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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

JOSEPH G.,

Petitioner,

v.

THE SUPERIOR COURT OF  
LOS ANGELES COUNTY,

Respondent;

LOS ANGELES COUNTY DEPARTMENT  
OF CHILDREN AND FAMILY SERVICES,

Real Party in Interest.

B245167

(Los Angeles County  
Super. Ct. No. CK88189)

ORIGINAL PROCEEDING; application for a writ of mandate. Sherri Sobel, Referee. Petition denied.

Law Office of Marlene Furth, Danielle Butler Vappie, and Carolina Villamil for Petitioner.

No appearance for Respondent.

John F. Krattli, County Counsel, James M. Owens, Assistant County Counsel, and Tracey F. Dodds, Principal Deputy County Counsel, for Real Party in Interest.

Joseph G. (Father) filed a petition for extraordinary writ, challenging the trial court's order terminating family reunification services and setting a permanency review hearing pursuant to Welfare and Institutions Code section 366.26.<sup>1</sup> We deny the petition.

## **FACTUAL AND PROCEDURAL HISTORY**

On June 8, 2011, the Los Angeles County Department of Children and Family Services (DCFS) filed a petition on behalf of Anthony R. (born July 2002), alleging that Anthony's mother, Angelica R. (Mother), placed the child at risk of physical harm by allowing marijuana and a loaded firearm to be in the home within access of Anthony and by being under the influence of marijuana while caring for him. (§ 300, subd. (b).)<sup>2</sup>

When interviewed by DCFS in July 2011, Father stated that he was incarcerated for driving a vehicle without the owner's consent and expected to be released in eight months. He said that he had lived with Mother and Anthony since the child was approximately a year old. Father told the social worker that he was willing to do anything to be with his son and to do what he needed for him.<sup>3</sup>

In August 2011, the court sustained an amended petition. Father was granted reunification services, including monitored visits upon his release from prison. He was allowed to write letters to Anthony and to have one telephone call per week at county expense. If Father had a telephone card, he was allowed to have unmonitored calls.

By the time of the August 2012 report for the 12-month review hearing, Anthony was living with a maternal aunt. He had been in a group home prior to his placement

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

<sup>2</sup> The petition also included allegations that Father was incarcerated and failed to provide Anthony with the necessities of life. (§ 300, subs. (b) & (g).) Those allegations were later dismissed.

<sup>3</sup> Initially, there was a question as to the identity of Anthony's biological father. The court eventually declared Father to be Anthony's presumed father.

with the aunt in March 2012. Anthony was in therapy, as he had become disruptive and uncooperative at home and school.

Mother visited Anthony rarely and told the children's social worker (CSW) that she wanted to relinquish parental rights so that the maternal aunt could adopt Anthony. The aunt expressed a willingness to adopt the child and provide a stable and suitable home for him. Although Mother was told on numerous occasions that the CSW wanted to have contact with her, Mother stated that she did not care and she would not communicate with the CSW.<sup>4</sup>

Father was being housed at Pelican Bay State Prison.<sup>5</sup> The CSW learned that Father did not have access to a phone to make calls to relatives. However, Father was able to exchange letters with Anthony. Father wrote to the CSW that he was due to be released on November 25, 2012. He wanted to reunify with Anthony and expected to have a stable home upon his release. Father included a certificate of completion for a 12-step program and an anger management, critical thinking program.

At the contested October 2, 2012 12-month review hearing, Father testified via telephone from prison. He stated that he expected to be released from custody on November 25, 2012. His brother, his brother's wife, and their two daughters shared a house in Norwalk and Father and Anthony were welcome to live with them upon Father's release. The brother and his wife were aware of Anthony's behavioral issues. Father expected no problems because Anthony got along well with the brother and the brother knew how to handle Anthony. Father said he would immediately seek work. In addition, he had just received a settlement from a personal injury case. Father had been writing to Anthony constantly during the past year and had sent him money in July 2012. While in prison, he completed a narcotics anonymous/alcoholics anonymous program and a class in basic life skills.

