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

D.P.,

Petitioner,

v.

THE SUPERIOR COURT OF SANTA
CLARA

Respondent,

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

Real Party in Interest.

H038850

(Santa Clara County
Super. Ct. No. JD20897)

D.P. (hereinafter "father") has filed a petition for a writ of mandate in this court, challenging the juvenile court's September 25, 2012 order terminating his family reunification services and setting of a Welfare and Institutions Code section 366.26¹ hearing with respect to his son D.P., who had previously been declared a dependent of the court. Father claims that the court erred in denying him additional reunification services

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise stated.

because the Santa Clara County Department of Family and Children's Services (hereinafter "Department" or "DFCS") failed to establish, by clear and convincing evidence, that the Department had provided him with reasonable reunification services.

Father maintains that (1) the Department failed to obtain his mental health records from Fremont Hospital and its omission prevented it from adequately addressing his significant mental health issues and (2) the Department failed to confirm his participation in individual therapy and provide therapy referrals in a timely manner. He asserts that these failures amounted to a denial of reasonable reunification services adequately addressing his mental health problems, which were central to his capacity to parent.

The petition further requests that this court "appoint separate counsel to pursue the merit" of his claim that he asked his appointed counsel "to file an appeal following the Disposition hearing but counsel did not do so."

For the reasons explained below, we will grant relief from the September 25, 2012 order² but we will deny the request for appointment of separate counsel.

I

Factual and Procedural Background

In October 2011, the Department filed a juvenile dependency petition on behalf of minor D.P. five days after his birth on grounds of failure to protect (§ 300, subd. (b)). The initial hearing report indicated an emergency response social worker had placed newborn D.P. in protective custody after both his mother and he tested positive for methamphetamine. Neither parents claimed any Indian heritage. Minor D.P. was ordered detained and temporarily removed from the physical custody of his parents.

A first amended dependency petition was filed on November 10, 2011.

A second amended dependency petition was filed on February 10, 2012.

² Father's request for a stay of the section 366.26 hearing, presently scheduled for January 16, 2013, is mooted by this court's grant of writ relief.

On February 16, 2012, the Department orally amended the second amended petition. A contested jurisdiction hearing was held and the matter was continued to February 27, 2012.

The Jurisdiction/Disposition Report (dated and signed November 14, 2011) was filed on February 27, 2012. It indicated that D.P.'s paternal grandmother had stated in October 2011 that father had been diagnosed with bipolar disorder in 2005.³ Father had stated that he unwilling to release his psychiatric or medical records, he was "not going to participate in services because he has other issues and priorities to deal with," and he did not believe that he had "any substance abuse or mental health issues" but he was willing to complete a psychiatric evaluation. Additional addendum reports (dated November 21, 2011, January 3, 2012, January 12, 2012, January 23, 2012, February 16, 2012, and February 27, 2012) were also filed on February 27, 2012.

The January 23, 2012 Addendum Report provided the following information. On January 10, 2012, police were dispatched to parents' home after mother called 911 and reported that father "was 'going crazy and fighting everybody.' " Mother told police that father "had a big knife in his hands and stabbed the walls saying 'I am going to kill everybody.' " "She stated that she feared for her safety and locked herself in the bedroom." Father was placed on a psychiatric 5150 hold.

At the hearing on February 27, 2012, the Department's counsel and the investigating social worker, Pa Chang, were present. The court indicated that it had found true the allegations of the second amended petition as further amended to conform to the evidence. The supporting facts found true were as follows.

³ The original petition and the first amended petition alleged that father was diagnosed with bipolar disorder in 2005 but continued to not seek treatment. This allegation was omitted in the second amended petition.

Newborn D.P. was placed in protective custody after being born and testing positive for methamphetamine. Mother also tested positive for methamphetamine. Mother had developed epilepsy and uncontrollable seizures as a result of her ongoing substance abuse. Nevertheless, mother continued to abuse marijuana and methamphetamine. "The mother's unstable medical condition places the child's safety and well-being at risk of further harm."

Mother smoked marijuana daily during her pregnancy with D.P. and she was unable to stop on her own. She had not consistently participated in or completed a substance abuse treatment program.

Mother had been diagnosed with bipolar disorder. She had several psychiatric hospitalizations since 2007 and most recently she was "placed on a 5150 psychiatric hold" after attempting suicide by pills. Mother was choosing "to self-medicate with marijuana to treat her mental health issues, rather than to participate in ongoing psychiatric care." Mother's "inability to properly address her mental health issues placed the child at substantial risk of serious harm."

