Filed 12/16/16 K.S. v. Superior Court CA6

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

K.S., et al., Petitioners, v. THE SUPERIOR COURT OF SANTA CLARA COUNTY, Respondent; SANTA CLARA COUNTY DEPARTMENT OF FAMILY AND CHILDREN'S SERVICES, Real Party in Interest.	No. H044012 (Santa Clara County Super. Ct. No. JD22695)

Petitioners K.S. (mother) and D.J. (father) challenge the juvenile court's order terminating reunification services and setting a hearing pursuant to Welfare and Institutions Code section 366.26.[1] They contend that they were not provided with reasonable reunification services. We deny their petitions.

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

I. Procedural and Factual Background

A. Detention Hearing

On July 11, 2014, two-day-old Elena was placed into protective custody after the mother showed lack of attachment toward the child and reported that she had been kicked out of the family home by the father. On the same date, the Santa Clara County Department of Family and Children's Services (the Department) filed a petition pursuant to section 300, subdivisions (a) (serious physical harm), (b) (failure to protect), and (j) (abuse of sibling). The petition alleged that the child was at substantial risk of suffering serious physical harm based on: the mother's physical abuse of the child's half sibling, Logan; her history of assaulting both the maternal grandmother and the father, including a recent arrest for domestic violence against the father in May 2014; and her failure to provide for the child's care.

Investigation by the Department revealed that the mother had not prepared for Elena's birth. The father had custody of her two older children, nine-year-old Logan and five-year-old Jacob. Logan had become a dependent in December 2010 due to the mother's physical abuse. After the mother failed to reunify, the father became Logan's legal guardian and the dependency was dismissed. The mother had an extensive Child Protective Services (CPS) history, including 35 referrals in nine years. The Department had provided "one Voluntary, three Informal Supervision, and one Court Family Reunification services." The mother denied that she had a mental health diagnosis or that she was taking any psychotropic medication.

The mother's criminal history included a conviction for battery in 2009, infliction of injury on a child in 2011, and infliction of corporal injury to a spouse in 2011. The mother was on probation until August 2015.

When the father was interviewed by a social worker, he acknowledged that there was domestic violence by the mother in front of the children, but he believed that Elena

would be safe with her. He wanted to raise the children with the mother, but he understood that he could not do so due to a restraining order.

The juvenile court ordered the detention of the child and a minimum of two supervised visits per week for two hours for each parent.[2]

In August 2014, the second amended petition was filed to include allegations that the mother and the father regularly engaged in domestic violence in the presence of the children. The father also allowed the mother to reside in the family home despite her history of domestic violence. When the father was overwhelmed, he used marijuana or disciplined the children with corporal punishment.

B. Jurisdiction/Disposition Hearing

The jurisdiction/disposition report recommended that the second amended petition be sustained and that disposition be continued. Elena had been placed in a foster home while Jacob and Logan remained in the father's home. The report summarized the family's extensive history with the Department.

The father disclosed that he had used physical discipline with Logan and Jacob, but denied leaving marks or bruises. He spanked them and sometimes "lightly slap[ped] them on the face." Jacob reported that his parents hit each other and Logan had seen the mother push the father. The social worker supervised one of the father's visits with Elena. The two boys were also present. Though the first 30 minutes went well, the boys began arguing and the father yelled at them. After 45 minutes, the father asked that the

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[2] Shortly thereafter, the Department filed a separate petition pursuant to section 300, subdivisions (a), (b), and (j) on behalf of Elena's brother, Jacob. At the initial hearing set for Jacob, the juvenile court ordered that Jacob remain in the care of the father and be detained from the mother. Two days later, the Department filed a petition to reopen the dependency on Logan.

visit be cut short and told the social worker that he did not know if he could handle all three children, but he wanted to try.

The mother's probation officer stated that the incident in May 2014 had resulted in charges of assault, criminal threats, and a violation of a protection order. The mother had been in mental health court since June 2014 and ordered to seek counseling. The probation officer recommended a psychological evaluation for the mother.

The Department's disposition report recommended that the father receive reunification services for Elena. It was also recommended that the mother not be offered reunification services. The report stated that the mother denied that she had engaged in domestic violence. The father had requested that the no contact order be modified to allow peaceful contact, but the court denied his request. The mother did not think that she needed reunification services. However, she agreed to participate in services to reunify with the children.

In November 2014, the juvenile court found true the section 300, subdivisions (b) and (j) allegations of the second amended petition as to Elena. The matter was set for a contested disposition hearing.

In January 2015, the disposition hearing was held. The juvenile court ordered that both parents receive family reunification services for Elena. The case plan for the mother included: a parent orientation class; a 16-week parenting without violence class; weekly counseling; psychiatric services and compliance with prescribed psychotropic medications; and a 52-week batterer's intervention program. The father's case plan included: a parent orientation class; a 16-week parenting without violence class; counseling; "on demand" substance abuse testing; and a domestic violence victims' support group. Supervised visits were also ordered for both parents.

C. Interim Review Hearing

A report was prepared for the interim review hearing in March 2015. The mother had completed the parenting without violence class and had started attending the 52-week batterer's intervention class. She began individual therapy with Sallie Danenberg and was scheduled to complete a psychological evaluation. The mother was also scheduled to begin therapeutic visits[3] at Kindred Souls. The father had completed the parenting without violence class, was in weekly therapy with Margo Tuckner, and had begun domestic violence victims support counseling with Nancy Marshall. Following admission of the report, the juvenile court set the case for another interim hearing.

