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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

LENORA M.,

Petitioner,

v.

THE SUPERIOR COURT OF CONTRA  
COSTA COUNTY,

Respondent;

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

Real Parties in Interest.

A143000

(Contra Costa County  
Super. Ct. No. J12-00147)

**I. INTRODUCTION**

This writ proceeding concerns the health and well-being of nine-year-old Jeremiah G. At age three or four, Jeremiah was a passenger in his mother's car when she was shot to death. Jeremiah himself was shot and wounded in that incident. Due to an illness, Jeremiah's father has been in a coma since 2007 and remains hospitalized.

Jeremiah and his five siblings were taken in by their maternal grandmother, Lenora M., after their mother's death. However, one of the older siblings (age 12) began sexually molesting Jeremiah and his twin brother in 2010 (when the twins were four or five). This brought the family into the dependency system when the molestation was finally reported in 2012.

The Contra Costa County Children and Family Services Bureau (Bureau) at first attempted to allow Jeremiah to stay with his grandmother, but when another of Jeremiah's brothers (age 16) engaged in inappropriate sexual behavior in front of him, Jeremiah was removed from the home. After a year of reunification services, the court ordered services terminated and set a hearing under Welfare and Institutions Code<sup>1</sup> section 366.26 for January 8, 2015. This writ petition under California Rules of Court,<sup>2</sup> rule 8.452, was filed by the grandmother to attempt to prevent her loss of Jeremiah.

We conclude that Jeremiah has developed mental health issues requiring intensive therapy and a stable environment, which his grandmother, despite extensive services and substantial efforts on her part, cannot offer him. Therefore, we deny the writ.

## **II. BACKGROUND**

### **A. The Petition and Disposition**

Lenora M., was appointed the children's guardian in 2008, after their mother was killed. On January 23, 2012, six-year-old Jeremiah and his twin brother, J.G., disclosed to their grandmother that they had been sodomized by their 12-year-old brother, M.G. Lenora took all three boys to the police department and told the police she did not want M.G. back in her home.

The Bureau filed juvenile dependency petitions on behalf of Jeremiah and J.G., as well as their 9-year-old twin sisters, 12-year-old M.G., and 15-year-old brother A.G. The Bureau alleged that Jeremiah had been sexually abused under section 300, subdivisions (d) and (j).

Lenora first learned in 2010 that Jeremiah and J.G. had been molested by M.G., but did not report it to the police. Instead, she established a safety plan which included placing all three boys in separate bedrooms, with M.G. on a different floor from J.G. and Jeremiah. In addition, Lenora sought counseling for the children. Despite these efforts, the record suggests the sexual abuse was more than an isolated event. When Lenora

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<sup>1</sup> Statutory references are to the Welfare and Institutions Code.

<sup>2</sup> References to rules are to the California Rules of Court.

learned in 2012 that M.G. was again molesting the younger boys, she delivered M.G. into police custody.

M.G. reported that he learned how to perform sex acts by watching pornography videos late at night on his Wii video game system with his older brother, A.G. (age 15 at that time). There is some suggestion in the record that M.G. may have been suffering from psychiatric problems.

Lenora reported that the children initially began therapy in 2008. However, when the Bureau contacted Jeremiah and J.G.'s therapist, she reported that the boys were last seen in 2011. Their work in therapy centered around learning how to separate from their grandmother, social skills and fears, worries, loss of their parents, the shootings, impulse control, and building confidence. Lenora told the therapist the twin boys needed counseling to address their sexualized play caused by Internet exposure, but she did not tell her the twins had been molested by their older brother.

Lenora pled no contest to the allegations of the petition. The court sustained the following counts pursuant to section 300 with respect to Jeremiah: "(D-1) The six year old child [Jeremiah], has been sexually abused by his twelve year old brother [M.G.], a member of his household, on at least two occasions since 2010. [¶] (J-1) the child's brother sexually abused the child since 2010."

The Bureau's investigation revealed that Jeremiah's mother had been sexually molested by a cousin when she was nine or 10 years old. There had also been an allegation in 2008 that the mother molested M.G. when he was eight years old, but the mother disappeared before a resolution of the case. Lenora did not tell the twins' therapist about the family history of sexual abuse.