Father "has a marijuana abuse issue that negatively impacts his ability to care for and protect" minor D.P. He purchases and smokes marijuana every day. He had "smoked marijuana continuously since he was 13 years old" but had "fail[ed] to acknowledge his longstanding marijuana abuse." He had purchased marijuana from drug dealers and "smoked marijuana laced with other controlled substances such as PCP and methamphetamine." Father had smoked marijuana when minor D.P.'s siblings Z.P., M.P. and S.P., who were born in 2006, 2008, and 2010, respectively, were living with him, "both when they were awake and when they were asleep."

Father's criminal history included a 2006 felony conviction for possession of a narcotic controlled substance (Health & Saf. Code, § 11350, subd. (a)), a misdemeanor conviction of obstructing a police officer (Pen. Code, § 148, subd. (a)(1)), and a 1999

misdemeanor conviction for assault not involving a firearm (§ 245, subd. (a)(1)). There was currently a warrant for his arrest.

Father had an extensive history of unstable mental health that had resulted in numerous psychiatric hospitalizations. He had been "hospitalized in Atascadero State Hospital, Napa State Hospital, Emergency Psychiatric Services in Santa Clara County, and a psychiatric hospital in San Francisco." On January 10, 2012, father was "placed on a 5150 psychiatric hold at Emergency Psychiatric Services in Santa Clara County" He was transferred to Fremont Hospital adult psychiatric facility and remained hospitalized until January 17, 2012.

In 2010, the parents were offered voluntary services by the Department for the siblings Z.P., M.P. and S.P. to address substance abuse and mental health issues. "The siblings remain in the care of their paternal grandmother under a legal guardianship that was established in Alameda County in 2010."

"[T]he parents have a history of domestic violence as evidenced by an incident reported to the Modesto Police Department in 2008. The mother and father got into a physical altercation with one another resulting in the paternal grandmother being called to get the child's siblings, [Z.P., M.P. and S.P.], due to safety concerns for the siblings. The father has uncontrollable anger issues and had been known to punch holes in the wall of the family home. The mother and father yell at one another and get into verbal and/or physical altercations and blame each other for starting the altercations."

On February 27, 2012, before the court made its dispositional orders, father's counsel stated for the record that father was "prepared to do his case plan." She indicated, however, that father preferred to take the Nurturing Fathers class rather than the recommended 16-week Parenting Without Violence. Father's counsel also stated that father agreed with the recommendation for counseling or therapy to address the issues, including post-traumatic stress. Counsel represented that he was already in counseling.

Counsel stated that father had given her "part of a document to show he is receiving counseling," which had the therapist's telephone number on it, and she would provide a copy to the social worker.

With regard to the case plan recommendation that father be required to comply with his discharge treatment plan from Fremont Hospital, his counsel stated that father had brought a copy of the treatment plan to the hearing and she would make copies for all counsel. Counsel disclosed that the treatment plan directed father to maintain his medication, Zyprexa. Counsel also informed the court that father was currently taking Percocet as well and he expected to test positive for THC because he took it "legally with the use of a medical marijuana card" and for the prescribed opiate.

Counsel representing minor D.P. had an issue with father's case plan. She stated: "Ms. Feldman [father's counsel] stated that the plan includes medication of Zyprexa. It's unclear to me what exactly that's treating. It's unclear at this point what his diagnoses are regarding his mental health. It's unclear whether he has a psychiatrist and seeing that psychiatrist is part of the treatment plans." One of her concerns was whether the case plan was adequate to address father's serious mental health issues. Since father had a history of mental illness and multiple hospitalizations in psychiatric facilities, she did not believe that the case plan was adequate to facilitate a safe reunification. She requested that father be required to "submit a waiver of disclosure and disclose the medical records and psychiatric records so that we can make sure that his needs are being met, or, in the alternative, to have a psychological evaluation done so we can know specifically what issues are present now and so that those can be treated." Father and his counsel agreed that he would sign a release. His counsel indicated that he would sign a release so the social worker could access his medical records and ascertain his formal diagnoses.

The juvenile court declared minor D.P. to be a dependent child of the court. The court ordered the extensive reunification services that the Department had recommended for the parents.

Father was ordered to participate in and successfully complete a parent orientation class offered through the Department, a 16-week Parenting Without Violence class, a program of counseling or psychotherapy to address issues of "post traumatic stress, boundaries, and conflict," and to comply with his discharge treatment plan from Fremont Hospital. He was required to undergo a domestic violence assessment as arranged by the supervising social worker.

