

ATTORNEY OR PARTY WITHOUT ATTORNEY ( <i>Name, State Bar number, and address</i> ):  TELEPHONE NO.: _____ FAX NO. ( <i>Optional</i> ): _____ E-MAIL ADDRESS ( <i>Optional</i> ): _____ ATTORNEY FOR ( <i>Name</i> ): _____	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF _____ STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CASE NAME: _____	
<b>NOTICE OF INTENT TO FILE WRIT PETITION                  AND REQUEST FOR RECORD TO REVIEW ORDER SETTING A HEARING                  UNDER WELFARE AND INSTITUTIONS CODE SECTION 366.26                  (California Rules of Court, Rule 8.450)</b>	CASE NUMBER: _____

**NOTICE**

The juvenile court has decided it will make a permanent plan for this child that may result in the termination of your parental rights and adoption of the child. If you want an appeals court to review the juvenile court's decision, you must first tell the juvenile court by filing a Notice of Intent. You may use this form as your Notice of Intent. In most cases, you have only 7 days from the court's decision to file a Notice of Intent. Please see page 2 for your specific deadline for filing this form.

1. Petitioner's name: \_\_\_\_\_
2. Petitioner's address: \_\_\_\_\_
3. Petitioner's phone number: \_\_\_\_\_
4. Petitioner is
  - a.  parent (*name*): \_\_\_\_\_
  - b.  guardian
  - c.  county welfare agency
  - d.  child
  - e.  other (*state relationship to child or interest in the case*): \_\_\_\_\_
5. Child's name: \_\_\_\_\_ Child's date of birth: \_\_\_\_\_
6. a. On (*date*): \_\_\_\_\_ the juvenile court made an order setting a hearing under Welfare and Institutions Code section 366.26. Petitioner intends to file a writ petition to challenge the findings and orders made by the court on that date and requests that the clerk assemble the record.  
 b. List all known dates of the hearing that resulted in the order: \_\_\_\_\_
7. The hearing under Welfare and Institutions Code section 366.26 is set for (*date, if known*): \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
 (TYPE OR PRINT NAME) ▶ \_\_\_\_\_  
 (SIGNATURE OF  PETITIONER  ATTORNEY)

The *Notice of Intent to File Writ Petition* must be signed by the person who intends to file the writ petition or by the attorney of record.

**PLEASE READ THE BACK OF THIS FORM FOR IMPORTANT INFORMATION AND DEADLINES**

APPELLATE CASE TITLE:  	APPELLATE CASE NUMBER:  
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#### WHAT WILL HAPPEN AT THE HEARING TO MAKE A PERMANENT PLAN?

- The court may order the termination of parental rights and adoption of the child.
  - The court may order a legal guardianship for the child.
  - The court may order a permanent plan of placement of the child with a fit and willing relative.
  - The court may order a permanent plan of placement of the child in a foster home.
- The above options are listed in the normal order of preference, because the main goal is to give the child a stable and permanent living situation.

**SEE WELF. & INST. CODE, § 366.26 FOR MORE INFORMATION**

#### HOW DO I CHALLENGE THE COURT'S DECISION TO SET A HEARING TO MAKE A PERMANENT PLAN?

- File this Notice of Intent to File Writ Petition and Request for Record in the juvenile court within the time specified below in the next box. This will let the court know you intend to file a writ petition, and the court will prepare the record.
- You will be notified after the record is filed in the Court of Appeal, and you will get copies of the record. **You have 10 days after the record is filed in the Court of Appeal to file and serve your writ petition.**
- You may use the optional Judicial Council form JV-825 to complete your writ petition, or, if you have an attorney, your attorney can write the writ petition for you.
- After you file a writ petition in the Court of Appeal, you must send copies of the petition to all of the parties in the case, to the child's CASA volunteer, to the child's present caregiver, and to any de facto parent who has standing to participate in the juvenile court proceedings. With your writ petition, you must file a Proof of Service confirming you have sent a copy of the petition to these people.

