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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

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

STANISLAUS COUNTY COMMUNITY  
SERVICES AGENCY,

Plaintiff and Respondent,

v.

TIFFANY P.,

Defendant and Appellant.

F065284

(Super. Ct. Nos. 515877, 515878,  
515896)

**OPINION**

APPEAL from an order of the Superior Court of Stanislaus County. Ann Q.  
Ameral, Judge.

Liana Serobian, under appointment by the Court of Appeal, for Defendant and  
Appellant.

John P. Doering, County Counsel, and Carrie M. Stephens, Deputy County  
Counsel, for Plaintiff and Respondent.

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Tiffany P. is the mother of four children: James, age 5; Hailey, age 4; Daniel,  
age 2; and Aubrey, age 1. This is the second appeal involving the three older children;

the youngest child was born after the latest disposition order and is not a subject of this appeal. In mother's first appeal, we affirmed the order of jurisdiction, but reversed the disposition order, finding that there was insufficient evidence to demonstrate by clear and convincing evidence that a substantial risk of harm existed at the time of hearing that could not be mitigated by family maintenance service and close supervision by child welfare staff. (*In re James P., et al.* (Nov. 14, 2011, F061732 [nonpub. opn.])<sup>1</sup> On remittitur, James and Hailey were returned to mother's full-time custody. The youngest child, Daniel, was placed with his father and allowed extended visits in mother's home.

Approximately one month later, the children were again removed and the Stanislaus County Community Services Agency (the Agency) filed a Welfare and Institutions Code section 387<sup>2</sup> supplemental petition. The juvenile court found the allegations of the petition to be true and removed James from mother's custody; Hailey was allowed to remain in mother's custody with family maintenance services; and Daniel was to remain in his father's custody, but continued as a dependent of the court.

Mother contends on appeal that there was no substantial evidence to support the juvenile court's findings and orders of May 11, 2012, by which the court sustained the section 387 supplemental petition and ordered removal of James from mother's physical custody. Mother also claims the Agency failed to provide reasonable reunification services and that the Agency violated mother's due process and equal protection rights. We disagree and affirm.

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<sup>1</sup> On November 19, 2012, mother filed a request to take judicial notice of the record and opinion in case No. F061732. We deferred ruling on this request which we now grant.

<sup>2</sup> Undesignated statutory references are to the Welfare and Institutions Code.

## **FACTUAL AND PROCEDURAL BACKGROUND**

### *Original Section 300 Petition and Jurisdiction/Disposition*

On August 11, 2010, a referral to the Agency noted that mother was locking her two children in a bedroom for “hours.” Social worker Madeline Perez made an in-home visit on September 2, 2010, at 2:00 p.m., and observed that the doorknob lock was turned around, i.e., on the outside of the door, facing the hallway. Mother unlocked the door and both James, age 2, and Hailey, age 1, walked out of the room. A strong urine odor emanated from the room.

Hailey had various scratches and red marks on both her cheeks and along her neck. Mother told Perez that James was often aggressive towards Hailey. Mother also told Perez that she locks the children in their bedroom during their naptime, approximately 12:00 noon to 3:00 p.m., and then again for their bedtime, approximately 7:00 p.m. to 7:00 a.m. When Perez raised concerns over the children’s safety, mother minimized the situation and made comments indicating she failed to grasp the seriousness of her actions.

Mother denied any mental health history or problems and denied an eating disorder. She advised Perez that she had a restraining order against Hailey’s father, Jerry S., and against her current husband, John P., father of her unborn child. While Perez was there, two staff workers from the BEST program, an early autism intervention program, arrived to work with James. They had to remove feces from the childrens’ bedroom before beginning to work with James.

On September 8, 2010, Perez and another social worker, Rosa Mercado, visited mother and observed Hailey with scratches on her face and body, which mother acknowledged were caused by James. Mother told them she did not feel the need for additional parenting instruction. She also initially denied any mental health diagnosis, current or past, before admitting she was previously diagnosed with an eating disorder

and had been admitted to a mental health institution several years prior for cutting herself. She also admitted she was currently working with a mental health services provider through Telecare.

Mother's Telecare case manager, Lisa Amarant, informed Perez that mother had been receiving services for approximately three years and had been diagnosed with an eating disorder (bulimia) and major depressive disorder. Mother's eating disorder was an ongoing concern.

On September 9, 2010, Perez visited mother's home and observed the doorknob lock was dismantled but still in place. She also noted James was not wearing a diaper. When she suggested James should have a diaper on, mother responded that James has a "bladder of steel," was not potty trained, and would sometimes take off his diaper and smear feces around the room, requiring hours of clean up. The social worker wrote in her report that mother again "minimize[ed] her problems and denied any mental health issues other than the bulimia."

Investigation into the children's fathers revealed that John P., father of mother's unborn child, was convicted of child abuse in June of 2010 after mother had him arrested for physically abusing James and Hailey. He also had a lengthy history of substance abuse convictions.

James's father, Juan E., was found to have no criminal background and a suitable home. He admitted that he did not have much contact with his son as mother had sole legal and physical custody. But, he had gone to pick up his son several weeks earlier and found him in the locked bedroom. He also reported that he had seen James eating and then sticking his two fingers down his throat, causing him to vomit. Juan E. had seen James do this before and was concerned due to mother's bulimia.

Hailey's father, Jerry S., had a long history of mental illness, a conviction for abusing his own father to the point of causing him brain injury and a more recent conviction for abusing his sister's 22-month-old son. He was currently incarcerated.

James and Hailey were removed from mother's home on September 9, 2010. James was placed in the temporary custody of his father. Hailey was placed with a friend of mother's who had babysat the children in the past.

The Agency filed a petition on September 13, 2010, which set forth nine allegations as to mother's unfitness for custody, under section 300, subdivision (b). On September 14, 2010, the juvenile court ordered the children detained and a jurisdiction hearing set.