D. Interim Review Hearing

The report prepared for the interim review hearing in April 2015 included the report of the mother's psychological evaluation by William Alvarez, Ph.D. The report stated that the mother had been sexually abused for several years beginning when she was a child. Alvarez noted that it was a "good possibility" that mother had a borderline personality disorder. However, he thought that posttraumatic stress disorder (PTSD) was the appropriate provisional diagnosis. Alvarez concluded that the mother suffered from "an untreated major mental disorder whose symptoms include mood instability, anger management issues and emotional lability." Alvarez recommended individual therapy, a parenting class, a program for victims of childhood sexual abuse, an anger management program, and a parenting without violence classes.

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[3] Unlike supervised visitation, therapeutic visitation provides "therapeutic intervention as a part of that visitation" and it is "a type of mental health treatment . . . for the child . . . ."

E. Six/12/18-Month Review Hearing

The originally scheduled six-month review hearing in July 2015 was continued to August 2015, because the assigned social worker suddenly took a medical leave of absence. In the request for the continuance, the social worker supervisor noted that she had been unable to contact the father due to problems with his cell phone. She also stated that she met with the mother, who had been placed on a psychiatric hold in early May. The mother was not hospitalized, but was prescribed medication and was currently seeing Danenberg. The supervisor also spoke to Ronald Ober, who was supervising the therapeutic visits between the mother and Elena at Kindred Souls. He reported that the visits were going well.

In August 2015, the juvenile court noted that the Department was late in submitting its report. It also noted that the report did not discuss the parents' compliance with the case plan. With the agreement of all the parties, the juvenile court set the mediation date for September 2015. The mediation did not occur, however, because the Department failed to provide an update for the mediation and the social worker called in sick.

The case was continued to October 2015 for an early resolution conference. The Department submitted an addendum report which provided more information about the parents' compliance with the case plan. However, it did not indicate the Department's efforts to assist the parents in complying with their case plan.

The court set Elena's case for a contested six-month review hearing on December 18, 2015. On that date, the juvenile court heard testimony from the social worker, the social worker therapist, and Danenberg. The juvenile court also admitted into evidence several reports by the Department. The six-month review report recommended that both parents receive family reunification services for Elena. The mother had one therapeutic visit per week at Kindred Souls. The therapist who supervised the visits

stated that they were going well. The father had one supervised visit per week with Elena at the Department. However, the paternal grandparents were not always available to supervise the second visit. The caregiver reported that Elena was often hesitant to leave the home for visits and she was fussy and uncomfortable when she was picked up from visits.

The mother had stated that she did not believe that she needed supervised visits and did not think they should be at the Department. She had also stated that she did not want to have therapeutic visits, because she has already had them and they were not helpful. The father believed that parenting and anger management programs would be helpful.

The social worker believed that the return of Elena to the father would increase his level of stress and he would be unable to care for three children. The social worker also noted that the mother did not acknowledge any of the issues which brought Elena before the court.

An addendum report, which was filed on December 18, 2015, recommended continued family reunification services for both parents. The social worker stated that the mother had attended half of the 52-week batterer's intervention program, but the program facilitator indicated that the mother was unable to integrate the information that had been provided. The therapeutic visits at Kindred Souls went well, but there were concerns about the mother's visits supervised by the Department. The mother's interactions with Elena were minimal during visits and she did not demonstrate that she was able to integrate what she had learned at Kindred Souls. The report on the father's domestic violence victim support sessions was positive.

An addendum report, which was dated November 30, 2015, stated that the foster parents had reported that Elena frequently had hives on her face, arms, and legs after

visits with either parent. Elena's physician opined that the hives could be related to stress.

Danenberg's report was attached to the November addendum report. She noted that the mother had withdrawn her release to share information with the Department, but requested that information regarding her progress be provided to her attorneys. According to Danenberg, the mother suffered from major depression and PTSD for which she took medication. Danenberg also noted that she had not seen the disposition or case plan for the mother and had not had contact with the social worker since August 2015.

The juvenile court continued the contested hearing to January 29, 2016. At that time, the six-month review hearing had become an 18-month review due to the passage of time. The juvenile court heard further testimony. Following argument, the juvenile court found that the Department had failed to provide reasonable services to the parents. The juvenile court then extended reunification services for six months to the 24-month review hearing. The mother's case plan was modified to require: counseling or therapy as recommended by the psychological evaluation; the 52-week batterer's intervention program; on-demand drug testing; and a parent-coaching program. The father's case plan required: counseling or psychotherapy; and services through Gardner's Intensive Up-Front & Parent Skill Building Program (Gardner). Pending a 30-day interim review hearing, the juvenile court reduced the parents' supervised visits to one time per week for two hours.

F. Interim Review Hearing

The interim review report, which was filed on February 29, 2016, stated that Elena's case had been assigned to Lori Tostado on February 3, 2016. Tostado and other representatives from the Department held a meeting with therapists from Kindred Souls.

The meeting specifically addressed the disparity in the mother's ability to meet Elena's needs during visits at Kindred Souls and those supervised by the Department. The mother had shown improvement during the therapeutic visits at Kindred Souls while the mother was inattentive to Elena's needs during visits supervised by the Department and held in the community. It was agreed that the therapist from Kindred Souls would move visits from the therapist's office to a more natural setting, such as a park or at home, so that he could more fully assess the mother's ability to provide safe parenting to Elena. Regarding the father, the report stated that he believed that he was well-bonded with Elena. The Department also recognized that he had made progress. However, there were still concerns regarding his ability to understand and meet Elena's needs and his ability to parent three children together. The juvenile court ordered visitation for each parent once a week for two hours.

