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July 17, 2014

California Court of Appeal
333 West Santa Clara Street, Suite 1060
San Jose, CA 95113

Re: *In re P.F.*, et.al., H1234567
Letter Brief pursuant to *In re Phoenix H.*

To the Clerk of the Court:

Appellate counsel is submitting this letter brief after a thorough review of the entire record on appeal. Having found no issues to raise, it is respectfully requested that the court permit appellant the opportunity to show cause that an arguable issue exists.

Statement of Appealability

This appeal is from a hearing where the court set the matter for a Welfare and Institutions Code section 366.26 hearing. All orders issued at a hearing in which a section 366.26 hearing is ordered are subject to section 366.26, subdivision (l) and must be reviewed by extraordinary writ. (*In re Tabitha W.* (2006) 143 Cal.App.4th 811, 815-817.)

Statement of Facts and Case

This appeal is from the April 29, 2014 twelve-month review hearing, at the conclusion of which the court: reduced appellant mother W.F.'s visits with her children, 13-year old P.F. and 11-year old B.F.; terminated mother's family reunification services; prohibited in-custody visits for 30 days; and, set a section 366.26 hearing to terminate mother's parental rights. (2CT 485-491; 1RT 11-18) Father F.F. died in 2007. (1CT 55; 2CT 339)

Jurisdiction and Disposition

On April 29, 2013, petitions filed under Section 300, subdivision (b)

alleged that mother was unable to provide regular care due to mental illness or substance abuse. The children were placed into protective custody on April 25, 2013 because mother was manufacturing, dealing, and using drugs at her home and they did not feel safe living or spending time there. The children had witnessed mother growing and manufacturing drugs; on many occasions they had found drugs and paraphernalia, including marijuana, in the room where they slept. Mother, who was diagnosed with bipolar disorder and struggled with depression, had discontinued taking her prescribed medication. She drank heavily and had stopped providing care for the children. (1CT 1-4, 6-9)

On April 30, 2013, the court detained the children and ordered that initial case plan services be provided to mother, including drug and alcohol assessment, drug testing, psychiatric/medical evaluation, parenting education and orientation classes. The court also ordered supervised visitation two times per week for two hours per visit. (1CT 47-49)

The May 16, 2013 jurisdiction report recommended that the court sustain the petitions, that the children remain in out-of-home care and that mother received family reunification services. The children were placed together in the home of the paternal great-grandparents and paternal cousin, as a temporary placement. (1CT 53) Mother denied having a substance abuse problem and growing marijuana in the home. She had charges pending from arrests on February 5, 2013 (for possession of methamphetamine, possession of drug paraphernalia, transportation of marijuana for sale, identity theft, possession of blank check, forgery, possession of stolen property and possession of people's information) and May 9, 2013 (for possession of controlled substances and possession of drug paraphernalia). The children reported that strangers entered their bedroom all the time; on one occasion, a strange man was lying on B.F.'s bedding and mother told B.F. not to wake the man. (1CT 65)

Mother was placed on a psychiatric hold shortly before moving with the children to Mexico in September 2011. While in Mexico, mother was arrested after taking the children to a club where B.F. was dancing after midnight and people were giving him money. (1CT 66) Mother had been struggling with depression since returning from Mexico in January 2012, isolating herself from the children and not supervising them. (1CT 67) Maternal grandmother reported that mother was diagnosed with bipolar disorder and had stopped taking her psychotropic medication. Maternal grandmother was concerned about mother's lack of care of the children. The children were not getting to school on time; they called grandmother saying they needed to go to school but mother was not home. (1CT 68) P.F. reported that mother's moods changed very drastically, and that mother became very agitated for no reason and yelled at them. (2CT 69) P.F. had

been taking care of B.F., waking him for school, preparing meals, taking care of his hygiene and putting him to bed at night. (1CT 69) The children were left alone for days at a time on many occasions. (1CT 70) Mother acknowledged her downward spiral for the past three years due to untreated mental health issues; she isolated herself from the children, was impulsive, did not exercise good judgment, made poor choices, and put herself and the children in unsafe situations. (1CT 71)