Mother gave birth to Daniel on September 24, 2010. Two days later, he was removed from mother's physical custody and placed in the same home as Hailey. A petition was filed for Daniel, with allegations that essentially mirrored the allegations in the petition for James and Hailey.

Mother underwent a psychological assessment on October 14, 2010. The diagnostic impression was that mother had an adjustment disorder with depressed mood, a history of bulimia, and a personality disorder. In the evaluation section of the report, the social worker noted that, although mother had received three years of parenting instruction from Parent Resource Center, including in-home mentoring, that "knowledge ha[d] not translated into appropriate actions." Mother still did not recognize the inherent danger in leaving the children alone, locked in the bedroom for long periods of time, especially because James was aggressive with Hailey, causing the scratches on her face and body. The social worker opined that mother's denial of problems would be the most difficult issue of any case plan objective.

During the pendency of the case, an autism evaluation was completed on James and he was found to fall in the mild to moderately severe category of autism. He was particularly impaired in the area of language.

A contested joint jurisdictional and dispositional hearing took place over three days in December 2010 and January 2011. The juvenile court found that a preponderance of the evidence supported a finding that James, Hailey, and Daniel were persons described by section 300, subdivisions (b) and (g) and that removal of the children from mother's physical custody was appropriate.

*Appeal from the Jurisdiction/Disposition Findings and Orders and Remittitur*

Mother filed an appeal from the disposition findings and orders. While the appeal was pending, the case was set for a six-month status review hearing.

The status review report filed in anticipation of the hearing stated that mother was receiving mental health services and working on issues of self-esteem, organizational skills, and finding housing. But when asked if she was working on the issues set out in her case plan, mother said she was not because she did not think they were valid. Mother had not worked on the housing packet provided her by the counselor, nor had she signed up for counseling in response to her referral to Sierra Vista. Mother was in the process of completing her parenting program with Mary Anne Cose, also at Sierra Vista. Cose reported that mother was most concerned with the injustices done to her and continued to defend locking James in the bedroom. But Cose also reported that mother used appropriate parenting techniques during the parenting labs, part of the parenting program. The social worker noted that mother was fixated on James's autism, to the exclusion of her other two children.

The social worker, who had taken over the case on April 4, 2011, noted mother's continued attempts to "dominate and manipulate the system," continuing to argue over the reasons the children were detained at every opportunity, rather than work on her case

plan. On May 2, 2011, mother was found to have made threats of harm on the internet toward the social workers. In response, safety precautions were put into place prior to her visits.

Mother requested a contested review hearing, which began on July 12, 2011, and continued over multiple days and was eventually put over to September 20, 2011. But in the interim, on September 1, 2011, a section 387 petition was filed. Mother had lost her housing and Juan allowed her to move into the home with him, contrary to the court order that all contact between James and his mother be supervised by the Agency. Mother did not inform the Agency of this arrangement, and it only came to light when mother fell in the home and Juan took her to the hospital, leaving James home alone unintentionally due to a misunderstanding with a neighbor.

The section 387 petition was combined for hearing with the continuing contested review hearing, heard over several days. Prior to the last scheduled hearing date, this court, on November 14, 2011, issued its opinion in the appeal from the original jurisdiction and disposition order, ordering a new disposition hearing. We found that the juvenile court “could have imposed stringent conditions, including frequent unannounced in-home visits, for mother on her use of the lock to confine her children, and on following the advice given to her by social workers and service providers as to her parenting behavior and mental health.”

On November 17, 2011, the juvenile court suspended the ongoing hearing and continued the matter to January 17, 2012, for hearing on the remittitur and further disposition. Social worker Roslyn Mincey visited mother’s home on December 14, 2011, to assess it for possible in-home visitation or return of the children. A home inspection revealed that mother had installed an alarm on her front door, baby-proofed electrical outlets, and there were no locking doors in the apartment, other than the bathroom, which could be unlocked from the outside. Medications and cleaning supplies were secured.

Mother and Mincey discussed various ways to cook safely with children around, specifically suggesting that mother not cook on the front burners of the stove. Mother agreed that the social worker could remove the knobs from the stove.

Mincey noted that mother had acquired a small hyperactive dog, according to mother a “therapy dog,” which ran around inside of the house. Although Mincey expressed concern regarding the dog when the children were returned due to its hyperactivity, mother thought the children would do well with the dog.

On December 15, 2011, the Agency filed a section 388 petition seeking an order to allow increased visitation, including overnight visits with mother in anticipation of their return, as well as authority to begin trial visits with John P. for Daniel. The petition was granted on January 4, 2012.

A disposition report on the remittitur was filed for the January 17, 2012 hearing, and recommended that all three minors remain dependents of the court; that James and Hailey be released to the custody of their mother; that reunification services be given for James and his father; that Hailey’s father, who continued to be incarcerated, be denied services; and that custody of Daniel be given to both of his parents, with the primary residence being with his father.

Mother obtained a one-bedroom apartment, and the Agency assisted her in obtaining a crib for Daniel. Daniel’s father, John P., was working on getting housing and employment; James’s father, Juan E., lost his housing and was living with his parents. Mother reported to the Agency that her only need at that time was to continue counseling at Sierra Vista.

On December 21, 2011, Juan E. reported to the social worker that he was concerned with mother’s ability to handle all of the children. He also reported that mother was again pregnant, but that he was not the father. Mother denied the pregnancy allegation.

James continued to receive services through Valley Mountain Regional Center (VMRC) and was reported by his care providers to be improving in both speech and social skills. Hailey had begun to develop negative behaviors in foster care and was approved for mental health and counseling services.