G. The Mother's Section 388 Petition

In April 2016, the mother filed a section 388 petition in which she requested that her visits with Elena be increased to four hours per week. The mother alleged that she had completed the 52-week batterer's intervention program, continued to attend therapy with Danenberg, and complied with psychotropic medication treatment. The mother later filed supplemental exhibits in support of her section 388 petition. These exhibits consisted of Kindred Souls visitation logs, which indicated that the mother had achieved the highest score in every category of evaluation. The juvenile court denied the petition.

H. 24-Month Review Report

The 24-month review report, which was dated July 11, 2016, recommended that the juvenile court terminate the parents' reunification services and set a selection and implementation hearing pursuant to section 366.26.

Since January 2016, the father had been provided with in-home parenting support for all three children through Gardner. The social worker spoke with Samarea Lenore, the Gardner coach. Lenore was concerned about the father's preferential treatment of Jacob. He was "very firm" with Logan, but allowed Jacob to do what he wanted to do. When Lenore tried to discuss the issue with the father, he "'didn't seem to grasp the importance of holding both children to the same standard.'" Lenore also expressed concern that the father was passive and described his inaction with the children as "'apathy.'" The father admitted that he had difficulty sometimes in managing his frustration and anger. The father also had difficulty in responding to each child's individual needs. His lack of consistency decreased Lenore's confidence that the father would be able to manage three children if Elena were returned to his care. Lenore reported that the father minimized the domestic violence in his relationship with the mother. Lenore described him as taking a "'romantic view of himself as a martyr'" and having a "'delusional optimism about their relationship.'"

On May 6, 2016, Tostado and her supervisor, Susannah Folcik, met with the father to discuss the safety of the children in his care. The father stated that he could benefit from conflict and accountability classes and he acknowledged that he lost his temper with Logan. He stated that he had kept appropriate boundaries with the mother. He also noted that the mother had been more attentive to her mental health needs, including taking medication.

In a team decision making (TDM) meeting on May 26, 2016, Lenore identified the father as being in the "'pre-contemplative'" stage of domestic violence treatment. This stage meant that he had "not yet progressed in his treatment to a place where he ha[d] learned what he needs to learn in order to protect his children from potential exposure to future domestic violence."

On June 17, 2016, Tostado and Folcik met with the father to discuss the Department's recommendations. The father stated that he had told the mother that he would never again be in a relationship with her and she agreed with his decision. Tostado was concerned that the father remained at strong risk of re-entering into an unhealthy relationship with the mother due to his lack of understanding of the problem of domestic violence in their relationship.

Tostado reported that Elena continued to develop rashes after visits with the parents, but not after visits with anyone else. Tostado spoke with the nurse practitioner who had treated Elena. The nurse practitioner indicated that it seemed plausible that anxiety caused the rashes. She referred Elena to the allergy and immunology clinic for further assessment.

The 24-month review report also discussed the reunification services provided to the mother. In March 2016, Danenberg, who had been the mother's therapist for over a year, reported to Folcik that she did "'not believe that mom will ever be able to safely parent her children.'" According to Danenberg, the mother had "'not internalized any of' what she ha[d] learned through her domestic violence programs." In addition to her individual therapy, the mother met regularly with her mental health case manager through Momentum for Mental Health and complied with the medication requirements of her psychiatrist. Though Tostado commended the mother on her progress, she opined that her mental health challenges made it unlikely that the mother would be able to meet Elena's needs.

Tostado stated that the mother had completed the 52-week batterer's intervention program as of March 2016, but the program's final report was not favorable. The mother's ability to apply program principles was "weak," and her understanding of the victim and children's perspective was "quite limited." The report stated that the mother's

"potential for further violence ha[d] . . . [r]emained the same." The mother had also reported "compliance with medication" to the program.

Regarding visitation, Tostado stated that the mother had her first therapeutic visit with Elena in an outdoor setting in mid-March 2016. From that point forward, therapeutic visits remained in the community until the mother had a therapeutic visit with Elena in her home in June 2016. The mother had made progress in meeting Elena's needs during therapeutic visits. However, in addition to the rashes, the foster mother reported a "negative impact on the child's mood and behaviors" after these visits. Tostado also noted that the mother had yelled at a social worker who was supervising her visit with Logan and Jacob in April 2016, thus demonstrating the mother's inability to control her behavior.

The father began having visits in his home with all three children. During one of the visits, Jacob threw a ball that accidentally hit Elena. Though she did not appear to be affected, Logan took Jacob to the bedroom and spanked him repeatedly. When the father told Logan to stop, Logan responded, "Well, you spank me all the time." Tostado was concerned that Logan had internalized that spanking was an appropriate form of discipline. At another visit, when the boys were running around and being loud and the father was yelling at them, Elena began asking for "mommy," that is, the foster mother. Logan yelled at her, "[D]on't call her that! She's not your mommy." The father tried to pick Elena up to comfort her, but she went to the door and tried to open it repeatedly. She then pushed the father away, picked up her diaper bag, brought it to the social worker, and pointed to the door while crying. There were other reports regarding the amount of yelling and arguing between the father, Jacob, and Logan.

I. The Department's Section 388 Petition

Based on Elena's level of stress after visits, the Department requested that the frequency of the parents' visits with Elena be reduced to two times per month and that the location of the visits be limited to the Department for the father and Kindred Souls for the mother. Following the hearing in August 2016, the juvenile court ordered that the parents have one visit per week for one hour and that the father's visits would be at the Department and the mother's visits would be at Kindred Souls. The hearing was continued.

