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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

V.S.,

Petitioner,

v.

THE SUPERIOR COURT OF SANTA  
CLARA COUNTY,

Respondent;

SANTA CLARA COUNTY  
DEPARTMENT OF FAMILY &  
CHILDREN'S SERVICES,

Real Party in Interest.

H038039

(Santa Clara County  
Super. Ct. No. JD19959)

V.S. (mother) seeks writ relief (Welf. & Inst. Code, § 366.26, subd. (I);<sup>1</sup> Cal. Rules of Court, rule 8.452) from the order terminating her reunification services and setting a section 366.26 hearing to consider selection and implementation of a permanent plan for her son D.S. (born 2009). We deny the petition.

**I. FACTUAL AND PROCEDURAL BACKGROUND**

*A. December 31, 2009 petition and detention report*

Real party in interest Santa Clara County Department of Family and Children's Services (Department) filed a petition on December 31, 2009, pursuant to section 300, subdivisions (b) (failure to protect) and (j) (abuse of sibling). The petition alleged that

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

mother was neglecting the medical needs of D.S., then six months old. D.S. had had only one newborn well baby checkup and was behind on his immunizations.

Mother also displayed problems containing her anger, pushing the maternal grandmother (grandmother) and throwing a telephone at her in the presence of D.S.'s half-sibling.<sup>2</sup> In a 2007 psychological evaluation, mother was diagnosed with Conduct Disorder-Adolescent Onset Type, Intermittent Explosive Disorder, Alcohol Dependence, Other Substance Abuse, Physical Abuse of Child, Neglect of Child, and Narcissistic and Histrionic Personality Disorder. She had a history of leaving grandmother's home and abusing alcohol and other substances to the point of blacking out.

Mother's parenting skills were also an area of concern, as she gave conflicting accounts to a social worker about feeding D.S. First she said she was providing D.S. with "four to five ounces, every other hour," but later said she fed him hourly.

At the initial hearing on January 11, 2010, the juvenile court ordered that D.S. remain released to mother. The Department was directed to provide mother with referrals to programs on parent orientation and education, as well as to a drug and alcohol assessment.

The February 1, 2010 jurisdiction report recommended that D.S. be adjudicated a ward of the court with the mother to receive family maintenance services. Mother was adamant that D.S.'s half-sibling had been unfairly taken from her, and she did not believe the Department's intervention was necessary with respect to D.S. However, the Department was concerned that mother had failed to benefit from prior services provided to her and continued to have unresolved problems with anger management, in addition to being undependable and manipulative, all of which needed to be addressed in therapy.

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<sup>2</sup> D.S.'s half-sibling was removed from mother's care after mother was placed in custody for assaulting grandmother. Mother failed to reunify with D.S.'s half-sibling and her parental rights were terminated on December 18, 2009.

The report noted that mother had cancelled at least three scheduled interviews with a social worker and did not return the social worker's calls.

The Department acknowledged that D.S. had been taken to see a pediatrician following its intervention and had received his first immunization, albeit three months late. Mother continued to provide conflicting information about D.S.'s feeding schedule, which was either hourly or three times a day. She did not keep a schedule for providing a bottle, but relied on D.S. to point to the bottle when he was hungry.

At the March 22, 2010 jurisdiction hearing, the juvenile court dismissed the dependency petition after mother signed an agreement to participate in informal supervision services.

*B. May 26, 2010 protective custody warrant and dependency petition*

The Department obtained a protective custody warrant for D.S. after mother was arrested and placed in juvenile hall. Mother engaged in a physical altercation with the maternal aunt in D.S.'s presence and the home environment was unsanitary, with dirty dishes stacked on the counters, flies circling in each room and dog feces on the floor of one room.<sup>3</sup> Mother had been verbally and physically abusive to grandmother, who was infirm and terminally ill.<sup>4</sup>

The dependency petition alleged all of the above and further alleged that mother left D.S. in the care of grandmother, despite the latter's limited mobility and infirmity. Occasionally, this was done while grandmother was asleep and thus unaware that mother had left.

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<sup>3</sup> According to the police report accompanying the application for a protective custody warrant, five dogs (two adult and three puppies) were confined to a small unfurnished room and appeared neglected and malnourished. The dogs and one cat were removed from the residence by animal control at the time mother was taken into custody.