The Agency recommended return of James and Hailey to mother's full-time care and extended visitation for Daniel, but it continued to have concerns about mother's ability to supervise her three children. A home-based service plan was put into place through Therapeutic Behavior Services (TBS) to assist mother in parenting, which would begin when the children were returned to her home.

During extended in-home visits, social workers observed that mother was affectionate with the children and was trying hard to manage them, but needed a lot of help learning how to accomplish this. One issue involved her need to establish and maintain boundaries, and not give in to the children's demands after she said no. Mother and John P. were referred to coparenting counseling at Sierra Vista because they shared custody of Daniel.

On January 17, 2012, although the remittitur had not yet been received, the court held the new disposition hearing and adopted the Agency recommendations. Hailey and James were returned to their mother's care.

#### Section 387 Petition

Slightly more than one month later, on February 23, 2012, the Agency filed a section 387 petition seeking removal of the children from mother's home. Hailey and James were detained and Daniel remained in his father's custody. The petition allegation described a series of issues that had arisen over the course of the six weeks since the minors began extended visits in mother's home and were subsequently returned.

### Section 387 Detention Hearing

A contested detention hearing began on March 1, 2012. Social worker Nicole Cunningham testified, primarily reviewing log notes of other social workers. The notes were admitted into evidence. The notes included the following incidents:

On January 10, 2012, Mincey supervised the first two hours of a four-hour home visit. When Daniel and James arrived for the visit, James immediately began pushing buttons on the air conditioning unit. He then focused on the small dog, repeatedly picked him up and squeezed him hard to keep him from jumping out of his arms. Although mother and Mincey attempted to teach James to treat the dog gently, James continued to grab the dog by the stomach or legs. At Mincey's suggestion, the dog was placed into a travel kennel. But when the children again asked for the dog, mother let the dog out. Although Mincey expressed concern for the dog, mother insisted that the children have the dog available and that it was good for the children to have a pet.

At one point, Daniel spilled the dog's water dish. Mother used a Swiffer mop to clean up the mess. James then used the mop and activated the water flow, getting the floors wet and slippery. Mincey suggested removing the water bottle from the mop, which mother did, only to replace it when James complained. James then resumed using the mop and activating the water, causing him to slip on the wet floor. James again pushed buttons on any electric devices in the apartment, including the remote control and dishwasher. He turned on the microwave and tried to turn on the furnace with a broomstick. Mother followed and tried to redirect him. When Hailey arrived, she and James played with the dog in "much the same manner as before."

Social Worker Maria Pasillas supervised the last two hours of the visit. James continued to turn knobs on the appliances and much of the same behavior reported by Mincey continued. At the end of the visit when mother hugged Hailey, Hailey slapped her hard in the face. Mother did not respond and Mincey told Hailey that her behavior

was not appropriate. Pasillas noted that mother was listening to suggestions on how to care for her children and she seemed to be trying, but she needed help learning how to manage three children and how to say “no” and stick by it.

At the next visit, two days later, Mincey noted that James continued to fixate on the electric appliances. Mincey suggested locking devices for the appliances, and mother said she had not found any yet, but would continue to look. Hailey and Daniel both grabbed the dog, which Mincey put into the kennel. When mother refused a request from Hailey, Hailey hit her. At Mincey’s suggestion, Hailey was given a time out.

During the second half of the visit, supervised by Pasillas, James continued to mistreat the dog. He put all of his weight on the dog, so that the dog could not breathe. When told not to, he laughed and continued to do it, although the dog was gasping for air. Hailey also mistreated the dog, but listened when told not to. Hailey then bit James and was placed in a time out by mother.

On January 20, 2012, the Agency delivered a crib to mother’s apartment for Daniel. Mother had two males visiting her; the apartment was messy and had a “really bad odor.”

Nine days after Hailey and James were returned to their mother’s care, Mincey made an unannounced visit to the home on January 26, 2012. At that time, mother said she was still postponing visits with Daniel while she got better at handling James and Hailey. Mother said that a behavior clinician came daily to work with Hailey, while another clinician made home visits and was working with both Hailey and James on “perservarative behavior.” Mincey noted that specific items of interest to James, i.e., the Swiffer mop and TV remote control, etc., were placed out of reach. The dog was now in a full-leg cast, the result of James dropping the dog from a great height, breaking its leg. Mincey advised mother to either give the dog away or temporarily place it with a friend until the children learned to play with it appropriately. Mother was hesitant to do either.

Mother reported that, earlier that day, James had opened the dishwasher while it was hot and gotten a “steam burn” on his finger. Treating it with ice appeared to solve the matter and Mincey noticed no ongoing injury to the finger. Mother still did not have any locking devices on either the dishwasher or stove, but continue to look for such devices. The social worker suggested additional behavioral services for James through VMRC, and mother said she would call.

The following evening, when social worker Pasillas made an unannounced home visit, Hailey bit James on the hand and was put in time out. The social worker noted that the home was messy with “toys all over the floor” and a “mountain of clothes on Hailey’s bed.” The social worker provided mother with documents for her neighbor Bryan H., so that he could be a respite care person for mother.

On January 31, 2012, a social services driver attempted to deliver bus passes to mother, but when he called her cell phone, she refused to come get them. According to mother, she was trying to put the children to sleep at the time.

Early on February 4, 2012, the Agency received a call from mother’s neighbor Bryan H., who was at the hospital with mother and her children. According to Bryan H., mother had come to his home that morning with the children, stating that she had fallen, and that she needed help getting to the hospital and watching the children. It was at this point that the social worker discovered that mother was now 24 weeks pregnant. She had fallen, causing a placental abruption and needed to stay in the hospital overnight for observation. A friend of mother’s, Tiffany M., came to the hospital to take the children. Mother was released the following day.

On February 6, 2012, Mincey visited mother, who admitted she was about 23 weeks pregnant and that the father was “no one involved in the case.” According to mother, the father lived on the East Coast with his family, and she had a written agreement with him not to disclose his name.

