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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT**

In re S.P., a Person Coming Under the Juvenile  
Court Law.

FRESNO COUNTY DEPARTMENT OF  
SOCIAL SERVICES,

Plaintiff and Respondent,

v.

CLAYTON P.,

Defendant and Appellant.

F064763

(Super. Ct. No. 11CEJ300013)

**OPINION**

**THE COURT\***

APPEAL from an order of the Superior Court of Fresno County. Mary Dolas,  
Commissioner.

Thomas S. Szakall, under appointment by the Court of Appeal, for Defendant and  
Appellant.

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\* Before Levy, Acting P.J., Gomes, J. and Franson, J.

Kevin Briggs, County Counsel, William G. Smith, Deputy County Counsel, for Plaintiff and Respondent.

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Clayton P. (father) appeals an order issued at a contested combined six- and twelve-month review hearing terminating his reunification services as to his daughter, S. He contends (1) there was insufficient evidence to support the finding he was provided reasonable reunification services and (2) the juvenile court abused its discretion when it terminated his services. We affirm.

### **FACTUAL AND PROCEDURAL BACKGROUND**

In January 2011, 16-month-old twins C. and his sister S. were taken into protective custody after C., who had a seizure disorder, was admitted to the hospital due to seizures for the sixth time in 10 months. The twins' mother, Ca. G. (mother), had a history of missing C.'s neurology appointments and failing to give C. his seizure medication. Mother, who did not have stable housing or money to provide for the twins, admitted abusing drugs and alcohol. Father had been incarcerated at the Fresno County jail on first degree burglary charges since December 25, 2010; it was not known when he would be released.

The Fresno County Department of Social Services (Department) filed a petition alleging the twins came within the provisions of Welfare and Institutions Code section 300, subdivision (b)<sup>1</sup> as mother's substance abuse, mental health issues, and instability placed them at risk of harm. The petition was later amended to add an allegation under section 300, subdivision (g), that father left the twins without any provision for their support, supervision and protection, as he was incarcerated and unable to provide for them.

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

At the January 27, 2011 detention hearing, the juvenile court removed the twins from mother's custody, and ordered services for mother and father. Father's services were comprised of parenting classes, and completion of an addiction severity index assessment and any recommended treatment. Upon father's release from custody, he was ordered to submit to random drug testing and to report to the Department for concurrent planning orientation. Father was given supervised visits twice a month while incarcerated, and twice weekly if not. On January 31, 2011, a social worker sent father a letter advising him of the services he was being offered and to take advantage of any programs offered through the jail.

On March 16, 2011, father was convicted of first degree burglary, and taking a vehicle without the owner's consent/vehicle theft, and sentenced to 44 months in prison. He was in custody at the Wasco Reception Center (Wasco) with a tentative release date of February 9, 2014. On April 7, 2011, the juvenile court found the amended petition's allegations true after mother and father submitted on the social worker's report.

In a report prepared for the July 7, 2011, dispositional hearing, the social worker stated that father had not participated in any services due to his incarceration. The Department recommended that father be denied reunification services pursuant to section 361.5, subdivision (e)(1), due to the length of his incarceration. The Department was unable to confirm what, if any, services would be available to father while in prison, but noted that even if he participated in services, he likely would remain incarcerated beyond the statutory time frame for reunification.

At the dispositional hearing, the juvenile court adjudged the twins dependents, removed them from mother's and father's custody, placed them in foster care, and ordered reunification services for both mother and father. The juvenile court ordered father to participate in parenting classes, counseling for substance abuse, domestic violence and relationships, and AA/NA meetings that were offered in state prison, and ordered the Department to assist father with services that were offered in state prison.

Boxes were also checked on the minute order that indicated father was to participate in domestic violence and substance abuse evaluations, and any recommended treatment. Father was given monthly supervised visits with S., but his visits with C. were suspended until C. could be medically cleared. C., however, passed away on July 18, 2011, due to respiratory and cardiac arrest, and presumed status epilepticus.

By September 2011, father was transferred to Corcoran State Prison (Corcoran). On September 6, 2011, the Department filed a section 388 petition to temporarily suspend father's visits with S., as her therapist thought it would be detrimental to S. to visit father in prison. On October 11, 2011, the juvenile court issued an interim order suspending visits while father was in custody. On November 1, 2011, the juvenile court denied the section 388 petition and ordered resumption of supervised visits.

