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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SIXTH APPELLATE DISTRICT

C.A.,

Petitioner,

v.

THE SUPERIOR COURT OF SANTA CLARA  
COUNTY,

Respondent;

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

Real Party in Interest.

H038463

(Santa Clara County

Super. Ct. No. JD20519)

C.A. was three years old when he was removed from the custody of petitioner, C.A. (mother). He was declared a dependent child of the court due to mother's incarceration and concerns about mother's mental health and substance abuse. At the contested 12-month review hearing, the juvenile court accepted the recommendation of the Santa Clara County Department of Family and Children's Services (Department) to terminate reunification services (Welf. & Inst. Code, § 366.22, subd. (a))<sup>1</sup> and set a selection and implementation hearing pursuant to section 366.26. Mother petitions for a writ of mandate directing the juvenile court to vacate that order. Mother argues that Department did not offer reasonable reunification services. Mother also faults

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

Department for failing to provide an opportunity for C.A. to visit with his half sibling, I.R. We reject the arguments and deny the petition.

## **I. BACKGROUND**

Mother was arrested on February 28, 2011, after a probation search and burglary investigation at her home revealed stolen property, methamphetamine, and an unsecured vintage handgun. C.A. was taken into protective custody and Department filed a petition alleging that he came within the jurisdiction of the juvenile court pursuant to section 300, subdivisions (b) and (j). C.A.'s half brother, 14-year-old I.R., was also placed in protective custody but he fled the placement the following day. The juvenile probation department notified Department that I.R. had open citations for grand theft and vandalism. I.R. continued in the juvenile justice system throughout the course of this case.

Mother had over 20 previous referrals to Department related to domestic violence, substance abuse, or physical abuse and neglect of her children. I.R. had previously been the subject of a dependency petition, as had a third child, A.P. I.R. was reunited with mother. A.P. was ultimately placed with his father.

Mother had a history of mental health problems, substance abuse, volatility, and involvement in physically violent personal relationships. Mother had nine drug-related criminal convictions between 2005 and 2010. Department's case plan for mother related to this constellation of parenting difficulties. The plan required that she participate in a parent orientation class, a substance abuse parenting class, a program of counseling or psychotherapy, weekly drug testing, a domestic violence victims support group, and a 12-step or other substance abuse self-help program. Mother was receiving psychiatric services while in custody and reported that she intended to be seen at Valley Medical Center for future psychotropic medication needs. Accordingly, her case plan required that she cooperate with any mental health treatment recommended, take her prescribed psychotropic medication, and participate and complete a substance abuse assessment.

Mother told the social worker during a visit at the jail on May 18, 2011, that she would do whatever she needed to do to get C.A. back but since she was in maximum security most programs were not available to her. Mother did participate in Bible study and a program called Road Map to Recovery.

At disposition proceedings on May 23, 2011, the juvenile court adjudged C.A. a dependent child of the court and ordered that he be continued in foster care and that mother and C.A.'s father receive reunification services.<sup>2</sup> The juvenile court approved the case plan and ordered mother to have a minimum of two supervised visits per week "upon release, or upon admission into the PACT program" and that C.A. have "reasonable" visitation with I.R. "once [I.R.] is released from Juvenile Hall."

Mother was placed on probation for crimes related to the stolen property and controlled substance. Probation conditions included that she abstain from drugs and alcohol and complete a substance abuse program. She was released from custody on September 18, 2011.

