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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

JAMES W.,

Petitioner,

v.

THE SUPERIOR COURT OF ORANGE
COUNTY,

Respondent;

ORANGE COUNTY SOCIAL SERVICES
AGENCY et al.,

Real Parties in Interest.

G047636

(Super. Ct. No. DP020554)

O P I N I O N

Original proceedings; petition for a writ of mandate/prohibition to challenge an order of the Superior Court of Orange County, Jacki C. Brown, Judge. Writ denied.

Cara L. Bender for Petitioner.

No appearance for Respondent.

No appearance for Real Party in Interest Orange County Social Services Agency.

Peggy J. Oppedahl for Real Party in Interest Minor J.W.

* * *

James W. (father) seeks extraordinary relief (Cal. Rules of Court, rules 8.450-8.452) from Orange County Juvenile Court orders terminating reunification services and setting a Welfare and Institutions Code section 366.26 permanency hearing (all statutory citations are to this code) for his son, J.W. He contends the court erred in terminating services because there was a substantial probability J.W. would be returned to his care with an extension of services. For the reasons expressed below, we deny the petition.

I

FACTS AND PROCEDURAL BACKGROUND

On November 12, 2010, the Orange County Social Services Agency (SSA) filed a petition alleging 11-month-old J.W. (born November 2009) came within the juvenile court's jurisdiction. SSA alleged J.W. had suffered, or was at substantial risk of suffering serious harm or illness from his parents' failure to supervise or protect him adequately, and by his parents' inability to provide regular care for him due to mental illness or substance abuse. (§ 300, subd. (b).) Specifically, the petition alleged J.W. lived with his mother, S.E. (mother), who had an unresolved history of methamphetamine and alcohol abuse. On November 9, 2010, a methamphetamine pipe was found in J.W.'s jacket "exposing the child to residue in the pipe, thus placing [him] at risk of injury and harm." Mother had used illegal drugs as recently as September 2010. SSA alleged the whereabouts of father were unknown, father had an unresolved history of substance abuse impairing his ability to safely parent, and father knew or should have known mother abused methamphetamine and alcohol and failed to protect J.W. Mother

ultimately did not contest the termination of reunification services. Consequently, we include references to mother in the factual summary only as relevant to father's petition.

According to SSA's detention report, mother did not know father's whereabouts, and she alleged a history of domestic violence between her and father, although not in J.W.'s presence. The court temporarily detained J.W. and placed him in foster care.

Father contacted the social worker shortly after the detention hearing and asked for custody. He had seen J.W. intermittently since J.W.'s birth, explaining mother "[did] not always allow visitation." Father admitted he had been addicted to cocaine and heroin for most of his adult life. He also acknowledged an extensive criminal record making him a "third strike candidate." His record, dating to 1975, included convictions for robbery, burglary, spousal battery, and possession of controlled substances. His last conviction in 2004 resulted in a seven-year prison term and parole supervision until November 13, 2010.

Since May 2010 father had participated in a six-month outpatient drug treatment program through Phoenix House, and his drug tests during this time were negative. He also had completed a 52-week batterer's program. According to the social worker, his small one room apartment, which he had rented for a year, "was clean and free from any visible safety hazards."

The social worker recommended a trial placement with father under the conditional release to intensive supervision program (CRISP). The court adopted the recommendation and placed J.W. with father on November 17, 2010. The court authorized random drug testing for father and monitored visitation for mother.

In the December 2010 jurisdictional report, father admitted using an ex-wife as a childcare provider without the social worker's knowledge or approval, later claiming he needed help with childcare so he could attend physical therapy appointments.

Father drove J.W. in his ex-wife's vehicle even though he did not have a driver's license. It was unclear whether he used a child safety seat.

Father admitted he was an addict with a history of heroin and cocaine abuse, but claimed he had been "in recovery for almost two years." Father conceded he would relapse if he became homeless and that he kept methadone in a safe for "pain management." He also used medical marijuana once or twice a day, but never in J.W.'s presence. Father explained he suffered from degenerative joint disease and walked with a cane.

Father's parole agent was unaware father used methadone and reported father had tested positive for drugs, but not in the previous two months. The parole officer stated the current social worker was "wise to question" placement with father.

The CRISP social worker reported he was unaware father left J.W. with his former spouse or that he stored methadone in a safe at his residence, and opined the "placement should never have taken place due to the father's current living situation, health issues, and other concerns." The worker complained "father does not purchase any needed items for the child and he often makes request[s] for baby items during the" social worker's visits.

