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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

ANDREW J. et al.,

Petitioners,

v.

THE SUPERIOR COURT OF LOS  
ANGELES COUNTY,

Respondent;

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN AND  
FAMILY SERVICES,

Real Party in Interest.

No. B247251

(Los Angeles County  
Super. Ct. No. CK56270)

ORIGINAL PROCEEDING. Petition for extraordinary writ. (Cal. Rules of Court, rule 8.452.) Marilyn Martinez, Juvenile Court Commissioner. Petition denied.

Children's Law Center of Los Angeles, Patricia G. Bell and Lucrecia Villafan for Minors.

Law Office of Marlene Furth and Danielle Butler Vappie for Petitioner S. S., Sr.

No appearance for Respondent.

John F. Krattli, County Counsel, James M. Owens, Assistant County Counsel, and Stephen D. Watson, Deputy County Counsel, for Real Party in Interest.

Andrew J. (age 6), Mia S. (age 5), and S. S., Jr. (age 3) have filed a petition for extraordinary writ (Cal. Rules of Court, rule 8.452), challenging orders issued by the juvenile court terminating family reunification services with S. S. (father), and setting a hearing pursuant to Welfare and Institutions Code section 366.26 to consider the termination of parental rights.<sup>1</sup> The minors contend substantial evidence does not support the juvenile court's finding that returning them to father's custody would create a substantial risk of detriment to their well-being. Father has joined in the petition filed by the minors.

We have reviewed the record in the light most favorable to the juvenile court's finding, and conclude that substantial evidence supports the finding. Accordingly, we deny the minors' petition.

## **BACKGROUND**

### **Prior History with DCFS**

Violet R. (mother) has a lengthy history with the Los Angeles County Department of Children and Family Services (DCFS). Mother appears to have given birth to nine children in total, including the minors.

DCFS removed mother's first five children from her care in or around 2003 based on sustained allegations of methamphetamine abuse by mother and incidents of violent confrontations between mother and the five children's father. After a period of failed reunification, the juvenile court terminated mother's parental rights and permanently placed all five children in the home of a relative. In 2006, DCFS removed mother's sixth child based on sustained allegations of the same nature involving illicit drug abuse and domestic violence. The juvenile court terminated mother's parental rights and the sixth child was adopted.

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<sup>1</sup> We will refer to the petitioners collectively as "the minors" or "the children" and individually by their first names. All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

Mother gave birth to Andrew in 2007 and Mia in 2008. In 2008, the juvenile court removed Andrew and Mia from mother's care based on sustained allegations that mother's chronic history of methamphetamine abuse, refusal to participate in court-ordered drug counseling, and recent positive toxicology screen for methamphetamines placed them in substantial danger of physical or emotional harm. In 2009, the juvenile court placed Andrew and Mia in father's custody, specifically ordered "mother not to reside in the home" shared by father, Andrew, and Mia, and terminated jurisdiction over the matter.

Sometime after the juvenile court terminated jurisdiction over the matter, father reunited with mother and permitted her to move back into the home that he shared with Andrew and Mia. S. was born in 2010.

### **Current DCFS Proceedings**

#### ***Detention and Jurisdiction***

In early June 2011, paramedics found mother, who was pregnant, in an alley bleeding. They rushed her to the emergency room at the University of California, Los Angeles (UCLA) hospital.<sup>2</sup> Because mother appeared disheveled and was acting erratically, hospital staff administered a toxicology screen. She tested positive for methamphetamines and opiates. Mother admitted that she had "picked up methamphetamines and some pills from the street" to "stop her pain." While at the hospital, Andrew told university police officers that father had hit mother with a table.<sup>3</sup> DCFS detained the minors.

DCFS subsequently interviewed mother and father. Mother maintained that the positive toxicology screen was a "lie" and that the hospital staff was rude, inattentive, and indifferent to her pain. Mother denied any physical violence between her and father, but

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<sup>2</sup> According to the record, mother "passed the fetus in the ER."

