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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re P.L. et al., Persons Coming Under the  
Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND  
HUMAN SERVICES AGENCY,

Plaintiff and Appellant,

v.

Q.L. et al.,

Defendants and Respondents;

P.L. et al.,

Appellants.

D068696

(Super. Ct. No. J518948D/E)

APPEAL from orders of the Superior Court of San Diego County, Sharon

Kalemkarian, Judge. Affirmed.

Terence M. Chucas, under appointment by the Court of Appeal, for Appellants,  
Minors.

Thomas E. Montgomery, County Counsel, John E. Philips, Chief Deputy  
County Counsel and Lisa Storing, Deputy County Counsel, for Plaintiff and  
Appellant.

Amy Z. Tobin, under appointment by the Court of Appeal, for Defendant and  
Respondent Q.L.

Joseph T. Tavano, under appointment by the Court of Appeal, for Defendant and  
Respondent Sean L.

Minors P.L. and S.L. appeal the juvenile court's orders returning them to the  
custody of their parents, Q.L. and Sean L., at the 18-month review hearing. (Welf. &  
Inst. Code,<sup>1</sup> § 366.22.) They ask this court to reverse the juvenile court's detriment  
findings and placement orders, and remand the matter to the juvenile court with  
directions to remove the children from their parents' custody and set a section 366.26  
hearing. We find no error and affirm.

#### FACTUAL AND PROCEDURAL BACKGROUND

Q.L. and Sean L. are the parents of P.L. and S.L. (together, the children). P.L. is  
now 10 years old; her brother, S.L., is nine. They have three older half brothers  
(collectively, siblings). The history of the case is detailed in *Q.L. v. Superior Court*  
(Nov. 30, 2015, D068601 [nonpub. opn.]), in which we reviewed the orders setting

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

section 366.26 hearings for the siblings. Here, we summarize the events leading to the 18-month review hearing, and describe the evidence supporting the orders returning the children to their parents' custody. (*In re N.M.* (2011) 197 Cal.App.4th 159, 168 [on a claim of lack of substantial evidence, we review the evidence most favorably to the court's order].)

Q.L. suffers from serious health problems. In 2013, during one of her hospitalizations, the children and their siblings were sent to live with family members in Los Angeles County. The Los Angeles County Department of Children and Family Services (DCFS) investigated allegations Sean physically abused the children and Q.L. neglected them, and the parents were using drugs. The siblings described chronic and severe physical abuse by Sean. They said their mother was not aware of the extent of the abuse because of her health problems and frequent absences from the home. S.L. said his father hit him in the stomach on one occasion. He said, "I don't want him to hurt me like he hurts my brothers." P.L. said she was "getting smacked" on her legs.

The juvenile court found that Sean physically abused the siblings and the children were at risk of physical abuse, and that Q.L. was unable to take appropriate action to stop the abuse. DCFS developed a court-ordered case plan including parenting education, anger management, domestic violence counseling, Sean's undergoing random drug testing, and Sean's participation in a substance abuse assessment and recommended substance abuse treatment program. The court removed the children and siblings from parental custody, and transferred the case to San Diego. P.L. and S.L. were separated from their siblings and placed together in foster care. They received therapeutic services.

At the six-month review hearing in November 2014, the juvenile court found that Q.L. and Sean had made some progress with their case plans. At the 12-month review hearing in January 2015, the juvenile court found that the parents had consistently and regularly contacted and visited the children, and had made significant progress in resolving the problems that led to the children's removal from the home. The parents' visits with the children were unsupervised. The court ordered Sean to participate in a child abuse group and continued services to the 18-month review date.

In February 2015, the San Diego County Health and Human Services Agency (Agency) reimposed supervision requirements on visitation, citing concerns about the parents allowing a family friend to transport the children without Agency approval, Sean's discharge from therapy services for excessive absences and his admitted use of marijuana. In addition, Q.L. had refused to submit to a drug test, stating it was not part of her case plan. The parents did not visit the children in January and February. By late February, Sean had resumed therapy and the case, which appeared to have derailed, was back on track.

At the 18-month review hearing, the juvenile court admitted into evidence reports from the Agency and the children's court-appointed special advocate (CASA), and heard testimony from witnesses. The Agency recommended the juvenile court terminate reunification services and set section 366.26 hearings for the children and their siblings. The children's trial counsel concurred with the recommendation.