With respect to substance abuse, father was also required to attend and successfully complete a 12-step program or other substance abuse self-help program approved by the social worker and to provide written proof of a minimum of twice a week attendance. He was responsible for obtaining a sponsor and providing the social worker with the name and phone number of the sponsor. He was required to undergo a substance abuse assessment and participate and complete the recommended drug treatment programs. Father was ordered to undergo "[r]andom testing for alcohol and/or controlled substances" at least once a week as arranged by the supervising social worker and "on demand" testing upon request of the social worker when supported by a "reasonable belief that the parent is under the influence or has been using drugs and/or alcohol." Father was required to participate in and successfully complete an "aftercare drug treatment program as recommended by the substance abuse treatment program and/or supervising social worker." He was responsible for developing an aftercare relapse prevention plan and submitting the plan to the supervising social worker. Father was also required to cooperate with Family Wellness Court partners.

Father agreed by written form, dated April 9, 2012, to participate in Family Wellness Court (FWC). The interim case plan review scheduled for April 9, 2012 was

taken off calendar after the social worker indicated that she was unable to prepare a report in a timely manner.

Father attended a number of FWC hearings.

On August 1, 2012, notice of the six-month review hearing scheduled for August 27, 2012 was filed. It indicated that the social worker was recommending that the court continue reunification services to both parents.

Father failed to appear for a FWC hearing on August 14, 2012.

On August 21, 2012, a new notice regarding the six-month review hearing scheduled for August 27, 2012 was filed. It stated that the social worker was recommending that the court terminate reunification services to both parents and set a section 366.26 hearing.

On August 27, 2012, the proceedings were continued to September 25, 2012 for a contested six-month review hearing.

A Status Review Report for the six-month review hearing, dated August 27, 2012, was filed on September 25, 2012.

II

Proceedings on September 25, 2012

Prior to holding the scheduled six-month review hearing on September 25, 2012, the juvenile court held a closed hearing with father and his counsel to inquire into father's complaint about his counsel.

The court then proceeded with the six-month review hearing. It admitted into evidence the social worker's August 27, 2012 Status Review Report. The report, submitted by social worker Lori Tostado, stated that minor D.P. had been placed in the care of his paternal grandmother on November 23, 2011. He continued to reside there. The paternal grandmother was also the legal guardian of minor D.P.'s three siblings, who

resided with her as well. The grandmother had committed to adopting him if the parents were unable to reunify.

The Status Review Report further disclosed that the reporting social worker had met face-to-face with father for case planning purposes on five dates: March 20, 2012, April 4, 2012, May 31, 2012, July 25, 2012, and August 2, 2012. As to each aspect of the case plan with regard to father, the report specified the services offered or provided and father's progress.

The report stated that, on April 5, 2012, father reported to the social worker that he had a mental health therapist through Momentum. The Case Plan Individual Client Responsibilities form, signed by father and Tostado (dated April 5, 2012 and attached to the report) indicated in a handwritten note that father gave Tostado a name and the phone number of a Momentum therapist and father was told to "please begin therapy." The form also noted that, with regard to the therapy component of the plan, a resource list had been mailed to father on February 29, 2012 and father had been asked to let the social worker know if he needed additional help locating a therapist. According to the report, during their monthly case planning appointments, the social worker advised father to begin therapy but, at the time of the report's preparation, he still had not started therapy.

The report further indicated that the social worker had requested "all diagnosis and treatment" records from Fremont Hospital but the hospital had rejected the request because the release of information form did not specifically ask for "mental health records." The social worker planned to have "father sign a new consent at the next case planning appointment."

According to the report, father had been referred to the parent orientation program offered through the Department on multiple occasions and had not yet attended. He was enrolled for classes beginning on August 20, 2012. Several referrals to the 16-week

parenting without violence class had been submitted on behalf of father and, at the time of the report, he was awaiting assignment to a class.

The report stated that father had started calling in for drug testing on April 18, 2012, he had called in 21 out of 90 times, and he had missed a total of 20 tests. Father had tested positive for THC on five dates, most recently on August 2, 2012.

Father had entered a transitional housing unit (THU) on July 13, 2012. On July 25, 2012, father told the social worker that he had not been going to drug testing because he was in a THU where he would be tested upon request up to twice a month. The social worker had advised father that the THU tests were not random or frequent enough to comply with the court's order and he should resume testing through the Department. On August 6, 2012, he was discharged from the THU "for continued THC use."

The report stated that social worker Pa Chang had mailed a list of resources for 12-step meetings to father on February 29, 2012 and, upon subsequent inquiry by Tostado, father indicated that he did not need additional information regarding meetings near his home. Father provided a sponsor verification on April 24, 2012 but he subsequently informed Tostado that he had a new sponsor. He had not yet provided contact information for the new sponsor to the social worker. Father had not consistently turned in sign-in sheets for 12-step meetings.