At the six-month review hearing held in November 2011, Department recommended continuing reunification services. C.A. was thriving in his foster home. He had no physical or developmental problems. Mother had twice weekly supervised visits with minor which were going well. Mother had begun the Celebrating Families program and an intensive outpatient drug treatment program at Blossoms Perinatal on October 19, 2011. She had participated in four sessions of individual therapy with Richard Garcia, LMFT. Mother reported that she was taking her prescribed medications. She missed some of the required drug tests; four of the five tests she did submit were normal. She tested positive for alcohol upon entering the Blossoms Perinatal program

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<sup>2</sup> C.A.'s father had not been part of C.A.'s life. He participated in reunification services but the juvenile court terminated services to father at the same time mother's services were terminated. C.A.'s father does not challenge that order.

but the program director reported that she usually gave her clients 30 days to stabilize. Overall, the social worker was “pleased and encouraged” with mother’s progress in her case plan and her motivation. I.R. was by then still within the juvenile justice system and residing at “the Ranch.” C.A.’s therapist felt that C.A. should be “shielded” from I.R. Department did not recommend visitation with I.R.

The juvenile court found by clear and convincing evidence that Department had offered and provided reasonable services designed to aid mother in overcoming the problems that led to removal of C.A. The juvenile court ordered that C.A. continue in care of the foster family and that mother continue to receive services according to the case plan Department had devised. The court ordered mother to have a minimum of two supervised visits per week. No sibling visitation was ordered.

Mother filed a motion pursuant to section 388 seeking an order for visitation between C.A. and I.R. and parent-child therapy for her and C.A. The hearing was set concurrently with the 12-month review hearing.

Department’s April 30, 2012 report for the 12-month review indicated that mother had not made the hoped-for progress. Although she had successfully completed a parenting class, she had made no progress on the rest of her plan. She had not met the requirement that she participate in a 12-step program and obtain a sponsor. She had been terminated from Blossoms Perinatal after less than a month due to “belligerent and enraged behavior towards staff.” She enrolled in another outpatient program on January 23, 2012, but did not engage with the other clients in the group and was “verbally disrespectful” to the counselor. A bed came available at a transitional housing unit (THU) on March 8, 2012, but mother arrived under the influence of methamphetamine so she was not admitted. Mother began a residential drug treatment program at Mariposa House on March 26, 2012, but was terminated on April 18, 2012, after she had become abusive toward the staff. Her therapist terminated her from therapy on March 12, 2012, for constantly failing “to show for scheduled appointments.”

It was believed that mother was living with a man on parole about whom mother refused to provide any information. She had not attended her domestic violence support group since March 8, 2012. She missed two or three visits with minor every month since December 2011. As for random drug testing, mother missed 10 tests and two were abnormal. On March 9, 2012, mother reported to her probation officer that she was, indeed, using drugs. The social worker concluded that mother continued to struggle with making good choices and was completely overwhelmed by the demands of her case plan. Accordingly, Department recommended that the juvenile court terminate family reunification services and set the matter for a selection and implementation hearing pursuant to section 366.26.

In an addendum report dated June 14, 2012, Department reported that mother had been incarcerated twice since the April 30 report. Mother had been participating in outpatient drug treatment as a condition of her probation but she was discharged from that program on May 7, 2012, for failing to respond or engage in the treatment. Mother had also been admitted to a program for mentally ill offenders. In connection with that program mother met with a psychiatrist on May 17, 2012 and admitted to him that she had not been taking her medications. The reason, she said, was “I just do whatever the fuck I want.” Mother became aggressive and swore at the doctor and the case manager. Accordingly, the program team concluded that she should be referred back to the criminal court judge. Mother was arrested on May 30, 2012, for violating probation and held until June 6, 2012. She was arrested again the next day and charged with two counts of burglary.

Meanwhile, C.A. continued to thrive. He was “very bonded” with his foster family and he did not mention his brother I.R. Department reiterated its recommendation that services be terminated.

Mother contested Department’s recommendation and a trial was held beginning June 14, 2012. The hearing on mother’s section 388 petition trailed the status review

hearing. Mother testified that she had been unable to obtain housing for about four months after she was released from jail the preceding September. She believed she had a better chance of staying sober when she had her own place to live but that Department had not assisted with her housing search. Since she had housing she had no domestic violence incidents. She asked to have therapy with C.A. and asked the juvenile court to set up visitation between C.A. and I.R. She said she needed her children and wanted “to work through my problems with my kids.”