<sup>4</sup> Mother was the appointed paid caretaker for grandmother through In Home Supportive Services (IHSS).

In addition, mother threatened to break D.S.'s legs, threatened to bash in the head of a neighbor who offered to help care for grandmother and also told grandmother she hoped she would have a fatal heart attack. According to the petition, mother has a continuing substance abuse problem and frequently drinks alcohol at home with her adult friends.

On June 2, 2010, the juvenile court ordered D.S. detained.

*C. August 16, 2010 jurisdictional hearing*

The juvenile court sustained the petition and removed D.S. from mother's custody, ordering that she receive family reunification services. Mother was to participate in and complete a parent orientation class, a young parents parenting class, a counseling or therapy program to address conduct disorder and behavior, and a 16-week anger management program. D.S. was placed with a maternal relative, and mother was permitted supervised one-hour visits with him a minimum of once a week.

*D. Six month review report and hearing*

The February 3, 2011 report recommended continuation of family reunification services to mother. Mother had recently been released from custody and was on probation. D.S. had been moved to a concurrent foster home after the maternal relative indicated he could no longer care for him.

While in custody, mother had completed a young parents parenting class and received mental health counseling and other services. She had not yet taken an anger management class, and still failed to understand why D.S. had been removed from her care.

At the February 24, 2011 hearing, the juvenile court ordered that mother was to receive additional family reunification services.

*E. Twelve month review report and hearing*

The May 26, 2011 report recommended mother continue to receive additional family reunification services. Mother had been referred to mental health counseling, but

she had missed three sessions claiming she lacked transportation despite having a bus pass available for that purpose. She also told staff at the counseling service that she was not aware she was receiving counseling services from them. The social worker arranged another appointment, but mother failed to attend, once more claiming she lacked transportation. At the end of April 2011, mother finally attended her initial intake session.

Mother was provided a referral to an anger management program, in which she began participating.

Her visitation with D.S. at the Kindred Souls visitation agency had gone well, and supervised visits were now taking place in mother's home twice a week. Those visits were going well, but the social worker expressed concerns about the safety and cleanliness of mother's home, as there were sharp objects, including syringes,<sup>5</sup> and cleaning chemicals within the child's reach. D.S. continued to reside in his concurrent foster-adopt home.<sup>6</sup>

Mother, however, continued to reject responsibility for the circumstances which led to D.S. being taken into custody and denied assaulting grandmother. Though she admitted assaulting the maternal aunt, she continued to claim it was in self-defense.

On May 26, 2011, the juvenile court adopted the Department's recommendations to continue providing family reunification services to mother.

*F. Eighteen month review report*

In its 18 month review report, dated November 14, 2011, the Department recommended terminating reunification services and setting a section 366.26 hearing.

Mother was facing eviction following the death of grandmother, which resulted in the loss of mother's IHSS income.

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<sup>5</sup> These were described as "diabetic syringes" in the report.

<sup>6</sup> On October 31, 2011, the juvenile court granted D.S.'s foster-adopt parents' application for de facto parent status.

She had completed the anger management program, a parenting class for young parents and an adolescent family life program. Mother also completed 12 sessions of individual therapy and her counselor reported she had made some progress on the issues discussed. Mother declined the Department's offer of additional counseling sessions, stating she had done what she needed to do for court.

Mother was allowed unsupervised visits during the review period. Social workers arrived unannounced during the first such visit. Mother and D.S. were apparently not at home, and the social workers called mother to inform her they were there. When mother and D.S. arrived, D.S. was hot, tired and fussy. Mother explained D.S. had walked two miles. She had not carried him because it was too hot outside and he was too heavy. She said they would have taken the bus if not for the phone call from the social workers saying they were at her trailer.

Once inside the trailer, the social workers found it "cluttered and dirty with unwashed dishes piled up in the sink." The dwelling smelt so strongly of dog that the social workers asked mother to open the door for ventilation. Social workers noticed several items stacked up which posed a hazard to the child. Mother explained these were grandmother's things and she would be working on organizing and cleaning the trailer before the next visit. The social workers advised mother of their disappointment since the cleanliness and safety of the home had been discussed at great length with her in the past.