<sup>3</sup> The record does not disclose whether Andrew was at the hospital because he was with mother when the paramedics arrived, or because he was later brought to the hospital by some other party.

admitted that a week before her hospitalization, deputy sheriffs came to their home and asked mother “to take a walk and cool down.”

Father maintained during his interview with DCFS that mother was “doing better and [had] not used in a while.” Father stated that, despite the 2009 court order that prohibited mother from residing with Andrew and Mia, he allowed mother to live at home with the minors. According to father, however, he did not allow mother to care for the minors alone while he was at work. Father’s statement was later contradicted by Andrew, who reported to the case worker that: “When my dad would work[,] my mom would take care of us.”

At the detention hearing, the juvenile court found a prima facie case existed to detain the minors as children described by section 300, subdivisions (a) and (b).<sup>4</sup> The juvenile court ordered family reunification services for mother and father, monitored visits for mother and father twice a week with a DCFS-approved monitor, and counseling and random drug testing for mother.

In its July 2011 jurisdiction/disposition report, DCFS reported that father had no criminal history, had a full-time job at a bicycle shop in Pasadena, and had expressed a strong desire to have the minors returned to his care. Father and mother came together during their visits with the minors, and both behaved appropriately during these visits.

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<sup>4</sup> Those sections provide: “Any child who comes within any of the following descriptions is within the jurisdiction of the juvenile court which may adjudge that person to be a dependent child of the court: [¶] (a) The child has suffered, or there is a substantial risk that the child will suffer, serious physical harm inflicted nonaccidentally upon the child by the child’s parent or guardian. . . . [¶] (b) The child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child, or the willful or negligent failure of the child’s parent or guardian to adequately supervise or protect the child from the conduct of the custodian with whom the child has been left, or by the willful or negligent failure of the parent or guardian to provide the child with adequate food, clothing, shelter, or medical treatment, or by the inability of the parent or guardian to provide regular care for the child due to the parent’s or guardian’s mental illness, developmental disability, or substance abuse.” (§ 300, subs. (a) & (b).)

The report also indicated that father appeared unwilling to recognize mother's continuing problems with drug abuse. Despite his knowledge of the reason mother was brought to the UCLA emergency room and her recent positive toxicology screen for methamphetamines and opiates, father maintained that mother was "doing well" and that "[t]here was no reason for the children to have been taken away." DCFS recommended in its report that reunification services be terminated for mother (given her chronic drug abuse and prior DCFS history), and that father be ordered to attend parenting education, individual counseling, domestic violence counseling, and Al-Anon meetings.

During this period, the juvenile court ordered DCFS to assess the feasibility of placing the minors with their maternal aunt during the remainder of the dependency proceeding. In September 2011, maternal aunt's home had received "ASFA approval" and DCFS placed the minors in her home. DCFS reported that "the children [were] doing well" in maternal aunt's home as of mid-October.

On October 25, 2011, the juvenile court declared the minors dependents pursuant to section 300 after finding, by clear and convincing evidence, that the minors were in substantial danger of suffering physical and/or emotional harm. The juvenile court ordered that mother was to receive no further reunification services pursuant to section 361.5, subdivisions (b)(10) and (11).<sup>5</sup> As to father, the juvenile court ordered him to attend individual counseling, parenting education, and Al-Anon meetings. The court

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<sup>5</sup> Section 361.5 provides: "(b) Reunification services need not be provided to a parent or guardian described in this subdivision when the court finds, by clear and convincing evidence, any of the following . . . [¶] . . . [¶] (10) That the court ordered termination of reunification services for any siblings or half siblings of the child because the parent or guardian failed to reunify with the sibling or half sibling after the sibling or half sibling had been removed from that parent or guardian . . . and that, according to the findings of the court, this parent or guardian has not subsequently made a reasonable effort to treat the problems that led to removal of the sibling or half sibling of that child from that parent or guardian. [¶] (11) That the parental rights of a parent over any sibling or half sibling of the child had been permanently severed . . . and that, according to the findings of the court, this parent has not subsequently made a reasonable effort to treat the problems that led to removal of the sibling or half sibling of that child from the parent."

permitted both “parents [to] have monitored visits with DCFS discretion to liberalize.”