At the Bureau's request, M.G. was initially detained and eventually placed in an out-of-county residential treatment program. Jeremiah and his other siblings were allowed to remain in Lenora's home under a family maintenance plan. Lenora's case plan required her to complete parenting classes and participate in counseling to prevent sexual abuse.

## **B. Six-Month Family Maintenance Review Hearing**

At the six-month review hearing, the social worker reported that A.G. had been arrested for burglary. A.G.'s juvenile dependency was terminated. He was declared a ward of the court and was committed to a youth facility for nine months.

The social worker also reported that the family's therapists "generally believe that the family is making progress with one of the greatest obstacles being [the guardian's] discomfort with giving the children full unfettered permission to share family secrets. This theme has come up with various therapists in the family including [guardian's] therapist." Lenora's own therapist believed Lenora's level of denial was having a negative impact on her family's health. The twin boys' therapist was concerned that Lenora did not give the children permission to fully disclose family issues in therapy, which impeded the therapeutic process. Jeremiah's therapist advised that Jeremiah felt conflicted in therapy because he had been told not to "share family business."

In therapy, Jeremiah was quick to anger, impulsive and hyperactive. In August 2012, Jeremiah's therapist discontinued therapy due to an aggressive and violent outburst by Jeremiah in her office. The therapist recommended that he have a medical evaluation to help control his behavior. According to Jeremiah's court-appointed special advocate (CASA), who witnessed Jeremiah's outburst, Jeremiah kicked and attacked J.G., fighting him "viciously," swinging toys and other objects at him and scratching his face. Jeremiah also behaved threateningly toward the adults present. Jeremiah's tantrum lasted almost two hours and was not quelled entirely even after the police were called. Eventually, Lenora arrived and took him home.

At the six-month review, the court continued family maintenance services to Lenora and the children. In part because the Bureau was concerned about Lenora's physical discipline of the children, which included hitting them with a belt, Lenora was referred to a parenting class for difficult children. The Bureau also funded and installed a video camera in the upstairs hallway of the family home to assist Lenora in supervising the children.

### **C. Twelve-Month Permanency Hearing**

At the 12-month review in February 2013, the court was advised that Jeremiah had resumed therapy with a new therapist in September 2012, and they were still in a “relationship building” phase. Jeremiah’s therapist reported that the underlying issue of sexual abuse “ha[d] not been addressed” in Jeremiah’s therapy because his outburst with his earlier therapist had required a change in therapists, which had slowed his progress.

At this hearing, the court learned that M.G. had disclosed to the staff at his group home that he had also molested his younger twin sisters. The social worker concluded that issues of sexual molestation within the family had only just begun to be addressed.

The social worker also reported that Jeremiah was performing below grade level at school, had a difficult time focusing, and had experienced some behavioral problems. The Bureau offered Jeremiah referrals for tutoring, therapeutic behavior services, and a medical/psychiatric evaluation for Attention Deficit Hyperactivity Disorder (ADHD). The court continued family maintenance services to 18 months, setting a hearing in July 2013.

### **D. The Supplemental Petition and Disposition**

On the date of the scheduled 18-month hearing, the Bureau requested a continuance to investigate new allegations. The Bureau had recently learned that A.G., who had moved back into Lenora’s home in March 2013, had engaged in sexual misconduct while incarcerated. Lenora knew he had exposed himself to tutoring staff at the juvenile facility, but did not disclose it to the Bureau. Lenora “minimized” the risk posed by A.G. and inappropriately rationalized A.G.’s behavior: “[T]he tutor must have liked it, or been getting something out of the situation[,] since she did not stop it any sooner than she did.” Lenora’s failure to inform the Bureau of A.G.’s known sexual misconduct violated the safety plan for the children.

In July 2013, another family member showed Jeremiah and J.G. a video of a woman giving a man oral sex, and it also came to light that A.G. had recently taught Jeremiah and J.G. how to have sex with girls. Jeremiah was also allowed to witness other family members engaged in sexual intercourse.

