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

H.C.,

Petitioner,

v.

THE SUPERIOR COURT OF SANTA
CLARA

Respondent,

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

Real Party in Interest.

No. H039287

(Santa Clara County

Super. Ct. Nos. JD20830, JD20870)

H.C., mother of minors A.C. and A.O.,¹ (hereinafter "mother") filed a petition for writ of mandate in which she seeks relief from the juvenile court's February 1, 2013 order terminating family reunification services and setting a hearing pursuant to Welfare and Institutions Code section 366.26.² (See Cal. Rules of Court, rule 8.452.) Mother

¹ The alleged father's initials are also A.O.; all further references to A.O. are to the child.

² All further statutory references are to the Welfare and Institutions Code unless otherwise stated.

maintains that the Santa Clara Department of Family and Children's Services (hereinafter "Department") did not prove by clear and convincing evidence that it had provided reasonable reunification services to her and, therefore, the juvenile court erred by not ordering additional reunification services instead of ordering termination of services and setting a section 366.26 hearing.

For reasons explained below, we deny relief.

I

Factual and Procedural History

Dependency petitions were filed on behalf of minors A.C. and A.O ("the children") on September 29, 2011 and on October 14, 2011, respectively. Each petition indicated that mother has a history of "chronic and severe mental health" issues, which negatively impacts her ability to safely care for the child and "mother has suffered from psychosis and schizophrenia since the age of 14, and has had many psychiatric hospitalizations." They indicated that mother had been receiving voluntary services for older sibling A.O. since about August 2011 when A.O. was about 20 months old and before A.C. was born. The mother was unable to care for A.C. due to her mental instability.

The petitions stated that mother had wanted to relinquish A.C. for adoption but, shortly after A.C.'s birth, a psychologist determined that mother did not have the capacity to sign the relinquishment paperwork. They alleged that mother had been inconsistently taking her medications before she became pregnant and she was not taking psychotropic medication as prescribed at the time of A.C.'s birth because she was pregnant.

The petitions described several instances of mother's failures to adequately supervise or protect. On or about June 17, 2011, mother fell asleep while A.O. was in her care and he wandered off and a housemate located him in the care of strangers. On July 19, 2011, mother became frustrated when asked to clean A.O.'s face, threw a towel at him, and "made gestures to drive away with him without a child car seat." On July 20,

2011, mother became lost as she drove with A.O. toward Los Angeles but she "could not explain where or why she was going." On July 21, 2011, mother left A.O. unattended and "an uncle found him wandering two buildings away." On July 22, 2011, mother drove with A.O., who was inappropriately dressed for the weather and without a diaper, in his car seat, which was soaked with urine. The petitions stated that mother's untreated mental health issues placed the children at risk of physical harm in her care.

The petitions also alleged that mother had perpetrated domestic violence toward A.O.'s alleged father, a housemate, and family members, often in A.O.'s presence. In 2010, mother hit the alleged father with a car seat, causing him injury, as he covered A.O. to prevent mother from hitting A.O. On July 19, 2011, mother argued with her housemate and pushed him out of the car while A.O. was inside the car. On August 8, 2011, mother attacked her housemate and injured his arm. The petitions alleged that the children are at risk of physical harm due to exposure to domestic violence. They stated that mother's criminal history includes a March 23, 2010 misdemeanor conviction for battery against spouse, cohabitant or fiancé.

The petitions also stated that the whereabouts of the children's alleged father were unknown. He allegedly had a substance abuse problem and a criminal history that included a misdemeanor conviction for battery.

On October 20, 2011, the court appointed a guardian ad litem (GAL) for mother in both dependency cases.

The Jurisdiction/Disposition Report, dated November 8, 2011, described the circumstances leading to the filing of the dependency petitions. The report shows the following.

During February 2010, mother was not been able to find car keys and she became agitated and began arguing with A.O.'s father. Mother began punching father about the face and head with a closed fist. At some point, mother had picked up their child's car seat and struck father on the back of the head several times with it. Father had picked up

A.O. sometime during the verbal altercation and subsequently one housemate had taken A.O. from him and another housemate had attempted to stop mother from attacking him. Father reported that mother had recently been diagnosed as schizophrenic and hospitalized for 10 days during January 2010.

Mother was convicted of a misdemeanor battery of a spouse, cohabitant or fiancé on March 23, 2010. She was placed on formal probation for three years.

In June 2011, there were two child welfare referrals that were evaluated out. The second referral, which was made on June 21, 2011, involved a report that mother had not been taking her medication for psychosis because she was pregnant and she had been "somewhat delusional." Mother had fallen asleep and left A.O. unattended. The referral was evaluated out because A.O.'s aunt had agreed to care for him.

A child welfare referral was made on July 19, 2011. Mother was pregnant and had been diagnosed with schizoaffective disorder but she not taking her psychotropic medication due to pregnancy. Mother had been delusional. From June 17, 2011 through the middle of July 2011, mother's sister had been caring for mother's son A.O., who was then one year old. On July 19, 2011, mother came to pick up A.O. from her sister. When A.O.'s maternal aunt asked mother to clean A.O., who had eaten something, mother became frustrated and threw a towel at A.O.'s face. Mother grabbed A.O. and almost drove off without a car seat but the aunt provided one. Mother and her housemate were seen arguing as they drove off and mother was seen pushing the housemate out of the car.

On July 20, 2011, mother was driving and she became lost with A.O. in the car. She was driving toward Los Angeles but she "had no idea she was going there." On July 21, 2011, mother went to the car to clean A.O. and returned without him. When a maternal uncle asked for the child, mother did not know where he was. The uncle found A.O. two buildings away. At about 6 a.m. on July 22, 2011, mother drove A.O. to his maternal aunt's house. He was wearing only a onesie with no diaper and no shoes; "his car seat was completely wet with urine."