At the May 16, 2013 jurisdiction hearing, the court found that the allegations of the petitions were true and the children were persons described in section 300, subdivision (b). (1CT 140) The court ordered that supervised visits take place at the Department of Family and Children's Services (DFCS), due to concerns regarding inappropriate discussion of court proceedings and issues with the children that had occurred during relative-supervised visitation. Mother requested that visits be reduced from twice per week to one time per week because she could not manage more frequent visits due to feeling overwhelmed and needing to focus on her own issues and appointments. The court advised mother that visitation would be increased when mother felt ready to manage an additional weekly visit. (1CT 171-172)

Reunification Services

The June 3, 2013 disposition report recommended that the children remain in the home of the paternal great-grandparents and cousin, and that mother receive family reunification services. (1CT 163-180) In the worker's assessment, mother needed to address her mental health, substance abuse and legal issues in order to appropriately and consistently meet her children's needs. (1CT 172) The worker opined that mother loved her children and wanted to be with them, but she minimized and denied issues that had brought the family before the court. (1CT 171-172) Counseling was recommended for the children due to the trauma of their father's death, and the instability and stress of their recent living situation and family issues. (1CT 172-173) Both children were well behaved, very bright, excelled in school and enjoyed healthy extra-curricular activities. (1CT 183) The maternal and paternal sides of the family provided tremendous support for mother and the children. (1CT 175) Mother was open to support and services. During visits, she was nurturing, loving and playful with the children, but required constant re-direction to not discuss the case with and make promises to the children. (1CT 175, 183) B.F. was diagnosed with stomach problems caused by anxiety. (1CT 177) Both children preferred to remain in the home of their paternal great-grandparents. (1CT 179)

On June 3, 2013, the court declared the children dependents of the court and ordered the continuation of previously ordered services for mother. (1CT 273, 275) Placement of the children was reserved for mediation. (1CT 273) Supervised visits were

ordered to be two times per week. However, mother requested visits one time per week until she notified the worker that she was ready for twice- weekly visits. (1CT 277)

The July 18, 2013 interim review reported that mother had attended four of her six scheduled visits since the June 3, 2013 disposition hearing. (2CT 284-285, 288) Mother was appropriate and engaging and interacted well with the children, who appeared to enjoy the visits. (2CT 288) Mother requested that the visits be increased to twice per week; however, the children wanted the visits to remain at one time per week. (2CT 288) Mother had a pattern of arriving late for visits. On July 2, 2013, mother texted B.F. twenty minutes before the visit was to begin and said that she was going out of state and would not be at the visit. (2CT 288) On July 9, 2013, fifteen minutes before the visit was scheduled to start, paternal great-grandmother learned from a relative that mother would not be at the visit; at the time, great-grandmother and the children were waiting in the DFCS lobby for the visit to begin. (2CT 289) On July 15, 2013, an unscheduled visit was arranged; mother and the children had a very happy and loving visit. (2CT 289-290) The worker was in support of the children's desire to remain in the home of the paternal great-grandparents. (2CT 291) On June 21, 2013, after meeting with the worker, mother left her purse in the room. In an attempt to identify the purse's owner, it was discovered that it contained a folding knife and a glass pipe with residue. (2CT 286)

On July 18, 2013, mother was not present and the court found that mediation regarding placement was unsuccessful. (2 CT 310)

The November 5, 2013 six-month status review report recommended that family reunification services be continued. The worker expressed concern regarding mother's lack of focus and commitment toward her case plan, as well as her lack of accountability and truthfulness. (2CT 355) The children were thriving in their great-grandparents' care and were supported and loved by their extended family. The children were losing hope of re-uniting with mother. (2CT 355)

The worker met with mother on July 23, 2013 regarding the effect mother's inconsistency with visitation and her pattern of coming late to visits was having on the children. (2CT 352) Mother agreed to a plan whereby visits would be canceled if mother were not present in the DFCS lobby one hour before the scheduled visit time. (2CT 352) Arrangements were made to reinstate the second weekly visits to be supervised by family members. (2CT 352-353) Mother was a no-show to six visits between July 25, 2013 and October 24, 2013. (2CT 353) On August 29, 2013, the children refused to visit with their mother. (2CT 353) During the visits that took place, the children enjoyed their time with mother, who was attentive and loving. (2CT 353) However, mother's fixation on a new health regimen was causing some distress to the children. (2CT 354) The paternal great-

grandparents were committed to adopting the children if mother failed to reunify. (2CT 354)

At the November 5, 2013 six-month review hearing, the court continued reunification services and twice per week visits. The court found that the Indian Child Welfare Act did not apply and denied mother's oral request to increase visits. (2CT 400, 403)