### ***Six-month Review Period and Hearing***

For the first couple of months after the October 25, 2011 jurisdictional hearing, father did not have “any contact” with the social worker assigned to the case. The record contains no indication that he attended any individual counseling, parenting education, or Al-Anon meetings as ordered by the juvenile court. Additionally, father’s visits with the minors were irregular and infrequent, and would only occur when mother was able to visit at the same time. Father explained to the case worker that his visits were infrequent because he was working long hours to pay the monthly rent for maternal aunt’s home and also the monthly rent at the motel where father and mother resided.<sup>6</sup>

In January 2012, the case worker met with father and informed him that DCFS would not recommend further reunification services unless father began participating in the court-ordered services and meeting with DCFS on a regular basis. Additionally, the case worker informed father that remaining in a relationship with mother would likely jeopardize his chances of reunifying with the minors given mother’s long history of substance abuse and inability to care for her other children. Father agreed that mother was not making any positive changes in her life and was holding him back from reaching his own goals. Father said he tried to end his relationship with mother during this review period, but ultimately reunited with her after just one week apart.

Father began attending Al-Anon meetings after his meeting with the social worker. He attended three sessions in January, three sessions in February, and two sessions in March. Father also began attending weekly sessions of parent education through Project Fatherhood in February 2012. Father increased the frequency of his visits with the minors. The visitation logs kept by maternal aunt showed that in February, father visited

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<sup>6</sup> After DCFS placed the minors in maternal aunt’s home, maternal aunt took a leave of absence from her job to care for them. DCFS explained that because of father’s income level, the minors were not eligible for foster care funding or subsidized child care services. As a result, maternal aunt was eligible only for non-needy caregiver funds, which are significantly lower than foster care funding.

with the minors on 11 occasions, eight of which were with mother. In March, father visited with the minors on nine occasions, four of which were with mother. Maternal aunt reported that some of the visits lasted up to four hours if they went to a local park. The quality of the visits were good, and the children were “always happy” to see father.

During this review period, Andrew began therapy, specifically Trauma-Focused Cognitive Behavioral Therapy, on a weekly basis. His therapist noted that Andrew displayed “symptoms of hyperactivity, short attention span, impulsiv[ity], unsafe behaviors and difficulty following directives,” and was “defiant” and “aggressive.”

As to mother, DCFS reported that she had been expelled from her substance abuse program due to lack of attendance and “poor attitude.” Additionally, mother was arrested during this time period for battery after engaging in a physical altercation with someone who lived in maternal aunt’s apartment complex. Mia witnessed the physical altercation. As a result of mother’s actions, the building manager banned mother from the apartment complex.

At the six-month review hearing, which took place on April 24, 2012, the juvenile court ordered DFCS to continue providing reunification services to father, with all prior orders in full force and effect. The court scheduled the 12-month review hearing for August 7, 2012.

### ***Twelve-month Review Period and Hearing***

During the period between the six-month and 12-month review hearings, father continued to pay the monthly rent for the home in which maternal aunt and the minors lived, and brought diapers, food, and other needed items for the minors.

Andrew continued with his therapy, and Mia commenced therapy. After several sessions, Andrew’s therapist referred him for a psychiatric evaluation, given his “hyperactivity, impulsivity, aggressiveness, difficulty focusing, and low frustration tolerance.” Mia showed “small improvements” in her behavior after some therapy, but nevertheless continued to show “defiant and aggressive behaviors,” including breaking things on a daily basis. The case worker observed that S., who was now two years old,

was beginning to imitate the negative behaviors exhibited by his siblings. A therapy referral for S. was initiated.