According to the report, father had completed his alcohol and drug assessment on April 24, 2012 and he had been referred to the Indian Health Center (IHC) for outpatient services. On July 31, 2012, father's primary counselor at the IHC reported that father was consistently attending his three scheduled weekly meetings and had missed only four group sessions since April 2012. The counselor stated that he was not aware that father had not been submitting drug tests.

The report stated that father was currently participating in a relapse prevention class through the IHC but Tostado had not yet received a relapse prevention plan from him.

As to domestic violence, the report stated that father had participated in a domestic violence assessment on May 4, 2012 and the assessor had recommended that father participate in individual therapy with a therapist "who understands the interaction of trauma, DV, substance abuse and mental health issues," complete a 52-week certified batterers intervention program, and participate in a parent education class that "emphasizes alternatives to the use of power and control in parenting." The social worker discussed the recommendation with father but he claimed that he does not need such services.

The report stated that father had attended a number of Family Wellness Court hearings but he had missed the August 14, 2012 meeting. He had been inconsistent in following up on the "Family Wellness Court service provider's recommendations."

In her report, Tostado concluded that it was not appropriate to return minor D.P. to either parent at that time. She stated, among other things, that it "will be important for [father] to stabilize his mental health prior to considering the return of the child to his care."

The juvenile court qualified Lori Tostado as an expert in risk assessment and case management for dependent children. The Department called Tostado as a witness on its behalf.

Tostado testified regarding the most recent developments. Father had not attended the parent orientation class on August 20, 2012. He had not completed parent orientation.

Tostado reported that she confirmed father's enrollment in a Parenting Without Violence class beginning on September 28, 2012.

As to individual therapy, Tostado reported that she had talked with father about his need for therapy referrals and asked him for information regarding his medical insurance because that affected her referrals. She believed that conversation had taken place on the date of the prior July court hearing.⁴ She had not heard back from father.

Tostado stated that since her preparation of the Status Review Report, father had not been calling in to test and he had not submitted to any random drug testing. She had asked father for proof of attendance of 12-step meetings and father had said he would provide them to the court. He failed to provide Tostado with information regarding his new sponsor. Father had not completed a substance abuse treatment program. Father had not been reenrolled or readmitted to a THU. It was her assessment that father had not successfully addressed the substance abuse issues at this time since he had not provided drug testing demonstrating that he was not using drugs, he had not provided proof of his attendance at 12-step meetings, he had not submitted the name and phone number of a sponsor, and he had not completed a drug treatment program.

Tostado testified that father had not addressed his mental health issues and he had not engaged in individual counseling specific to mental health. As to domestic violence, he had indicated that he was unwilling to participate in a domestic violence program. She had asked him again if would participate in such a program on August 27, 2012 but he was still not willing to participate.

In Tostado's opinion, it would be detrimental to the child to return him to his father's care. She did not think father would be able to successfully reunify with minor D.P. by the time of the 12-month review hearing if additional reunification services were provided to him because she believed it was unlikely that father would engage in the

⁴ The record reflects that a FWC hearing for father took place on July 24, 2012.

services based on his past behavior of not engaging in services and his view that he does not have substance abuse or mental health issues.

On cross-examination, Tostado explained that the case plan's requirement that father comply with Fremont Hospital's discharge treatment plan was included in the Department's recommended case plan because the "Department was concerned about the father having mental health issues and prior mental health hospitalization" and it wanted to ensure he addressed the hospital's recommendations. She agreed that the Department wanted the hospital's records so that it could be aware of the hospital's treatment recommendations. Father had signed a consent to allow the Department to obtain those records on February 27, 2012.

Tostado stated that, in July 2012, she sent the record request to the hospital and it was rejected. She did not attempt to get father's signature again at any time in July or August 2012. She finally obtained the needed signature in September 2012 and she had submitted the record request before the hearing.

Tostado confirmed that on April 5, 2012, father told her that he was going to obtain counseling through Momentum and he did not need any referrals. At the May 31, 2012 case planning meeting, Tostado advised father to begin therapy. He indicated that he had an individual therapist at the IHC. She told father that she would call to find out if the therapist was only a drug counselor, not a general therapist.

Tostado indicated that she subsequently called the therapist, who told her he was a certified drug/alcohol counselor and the therapy was focused on substance abuse. She acknowledged that clients do sometimes confuse individual therapy with other counseling.