A combined contested six- and twelve-month review hearing was held on April 5, 2012, on the issue of whether father was provided reasonable reunification services. In reports prepared for the review hearings, the social worker stated she contacted father's counselor at Corcoran on November 23, 2011, who had completed an initial assessment of father on September 7, 2011. According to the counselor, father was not eligible for prison services due to his expected release date, but would be eligible to participate in substance abuse treatment and anger management as his release date neared. On January 18, 2012, father was transferred to Fresno County jail for a court hearing in this case. He told the court on February 9, 2012, that he wanted to stay in local custody in order to appear at future court hearings. On February 17, 2012, the social worker contacted someone at the jail to ask if father was eligible for services while in local custody; the jail, however, did not have classes available for medium security inmates and its programs did not meet court mandates, as they were intended for pre-sentenced inmates. Father had not participated in any of the ordered services due to his incarceration. He had supervised visits with S. on November 2, 2011, January 6, 2012, February 10, 2012

and February 17, 2012. The Department recommended mother continue to receive reunification services, but that father's reunification services be terminated.

At the hearing, the Department submitted on the six- and 12-month reports. Father testified that when he was first in state prison custody he was at "Wasco reception," where he stayed for approximately five months, and then he was transferred to Corcoran. While at Wasco, father found out he could not take classes there, as they were not offered to anyone in "reception." Once he got to Corcoran, he found out there were no classes in which he could participate. While in local custody, father obtained instructional materials from the county jail, which included "packets" on parenting, improving relationships, approaches to discipline, substance abuse, building attachment with children and child development. He also obtained an "A.A." blue book which included the 12 steps, and a packet for incarcerated parents. He requested classes at the county jail, including "N.A." and parenting, but was told they were not offered in his housing unit. Accordingly, he was not able to participate in services at the county jail.

Father testified at length and in detail about what he had learned from the packets concerning the various aspects of parenting. The juvenile court acknowledged father clearly had received information from which he benefited, but asked father's counsel the relevance of the testimony to the reasonable services issue. Father's counsel asked to include as an issue that father had made enough progress on his own to justify continuation of services, which was relevant to whether he had made progress in alleviating the problems that led to S.'s removal.

Father described what he had learned concerning improving family relationships and ways to promote attachment between a parent and child. He had not been able to practice much of what he had learned during visits with S. because all of the visits were behind glass. Father had started to read the Alcoholics Anonymous materials. While he admitted using controlled substances in the past, he had not used for a year and a half and did not feel he had a current substance abuse problem. Father believed he had learned

from the materials he had studied to be a better father to S. Being incarcerated had opened his eyes and he now realized how important it was for him to be “out there” for S. and to better himself.

Father had about six contacts with the social worker since July 2011. In these contacts, they never went into detail about the case, although they had discussed the classes and services a couple times. Father had received the social worker’s letter in which she stated she had contacted his counselor at Corcoran, who told her there were no classes he could attend. Father did not have any visits with S. during the five months he was at Wasco, although visits were allowed. Between July 2011 and January 2012, father had one in-person visit with S. at Corcoran, where he was allowed to have physical contact with S., and seven other visits while in county jail. Since January 18, father had visits with S. nearly every Friday. Father’s scheduled release date was February 9, 2014, but he did not expect to be at Corcoran that whole time, since he had recently “been endorsed” to Jamestown, a correctional facility where he could go to “fire camp.” Father anticipated that, after the hearing, he would go back through reception at Wasco, then to Corcoran and then to Jamestown.

The social worker who had been on the case since its inception testified she formulated father’s case plan. She reviewed the case plan with father in April 2011 and again in July 2011, after the dispositional hearing. The components included parenting, substance abuse and mental health treatment. She could not recall if the plan had been modified. To help with father’s services, she attempted to reach Wasco, but never received a response from them, and then spoke with a counselor at Corcoran around October 2011. The Corcoran counselor told her father was in the substance abuse facility, but at the time he was not able to participate in services due to his release date. The social worker asked if the date of participation could be advanced, but was told the counselor would continue to assess father and he would be eligible for services as his release date approached. Due to prison funding cuts, there were not any written materials

that Corcoran could provide to father. The social worker was not aware if any classes would be available to father at Jamestown.

The social worker had recommended father complete a parenting class because she wanted to ensure he had the necessary parenting skills. She, however, did not have any information that father did not possess such skills. She had seen father interact with S. during visits about three times, but it was difficult to give an opinion as to father's parenting skills since visitation took place through a glass window; she did not observe anything inappropriate during visits. The Department was not able to provide father with self-study parenting materials because, as far as the social worker knew, such materials were not available for parents. The social worker admitted the Department was not able to provide father anything to further his parenting education, and had not talked with father about the topics that are covered in the parenting nurturing class. The social worker was aware father had obtained pamphlets on parenting.