On a subsequent visit, social workers arrived to find mother sitting alone in front of her trailer. She did not know where D.S. was and went to look for him. Mother said he was chasing the dog around the trailer park and he was too fast for her to keep up with. The social workers noted several hazardous conditions around the trailer, including open high voltage electricity boxes and an open crawl space beneath the trailer which was littered with beer bottles and broken glass. When reminded that D.S. was only two and

needed to be supervised at all times, mother said she had been watching him, but was just too tired.

The Department noted that mother, despite having completed the various courses and programs as directed by the court, lacked knowledge of how to properly supervise D.S. or how to provide a safe environment in which a two-year-old could play.

Mother also continued to disclaim responsibility for the incidents which led to both D.S. and his half-sibling being removed from her care. She insisted she was never abusive towards grandmother, and that the police report concerning her arrest and out-of-home placement was false. Grandmother was angry with her, but mother explained, “what teenage girl doesn’t fight with her mom?” She denied ever tying D.S. to grandmother’s wheelchair.

In a January 19, 2012 addendum report, the Department provided feedback from the facilitator for mother’s anger management class. The facilitator confirmed that mother completed the course, but indicated her attendance was “erratic.” She was “minimally engaged” in the program, “seldom contributed to the discussion,” and “minimally met the conditions required to complete the . . . program.”

In a March 2, 2012 addendum report, a social worker visited mother’s home on February 8, 2012, to deliver a bus pass and observed dog feces and alcohol bottles on the porch.

In addition, the Department advised the juvenile court mother had just given birth to another boy. Social workers did not know that mother was pregnant, and hospital staff reported she was uncooperative following her C-section delivery on February 8, 2012. According to the hospital social worker report, mother wanted to leave the hospital the day after the delivery rather than waiting three days as directed, despite the increased risk of infection. She propped the bottle up for the newborn, rather than holding the infant herself, and when advised by a nurse that this is dangerous for the baby and interferes with the bonding process, mother said she “doesn’t care.” Mother declined the offer of

home visits from a public health nurse and said she would make sure no one takes her son.

The hospital social worker interviewed mother, who gave “short, guarded answers” which were often preceded by the question, “Why do you want to know that?” Mother does not know who the father of her third child is and has no contact with him. She had no reason for not telling the Department about her pregnancy and wanted to leave the hospital early because she does not like hospitals.

The report concluded that mother had failed to integrate what she had learned in over three years of services into practice, in terms of providing safe and appropriate supervision of D.S. Her inability to maintain a clean home, as well as adequately supervise and care for her child, would place D.S. at risk of harm if he were in her care. The Department continued to recommend that mother’s services be terminated and the matter set for a section 366.26 hearing.

At mother’s request, the court set the 18 month review for trial.

*G. Eighteen month review trial*

*1. Social worker Kristen Bailey*

Bailey testified as an expert on risk assessment, placement and reunification of dependent children. She confirmed mother had completed the required counseling and had begun to address the issues which brought D.S. into the dependency system. Mother had also completed all the programs in her case plan.

However, Bailey did not believe mother had benefitted from the services. The unsupervised visits showed her inability to address the Department’s concerns about safety, conditions in the home and unsafe relationships. Bailey said mother had difficulty supervising D.S. and allowed people who had not been cleared by the Department to have access to the child. There were ongoing issues in the case regarding cleanliness in the home, unsafe objects in the home, including sharp objects, dirty dishes, and animal waste.

Twice, D.S. developed a very bad diaper rash and mother was counseled on the importance of changing his diapers. Mother had to be prompted by the social worker or a relative to change D.S. and she would say that he “doesn’t let me change him.” They had to reiterate that she was the parent, and if his diaper needed to be changed, it should be changed.

Bailey also was concerned about mother’s minimal participation in the anger management program as reported by the facilitator, since it was her argument with and assault on the maternal aunt that brought D.S. into the dependency system. Mother moved her chair away from the other women in the group, and the facilitator believed she would benefit from additional individual therapy sessions. Mother was offered such sessions but declined because she had completed the class.

Bailey discussed the facilitator’s concerns with mother, but she continued to deny assaulting the maternal aunt. She “was defending herself.”