**SEE WELF. & INST. CODE, § 366.26(l); CAL. RULES OF COURT, RULES 8.450-8.452**

#### WHEN DO I HAVE TO FILE MY NOTICE OF INTENT TO FILE WRIT PETITION AND REQUEST FOR RECORD?

- If you were present when the court set the hearing to make a permanent plan, you must file the Notice of Intent within 7 days from the date the court set the hearing.
- If you were not present in court but were given notice by mail of the court's decision to set a hearing to make a permanent plan and you live in California, you must file the Notice of Intent within 12 days from the date the clerk mailed the notification.
- If you were not present in court but were given notice by mail of the court's decision to set a hearing to make a permanent plan and you live in a state other than California, you must file the Notice of Intent within 17 days from the date the clerk mailed the notification.
- If you were not present in court but were given notice by mail of the court's decision to set a hearing to make a permanent plan and you live outside the United States, you must file the Notice of Intent within 27 days from the date the clerk mailed the notification.
- If you are a party in a custodial institution you must give the Notice of Intent to custodial officials for mailing within the time specified in this box.

**SEE CAL. RULES OF COURT, RULES 8.450, 5.540(c)**

- If the order setting the hearing was made by a referee not acting as a temporary judge, you have an additional 10 days to file the Notice of Intent.

**SEE WELF. & INST. CODE, §§ 248-252; CAL. RULES OF COURT, RULES 5.538, 5.540**

#### SIGNATURE ON NOTICE OF INTENT

- Must be signed by the person who intends to file the writ petition, or
- By the attorney of record

## Appellate Courts Case Information

CALIFORNIA COURTS  
THE JUDICIAL BRANCH OF CALIFORNIA

3rd Appellate District

Change court ▾

Court data last updated: 04/16/2014 01:05 PM

Docket (Register of Actions)

**J.A. v. The Superior Court of Butte County**  
Case Number **C072117**

Date	Description	Notes
09/27/2012	Received notice of intent.	Filed in trial court on 09/20/12 by J.A. Record due: 10/10/12.
10/01/2012	Requested - extension of time.	Juvenile writ record filed. Requested for 11/02/2012 By 22 Day(s) CSR Debbie Valdovinos to 11/02/12. Completed 5 hours of 65 total hours of transcript.
10/05/2012	Granted - extension of time.	Juvenile writ record filed. Due on 11/02/2012 By 22 Day(s) CSR Debbie Valdovinos to 11/02/12. Completed 5 hours of 65 total hours of transcript. RAYE, P.J.
10/31/2012	Requested - extension of time.	Juvenile writ record filed. Requested for 11/30/2012 By 25 Day(s) CSR 8017 Debbie Valdovinos to 11/30/12. 38 of 65 estimated hours complete.
11/05/2012	Granted - extension of time.	Juvenile writ record filed. Due on 11/30/2012 By 25 Day(s) CSR 8017 Debbie Valdovinos to 11/30/12. 38 of 65 estimated hours complete. NO FURTHER TIME.
12/13/2012	Juvenile writ record filed.	2 Vols. CT (577 pgs.); 1 Vol. RT (54 pgs.)
12/13/2012	Filed scheduling order.	Petition due 12/24/12. Opposition Due (PS) 10 DAYS, OR (MS) 15 Days thereafter.
12/20/2012	Requested - extension of time.	Juvenile writ petition filed. Requested

8 of 25

		Juvenile writ petition filed. Requested for 01/03/2013 By 8 Day(s) Petitioner to 01/03/13 to file petition.
12/20/2012	Motion/application to augment record filed.	Petitioner's, material attached.
12/21/2012	Granted - extension of time.	Juvenile writ petition filed. Due on 01/03/2013 By 8 Day(s) Petitioner J.A. to 01/03/13 to file petition. NO FURTHER TIME WILL BE GRANTED.
12/26/2012	Augmentation granted. (See order.)	To include material attached to motion.
01/02/2013	Juvenile writ petition filed.	by petitioner J.A. Stay requested. (ms)
01/03/2013	Stay order filed.	All further proceedings in Butte County Superior Court case number J34920, In re S.M.B., are stayed pending further order of this court. RAYE, P.J. (BM)
01/17/2013	Association of attorneys filed for:	RPI Employment and Social Services. Kim Merrifield associated as counsel of record.
01/17/2013	Opposition filed.	By RPI Employment and Social Services.
02/19/2013	Deemed submitted.	
03/07/2013	Opinion filed.	(Signed Published) The petition is granted. Let a peremptory writ issue directing the juvenile court to vacate its order denying reunification services and setting a section 366.26 hearing, and to hold a new disposition hearing to consider whether to order reunification services for father. The decision is final forthwith as to this court. (Cal. Rules of Court, rule 8.490(b). The stay previously granted is hereby vacated.
04/19/2013	Peremptory writ issued.	and remittitur issued.
04/19/2013	Case complete.	
07/22/2013	Galley proof sent.	To the court. Due: 08/02/13
08/06/2013	Galley proof sent.	To the Reporter of Decisions.