On July 28, 2011, mother signed a voluntary family reunification agreement because she was unable to care for A.O. Mother was hearing voices but she was not taking her psychotropic medication because she feared it would affect her unborn child. A.O. was being cared for by the maternal aunt.

The children's maternal aunt reported to a social worker that, on August 8, 2011, mother's car broke down and mother demanded that her roommate fix it. When he explained that he did not have the money, she became angry and hit him, injuring his arm. The police intervened.

On August 31, 2011, mother was taken to Santa Clara Valley Medical Center (hereinafter "SCVMC") due to her bizarre behavior. On about September 6, 2011, the maternal aunt informed social worker Maria Elba Valdivia that "mother was 5150'd at Valley Medical Center." On September 7, 2007, mother told Valdivia that she wanted a relative to adopt A.O. because she was unable to care for him because of her mental illness.

Mother gave birth to A.C. In a SCVMC discharge planning document, dated September 26, 2011, the medical social worker indicated that it had been determined that mother does not have the capacity to sign papers for the relinquishment of her infant.

The report disclosed that, after A.C. was born and prior to her discharge from the hospital, A.C. was diagnosed with hypothyroidism. To treat the condition, A.C. was prescribed Levothyroxine, which must be administered at the same time each day. A.C. undergoes regular blood tests to ensure she is receiving the correct dose of medication. "Failure to properly treat this condition can lead to severe mental and growth retardation, and heart problems, while early diagnosis and treatment leads to normal growth and intelligence." It was reported that A.C. was doing well medically and her thyroid levels were good.

On September 27, 2011, mother sought to be readmitted. Mother was diagnosed with schizophrenia.

On September 28, 2011, A.C. was placed in a confidential licensed foster home. A.O. remained in the care of his maternal aunt.

In October 2011, mother was on a psychiatric hold under Welfare and Institutions Code section 5250. Mother was reportedly discharged to a brother's care on November 2, 2011. Mother had been previously hospitalized in 2010 and 2008.

On November 28, 2011, Form JV-190 ("Waiver of Rights-Juvenile Dependency") was filed. The form was signed and initialed by mother's GAL and signed by mother's attorney.

The jurisdiction hearing took place on November 28, 2011. A Spanish interpreter was provided for mother. The petitions were submitted for decision. The juvenile court sustained them as amended. It concluded the children were described by section 300, subdivision (b) (failure to protect).

An addendum report, dated December 8, 2011, indicated that social worker Esmeralda Alvarez had received a telephone message that mother had attempted suicide and been taken to the hospital on November 29, 2011. When Alvarez spoke with the maternal aunt on December 1, 2011, she was told that mother was not recognizing people and "she wanted to get in the freeway between the cars" and one of mother's brothers had taken her to the hospital. On December 5, 2011, Alvarez received a call from mother that she was going to be released from the hospital that day.

The disposition hearing was held on December 8, 2011. A Spanish interpreter was provided for mother. The juvenile court ordered the children to continue under the Department's care, custody, and control with placement in a confidential foster home. The court ordered mother to have supervised visits with the children a minimum of two times a week for one hour per visit.

As part of its dispositional orders, the court ordered family reunification services for the children and mother but it ordered no services for the alleged father. The court specifically ordered mother to participate in and successfully complete the following

services as directed by the supervising social worker: a parent orientation class offered through the Department, a Basic Positive Parenting class, and a "program of mental health treatment and aftercare, which addresses issues of: monitoring prescribed medication, mental health issues (psychosis and schizophrenia), childhood trauma, coping skills, depression, and self-esteem issues." It also ordered two psychological/psychiatric evaluations to assess mother's "capacity to parent and capacity to utilize reunification services."

In an Interim Review Report, filed on January 25, 2012, social worker Valdivia indicated that mother had completed parent orientation and she was waiting for the next basic parenting class, which would begin on February 7, 2012. Mother had not missed any visits with the children. As to the court-ordered psychological evaluations, mother had met once with one of two psychologists and had a second appointment scheduled with him. The other psychologist asked that mother contact him because he had been unsuccessful in reaching her. Valdivia reported that mother seemed motivated to complete her case plan and she was cooperative. She stated that it was unknown whether mother would benefit from services because the psychological evaluations had not been completed.

In a Status Review Report, dated June 7, 2012, provided for the six-month review hearing (§ 366.21, subd. (e)), social worker Valdivia recommended that the court terminate reunification services and set a section 366.26 hearing. Valdivia reported that mother had participated in the two court-ordered psychological evaluations, she had completed the parent orientation, and mother was currently participating in the parenting class. Mother had been "consistent with her attendance and seem[ed] motivated to complete her case plan." Mother had "attempted to obtain a therapist" but she lacked "medical to cover the cost." The social worker had "submitted a referral for funding for mental health services." The social worker had contacted Social Security and the San Andreas Regional Center but she had found that mother did not qualify for services.

The report indicated that "[d]ue to her mental health issues," mother did not seem to "fully understand why she came to this Department's attention." But mother was "under the impression that once she is doing well she can stop taking her medication." Mother believed that "she can stop taking her medication once she feels 'better' and this put[s] the children at risk as she does not understand the severity of her condition." One of the psychological evaluators stated, based on mother's records and history, that mother's " 'major problem is her inability to take her medication on a consistent basis. . . .' "

Even though mother was currently on medication and seemed to be functioning well, social worker Valdivia did not believe that mother was able to safely care for the children. Valdivia reported that mother did not seem to be able to simultaneously care for both children; mother could pay attention to only one child at a time. During visits, mother often had to be reminded to be careful not to drop A.C. while she was carrying A.C. to the bathroom to change her diaper.

The report reiterated that failure to properly treat hypothyroidism "can lead to severe mental and growth retardation, and heart problems, while early diagnosis and treatment leads to normal growth and intelligence." It indicated that A.C. was doing well with respect to her thyroid levels.

