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

P.M.,

Petitioner,

v.

THE SUPERIOR COURT OF FRESNO  
COUNTY,

Respondent;

FRESNO COUNTY DEPARTMENT OF  
SOCIAL SERVICES,

Real Party in Interest.

F065734

(Super. Ct. Nos. 11CEJ300107-1 &  
11CEJ300107-2)

**OPINION**

**THE COURT\***

ORIGINAL PROCEEDINGS; petition for extraordinary writ review. Mary Dolas,  
Commissioner.

Fresno Dependency Office and Heather A. Von Hagen, for Petitioner.

No appearance for Respondent.

Kevin Briggs, County Counsel, and William G. Smith, Deputy County Counsel,  
for Real Party in Interest.

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\* Before Cornell, Acting P.J., Gomes, J., and Kane, J.

P.M. (mother) challenges by writ petition a superior court order terminating reunification services and setting a Welfare and Institutions Code, section 366.26 hearing to select and implement a permanent plan for mother's seven- and eight-year-old daughters.<sup>1</sup> Mother contends there was insufficient evidence to support the court's finding that she received reasonable services. She also argues the court should have granted her additional time to reunify. On review, we will deny mother's petition, as we conclude the court did not err.

### **PROCEDURAL AND FACTUAL HISTORY**

In May 2011, a superior court adjudged the children juvenile dependents and removed them from mother's custody, based on her physical abuse of them. Mother, who denied any abuse, failed to participate in services offered to her before the children were removed from her custody. She also made minimal progress toward alleviating the causes necessitating the children's foster placement.

At the May 2011 dispositional hearing, the court also granted mother reunification services and transferred the case to the Fresno County Superior Court. Mother's court-ordered services consisted of a mental health assessment and any recommended treatment, parenting education, eventual family counseling with the children, and weekly visitation. The court also ordered counseling for the children.

After the Fresno County Superior Court accepted the transfer of the case, the court ordered mother to also participate in a domestic violence evaluation and any recommended treatment. The court further ordered mother to comply with the services previously ordered by the Madera County Superior Court.

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<sup>1</sup> All statutory references are to the Welfare and Institutions Code unless otherwise indicated.

Because the girls have very unique first names and share the same initials, we will refer to them collectively as the children.

Mother was arrested in August 2011 and held for a parole violation. As of her arrest, mother had not yet participated in any of the evaluations or started any of the services. At most, she attended supervised weekly visits with the children. In September 2011, mother was transferred to state prison, where none of the court-ordered services were available and no evaluations could be conducted.

At a six-month status review hearing in November 2011, the court found respondent Fresno County Department of Social Services (department) offered mother reasonable services, but again, she made minimal progress. The court continued the children's out-of-home placement and reunification services for another six months.

The court conducted its next status review hearing in May 2012. Mother remained incarcerated in a prison where none of the court-ordered services were available. However, during this second six-month reunification period, there was only evidence of one visit between the children and mother. Consequently, the court found the department failed in its responsibility to continue visits and therefore it did not provide mother reasonable services. The court ordered continued reunification services, including once-a-month visits, and set a permanency review hearing for August 2012.

At the time of the May 2012 review hearing, the department supervised two visits between mother and the children. It also arranged visits between them at the prison, once in June and another time in July.

The court continued the permanency review hearing into early September. Because mother was transported back and forth to prison when the court continued the scheduled review hearing, the department did not arrange an August visit.

Mother was released from prison on August 30, 2012. In advance of the permanency review hearing, the department submitted a report recommending that the court terminate further reunification efforts and set a section 366.26 hearing to select and implement a permanent plan for the children.

*Evidence from September 2012 Permanency Review Hearing*

After the May 2012 status review hearing, the social worker contacted the counselor representative at the prison where mother was housed regarding possible services for her. The prison did have some vocational classes and volunteers did come to the prison to provide parenting and anger management classes. The prison previously eliminated classes due to budget cuts and was only offering the vocational classes. However, mother had been ineligible for such classes due to “program failure” for her numerous rule violations since January 2012. Mother came off of program failure in the summer of 2012, but there was a waiting list for the parenting and anger management classes. The social worker could not put mother on the waiting list. That was up to mother. At most, she put herself on a list for job training.

Also, while mother was in prison, the department had no means of administering mother’s mental health assessment or domestic violence inventory. Since mother’s August 30th prison release, the social worker referred mother for both the assessment and the inventory. Because mother had done neither of these, the social worker had no idea what recommendations for treatment would emerge from them. Mother had started a parenting course a few days before the hearing.