Bailey discussed the progression of visitation, describing how mother had participated in services, cleaned up her home and was transitioned to unsupervised visits. The home then again became cluttered and unsafe. The unsupervised visits went poorly, too, as mother made D.S. walk two miles in the heat and allowed him to run around the trailer park unsupervised. At another visit at a mall, despite mother being told by her and another social worker that she needed to be next to D.S. if he were climbing on play structures, they observed mother sitting outside the play area while D.S. played by himself, climbing and sliding down the slide. As a result, subsequent visits were supervised or more closely monitored. In the previous two months, mother had missed two visits and left one early.

Bailey agreed that mother was affectionate with D.S., fed him and he appeared to enjoy his visits. The visits themselves were pleasant, though there were safety concerns with D.S. standing on the back of the couch and climbing on an air conditioning unit.

Bailey believed D.S. was at risk because after three years of services, mother still had trouble supervising him, monitoring his safety and providing a clean, safe home for him. Bailey was concerned that mother was only beginning to address her many issues in counseling, and had made little to no progress in addressing her anger management issue, which is the reason D.S. was made a dependent in the first place.

## 2. *Mother's testimony*

Mother acknowledged she was involved in a physical altercation with the maternal aunt, and that incident led to D.S.'s detention.

She discussed the incident at the trailer park, where she could not immediately locate D.S., saying she was eight months pregnant at the time and had to sit down to rest. It only took her about a minute to locate D.S., not five minutes.

Mother also said that, on the occasion of the first unsupervised visit, D.S. only had to walk for seven to 10 minutes, she did carry him part of the way, and the total distance was only one-half mile, not two miles. At the mall, when D.S. was in the play area, she was no more than five feet from him, not far away.

With respect to the condition of her home, mother said it was initially cluttered with grandmother's belongings, but all that clutter had since been cleaned up. Grandmother's insulin syringes used to be in the home, but those were now gone, as well. Her home smelled of dog urine at times, but only because her dog used a pee pad. The social worker had not been to her home recently, and the environment was much different from when she had previously visited.

Mother checked D.S. every hour when he visited to see if he needed a diaper change, and denied that she ever needed to be prompted to change his diaper. She said she had missed only one visit with him in the last two months.

Mother had been living with her boyfriend for approximately six months, and he had been involved in multiple visits with D.S., and no concerns were raised about the boyfriend by social worker

3. *Mother's boyfriend's testimony*

The boyfriend said he had cleaned all of grandmother's possessions out of the trailer when he moved in and had completely cleaned up the home. The trailer was currently like a newly remodeled home, with fresh paint, no debris and very clean. The dog now lives in the back yard, rather than in the trailer.

4. *The juvenile court's decision*

After the parties submitted the matter, the juvenile court terminated mother's reunification services and set a section 366.26 hearing. In articulating its decision, the juvenile court framed the issue as not just whether mother participated in services, but whether she had benefitted from those services. The juvenile court noted mother had not claimed the services provided were not reasonable.

The court stated that "in this case it is not merely opinion about whether the mother has internalized. There is evidence that the child cannot be returned to the mother's care at this time. [¶] . . . It is not simply that the mother did not perhaps benefit from the services that were offered, but there have been specific facts and observations that have occurred, which establishes that the mother has not resolved the circumstances and the conditions which brought the child before the court in the first place." After reviewing the initial petition, the court concluded the evidence established the conditions set forth therein still existed and returning the child "would cause a substantial risk of detriment." In addition, the court noted the March 2, 2012 addendum describing mother's actions regarding the birth of her most recent child, as well as "her attitude toward medical providers and service providers, her attitude toward allowing people to observe the conditions of her home, all of that coupled with her interactions with the child during visitation, her lack of complete participation in the visitation that has been offered, the condition of the home when social workers have made unannounced visits, the concerns about her ability to properly supervise the child during times when she may

be having difficulty in her own personal life and at other times” provides sufficient evidence to support terminating reunification services and set a section 366.26 hearing.