[Click here](#) to request automatic e-mail notifications about this case.

[Attorney's name, bar number,  
address, telephone number, fax number, email address]

Attorney for Petitioner

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA,

FIRST APPELLATE DISTRICT

DIVISION

CLIENT'S INITIALS or FIRST NAME,  
LAST INITIAL

Petitioner

v.

SUPERIOR COURT, COUNTY OF

\_\_\_\_\_,

Respondent.

No. A

(\_\_\_\_\_ County Superior Court

No. \_\_\_\_\_)

**PETITIONER'S MOTION TO AUGMENT THE RECORD  
AND FOR EXTENSION OF TIME WITHIN  
WHICH TO FILE PETITION;  
POINTS AND AUTHORITIES AND DECLARATION IN SUPPORT**

TO THE PRESIDING JUSTICE OF DIVISION \_\_\_\_\_ OF THE FIRST  
DISTRICT COURT OF APPEAL:

Petitioner hereby moves, through counsel, pursuant to rule 8.452(e) of the  
California Rules of Court for an order augmenting the record with the following:

1. . . . ([cite to record indicating existence of item, if possible])
2. . . .

**Necessity of Augmentation**

[Set forth procedural and/or substantive facts supporting need for item to  
perfect record on appeal.]

This motion is based on this notice, the attached declaration and points  
and authorities and this court's records and files in this matter

DATED: \_\_\_\_\_

Respectfully submitted,

By:

[Attorney's signature]  
Attorneys for Appellant

## DECLARATION IN SUPPORT

I, \_\_\_\_\_, declare the following:

1. I am an attorney licensed to practice before the courts of this state, and I was appointed by the juvenile court to represent petitioner;
2. The record in this case, filed on \_\_\_\_\_ does not include \_\_\_\_\_  
\_\_\_\_\_;
3. The missing material is not a part of the normal record as defined in rules 8.450(h)(2) or 8.407(a) of the California Rules of Court [because  
]; or

The missing material is part of the normal record as defined by rules 8.450(h)(2) and 8.407(a) of the California Rules of Court and should have been included in the record filed with this court

4. The missing material is relevant and material, because  
.

5. Attached hereto are true and correct copies of the following documents that petitioner believes should be included in the record:

[Name of document and date filed or submitted to trial court]

I declare under penalty of perjury that the foregoing is true and correct based upon my review of the record filed in this matter. Executed this \_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_, California.

[declarant's signature]

**POINTS AND AUTHORITIES IN SUPPORT**

**I. THE RECORD SHOULD BE AUGMENTED AS REQUESTED.**

On its own motion, or upon the motion of any party, this court may augment or correct the record in a rule 8.452 writ proceeding when it appears that the record on appeal is insufficient to dispose of the issues. (Cal. Rules of Ct., rules 8.155, 8.452(e)(1), 8.410.) Where it appears with “some certainty how [the] materials not included in the normal transcript may be useful ... on appeal,” the request for augmentation ought to be granted. (*People v. Gaston* (1978) 20 Cal.3d 476, 480.)

[Discuss why the requested item is necessary to adequately represent petitioner], or

The missing document is one that is required to be included in the record pursuant to rules 8.540(h)(2) and 8.407(a) of the California Rules of Court.

[If you have a copy of the document]: Attached hereto is a true and correct copy of the [identify document (s)] with which petitioner seeks to augment the record.

**CONCLUSION**

Accordingly, petitioner respectfully requests an order augmenting the record with the requested document(s)/reporter’s transcript(s).

DATED: \_\_\_\_\_

Respectfully submitted,

By:

[Attorney’s signature]  
Attorney for Appellant

[Attach Proof of Service on all parties below and on juvenile court appeals clerk.]