Father continued to participate in individual counseling and parenting education. Father's individual counselor noted that during these sessions, father worked "on issues relating to decision making and taking steps towards reunification with his children." The facilitator at father's parenting education course stated that father participated well and was actively involved in group discussions. Father continued to attend Al-Anon meetings on a regular basis but the case worker could not ascertain what, if anything, father was learning from these meetings given that father did not speak to anyone at the meetings.

Father continued living with mother at a motel during the initial part of this review period. In May 2012, DCFS held a team decision meeting (TDM) with father and maternal aunt. During the TDM, DCFS explained that father's visits would continue to be monitored until he demonstrated that he had separated from mother and could be trusted to keep mother away during his visits if they were unmonitored. DCFS explained that if it gave father an opportunity to have an unmonitored visit with the minors, the "safety plan" required that mother not be present during the visit.

Shortly after the TDM, father moved out of the motel room that he had been sharing with mother. He began sleeping on a mattress in the back room of his place of employment. Given father's decision to no longer reside with mother, DCFS gave father the opportunity to have a four-hour unmonitored visit with the minors in early June. Although father understood from the recent TDM that he was to keep mother away from the minors during this unmonitored visit, he nonetheless permitted mother to spend time with him and the minors at the park and afterward, at a fast food restaurant, during the unmonitored visit. DCFS and maternal aunt only learned of mother's presence during this visit because one of the minors reported that "their 'mommy was at the park and McDonald's.'" When confronted with this information, father maintained that he did not invite mother along and that she happened to run into them at the park. He did not ask her to leave because he did not want to "upset the children."

Despite moving out of the motel, father remained intertwined with mother and her ongoing struggles. Father stated that he felt “responsible” for mother. He continued to pay the rent on the motel room so that mother could stay there and allowed her to use his cellular phone. Father also stayed with mother sometimes at the motel and regularly brought mother along during his nighttime monitored visits with the minors. When the social worker suggested that father distance himself from mother by ceasing to pay her motel rent, father responded that mother had no income and that he wanted to help her until she found a job. The social worker provided the following assessment: “[I]t does not appear as though the father is truly committed or ready to parent the children on his own, should he regain custody. It is more likely that he will allow the mother to return to the home, and she continues to be a risk to the safety of the children.”

Also during this period, mother continued to behave “aggressively and erratically.” Maternal aunt reported that mother would become “belligerent and loud” if maternal aunt did not permit her to see the minors, even when mother’s visits were unannounced. Mother was incarcerated twice during this review period, once for the battery that Mia witnessed and again for another incident.<sup>7</sup>

At the 12-month review hearing, which took place on August 7, 2012, with father and mother in attendance, counsel for father stated on the record that father was no longer residing with mother, and that he was currently living at his workplace. Father, however, still kept his belongings with mother. The juvenile court noted that Andrew and Mia continued to “have significant issues” and expressed concern that if father were to have unmonitored visits with the minors, and if mother were to appear at these visits, “it could be quite a setback for the children.” The juvenile court stated that it was “not opposed” to father and mother being in a relationship, but emphasized that in order to reunify with the minors, father would have to persuade the court that he could “actually . . . protect the children from their mother.”

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<sup>7</sup> The record does not specify the nature of the second incident.

The juvenile court ordered DFCS to continue providing reunification services to father. As to visitation, the juvenile court permitted father to have unmonitored daytime visits with the minors in a public setting for one to two hours. DCFS would have discretion to increase that time duration. The juvenile court ordered that “if mother is at or near the visit, the visit shall revert to [being] monitored.” The court scheduled the 18-month review hearing for December 10, 2012.

