardian’s custody, the juvenile court shall order the social worker to provide child welfare services to the child and the child’s mother and statutorily presumed father or guardians. Upon a finding and declaration of paternity by the juvenile court or proof of a prior declaration of paternity by any court of competent jurisdiction, the juvenile court may order services for the child and the biological father, if the court determines that the services will benefit the child.”

Section 361.2 requires that the court consider placement of a removed child with a noncustodial parent. “If that parent requests custody, the court shall place the child with the parent unless it finds that placement with that parent would be detrimental to the safety, protection, or physical or emotional well-being of the child.” (§ 361.2, subd. (a).) However, this statutory requirement applies only to noncustodial fathers who have achieved presumed father status at the time of removal. (*In re Zacharia D.*, *supra*, 6 Cal.4th at pp. 454-455.)

738-739 [biological father who satisfies the *Kelsey S.* requirements is “entitled to the rights of a presumed father”].)

In the present case, J.L. was an alleged father until April 2014. On April 15, the court elevated J.L.’s status to biological father. With that finding, the juvenile court was authorized but not required to order reunification services for J.L.. (§ 361.5, subd. (a).) However, the juvenile court’s finding that J.L. was a biological father was only preliminary. As reflected in our factual summary, the matter was continued for a contest regarding J.L.’s parental status, which was resolved on April 25.

The April 25 minute order is not as clear as it should be. However, it does establish that the juvenile court (1) found a factual basis for J.L.’s petition; (2) granted J.L.’s petition; (3) ordered the Agency to provide reunification services to J.L.; and (4) gave the Agency discretion to facilitate *unsupervised* visits between J.L. and the minor. Standing alone, these findings indicate that the juvenile court found that J.L. qualified as a presumed father under *Kelsey S.*

However, as discussed in our factual summary, the Agency’s 12-month status report characterized J.L. as both an alleged father and a biological father but never as a presumed father. In that report, the Agency acknowledged the April 25 order only to the extent that the court ordered that J.L. was to receive services. When the question of J.L.’s parental status was raised by the juvenile court, Agency counsel focused exclusively on the April 15 order. Indeed, even in this court the Agency avoids any direct characterization of J.L.’s parental status.

We are troubled by the Agency’s failure to make a proper record about this very important matter. If not for the statutory time limits that apply in a dependency case involving a child who is under the age of three years old, we would be inclined to remand this case for clarification of J.L.’s parental status especially in light of statements the court made at the contested hearing which suggest that it was distracted from evaluating the quality of the Agency’s services by arguments that J.L. was a mere biological father.

Furthermore, the Agency’s unexplained objection to J.L.’s section 388 petition and its consistent opposition to J.L.’s requests for services are more troubling when

viewed in the context of reports which reflect that the Agency's only real goal throughout these proceedings has been adoption by the maternal grandmother. As we explain next, that goal appears to have prevented the Agency from satisfying its statutory obligation to make a good faith effort to facilitate reunification between the minor and her father.

### **B. J.L. Did Not Receive Reasonable Services**

Even if J.L. was not a presumed father, the court made an express finding that he was entitled to reunification services with the minor. "The focus during the reunification period is to preserve the family whenever possible. [Citation.] Until services are terminated, family reunification is the goal and the parent is entitled to every presumption in favor of returning the child to parental custody. [Citations.]" (*Tracy J. v. Superior Court* (2012) 202 Cal.App.4th 1415, 1423.)

"The adequacy of reunification plans and the reasonableness of [the Agency's] efforts are judged according to the circumstances of each case. [Citation.] Moreover, [the Agency] must make a good faith effort to develop and implement a family reunification plan. [Citation.] '[T]he record should show that the supervising agency identified the problems leading to the loss of custody, offered services designed to remedy those problems, maintained reasonable contact with the parents during the course of the service plan, and made reasonable efforts to assist the parents in areas where compliance proved difficult . . . .' [Citation.]" (*Amanda H. v. Superior Court* (2008) 166 Cal.App.4th 1340, 1345.)

The present case does not contain substantial evidence that the Agency formulated a case plan for J.L. which addressed factual circumstances relevant to his role in this dependency case. The minor was not removed from J.L.'s home and when the Agency filed its petition, it did not question J.L.'s ability to safely parent the two very young children who were in his care. The dependency petition did contain an allegation that the minor was unsafe in Mother's home partly because of her history of domestic violence with J.L.. If the Agency perceived this factor as an independent impediment for J.L., it did not offer any service to address that problem. Instead, the case plan required that J.L. participate in drug testing and NA/AA meetings. However, the juvenile court did not

exercise jurisdiction over the minor pursuant to an allegation that J.L. had a substance abuse problem and the Agency report did not contain any evidence that J.L. had such a problem in April 2014 when reunification services were provided.