The social worker testified to the facts set forth in Department’s two reports. She agreed that stable housing can be helpful but she believed that mother needed to address her other concerns first. She believed that parents can reunify with their children even when living in shelters or THUs. Mother’s instability was related to more than just her initial lack of housing.

Mother’s therapist was willing to continue working with mother but first they had to reestablish a rapport. Mother had withdrawn from the therapeutic relationship because she believed the therapist had contributed to the recommendation that services be terminated.

I.R. was not present. His attorney represented that I.R. was “on runaway status” and that he needed to “come before the social worker” before the court could consider ordering visitation.

The juvenile court found by clear and convincing evidence that Department had provided reasonable services and that the social workers and others had made “good faith efforts under the circumstances” to offer services and to help mother comply with the case plan. There was no substantial probability that C.A. would be returned to mother’s custody before the next review period, mother had failed to participate regularly in and substantially benefit from the services that were offered. The juvenile court denied mother’s request for sibling visitation, finding no evidence that visitation with I.R. would be in C.A.’s best interests. The juvenile court would reassess visitation if I.R. were

located. The lack of visits between C.A. and I.R. had not affected mother's reunification efforts. The juvenile court terminated the reunification services to both parents and set a section 366.26 hearing. Mother challenges the order by way of petition for writ of mandate. (§ 366.26, subd. (l); Cal. Rules of Court, rule 8.450 et seq.)

## **II. DISCUSSION**

### *A. The Reasonableness of Services While Incarcerated*

Mother argues that Department failed to provide reasonable services while she was incarcerated because the social workers made no effort to identify programs in which mother could enroll while she was in jail. Mother has forfeited this argument. "Section 395 provides in relevant part: 'A judgment in a proceeding under Section 300 may be appealed from in the same manner as any final judgment, and any subsequent order may be appealed from as from an order after judgment . . . .' 'A consequence of section 395 is that an unappealed disposition or postdisposition order is final and binding and may not be attacked on an appeal from a later appealable order.' (*In re Jesse W.* (2001) 93 Cal.App.4th 349, 355.)" (*Sara M. v. Superior Court* (2005) 36 Cal.4th 998, 1018.) Mother was incarcerated when the juvenile court entered the disposition order, which also approved the case plan as set forth in Department's report. If mother believed the plan was inadequate she was entitled to appeal from the order. Mother had recently been released from jail at the time of the six-month review hearing, when the juvenile court found, again, that Department had offered reasonable services. Mother then had a second opportunity to challenge the order but she did not. The trial court's orders entered following the disposition hearing and the six-month hearing are both final. Mother's failure to challenge them precludes her challenge in this matter.

### *B. Services to Address Mental Health Issues*

Mother next argues that Department failed to provide reasonable services to address her mental health issues. Generally speaking, reunification services should be "aimed at assisting the parent in overcoming the problems that led to the child's

removal.” (*Judith P. v. Superior Court* (2002) 102 Cal.App.4th 535, 546; *In re Nolan W.* (2009) 45 Cal.4th 1217, 1229.) “A social services agency is required to make a good faith effort to address the parent’s problems through services, to maintain reasonable contact with the parent during the course of the plan, and to make reasonable efforts to assist the parent in areas where compliance proves difficult.” (*Katie V. v. Superior Court* (2005) 130 Cal.App.4th 586, 598.) “However, in most cases more services might have been provided and the services provided are often imperfect.” (*Ibid.*) “The standard is not whether the services provided 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.) “The adequacy of reunification plans and the reasonableness of [the agency’s] efforts are judged according to the circumstances of each case.” (*Amanda H. v. Superior Court* (2008) 166 Cal.App.4th 1340, 1345.)