The assigned social worker, however, believed father was currently providing for J.W.'s needs and was "resourceful in identifying [and] utilizing community resources." Father received \$900 a month in disability payments, and paid \$700 a month in rent. He also qualified for \$200 in food stamps, and a request for cash aid of \$382 per month was pending. Although father was loving and attentive with J.W., the social worker expressed "concerns about [] father's ability to provide the care and supervision of the child." The worker noted father had violated the CRISP by leaving J.W. with unapproved caretakers, and transporting J.W. without a driver's license. He had not been forthcoming about his use of medicinal marijuana and methadone. The worker also worried about father's consumption of alcohol, the potential interaction of his many

medications, and the effect on his ability to safely parent. Despite these concerns, the social worker recommended extension of the CRISP placement.

In January 2011, the parents pleaded no contest to an amended section 300 petition. An addendum report noted father “appears to have complied with the [CRISP] agreement during this reporting period and the child appears to be doing well in father’s care.” The social worker recommended family maintenance services for father.

The social worker reported in February that father tested positive for methadone and marijuana, and missed one drug test, but father promptly advised her he missed the test because he was caring for J.W. The home environment improved for father and J.W. because the social worker secured monetary assistance to allow father and J.W. to move into a new apartment, and arranged to provide them with appliances and furniture.

At the disposition hearing in late February 2011, the court vested custody with father under a family maintenance plan. But in late June 2011, SSA placed J.W. in protective custody after Garden Grove police arrested father for possession of marijuana for sale, possession of hashish oil, possession without a prescription of the drug Soma, and resisting arrest.

Based on father’s arrest and incarceration, SSA filed a supplemental petition (§ 387) and placed J.W. in maternal aunt S.M.’s home over father’s objections. In a July 2011 report, a newly assigned social worker recommended denying reunification services for father based on his 1975 and 1993 robbery convictions. (§ 361.5, subd. (b)(12) [court need not offer reunification services to parent or guardian convicted of a violent felony].)

Father denied selling marijuana, explaining he used it medicinally and only as prescribed, but admitted he possessed Soma without a prescription. Father remained incarcerated until February 14, 2012. J.W. visited father at the jail, and reacted warmly and cheerfully during their visits. Father sent letters with poems and hand-drawn pictures

to J.W., and provided the social worker with written summaries of a parenting education book the social worker had given him.

In late September, the social worker changed her recommendation to offer father reunification services. Father pleaded no contest to the allegations of the supplemental petition. The court vested custody of J.W. with SSA, ordered reunification services, and adopted SSA's case and visitation plans. The court scheduled a six-month review for March 14, 2012.

Father immediately contacted the social worker upon his custodial release to arrange visitation and case plan activities. The social worker reported that while incarcerated, father participated in all available services. In jail, father "expressed on many occasions that he is determined to reunify . . . and is not participating in services only because he can't, not because he doesn't want to. The father . . . request[ed] other services to be provided through the mail, however . . . there were no other services available" After his release, he had two supervised, two-hour visits per week. He and J.W. interacted well. Father brought appropriate snacks and "showed a lot of affection." J.W. told his father he loved him at the end of their visits.

Based on father's determination and participation in his case plan, the social worker recommended continuing reunification efforts in advance of the six-month review. Minor's counsel opposed the recommendation and the juvenile court scheduled a contested review hearing for May.

Frustrated that minor's counsel had contested SSA's recommendation, father informed the social worker "he didn't want to do anything for nothing" and therefore had stopped drug testing and attending outpatient drug treatment. Father changed his mind, however, when the social worker explained the process and encouraged father to resume participation in reunification services. Father did not miss any visits with J.W., who was always "excited to see" his father.

In early May, the social worker reported father had missed two drug tests during the previous month. Father kept his scheduled intake appointment with a therapist, but otherwise failed to provide the social worker with any other information concerning case plan activities. Father believed there was a “conspiracy” against him because “no one’ wants him to have custody of” J.W.

In a report filed May 16, the social worker recommended terminating reunification services based on father’s refusal to participate in case plan activities. He continued to miss drug tests and failed to provide proof of enrollment in an outpatient drug program. Father actively participated in therapy sessions, however, and regularly visited with J.W.

The court conducted a contested review hearing over several days, and heard testimony from the social worker, father, and his therapist. Father provided a copy of his rental agreement, proof of attendance at Narcotics Anonymous meetings from February through May, proof of income, and verification of enrollment in a substance abuse outpatient program. He had a negative drug test on May 18, 2012.