The Bureau also learned in July 2013 that A.G. and other relatives smoked marijuana in the garage of the family home and that Lenora's adult daughter and her boyfriend had recently engaged in domestic violence in the family home. The boys reported to the social worker and their CASA that Lenora's daughter was chased by her boyfriend, who was yelling obscenities. The children were awakened and frightened by the commotion.

Family secrecy was still an issue, as the CASA reported in July 2013 that Jeremiah and his brother still fought over whether to reveal family secrets. Jeremiah yelled they were "not supposed to tell family secrets. Grandma said!" The social worker also reported that the twin girls had told their grandmother they were being molested by M.G., but Lenora accused them of lying. She told them not to tell anyone or they would be "take[n] away from [the] family." Jeremiah had also become upset with his CASA because she had talked to Lenora about marijuana being smoked in the home. While Jeremiah and the CASA were discussing this on the phone, the CASA could hear Jeremiah's sister yelling at him in the background for "telling the family secrets." The social worker reported that Lenora still could not acknowledge the significant effects of multigenerational sexual abuse. The report also pointed out that continued "secrecy about the past sexual molest issues may have resulted in additional sexual abuse of the children."

Moreover, Jeremiah was performing below grade level. His second grade teacher had recommended that he be held back a year to overcome some of his educational gaps. But Lenora failed to file his retention paperwork and Jeremiah was now struggling in the third grade. While living with Lenora, the children did not have a homework routine and did not know how to study. J.G. and Jeremiah did not know the months of the year, and Jeremiah was still learning the days of the week. In October 2013, in an addendum to the disposition report, the social worker told the court all of the children were "alarmingly behind academically" and recommended termination of Lenora's educational rights.

Jeremiah's therapist advised the social worker that Jeremiah "does not want to work on emotional things, he just wants to play." The therapist again commented on the

“culture of silence within the family system,” and noted that Jeremiah appeared to be “fascinated by violence.”

In light of these developments, in July 2013, Jeremiah’s attorney filed a request under section 388 that he be removed from Lenora’s home. The attorney concluded that the months of therapy had been “ineffective,” and there had been “no improvement in the aggression and violence of the children.” The attorney believed it was necessary for Lenora to get therapy, to allow the children to talk about the family in therapy, to gain an understanding of her role in the molestation, to understand the effects of sexual molestation on a child, and to demonstrate her ability to protect the children from future molestation. “The violence and chaotic atmosphere of the home needs to be addressed.”

Two days later, the Bureau filed a supplemental petition under section 387, alleging that: (1) Lenora continued to foster an atmosphere of secrecy by allowing the child’s sibling A.G., a known sexual predator, to move into the family home with the children without telling the Bureau he had engaged in sexually inappropriate behavior while in custody; (2) Jeremiah reported that A.G. showed him what to do to have sex; and (3) Jeremiah had observed A.G. and his girlfriend having sex, as well as his uncle and his girlfriend having sex. It was further alleged that Jeremiah had been exposed to marijuana use and domestic violence in the home.

The Bureau recommended removal of the two sets of twins from the home. The court detained them and ordered supervised visits with Lenora twice a month. Lenora later pled no contest to the amended counts alleging she continued to foster an atmosphere of secrecy and failed to protect Jeremiah from A.G.

At disposition, the court ordered out-of-home placement for Jeremiah, J.G., and the twin girls. The girls were placed together in the same foster home. J.G. and Jeremiah were placed in separate foster homes due to the dynamics of their relationship. The children “appeared to thrive on the structure and routine” that their foster homes provided.

The court further ordered a family reunification case plan that included individual counseling and parenting education for Lenora. The court found Lenora had regularly

and consistently visited Jeremiah and ordered continued supervised visits two times monthly, including therapeutic visits. Lenora's education rights were not terminated.

#### **E. Six-Month Family Reunification Review**

A.G.'s sexual misconduct and Lenora's lack of full disclosure again drew comment in the six-month family reunification review in April 2014. In March 2014, the social worker had asked Lenora about A.G.'s progress. Lenora indicated that A.G. had made some poor choices, but did not elaborate. The social worker learned from A.G.'s probation officer that A.G. had over the clothes sexualized contact with an 11-year-old girl. A.G. also admitted that during a home pass he called the 11-year-old girl and smoked synthetic marijuana. The social worker concluded that Lenora had failed to adequately supervise A.G. on the home pass, had minimized the risks posed by A.G., and was in denial about the significant effects of multigenerational sexual abuse.

