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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

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| M.G.,<br><br>Petitioner,<br><br>v.<br><br>THE SUPERIOR COURT OF SANTA CLARA COUNTY,<br><br>Respondent,<br><br>SANTA CLARA COUNTY DEPARTMENT OF FAMILY AND CHILDREN'S SERVICES,<br><br>Real Party in Interest. | H039067<br>(Santa Clara County<br>Super. Ct. No. JD020740) |

## I. INTRODUCTION

M.G. is the father of M., the child at issue in this juvenile dependency case. He has filed a petition for extraordinary writ seeking review of the juvenile court's orders terminating his reunification services and setting a Welfare and Institutions Code section 366.26[1] permanency planning hearing. A self-represented litigant, father states in his writ petition that he believes that he has done everything he has been asked to do and requests further reunification services.

[1] All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

For the reasons stated below, we find that father has not shown that the juvenile court's findings and orders are not supported by substantial evidence and we will therefore deny the writ petition.

## II. FACTUAL AND PROCEDURAL BACKGROUND

### A. *Section 300 Petition*

On July 29, 2011, the Santa Clara County Department of Family and Children's Services (the Department) filed a petition under section 300, subdivision (b) [failure to protect] and (j) [abuse of a sibling] alleging that M., age seven months, came within the jurisdiction of the juvenile court.

The petition further alleged that M. was at significant risk in the care of her mother and father due to the mother's developmental delays and mental health problems, as well as both parents' inability to adequately meet the child's basic needs and provide adequate supervision for M. and her three siblings. Previously, all three siblings had been declared dependents of the court.[2] Although the mother received 12 hours of in-home assistance from the San Andreas Regional Center every day, she was unable to maintain a sanitary home, provide regular meals, or change M.'s diaper without being reminded to do so. Additionally, she had dropped M. on her face.

Regarding abuse of a sibling, the petition alleged that the family home was unsanitary and unsafe for children, with the presence of "old food with larvae on it which both parents refuse to throw out, buckets of standing water, an excessive amount of cleaning chemicals and exposed electrical cords, all of which are accessible to the child and her siblings." M. and her siblings had also been injured due to the lack of parental

[2] The Department's request for judicial notice of this court's opinion in a related appeal, *In re S.G.* (Dec. 20, 2012, H038274) [nonpub. opn.] is granted. (Evid. Code, § 452, subd. (d)(1).) In that opinion, this court affirmed the juvenile court's order terminating the parental rights of M.'s mother and father with respect to M.'s three siblings, pursuant to section 366.26, subd. (c)(1)(B)(i).

supervision. The children played unsupervised in front of the house, which was on a busy street, and M.'s three-year-old brother had pushed M. in her stroller into oncoming traffic.

The petition also noted that the mother's parental rights to her three older children with a different father were terminated during juvenile dependency proceedings in 2000 due to the mother's mental health issues, neglect of the children's basic needs, and inadequate supervision of the children.

**B. *Detention Hearing***

At the detention hearing held on August 3, 2011, the juvenile court found that (1) M.G. was the presumed father of M.; (2) continuance in the parental home would be contrary to the child's welfare; and (3) continued detention was necessary because removal from the parents' custody was necessary to protect the child's physical or emotional health. The court therefore determined that a prima facie showing had been made that the child came within section 300.

The court ordered that the parents be provided with supervised visitation, with a minimum of two visits per week for a minimum of one hour each visit.

**C. *Jurisdiction/Disposition Report***

The Department filed a jurisdiction/disposition report on November 21, 2011. The report stated that M.'s three siblings were placed in protective custody in 2009 and M. was born while the parents were receiving extensive family reunification and family maintenance services. The Department found that the mother, who was the main caretaker for the child, did not provide proper care for M. although the parents were receiving 12 hours of assistance every day from the San Andreas Regional Center.

The report also stated that the family's living situation was unsafe because they were living in a warehouse that was unsanitary due to the mother's hoarding and the presence of unsafe items, including old food with larvae that the parents refused to throw

out, buckets of standing water, excessive amounts of cleaning chemicals, exposed electrical cords, soiled clothes on beds, dirty diapers, and garbage throughout the house.