An Addendum Report, also dated June 7, 2012, reported that the social worker had received reports regarding the court-ordered psychological evaluations. Dr. Sanchez diagnosed mother with schizophrenia, paranoid type (chronic). He indicated that mother will have major problems with her perceptual accuracy and be unable to parent effectively when she is psychotic. He stated that "[i]t would be very traumatic for her children to see her in a psychotic state." He indicated that "[a]ccording to her sister and based on records, [mother's] major problem is the inability to take her medication on a consistent basis." "[W]hen she feels better she tends to stop taking the medication and starts to decompensate little by little. When this happens she is too disorganized to

benefit from reunification services. When psychotic she is unable to modulate her emotions and gets overwhelmed by stress. She has a history of hearing voices and becoming aggressive during a psychotic episode." It was reported that mother "continues to hear voices, 'they laugh and talk.' "

It was Dr. Sanchez's opinion that mother will not be able to parent effectively without ongoing mental health treatment that includes consistently taking her medication. "Without consistent medication, . . . she becomes very agitated, tense, jumpy, paranoid, and begins to experience auditory hallucinations. Her reality falters and marked cognitive slippage occurs. Then she feels impotent, incompetent, insecure, will lose control of her behavior, and will be unable to utilize reunification services." His recommendations were that mother continue mental health treatment and understand the importance of remaining stabilized on medication, mother's psychiatrist frequently monitor her to ensure she is consistently taking her medication, and mother participate in individual psychotherapy. He stated that mother, once stabilized, "would also benefit from parent effectiveness training."

Dr. Montalvo diagnosed mother with schizophrenia, paranoid type, episodic with inter-episode residual symptoms, a depressive disorder not otherwise specified (NOS), and a personality disorder NOS with paranoid, dependent, narcissistic and immature features. He stated: "Evaluation data suggest that [mother] does suffer from a mental disability that renders her unable to care for and control her children adequately." He opined that when mother's "primary positive symptoms of psychosis (delusions/ hallucinations) are successfully controlled by medication, [mother's] mental disability does not render her incapable of utilizing reunification services" but "[a] recurring problem has been [mother's] failure to take her medication on a consistent basis" Even on medication, mother's "mental disability renders her less capable of utilizing reunification services" He concluded that mother "appears unlikely to be capable of

adequately caring for and controlling her child even if reunification services are provided for six months."

Dr. Montalvo indicated that mother's adherence to a consistent daily dosage of medication was of "primary importance" and suggested that mother be evaluated by a psychiatrist to determine whether she would benefit from receiving her anti-psychotic medication by injection on a periodic basis. He recommended that mother participate in individual psychotherapy and in an ongoing parent support group with other Spanish-speaking mothers, which would provide an opportunity to learn about "children's emotional needs and effective discipline methods." He also recommended further testing to more accurately assess her intellectual functioning.

In a second addendum report, dated July 17, 2012, social worker Valdivia recommended the continuation of family reunification services for the children and mother. Mother had attended all parenting classes; she had completed all homework for the classes and received a four out of five on the homework. The facilitator indicated that mother had "appeared 'distant' and 'depressed' during class" and "[t]he facilitator did not recommend another parenting class." Valdivia reported that, despite spending "countless hours" on the Internet attempting to find an appropriate parenting support group conducted in Spanish, she had not yet found one. Mother had begun therapy.

Valdivia indicated in the report that mother continued to visit with her children twice a week for an hour per visit. She had many concerns about mother's ability to safely care for her children and could not recommend moving to unsupervised visits. Valdivia reported that mother "presents herself with a flat affect and does not show any emotions and does not nurture her children when upset or hurt." Despite "constant role modeling" by social workers, mother "seem[ed] to only be able to partially care for only one child at a time." She often needed to be reminded not to allow A.O. to engage in potentially harmful activities. Mother seemed unaware that her children could get hurt if not watched. In one instance, while mother concentrated on cleaning up, A.C. crawled

16 to 18 feet away from mother without mother making any effort to get her. The report stated that the social workers would continue to role model appropriate parenting skills for mother.

The second addendum report further concluded that, despite mother's cooperation in the services provided, mother had "not been able to demonstrate an ability to keep her children safe" or an awareness of "the physical dangers when the children are in her care." Valdivia was concerned that mother had not demonstrated "an ability to appropriately nurture her children when they cry or they get hurt."

The minute order for July 17, 2012 indicates that mediation had been successful. For the hearing that day, a Spanish interpreter was provided for mother. The court ordered mother to (1) participate in and successfully complete a program of counseling or psychotherapy addressing "[c]ognitive reorientation methods" and mother's emotional needs and underlying psychological problems, (2) continue taking psychotropic medications prescribed by her psychiatrist, and (3) participate in the " 'Mindfulness for Moms' support group through the YMCA [sic]." The mothers support group was not originally part of the recommended case plan. The court increased supervised visitation to twice a week for two hours per visit.

In an Interim Review Report, dated August 27, 2012, social worker Valdivia stated that she had contacted mother's therapist on or about August 17, 2012 and the therapist reported that mother was consistently attending and participating in therapy. Valdivia had also spoken to the coordinator of the YWCA support group, who indicated mother had consistent attendance. The coordinator reported, however, that mother "seemed to have difficulties understanding what was being said to her and [the coordinator] had to repeat things several times" and "sometimes [mother's] answers were vague and confused." Mother had told the coordinator that the Department had removed her children because mother had left A.O. with her sister. In a follow-up letter, the coordinator explained that the mother's support group was focused on mindfulness and

education around perinatal depression and the group was not a good resource for mothers trying to regain custody of their children and it was not a parenting class. The coordinator explained that she had asked the "referred member" to leave the group.