Lenora had begun individual therapy with a new therapist in March 2014, and she participated in family therapy every other week. The Bureau recommended six more months of services so she could "better understand and reflect on" the sexual abuse within her family.

Jeremiah was also participating in therapy, working on improving self-regulation. In October 2013, Jeremiah was ordered to receive psychotropic medication for ADHD. In February 2014, his medications were changed because the earlier prescription had been "ineffective." The court observed at the six-month hearing that Jeremiah was the "one who has not progressed as much as the other three children . . . ."

The court continued services for another six months. Visitation with Lenora was ordered twice a month, with supervision optional. The court allowed sibling visits, but ordered no contact with A.G.

#### **F. Twelve-Month Permanency Hearing on Supplemental Petition**

At the contested 12-month permanency hearing in September 2014, the Bureau recommended termination of services, reciting that Lenora had received more than 30 months of services: 18 months of family maintenance and 12 months of family reunification services. Still, Lenora had only recently begun to articulate her role in

failing to protect the children from sexual abuse. Although she was beginning to develop an awareness of the impact of intergenerational sexual abuse, she had a history of exhibiting poor insight and judgment. This had been demonstrated recently, when she moved six houses down the street from her twin granddaughters' foster home, causing consternation in the foster family and discomfort for the girls.

In addition to reviewing the case history, the social worker's report advised the court that Jeremiah had been taken to a children's psychiatric unit under section 5150 for unsafe behavior on three occasions between May and July 2014. Each incident occurred at school. In the first incident, Jeremiah ran into traffic, declaring that he wanted to hurt himself because he did not like himself. He was held in a juvenile psychiatric facility for four days. Ten days later, he was "banging his head against the wall and making choking motions with his shirt" in class. He had a "meltdown that turned violent" and could not be contained, so he was again committed under section 5150 and held five days. In July, he was held a third time under section 5150 for using profanity, throwing books and turning over chairs in the classroom, this time staying in the hospital for seven days. After his three temporary commitments he was placed on longer-acting psychotropic medication for ADHD and impulse control disorder.

Jeremiah's treatment team determined he could no longer safely be maintained in a foster home, and the foster home agency also requested an alternative placement. The treatment team believed Jeremiah needed "more supervision and intensive individual therapy."

Jeremiah was moved to St. Vincent's School for Boys in San Rafael (St. Vincent's) at the end of July 2014 and entered the onsite nonpublic school a month later.<sup>3</sup> Jeremiah's treatment included individual therapy with a licensed therapist, peer group

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<sup>3</sup> Jeremiah started school a week later than the other students, reportedly because Lenora failed to promptly return the necessary forms. By the time of the September 2014 hearing, the CASA reported that Jeremiah's reading was "still below grade level" and he was "far behind in third grade math." The CASA volunteered to take on responsibility for exercising educational rights on Jeremiah's behalf.

counseling, and work with a Therapeutic Behavioral Specialist (TBS). The CASA reported that St. Vincent's staff anticipated Jeremiah would need at least six months of treatment before foster care could again be considered. The plan was to prepare Jeremiah to be returned to a foster family with the expectation that he would later be adopted. At the 12-month review, the court expressed the opinion that St. Vincent's was a "terrific placement" for Jeremiah "with lots of services to offer to him."

Jeremiah continued to express the wish to reunite with his grandmother, but the CASA reported he was settling in well at St. Vincent's, enjoying his time outdoors, and even learning to ride a horse. The staff at St. Vincent's considered Jeremiah "one of the good kids" and expressed appreciation of his athletic ability and his ability to "stick up for himself with the tougher boys."

The social worker had "considerable concerns" about whether Lenora could consistently exercise good judgment to protect her grandchildren from "emotional, sexual, educational or physical" harm. She further opined that Lenora could not provide the children with enough safety, security, structure or educational support. Jeremiah, especially, required intensive therapeutic services and a high level of care.