The CASA reported that P.L. was a bright and beautiful girl who was doing well in school. S.L. was thoughtful, impressionable and very sweet. The children were

always polite and well behaved, and were very respectful of the foster mother. The CASA said there were no visits in January and February 2015 but there were seven supervised visits in March and April. In mid-April, the Agency reinstated unsupervised visitation but did not allow the parents to transport the children. The CASA began transporting the children to visits in May. The parents cancelled one visit because Sean had to attend a class. The children were upset by the cancellation. P.L. and S.L. enjoyed visiting their parents and looked forward to their visits. Sean was very affectionate with the children, hugging them numerous times and telling them he loved them. The parents had rented an apartment and obtained a car.

The social worker reported that Sean was in compliance with the requirements for individual therapy and parenting classes. Sean tested positive for marijuana twice in April 2014. He said he used medical marijuana to relax and to treat insomnia, and had a medical marijuana card. Sean's therapist said Sean had met his treatment goals and would be discharged from therapy. Q.L. was participating in individual therapy but was often hospitalized.

The social worker reported that P.L. and S.L. visited their parents every Wednesday after school for three hours and every Saturday morning for three hours. However, in March, P.L. reported that her parents had not visited since Christmas because they did not have transportation. During her testimony, the social worker acknowledged Q.L.'s health problems had impeded visitation on several occasions.

According to their therapist, P.L. and S.L. were doing well and did not express any fear about going home. They appeared to be well bonded with their parents.

P.L. and S.L. routinely asked the social worker when they would be able to live with their parents. S.L. was very happy to see his parents and loved the attention he received from his father. Visits went well. P.L. and S.L. wanted to return home to their parents.

Q.L.'s therapist testified the protective issue was Sean's physical and emotional abuse of Q.L.'s children. Q.L. always cooperated with the therapy process and had an above average understanding of the protective issues. Q.L.'s presentation was fairly normal. She was always calm, her thinking patterns were cohesive, and she did not present as a victim. Q.L. believed that Sean corporally disciplined the children by spanking them with his hand and a belt.

Sean testified he completed a parenting education program and learned better ways to discipline his children. He did not believe it was appropriate to use corporeal punishment as discipline, and would not physically discipline his children again. He disagreed with the social worker's report he had not seen the children for two months. They had many visits at a park near the foster mother's home and at his barber shop. He and Q.L. talked to the children at least once a day. Sean cut S.L.'s hair and provided clothes, shoes, toothpaste and other necessities to his children.

The juvenile court found the Agency had not met its burden to show there would be a substantial risk of detriment to the children's safety, protection, or physical or emotional well-being if returned home. The problems in the case were caused by the transfer from Los Angeles, the social worker's lack of experience with complicated cases, and the parents' pride. The court said the parents displayed empathy and concern for their children. There was not one bad report about visitation. The court found that Sean

was truly sorry about his conduct with the siblings, and that he and Q.L. had met their treatment goals. The children wanted to return home. Every person who had observed the children's visits with their parents reported that Sean was kind and loving to his children. The court distinguished the children's circumstances from their siblings' circumstances, and ordered the Agency to return the children to the custody of their parents under a plan of family maintenance services.

## DISCUSSION

### A

#### *Issue on Appeal*

The children, joined by the Agency, contend the children are at very high risk of future abuse and neglect. They argue Sean had continued to physically abuse the siblings after receiving voluntary services in 2008, leading to the children's dependency adjudication and removal in 2013. They maintain that Sean physically abused all five children and Q.L. acquiesced to his physical abuse, and that both parents had not met all the goals of their reunification plans. The children assert the parents did not visit them regularly; Q.L. refused to drug test and did not provide her medical records to the social worker; Sean continued to use marijuana; and Sean's personality traits were maladaptive and inflexible and therefore his participation in services did not mitigate the risk of physical abuse to the children. In addition, the children argue the stressors that were present at the beginning of the case—Q.L.'s health problems, the family's financial stressors, unstable housing, Sean's anger issues, and lack of disclosure of physical abuse—were still present. The children assert the Agency presented overwhelming

evidence that returning home would be detrimental to them, and therefore the juvenile court erred when it found the Agency had not sustained its burden of proof.

## B

### *Statement of Law and Standard of Review*

"The dependency scheme is based on the law's strong preference for maintaining family relationships whenever possible. [Citations.] When a child is removed from parental custody, certain legal safeguards are applied to prevent unwarranted or arbitrary continuation of out-of-home placement. [Citations.] Until reunification services are terminated, there is a statutory presumption that a dependent child will be returned to parental custody. [Citation.] As relevant here, section 366.22, subdivision (a) requires the juvenile court at the 18-month review hearing to return the child to the custody of the parent unless it determines, by a preponderance of the evidence, that return of the child would create a substantial risk of detriment to the child's physical or emotional well-being." (*In re Yvonne W.* (2008) 165 Cal.App.4th 1394, 1400 (*Yvonne W.*).

