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

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

In re M.F., a Person Coming Under the  
Juvenile Court Law.

SAN BERNARDINO COUNTY  
CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

L.F.,

Defendant and Appellant.

E060597

(Super.Ct.Nos. J247133)

**OPINION**

APPEAL from the Superior Court of San Bernardino County. Christopher B. Marshall, Judge. Affirmed.

Hassan Gorguinpour, under appointment by the Court of Appeal, for Defendant and Appellant.

Jean-Rene Basle, County Counsel, and Jeffrey L. Bryson, Deputy County Counsel, for Plaintiff and Respondent.

In this dependency proceeding regarding M.F. (sometimes child), the juvenile court terminated reunification services and ordered a permanent planned living arrangement. M.F.'s father L.F. (father) appeals, contending the juvenile court erred by:

1. Finding that reasonable reunification services had been offered or provided to the father.

2. Denying the father visitation until he was out of custody.

We find no reversible error. Accordingly, we will affirm.

## I

### FACTUAL AND PROCEDURAL BACKGROUND

M.F. was eight when this dependency proceeding was filed; he is now ten.

As of December 2012, the father and the child's mother were married but separated. The mother had custody of the child; the father had visitation on weekends.

In December 2012, during a visit with the father, the child developed a stomachache. The father took him to a hospital emergency room. The child had two bruises, for which he and the father (and later, the mother) gave inconsistent explanations. When hospital personnel tried to draw blood from the child, the father threatened to kill them. The police were called, and they arrested the father.

The mother admitted using methamphetamine on the date of the detention. The father admitted having used methamphetamine in the past but claimed he had stopped in 2004.

San Bernardino County Children and Family Services (Department) detained the child and filed a dependency petition as to him. He was placed in a foster home.

The father pleaded no contest to the petition. At the jurisdictional hearing, the juvenile court found jurisdiction based on failure to protect (Welf. & Inst. Code, § 300, subd. (b)), failure to support (*id.*, § 300, subd. (g)), and abuse of a sibling (*id.*, § 300, subd. (j)).<sup>1</sup>

In June 2013, at the six-month review hearing, the juvenile court found that reasonable services had been offered or provided.

In February 2014, at the 12-month review hearing, the juvenile court found again that reasonable services had been offered or provided. It terminated reunification services and ordered a planned permanent living arrangement of foster care, with the goal of guardianship.

## II

### THE FINDING OF REASONABLE REUNIFICATION SERVICES

The father contends that the juvenile court erred by finding that reasonable reunification services had been offered or provided.

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<sup>1</sup> The abuse of a sibling allegation related exclusively to conduct of the mother.

A. *Additional Factual and Procedural Background.*

The evidence admitted at the 12-month review hearing consisted of two specified social worker's reports, plus the father's oral testimony. We confine our review to this evidence.

The six-month review hearing was held on June 26, 2013. The father was in custody at that time, but he was released on July 5.

On July 17, the father met with the social worker to start services. He was offered parenting education, individual counseling, anger management, substance abuse, drug testing, and transportation assistance services.

Starting on July 18, he had visitation once a week, for an hour at a time. He was a "no-show[]" on September 5 and 12, October 3, and November 7 and 14.

On August 15, he went to a substance abuse intake appointment. He attended two substance abuse sessions August 26 and 28, then stopped attending.

On August 19 and 26, he attended two anger management sessions. He then stopped attending.

On August 21, he attended one counseling session. He missed the next two scheduled appointments and was therefore terminated.

On August 26, he tested positive for amphetamines.

On August 29, he attended one parenting education session. He then stopped attending.

In the wake of the positive drug test, the social worker tried to phone the father. She left messages for him on September 10, 11, 17, and 23, but he did not return her calls. She also tried to contact him at the visits scheduled for September 12 and October 3, but those were both days when he no-showed.

Finally, on October 17, she managed to intercept him during a visit. However, when she asked to speak to him, he refused. He cursed at her, accused her of getting him into trouble with the police, said “I am not going to fight with you!,” and finally walked away.

In response to the missed visit on November 14, the social worker tried to contact the father again. On November 25, she managed to get through to him by phone.<sup>2</sup> He told her that he was working in Oxnard Mondays through Fridays. “When asked about his services [he] explained how he felt they were not necessary . . . .” He added that “the expectation for him to complete all the services and maintain employment is not fair.” When a second social worker (on speakerphone) tried to persuade him to take advantage of services, he said “he would let the [j]udge decide what to do with [M.F.]” and hung up.

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<sup>2</sup> The father seems to think there were two phone contacts, one “[a]round” November 14 and one on November 25. That is incorrect. The missed visit on November 14 was the impetus for the contact, but the contact actually occurred on November 25.

The next day, November 26, the father's attorney asked the social worker to look into services in Oxnard, asserting that the father was going to be there for 45 days. The social worker's report (signed nine days later, on December 5) did not indicate whether she had done so yet.

According to the father, when he returned to San Bernardino (on an unspecified date), he signed up on his own for a parenting class and an anger management class; they were due to start on January 4, 2014. However, on January 1, he was arrested in San Bernardino for brandishing an imitation firearm. (Pen. Code, § 417.4.) As of February 3, the date of the 12-month review hearing, he was still in custody.

B. *Analysis.*

At a 12-month review hearing, the juvenile court must “determine whether reasonable services that were designed to aid the parent or legal guardian to overcome the problems that led to the initial removal and continued custody of the child have been provided or offered to the parent or legal guardian.” (Welf. & Inst. Code, § 366.21, subd. (f).) If reasonable services have not been provided, the court can continue the case for up to six months for a permanency review hearing. (Welf. & Inst. Code, § 366.21, subd. (g)(2).)

