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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

H.J.,

Petitioner,

v.

THE SUPERIOR COURT OF  
RIVERSIDE COUNTY,

Respondent;

RIVERSIDE COUNTY DEPARTMENT  
OF PUBLIC SOCIAL SERVICES,

Real Party in Interest.

E056674

(Super.Ct.No. RIJ1100860)

OPINION

ORIGINAL PROCEEDINGS; petition for extraordinary writ. Matthew Perantoni,  
Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Petition denied.

Dawn Shipley for Petitioner.

No appearance for Respondent.

Pamela J. Walls, County Counsel, and Julie Koons Jarvi, Deputy County Counsel, for Real Party in Interest.

Petitioner H.J. (Father) challenges the order of the juvenile court terminating his reunification services and setting a permanency planning hearing pursuant to Welfare and Institutions Code section 366.26. He argues that the juvenile court should have found that there was a substantial probability of returning his three children to his care within the next six months and, therefore, should have continued services. We disagree and deny the petition.

#### STATEMENT OF FACTS

Petitioner is the father of three children ages one, three, and four years old. The children came to the attention of the Riverside County Department of Public Social Services (Department) on June 19, 2011, when the one-year-old child was found wandering around a supermarket parking lot. Mother, who is not a party to this petition, was asleep in her vehicle along with the other two children, and was difficult to wake. The children were observed to be ““filthy,”” and the inside of the vehicle was a ““mess”” and smelled of gasoline. Mother was arrested for felony child endangerment.

A social worker was summoned and spoke with Mother. Mother gave inconsistent explanations for her presence in the vehicle, which included her eventual assertion that she had left her home in San Bernardino to drive to Riverside to have her van repaired in Riverside at midnight. However, she ran out of gas in the supermarket parking lot. After obtaining some gasoline (apparently in a can) at a gas station, she still could not get the

van to start, and gasoline spilled inside the vehicle. She was not able to explain how the one-year-old child got out of the vehicle.

Mother, who admitted to previous experience with child protective services, identified Father as her husband and the father of the three children. However, she reported that he was incarcerated for domestic violence, with a projected release date of about three weeks in the future. The children were placed in foster care.

The juvenile court ordered the children detained on June 22, 2011, and directed that substance abuse treatment, parenting education, and general counseling be provided to both parents pending further proceedings.

The report prepared for the jurisdictional/dispositional hearing and filed July 11, 2011, reflects that Father had numerous arrests beginning in 2005 for charges such as burglary, controlled substances, and spousal battery, although the record only shows that he has three misdemeanor convictions—one for spousal battery, one for driving without a license, and one for possession of burglary tools. Father had been released from jail on July 5, but had not contacted the social worker by the time the report was prepared. The social worker also reported statements by the four-year-old child, indicating that the family was homeless and lived in the van, although Mother had disputed this.

Father was present in court on July 14, 2011, when the juvenile court found the children to be dependents and ordered that reunification services be provided to both parents as specified in the social worker's report. This case plan required Father to enroll in a domestic violence program to address anger management issues, to participate in

general counseling, to enroll in an inpatient substance abuse program, to submit to drug testing, and to complete a parenting education program.

The six-month review report was filed on December 23, 2011. The report showed that Father had successfully completed an outpatient substance abuse program and had consistently tested negative for controlled substances. However, concerns remained because Mother had failed to cooperate with her own program and had relapsed into drug use. Father had been dropped from general counseling due to failing to attend and had not yet enrolled in a parenting program. Father had also chosen not to enroll in the offered domestic violence program because it did not meet the requirements for a class ordered by the criminal court in connection with his domestic violence case. Visitation had been reasonably consistent; however, after Mother was released from jail<sup>1</sup> and the parents began visiting together, they would sometimes arrive late, and Mother would exhibit bizarre behavior. Mother also appeared at one visit with a black eye. Nevertheless, services were continued for an additional six months.

The 12-month report was filed on June 28, 2012. The social worker reported that Father had been in jail from February 17 to May 15, 2012. The report reflects that Father, apparently convicted of a domestic violence offense, had chosen jail time instead of probation out of a disinclination to complete a domestic violence program that was

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<sup>1</sup> Mother was apparently convicted of felony child endangerment (Pen. Code, § 273, subd. (a)) and served a brief jail term as a condition of probation.

also a condition of probation.<sup>2</sup> Father and Mother had moved several times during the review period and neither was employed. Mother had dropped out of another drug program after testing positive for methamphetamine in May 2012.<sup>3</sup> Father, whose incarceration obviously had an impact on his ability to participate in reunification, had not enrolled in a domestic violence program.