Tostado recalled that, at the July 25, 2012 case planning meeting with father, she clarified the distinction between a substance abuse counselor and an individual therapist. She asked him "if he had medical or insurance" for the purpose of determining to whom

he should be referred but father was uncertain "if he had medical or other insurance." She conceded that there was nothing in her July 25, 2012 notes stating that she asked father "about medical so [she could] give him appropriate counseling referrals." In preparing for the August 2012 case planning meeting and looking at the therapy component, she remembered the previous month's conversation and realized that she needed to address it again.

The Department called father to testify.

Father acknowledged that he had stopped daily drug testing as a form of protest. He claimed that he had not provided updated proof of attending 12-step meetings to the social worker because "[s]he never asked." He indicated that the reason he did not stay for an August family wellness hearing was because his attorney and he "had a disagreement at the time and [he] was protesting it" He admitted that he did not have a sponsor any more.

When asked what he was doing to address his substance abuse problem, father indicated that he was seeing his drug counselor at the IHC, he was going to relapse prevention class at the IHC, and attending group therapy. He said that he had given his most recent treatment status report to Tostado after the last court date during the previous week. He was "pretty" sure he had also given her the "T.S.R." documenting his participation in the relapse prevention group during the previous week but he had not brought a copy to court.

Father admitted he was still smoking marijuana and had most recently smoked marijuana the day before the hearing. He testified that he had smoked a "blunt," "a cigar full of weed," about .5 grams, the previous afternoon because he was stressed out. He indicated he had smoked about the same amount for the same reason two days prior to the hearing. He explained that he used to smoke about 3.5 grams a day and he had cut back to .5 grams a day.

As to his mental health issues, father testified that he understood that he needed to address them. He knew that he had not been addressing his mental health issues but claimed he was waiting for a referral. He admitted that he had not gotten back to the social worker with the information she had requested regarding medical coverage.

Father acknowledged that he had participated in a domestic violence assessment but he had told the social worker that he was unwilling to participate in the recommended treatment, a 52-week certified batterer's intervention program. He explained that he would not participate in that program because he believed that it "was the same services that you offer felons after they plea out" and he did not want to be grouped with them and be regarded "as a felon committing domestic violence and pretending to do services," which he thought might be used against him in court.

Father admitted cancelling some visits with his son. He did not recall a visit in May 2012 where he arrived to the visit at 1:25 and left 15 minutes later.

Father did not believe he had a substance abuse problem. He acknowledged that he had some mental health issues but he believed that none needed to be addressed to safely parent his son. When asked whether he had any domestic violence issue that needed to be addressed before he could safely parent his son, father said, "No. I believe that family counseling would be proper and just . . . in this case, but I believe that domestic violence and the services you give felons, it wouldn't be proper."

Father asserted that he had attempted to stop using marijuana but he had relapsed. He had a marijuana card and the medical reason was for treatment of P.T.S.D. and anxiety. He had used Ativan and Zyprexa to treat his conditions in the past but he was not currently taking medications. He had been working with his drug counselor on reducing his consumption of marijuana and learning techniques to manage his P.T.S.D. and anxiety.

Following the close of evidence, counsel presented argument. Father's counsel argued that the Department had not been given the appropriate mental health referrals to father and it had not provided him with reasonable services. Father's counsel contended that the social worker had failed to request the Fremont hospital records until July 2012 and then the request had been rejected and, consequently, the Department still did not know the hospital's recommendations and was unable to give father appropriate mental health referrals to address the problems leading to his hospitalization.

Father's counsel further argued, as to counseling services, that the social worker had not provided any therapy referrals to father. Counsel acknowledged that father had told the social worker that he was going to obtain therapy through Momentum but the social worker was aware he had not pursued therapy and he needed help with therapy referrals. Counsel maintained that the court was required to order six more months of services if father was not provided with reasonable services.

Mother did not contest the Department's recommendations and mother's counsel submitted on her behalf.

The juvenile court stated that "there were reasonable efforts made, especially in the mental health category, where [father] told the social worker he had that covered." It found, by clear and convincing evidence, reasonable services had been offered and provided to the parents that were designed to aid them in overcoming the problems that led to the initial removal of minor. It further found, by clear and convincing evidence, that the parents had failed to participate regularly and make substantive progress in the court-ordered treatment program and there was no substantial probability that the child would be returned to the parents within the next six months. It terminated reunification services for the parents and set a section 366.26 hearing.