The Department submitted an addendum report in support of its section 388 petition. The visitation logs of the parent's visits and Elena's medical records were attached to the report. Following the hearing, the juvenile court ordered: (1) the mother's visits were to be two hours once a week at her home and supervised by Kindred Souls; and (2) the fathers visits were to be two hours once a week at the Department.

J. 24-Month Review Hearing

In September 2016, the 24-month review hearing was held. The juvenile court took judicial notice of various documents in the court's file. The social worker reports and attachments were admitted into evidence.

The father testified that he had been in a relationship with the mother for over 12 years. They had broken up and reconciled two or three times during this period and they were currently separated. He and the mother had engaged in physical altercations at least 10 times, including incidents in which she hit him on the head while he was driving, stabbed him in the groin with a pen, hit him with a closed fist and broke his nose, and knocked over the chair that he was sitting in. They had also had a couple of arguments over the phone and in person since the latest incident. They argued about the children's homework, his discipline of the children, and his medical marijuana use.

The father believed his biggest challenge as a parent was his frequent frustration that the children did not listen to him. When they ignored him, he became agitated, yelled and scowled at them, and sometimes made sarcastic comments. He also cursed at the children and resorted to physical violence once or twice. When his behavior got their attention, they "seem[ed] scared." He described an incident in July when he asked Logan if he was "a fucking idiot." When Logan denied hitting Jacob, the father yelled that he was "a lying bag of shit." After Logan talked back to him and used some profanity, he "swatted him open handed over the top of his head." Logan had tears in his eyes and apologized. Jacob looked very scared.

The father also described a visit in which Logan kicked a ball toward a toddler when he was about five feet away from the child and hit the child's face. The parent coach, a social worker, Elena, and the two boys were present. The father was very angry with Logan and he threw the tennis ball towards Logan. The father asserted that he made a deliberate effort not to strike Logan with the ball, but he acknowledged that his behavior was inappropriate.

There had been occasions when he raised his voice during visits and Elena was "startled a little bit." Though the boys played roughly and wildly during Elena's visits at his home, he was not concerned that one of the boys would accidently hurt her if she was returned to his custody.

The father acknowledged that parenting Logan and Jacob was challenging and difficult at times. He felt that he could parent Elena in addition to the boys with the right services, such as more parent coaching. If Elena was returned to his care, he thought she would need contact with the foster parents, therapy, and FIRST 5 services. He would ensure that she was emotionally and physically safe by participating in therapy and anger management.

The father also testified about his work with the parenting coach. He worked with Lenore until July 2016 when she left the agency. Lenore attended at least part of many of the visits and he met with her about three times. Many of the things she told him were helpful. However, she tended to come during the middle of a visit and sometimes misinterpreted what was happening. He did not agree with her concern about his ability to adequately supervise his children. However, he agreed that he needed more support for anger management because he frequently raised his voice with his sons. The father thought his sessions with his new parent coach were more helpful.

The father was in therapy for two years with Tuckner, but he was not working on his anger management issues. Tuckner had left the agency about a month previously and he had not received any notice regarding another course or class.

Since February 2016, Tostado had met with the father twice, supervised part of two visits with Elena, checked in with him monthly, and attended two meetings at the Department in May and June. Tostado generally did not respond when he left her messages. It had been confusing for him to work with both Tostado and Folcik, because he wanted information "from the horse's mouth." The father asked Tostado or Folcik about anger management classes at the May and June meetings, but he never received a referral for one. They seemed to be still assessing which class would be best for him. Folcik recently e-mailed him information about parenting accountability classes. He had not looked at the e-mail yet, but he thought that she gave him several classes to choose from.

The father disagreed with the Department's recommendation to reduce visits with Elena to twice per month. He thought that they were very strongly bonded with each other and she enjoyed her visits. He had never seen rashes on Elena. He thought that the rashes might be caused by her staying up too late or being in a home with dogs. He thought the mother's visits should remain supervised.

The mother testified that Elena was born in her apartment. They went to the hospital after the birth because they thought "it would look bad if [they] didn't go to the hospital." The mother did not remember how the father got custody of Jacob. The father obtained custody of Logan when he was six years old. She lived with the father and the boys from October 2012 to October 2013. She also lived with them from February 2014 to May 2014.

During Logan's dependency case, she received 18 months of reunification services. She felt that she was currently receiving more services. In both dependency cases, she participated in a 52-week batterer's intervention program. In the previous case, she had 12 sessions of individual counseling while she has had over a year and a half of weekly counseling in the present case. She was also in counseling with her mother and had attended multiple mental health groups and courses.

The mother was no longer in a relationship with the father though she spoke to him by phone every day. The biggest struggle in their relationship was his anger. They had engaged in physical altercations "maybe a dozen" times. The mother considered herself the abuser in the relationship and the father as the victim.

According to the mother, the father used corporal punishment with Logan. She described the father squeezing Logan's forearms too hard, hitting him on the shins, spanking him with a closed fist, and pushing him too hard into a mattress. He confessed to incidents of physical discipline of the boys every time that he talked to her.

The mother acknowledged that she had been violent toward her mother. She had pushed and punched her. The mother was aware that there were 35 CPS reports and she believed that her mother had made the majority of the reports. The mother intended to live with the maternal grandmother if Elena were returned to her custody.