At the conclusion of the review hearing on June 5, 2012, the juvenile court summarized father’s progress as a “very mixed picture.” The court was “very concerned” about father’s belief the social worker “or anyone else associated with the case is somehow against him.” The court commented on father’s “demeanor during testimony” and his inability to “make the social worker part of the team, [or] make things work . . . to get the job done on behalf of” J.W. But the court noted father maximized the limited reunification opportunities he had while in custody. He contacted the social worker immediately upon release to arrange visits, and had begun to participate in other programs. The court found continued supervision was necessary, returning J.W. to father would create a substantial risk of detriment, and reasonable services had been provided. Father’s progress toward alleviating or mitigating the causes necessitating placement was “minimal moving towards moderate.” The court found a substantial probability it would

return J.W. to his father's physical custody within six months. The court scheduled a 12-month permanency review for August 13, 2012.

In a report filed August 1, 2012, the social worker recommended terminating reunification services and scheduling a section 366.26 hearing. Father tested positive for cocaine on June 9 and missed drug tests on June 11 and June 30. When the social worker informed father of his failed drug test, father denied cocaine use and accused the social worker of bias, repeatedly calling her "a mother-fucking racist and mother-fucking white lady." Father's therapist reported father believed everyone was "out to get him" and lacked trust in government agencies. Nevertheless, father continued with his reunification plan, advancing to phase 2 in the health care agency's outpatient drug program, including drug testing and both individual and group counseling. He attended 12-step meetings, and had not missed any visits with J.W. The report noted father "consistently shows the child love and affection during the visits and the child appears to be comfortable" and excited to see father. Father maintained stable housing and continued to receive disability income.

In early July, S.M. asked the social worker to remove J.W. from her care because "father gets everything he wants." She said she could not "continue to handle the pressure of father's continual accusations [she was neglecting and abusing J.W.] combined with the child's aggressive behavior [stubborn, obstinate and will spit and hit adults when angry or frustrated]." She also mentioned the termination of funding for caregivers effective July 30. She refused to allow for a seven-day notice period. SSA placed J.W. with his respite care provider until another placement could be found.

The social worker wrote the court had advised father at the six-month review that "he needed to participate in all services with no room for error," but father took no responsibility for the positive and missed drug tests, and instead grew belligerent. Father's "behavior . . . is very concerning" because of his long history of drug use and domestic violence. He displayed "no accountability for his behaviors, which makes

progress and resolution difficult.” He appeared to do “things that benefit him and not necessarily the child” She noted the removal of J.W. from his aunt’s home was largely caused by father and was “very difficult for the child and could possibly have long lasting [e]ffects on him.” The report noted father appeared to love J.W. “very much,” but father’s issues “are extensive” and would take a long time to resolve, but J.W. “does not have that time to wait.”

SSA assigned a new social worker to the case on July 9. On August 6, father’s probation officer informed the social worker father was “in compliance with the [alcohol and drug] program, testing clean and doing well.” On August 13, father’s lawyer declared a conflict and the court appointed new counsel. The court continued the permanency review to allow new counsel time to review herself with the case.

In reports filed in early October 2012, the social worker noted father continued to attend all supervised visits with J.W., and sought to extend visits to Sunday so J.W. could accompany him to church. Father advanced to phase 3 of the county’s alcohol and drug treatment program. His drug tests had been clean since May 17, 2012, and he was on schedule to graduate from the program in late October. But father missed three drug tests, despite being warned SSA considered a missed test the equivalent of a positive drug test. He also tested positive for oxycodone (a generic form of the drug OxyContin) on August 29. His prescribed medications did not account for the positive test. Father tested positive for alcohol on one occasion, but he explained this occurred because he had a beer at lunch with his pizza. Father denied use of other than prescribed drugs and marijuana.

Father continued with individual therapy and conjoint counseling with J.W. Father’s therapist noted father grew up as a ward of the court and was “guarded, and distrusting” regarding foster care workers. He was not psychologically paranoid, however, and did not have problems with others in authority positions. The social worker reported father actively participated in all of his 14 scheduled therapy sessions, and six

joint sessions with J.W. Although J.W. initially needed time to warm up to father, he now “runs down the [hallway] to greet” him, and “cries when it is time to leave. [J.W.] also seeks out comforting from his father” Father “demonstrated consistent ability to nurture his son and redirect him in a constructive manner.”