## **II. DISCUSSION**

### *A. Applicable legal principles*

Once a child has been detained under juvenile court custody, family reunification efforts are required. (§§ 319, 361.5, subd. (a).) Reunification services are time limited. For a child who is three years old or younger on the date of initial removal from the custody of a parent, court-ordered services are not to exceed six months. (§ 361.5, subd. (a)(2).) Services may be extended up to a maximum of 18 months if it can be shown that a substantial probability exists that the child may safely be returned home within an extended six-month period, or if reasonable services had not been provided to the parent. (*Id.* subd. (a)(3).)

“The court shall order the return of the child to the physical custody of his or her parent or legal guardian [at the 18-month review hearing] unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The social worker shall have the burden of establishing that detriment. . . . The failure of the parent or legal guardian to participate regularly and *make substantive progress* in court-ordered treatment programs shall be prima facie evidence that return would be detrimental. In making its determination, the court shall review and consider the social worker’s report and recommendations and the report and recommendations of any child advocate appointed pursuant to Section 356.5; shall consider the efforts or progress, or both, demonstrated by the parent or legal guardian and the extent to which he or she availed himself or herself of services provided; . . . and shall make appropriate findings pursuant to subdivision (a) of Section 366.” (§ 366.22, subd. (a), italics added.)

While “simply complying with the reunification plan by attending the required therapy sessions and visiting the children is to be considered by the court, . . . it is not determinative.” (*In re Dustin R.* (1997) 54 Cal.App.4th 1131, 1143.) In other words, parental compliance with the reunification plan does not automatically result in a child’s return to parental custody. (*Ibid.*) Rather, the decision to return the child to parental custody depends on the court’s assessment of the effect that return would have on the physical and emotional well-being of the child. (§ 366.22, subd. (a).) When the juvenile court considers whether to deprive a parent of custody, it is concerned about the parent’s “grasp of the important parenting concepts--things such as a child’s need for security, adequate nutrition and shelter, freedom from violence, proper sanitation, healthcare, and education.” (*David B. v. Superior Court* (2004) 123 Cal.App.4th 768, 790.) By the time of the section 366.22 hearing, “the Legislature has determined a child’s need for stability and security within a definitive time frame becomes paramount. The cutoff date for fostering family reunification is the 18-month status review. At this hearing, the court must return children to their parents and thereby achieve the goal of family preservation or terminate services and proceed to devising a permanent plan for the children.” (*In re Elizabeth R.* (1995) 35 Cal.App.4th 1774, 1788.)

The juvenile court has wide discretion in ruling at the 18-month review hearing, and consequently, appellate courts will uphold the court’s finding of detriment if it is supported by substantial evidence. (*Constance K. v. Superior Court* (1998) 61 Cal.App.4th 689, 705.) “We do not reweigh the evidence, evaluate the credibility of witnesses, or resolve evidentiary conflicts. [Citation.] The judgment will be upheld if it is supported by substantial evidence, even though substantial evidence to the contrary also exists and the trial court might have reached a different result had it believed other evidence.” (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 228.) To determine whether there is substantial evidence to support the court’s findings, we review the evidence most

favorable to the prevailing party and “indulge in all legitimate and reasonable inferences to uphold” the court’s ruling. (*In re Misako R.* (1991) 2 Cal.App.4th 538, 545.)

*B. Substantial evidence supports the juvenile court’s decision*

Mother contends she “diligently completed her entire court ordered service plan,” and, therefore, D.S. should have been returned to her under a program of family maintenance. We disagree. Although the record contains evidence favorable towards mother’s position, there is substantial evidence to support the court’s finding that returning D.S. to mother would be detrimental to D.S.’s well-being.

D.S. was initially taken from mother because she could not cope with anger and frustration. Though she did participate in the anger-management part of her reunification plan, the facilitator noted that her participation was “minimal,” and that she moved her chair away from the other members of the group during the sessions. She rarely participated in the discussions and her attendance was erratic. The facilitator believed she would benefit from further individual therapy sessions, but mother refused that offer of assistance.

Furthermore, although mother had completed 12 sessions of individual therapy, making progress on some of the issues discussed, she refused the Department’s offer of additional therapy to address remaining issues. Mother had done all that was required of her by the court, and in her mind, that was sufficient.