In the report, Valdivia expressed her continuing concern regarding mother's lack of understanding of her children's emotional and safety needs. She stated that mother "continues to need constant prompts with basic parenting skills"

In a Status Review Report, dated November 13, 2012, for the 12-month permanency hearing (§ 366.21, subd. (f)), social worker Valdivia recommended that reunification services for mother be terminated and a section 366.26 hearing be set. Mother was pregnant again but she had decided to continue on her medication this time.

The report indicated that A.C. continued to take daily medication for congenital hypothyroidism but otherwise the children had no reported health problems. Both children had developed a strong attachment to their caregivers and it was becoming more difficult for them to separate from the caregivers at visits. Both children became visibly upset when a caregiver left them for a visit and they often needed reassurance that their caregiver would return but mother was unable to recognize the children's needs. Mother did not "offer them any emotional support" and the children cried louder as their foster parent left. The social worker supervising the visit was the person who calmed the children and offered emotional support.

The report indicated that mother had completed parent orientation, a parenting class, and 12 weeks of therapy. Mother was attending a support group sponsored by the National Alliance for Mental Illness (NAMI). It was actually a support group for families but mother had been allowed to participate because the "peer to peer" support group had insufficient enrollment to begin.

Valdivia indicated that, from the outset, mother had to be coached regarding changing A.C.'s diaper and the appropriate diaper's size. Mother "insisted on bringing diapers that were too big for [A.C.]." Mother "needed to be reminded that [A.C.] was too

small to be left unattended on the couch" or to be held "with only hand while tending to [A.O.]." A.C. had almost fallen from the couch on more than one occasion.

Valdivia stated in the report that, during visits with children at the park, "it became evident that [mother] lacks basic parenting skills and the ability to identify safety risks." She further stated: "In spite of completing a parenting class, [mother] continues to ignore safety issues when [A.O.] wanders away from her and climbs [on] play structures that are too high for his age." Mother had not noticed when A.C. wandered away from her. Mother had been unable to alter her routine at the park even when necessary for the children's comfort. For example, mother had been unable to deviate from her routine of placing the children on the grass even though the grass was wet and the supervising social worker had pointed that out and suggested bringing them to a nearby table.

It was reported that mother's therapist had told social worker Valdivia that, even with medication, mother "continues to hear 'voices' and has problems discriminating between her inner thoughts and the outside world" The therapist believed that mother could not make sound judgments regarding the children's safety. A letter, dated September 19, 2012, from the therapist was attached to the social worker's report. The therapist reported that mother had completed 12 weekly sessions and she had never missed an appointment. Schizophrenia was described in the letter: "This severe mental disorder is characterized by substantial impairments in cognition, mood, perception, behavior, and judgment. In everyday life, severe mental illness is often marked by an inability to [provide] adequate supplies of food, clothing and shelter, resulting in an inability to provide by herself, the appropriate environment for the development of a child." As an example of mother's thinking, the therapist's letter offered mother's response to the question what she could do if a baby is crying. Mother had answered that she would not listen to the baby because the baby could become a spoiled child.

In the report, Valdivia described mother's behavior toward her children as "robotic." Mother was "not able to emotionally be there for" the children. During the

past year, mother had not understood the importance of soothing the children when they cried because they were sad or upset. Mother was unaware of the children's cues. Mother did not attempt to find out the reason for A.C.'s crying and ignored it. The children had not developed a strong bond with mother.

In addition, mother was unaware of the children's nutritional requirements. If mother was feeding A.C. and became distracted with A.O., she often did not finish feeding A.C. "On more than one occasion, [mother] fed [A.C.] whole grapes even though she was made aware of the danger of choking."

Valdivia stated that mother "continues to be unaware of the children's needs and can only focus on one child at a time." She "does not demonstrate the ability to make sound judgments regarding the children's abilities or needs." Valdivia was "very concerned that [mother] is not able to identify when [A.O.] is at risk of hurting himself." Mother was "unable to identify basic risk factors" and she did not provide adequate supervision. The risk of maltreatment or harm due to inadequate supervision was higher now that mother was pregnant.

According to Valdivia, mother did not understand the importance of communicating with the children "with more than two syllable sentences." Valdivia expressed great concern that "the absence of stimulation" from mother would "interfere with the children's growth and development of their brain and will result in generalized cognitive delay."

Valdivia's professional assessment was that mother was unable to provide a safe and nurturing environment and returning the children to her care would be detrimental to their safety and emotional wellbeing. Mother continued to believe that she lost custody because she left A.O. with her sister and she seemed to be unaware of the safety concerns for the children even though they had been explained.

A contested 12-month review hearing was held on February 1, 2013. A Spanish interpreter was provided for mother. The November 13, 2012 report and attachments

were admitted into evidence. The parties stipulated that Valdivia was an expert in risk assessment of dependent children and Asmindia Sousa, mother's therapist, was an expert in the area of mental health diagnosis and treatment. The parties also agreed that the court could consider the two psychological evaluations of mother.

Mother called Sousa as a witness out of order. Sousa was employed by ACT for Mental Health, a nonprofit agency for mental health. Mother had been referred to Sousa by Valdivia and Sousa had started seeing mother for 12 sessions of individual therapy on June 26, 2012.

Sousa acknowledged that mother experiences voices in her head as a symptom of schizophrenia. Mother had described the voices as similar to "hearing the radio in the background sometimes." Mother had never described the voices as violent or menacing. Sousa agreed that a patient with schizophrenia could usually lead a relatively normal life if the patient stayed on medication.

At the request of social worker Valdivia, Sousa had attended about six of mother's two-hour visits with her children as an observer. According to Sousa, mother was physically affectionate with the children during the visits. She said that mother was able to pick up on the children's emotional needs during the visits. If they were upset or uncomfortable, she asked them whether they needed something or were hungry or thirsty. Sousa did not think that mother displayed a lack of empathy for the children's needs during those visits. She thought that mother understood the children and was able to attend to their needs very well. Sousa believed that mother was able to respond quickly to safety concerns.