A substance abuse assessment had not been completed for father, so the social worker did not know if he needed treatment. The Department did not contract with anyone who could administer a substance abuse inventory to an incarcerated parent, and its substance abuse specialists, who are Department employees, only do assessments at Department offices, not at a jail. Since a domestic violence assessment had not been completed for father, the social worker did not know if he needed any treatment for domestic violence or anger management. The Department did not contract with anyone to provide domestic violence inventories to an incarcerated parent. The social worker recalled speaking with father about substance abuse, as well as mental health or general therapy for the family. The social worker did not recall if she asked the prison counselor specifically whether there was counseling that could deal with substance abuse or domestic violence issues. The counselor told her, however, that father would not be eligible for any services until closer to his release date. She had tried to contact the Corcoran counselor again, but was unable to reach her. The Department did not have any

resources to assist an incarcerated parent with reunification services aside from contacting the facility where the parent was housed to try to find out what is offered there. The Department is not able to provide written materials for services or correspondence courses.

County counsel argued that father's services should be terminated as he was unable to continue with services, he had not made significant progress, and there was no basis to extend his services to 18 months. County counsel further argued that even if he were given six more months of reunification services, he would not be able to complete them during the reunification period due to his incarceration, and the services provided were reasonable because the Department's only duty to incarcerated parents is to identify available services. S.'s counsel also argued the services provided were reasonable and asked that father's reunification services be terminated. Father's attorney argued the Department could not recommend termination of services based on father's failure to comply, as it was impossible for him to comply with the case plan, and it was pure speculation that he needed any services as there was no evidence father's parenting was inadequate or that he needed treatment for substance abuse, domestic violence, or mental health. Father's attorney asserted services were not reasonable, as the Department had a duty to provide some sort of services and to comply with court ordered services, beyond calling the prisons and concluding there was nothing it could do, and the Department failed to provide consistent visitation.

The juvenile court found that, based on the evidence, it could not return S. to either parent and that reunification services should continue to be provided to mother. With respect to father's services, the court reviewed the disposition orders which showed father's ordered services were primarily parenting classes and participation in any counseling, including substance abuse classes or relationship counseling, that was offered in the institution. Evidence provided by father and the Department showed that counseling sessions or classes other than A.A. or N.A. meetings are not offered at the

institution in which he was residing. Nevertheless, the court found that father had completed and participated in parenting instruction via the packets he obtained, and was participating in what was offered regarding A.A. and N.A. meetings by reading the materials.

The juvenile court noted, however, that the obstacle was father's incarceration until 2014, which exceeded the statutory time for reunification. It recalled that services were ordered for father at disposition because there was a possibility he would either be released earlier or sentenced to a facility that would have more options for reunification, and the parents intended to continue their relationship. The court explained that even if it found father had complied with services, there was no evidence it could find any probability that it would be able to return S. to his custody within an extended period of time. The court was willing to extend the reunification period to 18 months as mother had a substantial probability of having S. returned to her based on her progress, but father's length of incarceration prevented him from having S. returned to him within the statutory period. While the court found the law required it to terminate services, it found that father had complied by participating in parenting and the only things available to him regarding substance abuse. With respect to domestic violence and mental health, the court found those services were not available and the Department was required only to identify available services and assist incarcerated parents in participating in them.

The juvenile court found the Department provided and offered reasonable reunification services to mother and father, and complied with the case plan by making reasonable efforts to return S. to a safe home and complete the steps necessary to finalize her permanent placement. The court found mother's progress with reunification services significant, father's progress good, and that out of home placement was necessary as return of S. to either parent would create a substantial risk of detriment. The court ordered S. remain a dependent, mother's reunification services continue, and set an 18-

month review hearing for July 2012. The court ordered monthly supervised visits for father.

## DISCUSSION

### *Reasonableness of Reunification Services*

Father contends the juvenile court erred in terminating his reunification services because he was not provided with reasonable services. Section 366.21, subdivision (f), governs the juvenile court proceedings at the 12-month review hearing. When the juvenile court decides it cannot safely return the child to parental custody and long-term foster care is not an option, the juvenile court may continue services to the 18-month review hearing if it finds either (1) the parent was not provided reasonable services, or (2) there is a substantial probability the child will be returned to the parent's physical custody by the 18-month review hearing. (§ 366.21, subd. (g)(1).) In making its determinations, the juvenile court must consider the barriers to an incarcerated parent, such as father, and his ability to access court-mandated services and maintain contact with his child. (§ 366.21, subd. (f).)

Father contends the Department failed to provide reasonable services because the Department refused to assess him for domestic violence, substance abuse and mental health issues, and the social worker did not discuss the case plan with him, explore the options available at Wasco, or revise the case plan to suit his circumstances.