### ***Eighteen-month Review Period and Hearing***

During the period between the 12-month and 18-month review hearings, S., commenced weekly family therapy. In her report, the therapist noted that after several sessions, S. began to show improvement in his speech development and willingness to engage with the therapist. S.’s progress appeared directly connected to his attachment to maternal aunt and her ability to provide a stable and consistent environment.

In contrast, the therapist observed that all three children appeared “dysregulated” after a visit from mother. S., in particular, “would often be irritable, difficult to soothe and less engaged in play, in particular mutual play” after seeing mother. Maternal aunt reported to the therapist that mother often “show[ed] up during the visits with S.’s father despite the recommendation that these visits be separate.” In contrast, during the sessions when S. had not recently seen mother, he “would appear calm, happy and engaged in play both by himself and with others in the [therapist’s] office.” Additionally, the therapist voiced her concerns about the impact of father’s visits on the minors. First, she characterized them as inconsistent, and explained that “[i]nconsistency for any children, especially for children who have experienced trauma, is detrimental to their emotional growth.” Second, maternal aunt reported to the therapist that father appeared to pay more attention to S. than Andrew. This inequity, according to therapist, increased the conflict between the two boys.

After undergoing a psychiatric evaluation, which included a series of blood tests, Andrew was diagnosed with disruptive behavior disorder, impulse control disorder, and adjustment disorder with mixed disturbance of emotion and conduct. The evaluating psychiatrist recommended that Andrew “be approved for the psychotropic medication

Risperdol to help manage his mood swings, agitation, aggression, hitting [of] others, and banging his head on the floor or wall.” Andrew also began receiving wraparound services to address his angry outbursts, aggressive behavior toward maternal aunt and siblings (e.g., hitting, pinching, biting, and kicking), easy agitation, and difficulty in concentrating.

As to father’s visits during this time period, father and maternal aunt provided conflicting accounts. Maternal aunt reported that father had made “little effort” to have unmonitored visits with the minors. When father did visit, his visits were sometimes unannounced and sometimes only because maternal aunt had asked him to bring over diapers and other needed items. Father, on the other hand, maintained that his visits were more regular than maternal aunt had reported. According to father, he usually visited the minors on Tuesdays. His visits usually consisted of picking Andrew up from school after lunch, and then staying in the apartment with the minors or taking them to the park while maternal aunt ran errands. He reported that the visits went well, and Andrew and Mia would often ask to stay with him and not return home to maternal aunt.

Father continued to attend individual counseling regularly. His counselor reported that father “appear[ed] motivated to address the issues he is having with the children’s mother so he can move on from their relationship, and regain custody of his children.” In contrast to this positive report provided by the counselor, the case worker reported that she had asked father several times during this review period to describe what he learned from his individual counseling sessions. Father provided only “vague” responses and continually queried why he needed individual counseling at all. The social worker provided the following assessment: Father “has not gained the insight and judgment necessary to be a protective father, and identify his role in the detention of the children.”

Regarding father’s Al-Anon attendance, DCFS reported that father claimed he was regularly attending meetings, but had failed to demonstrate any “specific progress” since he started attending meetings in March 2012. Father could not articulate anything specific about what he was learning in Al-Anon, and continued to make no progress in obtaining an Al-Anon sponsor.

In an update filed with the court on January 16, 2013, DCFS reported additional information about father's housing situation. In early January, father informed the case social worker that he had been living at a motel in Pasadena "for a few months." When asked whether mother stayed with him at the motel, father stated: "[N]o, I don't know where she stays." The case worker followed up with an unannounced visit to father's motel about a week later on January 15. She saw mother and father walking together away from the motel. The case worker then interviewed the motel owner, who stated that father and mother had been staying at the motel together "for a few months now" and had been sharing a motel room for the duration of their stay. The motel owner also informed the case worker that his policy is to require all long-term residents to vacate their room for one day every four weeks.