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<sup>4</sup> As Mother is not a party to this writ proceeding, we do not include all of the history with respect to her compliance with the reunification plan.

<sup>5</sup> Notwithstanding Father's statement prior to the detention hearing that he expected to be released in eight months, he was in custody during the pendency of this matter.

Father's counsel asked the court to extend reunification services to the 18-month review date. She urged that Father was getting out in November and there was a likelihood Anthony could be returned to Father by that date. She pointed out that Father had completed programs even though he had not been ordered to do so by the court. She noted that he had a place to live with Anthony and had money saved. Father was aware his son had emotional and behavioral problems. Anthony's counsel concurred that services should be extended for Father, especially since Mother was having no contact with the child.

The court observed that Father would have approximately two weeks upon his release from prison to demonstrate he can care for Anthony and start a relationship with him by the 18-month review date, which was in early December. The court concluded it could not make the findings necessary to extend reunification services. It stated that if Father was able to follow through on his plan to care for Anthony, he could file a section 388 petition. The court set a section 366.26 permanency review hearing for January 29, 2013.

Father filed a timely writ petition and we ordered the permanency review hearing stayed pending our decision on the petition.

## **DISCUSSION**

Father contends the trial court's conclusion that there was no substantial probability Anthony could be returned by the 18-month review date is not supported by the evidence.<sup>6</sup> Under the rules governing the extension of reunification services, the court's order was appropriate.

At the 12-month review hearing, the court may extend reunification services to the 18-month review date only if it finds there is a substantial probability that the child will be returned to the physical custody of his or her parent and safely maintained in the home

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<sup>6</sup> Anthony R.'s counsel filed a statement in support of Father's petition.

within the extended period of time. (§ 366.21, subd. (g)(1).) To meet the substantial probability threshold, the court must find all of the following: (1) the parent and child have had consistent and regular contact; (2) the parent has made significant progress in resolving the problems that led to the child's removal from the home; and (3) the parent has demonstrated the capacity and ability to complete the objectives of the 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), (B) & (C).)

Father argues that he had regular contact with Anthony through the letters he sent from prison. As to whether he had made significant progress in resolving the problems that led to the court declaring Anthony a dependent, Father notes that he is a nonoffending parent. As to the third requirement, he asserts that he had "demonstrated *the capacity* to complete the objectives of the case plan by the 18-month date." He claims it was unfair for the court to put the onus on him to file a section 388 petition and urges that the court should have extended reunification services to the last date, which he claims was December 8, 2012, and had DCFS prepare a report detailing his progress in meeting the statutory guidelines. We are not persuaded.

Father fails to come to grips with the requirement of section 366.21, subdivision (g)(1). In order to extend services, the court must find there is a substantial probability that the child will be returned to the physical custody of the parent "*and safely maintained in the home within the extended period of time.*" (§ 366.21, subd. (g)(1), italics added.) To meet the substantial probability test, the parent must have demonstrated the capacity *and ability* to provide for the child's safety, physical and emotional well-being, and special needs. (§ 366.21, subd. (g)(1)(C).) Anthony was taken from Mother's custody on June 5, 2011. The 18-month date was December 5, 2012. Father was to be released on November 25, 10 days before the 18-month date. At the time of the 12-month review hearing, he had not demonstrated an ability to provide for Anthony. At best, he had plans for housing and hopes to find employment. Whether Father could provide for Anthony's safety and well-being and manage the child's behavioral problems remained an open question. The court's finding there was no

substantial probability that Anthony could be safely maintained in Father's home before the 18-month review date of December 5 is amply supported by the evidence.

Father also argues that because he was soon to be released from prison, he was entitled to an extension of services pursuant to section 366.22, subdivision (b) and section 366.25. He is mistaken. Those sections apply to proceedings at the permanency review stage, not at the 12-month status review hearing.

### **DISPOSITION**

The petition is denied. The stay of the permanency review hearing is lifted.

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SUZUKAWA, J.

We concur:

WILLHITE, Acting P. J.

MANELLA, J.