[RED COVER]

IN THE  
COURT OF APPEAL OF THE STATE OF CALIFORNIA  
IN AND FOR THE  
FIRST APPELLATE DISTRICT, DIVISION FOUR

ALICE A.,  
Petitioner,  
v.  
SUPERIOR COURT OF THE STATE OF  
CALIFORNIA, COUNTY OF COW  
Respondent.  
COW COUNTY DEPARTMENT OF  
SOCIAL SERVICES  
v.  
AMBER A.,  
Defendant and Appellant.

No. A048762  
Cow County  
Superior Court  
No. 507200/507201  
Hon. Roy Bean, Judge

**STAY OF APRIL 2, 2014**  
**WELF. & INST. CODE**  
**SECTION 366.26 HEARING**  
**REQUESTED**

**PETITION FOR EXTRAORDINARY WRIT**  
**pursuant to Cal. Rules of Court, Rule 8.452**

JANET G. SHERWOOD  
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Attorney for Petitioner  
Alice A.

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**TO BE FILED IN THE COURT OF APPEAL**

**JV-825**

COURT OF APPEAL, <u>First</u> APPELLATE DISTRICT, DIVISION <u>Four</u>	Court of Appeal Case Number (court will provide):  <b>A048762</b>
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In re the Matter of:  <u>Denny A. (12/2/00) &amp; Tony A. (6/6/04)</u> <i>(Name and date of birth of subject child or children)</i>
<u>Alice A.</u> <p align="center">Petitioners</p> <p align="center">v.</p> Superior Court of California, County of _____
<u>Cow</u> <p align="center">Respondent</p> <u>Cow County Department of Social Service</u> <p align="center">Real Party in Interest</p>

[ (FILE STAMP) ]

[ ]

Superior Court No. JV 507200

Superior Court No. JV 507201

Related Appeal Pending  
 Appellate Court No. \_\_\_\_\_

**PETITION FOR EXTRAORDINARY WRIT  
 (California Rules of Court, Rules 8.452, 8.456)**

**STAY REQUESTED** (see item 11).

**INSTRUCTIONS—READ CAREFULLY**

- Read the entire form *before* completing any items.
- This petition must be clearly handprinted in ink or typed.
- Complete all applicable items in the proper spaces. If you need additional space, add an extra page and mark the additional page box.
- If you are filing this petition in the Court of Appeal, file the original and 4 copies.
- If you are filing this petition in the California Supreme Court, file the original and 10 copies.
- Notify the clerk of the court in writing if you change your address after filing your petition.

Individual Courts of Appeal or the Supreme Court may require documents other than or in addition to this form. Contact the clerk of the reviewing court for local requirements.

CASE NAME: Alice A. v. Superior Court	CASE NUMBER: A048762
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1. This *Petition for Extraordinary Writ (Juvenile Dependency)* is filed on behalf of petitioner.
  - a. Name: Alice A.
  - b. Address: c/o Attorney's Office
  - c. Phone number: Attorney's phone number
  
2. Petitioner is the
 

<ol style="list-style-type: none"> <li>a. <input type="checkbox"/> child</li> <li>b. <input checked="" type="checkbox"/> mother</li> <li>c. <input type="checkbox"/> father</li> <li>d. <input type="checkbox"/> guardian</li> </ol>	<ol style="list-style-type: none"> <li>e. <input type="checkbox"/> de facto parent</li> <li>f. <input type="checkbox"/> county welfare department</li> <li>g. <input type="checkbox"/> district attorney</li> <li>h. <input type="checkbox"/> other (state relationship to child or interest in the case):</li> </ol>
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3. The *Petition for Extraordinary Writ (Juvenile Dependency)* pertains to the following child or children (specify number of children): \_\_\_\_\_
  - a. Name of child: Denny A.  
Child's date of birth: 12/2/00
  - b. Name of child: Tony A.  
Child's date of birth: 6/6/04
  - c. Name of child:  
Child's date of birth:
  - d. Name of child:  
Child's date of birth:  
 Continued in Attachment 3.
  
4. This petition seeks extraordinary relief from the order of (name):
  - a.  setting a hearing under Welfare and Institutions Code section 366.26 to consider termination of parental rights, guardianship, or another planned permanent living arrangement.  
OR
  - b.  designating a specific placement after a placement order under Welfare and Institutions Code section 366.28.  
OR
  - c.  other (specify):
  
5. The challenged order was made on (date of hearing):  
December 2, 2013
  
6. The order was erroneous on the following grounds (specify):  
See attached Memorandum of Point and Authorities
  
7. a.  Supporting documents are attached.  
b.  Because of exigent circumstances, supporting documents are not attached (explain):
  
8. Summary of factual basis for petition (Petitioner need not repeat facts as they appear in the record. Petitioner must reference each specific portion of the record, its significance to the grounds alleged, and disputed aspects of the record):  
See Attached Memorandum of Point and Authorities

Additional pages attached.