Sousa worked with mother on creating an external structure with schedules and rules because people with schizophrenia have no internal structure. Mother created a weekly schedule, which Sousa thought was a "really good schedule."

When asked whether there were any cultural issues affecting mother's parenting, Sousa indicated that mother had "some wrong ideas" about parenting, like magical

thinking. For example, mother thought putting "a little red thing on the forehead" stopped hiccups.

In Sousa's opinion, mother could safely parent both children.

On cross-examination by the Department's counsel, Sousa indicated that she agreed with mother's diagnosis of schizophrenia. She stated that schizophrenia means a person has trouble connecting with reality and trusting people. Sousa acknowledged that mother was still hearing voices, which could be distracting sometimes. She believed that mother did not have paranoid ideas and so, in mother's case, the voices were like a radio in the background and did not interfere in her activities. The judge questioned whether Sousa had read the psychological evaluations because it was his recollection that mother suffered from schizophrenia with paranoia. Although Sousa had received the psychological evaluations of mother, she had not read them. She had not done any psychological testing. She had not worked with mother and the children in joint therapy sessions. One of mother's 12 sessions with Sousa was intake and the other 11 sessions were individual therapy.

On cross-examination by the children's counsel, Sousa indicated that she did not have concerns about mother's ability to manage the children in the community. She had seen mother cross the street with the children in a safe way.

Sousa did recall telling the social worker in August 2012 that mother was not able to feel empathy because she did not know how the children were feeling. At that time, Sousa felt that mother lacked the empathy to relate to her children. Sousa believed that, as the result of professional help, mother was learning to trust and relate to others and mother was now able to see what others wanted or needed. She believed that mother now had the capacity for empathy because she was taking care of herself, taking her medication, and following instructions. Sousa believed that instructions would not always be necessary for mother "throughout her life" but "sometimes could be helpful." Although mother now had a boyfriend whom mother had indicated was "a little bit

jealous and controlling," Sousa believed that mother knew she had resources to help her and Sousa was confident that mother could take care of her needs.

Sousa went to mother's home to observe a visit from social workers because mother had invited her. She left after only three to five minutes because there were a lot of people there and she thought it was too crowded. It was not Sousa's normal practice to go to her clients' homes.

The Department called social worker Valdivia as a witness. Mother received voluntary services prior to the filing of any dependency petition. Valdivia began working with mother in approximately June 2011. During her assignment to the case, Valdivia had regular contact with mother. Mother usually called Valdivia when she came to the department for her weekly visits with the children. Valdivia saw her in person at least once a month. She saw the children during the visits about once a month and sometimes she visited the children at their home.

Valdivia had supervised about five visits, three of them within the prior six months. She received written reports from the social worker who supervised mother's visits with the children and she had reviewed all those reports. Valdivia has spoken with mother's therapist Asminda Sousa, the facilitator of the basic parenting class in which mother had participated, the facilitator of the YWCA mothers support group, a medical social worker at Valley Medical Center (VMC), mother's case manager at Central Wellness and Benefit Clinic, and a number of people at NAMI.

Valdivia testified that, even after mother completed the parenting class, there were still concerns about mother's ability to safely parent. Mother had demonstrated inability to make good judgments when the children were in danger. For example, mother was unresponsive when, as a two and a half year old, A.O. took off running at the park and began climbing on a structure. She did not follow him or attempt to stay close. Valdivia advised mother that she needed to be nearby in case A.O. fell but mother did not follow that direction. Mother seemed relatively unconcerned that A.O. would be hurt when, as

an active three year old, he went back and forth between the park's two play areas, one for children his age and the other for children older than five or six. Mother sometimes followed him but "with no urgency that he might get into something that is dangerous for him."

Valdivia also had concern about mother's ability to be emotionally available to the children. She stated: "Mom is not able to respond when the children cry. She might for example touch them, might hug them, but she never really verbalizes anything to them. The more they cry the more mom kind of freezes and looks at the supervising social worker, being me, for some kind of an answer" When the children are being dropped off by the foster parents, "[m]om is not able to approach the children to comfort them to tell them it's going to be okay, she just stays there quietly" and lets the social worker or the foster parents comfort the children.

There were also issues related to feeding the children. On several occasions when A.C. was younger, mother had been told that A.C. could not eat whole grapes because she might choke and mother needed to cut the grapes. Mother had not been able to follow those instructions.

During the first four-hour home visit by Valdivia, mother began to feed A.C. but she became distracted by A.O. and A.C. was not fed. At the end of the visit, mother gave yogurt to A.O. but not A.C. A.C. "got a hold of" the yogurt lid and was licking it and obviously hungry. When the social worker coached mother to feed A.C., mother said A.C. was not hungry. This was a recurring problem. Even when A.C. indicated that she was hungry by trying to grab food that mother was giving to A.O., crying, or pulling, mother did not seem to understand that A.C. was hungry.

The social workers had done a lot of role modeling during the first months of mother's visits with the children. During the last six months, the amount of role modeling had been reduced to learn how much mother had grasped but mother was still given suggestions and advice. Although mother had been told that the foster parents usually

fed the children around 11:30 or 12:00 and it was mother's decision when to feed the children during supervised visits, mother still was relying "on the social worker supervising the visits as to whether she should feed the kids or not."

The twice-a-week visits with mother had been emotionally difficult for the children, who cried hysterically and begged their foster parents not to leave. Mother had not responded appropriately when the children were crying hysterically. Valdivia had observed a lack of empathy from mother toward the children. In Valdivia's opinion, the children had not bonded with mother. She had not observed the children run to greet their mother.