At the February 8, 2012, visit Mincey noted that Hailey had scratches on both sides of her face and on her forehead. Mother reported to the social worker that she was tired all the time, most likely due to her pregnancy and the fact that the children no longer took daytime naps.

On February 15, 2012, a referral was received from Daniel's father, John, that when Daniel returned from a visit with mother, he had bites on his arm and hand and a bruise on his arm. Mother told him Hailey had bitten Daniel. When asked about the incident, mother reported that the two had argued over a mop and over a toy, and Hailey bit Daniel when he wanted the items. Mother claimed the bruise on Daniel's arm was already present when he arrived at her house.

Mincey noticed that James had a "good size" scrape on his forehead. Mother said that the injury had occurred the previous weekend when James was visiting his previous foster parents and he fell off of a scooter. Although she invited the social worker to call the foster parents, mother could not remember their names or contact information. Mother had still not purchased appliance locks.

The social worker contacted the previous foster family, who confirmed that James and Hailey had visited the previous week, but that they had played all day without incident. James did not fall and get hurt while visiting.

On February 16, 2012, Mincey made an unannounced home visit. At the visit, mother reported that she had given the dog to a friend to take to the animal shelter. Mother had now purchased locks for her refrigerator and oven, but had yet to find one that fit her dishwasher. James continued to pull on appliance doors and try to turn them on.

Juan Taran, behavior therapist for Hailey, was contacted and stated that he works daily with Hailey and mother at their home. He had not been there when all three children were there, just James and Hailey. Mother told him about one biting incident

with Hailey and that she had put her in time out. She did not mention a second biting incident.

After an Agency staffing on the case on February 21, 2012, a warrant was written for detention of the minors. It was served that afternoon and the children taken into protective custody. Mother was upset and would not listen to the social workers regarding the reasons for the detention. As summarized in the report, the reasons for placing the children in protective custody were as follows:

“[T]he allegations of General Neglect are SUBSTANTIATED. [Mother] recently reunified with her 3 children ranging in ages from 1-4 years old. They were initially removed due to issues regarding her mental health issues, her lack of parenting skills, her inability to protect them from physical abuse and her being completely overwhelmed. The children have been back in her home since mid January. Over the course of the past month, the FR SWs have noted supervision and parenting concerns, [mother] herself was seriously injured, despite the fact that she knows Hailey bites, [mother] has not taken appropriate steps to keep Daniel safe and he sustained two bites in the space of one morning and James has an unexplained injury to his forehead. Despite the extensive services provided to [mother] over the past year it does not appear that she [is] able to demonstrate that she can safely supervise and appropriately parent the children.”

Hailey’s therapist, Chad Fielden, testified that he had begun therapy with Hailey while she was still in foster care. At the time of referral, the concern had been Hailey’s behavior, which had included smearing feces, defiance, tantrums, and difficulty sleeping. Fielden had been to mother’s home between six and eight times, and was working on Hailey’s frustration tolerance. He saw Hailey’s biting as a response to frustration. Fielden saw an improvement in the duration of Hailey’s tantrums. Fielden thought mother’s home was chaotic due, in part, to James’s behavior, but he did not think mother’s parenting put the children in danger. Daniel was present during two of Fielden’s visits to the home. Early on when Fielden first visited mother’s home, she

refused to sign a release of information form to share his reports with the Agency.

Mother was “adamant” that Fielden not share information with the Agency.

Fielden testified that when he went to mother’s home, there was usually another adult male present who would watch James while Fielden and mother worked with Hailey. On occasion, the male would intervene with James to prevent him from doing various negative behaviors. Fielden testified that it was particularly important with a child like Hailey for a parent to establish boundaries and to maintain them with consistent discipline. Fielden thought mother was able to provide those appropriate structures and boundaries.

Mincey, who made four visits with mother and children since December of 2011, testified that James had autism that manifested itself in repetitive behaviors. James uttered a few words, but had no appreciable communication skills. In her first visit with mother on December 14, 2011, Mincey discussed with mother the wisdom of keeping a dog very demanding of her time while she was trying to care for her children. Mother thought the children would treat the dog appropriately in time. Mincey was concerned that the dog would bite one of the children while trying to protect itself. The children played tug of war with the dog and the dog would grab food out of their hands.

During the visit, Mincey noticed a large pot on the stove with the handle in a position that it could be easily bumped or knocked off. Mincey discussed with mother that the placement of the pot handle could result in injury.

According to Mincey, James remained fixated on repetitive activities, including pushing the air conditioning buttons, pulling at plugs, and running a toy along the heater grate. Mother was torn between the three children, trying to monitor normal childhood issues and being distracted with James’s constant activity. Mincey discussed with mother several times that the appliances needed to have locking devices on them for James’s safety. Mother had reported to Mincey that James had a steam burn on his finger from

opening the hot dishwasher. When James was in his father's house, he did not have the same preoccupation with electrical devices. After witnessing the children hurting the puppy, Mincey suggested to mother that she give the puppy away, but mother refused.

At this point in the proceedings, a conference was held at the suggestion of the juvenile court. It was agreed that Hailey would return to mother's care, but James would continue in foster care and Daniel in his father's care. This would allow mother to focus on getting Hailey's behavior under control before adding the other children. Visits with James would occur when there was a service provider in the home. A jurisdiction/disposition hearing was set for March 27, 2012.

#### *Jurisdiction/Disposition Report and Hearing*

The March 27, 2012, report prepared in anticipation of jurisdiction/disposition stated that, while mother was able to safely parent Hailey, she was not able to parent all three children at that time, especially due to James's behavior problems caused by autism. The report, which described mother as "overwhelmed," noted mother's inability to explain the scrape on James's forehead and surmised that it occurred while he was not being properly supervised. The report also stated that it was not safe to return Daniel to his mother's care because Hailey had bitten him while he was under mother's supervision. The report noted that, while mother was presently providing a safe environment for Hailey, mother might not be able to cope with Hailey once the new baby arrived.