The only other service the Agency provided was visitation. “Visitation is an essential component of a reunification plan. [Citation.] To promote reunification, visitation must be as frequent as possible, consistent with the well-being of the child. [Citations.]” (*Tracy J. v. Superior Court, supra*, 202 Cal.App.4th at p. 1426.) In this case, the April 25 order gave the Agency discretion to facilitate unsupervised visits. There is no explanation why the Agency did not consider that option. Regardless, the circumstances called for active facilitation of visitation by the Agency which did not happen. During the crucial first month of J.L.’s shortened reunification period, the Agency did not assign a reunification worker to this case, but left the case in the hands of an adoption worker who was, by definition, aligned with the interests of the maternal grandmother. Then, when the case was transferred to the reunification worker, visits were *reduced* to once a week and responsibility for supervision was delegated to an outside service provider. Again the record contains no explanation for these decisions. Furthermore, there is no evidence the Agency even considered attempting to include J.L.’s other children so they could visit with their sister. The fact that J.L. was the sole caretaker of the minor’s two very young siblings was another circumstance about this case that the Agency did not take into account when formulating J.L.’s case plan.

The Agency’s failure to develop a case plan that addressed the circumstances of this case is strong evidence that it did not make a good faith effort to facilitate reunification between J.L. and the minor. That conclusion is reinforced by the fact that the reunification worker that was charged with providing services to J.L. had virtually no contact with him. She assumed that the adoption worker had already adequately explained the purpose of a case plan and J.L.’s obligations under his plan. But, J.L.’s testimony that the adoption worker deferred the matter until Morineau took over is undisputed. Furthermore, contrary to Morineau’s testimony regarding her assumptions about this case, J.L. did not sign his case plan.

Shortly after Morineau took responsibility for providing services to J.L., she attempted to schedule an orientation at The Gathering Place before she went on vacation. But she never explained why that referral was necessary or appropriate, especially in light of the shortened reunification period. Furthermore, she admitted that she never observed J.L. and the minor together, or even met J.L. until the contested hearing and yet she stood ready to testify about the bond between the minor and the maternal grandmother. Under these circumstances, the record does not contain substantial evidence that Morineau made a good faith effort to facilitate visitation.

In this court, the Agency argues that its “limited contact” with J.L. was not due to a lack of effort on its part, but was caused by J.L. who had no telephone and could only provide the Agency with an email address and voicemail number for leaving messages. To support this argument, the Agency relies on J.L.’s alleged admission that he missed his orientation at the Gathering Place because he did not check his messages in time; the message was left on a Friday and he did not receive it until the following Monday, after the orientation was scheduled to occur. First, the fact that J.L. has no telephone is a circumstance the Agency was required to account for, not an excuse for failing to facilitate a meaningful visitation schedule. Second, the Agency’s resort to this incident as evidence of J.L.’s alleged lack of commitment to his case plan only reinforces our concerns that the Agency was never inclined to facilitate reunification between the minor, her father and her siblings.

“It has been stated, ‘[i]n almost all cases it will be true that more services could have been provided more frequently and that the services provided were imperfect. The standard is not whether the services . . . were the best that might be provided in an ideal world, but whether the services were reasonable under the circumstances.’ [Citation.]” (*Robin V. v. Superior Court* (1995) 33 Cal.App.4th 1158, 1166-1167.) Here, by finding that J.L.’s services were unreasonable, “we do not suggest the [Agency] had to take him by the hand or lead him step-by-step along the way. [Citation.] But neither was it free to hang him out to dry.” (*Ibid.*) It appears from the evidence in this record that the Agency complied with the order to provide J.L. with services only in the most superficial sense,

without ever committing to a goal of potential reunification between J.L. and the minor. Indeed, the case plan the Agency attached to the 12-month status review had only one goal: adoption by a relative. It appears that the Agency's commitment to that goal precluded it from giving J.L. the services to which he was entitled.

The juvenile court may not refer a case for a section 366.26 hearing unless it finds by clear and convincing evidence that reasonable services have been provided. (*In re Mark L.* (2001) 94 Cal.App.4th 573, 585; § 366.21, subd. (g)(4).) “The courts have defined clear and convincing evidence as evidence which is so clear as to leave no substantial doubt and as sufficiently strong to command the unhesitating assent of every reasonable mind. [Citations.] It has been said that a preponderance calls for probability, while clear and convincing proof demands a high probability. [Citations.]” (*In re Terry D.* (1978) 83 Cal.App.3d 890, 899, italics omitted.) Here, there is no substantial evidence supporting the trial court's finding, required to be made by clear and convincing evidence, that reasonable services had been provided to enable J.L. to reunify with the minor.

#### **IV. DISPOSITION**

Let a writ issue directing the juvenile court to (1) vacate the August 26, 2014 order terminating reunification services to J.L. and setting a section 366.26 hearing; and (2) enter a new order providing J.L. with six months of appropriate reunification services. This decision is final immediately as to this court. (Cal. Rules of Court, rules 8.452(i), 8.490(b)(2).)

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RUVOLO, P. J.

We concur:

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REARDON, J.

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BOLANOS, J.\*

\* Judge of the San Francisco City and County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

A142870, *In re C.C.*