There were conflicting accounts regarding what happened during several unsupervised visits with D.S. Bailey said D.S. was made to walk two miles in hot weather. Mother said it was only one-half mile or so and she carried him part of the way. Bailey said mother spent about five minutes trying to find D.S., who was chasing the dog around the trailer park. Mother said it was only a minute or so. Bailey said that mother was sitting outside the play area at the mall while D.S. was climbing on the play structures and using the slide. Mother said she was no more than five feet from D.S. at

the time.<sup>7</sup> Though it did not say so, the juvenile court apparently found Bailey's testimony and the Department's evidence more credible than mother's testimony. It was entitled to do so, and we cannot second-guess its determination in that regard. The evidence supports the finding that mother still cannot appreciate a child's need for security and her responsibility to provide a safe environment for him.

Even though the juvenile court might have reached a different result had it believed other evidence, substantial evidence supports the court's decision. Despite mother's progress, the juvenile court could reasonably determine that she had not yet demonstrated the ability to ensure D.S.'s safety, protection, or physical or emotional well-being in her care. Again, mother's arguments would require us to view the evidence in the light most favorable to her, and to disagree with the juvenile court's deductions and resolution of credibility issues. We may not do so. (*In re Albert T.* (2006) 144 Cal.App.4th 207, 216; *In re Casey D.* (1999) 70 Cal.App.4th 38, 52-53.) The substantial evidence test is not concerned with whether substantial testimony supports mother's position, or "whether there is substantial conflict, 'but rather whether there is *substantial evidence in favor of the respondent*. If this "substantial" evidence is present, no matter how slight it may appear in comparison with the contradictory evidence, the judgment will be affirmed.' " (*In re Stephen W.* (1990) 221 Cal.App.3d 629, 644, fn. 12.)

*C. Mother was provided reasonable services*

Mother argues in the alternative the court should have found that she was not provided with reasonable services because visitation was never increased beyond twice a week. This position, even if it were not forfeited by failing to raise it below, is not supported by the evidence.

As a general rule, claims of error are forfeited on appeal if they are not raised in the trial court. (*In re S.B.* (2004) 32 Cal.4th 1287, 1293; *Doers v. Golden Gate Bridge*

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<sup>7</sup> Mother did not specify whether she was inside or outside the play area.

*etc. Dist.* (1979) 23 Cal.3d 180, 184-185.) “The purpose of this rule is to encourage parties to bring errors to the attention of the trial court, so that they may be corrected.” (*In re S.B.*, *supra*, at p. 1293; *In re Lorenzo C.* (1997) 54 Cal.App.4th 1330, 1338.) “Dependency matters are not exempt from this rule.” (*In re S.B.*, *supra*, at p. 1293.) “[A]ny other rule would permit a party to . . . deliberately stand by in silence and thereby permit the proceedings to reach a conclusion in which the party could acquiesce if favorable and avoid if unfavorable.” (*In re Lorenzo C.*, *supra*, at p. 1339.)

Even assuming mother did not forfeit this claim by failing to raise it below, the record does not support her contention. After D.S. was initially detained, the court ordered supervised visitation for one hour a minimum of once per week. At the six month review hearing, mother’s supervised visitation was increased to a minimum of once a week for two hours. At the 12 month review hearing, mother was permitted a minimum of two visits per week for two hours apiece. At the end of August 2011, the social worker “used discretion to grant the mother unsupervised visitation . . . to assess as to whether the mother was ready for possible overnights or return.” As discussed above, however, those unsupervised visits did not go well and when social workers stopped by unannounced or participated in the visits, they observed a number of problems which were described in detail in the 18 month report. Consequently, the Department reinstated supervised visitation.

Contrary to mother’s assertion in her writ petition, the evidence presented to the juvenile court establishes that the Department provided mother with reasonable services and duly increased the frequency of her visitation with D.S. and decreased the level of supervision until it became clear that mother remained incapable of providing a safe, clean environment for D.S. The juvenile court did not err in concluding the Department provided mother reasonable services.

**III. DISPOSITION**

The petition for writ of mandate is denied. This opinion is final as to this court immediately upon filing. (Cal. Rules of Court, rule 8.264(b)(2).)

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Premo, J.

WE CONCUR:

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Rushing, P.J.

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Elia, J.