The report stated that mother had not been keeping up with her counseling services at Sierra Vista. Mother had cancelled appointments on February 27, 2012, and March 12, 2012, and she had not informed her therapist that she was pregnant. Mother's failure to be forthcoming concerned the therapist. Mother did not attend coparenting sessions on March 12 and 29, 2012, which were scheduled with Daniel's father. The social worker opined that, although mother was for the most part working on her case

plan, she was not putting the skills she learned into practice. The social worker had serious concerns about mother's ability to supervise all three children at the same time.

At a March 27, 2012, pre-trial conference, the juvenile court gave the Agency discretion to allow mother extended visits with James. A contested jurisdiction/disposition hearing was set for April 17, 2012.

An addendum report filed April 17, 2012, stated that a visit with James on March 21, 2012, was cancelled because he was ill. A visit on March 23, 2012, went well with mother appropriately redirecting the children when they did not get along. A March 26, 2012, visit went well; the house was clean and organized, but the children argued a lot. A scheduled April 2, 2012, visit was cancelled due to mother's "pregnancy pains."

The first visit with Daniel was scheduled for April 9, 2012, but he could not come due to an emergency in his father's family. Hailey and James argued with each other. Daniel came to visit with the others on April 16, 2012; Hailey misbehaved and had to be placed in time out three times.

The report included a letter from mother's therapist Cose who stated that, between June of 2011 and March 12, 2012, mother missed or cancelled eight sessions. According to Cose, mother was forthcoming and motivated "for brief periods," but her ability to be forthcoming was fleeting. Mother still had not revealed her pregnancy to Cose. Cose worried that this would likely add additional stress for mother.

At the April 17, 2012, contested hearing, the Agency submitted on the petition and reports. It was agreed that the juvenile court would take judicial notice of the testimony at the detention hearing, except for Mincey's testimony because she had not yet been cross-examined and was presently unavailable to testify.

Juan Taran testified on mother's behalf that he was a therapeutic behavioral aide with Therapeutic Behavior Services (TBS) and had been working with Hailey for about five months, three of those with mother. He was in the home three to four times a week

for one or two hours a day. He had never witnessed Hailey biting and had not heard reports of biting until he was informed about the bites on Daniel. Because he was working with Hailey, he had not had interaction with James or Daniel. Taran testified that he and mother had discussed getting a lock on her dishwasher, but that it was a very small size and he did not think she would be able to find such a lock for it. Instead, mother had put number magnets on the dishwasher, which steered the children's attention away from the dishwasher knobs.

Tiffany M., mother's friend, testified that they each have children with autism. Tiffany babysat Hailey and James when mother was in the hospital overnight in February. While she did have to redirect James at times, the children behaved and played relatively well together. Hailey did not try to bite anyone.

Sarah Jordan, a friend and neighbor of mother's, testified that she visited with mother in her apartment two to three days a week. Jordan had seen James "bolt" and get out of the residence two or three times since the beginning of the year.

Social worker Gary Boyd testified that he had been the placement worker since the end of February 2012. James visits with mother twice a week for two hours. Boyd described Hailey as a very difficult child; she is demanding and screams and spits on him. Boyd described Hailey as unpredictable, and he had not seen any improvement in her behavior in the six weeks he had worked with her.

Boyd was not aware of James's assessment or available services at this time because James moved between counties and mother had not yet signed a release for VMRC to release records to the Agency.

Boyd observed one visit on April 16, 2012, with all three children present. It was difficult for mother to manage all three children and Hailey was more difficult to manage when the others were around. Boyd thought it best if mother had one-on-one time with James and Daniel, which could occur if mother allowed Hailey go to the Children's

Crisis Center, but she was not willing to do that. Boyd opined that, for James to be safely returned at this point, there would need to be another set of hands in the home, which the Agency could not provide on an around the clock basis.

Social worker Pasillas testified that James was originally a client of Stanislaus County VMRC before dependency. James moved to Merced County when taken from his mother and participated in a different VMRC. He has been back and forth between the two counties again due to his placement, causing a disruption in services at Stanislaus County VMRC.

Cunningham testified that Mother must attend VMRC classes in order to receive in-home VMRC services for James. Although mother claimed she had just begun, she had not yet provided Boyd paperwork. To date, mother had attended only one coparenting session with Daniel's father.

At the continued hearing, Mincey testified that James had received autism-based services through the school autism-based program since he was three. James's father had attended the mandatory parent orientation classes at VMRC while James was in his care. Although Mincey had referred mother to VMRC for in-home behavioral services for James, she did not attend the classes before he was removed. She was scheduled to attend on March 31, 2012.

Mother testified that she got a referral for VMRC in January or February and was scheduled to attend in March, but did not go because she did not know the proper time. She knew James would be eligible for 40 hours of in-home services. Mother admitted that her home was chaotic when all three children were present because the home is small. If her children were returned to her, she would be eligible for a three bedroom home through Section 8. Mother thought many of "these problems" would not have occurred had she had a bigger home.

Mother acknowledged that she missed four coparenting sessions with Daniel's father, including one the previous day. Mother claimed Sierra Vista, where the visits were to take place, did not provide her information about visit times because they were scheduled by Daniel's father.

Mother testified that she thought Hailey was "on the calmer side," although there were times when "everything bothers her," usually when James leaves after a visit. Mother testified that Hailey and James had no aggression towards each other. She cancelled a recent visit with Daniel and James because she was expecting a doctor to come to her home for a prenatal exam. And she refused to have visits at the Agency when the social worker was not available to stay at the house because the room at the Agency was too small and it became too chaotic.