CASE NAME: Alice A. v. Superior Court	CASE NUMBER: A048762
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9. Points and authorities in support of the petition are attached (*number of pages attached*): 20

10. Petitioner requests that this court direct the trial court to (*check all that apply*):

- a.  Vacate the order for hearing under section 366.26.
- b.  Vacate the order designating a specific placement after termination of parental rights under section 366.28.
- c.  Remand for hearing.
- d.  Order that reunification services be  
      provided  continued.
- e.  Order visitation between the child and petitioner.
- f.  Return or grant custody of the child to petitioner.
- g.  Terminate dependency.
- h.  Other (*specify*):

11.  Petitioner requests a temporary stay pending the granting or denial of the petition for extraordinary writ.

a. Hearing date (*must specify*): April 2, 2014

b. Reasons for stay (*specify*):

Petitioner requests that this court grant a stay of the April 2, 2014 section 366.26 hearing if this matter is not resolved prior to the date. A stay is necessary to prevent the juvenile court from proceeding as if the December 2, 2013 order setting the section 366.26 hearing provides valid grounds for setting that hearing and making a permanent plan for the children out of petitioner's custody before this court has determined the validity of that order.

Additional pages attached.

12. Total number of pages attached: 20

13. I am the  petitioner  attorney for petitioner.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, except for matters that are stated on my information and belief, and as to those matters, I believe them to be true.

Date: January 3, 2014

Alice A. \_\_\_\_\_  
(TYPE OR PRINT NAME)

▶  \_\_\_\_\_  
(SIGNATURE OF  PETITIONER  ATTORNEY)

Address:  
 c/o Attorney's Office

## **MEMORANDUM OF POINTS AND AUTHORITIES**

### **INTRODUCTION**

This petition challenges a number of serious errors that occurred at the twelve-month review hearing. Appellant, Alice A., is a 21 year old mother of two young children. She has been diagnosed as "mildly mentally retarded." By the time of the twelve-month review hearing, Alice had completed both of the court-ordered reunification services programs. However, neither of the service providers felt that Alice had really benefited from these programs because they noted that she seemed to have serious comprehension problems and was incapable of completing the homework assignments correctly.

Although the agency received the results of a court-ordered psychological evaluation that disclosed Alice's disability less than two months after the second six-month reunification period began, the agency did not share the results of the psychological evaluation with Alice's counsel nor did it amend Alice's case plan to tailor her services to someone with her limitations. Instead, it did nothing. At the twelve-month review hearing, the agency recommended that Alice's children not be returned to her because she did not have separate housing even though finding separate housing was never a requirement of her reunification plan.

The juvenile court ordered that Alice's children not be returned to her but did not specify the facts upon which that decision was based in spite of the statutory requirement that it do so. Further, in spite of the fact that the agency essentially admitted that Alice had not been provided with reasonable reunification services because "it was not her fault" that she did not benefit from the services that were provided, the juvenile court found that reasonable services had been provided.

For the reasons set forth below, these errors require the issuance of writ ordering reversal of the twelve-month review orders in this case.

## INTEGRATED STATEMENT OF THE CASE AND STATEMENT OF FACTS

On August 9, 2012, the Cow County Department of Social Services ("the agency") filed a petition pursuant to Welfare and Institutions Code<sup>1</sup> section 300, subdivision (b) alleging that Denny A. and Tony A. came within the jurisdiction of the juvenile court because Denny had suffered nonaccidental burns on his legs and facial injuries that their mother, Alice A., had either caused or failed to protect Denny from, and that she failed to obtain prompt medical treatment for the child's injuries. (CT<sup>2</sup> 1, 5.)