The mother began receiving mental health treatment when she was 14 years old. She was first diagnosed with psychosis with auditory hallucinations in May 2015. Her

current diagnosis was psychosis with auditory hallucinations, depression, and anxiety. She had been prescribed Topamax, Geodon, Wellbutrin, and hydroxyzine. She took her medications until November 2015. She was currently not taking any medications, because she felt that she was overly medicated even on the lowest doses. She met with her psychiatrist monthly.

The mother had been in therapy with Danenberg for several years. She did not inform her that she had stopped taking her medications. The mother stopped working with Danenberg, because she found a therapist closer to her home. She had been meeting with her new therapist, Charles Chang, weekly since early June 2016. She had not provided any information about Chang to the Department, because her attorney had recommended that she not communicate directly with the Department. She had not met monthly with anyone from the Department.

The mother described a recent visit, which had occurred on August 19, 2016, when she, the children, and a social worker had gone to the movies. She explained that she can be "a demanding customer" and has high expectations of clerks. After she purchased popcorn, the clerk did not place it directly in front of her. When the mother questioned the clerk, Logan whispered, "'Mom, you're crazy.'" As they were watching the movie, a baby began crying. The mother turned to look at the baby and intended to let the parent know that the child was being disruptive. Logan said, "'Mom, stop. Don't.'" After the movie, they went to a restaurant and the mother became upset because the social worker decided to sit at a table instead of a booth. The mother told the children to obey her rather than the social worker. She felt humiliated. She also explained that she "was on the side of righteousness." She "made a scene" and told people that her children were being kidnapped. A bystander called 911 when the mother was out of control and yelling. As the police arrived, the children were crying. After the mother

returned home, she left three messages in which she screamed at the social worker and said "crazy things."

The mother saw no challenges if Elena were returned to her custody. She had no concerns about coparenting Elena with the father. She believed it would be safe for Elena to be in the father's sole custody. She, however, would continue to pursue equal visitation.

Tostado testified as an expert in risk assessment, placement of children, and the provision of reunification services. She was the primary social worker for this case since February 2016. According to Tostado, the father needed to develop: coping mechanisms to help deal with stress that did not involve the use of marijuana; parenting skills; and ways of managing his anger. She was also concerned about his ability to protect Elena and her siblings given his relationship to the mother.

Tostado testified regarding the services offered to the father. Tostado confirmed that the father had been in individual counseling. She had communicated with his therapist in person and by phone. Tostado did not recall whether the father had informed her that Tuckner was no longer his therapist. The father had also engaged in domestic violence support counseling with Marshall. Based on Tostado's observations and communication from service providers, the father's participation in therapy had not sufficiently alleviated the Department's safety concern. He was still actively engaging in minimizing some of the violence that had occurred, which made it difficult for him to understand the risk that the domestic violence posed to the children.

Tostado testified that the father had been receiving in-home parenting coaching through Gardner since January 2016. This program involved a parenting coach going to the home and assisting the parent in applying their parenting skills. The father's initial parenting coach, Lenore, left the agency in July, but he was referred to another one in August. Tostado spoke extensively with Lenore about the father by phone and met with

her at meetings. As of June 2016, Lenore continued to have a lot of concerns about the father's progress in developing his parenting skills.

Tostado testified that there had been three TDM meetings since she became the assigned social worker. There were two TDM's for the father and one for the mother. In addition to the TDM's for the father, Tostado met with the father in February, April, and July. She was also present for a portion of visits in March, April, and July.

One of the issues discussed at the second TDM meeting in May was an anger management class for the father. It was Tostado's understanding that Tuckner would refer the father to the class. When Tostado contacted Tuckner in July 2016 to determine whether the referral had been made, she learned that a referral had not yet been made.

Tostado also testified regarding the mother's case plan. When Tostado was assigned to the case, the mother was in therapy with Danenberg. Folcik spoke with Danenberg by phone in March 2016. At that time, Danenberg had significant concerns about the mother's ability to internalize what she had learned in the domestic violence programs.

Danenberg participated in one of the TDM meetings. Tostado and her supervisor shared Danenberg's concerns with the mother, because they thought it was important to be transparent about their concerns so that the mother had an opportunity to address them. Danenberg thought that by sharing this information, they had compromised the relationship that she had with the mother. Since the mother did not believe that Danenberg had made the comments, Tostado sent a letter to the mother on June 1, 2016. She also attached contact notes from the March phone call and some e-mails between Folcik and Danenberg. The following day, Tostado and Folcik met with the mother and gave her the letter. After the mother indicated that she planned to fire Danenberg, Tostado and Folcik encouraged her to continue working with her. However, they also

urged her to provide contact information and appropriate releases if she changed therapists, but she never did so.

Regarding contact with the mother, Tostado testified that she met the mother for the first time in February. In addition to the TDM meeting in May, she had meetings with the mother in May and June. She participated in the mother's visits in February and April. Tostado tried to meet with the mother in August, but the mother refused to do so. According to Tostado, their most common means of communication was by telephone, but she also e-mailed the mother.

The foster parents had sent Tostado photos of Elena's rashes and the dates of the photos matched the dates of the parents' visits. A physician referred Elena for allergy testing. The foster parents took her for blood work and the tests were negative. However, Tostado eventually learned from the physician that a mistake had been made and the lab had not conducted all of the testing that had been ordered. Nevertheless, the Department still recommended reducing visitation due to Elena's behaviors after the visits.