Due to the lack of supervision, M. had suffered at least three falls, from her car seat on the floor and from a bed. The mother had also allowed M.'s three-year-old brother to push her stroller into oncoming traffic, where M. was almost hit by a truck. It appeared that the parents did not want to follow the safety instructions that they had received from the social worker and the in-home assistant.

The father focused on the mother as the problem and was unable to explain why he did not get more involved in caring for the children, even after attending parenting classes and receiving other services to improve his parenting skills. Both parents lacked effective parenting skills, which continued to place the children at risk of harm.

In the addendum report filed November 21, 2011, the Department reported that M. had been placed in a foster home with her siblings and was doing very well. The Department recommended that the mother not be provided reunification services because she had been unable to learn basic parenting skills to keep M. safe. However, the Department recommended that the father receive family reunification services with respect to M. and the social worker was "hopeful that the father is able to comply with services and reunify with the child."

**D. *Jurisdiction Hearing***

A contested hearing on jurisdiction and disposition was held on November 21, 2011 and December 2, 2011. The December 2, 2011 order states that the juvenile court found allegations of the amended section 300 petition to be true and declared M. a dependent of the court. Additionally, the court ordered that M.'s placement in the foster home continue; only the father was to receive family reunification services; and both parents were to have weekly supervised visitation for two hours.

**E. *Interim Status Reviews***

The first interim review of family reunification took place on January 31, 2012. The Department stated in its first interim review report, filed on January 31, 2012, that M. was doing well with her caregivers, the father was engaging in his case plan, and his weekly drug tests had been negative. The juvenile court ordered that all previous orders remain in effect.

In conjunction with the six-month interim review held on July 10, 2012, the Department submitted its status review report. According to the report, the father was working full time in his ice cream shop and continuing to live in the warehouse from which his three older children had been removed due to unsafe and unsanitary conditions. The social worker had conducted home visits and observed the that the warehouse was cluttered with clothes, toys and garbage; the bathroom was dirty and consisted only of a toilet and sink, with no hot water; there were openings in the ceiling to the outside; the side door had no lock; electricity was provided by electrical cords run from the father's business next door; the kitchen was dirty and messy, with rotten food; and the bedroom had a king-sized bed surrounded by bags of toys and clothing.

The Department also stated in its six-month status review report that the father had continued to have weekly negative drug tests, had completed the parent orientation class, and had consistently visited M. However, the father was not interactive with M. during the visits and tended to feed her rather than play with her. Regarding the warehouse situation, the father continued to live with the mother in the warehouse and did not intend to look for an appropriate home until M. was returned to him.

The Department remained concerned by the father's inability to provide a safe home for M., the possibility that M. would be returned to the mother's care if she were to be returned to the father, and his failure to demonstrate that he wanted to actively parent M. Therefore, the Department recommended that the father's family reunification services be terminated and a permanency planning hearing under section 366.26 be set.

Two addendum reports were filed by the Department that included recent photographs of the warehouse where the father lived, and which showed that the warehouse remained unsafe and unsanitary. The Department noted that the father had failed to find adequate housing for nearly one year and had also failed to show that he could meet M.'s basic needs.

In its order after hearing on contested six-month status review, filed on July 26, 2012, the juvenile court ordered that M. continue as a dependent child of the court and the father continue to receive family reunification services. The court also ordered the father to participate in and successfully complete counseling regarding relationship issues, weekly drug testing, a 12-step program, a relapse prevention plan, and to cooperate with Family Wellness Court partners. The father was allowed supervised visitation of a minimum of two visits per week for two hours each visit.

**F. *12-Month Status Review***

**1. The Status Review Report**

The Department filed its 12-month status review report on November 27, 2012. Since the last status review, the father had moved in and out of a studio apartment and was again living in the warehouse, which remained unsafe and unsanitary. He continued to advise the social worker that he would have adequate housing for M. once she was returned to him.