The contested 18-month review hearing took place on January 17, 2013. Father testified on several topics:

On the topic of mother, father testified that in his view, mother posed no risk to the minors' safety and well-being. He elaborated: "[S]he's a good mother. And I'm not going to say that she doesn't make mistakes, but she understand[s] now the situation and she's trying to do better. She's actually trying to find a program where she can get herself involved to, and this time she's -- we've been actually talking about this, and she's trying to do something for -- you know, to change the situation." When asked why he thought the court had prohibited mother from having unmonitored visits with the minors, father testified that it was because mother had not "complete[d] her program." Although father did not believe mother posed any danger to the minors, he maintained that if the minors were returned to his care, he would not allow mother to reside with them because: "[I]t's going to be a court order. If I'm going to let the mother in, I'm going to get in trouble. So I'm not going to let her in."

On the topic of Al-Anon, father testified that he had been attending Al-Anon meetings regularly, usually at sites near his job.<sup>8</sup> Father testified that at these meetings, he learned how to “live better” with someone who had drug or alcohol abuse issues, and also how to identify the signs of when someone is under the influence of drugs or alcohol. Father stated that thus far, he had encountered no opportunities to use the skills learned at Al-Anon meetings because he was living by himself, and not with mother.

As to whether mother was currently residing with him, and for how long, father’s testimony was all over the map. First, as noted above, father testified that he was living by himself and thus had no need or opportunity to employ any skills learned in Al-Anon. After additional questioning, however, father testified that he was currently living with mother at a motel, but that mother had moved in just a “few days” before the January 17 hearing. Father explained that “it was raining, and it was cold” and he could not turn mother away. Father later changed his testimony and stated that mother had been staying with him since Christmas time. Father changed his testimony yet again and stated that mother had started to live with him at the motel in early November. When asked if he had observed any indications of mother being under the influence of drugs during the time he spent with her, father testified that when he was at work, mother “goes and do[es] whatever she needs to do.” Father testified that overall, he felt “bad” for mother when she did not have a place to stay, and admitted to telling the social worker on several occasions that mother was the mother of his children, and he could not let her live in the streets.

On the topic of how the minors were faring, father stated that he did not know of any “special needs” that any of the minors might have. He testified that in his view, Andrew was doing “very good.” Father testified he did not know why Andrew was receiving wraparound services, and was not aware that Andrew was experiencing any behavioral problems. Father testified that although he regularly walked Andrew to school, he had not yet spoken with any of Andrew’s teachers to see how Andrew was

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<sup>8</sup> Father entered into evidence Al-Anon sign-in sheets showing 19 entries for the time period between August 21, 2012 and January 8, 2013.

doing. Similarly, he viewed S.'s development as "normal." Father testified that if the juvenile court returned the minors to his custody, he had arranged for maternal aunt to care for them during the day while he was at work.

### ***The Juvenile Court's Ruling***

After considering the testimony, counsels' arguments, and the admitted documentary evidence, the juvenile court found that returning the minors to father's custody would create a substantial risk of detriment to their well-being. The court reasoned as follows: despite father's regular attendance at parenting classes, individual counseling, and Al-Anon meetings, father showed no substantial progress in understanding the reasons why the minors were removed from his and mother's care. Specifically, even though mother had a chronic history of substance abuse, father testified unequivocally that mother posed no risk to the minors. The court noted that "perhaps if [father] had been attending Al-Anon from the inception of the case plan and not started five months ago, he might have learned something more about her. But he has not at all." Additionally, father seemed unwilling or simply unable to disengage himself from mother and her issues. The court cited evidence that father continued to feel sorry for mother and paid for her motel rent, at the expense of obtaining his own, separate stable housing so as to facilitate reunification with the minors.

The juvenile court also noted father lacked assertiveness to determine at a very basic level why his children were receiving therapy and wraparound services, and what he needed to learn to meet their needs. Additionally, the juvenile court found father's current living situation somewhat unstable given the motel owner's policy of requiring long-term residents to vacate every four weeks. The court described father's willingness to pay for the minors' expenses as "commendable" but ultimately found that this was "insufficient to persuade me that these children are not at risk by the preponderance of the evidence."