The court found that return of Jeremiah to Lenora's home "would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child." It also found by clear and convincing evidence that the Bureau had provided or offered reasonable services to Lenora designed to aid her in "overcoming the problems which led to the initial removal and continued custody" of Jeremiah. The court found, however, that Lenora had made only "partial" progress toward alleviating or mitigating the underlying problems and declined to offer Lenora further services. The court transferred educational rights to Jeremiah's CASA, who had formed a strong bond with the child and provided valuable feedback to the court. The court found no substantial probability that Jeremiah would be reunified with Lenora if family reunification services were extended six more months.

The court set Jeremiah and his siblings' cases for a section 366.26 selection and implementation hearing on January 8, 2015. The twin girls were doing extremely well in

school, were ready to cut ties with their grandmother, and were looking forward to their adoption. J.G. and Jeremiah were still more attached to their grandmother, but J.G. felt he would be safe if left in his foster family's care. The foster families of J.G. and the girls were expected to adopt them.

Lenora filed the instant petition and requested a stay of the January 8, 2015 hearing with respect to Jeremiah only. She has not challenged the findings or orders in the case of his siblings.

### **III. DISCUSSION**

Lenora's sole legal claim is that there was insufficient evidence to support the court's finding of no reasonable probability that Jeremiah could be returned to her home within the next six months.

She points out that she substantially complied with her case plan by completing two parenting classes and participating in individual counseling and family therapy, including individual therapy for nonprotective parents whose children have been sexually abused. She argues that she turned M.G. in to the police when the molestation came to light in 2012 and ousted A.G. from her home in order to protect the younger children. She also argues that, while the children were living with her, she made a great effort to make and keep medical and therapy appointments for them, to attend school meetings, and to support Jeremiah's participation in sports. She says she had a video camera installed upstairs in her home to help her monitor the children.<sup>4</sup> She also visited Jeremiah frequently when he was placed out of her home. She emphasizes that Jeremiah wants to come back to live with her.

Significantly, however, her petition addresses only in the most cursory fashion Jeremiah's mental health issues that surfaced during the months just preceding the September 2014 hearing. Her petition fails to acknowledge Jeremiah's self-destructive and violent behavior that led to the three commitments. When she does mention his

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<sup>4</sup> The record suggests the video camera was installed by the Bureau at the Bureau's expense.

“5150 episodes” she refers to them as “pronounced depressions arising from being out of her home.” No evidence was presented that Jeremiah’s section 5150 commitments were for “depression” or were causally connected to his out-of-home placement.

At the 12-month permanency hearing, more is required than satisfactory participation in or even completion of the case plan. When services have already been provided to the family, further reunification services may be continued after 12 months only if the court finds “there is a substantial probability that the child will be returned to the physical custody of [the] legal guardian and safely maintained in the home within the extended period of time . . . . [I]n order to find a substantial probability that the child will be returned to the physical custody of his . . . legal guardian . . . , the court shall be required to find all of the following: [¶] (A) That the . . . legal guardian has consistently and regularly contacted and visited with the child. [¶] (B) That the . . . legal guardian has made significant progress in resolving problems that led to the child’s removal from the home. [¶] (C) The . . . legal guardian has demonstrated the capacity and ability both to complete the objectives of his or her treatment plan and to provide for the child’s safety, protection, physical and emotional well-being, and special needs.” (§ 366.21, subd. (g)(1).) A similar provision appears in rule 5.715(b)(4)(A)(i)(a)-(c).

We review the court’s findings and orders for substantial evidence. (*James B. v. Superior Court* (1995) 35 Cal.App.4th 1014, 1020; *In re Shaundra L.* (1995) 33 Cal.App.4th 303, 316.) We do not reweigh the evidence, evaluate the credibility of witnesses, or resolve evidentiary conflicts. (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 576.) Rather, our role “begins and ends with a determination as to whether or not there is any substantial evidence, whether or not contradicted, which will support the conclusion” of the juvenile court. (*In re Katrina C.* (1988) 201 Cal.App.3d 540, 547.) We must resolve all conflicts in favor of the court’s order, and where there is more than one reasonable inference from the evidence, we are without power to substitute ours for that of the juvenile court. (*Ibid.*)

We conclude the court’s finding of no reasonable probability of reunification within six months was supported by substantial evidence. It was clear to all participants

in the dependency process that Lenora loves Jeremiah and they have a strong family bond. She has also made commendable efforts to keep him safe and to comply with the court's requirements. Unfortunately, there is also substantial evidence that Lenora is simply unable to offer Jeremiah the physical and emotional protection, structure and intensive therapy he needs.