The Department also reported that the father had complied with weekly drug testing, with the exception of missing one week; was attending a weekly cognitive behavior therapy group; had received services from the Gardner's Family Enrichment Program; had failed to attend an appointment for a transitional housing unit; and had not engaged in the mental health services to which he had been referred by Family Wellness Court. The father had attended supervised visitation of M., where he continued to offer her food from the beginning to the end of the visit.

Due to the father's procrastination in finding adequate housing and his inability to meet M.'s basic needs, the Department determined that it was not likely that the father would reunite with M. if he were given additional time. The Department therefore recommended that family reunification services to the father be terminated and a section 366.26 permanency planning hearing be set.

In an addendum report dated September 25, 2012, the Department provided an update on the father's housing situation. In September 2012, the father had moved into a transitional housing unit for fathers who are in the process of reunifying with their children. The father was able to live in the transitional housing unit for six months and would lose the housing if he lost family wellness services.

M.'s mother continued to live in the warehouse. The social worker visited the warehouse in September 2012 and found that it continued to be cluttered, unsafe, and unsanitary. The mother informed the social worker that she does not have time to clean when she comes home from work and the father tells her not to throw anything away. Although the father had told the mother that he wants to clean the warehouse and make it livable, he did not help with cleanup. The mother intended to continue her relationship with the father.

In a second addendum report, dated October 24, 2012, the Department reported on the outcome of the father's participation in 12 months of reunification services and supervised visitation with M. The father had displayed limited parenting skills, including continuing to feed M. fruits and juices that made her sick. He had also given her expired food and had failed to properly change her diaper without reminders. The father also needed to be reminded to watch M., who was now an active toddler, during visitation. The Department found that M. would be at risk of harm if placed with the father, not only due to his limited parenting skills but also because he had failed to maintain a safe and sanitary home. The Department believed that it was "highly probable" that the father

would use the mother as a caretaker if M. was returned to him, although the mother was unable to adequately identify risk factors and supervise children.

**2. The Contested Hearing**

The contested 12-month hearing was held on November 27, 2012. The witnesses who testified at the hearing included the social worker for the family and the father.

The social worker testified that M. was removed from the father's care in July 2011 due to the unsafe and unsanitary conditions in the home, the lack of supervision, and the continued hoarding problems. The reunification services offered to the father included parent orientation, basic parenting class, Family Wellness Court, drug testing, a 12-step program with a sponsor, the family enrichment program (monitoring of parenting skills), bus passes, and support by the Department. The father had not participated in the individual counseling ordered by the Family Wellness Court.

In the social worker's opinion, M. cannot be returned safely to her father because he has not addressed the risk factors that brought M. to the attention of the Department, including his lack of parenting skills; his continued relationship with the mother and the risk that M. would be returned to the mother's care while he was at work; and the continued unsafe and unsanitary condition of the warehouse. The father also believed that it was the mother's fault that M. was removed from his care and he had not taken responsibility for the risk factors that caused her removal.

Additionally, the social worker had observed the father's interactions with M. at least 10 times and found that he was unable to adequately supervise her, change her diaper, or feed her properly without reminders from the social worker. Although both the Department's social worker and the mental health rehabilitation specialist from the family enrichment program had provided the father with feedback regarding these issues, he had not changed his behavior and his visitation with M. was always supervised. The social worker acknowledged that she had not observed any hoarding by the father in his

room at the transitional housing unit, but noted that the rules there required him to pick up after himself.

During his testimony, the father agreed that the warehouse is not currently suitable as a home for children. M.'s mother was living in the warehouse, which contained used items that he previously sold. He has been unable to clean the warehouse because he and the mother disagreed about it. The mother brought most of the items to the warehouse and he tried to get her to throw them away. If M. were returned to him, he would not live in the warehouse and would not return M. to her mother because she is not capable of taking care of M. for more than two or three hours. The father believed that he could stay in the transitional housing unit for nine months and was looking for a low-income apartment. He has saved more than $1000 and is arranging for child care.