Mother had not yet gotten a parent mentor through Aspiranet. She had called them and they had failed to return her call. Mother testified that her neighbor Brian helps her often, that her extended family visits every other weekend, that therapists Taran, Fielden, and Cose help, as does Parent Resource Center, and that a public health nurse would be working with Hailey and the newborn. Mother had taken an online autism parent training course in the past week. Mother was planning to attend the next VMRC orientation in July.

According to mother, her wish would be to have James back home with in-home services and have Daniel transition back into the home. That way she could get James and Hailey settled first with the newborn. According to mother, Hailey was a typical "easy-going" child, and James was the one who required a lot of "redirection." Mother thought Hailey's behavior problems had improved since she left foster care. According to mother, Hailey was not aggressive at home, except for the one time when she bit Daniel.

Mother refuted several claims made by social workers. She claimed she had always been open to signing release forms and did not remember telling Fielden not to share information with the Agency. She did not remember being asked in January to install appliance locks, but instead installed the locks the day it was discussed on February 16, 2012. That same day, she took James to the doctor for a cold and to address the scrape on his head. She did not tell the social worker that she was certain James's injury occurred at the foster parents, but she assumed it occurred there.

Mother insisted that she was honest and forthcoming with her counselor, Cose. She did not tell Cose about her pregnancy because it was irrelevant and none of her business. Mother thought the social workers had no right to say she was overwhelmed and she thought her pregnancy had no impact "whatsoever" on her care of her children.

Mother denied that Hailey ever bit James, only that she bit Daniel twice in one day. Mother did not think Hailey spitting at someone while in time out was an aggressive behavior. Mother did not recall Hailey hitting her or a social worker's response to such an incident.

Mother claimed that she lost the information on the time for the VMRC class and she could not find the paperwork she was supposed to fill out. She claimed that she had now sent in the paperwork and was "adamant" about attending the next available class in July.

Boyd re-took the stand as a rebuttal witness. Mother had signed a release for VMRC records on April 18, 2012, and he had since received James's records from them. James had received assessment, speech therapy, physical therapy and case management through VMRC until age three. After that time, he received some services through the Department of Education and case management services through VMRC. He is currently receiving speech therapy and is in a special autism class, and will be assessed for in-home behavioral services after mother takes the class.

Boyd had arranged respite care for mother the weekend of April 14 and 15 so that she could attend what he believed to be the VMRC class. Boyd requested documentation, which mother did not provide. She later said she attended an autism conference in Sacramento. He still had not received verification from mother that she attended such a conference.

Boyd testified that, in the two months he had supervised visits, he had seen Hailey hit and spit on mother. Hailey had also spit on Boyd, and Hailey typically had to have two to three time outs every two-hour visit.

The juvenile court sustained the petition, finding that mother was unable to safely care for all three children, or even two children, at the same time. Specifically, the court found that mother was not able to care full-time for James at that point. The court found that the number of injuries to the children, albeit small, demonstrated by clear and convincing evidence that they were at a substantial risk of harm. The court noted that, although several of the service providers testified that mother did okay supervising the children, it was always in a situation where there were other adults present. The court found that mother's testimony lacked credibility.

The juvenile court ordered that Hailey remain in mother's care with family maintenance services; that James be removed from mother and father's care and placed in foster care with reunification services; and that Daniel be removed from mother's custody but remain placed with his father and reunification services ordered.

## **DISCUSSION**

### **I. SUFFICIENCY OF THE SECTION 387 SUPPLEMENTAL PETITION**

Mother contends that the evidence did not support the juvenile court's ruling sustaining the section 387 supplemental petition and removing James from her custody and that it should have been dismissed. We disagree.

A section 387 supplemental petition is used to change the placement of a dependent child from the physical custody of a parent to a more restrictive level of court-ordered care. (§ 387; Cal. Rules of Court, rule 5.560(c).)<sup>3</sup> In the jurisdictional phase of a section 387 proceeding, the court determines whether the factual allegations of the supplemental petition are true and whether the previous disposition has been ineffective in protecting the child. (§ 387, subd. (b); rule 5.565(e)(1).) If the court finds the allegations are true, it conducts a dispositional hearing to determine whether removing custody is appropriate. (Rule 5.565(e)(2); *In re H.G.* (2006) 146 Cal.App.4th 1, 11.) A section 387 petition need not allege any new jurisdictional facts, or urge different or additional grounds for dependency because a basis for juvenile court jurisdiction already exists. (*In re Joel H.* (1993) 19 Cal.App.4th 1185, 1200; *In re John V.* (1992) 5 Cal.App.4th 1201, 1211.) The only fact necessary to modify a previous placement is that the previous disposition has not been effective in protecting the child. (§ 387, subd. (b); *In re Joel H.*, *supra*, at p. 1200.)

When a section 387 petition seeks to remove a minor from parental custody, the court must apply the procedures and protections of section 361. (*In re Paul E.* (1995) 39 Cal.App.4th 996, 1001-1003.) Thus, before a minor can be removed from the parent's custody, the court must find, by clear and convincing evidence, "[t]here is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home, and there are no reasonable means by which the minor's physical health can be protected without removing the minor from the minor's parent's ... physical custody." (§ 361, subd. (c)(1); *In re Javier G.* (2006) 137 Cal.App.4th 453, 462.)

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<sup>3</sup> Rule references are to the California Rules of Court.

A removal order is proper if it is based on proof of: (1) parental inability to provide proper care for the minor; and (2) potential detriment to the minor if he or she remains with the parent. (*In re Jeannette S.* (1979) 94 Cal.App.3d 52, 60.) The parent need not be dangerous and the minor need not have been harmed before removal is appropriate. The focus of the statute is on averting harm to the child. (*In re Diamond H.* (2000) 82 Cal.App.4th 1127, 1136, overruled on other grounds in *Renee J. v. Superior Court* (2001) 26 Cal.4th 735, 748, fn. 6.)