The children liked their recent visits with mother, but they did not want to live with her. The visits were noncontact due to mother’s criminal history and prison regulations. Due to mother’s incarceration, there was nothing more the department could do to bring the children closer to mother or to help them develop any relationship with her. Around the time of the visits, the children experienced enuresis and did not want to follow the rules. It took about two weeks after a visit for the children to resume their normal routine.

The children had been placed with a relative in the San Francisco Bay Area since March and were making significant emotional, behavioral and scholastic progress. After the children’s placement in the Bay Area, the social worker made numerous, but

unsuccessful, attempts to enroll them in mental health therapy. Both children had been previously seeing a therapist in Fresno County.

No family therapy had commenced between mother and the children because it normally occurs once a family has unsupervised visits, which was not the case for this family. Also, parents and children do not start family therapy when parents have not even begun their other services.

Although mother still disagreed with the jurisdictional finding that she physically abused the children, she claimed she was willing to participate in services. She also asked the court to continue reunification services.

#### *Ruling*

After closing arguments, the juvenile court made the necessary findings to terminate reunification services and set the section 366.26 hearing. In particular, the court found the department provided and offered reasonable services, as well as complied with the case plan. Since the May 2012 status review hearing, the department made reasonable efforts to provide visitation between the children and mother. The court also found that there were no court-ordered services the department could provide mother because she was in a facility where there were no services available. Also, it was mother's own behavior that caused her to be unavailable to participate in even the minimal or volunteer-led services at the prison.

In addition, the court rejected mother's argument for six more months of services. The court noted the absence of evidence that: (1) mother had made or was making significant and consistent progress in establishing a home that is safe for the children; and (2) there was a substantial probability that the children could be returned within that time period. At most, there was evidence that mother was currently willing to do everything to reunify.

## DISCUSSION

### I. THE DEPARTMENT PROVIDED REASONABLE SERVICES SINCE THE MAY 2012 REVIEW HEARING

Mother challenges the sufficiency of the evidence to support the juvenile court's reasonable services finding. She begins by seeking this court's review of the record for the one-year period during which she was incarcerated. However, the scope of our review is more limited than that. We consider only the record of services since the May 2012 findings and orders. (*Steve J. v. Superior Court* (1995) 35 Cal.App.4th 798, 812.)

Having reviewed the record as summarized above, we conclude there was substantial evidence to support the juvenile court's reasonable services finding. Mother's failure to reunify had nothing to do with the department. Mother made herself unavailable to take advantage of court-ordered services due to her own conduct that resulted in her year-long incarceration at a facility where none of the court-ordered services were available. Her further misconduct while in prison prevented her from even signing up for the prison's volunteer services until shortly before mother was released. Even then, however, mother did not put her name on the waiting list for those volunteer services. Also, due to mother's incarceration, the department had no means of arranging for administering a domestic violence inventory and mental health evaluation for her. As for visitation, the department complied with the court's order except in August. Mother overlooks the department's reasonable explanation for that omission.

To the extent mother criticizes the department for lack of mental health services for the children and the lack of family therapy, she again overlooks the record. The department successfully placed the children with relatives in the Bay Area. Consequently, the children could no longer attend their therapy sessions in Fresno County. The social worker thereafter made numerous, albeit unsuccessful, attempts to enroll the children in mental health therapy closer to their new home. As for family

therapy, the social worker explained it could not even start when parents had not begun their other services and visitation remained supervised.

Having found substantial evidence to support the court's reasonable services finding, we reject mother's related argument that the court should have granted her additional time within which to reunify with the children because she did not receive reasonable services. Alternatively, she contends the court should have granted her additional services on a theory that it would have been in the children's best interests and there was a substantial probability that the children would be returned. We disagree. First, there was no evidence, yet alone clear and convincing evidence, that providing additional services would be in the children's best interests. (§ 366.22, subd. (b).) In addition, to extend services past the permanency review hearing to a maximum of 24 months for a parent who was recently discharged from incarceration, there must be clear and convincing evidence that the parent was making significant and consistent progress in establishing a safe home for the child's return. (*Ibid.*) Again, there was no such evidence on the record before us.

#### **DISPOSITION**

The petition for extraordinary writ filed on October 12, 2012, is denied. This opinion is final forthwith as to this court.