Alice told investigating authorities that the burns on the child's legs had occurred on August 1, 2012 while Denny was in the care of the his babysitter, Sara C. (CT 10.) The babysitter told Alice that she had left Denny sitting on the kitchen counter next to a hot stove. (CT 10.) Alice also said that the babysitter called her at work on August 1, 2012, to tell her that Denny had a gotten a black eye from being hit in the face with a tetherball. (CT 10.) That evening, Alice discovered a cut on Denny's nose when she went into the room at the babysitter's house where the child had been put to bed. She thought that he had hit his face on a bed frame next to where he was sleeping. (CT 10-11, 49.) She called her parents who came over and treated the cut. (CT 87.) The babysitter denied causing any of the child's injuries. (CT 10, 49.)

Alice admitted that about two weeks previously, Denny had returned from the babysitter with scratches on his face. The babysitter told her that Tony had scratched Denny. Alice did not believe that this was the case and reported the incident to the

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<sup>1</sup> All section references hereinafter are to the Welfare and Institutions Code unless otherwise indicated.

<sup>2</sup> There are two Clerk's Transcripts in this case, one for each child. The two transcripts are substantially the same. References to the Clerk's Transcript are references to the Clerk's Transcript in Denny's case (Superior Court No. 507200) unless otherwise indicated.

sheriff's department. Nevertheless, she continued to use Sara C. to care for the children while she worked because she had no one else to watch her children. (CT 49, 88.)

Alice took the child to the doctor on August 5, 2012, for treatment of a cold but failed to mention the burns on the child's legs. (CT 49, 50.). The doctor's office called Child Protective Services. Both the agency and the police investigated. (CT 53, 79-89.) The agency detained the children on August 7, 2012 and filed the section 300 petition. (CT 1, 2.) The police eventually decided not to pursue a prosecution because Alice passed a polygraph examination that established that she did not know how Denny had incurred his injuries. (CT 217; RT 9-10.)

Alice was separated from Denny L., who is her husband and the children's father. (CT 50, 55.) Alice left him and moved back in with her parents because he was not supporting her and the children, was never home, and never spent time with the children. (CT 55.) For the five months prior to the initiation of the dependency proceedings, Alice was living with a roommate and trying to make it on her own. (CT 55.) After the petition was filed, Alice had to move back in with her parents because she was fired from her job and lost her TANF funding. (CT 55.) Denny L. appeared at the detention hearing (CT 25) but failed to appear at the jurisdiction hearing. (CT 150.) He did not participate in his case plan (CT 180) and did not participate further in any of the proceedings in the case. (CT 226.)

Alice submitted on the petition after it was amended at a combined jurisdiction/disposition hearing held on May 25, 2012. (CT 5, 165.) The court ordered that the children be removed from Alice's custody and that reunification services be provided to her. (CT 166.) The reunification plan called for Alice to attend a parenting class and an anger management class.<sup>3</sup> (CT 63-64.) At that point, Alice had already

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<sup>3</sup> At this point in the case, the agency apparently assumed that Amber was the perpetrator and that the child's injuries had been inflicted in anger. This later proved not to

attended five parenting classes and two anger management classes and was visiting regularly. (RT 12; CT 58.)

The children's counsel expressed some concern at this hearing that the parenting class might not be enough to help Alice. (RT 10.) Ms. Costa, the social worker, suggested that there should be assessment after Alice completed the parenting class and that if the assessment indicated that she needed additional help, she could be referred to the Parents Resource Center. (RT 11.) The children's counsel indicated that the proposal for the assessment and an additional referral would satisfy her concerns and the court approved of that plan. (RT 11.)

Alice continued to live with her parents until September 8, 2012 when she moved in with her maternal grandmother. (CT 211, 214.) Her children were initially placed with Lori L., the paternal grandmother. (CT 209, 217.) Alice's mother, Victoria A., provided childcare while Lori L. was at work. The children were with Alice at Victoria's house every day from 6:30 a.m. to 7:00 p.m., except for the two days a week that Alice attended her classes. (CT 213.) Alice applied for a number of jobs at various places but was turned down. Alice believed that part of the problem was that she "has some spelling problems" (CT 212.) She wanted her new social worker, Mr. Nada, to help her with some job training. (CT 212.) On September 28, 2012, after Alice had moved out of the house, the agency decided to place the children with Victoria because Lori L. was overwhelmed and had difficulty dealing with Denny. (CT 216, 217.)