The juvenile court ordered no further reunification services for father and set a hearing pursuant to section 366.26 to consider the termination of parental rights. The minors filed this timely petition for extraordinary writ relief. This court stayed the

section 366.26 hearing to provide for adequate time to review and consider minors' petition and father's joinder.

## **DISCUSSION**

### **I. Standard of Review**

The standard of review for orders terminating reunification services and setting a permanency planning hearing under section 366.26 is whether substantial evidence supports the challenged orders. (*In re Albert T.* (2006) 144 Cal.App.4th 207, 216-217 [review of orders under § 361.5]; *Angela S. v. Superior Court* (1995) 36 Cal.App.4th 758, 763 [review of orders under § 366.26].)

“Under this standard of review we examine the whole record in a light most favorable to the findings and conclusions of the juvenile court and defer to the lower court on issues of credibility of the evidence and witnesses. (*In re Tania S.* (1992) 5 Cal.App.4th 728, 733-734.) We must resolve all conflicts in support of the determination and indulge all legitimate inferences to uphold the court's order. Additionally, we may not substitute our deductions for those of the trier of fact.” (*In re Albert T., supra*, 144 Cal.App.4th at pp. 216-217.) If there is substantial evidence in the record to support the challenged orders, then the appellate court must affirm. (*Ibid.*)

### **II. Analysis**

The minors argue: “The court's finding that returning the children to father would create a substantial risk of detriment was not supported by substantial evidence.” This court disagrees. There was ample evidence in the record to support the juvenile court's finding that returning the minors to father's custody would place them at substantial risk of physical and/or emotional harm.

First, father's unwillingness to recognize the danger that mother posed to the minors placed minors at substantial risk of harm. In 2009, the juvenile court specifically ordered father not to let mother reside with him, Andrew, and Mia given her addiction issues. Father disregarded this order, allowed mother to move back in, and had a third child with her. In 2011, after learning that mother tested positive for methamphetamines and opiates while pregnant, father maintained to the case worker that mother was “doing

well” and that “[t]here was no reason for the children to have been taken away.” In 2012, father agreed to a “safety plan” with DCFS that required him not to allow mother to be with him and the minors during an unmonitored visit. Nevertheless, he permitted mother to join him and the minors for an entire afternoon during his very first unmonitored visit. And, in 2013, after mother had been expelled from her substance abuse program, had physically battered another person in front of Mia, and had been in custody twice, father still believed mother posed no harm to the minors. At the contested 18-month hearing, father was asked: “Do you believe the mother places the children at risk?” Father testified unequivocally: “No.”

Father has had many years to grapple with mother’s chronic methamphetamine abuse and erratic, violent behavior. He has attended parenting sessions, individual counseling, and Al-Anon meetings for more than a year leading up to the contested hearing. Yet, father has made little to no progress in recognizing the danger that mother’s drug history poses to the minors. As noted above, when father was asked whether he had encountered an opportunity to determine whether mother was under the influence, father testified that when he was at work, mother “goes and do[es] whatever she needs to do.” The juvenile court could certainly infer from this testimony that, despite parenting education and counseling, father was willing to turn a blind eye to mother’s drug activities, or simply unable to grasp the severity of mother’s chronic drug abuse. (*Blanca P. v. Superior Court* (1996) 45 Cal.App.4th 1738, 1748-1749 [the pertinent inquiry “is not, as it were, quantitative (that is, showing up for counseling or therapy or parenting classes, or what have you) but qualitative (that is, whether the counseling, therapy or parenting classes are doing any good)”].)