Additionally, the father testified that he has never been told not to bring food to his visits with M., except when she started getting a rash. He never insists that she eat and stopped bringing grapes after the social worker told him not to bring them. The mother is at fault for M. being removed since he was at work when things happened. According to the father, he has a connection with M. and he knows that he has responsibility for her care and support, including protecting her from her mother.

**3. The Juvenile Court's Orders**

At the conclusion of the contested 12-month review hearing, the juvenile court made several findings. First, the court found that clear and convincing evidence showed that the return of the child to the physical custody of the father would create a substantial risk of detriment to the child's safety, protection, and physical or emotional well-being. Although the court believed that the father loved M. and worked very hard to provide for the family, the court found that the father did not have any insights into the problems that had brought him before the court, including his failure to provide a suitable home.

Second, the juvenile court found that there was clear and convincing evidence that reasonable services had been offered to the father and there was no substantial probability

that M. would be returned to him in the next six months. The court pointed to the evidence showing that his visits with M. were still supervised and he still needed directions regarding basic child care.

Accordingly, as set forth in the court's order of November 27, 2012, the court ruled that the father's reunification services were terminated; that M. would continue her placement in the foster home; the father would have supervised visitation of a minimum of two visits per week for two hours each visit; and the section 366.26 permanency planning hearing would be held on March 26, 2013.

**G. *The Father's Writ Petition***

The father filed a petition for extraordinary writ pursuant to California Rules of Court, rule 8.452[3] on December 31, 2012, seeking relief from the November 27, 2012 order setting the section 366.26 hearing. He contends that further reunification services are necessary; he has the resources to support his children; he is not homeless and will remodel his place or move if ordered to do so; he has done everything he was asked to do; he attends Alcoholics Anonymous and is "clean of alcohol and [has] never used drugs"; and he does not understand "why this is happening . . . ." The father also complains that he had only been allowed one visit for two hours per week, instead of the court-ordered minimum of two visits for two hours each week.

## III. DISCUSSION

Before evaluating the father's contentions, we will provide an overview of the statutory requirements for the termination of reunification services, as well the applicable standard of review.

[3] All further rule references are to the California Rules of Court unless otherwise indicated.

**A. *Termination of Reunification Services***

Section 361.5, subdivision (a), generally mandates that reunification services are to be provided whenever a child is removed from the parents' custody. (See *In re Luke L.* (1996) 44 Cal.App.4th 670, 678 (*Luke L.*).) "Only where there is clear and convincing evidence the [Department] has provided or offered reasonable services may the court order a section 366.26 hearing." (*Robin V. v. Superior Court* (1995) 33 Cal.App.4th 1158, 1165 (*Robin V.*); § 366.21, subd. (g)(2).)

"Reunification services must be 'designed to eliminate those conditions that led to the court's finding that the child is a person described by Section 300.' (§ 362, subd. (c).) Accordingly, a reunification plan must be appropriately based on the particular family's 'unique facts.' [Citation.]" (*In re T.G.* (2010) 188 Cal.App.4th 687, 696; see *Luke L.*, *supra*, 44 Cal.App.4th at p. 678.) " ' "[T]he record should show that the [Department] 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 . . . ." [Citation.]' [Citation.]" (*In re T.G.*, *supra*, at p. 697; *David B. v. Superior Court* (2004) 123 Cal.App.4th 768, 793-794.) "Among its components, the reunification plan must include visitation. (§ 362.1.) That visitation must be as frequent as possible, consistent with the well-being of the minor. (*Ibid.*)" (*Luke L.*, *supra*, at p. 679.)

"The adequacy of reunification plans and the reasonableness of the [Department's] efforts are judged according to the circumstances of each case." (*Robin V.*, *supra*, 33 Cal.App.4th at p. 1164; *Amanda H. v. Superior Court* (2008) 166 Cal.App.4th 1340, 1345.) That additional services might have been possible, or that the services provided were not the services the parent thought were best for the family, does not render the services offered or provided inadequate. " '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 T.G.*, *supra*, 188 Cal.App.4th at p. 697; *In re Misako R.* (1991) 2 Cal.App.4th 538, 547 (*Misako R.*).)