On October 15, the new social worker filed a report changing SSA’s recommendation. The worker now concluded there was a substantial probability of returning J.W. to father by the 18-month review. Father had spoken to the social worker’s supervisor around October 11 and requested an extension of the reunification period, noting he could not participate fully in reunification services until his release from jail in February 2012. Father emphasized he was scheduled to graduate from his substance abuse program on October 25, he had attended all scheduled visits with J.W., and he continued to participate and make progress in individual and conjoint therapy.

Minor’s counsel opposed an extension of reunification services and requested a contested permanency review hearing. At the hearing commencing October 22, the new social worker, Juan Cervantes, testified that “[a]fter reviewing the therapist’s last report and consulting with [his SSA] supervisor, . . . we looked at the progress that the father was doing in regards to his case plan and changed our recommendation to provide more family reunification services.” Cervantes noted about two months of potential services remained.

Cervantes’s supervisor, Ann Gonzalez, testified they changed the recommendation based on an updated report from father’s therapist concerning his progress in therapy and other areas. She also cited father’s inability to participate in reunification during the first portion of the reunification period because of his incarceration. She recommended father enroll in another parenting class addressing issues with toddlers if the court extended the reunification period. Gonzalez noted father had graduated from the outpatient drug program on October 25. The social workers did not require any further drug counseling, although they continued to require drug testing.

At the close of the hearing, county counsel elaborated on SSA's decision to change its recommendation, explaining that the agency "believe[d] on balance that it would be appropriate" to extend services, although it recognized that aspects of father's performance "would certainly be likely to cause the court concern regarding the prospect of future reunification."

Father's former social worker, Deanna Petersen, testified father tested positive for cocaine shortly after the prior review hearing even though the court had made it "very clear . . . he needed to participate in all services with no room for error." Petersen stated it was a "mutual agreement" to reassign her because father did not "respect the things [she] would say to him" and he "was not willing to work with [her]." She "did not want any difficulties in [their] relationship to be a barrier to reunification"

Father testified and denied using cocaine in June or August. He could not explain the positive drug test he provided on June 9, and he attributed the missed tests in June to "some unfortunate situations" he believed were related to transportation issues, although he could not recall specifics at "this time" because "[a] lot of things happened between now and then." He also missed other tests after he broke his foot around August 16 because he could not walk or get to the test location. He sent the social worker X-rays of his injury and "hoped" the social worker understood he was incapacitated and therefore unable to submit to drug tests.

He did not believe SSA's plan precluded him from drinking a beer, explaining he never had a problem with alcohol and did not think he was an alcoholic. He admitted his June 2011 arrest involved the use of alcohol, but distinguished between drinking a beer and being drunk. He believed he could safely parent and drink an occasional beer. Recalling his "sober date" was a "tough one," but he "would say June 20 of 2011," which was the date of his most recent arrest for alcohol and marijuana.

He testified he had not used crack cocaine or any illegal substance since 2010, and held a medical marijuana card since late 2009.

Father tested weekly at the end of each drug treatment session. The program taught him about triggers and how to avoid circumstances that put his sobriety at risk. He “learned something” because he no longer used drugs. He went to 12-step meetings three or four times a week and would continue to do so, even if not required. J.W. was his “greatest reason for not wanting to use” drugs because he loved “[his] son and being with [him], being a part of his life.” He had surrounded himself with “people through meetings . . . and church” who would “like to see [him] do well” and help him avoid relapsing. He claimed not to be “the same person” he was when he abused drugs and committed crimes.

While he was in custody, he “tried desperately to obtain services” that were unavailable in the medical unit. He was not permitted visits from NA or AA groups, and there were no classes available. He believed continued counseling was helpful because “anybody who would offer me a better understanding about parenting, my communication skills, how to just be a better father . . . I could use that for the rest of my life. I mean parenting doesn’t stop after birth It just keeps on going.”

He was certain J.W. wanted to live with him. He had a stable residence and income and felt he could have J.W. returned to his care immediately, although he agreed it would be prudent to extend the reunification period to transition J.W. into his home. He did not think his health issues, which included degenerative joint disease in his knees, shoulders, neck and ankle, sleep apnea, and high blood pressure, would preclude him from safely caring for J.W.