As part of its reasonable services finding, the juvenile court must find that the supervising agency offered services targeting the family's problems and made reasonable efforts to help the parent comply with court-ordered services, even where compliance is difficult. (*In re Riva M.* (1991) 235 Cal.App.3d 403, 414.) We review the juvenile court's reasonable services finding for substantial evidence, i.e. we view the evidence in a light most favorable to the respondent, indulging in all legitimate and reasonable inferences to uphold the finding. (*In re Misako R.* (1991) 2 Cal.App.4th 538, 545.) If substantial evidence supports the juvenile court's finding, we will not disturb it. (*Ibid.*)

The Department has no control over the services available to an incarcerated parent. Father was incarcerated throughout the proceedings in this case, with a projected release date in February 2014. The social worker attempted to identify services available to father during his incarceration by contacting both Corcoran in October 2011 and the Fresno County jail in February 2012, but the services ordered for father were not available to him at any of the facilities in which he was incarcerated. Since the Department does not control the provision of services to inmates, there was nothing more the social worker could have done through either the county jail or the state prison system. On this record, we conclude the Department's efforts to assist father in accessing services were reasonable and the juvenile court did not err in so finding.

Father asserts the Department had a duty to assess him while in prison, and its refusal to do so "bordered on contempt." Even if the Department could have done more, the question is whether its failure to do what father suggests requires a finding of unreasonable services. We conclude it does not. According to the record, the social worker tried to locate services for father. Ultimately, however, father's failure to reunify with S. had much more to do with his choice to break the law rather than the social worker's failure to scout out every conceivable service available to him. Commendably, father obtained parenting and substance abuse treatment materials on his own and studied them. If he were out-of-custody, there may have been a different outcome in this case. Under the circumstances, the Department's failure to assess him was not unreasonable. We conclude, therefore, substantial evidence supports the juvenile court's reasonable services finding.

#### ***Termination of Services to One Parent***

Father contends the juvenile dependency statutory scheme does not allow for termination of reunification services as to a parent from whom the child was not removed, and for whom reunification is not anticipated or likely, if services continue for the other parent. He claims that because S. was not removed from his custody, the

juvenile court could only terminate his services if it found reunification with both parents will not occur, and here, reunification between mother and S. was still a possibility.

If the juvenile court finds a parent has been provided reasonable services, it must terminate reunification services unless it finds there is a substantial probability that the child will be returned to the parent's custody and safely maintained in the home by the 18-month review hearing. (§ 366.21, subd. (g)(1).) In making that finding, the juvenile court must find, inter alia, that the parent made significant progress in resolving the problems that led to the child's removal from the home, and demonstrated the capacity and ability to complete the objectives of his treatment plan and provide for the child's safety, protection, physical and emotional well-being. (§ 366.21, subd. (g)(1)(B) & (C).) Here, the juvenile court found that there was a substantial probability S. would be returned to mother's custody, but not father's, and therefore continued mother's reunification services and terminated father's services.

Where reunification services continue for one parent after a review hearing, the juvenile court may, but need not, offer reunification services to the other parent. (*In re Katelynn Y.* (2012) 209 Cal.App.4th 871, 881 (*Katelynn Y.*); *In re Jesse W.* (2007) 157 Cal.App.4th 49, 55-56 (*Jesse W.*); *In re Alanna A.* (2005) 135 Cal.App.4th 555, 565-566.) "The parent seeking additional services has the burden of showing such an order would serve the child's best interests." (*Katelynn Y.*, at p. 881.) In deciding whether to order additional services, the court evaluates whether the parent will utilize those services and whether services "would ultimately inure to the benefit of the minor." (*Jesse W.*, at p. 66.) We review that decision for abuse of discretion. (*Katelynn Y.*, at p. 881.)

Father contends the juvenile court erred when it terminated his reunification services based on its finding that there was not a substantial probability S. would be returned to him. He asserts that because S. was in mother's custody when she was detained, she could not be returned to his custody as she was never removed from it. Father, however, ignores that the juvenile court in fact ordered S. removed from both his

and mother's physical custody pursuant to section 361, subdivision (c)(1). Since S. was removed father's physical custody, the issue at the 12-month review hearing was whether there was a substantial probability she could be returned to him by the 18-month review hearing. (§ 366.21, subd. (g).) Given father's sentence, she could not.

Consequently, substantial evidence supports the juvenile court's finding there was not a substantial probability S. could be returned to his custody by the 18-month review hearing. Father does not otherwise contend the juvenile court abused its discretion in terminating his reunification services while mother's continued, and we perceive no such abuse.

#### **DISPOSITION**

The six- and twelve-month review orders are affirmed.