Jurisdictional findings under section 387 are reviewed for the existence of substantial evidence. (*In re Joel H., supra*, 19 Cal.App.4th at p. 1200.) We will therefore affirm the jurisdictional findings if examination of the record, reviewed as a whole and in the light most favorable to the order, discloses evidence that is “reasonable, credible and of solid value,” which would allow a reasonable trier of fact to make the pertinent findings. (*In re Christina A.* (1989) 213 Cal.App.3d 1073, 1080.) In making this determination, we recognize that all conflicts are to be resolved in favor of the prevailing party and that issues of fact and credibility are questions for the trier of fact. (*In re Jason L.* (1990) 222 Cal.App.3d 1206, 1214; *In re Steve W.* (1990) 217 Cal.App.3d 10, 16.) Upon review for substantial evidence, we do not reweigh the evidence. (*In re Spencer W.* (1996) 48 Cal.App.4th 1647, 1650.)

Here, in its section 387 petition, the Agency first repeated how mother initially came to the attention of the Agency: the fact that she had been locking Hailey and James in their room for hours; that James was aggressive towards Hailey, causing scratches on her face; the Agency’s concern with mother’s mental health despite some mental health counseling and her parenting abilities despite having participated in parenting education; her pregnancy with Daniel; and mother’s difficulties with dealing with the system based on her “perceived injustices.” Based on the opinion of this court, the children, who had

been detained in response to the initial section 300 petition, were returned to mother on January 17, 2012, under a family maintenance plan.

The section 387 petition then alleged an overarching concern that mother was unable to properly supervise the children after they were returned to her as evidenced by (1) Hailey biting and bruising Daniel on February 15, 2012; (2) James's continued fascination with buttons on the A/C unit, dishwasher, stove and oven, and mother not having installed a lock on the dishwasher until the children were removed from her on February 21, 2012; (3) mother repeatedly "giv[ing] in" to the children and her inability to say no to them, despite parenting education; (4) James having an unexplained scrape on his forehead (which mother claimed happened when he fell from his scooter); (5) mother giving away her dog only after James injured it; (6) and mother again being pregnant, not being forthcoming about her pregnancy with the Agency, and the Agency's concern that the pregnancy would exacerbate her parenting deficits. The Agency alleged:

"The circumstances that led the initial removal of the children in January 2011 continue to exist despite over a year of services. [Mother] has completed a parenting program, has TBS services in home every day for two hours, and has a Children's System of Care clinician in her home on a weekly basis. Despite these intensive[] services [mother] continues to be overwhelmed in caring for her three young children, the home continues to be chaotic, and she is unable to provide adequate supervision for the children. The children continue to harm each other and the mother is unable to maintain their safe and stable care in her home. If these very young children were to remain in her care they would be [at] risk for substantial risk or harm as has been demonstrated by the recent injuries to James and Daniel."

We find that substantial evidence supports the juvenile court's findings under section 387. There was ample evidence in the record that mother was not able to adequately care for and protect the three children when they were together in her home. The visits observed by social workers Mincey and Pasillas were consistently described as chaotic and mother was described as overwhelmed. Numerous instances of inadequate

supervision were described. James, who is autistic and aggressive, was constantly fixated on pushing buttons and opening dangerous appliances. One such instance resulted in a steam burn when he opened the dishwasher. And although mother was asked numerous times to get locks for her appliances, she was slow to do so. James, on his own and with Hailey when they were together, repeatedly hurt the family's pet dog, causing the social worker to become concerned that the dog would bite them. At one point, James had an unexplained "good size" scab on his forehead. According to Mincey, mother was consistently torn between the three children, trying to monitor normal childhood issues and being distracted by James's constant activity.

In addition to James's behavioral concerns, Hailey was also a difficult child. Social worker Boyd described Hailey as demanding and unpredictable, and he had not seen much improvement in the time he had worked with her. Boyd testified that it was difficult for mother to manage all three children, and that Hailey was even more difficult to manage when the others were around. Hailey's aggressive behavior resulted in her biting Daniel on two occasions. While mother had the option of taking Hailey to the Children's Crisis Center in order for her to have one-on-one time with James and Daniel, mother was not willing to do so. Boyd opined that, in order for James to be safely returned, there would need to be another set of hands in the home at all times.

There was some evidence in conflict with that of Mincey, Pasillas and Boyd. Haley's therapist Fielden agreed that mother's home was chaotic due, in part to James's behavior, but he did not think mother's parenting put the children in danger. Taran, a behavioral aide who worked with Hailey, did not have concerns about mother's parenting, although he acknowledged he had been in the home only once or maybe twice when mother and all three children were present, and during those times there had been another adult present as well. And mother herself minimized much of her problems, claiming they were due to the small size of her home. Mother described Hailey as "easy-

going” and acknowledged that James needed a lot of “redirection,” but that there was no aggression between Hailey and James, or between Hailey and Daniel, except for the times Hailey bit Daniel.

The juvenile court, hearing the testimony and weighing the evidence, resolved the conflict adversely to mother, whom it found not credible, and found the petition true. Viewing the evidence in the light most favorable to the juvenile court’s finding, as we must, we conclude there was sufficient evidence to support the factual allegations in the section 387 petition and that mother was unable to provide adequate supervision for the children, such that the children were at risk of substantial harm. James’s removal from mother’s custody was therefore proper.

## II. REASONABLENESS OF REUNIFICATION SERVICES

Mother next contends that she was not offered reasonable services to prevent removal of the children from her home. Specifically, mother argues that former and current social workers testified to a lack of knowledge and lack of services provided to James with his known behavioral issues due to autism and that she was not provided any help or training on dealing with a special needs child like James. We disagree.