At the conclusion of the hearing, the juvenile court found J.W.’s return to his father’s care would create a substantial risk of detriment to his safety, protection, and physical or emotional well-being. The court found father failed to participate regularly and make substantive progress in court-ordered treatment programs. The court noted

father delayed enrolling in a drug treatment program for several months after he left jail in February 2012. The court cited father's belief in a conspiracy and his initial refusal to participate in services. The court also noted father lost custody of J.W. due to his arrest, incarceration, and concomitant inability to adequately care for J.W., and found the same risk "continues . . . because [father] fails to understand that even though he has a substance abuse problem, it is not just a problem with cocaine. It is a problem with abusing intoxicants of all natures," noting father "has never been able to go for an extended period of time testing negative" and "has not been able to ever accept the responsibility of the fact that his arrest leaving his very small infant son without any caretaker was directly related to the sales of narcotics and placing his own home, in which his infant was placed, in jeopardy." The court observed father had not adequately explained his numerous positive and missed drug tests. The court further noted a difference between "attending" and "substantively progressing [and] participat[ing]" in programs, and it did not appear father was "doing the 12-step program." The court also stated "drugs were not [father's] only problem," noting the case plan required "anger management and therapy."

Finally, the court found there was not a substantial probability the court would return J.W. to father's custody by December 20, 2012, 18 months after J.W. was originally removed from father's physical custody. The court concluded there "has been no substantive change in [] father since" the date of removal and "the circumstances leading to the risk of him being arrested again are still present." The court scheduled a section 366.26 hearing for March 4, 2013.

II

DISCUSSION

Substantial Evidence Supports the Juvenile Court's Findings Under Section 366.21, Subdivision (g)(1)

Despite SSA's recommendation to extend services, the court found there was not a substantial probability the court would return J.W. to father's physical custody by the 18-month review hearing. Father contends in this writ petition the court erred in declining to offer the six additional months of reunification services that SSA recommended. SSA does not oppose father's writ petition, although J.W.'s appellate counsel argues the court appropriately terminated reunification efforts and substantial evidence supports the court's finding.

We apply the general rule that the trial court's judgment or order is presumed correct and error must be affirmatively shown. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) Our review is limited to whether substantial evidence supports the juvenile court's order. (*James B. v. Superior Court* (1995) 35 Cal.App.4th 1014, 1020.) Father "has the burden to demonstrate that there is no evidence of a sufficiently substantial character to support" the order. (*In re Geoffrey G.* (1979) 98 Cal.App.3d 412, 420.)

Per section 361.5, subdivision (1)(B), the juvenile court should provide reunification services no longer than 12 months from the date the child entered foster care. The court may extend services only if it finds there is a "substantial probability" the court will return the child to the physical custody of the. (§ 366.21, subd. (g)(1).) To find a substantial probability of return, the court must find the parent (1) consistently visited the child; (2) made "significant progress" in resolving the problems that led to the

removal; and (3) shown the capacity and ability to complete the case plan objectives and provide for the child's safety, protection, physical and emotional well-being, and special needs. (§ 366.21, subd. (g)(1)(A)(B)(C).)

Here, substantial evidence supports the juvenile court's decision not to extend services because father failed to meet all the requisite conditions of section 361.21, subdivision (g)(1). The record reflected father had a lengthy criminal record and spent much of his adult life in penal institutions. It also reflected he had a longstanding addiction to illicit substances. When SSA placed J.W. with father in November 2010 under a CRISP plan, father used unapproved providers for childcare and transported J.W. while unlicensed to drive. Father's parole agent questioned J.W.'s placement with father, and the CRISP worker, initially unaware father stored methadone in a safe at his residence and had left J.W. with his former spouse, believed the placement should never have taken place because of father's history, living situation, and health issues. Father had not been forthcoming about his use of medical marijuana and methadone, and he also used alcohol, which was imprudent given his lengthy history of substance abuse.

In June 2011, father was arrested for possessing marijuana for sale and other crimes. He ultimately pleaded guilty to a felony and remained incarcerated until February 2012. To his credit, father took advantage of the limited services available while in custody and continued to visit regularly with J.W. But he missed drug tests in late April, and delayed obtaining reunification services. He unreasonably believed social workers were conspiring against him and they did not want him to regain custody.

