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

DANIEL E.,

Petitioner,

v.

THE SUPERIOR COURT OF FRESNO  
COUNTY,

Respondent;

FRESNO COUNTY DEPARTMENT OF  
SOCIAL SERVICES,

Real Party in Interest.

F073278

(Fresno Super. Ct.  
No. 10CEJ3001100)

**OPINION**

**THE COURT**\*

ORIGINAL PROCEEDINGS; petition for extraordinary writ review. Brian M. Arax, Judge.

Daniel E., in pro. per., for Petitioner.

No appearance for Respondent.

Daniel C. Cederborg, County Counsel, and Brent C. Woodward, Deputy County Counsel, for Real Party in Interest.

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

Daniel E. (father), in propria persona, seeks extraordinary writ review of the juvenile court's order issued at a contested 12-month review hearing (§ 366.21, subd. (f))<sup>1</sup> terminating his reunification services and setting a section 366.26 hearing as to his sons, Justin, Jessie and Jeremy. He contends the juvenile court erred in not continuing reunification services. We deny the petition.

### **PROCEDURAL AND FACTUAL SUMMARY<sup>2</sup>**

In August 2014, the juvenile court exercised its dependency jurisdiction over then six-year-old Justin, four-year-old Jessie and three-year-old Jeremy after sustaining allegations that father and Ashley, the children's mother, engaged in ongoing domestic violence. The domestic violence included verbal altercations, intimidation and physical harm in the presence of the children. The court ordered reunification services for both parents and continued them to the 12-month review hearing. The Fresno County Department of Social Services (department) placed the children together in foster care.

During the reunification period, father completed a parenting class and outpatient drug treatment. However, he denied engaging in domestic violence with Ashley and persisted in his denial. He did so even though he was arrested in January 2015 for assaulting and falsely imprisoning Ashley and pled no contest to the resultant charges. He was placed on probation for domestic violence and ordered to complete a batterer's treatment program.

In May 2015, father participated in a risk assessment with Tamika London, Ph.D., who opined that he posed a substantial risk to the children's emotional, psychological and physical well-being and that continued services were unlikely to reduce the risk.

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

<sup>2</sup> We previously granted a writ petition filed in these proceedings. (*Daniel E. v. Superior Court* (Dec. 28, 2015, F072383 [nonpub. opn.].) We take judicial notice of the record in that case pursuant to Evidence Code sections 452, subdivision (d)(1) and 459.

London reported that father's judgment and insight were poor, he did not assume any responsibility for his behaviors and he expressed no remorse for his actions.

In its report for the 12-month review hearing, the department recommended the juvenile court terminate father and Ashley's reunification services. Father continued to use drugs and, although he was participating in batterer's treatment, he denied his history of family violence and insisted he did not need services, including domestic violence classes. Ashley's progress was no better. She had not visited the children since January 2015 and had not completed her services or maintained contact with the department.

In September 2015, the juvenile court convened a contested 12-month review hearing. Father did not appear and his substitute attorney requested a continuance which the juvenile court denied. The court terminated father and Ashley's reunification services and set a section 366.26 hearing for January 2016. The court ordered visitation to remain supervised and to occur a minimum of one time a month. Father challenged the juvenile court's setting order by extraordinary writ petition and we granted relief. (F072383.)

In January 2016, the juvenile court vacated the section 366.26 hearing and reset the matter for a contested 12-month review hearing to be conducted in February 2016. The court ordered the department to prepare an addendum report.

A social worker met with father to ascertain his status. He said he was living in an apartment and was unemployed. He claimed he was participating in outpatient drug treatment but the social worker was unable to confirm that. Father stated he was no longer using illicit drugs. However, following the meeting, he was drug tested and tested positive for methamphetamine and marijuana. Father also told the social worker that he stopped attending his batterer's treatment classes in September 2015.

In its addendum report, the department recommended the juvenile court terminate father's reunification services. The department pointed out that father continued to deny engaging in domestic violence with Ashley. He also continued to use drugs and had not

completed batterer's treatment. It reported that father did not visit the children from September 2015 to January 2016. He resumed visitation in February but the visits were reported to be "rough" and "out of control."

In February 2016, the juvenile court conducted the contested 12-month review hearing. Ashley did not appear and had not appeared since February 2015. Father testified there had never been domestic violence in his relationship with Ashley. He said Ashley claimed there was because she is mentally ill. He also said that the social worker lied about there being domestic violence. He said he pled guilty to a charge of domestic violence to save his apartment because he was in custody. Father believed he could take immediate custody of the children because he was their father and he missed them. He said the "whole thing [had] been blown way out of proportion [and] should have been a mental issue in the first place with Ashleigh [*sic*] ...." As to his positive drug test in January 2016, he explained that it was an isolated incident triggered by four deaths in the family. Following his testimony, his attorney argued for continued services and liberal visitation.