It is particularly notable that at the 18-month hearing, father testified if the minors were returned to his care, he would not allow mother to reside with them because he would “get in trouble” with the juvenile court if he did so. Glaringly absent from father’s answer is any recognition that the reason to prohibit mother from living with the minors is because of the risk that she and her chronic substance abuse poses to them. Father disregarded the juvenile court’s order restricting mother from living with him and the

minors in 2009; there is no indication that he has gained sufficient insight not to choose the same course of action this time around. (See *Francisco G. v. Superior Court* (2001) 91 Cal.App.4th 586, 600-601 [rejecting father's argument that there was insufficient evidence to support the juvenile court's determination that he had not made reasonable efforts to treat the problems that led to the removal of the minors where the record showed that "the key problem was mother's substance abuse and father's failure to protect the siblings from such abuse" by "continu[ing] to believe that mother did not have a drug problem"].)

The minors contend that father had in fact distanced himself from mother, and should not be faulted for letting mother occasionally stay with him during "cold and rain." But the record is otherwise. The motel owner told the case worker that father and mother had been living together at the motel in the same room for a "few months" prior to the 18-month contested hearing in January 2013. Even father testified at the hearing that mother had been living with him since November 2012. This evidence, coupled with evidence that father paid the motel rent for mother and permitted mother to use his cellular telephone, showed that father was still very much involved in mother's life.

The minors also contend that "[w]hat comes through clearly in the record of this case is that father is a dedicated parent, with a heart of gold." There is no doubt that father has shown a financial commitment to the minors, and that he has worked hard to provide them with food, diapers, and other necessities including helping maternal aunt with housing. But, this evidence does not change or mitigate the evidence that father is either unwilling or simply unable to recognize the danger that mother poses to the minors, and extricate himself from mother's life and drug abuse entanglements. This court's role, as noted above, is not to substitute our deductions for those of the juvenile court. (*In re Albert T.*, *supra*, 144 Cal.App.4th at pp. 216-217.) If there is substantial evidence in the record to support the challenged orders, and there is such evidence in this case, then the appellate court must affirm. (*Ibid.*)

Substantial evidence also supports the juvenile court's finding that father showed a significant lack of awareness of the children's special needs, especially with regard to

Andrew. Even though Andrew was receiving weekly therapy, wraparound services, and psychotropic medication to address extremely aggressive and oppositional behavior, father testified that Andrew was doing “very good” and had no apparent special needs. The minors argue in their petition that father’s lack of knowledge regarding Andrew’s special needs is excusable because “father is clearly unsophisticated about such matters.” Such a characterization is patronizing. There is little in the record to suggest that father was so “unsophisticated” as to not investigate or even question why his son was receiving such an intense level of therapy on a regular basis.

As to housing, the minors argue that father’s living situation was not unstable and that “[o]nce the children are returned to him, father can use his income to maintain a single household for him and his children.” But father testified that he intended to have maternal aunt care for the minors while he was at work. As noted above, maternal aunt took a leave from her job in order to care for the minors during the day, and for this reason did not have sufficient income to pay her own rent. The juvenile court was entitled to infer from this evidence that if maternal aunt continued to care for the minors during the day, father would continue to pay her rent, thus leaving father and the minors to stay at the motel where father was currently residing. At this motel, father would have to move out with the children once every four weeks -- certainly an unstable situation.

In sum, we conclude that there is substantial evidence in the record to support the juvenile court’s finding that returning the minors to father’s custody would create a substantial risk of detriment to their well-being. Accordingly, the juvenile court properly terminated family reunification services and set the underlying proceeding for a hearing pursuant to section 366.26.

**DISPOSITION**

The petition for extraordinary writ is denied, and the stay of the section 366.26 hearing is hereby lifted. Pursuant to California Rules of Court, rule 8.264(B)(3), this opinion is made final forthwith.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

\_\_\_\_\_, J.  
CHAVEZ

We concur:

\_\_\_\_\_, P. J.  
BOREN

\_\_\_\_\_, J.  
ASHMANN-GERST