III

Reasonable Reunification Services

A. Applicable Law

" Family preservation, with the attendant reunification plan and reunification services, is the first priority when child dependency proceedings are commenced. [Citation.] Reunification services implement "the law's strong preference for maintaining the family relationships if at all possible." [Citation.]" (*In re Elizabeth R.* (1995) 35 Cal.App.4th 1774, 1787. . . .) Reunification services are typically understood as a benefit provided to parents, because services enable them to demonstrate parental fitness and so regain custody of their dependent children. [Citation.]" (*In re Nolan W.* (2009) 45 Cal.4th 1217, 1228.)

In general, if a child was under three years of age on the date of the child's initial removal from the physical custody of his or her parent or guardian, a court is required to order family reunification services "for a period of six months from the dispositional hearing as provided in subdivision (e) of Section 366.21, but no longer than 12 months from the date the child entered foster care . . . unless the child is returned to the home of the parent or guardian." (§ 361.5, subd. (a)(1)(B).)

At the time of the six-month review hearing on September 25, 2012, section 366.21, subdivision (e), provided in pertinent part: "If the child was under three years of age on the date of the initial removal, . . . , and the court finds by clear and convincing evidence that the parent failed to participate regularly and make substantive progress in a court-ordered treatment plan, the court may schedule a hearing pursuant to Section 366.26 within 120 days. If, however, the court finds there is a substantial probability that the child, who was under three years of age on the date of initial removal . . . may be returned to his or her parent or legal guardian within six months or that *reasonable services have not been provided*, the court shall continue the case to the 12-month

permanency hearing." (Italics added.) Rule 5.708(m) of the California Rules of Court provides: "At any 6-month, 12-month, or 18-month hearing, the court may not set a hearing under section 366.26 unless the court finds by clear and convincing evidence that reasonable services have been provided or offered to the parent or legal guardian." (See § 366.21, subd. (g); 366.22, subd. (b); see also *Crail v. Blakely* (1973) 8 Cal.3d 744, 750 [a "clear and convincing" standard provided for the guidance of a lower court is not the standard of review].) Thus, the authority of the juvenile court to set a section 366.26 hearing at the six-month review hearing is conditioned on a finding that reasonable family reunification services have been provided.

A juvenile court's finding that reasonable reunification services have been offered and provided to the parents is reviewed under the substantial evidence standard. (See *Amanda H. v. Superior Court* (2008) 166 Cal.App.4th 1340, 1346; see also *In re Misako R.* (1991) 2 Cal.App.4th 538, 545.) Reviewing courts "determine whether substantial evidence supports the trial court's finding, reviewing the evidence in a light most favorable to the prevailing party and indulging in all legitimate and reasonable inferences to uphold the court's ruling. (*In re Misako R.* (1991) 2 Cal.App.4th 538, 545 . . .)" (*Katie V. v. Superior Court* (2005) 130 Cal.App.4th 586, 598.)

"The adequacy of reunification plans and the reasonableness of DCFS's efforts are judged according to the circumstances of each case. (*Robin V. v. Superior Court, supra*, 33 Cal.App.4th at p. 1164 . . .) Moreover, DCFS must make a good faith effort to develop and implement a family reunification plan. (*Ibid.*)" (*Amanda H. v. Superior Court, supra*, 166 Cal.App.4th at p. 1345.) "[T]he record should show that the supervising agency identified the problems leading to the loss of custody, offered services designed to remedy those problems, maintained *reasonable* contact with the parents during the course of the service plan, and made *reasonable* efforts to assist the parents in areas where compliance proved difficult (such as helping to provide

transportation and offering more intensive rehabilitation services where others have failed)." (*In re Riva M.* (1991) 235 Cal.App.3d 403, 414.) "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., supra*, 2 Cal.App.4th at p. 547.)

The reviewing court " 'construe[s] all reasonable inferences in favor of the juvenile court's findings regarding the adequacy of reunification plans and the reasonableness of [the social services department's] efforts.' [Citation.]" (*Sara M. v. Superior Court* (2005) 36 Cal.4th 998, 1018.) "If there is substantial evidence supporting the judgment, our duty ends and the judgment must not be disturbed. [Citations.]" (*In re Misako R., supra*, 2 Cal.App.4th at p. 545.)

B. Adequacy of Family Reunification Services Provided or Offered to Father

Father's counsel argues that, by failing to timely request father's mental health records, the Department lacked "crucial information" about his mental health diagnoses, which prevented it "from providing appropriate referrals and negatively affected [his] ability to successfully engage in his case plan." Counsel maintains that "[i]f the Department had availed itself of the crucial information regarding Father's mental health diagnoses, Father may have received proper mental health treatment and, as a result, successfully engaged in other components of his case plan." Counsel asserts that the Department's failure to acquire father's mental health records was not reasonable under the circumstances, especially given the fact that father signed "the record request at the earliest possible date and the Department's grave concerns regarding [his] mental instability from the beginning of the case." Counsel also contends that the Department failed to confirm father's participation in individual therapy and failed to provide therapy referrals in a timely manner.