In reviewing a challenge to a juvenile court’s finding that reunification services were reasonable we look only for substantial evidence. (*In re Alvin R.* (2003) 108 Cal.App.4th 962, 971.) The person challenging the order “has the burden of showing there is no evidence of a sufficiently substantial nature to support the finding or order.” (*In re Diamond H.* (2000) 82 Cal.App.4th 1127, 1135, disapproved on another point in *Renee J. v. Superior Court* (2001) 26 Cal.4th 735, 748, fn. 6.)

Department identified mother’s mental health difficulties as one of the problems leading to C.A.’s removal. Mother received psychiatric services while in custody and later through the county’s mental health department. Thus, Department reasonably included in the case plan only the requirement that mother take the medications she was prescribed through these services. There was no need for Department to provide duplicate psychiatric services. Department’s plan also required mother to participate in individual therapy and the social worker made the referral to therapist Garcia who worked with mother until mother just stopped going to her appointments. This is

substantial evidence of reasonableness. Indeed, mother does not say what else Department could have done.

*C. Services to Arrange for Housing*

Mother argues that Department failed to make referrals for her to find stable housing. She maintains that absent housing she was in no position to make substantial progress on her case plan. To the extent that mother claims the case plan as approved by the court at disposition, and again at the six-month review hearing, was unreasonable for its failure to include a plan for stable housing, mother has waived that argument by failing to appeal from those orders when they were made. In any event, the record shows that the services Department provided were not unreasonable due to the lack of a plan for stable housing.

The plan, as designed, addressed mental health, substance abuse, domestic violence, and parenting issues. There is no dispute that these were the problems that led to the dependency. These were the problems the social worker felt deserved the most attention. As the social worker explained, parents can reunify with the children while in living situations other than their own homes. It was the social worker's opinion that the more important focus was for mother to reach stability in the areas of substance abuse and mental health. Although mother insists that without housing she did not have a chance at stability in these other areas, the record shows otherwise. Mother obtained housing on her own in or about February or March 2012, but that did not improve her ability to participate in her case plan. To the contrary, among other things, mother was terminated from the Mariposa program on April 18, 2012, after being abusive to the staff, was terminated from an outpatient drug treatment program on May 7, 2012, for failure to engage in the program, stopped taking her medication and became aggressive with her psychiatrist on May 17, 2012, and was arrested for burglary on June 7. Indeed, mother had stable housing when she got into the trouble that led to removal of C.A. in the first place. We conclude that evidence of the gravity of mother's problems with mental health

and substance abuse, coupled with the social worker's expert opinion that mother's stability did not turn upon her having a place of her own, is substantial evidence that the services Department offered were reasonable notwithstanding the absence of a housing component.

*D. Sibling Visits*

The juvenile court denied mother's section 388 petition asking the court to require Department to arrange visitation between C.A. and I.R. Section 388 allows a parent to petition the juvenile court to change, modify or set aside a previous order if the petitioner can establish that circumstances have changed and the proposed order would be in the best interests of the child. The burden of proof is on the petitioner. (*In re Clifton B.* (2000) 81 Cal.App.4th 415, 423.) We will reverse the juvenile court's determination only if mother can show it was an abuse of discretion. (*In re Casey D.* (1999) 70 Cal.App.4th 38, 47.)

Department argues that since visitation between the two half-siblings does not adversely affect mother she lacks standing to raise the issue. Assuming mother has standing, we reject her argument on its merits. Mother has made no attempt to demonstrate changed circumstances or to show that visitation with I.R. would have been in C.A.'s best interests. For most of the course of this case I.R. was either in custody of the juvenile justice system or his whereabouts were unknown. At the time of trial he was "on runaway status." Mother offered no evidence of changed circumstances. And the only evidence on the point supports the conclusion that visitation would not be in C.A.'s best interests. Both C.A.'s therapist and the social worker believed a visit with I.R. would not be a good thing for C.A. There was no evidence to the contrary. Accordingly, the trial court's decision was not an abuse of discretion.

**III. DISPOSITION**

The petition is denied.

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Premo, J.

WE CONCUR:

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Rushing, P.J.

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Elia, J.