On appeal, the applicable standard of review is sufficiency of the evidence. (*Kevin R. v. Superior Court* (2010) 191 Cal.App.4th 676, 688 (*Kevin R.*).) "In reviewing the reasonableness of the services provided, this court must view the evidence in a light most favorable to the [Department]. We must indulge in all legitimate and reasonable inferences to uphold the [juvenile court's findings]. If there is substantial evidence supporting the judgment, our duty ends and the judgment must not be disturbed." (*Misako R.*, *supra*, 2 Cal.App.4th at p. 545; *In re Monica C.* (1995) 31 Cal.App.4th 296, 306.) "We have no power to judge the effect or value of the evidence, to weigh the evidence, to consider the credibility of witnesses or to resolve conflicts in the evidence or the reasonable inferences which may be drawn from that evidence." (*In re Casey D.* (1999) 70 Cal.App.4th 38, 52-53.)

**B. *Analysis***

The Department requests that the writ petition be dismissed because it does not comply with the requirement that the petition be accompanied by a memorandum that provides a summary of significant facts, separately headed points supported by argument and citation of authority, and citations to the record for any reference to a matter in the record. (Rule 8.452(a), (b).) Alternatively, the Department argues that the juvenile court's orders are supported by substantial evidence and for that reason the writ petition should be denied. As we will discuss, we agree that the court's orders are supported by substantial evidence.

Whether appellate review is sought in a writ proceeding or in an appeal, we apply the general rule that the trial court's judgment or order is presumed correct and error must be affirmatively shown. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) Where, as here, our standard of review requires that we review the juvenile court's order for substantial evidence (*Kimberly R. v. Superior Court* (2002) 96 Cal.App.4th 1067, 1078;

*Kevin R., supra*, 191 Cal.App.4th at p. 688), the party challenging the order "has the burden to demonstrate that there is no evidence of a sufficiently substantial character to support the [order]." (*In re Geoffrey G.* (1979) 98 Cal.App.3d 412, 420; see also *In re N.M.* (2011) 197 Cal.App.4th 159, 169.)

Here, the father has made no effort to demonstrate that the juvenile court's orders are not supported by substantial evidence. Having reviewed the entire record on appeal, we determine that substantial evidence supports the court's orders. The evidence shows that the father received reunification services for 12 months, including parent orientation, basic parenting class, Family Wellness Court, drug testing, a 12-step program with a sponsor, the family enrichment program (monitoring of parenting skills), bus passes, support by the Department, and supervised visitation with M. The father did not participate in the individual counseling ordered by the Family Wellness Court.

Despite the extensive provision of reunification services to the father, he failed to provide a safe home for the child. The evidence shows that the warehouse where the father and mother lived (except when father stayed briefly in an apartment and a temporary transitional housing unit) was cluttered due to the parents' hoarding, unsanitary due to the presence of rotten food and garbage, and unsafe due to the exposed electrical wiring and holes in the ceiling. These conditions never improved during the time the father was receiving reunification services. The father had also failed to attain basic parenting skills and the social workers feared that M. would be returned to the care of her mother in the warehouse, although the mother's other six children (including her three children with the father) had been removed due to her continued inability to adequately meet the children's basic needs and provide adequate supervision.

We accordingly determine that substantial evidence supports the juvenile court's findings that the Department has provided or offered reasonable services to the father (§ 366.21, subd. (g)(2)) and there would be a substantial danger to the safety and well-being of the child if she were returned to the father (§ 361, subd. (c)(1)). We will

therefore deny the father's writ petition on that ground. Having reached this conclusion, we need not address the Department's request for dismissal of the writ petition.

## IV. DISPOSITION

The petition for extraordinary writ is denied.

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BAMATTRE-MANOUKIAN, J.

WE CONCUR:

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PREMO, ACTING P.J.

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GROVER, J.