Tostado thought the father was having a very difficult time parenting the children already in his care. Tostado was also concerned about his relationship with the mother because he seemed unable to identify when abuse was occurring. As for the mother, Tostado believed that her mental health issues had not been adequately addressed so that she could provide safe care for a child. According to the psychological evaluation and her therapist, the mother needed long-term mental health treatment. Tostado was extremely concerned about her lack of progress in the domestic violence programs. According to Tostado, Elena would be at high risk of physical or emotional harm if returned to either parent's custody.

Jacqueline Calderon, a social worker, testified that she supervised visits with the father between September 2015 and August 2016. There was a lot of yelling during the

visits and the father treated Logan and Jacob differently. When the father was yelling, Elena came to Calderon. She picked up her diaper bag "almost weekly for a few months," gave it to Calderon, and went towards the door. Elena never sought consolation from the father or her brothers.

Calderon described a supervised visit at the park on July 14, 2016. Calderon, the boys, Elena, the father, and the parent coach were present. Logan kicked a tennis ball and accidentally hit a baby. When the parent coach tried to advise the father on how to handle the situation, he began arguing with her. The father said, " 'This little brat just doesn't understand.' " He then picked up the tennis ball and threw it at Logan, but missed him. Calderon was shocked and concerned about how the father would act when other adults were not present. The father told the parent coach that he wanted Logan to see what it felt like to have a ball thrown at him.

During the visits at the father's house, he called the mother a few times and described what was happening during the visits. He also asked her how to cook whatever he was making for dinner that night.

Calderon supervised the mother's visits with Elena once a week from February 2015 through November 2015. The mother was "sort of absent" and did not actively play with Elena. At a visit in September 2015, Elena started walking toward an oncoming bicyclist at a park. The mother responded very slowly and Calderon told her that she needed to stay close to Elena. At a visit in August 2015, the mother was allowing Elena to walk around a picnic area. Elena began playing with ashes in an ashtray. Calderon waited for the mother to respond. When Elena was about to put the ashes in her mouth, Calderon told the mother to get her away from the ashes.

Calderon did not observe a significant amount of affection between Elena and the mother. The mother would hug Elena, but Elena would not reciprocate. During visits with the three children, the mother would allow Elena to wander off on more than one

occasion. When they visited a shopping center, Jacob got away and hid. He was gone for two or three minutes before the mother noticed that he was gone. Calderon went to get him because she had seen where he had gone. When Calderon discussed her concerns with the mother, she just shrugged. During another visit, Logan was swinging a thermos when the strap broke and hit a tree. The mother became very angry and tried to hit him, but he moved away. The visits in the home were chaotic and the mother had difficulty setting rules. Calderon did not feel comfortable correcting the mother, because the mother started yelling and accused her of wanting to take her children. Calderon stopped supervising visits in the parents' homes, because she did not feel safe being alone with either of the parents.

Dawn Pratt, the court appointed special advocate (CASA) for all three children, testified that she became involved with the family as Logan's advocate when he was six years old. Pratt observed visits between all three children and the mother from December 2015 through January 2016. She also observed visits between all three children and the father between April and July 2016. According to Pratt, the father was not capable of meeting Elena's needs due to his anger and his treatment of the boys. She described an incident when Logan kicked a ball which hit her face and almost knocked her glasses off her face. The father was unable to control Logan. The father was disrespectful and rude and she could not imagine having three children in that environment. Pratt also opined that the mother was incapable of meeting Elena's needs due to her mental health issues. The mother also could not control all the children at once. Pratt did not think that Elena would be safe from physical or emotional harm if she were returned to the mother, because the mother was not always "present" during the visits. She was so focused on taking care of the boys that she did not see what was happening with Elena.

Danenberg, a licensed marriage and family therapist, testified as an expert in domestic violence and the treatment of mental health for individuals. The mother began

therapy with Danenberg in February 2015. During their 48 sessions, the focus was on completion of the mother's case plan. Danenberg also educated and encouraged the mother to participate in mental health treatment. They reviewed the psychological evaluation and the mother assured Danenberg that she was taking her prescribed medications. After the mother completed the 52-week batterer's intervention program, Danenberg spoke to Folcik about her concern for the children's safety. She was concerned about the mother's behavior due to her strong resistance to taking medications and staying in treatment. Danenberg initially refused to participate in the first TDM meeting in May, but the mother wanted her to attend. According to Danenberg, Folcik attacked her and called her a liar. Folcik then accurately summarized a phone conversation that she had had with Danenberg. Danenberg stated at the meeting that the mother had made progress, but noted that there was no way to guarantee that the mother would stay in treatment and take her medication. After the meeting, Folcik apologized.

Danenberg wrote an e-mail in May in which she stated that "having a mental health diagnosis is not [a] reason to terminate. [The mother] has many more problems making it ill-advised to trust her to parent at this time." Danenberg was referring to the mother's relationship with the father, her relationship with the maternal grandmother, and her lack of income. The mother had described many occasions in which there were abusive arguments with the maternal grandmother.

Danenberg testified that statistically and from personal experience, children exposed to domestic violence often repeat that behavior as adults. She explained that it normalizes violence as a legitimate tool for resolving conflict. Most of the perpetrators of domestic violence will identify that they came from a family in which they observed domestic violence.

Danenberg opined that it was important for the mother to consistently take her medications as well as participate in therapy. She noted that it was "pretty consistent" for

individuals who have a mental illness to decide not to take medication. Danenberg was concerned that if the mother was not taking her medication, she would repeat her violent and aggressive behavior with her children. According to Danenberg, if the mother had mental health treatment for five to six more years, she could be trusted to parent.