The Department had provided mother 12 weeks of individual therapy and Valdivia had made a referral, and requested funding, for family therapy for 12 additional weeks. Mother had participated in a mothers support group until the facilitator determined that she was not a good fit for the group. Valdivia had subsequently referred mother to a NAMI peer-to-peer support group for the mentally ill but the group had not begun until January 2013 because there had been difficulty gathering enough participants.

Mother was also receiving services from the Central Wellness and Benefits Clinic, which administered and monitored her medication. Mother was receiving monthly injections. Two other medications in pill form had been discontinued due to her pregnancy. Mother had been very compliant with her medications and appointments.

Valdivia had received a telephone call from a VMC social worker, who called because mother, who was receiving medical care for her pregnancy at the VMC, had said things that did not make sense and the social worker was seeking clarification. The VMC social worker commented that she would be concerned if the children were returned to mother.

In Valdivia's opinion, mother was unable to meet the children's basic needs and safely parent them. Mother continued to make the same mistakes even after 12 months of services, a basic parenting class, and therapy. She was unable to provide for the children,

feed them when they needed to be fed, and nurture them when they needed to be nurtured. She believed that mother's inability to empathize made her unable to meet their emotional needs.

It was Valdivia's assessment that it would be detrimental to the children for them to be returned to their mother's care. In her view, the children were very young and their brains were still developing and they required an environment in which their needs were consistently met and they were nurtured. Valdivia was concerned that they would not have that situation if they were returned to mother.

Valdivia's assessment was based in part on the psychological evaluations of mother. In her opinion, mother's mental disability impaired her ability to safely parent the children. She did not believe that additional reunification services would allow mother to successfully reunify with the children within 18 months of removal from parental custody.

On cross-examination by mother's counsel, Valdivia acknowledged that mother had been very consistent in taking her medication and mother had decided to stay on medication through her pregnancy. Valdivia agreed that in her June 7, 2012 report she had reported that mother had regularly attended visits with the children and was always punctual. Valdivia acknowledged that she had said in that report that mother was on her medication and doing well. Valdivia acknowledged that at the time of that report she was concerned about mother's history of going off her medication.

Valdivia confirmed that no other parenting class was added to mother's case plan after mother was discontinued from the mothers group.

Valdivia initially contacted Sousa about providing family therapy in late August 2012. They spoke again in late September but funding had not yet been secured. On October 3, 2012, Valdivia asked Sousa to observe and work with mother during visits with the children. Sousa first attended a visit between mother and the children on October 10, 2012. After the visit, Sousa had several positive comments about mother's

parenting but Sousa agreed that there were still legitimate safety concerns. Valdivia subsequently had a few more conversations with Sousa but Valdivia did not include them in her social worker notes or reports. Valdivia indicated that she had asked Sousa to prepare a written report about two weeks before the hearing.

Valdivia acknowledged that A.C. had special medical needs based on her condition of hypothyroidism but she had not referred mother to a class on medically fragile children. Valdivia had spoken to mother only twice about A.C.'s condition and her daily medication. Mother had gone to only one of A.C.'s medical appointments, which had been the day before the hearing.

On cross-examination by the children's counsel, Valdivia agreed that mother remained dependent upon visit supervisors for making decisions about the children's basic needs and care. When the children were crying, mother needed direction to sooth and attend to them. At times mother interpreted crying as a need for food but that was not always an appropriate assessment.

In Valdivia's opinion, the schedule prepared by mother was not realistic given the ages of the children. For example, her schedule provided for breakfast at 10:30 in the morning but young children usually wake up as early as five or six o'clock in the morning. Mother did not seem to have the ability to deviate from what she had already been told to do and mother lacked the flexibility that young children require.

During the three months before the hearing, Valdivia had supervised some visits with the children in the community. One visit was at the Children's Discovery Museum. During another visit, they had gone to the pastry shop across the street from mother's apartment. Mother had not identified safety concerns during those supervised visits. For example, at the museum, A.O was playing under a structure while an adult, who was sitting on the top of the structure, was swinging her legs. The supervisors were waiting for mother to intervene by saying something either to the adult or to A.O. but she did not and the supervisors had to make the adult aware that a child was beneath her. When they

were going to the pastry shop, mother was about to cross a busy main road with a lot of cars coming and going while she was carrying A.C. in one hand and holding A.O. with her other hand. Valdivia stopped her and suggested going to the light so they could cross with a walk signal for safety.

Valdivia was also concerned about interactions between the children. She had seen A.O. push A.C., who is very small, causing her to lose her balance and fall. On more than one occasion, mother had been unconcerned with this kind of situation and the supervising social worker had to interfere and tell mother that she cannot allow A.O. to do that because A.C. can get hurt. Mother had not subsequently changed her behavior and intervened in this type of situation.

On redirect examination, Valdivia was asked about A.C.'s medical condition of hypothyroidism, which was treated with a daily pill. She had not read anything from the doctor that described A.C. as medically fragile. As long as A.C. was receiving the proper medication, her health would be stable. Valdivia had asked mother to attend A.C.'s medical appointment with her the day before the hearing because she realized that she had not "encouraged mom to go to doctors appointments with the children" and mother "needed to know exactly what was going on with [A.C.'s] problem." Valdivia did not have a reason for not inviting mother to come to A.C.'s earlier medical appointments.

With respect to Dr. Sanchez's recommendation of parent effectiveness training for mother, Valdivia indicated that she did not know of any specific class called "parent effectiveness training." She believed that parent effectiveness was addressed in the parenting class in which mother participated.

Valdivia was unable to find a parent support group with other Spanish-speaking mothers as recommended by Dr. Montalvo. She was only able to find a peer-to-peer support group for mentally ill individuals.