While the record discloses substantial evidence that reasonable reunification services were provided or offered to address father's substance abuse and domestic violence issues, it does not disclose substantial evidence that reasonable reunification services were provided or offered to address father's serious mental health issues. The juvenile court found that father had multiple psychiatric hospitalizations. The most recent hospitalization occurred in January 2012 after commencement of the dependency proceedings. It was known that the hospital's discharge treatment plan required father to continue taking Zyprexa as prescribed. Although he apparently had serious, recurrent mental health issues, no specific diagnoses were established.

At the time of disposition, minor's counsel voiced significant concerns regarding the adequacy of the case plan to address father's serious mental health issues and the court and the parties agreed that father, instead of submitting to a further psychological evaluation, would sign a release allowing the social worker to obtain his medical and psychiatric records and find out his current formal diagnoses. Father promptly provided his written permission to allow the Department to obtain those records on February 27, 2012, the date of disposition.

Nevertheless, the case social worker did not submit the record request to the hospital until July 2012, many months after disposition, and the request was rejected the same month, shortly after the request was submitted, because the form did not specifically request "mental health records." The social worker did not attempt to obtain father's signature on another release form in July or August 2012 even though the social worker met with father on July 25, 2012 and August 2, 2012 for case planning and there was a dependency hearing on August 27, 2012, at which both father and the social worker were present. She finally obtained father's signature in September 2012 and submitted another request for the hospital records but impliedly the request was too late

to affect the provision of reunification services to him before the September 25, 2012 review hearing.

As indicated, father's counsel disclosed at the February 27, 2012 disposition hearing, attended by the Department's investigating social worker, that the discharge treatment plan from Fremont Hospital required father to maintain his medication, Zyprexa. It is unclear whether father needed a referral to a psychiatrist, who could prescribe Zyprexa and supervise father's compliance with the hospital's discharge treatment plan or prescribe other appropriate medication to address father's mental health needs.

At the February 27, 2012 hearing, father's counsel represented that father was in counseling and she would give the social worker a copy of the documentation that contained the therapist's telephone number. At the April case planning meeting with social worker Tostado, father told her that he had a therapist at Momentum. Father apparently provided a name and number but he also indicated that therapy had not yet begun.

Nothing in the record shows that Tostado attempted at any time after the February 27, 2012 disposition hearing and before the April 5, 2012 case planning meeting, when she learned that father had not yet begun individual therapy, to contact father's supposed therapist to assess father's progress and determine whether father's mental health needs were being met in light of his previous mental health hospitalizations. There is no evidence in the record that Tostado made reasonable efforts on April 5, 2012 to ascertain the obstacles to his participation in therapy and to provide any reasonable assistance necessary to getting him started in therapy. There is no evidence in the record that she made reasonable efforts to maintain contact with father or to contact the named therapist between April 5, 2012 and the next case planning meeting with father on May 31, 2012 (at which time she learned that father believed that his

ongoing counseling at the IHC was sufficient to meet the therapy requirement) to confirm that he was receiving mental health services through Momentum and to troubleshoot any problem, including providing an alternate referral if necessary. (Cf. *In re Alvin R.* (2003) 108 Cal.App.4th 962, 965, 972-973 [reunification plan required individual counseling for child followed by conjoint therapy for father and child but DFCS presented no evidence that it had made any effort to overcome obstacles to child's individual therapy or it had taken the necessary timely steps to have father and child begin conjoint counseling once ordered].)

At their meeting in late May 2012, the social worker told father that she would call the IHC counselor to find out whether the counselor was a drug counselor or general therapist. Although the social worker discovered that father's IHC counselor was a drug and alcohol counselor, not a psychotherapist, she apparently waited until the July 25, 2012 case planning meeting, almost two months after their May meeting, to explain to father the difference between a drug counselor and an individual therapist and to inquire "if he had medical or other insurance."

In light of father's numerous prior psychiatric hospitalizations and evident mental health issues and the short time frame for reunification with D.P., who was a newborn when removed from parental custody, his compliance with the discharge treatment plan and the therapy component of the case plan merited greater attention from the Department. As stated in *Amanda H. v. Superior Court*, *supra*, 166 Cal.App.4th 1340: "While it was [the parent's] responsibility to attend the programs and address [the parent's] problems, it was the social worker's job to maintain adequate contact with the service providers and accurately to inform the juvenile court and [parent] of the sufficiency of the enrolled programs to meet the case plan's requirements. (See *In re Riva M.*, *supra*, 235 Cal.App.3d at p. 414 . . . ; *Robin V. v. Superior Court*, *supra*, 33 Cal.App.4th at p. 1164 . . .)" (*Id.* at p. 1347.)