“In a section 387 disposition hearing, the Agency has the burden of proof to show reasonable efforts were made to prevent or eliminate the need for removal. [Citations.]” (*In re Javier G.*, *supra*, 137 Cal.App.4th at p. 463.) When a finding that reunification services were adequate is challenged on appeal, we review it for substantial evidence. (*Melinda K. v. Superior Court* (2004) 116 Cal.App.4th 1147, 1158.)

Here, substantial evidence reveals that the department provided mother with reasonable reunification services. Further, the services were reasonably geared to overcoming the problems that caused dependency and were appropriate under the circumstances. (See *In re Jasmon O.* (1994) 8 Cal.4th 398, 424-425; *In re Christina L.* (1992) 3 Cal.App.4th 404, 417 [reasonable, not ideal, services required].) “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 were the best that might be provided in an ideal world, but whether the services were reasonable under the circumstances.” (*In re Misako R.* (1991) 2 Cal.App.4th 538, 547.)

Mother’s complaint of inadequate services for James is without merit. In-home behavioral services were not available while James was not in the home. After James was returned in January of 2012, mother was scheduled to go to classes in order to qualify for the in-home services. She was provided with a referral in January of 2012 for a class to VMRC by case manager Shannon Macen. By her own testimony on May 8, 2012, mother acknowledged that she had been provided the paperwork to sign up, but did not do so. According to mother, she “lost” the necessary information and was not able to contact anyone.

Mother also complains that not every social worker who testified was aware of the details of each service, especially pertaining to James’s autism. While this may be true, it was not an indication that necessary services were not offered, but rather that, since the case involved three children, two with special needs, mother’s case needed several social workers to keep track. A social worker cannot be expected to know and recite all of the details of each service provided for each child in a lengthy and complicated case such as mother’s. In addition, mother acknowledged that she did not sign a release of information for the Agency to receive necessary records of James’s VMRC diagnosis and case plan until after court on April 18, 2012.

Finally, mother complains that, although the social worker knew that Hailey, while in foster care, “bit every day all day long,” the social worker failed to tell the therapist, Taran, so that he could concentrate on that target behavior. Instead, as argued by mother, mother was unaware of this behavior until the one incident when Hailey bit Daniel twice, which then resulted in the children being detained. But mother was clearly aware of

Hailey's biting behavior and its inappropriateness before the detention – during an extended supervised visit on January 12, 2102, Hailey bit James over a shared toy and was put in a time out by mother. Mother failed to mention this incident to Fielden or Taran, who were both treating Hailey for aggressive behavior. Taran testified that he did not have a release from mother to speak to the social workers. Neither did Fielden, who testified that mother was “adamant” that he not provide information about Hailey to the social workers.

The problem is not that inadequate services were offered, but that mother failed to utilize them. We reject mother's claim that reasonable services were not provided.

### III. MOTHER'S DUE PROCESS AND EQUAL PROTECTION RIGHTS

Mother asserts that, by allegedly giving a day care referral and a letter for Section 8 housing purposes to Daniel's father, John P., and not to her, and by failing to investigate her complaint against John P. that Daniel came home with bruises and a severe diaper rash, the juvenile court violated her due process and equal protection rights. We disagree.

First, we note that mother did not raise these due process/equal protection arguments below, and thus forfeited them. (*In re S.B.* (2004) 32 Cal.4th 1287, 1293.)

We also find mother's due process and equal protection claims without merit. The statutory scheme recognizes that services may be provided or continued for one parent but not the other, depending on the circumstances presented and the minor's best interests. (*In re Katelynn Y.* (2012) 209 Cal.App.4th 871, 877-878; *In re Jesse W.* (2007) 157 Cal.App.4th 49, 59.) The very nature of reunification services and the large body of case law thereon address the fact that services should not be cookie cutter and identical from person to person and case to case, but should address each parent's individual needs and situation. (*In re Dino E.* (1992) 6 Cal.App.4th 1768, 1777.)

Here, the facts related to mother and John P. were by no means identical, negating her claim that John P. was incorrectly treated differently and provided more services. Mother claims first that John P. was given a referral for day care and she was not. But John P. was employed; mother was not. In addition, although mother claims she was not referred child care, she actually was, to Children's Crisis Center, which was the same place to which John P. was referred. Mother, however, chose not to use that facility, finding a variety of reasons why she did not want her children there.

Mother also claims that the Agency gave John P. a letter stating that Daniel was in his custody in order to qualify for Section 8 housing, but failed to do the same for her. Mother presents no evidence, other than her own testimony, that she ever requested such a letter while the children were in her care. In addition, mother was already in Section 8 housing based, not on her children, but on her mental health diagnosis.

Mother also complains that the Agency failed to remove Daniel from John P.'s care after she complained about a bruise on his arm and a case of severe diaper rash. But mother's claim that the bruise was intentional is wholly unsupported by the evidence. Mother showed the social worker pictures of what appeared to be bruises, but the social worker did not indicate that the bruises were of concern. And her claim that Daniel should have been removed from John P. due to a severe diaper rash is also without merit. Although mother first stated that the diaper rash was so serious that she was going to take Daniel to the emergency room, she did not do so because she claimed not to have his Medi-Cal card. But she later admitted knowing that such a card was not needed for an emergency room visit, suggesting that the rash was not as severe as mother claimed.

Mother has failed to establish any disparate treatment, and to the extent mother and John P. did not have the same experiences with the Agency and the court, it was based on the evidence, and the needs and credibility of each party. No violations of mother's constitutional rights occurred.

**DISPOSITION**

The orders are affirmed.

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Franson, J.

WE CONCUR:

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Gomes, Acting P.J.

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Poohigian, J.