During recent months, the social workers supervising the visits had not focused on providing a parenting role model to mother because they wanted mother to be more

independent. Instead, the social workers redirected mother to the appropriate parenting skill if she demonstrated that she lacked it.

On recross-examination by the children's counsel, Valdivia expressed her concern about mother's ability to properly administer the medication to treat A.C.'s hypothyroidism because she becomes distracted when caring for the children. Mother had become distracted and forgotten to continue feeding A.C.

The Department called the children's confidential foster mother to testify. She had cared for A.C. since A.C. was four days old. A.O. had come into her care right after his second birthday in 2011.

When the foster parents had picked A.C. up from the hospital, they had learned that she had congenital hypothyroidism. A.C. took one pill every day but the dose had changed many times. The current dose required them to cut a pill in half, which was difficult because the pill sometimes crumbled and it was important that A.C. received the exact dose. A.C. was required to take the medication on an empty stomach and then not eat for at least an hour after taking it. She was required to take the medication once every 24 hours. The foster parents were giving the medication to A.C. when she woke up from her late afternoon nap and then having her wait until dinner time to eat.

A.C. was given frequent blood tests but their timing depended upon the blood test results. The blood tests occurred sometimes once a week, every two weeks, or every four weeks as the doctor directed. The dose could change because A.C. was growing. They communicated closely with doctor about testing times when A.C. was ill or recovering from illness because illness increased thyroid levels. The wrong dosage can impact bone development. When A.C. had the stomach flu, the foster parents searched through her vomit and diarrhea to determine whether there was an undigested pill.

The foster parents had gone through about eight different methods of administering the pill. The current approach was to pry A.C.'s jaw open and stick the pill down her throat, which was difficult. A.C. sometimes spit it up or hid it in her cheek.

On the occasions when the foster mother had dropped off the children for visits with mother, she had not observed the children run to see mother.

Both the children's counsel and the Department's counsel requested that family reunification services be terminated and a section 366.26 hearing be set.

Mother's counsel argued, among other things, that the Department had failed to provide mother with reasonable services to assist her with developing better parenting skills. Counsel protested that mother was not referred to class regarding parenting of a medically fragile child, she was not educated about A.C.'s medical condition, and she had not been invited to any of A.C.'s medical appointments until the previous day.

The court found that mother had "worked very hard to comply with the case plan, particularly given the challenges that her mental disability brings." It observed that mother was regularly taking her medication, which helped her remain minimally stable, and that was a major accomplishment. She had "attended her parenting classes and all visits with the children," which was "very commendable under the circumstances." Nevertheless, the court concluded that "despite her best efforts, [mother] cannot meet the children's needs for safety, protection, and nurture at the present time" and "[n]or is she likely to be able to do so at any time in the foreseeable future." It found the social worker's testimony was "credible and persuasive on the issues of whether the child can be returned to the mother and whether additional services would be beneficial." The court found it clear that therapist Sousa was strongly committed to helping mother and she had taken on the role of advocate. But the court did not find the therapist's "expert testimony regarding the safety of the children during visits or the mother's ability to parent the children safely to be persuasive."

The court found the issue whether the Department had provided reasonable services to the parent to be the most difficult, as in all cases involving mental illness. It nevertheless determined that the Department had "reasonably assisted" mother and "no

amount of additional services will help [mother] progress to the point where she can adequately care for two small children."

The court terminated family reunification services to mother and set the matters for a section 366.26 hearing on May 28, 2013.

On February 5, 2013, counsel for mother filed a notice of intent to file a writ petition (see Cal. Rules of Court, rule 8.450(e)).

II

Analysis

A. Applicable Law

"The overarching goal of dependency proceedings is to safeguard the welfare of California's children. (*In re Josiah Z.* (2005) 36 Cal.4th 664, 673) '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. [Citations.]" (*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, 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" (§ 361.5, subd. (a)(1)(B).)

A permanency hearing ordinarily must "be held no later than 12 months after the date the child entered foster care" (§ 366.21, subd. (f).) "After considering the relevant and admissible evidence," the court is required to "order the return of the child to

the physical custody of his or her parent or legal guardian unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child." (*Ibid.*) In addition, the court is required to "determine whether reasonable services that were designed to aid the parent or legal guardian to overcome the problems that led to the initial removal and continued custody of the child have been provided or offered to the parent or legal guardian." (*Ibid.*)

At the 12-month permanency hearing, if the time period for providing reunification services to a parent has expired and a child is not returned to parental custody at the permanency hearing, the court may, if certain findings are made, "[c]ontinue the case for up to six months for a permanency review hearing, provided that the hearing shall occur within 18 months of the date the child was originally taken from the physical custody of his or her parent." (§ 366.21, subd. (g)) "The court may not order that a hearing pursuant to Section 366.26 be held unless there is clear and convincing evidence that reasonable services have been provided or offered to the parent or legal guardian." (§ 366.21, subd. (g)(1); see § 366.21, subd. (g)(4); Cal. Rules of Court, rule 5.708(m).)

"The adequacy of reunification plans and the reasonableness of DCFS's efforts are judged according to the circumstances of each case. [Citation.]" (*Amanda H. v. Superior Court* (2008) 166 Cal.App.4th 1340, 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.)