While reunification services cannot be forced on an unwilling or indifferent parent (*In re Jonathan R.* (1989) 211 Cal.App.3d 1214, 1220), "[t]he department must make a ' " 'good faith effort' " ' to provide reasonable services responsive to the unique needs of each family. [Citations.]" (*Mark N. v. Superior Court* (1998) 60 Cal.App.4th 996, 1010.) "The effort must be made to provide suitable services, in spite of the difficulties of doing so or the prospects of success. (*In re John B.* (1984) 159 Cal.App.3d 268, 273, 276)" (*In re Dino E.* (1992) 6 Cal.App.4th 1768, 1777.) "If mental illness is the starting point, then the reunification plan, including the social services to be provided, must accommodate the family's unique hardship." (*In re Elizabeth R.* (1995) 35 Cal.App.4th 1774, 1790.) Consequently, the social worker in this case needed to be more attentive and proactive with regard to timely obtaining father's mental health records and ensuring father had access to the appropriate mental health service providers.

Under the circumstances of this case, substantial evidence does not support the juvenile court's determination that reasonable reunification services were offered or provided with respect to father's mental health needs. "When it appears at the six-month review hearing that a parent has not been afforded reasonable reunification services, the remedy is to extend the reunification period, and order continued services. (*In re Monica C., supra*, 31 Cal.App.4th at p. 310 . . . ; Welf. & Inst. Code, § 366.21, subd. (g)(1).)" (*In re Alvin R., supra*, 108 Cal.App.4th 962, 973-974.) Accordingly, relief will be granted.

IV

Father's Request to this Court for Appointment of Counsel

On October 26, 2011, the juvenile court appointed the Office of Dependency Counsel to represent father. Section 317.5, subdivision (a), provides: "All parties who are represented by counsel at dependency proceedings shall be entitled to competent counsel."

"Juvenile courts, relying on the *Marsden* model, have permitted the parents, who have a statutory and a due process right to competent counsel, to air their complaints about appointed counsel and request new counsel be appointed. (§ 317.5; *In re James S.* (1991) 227 Cal.App.3d 930, 935, fn. 13 . . .)" (*In re V.V.* (2010) 188 Cal.App.4th 392, 398; see *People v. Marsden* (1970) 2 Cal.3d 118.)

On February 27, 2012, the court held a *Marsden*-type hearing to consider father's complaints about his counsel and the contested jurisdiction hearing. During the closed hearing, the court twice told father if he was unhappy with the outcome, he had had a right to an appeal. Back in open court, the court told father that his right to appeal would begin that day after disposition.

On September 25, 2012, the date scheduled for the six-month review hearing, father complained that his counsel had failed to file an appeal challenging the court's decisions on February 27, 2012. In a closed hearing, father acknowledged that he had been informed of his right to an appeal and he knew that he had a right to appeal. He claimed that he had asked for an appeal on February 27, 2012. The attorney's notes did not reflect that father had asked for an appeal on that date or at any time before the time for filing an appeal had expired. His counsel indicated that in the cases where, in counsel's opinion, there is no valid appealable issue but the clients nevertheless wish to appeal, counsel instructs the clients on how to file an appeal. Father asked the juvenile court to grant his appeal, which the court explained it lacked the authority to do so.

Father's counsel, still the Office of Dependency Counsel, now asks this court, on behalf of father, to "consider appointing counsel to pursue the issue of Father's assertion that he wanted to file an appeal after the Disposition hearing and none was filed."

Father's petition and supporting argument do not assert that the juvenile court abused its discretion on September 25, 2012 in response to father's complaint about his counsel not filing an appeal from the February 27, 2012 disposition or that counsel

provided ineffective assistance of counsel by not filing such appeal. We decline the request for additional, separate appointed counsel since father is not entitled to more than one appointed counsel. (See § 317; cf. *People v. Marsden, supra*, 2 Cal.3d at p. 123.)

DISPOSITION

Let a peremptory writ of mandate issue directing the juvenile court to vacate its September 25, 2012 order terminating reunification services to father and setting a selection and implementation hearing pursuant to section 366.26 and to order continued reunification services to father. This opinion is made final as to this court seven days from the date of filing. (See Cal. Rules of Court, rules 8.452(i) and 8.490(b)(3).)

ELIA, J.

WE CONCUR:

RUSHING, P. J.

PREMO, J.