Brittinie, Elena's foster parent and de facto parent, began caring for Elena when she was two days old. Elena did not typically appear to be excited or eager to visit with the mother or the father. After Elena returned from a visit with the mother, she was quiet for about an hour and then she became very clingy. She became panicky if the foster mother left the room. She also had a very difficult time sleeping and woke up screaming. Things that did not typically upset Elena "upset her to an extreme level where she'll throw herself on the ground." During the last few months, she had become very aggressive after visits and bit the other child without any provocation. After visits with the father, there was more aggression and an inability to regulate her emotions. Brittinie also testified that Elena had developed a rash after visits with the parents.

Tuckner, a licensed marriage and family therapist, testified as an expert in domestic violence and the provision of therapeutic services. The father began therapy with Tuckner about three years ago when he was a victim of domestic violence. At that time, he had about 10 sessions. He then returned about a year later and participated in about 35 sessions. She had not seen him in a couple weeks, because both of them had been busy. However, they had been in contact by phone. If the father wanted to continue therapy in her private practice, she would be available to do so.

Tuckner testified that the main reason the father was in therapy was to address his struggles with managing his anger. They also worked on his parenting skills, domestic violence as it affected him and the children, and the case with Elena. They specifically discussed the father's yelling at the children and Tuckner provided him with alternative ways of dealing with the children.

Tuckner and the father discussed that since he was making more progress than the mother, he would probably have to choose between the mother and the children. He did not want to choose, but he eventually understood that he would have to do so. At their last sessions, the father told her that he realized the importance of not having a relationship with the mother because it was important for the children.

When Tuckner attended a TDM meeting in April 2016, people made very positive comments about his parenting. Tuckner spoke to Folcik at the second TDM meeting. She also spoke with Tostado after the first TDM meeting. Tostado called Tuckner on another occasion and left a message requesting an update on the father's therapy. Tostado also wanted to know whether the father had gotten into an anger management program. Tuckner reported that all the father needed to do was talk to the front desk at her agency since the program was provided there. He did not need a referral.

Ron Ober, a therapist at Catholic Charities, testified as an expert in therapeutic treatment of children with mental health issues. He began supervising visits between Elena and the mother in March 2015. The mother had been referred to his program due to concerns about the mother's ability to manage Elena during visits and the goal was to reduce Elena's anxiety.

According to Ober, Elena's visits with the mother improved. When the visits were in the community, he never directed the mother as to how she should parent Elena and he was never concerned about Elena's safety. There were a couple of times when the mother on her own volition intervened when other children were aggressive. The mother was very receptive to Ober's suggestions. Ober opined that the mother was ready to transition from therapeutic to supervised visitation. He did not believe Elena was anxious during her visits with the mother. He had never seen the mother act inappropriately with Elena and he did not think that Elena was unsafe with the mother. In his opinion, it would not be Elena's best interest to reduce visits.

Amy Weingarten was a licensed clinical social worker, who worked for the law firm representing the mother. Weingarten testified as an expert in risk assessment and available reunification services. She began working with the mother in April 2016.

Weingarten attended the first TDM meeting in May and brought up the issue of extending visitation. The plan at that time was for Ober to work with the mother on extended visits. However, the Department told the mother at the second TDM meeting in May that it would not be recommending reunification.

Weingarten prepared an assessment, which was dated August 31, 2016. She recommended an extension of reasonable services. She did not understand why the visits had not been unsupervised or overnight. In her experience, when visits went well, there would be less supervision. She was not recommending that Elena be returned to the mother, because she did not have enough data. She had concerns about the relationship between the father and the mother. Weingarten believed that the mother "slipped backwards" at the August 19 visit and that the stress of the court case was a factor in how she reacted. Weingarten was not aware that the mother had stopped taking her medication in November 2015.

The juvenile court found that the return of Elena to the parents would create a substantial risk of detriment to her safety, protection, or physical or emotional well-being. The juvenile court also found that the Department made reasonable efforts to provide the family with appropriate reunification services.

II. Discussion

Both parents contend that the juvenile court erred in finding that the Department provided reasonable reunification services.

The Department "must make a good faith effort to develop and implement a family reunification plan. [Citation.] '[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 . . . .' [Citation.]" (*Amanda H. v. Superior Court* (2008) 166 Cal.App.4th 1340, 1345 (*Amanda H.*).)

"The adequacy of reunification plans and the reasonableness of the [Department's] efforts are judged according to the circumstances of each case." (*Robin V. v. Superior Court* (1995) 33 Cal.App.4th 1158, 1164.) "In almost all cases it will be true that more services could have been provided more frequently and that the services provided were imperfect. The standard is not whether the services provided were the best that might be provided in an ideal world, but whether the services were reasonable under the circumstances." (*In re Misako R.* (1991) 2 Cal.App.4th 538, 547 (*Misako R.*).)

"The applicable standard of review is sufficiency of the evidence. [Citation.]" (*Amanda H.*, *supra*, 166 Cal.App.4th at p. 1346.) "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.) "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.)

Here, the mother's mental illness and her history of domestic violence led to the loss of custody of Elena. Her reunification plan included: a parent orientation class; a 16-week parenting without violence class; counseling or therapy as recommended by the psychological evaluation; compliance with prescribed psychotropic medications; a 52-

week batterer's intervention program; a parent-coaching program; and visitation. The mother was referred and completed the parenting classes. She had a psychological evaluation in March 2015. At that time, she was diagnosed with a major mental disorder with complex symptoms. The mother received weekly individual therapy for 16 months with Danenberg, who was an expert in domestic violence. In June 2016, the mother decided to end therapy with Danenberg. Though the Department encouraged her to continue therapy with Danenberg or another therapist, the mother never provided documentation to the Department that she had begun seeing another therapist. The mother was also referred to Momentum for Mental Health and met regularly with her mental health case manager. Due to her history of domestic violence, the mother was referred to the 52-week batterer's intervention program, which she completed. When the visits supervised by the Department were unsuccessful, the mother was also referred for therapeutic visits and received parenting suggestions from Ober.