We review for sufficiency of the evidence a juvenile court's determination at the 12-month hearing that reasonable services were provided or offered to a parent. (See *Amanda H. v. Superior Court*, *supra*, 166 Cal.App.4th at p. 1346; see also *Crail v. Blakely* (1973) 8 Cal.3d 744, 750 [a "clear and convincing" standard adopted for "the edification and guidance of the trial court" is not the standard for appellate review].) "When we review a sufficiency of the evidence challenge, we may look only at whether there is any evidence, contradicted or uncontradicted, which supports the trial court's determination. We must resolve all conflicts in support of the determination, and indulge in all legitimate inferences to uphold the court's order. Additionally, we may not substitute our deductions for those of the trier of fact. [Citations.] And, in reviewing the reasonableness of the reunification services provided by the Department, we must also recognize that in most cases more services might have been provided, and the services which are provided are often imperfect. The standard is not whether the services provided were the best that might have been provided, but whether they were reasonable under the circumstances. (*In re Misako R.* (1991) 2 Cal.App.4th 538, 547)" (*Elijah R. v. Superior Court* (1998) 66 Cal.App.4th 965, 969; see *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." ' [Citation.]" (*Amanda H. v. Superior Court*, *supra*, 166 Cal.App.4th at p. 1346.)

B. Adequacy of Services Provided or Offered to Mother

Mother now asserts that social worker Valdivia "did not include any additional parenting component in Mother's case plan at the six-month review" even though Dr. Sanchez had recommended that mother receive parent effectiveness training. Valdivia testified, however, that the basic parenting class covered parent effectiveness. Valdivia had no knowledge of a specific class called "parent effectiveness training." No evidence was introduced that such a parent education program was available to and appropriate for

mother who speaks Spanish, or that such a program would have taught mother anything more than the parenting class in which she did participate.

As to Dr. Montalvo's recommendation that mother participate in a support group for Spanish-speaking mothers, a mothers group was added to the case plan at the six-month review hearing. The facilitator of that mother's group, however, determined that mother was not appropriate to that group and mother could not continue participating in it. Valdivia spent many hours attempting to find another mothers support group appropriate for mother without success. Valdivia was able to arrange for mother to join NAMI support groups.

Pointing to Sousa's testimony, mother now argues that if she had been "provided with parenting coaching or therapeutic visitation specifically designed for clients with her mental health diagnosis, she may have improved her parenting skill significantly and been successful in reunifying with her children." Mother's reliance on her therapist's testimony is unavailing because the court implicitly found that therapist was not credible with regard to mother's parenting skills under her watch. Further, no evidence was introduced showing that such additional services existed and were appropriate for mother. The social workers supervising mother's visits with the children modeled and provided instruction regarding appropriate parenting of young children. In addition, the Department provided a parenting class and individual therapy and it arranged for mother's therapist to attend a number of visits with the children.

Mother also argued that she was "given no instruction and minimal information about A.C.'s special medical needs" and she was not invited to any of A.C.'s doctor appointments until the day before the hearing and, consequently, she was not "given the opportunity to show whether she could adequately address those needs." She states that she was "never referred to a class for parenting medically fragile children." In support of her contention that she was denied reasonable services with respect to A.C.'s

hypothyroidism, mother cites *Tracy J. v. Superior Court* (2012) 202 Cal.App.4th 1415 (*Tracy J.*).

Tracy J. was a case involving developmentally disabled parents whose reunification services were terminated at the 18-month review hearing. (*Id.* at pp. 1419-1423.) They had a son who "had asthma, requiring different treatments depending on the severity of his symptoms." (*Id.* at p. 1420.) The reviewing court granted writ relief because, "[d]espite positive reports from professionals about the parents' devotion to the child and to his safety, the Agency unreasonably limited visitation services." (*Id.* at p. 1419.) It emphasized that "harm to a child cannot be presumed from the mere fact a parent is developmentally disabled." (*Ibid.*)

In *Tracy J.*, the reviewing court explained: "Early in the dependency proceedings, a visitation supervisor said the parents demonstrated a parental role with T.J., responded appropriately to his verbal and nonverbal signals, put his needs ahead of their own and consistently displayed empathy toward him. Later, the professionals involved in the case characterized the parents' interactions with T.J. as 'great,' 'very protective,' 'very loving and adoring,' 'protective [and] alert,' 'very nurturing, very loving,' and 'comfort[ing].' They also said [the father] was a 'very loving, caring father' and 'very cognizant of [T.J.'s] safety.' Social worker Carter said the parents had a basic understanding of how to care for T.J. [¶] Despite reports the parents were protective of T.J.'s safety, the record shows the Agency did not advance the parents' visitation services." (*Id.* at pp. 1426.) The court also found: "The parents were not informed about T.J.'s medical appointments until they were over. They did not receive any instruction on how to recognize T.J.'s asthma symptoms and treat him appropriately, which directly undermined their ability to reunify with him." (*Id.* at p. 1427.)

The reviewing court in *Tracy J.* concluded: "[T]here is not substantial evidence to support the juvenile court's finding reasonable family reunification services were offered or provided to [the parents]. Despite their full cooperation with the Agency, positive

reports from service professionals, their devotion to T.J. and the availability of significant support services through SDRC, [the parents] have not had a reasonable opportunity to show they are able to parent their child." (*Id.* at p. 1428.)

Unlike the parents in *Tracy J.*, mother had ample opportunity to show that she had acquired basic parenting skills and was able to care for the children. There was evidence suggesting that mother was not ready for detailed instruction regarding the parent's role in the treatment of hypothyroidism. The mere fact that mother had not been regularly invited to attend A.C.'s doctor appointments concerning hypothyroidism does not establish that she received inadequate services. Moreover, the record does not show that A.C. qualified as "medically fragile" or that a class regarding the parenting of medically fragile children was available to mother and appropriate under the circumstances.

In this case, the reunification services provided to mother addressed her particular needs. The record discloses substantial evidence to support the juvenile court's finding that reasonable reunification services were provided or offered to mother.

DISPOSITION

Mother's petition for a writ of mandate is denied. Mother's request for a stay of the section 366.26 hearing, presently set for May 28, 2013, is denied as moot. This opinion is final in this court seven days after filing. (Cal. Rules of Court, rules 8.452(i) and 8.490(b)(3).)

ELIA, J.

WE CONCUR:

RUSHING, P. J.

PREMO, J.