At the conclusion of the hearing, the juvenile court found it would be detrimental to return the children to parental custody. The court also found that the department provided reasonable reunification services but that father and Ashley made minimal to moderate progress. The juvenile court terminated reunification services, ordered twice-monthly supervised visitation and set a section 366.26 hearing.

Father filed a timely notice of intent to file a writ petition and appear for oral argument.<sup>3</sup>

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<sup>3</sup> Ashley did not file a writ petition.

## DISCUSSION

Father contends the juvenile court should have continued his reunification services because he had “come a long way.” He points out that he consistently denied engaging in domestic violence and, at one time, had witnesses subpoenaed to testify but the court did not get to hear their testimony. He believes the court would have dismissed the case had it heard the testimony. Father does not believe the court was able to consider how attached he and his sons are and believes if given the chance he can successfully raise them. He states, “We’ll be just fine.”

We construe father’s contention as a challenge to the sufficiency of the evidence to support the juvenile court’s order terminating his reunification services.<sup>4</sup> We conclude substantial evidence supports the court’s order.

Dependency statutes generally limit the duration of reunification services to 12 months from the date the child entered foster care for a child who was three years of age or older on the date of his or her initial removal from parental custody (initial removal). (§ 361.5, subd. (a)(1)(A).) A child is deemed to have entered foster care on the earlier of the date of the jurisdictional hearing or the date that is 60 days after the initial removal. (§ 361.49.)

At the 12-month review hearing, the juvenile court must decide if it can safely return the child home. (§ 366.21, subd. (f).) If, as occurred here, the juvenile court finds it would be detrimental to return the child to parental custody, the court must either continue reunification services or set a section 366.26 hearing. (§ 366.21, subd. (g)(1) & (4).) The court may only continue reunification services, however, up to 18 months from

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<sup>4</sup> We are aware of the content requirements for an extraordinary writ petition prescribed by California Rules of Court, rules 8.450 and 8.452 and acknowledge that father’s petition does not technically comply. Nevertheless, as is our practice, we liberally construe writ petitions in favor of their adequacy and exercise our discretion to reach the merits in the appropriate case. (Rule 8.452(a)(1).) We do so here.

the date the child was initially removed. Further, the court may only continue services if it finds there is a substantial probability the child will be returned to parental custody within the extended period of time or that the parent was not provided reasonable services. (§ 366.21, subd. (g)(1).)

In this case, father had received 15 months of reunification services by the 12-month review hearing in September 2015. That is because the children were removed from his custody on June 11, 2014; 60 days later fell on August 10. The jurisdictional hearing was conducted on June 30, 2014, making it the earlier date. Since the court did not reinstate reunification services after vacating the section 366.26 hearing in January 2016, father had also received 15 months of services when the court convened the 12-month review hearing in February 2016. Further, when the court convened the 12-month review hearing in February 2016, it had been 20 months since the children were initially removed.

The juvenile court was prepared to continue father's reunification services up to another 90 days under the circumstances. However, in order to have done so, it would have had to find father was not provided reasonable services or that there was a substantial probability the children could be returned to his custody within or by the end of the extended period. Father does not argue he was not provided reasonable services. He simply asserts that he could reunify with the children if given the chance which, to the extent it suggests a substantial probability of return, lacks merit.

In order to find a substantial probability of return, the juvenile court must make all three of the following findings: (1) the parent consistently and regularly contacted and visited the child; (2) the parent made significant progress in resolving the problems that led to the child's removal from the home; and (3) the parent demonstrated the capacity and ability to complete the objectives of the treatment plan and provide for the child's safety, protection, and physical and emotional well-being. (§ 366.21, subd. (g)(1)(A)-

(C.) There is no evidence in this case to support any of the findings. Father only had one visit a month with the children and did not visit them at all for four months, from September 2015 to January 2016. He made minimal progress in addressing his drug use and propensity for domestic violence and demonstrated virtually no ability to complete the objectives of his case plan given his denial of his circumstances.

Father's position throughout these proceedings was simply the department made a mistake removing his children. He consistently maintained that he did not engage in domestic violence or use drugs despite evidence to the contrary. He asserted before the juvenile court, as he does here on appeal, that the family can reunify and the children will be fine. The evidence, however, does not support that conclusion.

As to father's claim he had witnesses he wanted to subpoena, the record reflects that he told his attorney he wanted to call a witness but never provided a name.

We conclude substantial evidence supports the juvenile court's order terminating father's reunification services and setting a section 366.26 hearing.

### **DISPOSITION**

The petition for extraordinary writ is denied. This opinion is immediately final as to this court.