“[T]he agency has the burden of showing by a preponderance of evidence . . . that reasonable reunification services have been provided. [Citations.]” (*In re Zeth S.* (2003) 31 Cal.4th 396, 410.)

“In almost all cases it will be true that more services could have been provided more frequently and that the services provided were imperfect. The standard is not whether the services provided were the best that might be provided in an ideal world, but whether the services were reasonable under the circumstances.’ [Citation.]” (*In re Julie M.* (1999) 69 Cal.App.4th 41, 48.)

“We determine whether substantial evidence supports the trial court’s finding, reviewing the evidence in a light most favorable to the prevailing party and indulging in all legitimate and reasonable inferences to uphold the court’s ruling. [Citation.]” (*Katie V. v. Superior Court* (2005) 130 Cal.App.4th 586, 598.)

Preliminarily, the father complains that the Department did not provide reasonable services during the first six months of the reunification period (during most of which he was in jail). At the six-month review hearing, however, the juvenile court found that reasonable services had been provided; the father did not appeal from that order. “If an order is appealable, . . . and no timely appeal is taken therefrom, the issues determined by the order are res judicata. [Citation.]” (*In re Matthew C.* (1993) 6 Cal.4th 386, 393.)

The father also complains that the Department did not provide reasonable services while he was in Oxnard. However, from September through November, he had been failing to participate in services and evading contact with the social worker. On November 25, when he first revealed that he was in Oxnard, he said he did not feel that services were necessary; he added that it was not fair to expect him to complete his services. When another social worker tried to persuade him to participate in services, he

hung up. In light of these strong indicia that he had no intention of participating in any services, anywhere, at any time, it was not unreasonable not to give him referrals to services in Oxnard.

Finally, the father also complains that the Department did not provide reasonable services between January 1, 2014, when he was arrested, and February 3, 2014, the date of the 12-month review hearing. His attorney, however, had told the social worker that the father would be in Oxnard until mid-January. The Department did not learn that he had been arrested in San Bernardino until January 22. Any failure to provide services while the father was in jail between January 22 and February 3 was de minimis.

### III

#### THE DENIAL OF IN-CUSTODY VISITATION

The father contends that the juvenile court erred by denying him visitation until he was out of custody. The Department responds that this contention is moot.

##### *A. Additional Factual and Procedural Background.*

The social worker's report for the 12-month review hearing recommended supervised visitation for one hour a week. The juvenile court so ordered, but it added a proviso, sua sponte, that visitation would not begin until the father was released from custody.

At the Department's request, we have taken judicial notice that by August 2014, the father was no longer in custody.

B. *Analysis.*

“An appellate court will not review questions which are moot and only of academic importance, nor will it determine abstract questions of law at the request of a party who shows no substantial rights can be affected by the decision either way.

[Citation.] An appeal becomes moot when, through no fault of the respondent, the occurrence of an event renders it impossible for the appellate court to grant the appellant effective relief. [Citations.] On a case-by case basis, the reviewing court decides whether subsequent events in a dependency case have rendered the appeal moot and whether its decision would affect the outcome of the case in a subsequent proceeding. [Citation.]’ [Citation.]” (*In re M.C.* (2011) 199 Cal.App.4th 784, 802.) Here, even assuming the father was erroneously denied visitation while in custody, we can no longer grant him effective relief. Accordingly, this issue is moot.

The father argues that the claimed error is not moot because it could affect further proceedings. He relies on *In re Dylan T.* (1998) 65 Cal.App.4th 765. There, at the dispositional hearing, the juvenile court assertedly erred by refusing to allow the mother visitation while she was incarcerated. (*Id.* at p. 768.) While her appeal was pending, she was released and placed in a residential drug treatment program. (*Id.* at p. 769.) The appellate court held that the appeal was not moot. (*Id.* at pp. 769-770.) It explained: “Because reunification efforts could be terminated after six months, the lack of all opportunity for visitation during a significant portion of this time is an error which could infect the outcome of subsequent proceedings.” (*Id.* at p. 770.) It also noted that the

mother “remains subject to incarceration. If reincarcerated, she would again suffer the consequence of no visitation.” (*Id.* at p. 769.)

Here, by contrast, the reunification period is already over. Even assuming that the lack of visitation while the father was in custody impaired his relationship with the child so as to affect a hypothetical future hearing under Welfare and Institutions Code section 366.26, we see no way we can make up for the lost visitation. We also note that here, the father does not claim that he is subject to reincarceration; however, even assuming he is, the order appealed from will not be binding on the juvenile court. The father will be free to argue that, under the circumstances then prevailing, visitation with him while he is in custody would not be detrimental.

Finally, the father invokes “the exception to the mootness doctrine for issues of substantial public interest which are capable of repetition, yet evade review. [Citations.]” (*In re Natasha A.* (1996) 42 Cal.App.4th 28, 38 [Fourth Dist., Div. Two].) In our view, the issue is not one of substantial public interest. It is simply a question of whether, on this particular record, there was substantial evidence that visitation would be detrimental.

Significantly, the father did not argue below that the trial court erred. He claims this does not bar him from raising the issue for the first time on appeal. Even if so, it still means the record on the issue is not well developed; hence, this is not an ideal case in which to reach it. It also means that in other cases, repetition of the error (if error it is) may be prevented simply by raising and arguing the issue below.

IV

DISPOSITION

The order appealed from is affirmed.

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RAMIREZ

P. J.

We concur:

HOLLENHORST

J.

KING

J.