Although minor's counsel objected, the juvenile court agreed to extend additional services to father after the review hearing concluded on June 5, 2012. The court noted father's progress was a "very mixed picture" and that he must "get the job done" on behalf of his son. The court warned him the "burden is on you. If you want your son back, then you need to get going. You need to make sure you get to all your

appointments. You need to make sure you get to [drug] testing. Don't miss any testings. You need to do all these things. Make sure that you attend your drug program. You have a gift here”

But only four days later, father tested positive for cocaine. He missed subsequent drug tests, and later tested positive for oxycodone. He denied using illicit drugs and aggressively challenged the social worker, raising again his conspiracy claims. During his testimony at the 12-month permanency review, he had no explanation for the positive drug tests and did not adequately account for the missed tests.

Although father received a generally favorable report from his therapist and ultimately persuaded the social worker and the SSA supervisor to change SSA's recommendation to extend the reunification period, the juvenile court reasonably could conclude at the November 2012 permanency review there was not a substantial probability the court would return J.W. to father's care by the 18-month deadline on December 20, 2012. Father had not made significant progress in resolving problems that led to J.W.'s removal from the home. Nor had he demonstrated the capacity and ability to complete the objectives of his treatment plan and to provide for his son's safety and protection. Despite drug treatment and counseling, drug tests demonstrated father continued to use illicit drugs. His substance abuse and attendant lawlessness placed J.W. in a precarious custodial position. As the social worker previously noted, father displayed little accountability for his behaviors, and this made progress difficult. He acted without regard to J.W.'s interests when he alienated the maternal aunt, which prompted her to seek J.W.'s removal from her home. Father's failure to progress beyond supervised visitation by November 2012 undermined his claim he could soon reunite with J.W. Father loved J.W., and made some progress, but the court reasonably could conclude his extensive issues would take more than a few months to resolve. The record does not support father's claim he “met the objectives of his services plan” and J.W.

“could safely be transitioned back to his care within the extended period of reunification services.”

Father’s reliance on *Jennifer A. v. Superior Court* (2004) 117 Cal.App.4th 1322, 1344, is misplaced. There, the issue was whether the juvenile court erred in finding a substantial risk of detriment in returning the children to their mother at the 18-month review. The mother, a single parent, had left her seven- and three-year-old children alone in a motel room while she went to work. She performed well on her case plan but tested positive for marijuana on a few occasions (out of 84 drug tests). The mother had unmonitored visits with the children and her occasional marijuana use did not negatively affect her parenting. The social worker testified the mother did not have a drug problem and exercised good parenting skills, and the mother demonstrated the ability to function in life by steadily working and caring for her children. (*Id.* at pp. 1337-1338.) The appellate court concluded the record did not support the juvenile court’s finding, explaining, “the evidence did not link substance use or abuse with Mother’s lapse of judgment in leaving the children at home alone. The petition did not allege substance abuse as a ground for detention Mother [displayed] . . . sufficient compliance with the case plan” (*Id.* at p. 1327.)

Here, in contrast, father had a history of drug addiction and crimes, and was arrested during these proceedings for drug-related crimes while caring for J.W. This alone distinguishes father’s case from the parent in *Jennifer A.* Father’s positive and missed drug tests were therefore crucial factors in determining whether he could safely care for J.W.

Finally, father also relies on *David B. v. Superior Court* (2004) 123 Cal.App.4th 768, where the court remarked, “We do not get ideal parents in the dependency system [or anywhere else for that matter]. . . . But the State of California is not in the business of evaluating parents and redistributing their offspring based upon perceived merit. [¶] The parents who come through the dependency system are more in

need of help than most. If we are lucky, they are parents who can learn to overcome the problems which landed their children in the system, and who can demonstrate the dedication and ability to provide for their children's needs in an appropriate manner. . . .

[¶] We are looking for passing grades here, not straight A's." (*Id.* at pp. 789-790.)

Here, father does not challenge the detriment finding. In any event, father's long history of criminal behavior and abuse of illicit substances manifestly *did* impact his ability to parent J.W. and sets him far apart from the parents in *Jennifer A.* and *David B.* The juvenile court reasonably could find that if father had "passing grades" in June 2012, he manifestly failed the test the court placed before him when he tested positive for cocaine and oxycodone soon after the review hearing. As the court noted, the evidence reflected father had not significantly changed since his felony drug arrest in June 2011. Substantial evidence supports the juvenile court's finding there was not a substantial probability J.W. would be returned to the physical custody of father and safely maintained in the home within the extended period of time.

III

DISPOSITION

Father's petition pursuant to California Rules of Court, rules 8.450 to 8.452 is denied.

ARONSON, J.

WE CONCUR:

BEDSWORTH, ACTING P. J.

THOMPSON, J.