"The Agency has the burden of establishing detriment. [Citations.] The standard for showing detriment is 'a fairly high one. It cannot mean merely that the parent in question is less than ideal, did not benefit from the reunification services as much as we might have hoped, or seems less capable than an available foster parent or other family member.' [Citation.] Rather, the risk of detriment must be *substantial*, such that returning a child to parental custody represents some danger to the child's physical or emotional well-being. [Citation.]" (*Yvonne W., supra*, 165 Cal.App.4th 1394, 1400) "In evaluating detriment, the juvenile court must consider the extent to which the parent

participated in reunification services. [Citations.] The court must also consider the efforts or progress the parent has made toward eliminating the conditions that led to the child's out-of-home placement. [Citations.]" (*Ibid.*)

We review the record to determine whether substantial evidence supports the court's finding that P.L. and S.L. would not be at substantial risk of detriment if returned to their parents' custody. (*Angela S. v. Superior Court* (1995) 36 Cal.App.4th 758, 763-764.) "The appellate court does not reweigh the evidence, evaluate the credibility of witnesses or indulge in inferences contrary to the findings of the trial court. [Citations.] The substantial evidence standard of review is generally considered the most difficult standard of review to meet, as it should be, because it is not the function of the reviewing court to determine the facts. [Citation.]" (*In re Michael G.* (2012) 203 Cal.App.4th 580, 589 (*Michael G.*))

## C

### *Substantial Evidence Supports the Court's Finding the Agency Did Not Meet Its Burden to Show Detriment*

The record belies many of the children's assertions.<sup>2</sup> Any visitation problems in February and March 2015 were caused by inadequate transportation, Q.L.'s health

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<sup>2</sup> "When an issue raised on appeal involves only a substantial evidence claim, appellate counsel should consider whether any reasonable person could agree that the trial court's conclusions are not supported by substantial evidence. In deciding whether to raise a substantial evidence claim on appeal, appellate counsel should keep in mind that the appellate court 'accept[s] the evidence most favorable to the order as true and discard[s] the unfavorable evidence as not having sufficient verity to be accepted by the trier of fact.' [Citation.]" (*Michael G., supra*, 203 Cal.App.4th at p. 595.)

problems, and miscommunication with the social worker. When the social worker became aware of the lack of visitation, regular visits resumed. The initial DCFS case plan did not require Q.L. to participate in drug testing. Her refusal to test was based on her understanding of her court-ordered case plan requirements. With respect to the social worker's complaint of not receiving Q.L.'s medical records, the record shows that at DCFS's request, Q.L. signed a release for her medical records in December 2013. The Agency's own reports and DCFS reports describe Q.L.'s many health problems. There is no support in the record for the children's assertion Sean was unable to mitigate the risk of physical abuse because his personality traits were maladaptive and inflexible. Sean's therapist said he did not make a definitive personality disorder diagnosis because Sean had shown insight into his behaviors, and his insight increased after he began processing family of origin issues. Several months later, the therapist reported that Sean had achieved all his treatment goals and would be discharged from therapy.

Although Sean's use of marijuana is problematic, and the family continues to deal with Q.L.'s health problems and financial stressors, those factors must present some danger to the children's physical or emotional well-being at the time of the review hearing. (*Yvonne W.*, *supra*, 165 Cal.App.4th 1394, 1400-1401.) The juvenile court did not abuse its discretion when it concluded that those factors alone did not meet the "fairly high" standard required for a detriment finding. (*David B. v. Superior Court* (2004) 123 Cal.App.4th 768,789.)

The record clearly shows that the juvenile court was fully aware of the history of the children's dependency cases. In determining that the Agency did not meet its burden

to show detriment, the juvenile court credited evidence showing the parents substantially complied with their case plans and met their treatment goals. The court also placed great weight on the children's wishes to return home, the positive interactions between the parents and the children, and the lack of any problems during visitation. The family continues to receive services under Agency supervision. The juvenile court will review the children's circumstances every six months at minimum or sooner if any problems arise. As described in our recitation of the facts, *ante*, the juvenile court's findings are more than adequately supported by the record, and we have no power to disturb them. (*In re Aurora P.* (2015) 241 Cal.App.4th 1142, 1167.)

#### DISPOSITION

The orders are affirmed.

BENKE, J.

WE CONCUR:

McCONNELL, P.J.

PRAGER, J.\*

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