In his report for the six month review hearing (§361.21, subd. (e)), held on May 19, 2013, Mr. Nada reported that Alice had attended the anger management program regularly but had difficulty comprehending the material. (CT 179.) The progress report from the program counselor, Mr. Winner, indicated that Alice had com-

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be the case but the agency did not amend the reunification plan to delete this requirement. Alice completed the anger management program. (CT 252.)

pleted 13 out of 16 sessions but that she had not benefited from these classes, "mainly because she has low comprehension of and in the use of the English language; concrete or abstract reasoning is seemingly beyond her capabilities; *i.e.*, she has never completed any home-work assignment, and can not [sic] conceptualize or discuss the context of what the assignments were purported to achieve or what she has learned from the homework assignment." (CT 193.) Mr. Winner recommended that a psychological evaluation be done to ascertain Alice's level or capability to function as an independent person and, if she is capable, to recommend what level or kind of vocational training would help her become a self-sustaining person. (CT 194.)

The progress report from the counselor at the parenting class indicated that Alice had missed some appointments but had completed eight out of ten parenting classes. She had not yet completed six "packets" and still needed to do the parent-child labs. (CT 191.)

In the context of reporting Alice's difficulties in comprehending that material, the social worker reported that Alice was assessed by the Lone Mountain Regional Center (LMRC) for a possible developmental delay but was determined not to qualify for the regional center's services. (CT 181, 231-233.) The regional center recommended that Mr. Nada refer Alice to the Disability Services Department at Cow County Junior College for classes to improve her reading and writing skills. Mr. Nada told the regional center that he had already thought of this and would be looking into this program for Alice. (CT 233.) There is no evidence in the record that Mr. Nada ever referred Alice to this program.

On April 21, 2013, Mr. Winner notified the social worker that Alice had completed the anger management program. (CT 235.) He indicated that her last two sessions were uneventful and that his recommendations concerning Alice had not changed. (CT 235.) On April 26, 2013, the parenting class counselor reported that

Alice had only one more class to attend and three packets and parent/child labs to complete before she was done with her parenting classes. (CT 236.)

The social worker recommended that the agency continue to provide services to Alice. The case plan attached to the report continued to require Alice to complete the anger management and parenting classes (CT 185, 186.) Although the CASA had recommended that Alice be provided with a Basic Life Skills class and vocational training and the regional center recommended that she be referred to the Disability Services Department at the junior college, Mr. Nada did not recommend any additional services.

At the six-month review hearing held on May 19, 2013, the court ordered that Alice continue to receive reunification services. In light of Mr. Winner's report, the court also ordered that Alice participate in a psychological evaluation. (CT 226.)

On July 15, 2013, the psychologist, Dr. Freud, provided his report to Mr. Nada. Dr. Freud concluded that Alice had an IQ of 65, which is "indicative of Mild Mental Retardation." (CT 285.) According to Dr. Freud,

the Verbal IQ of 65 demonstrates that she has a very poor fund of general information, does not abstract very well, has poor calculation skills, has difficulty remembering and learning new material, and struggles with practical and social judgement. I believe that this is her primary problem rather than a diagnosable mental illness.

(CT 285.) Dr. Freud concluded his report by reiterating that Alice's reasoning, knowledge and judgment are impaired by diminished intellectual functioning" and recommending to Mr. Nada that Alice's "reunification plan, if not already in place, needs to consolidate this persisting disability." (CT 285.)

Mr. Nada did not amend the case plan to take into account the fact that Alice had this disability nor did he share this report with counsel until October 2013<sup>4</sup>. (RT 23, 28, 29.) When Alice's counsel finally learned of the report, he contacted county

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<sup>4</sup> It appears that the report was served on counsel as an attachment to the 12-month review report that was filed with the court on October 30, 2013. (CT 243.)

counsel and asked that the report be sent to the regional center. (RT 23.) After the regional center received the report, it again concluded that Alice was not eligible for its services but asked for additional records. (RT 24.) The agency did nothing to obtain those records. (RT 24, 29-30.) Alice's counsel obtained those records in mid-November and submitted them to the regional center. (RT 26.) Alice received no response from the regional center until the day of the 12-month review hearing when she was orally advised that she was not eligible for regional center services. (RT 24.)

The school records showed that Alice had been diagnosed as mentally retarded at least three times by various school districts. In 2000, the Freebie School District concluded that Alice was disabled because of "mental retardation." It referred to an earlier 1998 report that indicated that Alice was functioning in the "mentally-retarded range." (RT 30-31.) In 1999, a psychologist for the Cow County Unified School District concluded that Alice was retarded with an IQ in the 55 to 65 range. (RT 31.)