Termination of Services

The April 29, 2014 twelve-month status review report recommended termination of family reunification services. (2CT 409) On December 31, 2013, mother was arrested and charged with possession of controlled substances, retaining/possession of a person's identification information with intent to defraud, driving under a suspended license, and possession of paraphernalia. Mother failed to appear for her court hearing and had an active warrant for her arrest. (2CT 412) Mother never tested for drugs as required by her case plan and a family member provided a video to the worker that appeared to show mother abusing drugs. (2CT 427) Mother had ten no-shows or cancellations due to late arrival for visits since the November 5, 2013 review hearing. Most of the visits went well; however, there were concerns about family-supervised visits. During one visit, mother appeared to be under the influence of marijuana; during another, B.F. saw marijuana in mother's backpack; and, at a third visit, mother was rude and verbally abusive. The children were upset by these incidents and they expressed that mother was "not even trying." (2CT 425-426) The family began therapeutic visits at Kindred Souls during April 2014 and the visits went well with the intervention of the supervising therapist. The second weekly visits continued to be supervised by DFCS staff. (2CT 426)

Both children felt that mother had not made any progress or changes and they were afraid of being returned to her care. Both wanted to be adopted by their great-grandparents. The great-grandparents were committed to a plan of adoption if mother failed to reunify. (2CT 427) Mother had failed to engage in services and the worker opined that her pattern of behavior would not change if she were given another six months of services. The children were thriving with the great-grandparents and only wanted to see mother "once in awhile." (2CT 428) However, the worker requested once per week visits to maintain therapeutic visits at Kindred Souls. (2CT 428)

Mother appeared in-custody at the April 29, 2014 twelve-month review. The court denied mother's request for six months of additional reunification services and ordered supervised visits to continue at Kindred Souls one time per week. The court further ordered that no in-custody visits would occur for thirty days and should in-custody visits

be required, the worker was to accompany the children. (2CT 485) The court advised mother of the requirement to file a writ petition. (2CT 485; 1RT 16-17)

On May 2, 2014, mother filed a timely notice of appeal challenging the court's order pertaining to reduction of visitation. (2CT 492-493)

ARGUMENT

The request to allow appellant the opportunity to raise an arguable claim is made pursuant to the opinion of the California Supreme Court *In re Phoenix H.* (2009) 47 Cal.4th 835. In *Phoenix H.*, the supreme court decided: “[W]e do not exercise our supervisor powers to require the Court of Appeal to permit an indigent parent who has appealed from an order of the juvenile court affecting his or her parental rights to personally file a brief whenever appointed counsel files a brief raising not issues. Instead, we hold that the Court of Appeal has the discretion to permit the parent to personally file a brief and must do so only upon a showing of good cause that an arguable issue does, in fact, exist.” (*Id.* at p. 844.) Appellant has been advised of her right to file a motion seeking leave to file a supplemental brief in this court within 15 days of the date this brief is filed. Appellant has been advised that her motion must demonstrate to the court that “a showing of good cause that an arguable issue does, in fact, exist.” (*Ibid.*)

Appellant has been further advised that upon her request present counsel will forward a copy of the record on appeal for the purpose of preparing the motion or a supplemental opening brief, but that counsel will retain the record for the present to allow proper representation in the event this court requests further briefing. Appellant has been further advised that she may ask the court to relieve present counsel at the court's discretion.

Dated: July 17, 2014

Respectfully submitted,

CLARENCE DARROW
Attorney for Appellant W.F.

DECLARATION OF COUNSEL

I, Clarence Darrow declare:

1. I am an attorney of law admitted to practice before all courts of California, and am appointed counsel for appellant W.F.
2. I have thoroughly reviewed the entire record in this case.
3. In a letter dated July *, 2014, I advised appellant that a brief pursuant to *In re Phoenix H.* (2009) 47 Cal.4th 835 would be filed.
4. I also informed appellant of her right to file a motion seeking leave of this court to file a supplemental brief within 15 days of my filing the *Phoenix H.* brief; that her motion must demonstrate a showing of good cause that an arguable issue does, in fact, exist; that upon request I would send her a copy of the record on appeal to aid her preparation of the motion or a supplemental brief, if any; that I would remain available to brief issues as requested by the court; and that she may ask the court to relieve present counsel at the court's discretion.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that it was executed on July 17, 2014, at Springfield, California.

CLARENCE DARROW
Attorney for Appellant