We are willing to assume for purposes of argument that Lenora complied with subparagraph<sup>5</sup> (A) of section 366.21 subdivision (g)(1), which required her to have consistently and regularly visited Jeremiah. During the six-month period preceding the 12-month review, Lenora and Jeremiah attended family therapy together and had supervised visits twice a month. Lenora's visits with Jeremiah were disrupted during his hospitalizations. It appears that Lenora was able to visit Jeremiah once again, or at least made efforts to stay in contact with him, after he was moved to St. Vincent's.

Lenora did not, however, fulfill subparagraph (B), which required demonstration of "significant progress" in resolving the problems that led to Jeremiah's removal. The court found Lenora had made only "partial" progress. Lenora's therapist reported that she had only just begun to take responsibility for her failure to protect her grandchildren from sexual abuse and to develop an awareness of the impact of intergenerational sexual abuse. The social worker agreed that Lenora was still "early in the process" of understanding how to be protective of Jeremiah and to manage children with his symptoms. Throughout the dependency, Lenora remained largely unable to acknowledge the seriousness of the intrafamilial sexual abuse. Her insistence upon family secrecy only exacerbated the problem. Despite 30 months of family maintenance and reunification services, she had made limited progress in addressing the underlying issues. The court's finding of only partial progress was supported by substantial evidence, and that finding alone required termination of services and setting of a hearing under section 366.26. (§§ 366.21, subd. (g)(1), 366.26.)

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<sup>5</sup> References to subparagraphs without further statutory designation are to the subparagraphs of section 366.21, subdivision (g)(1).

In addition, subparagraph (C) required a demonstrated “capacity and ability” on Lenora’s part both to complete the objectives of her treatment plan and to provide for Jeremiah’s “safety, protection, physical and emotional well-being, and special needs.” Jeremiah required a stable home and Lenora had not demonstrated an ability to provide one for him. He needed protection from his older siblings and other negative influences that had plagued Lenora’s home in the past. He needed educational reinforcement, frequent visits with a licensed therapist, peer group sessions, and a TBS.

It was not at all clear that Lenora could offer Jeremiah the needed protection, services and stability in the near future. Aside from the chaotic atmosphere in her home in the past, at the time of the 12-month hearing, Lenora’s living situation was in flux and she was living temporarily with two adult sons. Since she had moved down the street from her granddaughters, the Bureau was encouraging her to find alternative housing. Whether she could find a suitable living environment for Jeremiah within six months was an open question. Given Jeremiah’s recent mental health issues and his treatment team’s assessment of his needs, it appears Lenora remained unable to provide either the structure or access to the level of service that Jeremiah needs.

With respect to academic support, in April 2014 the CASA noted that Lenora rated Jeremiah as functioning better than his teachers rated him in a wide range of areas. Perhaps because of her inability to recognize Jeremiah’s academic weaknesses, his CASA noted in his 12-month review report that Lenora was “not able to advocate adequately for Jeremiah in the school setting.”

Given these deficits, Lenora has not established that she met all three requirements under section 366.21, subdivision (g)(1). Jeremiah’s recent psychological problems, his traumatic experiences in his grandmother’s care, Lenora’s resistance to meaningfully and timely addressing those issues, Jeremiah’s current need for intensive therapy, and Lenora’s apparent inability to help Jeremiah with his difficulties in school, all contribute to our decision that the court had ample evidence to conclude that further provision of services would not lead to the hoped-for reunification within the next six months.

#### **IV. DISPOSITION**

The petition for extraordinary writ is denied. Our decision is final as to this court immediately. (Rule 8.490(b)(2)(A).)

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Bolanos, J.\*

We concur:

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Ruvolo, P.J.

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Reardon, 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.