Mr. Nada's initial report for the 12-month review hearing recommended that reunification services be terminated. (CT 243.) Because of that recommendation, there was no service plan for Alice attached to the report.

An attached report from the parenting program noted that Alice had completed all of the required classes and labs but that she was slow to grasp the materials because of comprehension problems and that she did not interact with her children very much in the labs. (CT 27-280.) The report recommended that if Alice was to reunify with her children, she should be provided with an in-home support service, such as Leaps and Bounds, to assist her in raising her children. (CT 280.)

The twelve-month review hearing was held on December 2, 2013. (CT 347; RT 18-40.) Both Alice's counsel and the child's counsel objected that reasonable services had not been provided because of the agency's failure to do anything to amend the service plan to take Alice's disability into account, failure to notify the

service providers of Alice's condition so that they could amend their services to take Alice's disability into account, and failure to timely notify counsel of Dr. Freud's report so that counsel could pursue the matter with the regional center on Alice's behalf. (RT 29-32.) Counsel for the agency admitted that Alice's failure to make as much progress as the agency would have liked was "not her fault" (RT 27) but argued that the only source of services for people who are mentally retarded is the regional center and that there was nothing else the agency could have done for her. (RT 26.)

The juvenile court concluded that the regional center was the only source of services to assist Alice in properly completing her case plan and that even if the Dr. Freud's report had been provided earlier, the conclusion that regional center would have reached a different conclusion about Alice's eligibility for services was purely speculative. (RT 36.) The court then found that return of the children to Alice's custody continued to create a substantial risk of detriment to them, that reasonable services had been provided, and that Alice had participated regularly in the case plan and but had made only limited progress. (RT 37.) The court went on to order that reunification services be terminated and set a section 366.26 hearing for April 2, 2014. (RT 38.)

On December 6, 2013, Alice filed a timely notice of intent to file this petition. (CT 391.)

## **ARGUMENT**

### **I**

#### **THE JUVENILE COURT'S DETRIMENT FINDING IS NOT SUPPORTED BY SUBSTANTIAL EVIDENCE**

Section 366.21, subdivision (f) is the statute that sets forth the procedures the juvenile court must follow at a 12-month review hearing. That statute provides in pertinent part:

At the permanency hearing, the court shall determine the permanent plan for the child, which shall include a determination of whether the child will be returned to the child's home and, if so, when, within the time limits of subdivi-

people of average intelligence and made no attempts to find other services or redesign the services already offered when it became clear six months into the case that Alice lacked the intellectual ability to benefit from those services. That being the case, the court's finding that the agency provided reasonable services designed to overcome the problems that caused Alice to continue to be deprived of the custody of her children is not supported by substantial evidence and must be reversed.

### **CONCLUSION**

In light of the foregoing, this court is respectfully requested to issue a writ of mandate ordering reversal of the December 2, 2013 review hearing order insofar as it was not supported by any evidence of detriment to the children if they were returned to Alice's custody and found that reasonable services were provided to Alice during the second six-month reunification period.

Dated: January 6, 2014

Respectfully submitted,

JANET G. SHERWOOD  
Attorney for Petitioner  
Alice A.

**CERTIFICATION OF WORD COUNT**

I. Janet G. Sherwood, hereby certify under penalty of perjury under the laws of the State of California that, according to the word processing program used to prepare this brief, petitioner's memorandum of points and authorities contains 6600 words.

Dated: January 6, 2014

\_\_\_\_\_  
Janet G. Sherwood

DECLARATION OF SERVICE BY MAIL

Alice A v. Superior Court

NO. A107654

I am the attorney the attorney for petitioner Alice A. I am a citizen of the United States, over the age of 18 years and my business address is 5643 Paradise Drive, Suite 12, Corte Madera, CA 94925-1815.

On January 9 2014, I served the attached **Petition for Extraordinary Writ** on the parties hereto by United States Mail by depositing true copies thereof, enclosed in an envelope with postage thereon fully prepaid and addressed as follows, in the United States Mail at Corte Madera, California 94925.

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ATTN. JUDGE ROY BEAN

COW COUNTY CASA PROGRAM  
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COWTOWN, CA 99911

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on January 9, 2014 at Corte Madera, California.

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JANET G. SHERWOOD