The mother argues, however, that the Department failed to increase her visitation with Elena based on "vague concerns regarding mother's mental health diagnosis." There is no merit to this argument.

"When the [Department] limits visitation in the absence of evidence showing the parents' behavior has jeopardized or will jeopardize the child's safety, it unreasonably forecloses family reunification on the basis of the parent's labeled diagnoses, and does not constitute reasonable services." (*Tracy J. v. Superior Court* (2012) 202 Cal.App.4th 1415, 1427.)

The mother argues that the Department should have increased visitation in April 2016, because she satisfactorily completed the 52-week batterer's intervention program and she was receptive to feedback about improving the quality of her interactions with Elena. The mother has mischaracterized the record. The mother had an extensive history of domestic violence, including physically assaulting the maternal grandmother, the

father, and Logan. Though she completed the batterer's intervention program for the second time, her potential for future violence remained the same. Moreover, Danenberg had also reported to the Department in March 2016 that the mother had failed to internalize what she had learned in her domestic violence programs. Thus, the Department reasonably concluded that an increase in visitation was not warranted because the mother remained a danger to Elena.

The mother points out that the Department never observed a therapeutic visit between her and Elena or contacted her therapeutic visitation supervisor about visitation. While the Department never observed a therapeutic visit, it was well aware that therapeutic visits at Kindred Souls were more successful than those supervised by the Department.

The mother next argues that the Department neglected to assist her where compliance proved difficult. The mother first faults Tostado for failing to discuss the final report from the batterer's intervention program, which was prepared in March 2016. Tostado discussed the report with her in May 2016. Even assuming that they had discussed the report in March, it is unclear what possible additional service could have been offered to the mother. She had failed to demonstrate that she had internalized the principles of a 52-week program that she had taken twice.

The mother also faults Tostado for failing to discuss with the mother whether she was taking her medication. However, when the mother filed her section 388 petition in April 2016, she stated that she had complied with psychotropic medication treatment. Danenberg was also unaware that the mother had failed to take her prescribed medications. Given that the mother had misled her attorney and her therapist, it is extremely unlikely that she would have admitted to Tostado that she was not taking her medications.

The mother claims that the Department failed to assist her in understanding and participating in additional services after it learned of Danenberg's concerns. There is no merit to this claim. "The requirement that reunification services be made available to help a parent overcome those problems which led to the dependency of his or her minor children is not a requirement that a social worker take the parent by the hand and escort him or her to and through classes or counseling sessions." (*In re Michael S.* (1987) 188 Cal.App.3d 1448, 1463, fn. 5.) Here, the mother stopped taking her medications, fired her long-term therapist, and failed to benefit from classes and programs that were offered. In our view, the services offered by the Department "were reasonable under the circumstances." (*Misako R.*, *supra*, 2 Cal.App.4th at p. 547.)

As to the father, he lost custody of Elena because he was overwhelmed with parenting Logan and Jacob and he continued to be involved with the mother, who was his abuser. His reunification plan included: a parent orientation class; a 16-week parenting without violence class; counseling; a domestic violence victims' support group; and services through Gardner. The father was referred to and completed the parenting classes. He also had 35 sessions of individual counseling with Tuckner. The main reason he was in counseling was to address his anger management. He was provided individual sessions with a domestic violence specialist. He was also provided with an in-home parent coach through Gardner.

The father contends, however, that the Department did not provide reasonable reunification services because he was not referred to an anger management class until late September 2016. There was a miscommunication between Tostado and Tuckner regarding the anger management class, which led to a substantial delay in the referral. However, we cannot conclude that this failure established that the Department did not provide reasonable reunification services, because he was provided with extensive services designed to assist him with anger management.

The father also claims that Tostado failed to communicate directly with him. Tostado met with the father in February 2016, supervised part of a visit in March, participated in a TDM meeting with him in April, supervised part of a visit in April, met with him twice in May, and met with him in June. Though she did not always return phone calls, the father was able to speak with Folcik. Thus, we reject his claim.

The father argues that Tostado should have ensured that allergy testing for Elena was completed more promptly. However, it was an error by the laboratory that created the delay, not Tostado.

The father summarizes the discussions in the first TDM meeting in May and in the June meeting with Tostado and Folcik. He also summarizes his version of the supervised visits. The father's summaries were not before the juvenile court, and thus we do not consider them.

The father challenges Lenore's qualifications to state that he was in the "pre-contemplative stage" of domestic violence. The father also claims that the foster parents may have misrepresented the time and date of the photographs of Elena's rashes. Since the father failed to raise these issues in the juvenile court, they have been forfeited. (*In re Dakota S.* (2000) 85 Cal.App.4th 494, 502.)

In sum, the juvenile court did not err when it concluded that the Department had made reasonable efforts to provide appropriate services to the parents. Despite the intense level of services provided to the parents during the last nine months, the parents failed to adequately address the problems that led to the loss of custody of Elena. Thus, the juvenile court did not err in concluding that the return of Elena to her parents was not in her best interests.

III. Disposition

The petitions are denied.

Mihara, J.

WE CONCUR:

Elia, Acting P. J.

Bamattre-Manoukian, J.