Father was participating in parent education and appeared to be developing insight into his role as a parent and a sense of responsibility for his children, however, he had not reenrolled in general counseling sessions. Visits went well, although the children would willingly return to their foster parents when the visits ended.

The recommendation was for termination of services and the development of a permanent plan.

At the hearing, no testimony was presented. However, Father's counsel told the juvenile court that Father had not completed the domestic violence program ordered by the criminal court because he could not afford it,<sup>4</sup> and that he would be going back to general counseling shortly. The juvenile court terminated services to both parents,

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<sup>2</sup> The report also refers to "parole," so the legal circumstances surrounding the incarceration are not clear. We also note that at the 12-month hearing, Father's counsel gave a different explanation for his failure to participate in the program ordered by the criminal court.

<sup>3</sup> Mother was once again pregnant.

<sup>4</sup> This contention, not supported by evidence, suggests that the criminal court had the power to jail Father because he could not afford a required program. We express no view on the point.

finding that there was no “substantial probability” of return within six months. This petition followed.

## DISCUSSION

Father argues that the juvenile court erred because he was making substantial progress, having completed substance abuse and parenting classes. But, at the 12-month hearing, it is not enough that a parent is making progress; the standard is whether there is a “substantial probability” of returning a child to a parent’s custody within six more months. (Welf. & Inst. Code, § 366.21, subd. (g)(1).) The statute further contains three factors that must be present before a finding of “substantial probability” can be made: consistent and regular contact and visits; “significant progress in resolving problems that led to the child’s removal”; and “the capacity and ability 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.”<sup>5</sup> (Welf. & Inst. Code, § 366.21, subd. (g)(1)(A)-(g)(1)(C).) Father fails on the latter two prongs.

A parent whose children are found to be dependent is normally entitled to six months of reunification services; but, as time passes, the children’s need for stability assumes greater importance and by the time a 12-month hearing is held, granting of

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<sup>5</sup> Welfare and Institutions Code section 361.5, subdivision (a)(1)(B) and (a)(1)(C), provides that services may be provided “no longer” than 12 months to children who are three years of age or younger, and in some cases members of a sibling group including such a child. Having established this unequivocal limitation, the Legislature then expressly undercuts it in subdivision (g) of section 366.21. If ever there were a set of statutes in dire need of pruning and coordinating, the dependency statutes is that set. (See *M.V. v. Superior Court* (2008) 167 Cal.App.4th 166, 181 [describing § 366.21 as “unwieldy”].)

additional services is “disfavored.” (*Tonya M. v. Superior Court* (2007) 42 Cal.4th 836, 845.) Our review considers whether the juvenile court’s findings are supported by substantial evidence, whether or not contradicted, and we resolve any conflicts in favor of the ruling. (*In re N.M.* (2009) 174 Cal.App.4th 328, 335.)

In this matter, Father did make appropriate progress in dealing with his own substance abuse issues, and the social worker conceded that he was also making progress in accepting his role as a parent. However, he had not dealt with the domestic violence part of his plan, although he was offered an express referral.<sup>6</sup> As briefly noted *ante*, Father purportedly elected to wait until he could afford the class required by the criminal court, even though at no time reflected by the record has he been employed or had a source of income. Indeed, he eventually implicitly recognized as much when he submitted to three months of incarceration in lieu of completing the program.

Nor had Father participated in general counseling, which would have helped him gain insight into what was needed in order to provide a safe home for the children and would also presumably have addressed the problems created by Father’s relationship with Mother. Instead—to put it bluntly—Father not only remained with Mother and made no effective attempts to modify her unstable behavior, but he fathered another child with her even though she continued to abuse methamphetamine. This alone demonstrates that Father had a long ways to go before developing sufficient parental insight or understanding.

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<sup>6</sup> It seems not to have occurred to Father to ask the criminal court to modify its probation orders so that Father could satisfy both requirements.

To summarize, Father had completed two of the four major elements of his reunification plan. He had not addressed the issue of domestic violence/anger management, which had apparently led to two periods of incarceration. Also, Father had not completed any general counseling; although he had enrolled in counseling sessions shortly after the proceedings began, he had abandoned them. Furthermore, due in part to his incarceration and in part to his transience, he had not progressed to the point of unsupervised or overnight visits with the children, which in any event would be problematic so long as Father resided with Mother. In other words, he had not begun to demonstrate that his parenting skills were adequate to care for three children or could reasonably be expected to become so in six months.

We conclude that substantial evidence supports the juvenile court's conclusions that, despite commendable efforts by Father, there was no substantial probability of returning the children to his care within an additional six months.

DISPOSITION

The petition for extraordinary writ is denied.

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HOLLENHORST  
J.

We concur:

RAMIREZ  
P. J.

MILLER  
J.