Judicial Council of California, Center for Family, Children, and the Courts
November 18, 2020 Webinar

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

IN RE JULIET C., A person Coming Under the Juvenile CourtLaw.	)	
	)	H_____
LADY C.	)	
Petitioner,	)	(Fredonia
	)	County
v.	)	Juvenile Court
	)	No. 19JP911)
FREDONIA COUNTY SUPERIOR COURT,	)	
Respondent;	)	
	)	
FREDONIA COUNTY CHILD PROTECTIVE SERVICES, et al.,	)	
Real Parties in Interest.	)	
	)	

The Honorable Solomon Wisdom, Judge

PETITION FOR EXTRAORDINARY WRIT AND REQUEST FOR STAY

SIXTH DISTRICT APPELLATE PROGRAM

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Attorney for Petitioner
Lady C.

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TO BE FILED IN THE COURT OF APPEAL

COURT OF APPEAL	SIXTH APPELLATE DISTRICT, DIVISION	COURT OF APPEAL CASE NUMBER *(Court will provide)*:

In re the Matter of:

JULIET CAPULET (1/1/07)

(Name and date of birth of subject child or children)

LADY CAPULET

Petitioners

v.

Superior Court of California, County of

FREDONIA

Respondent

FREDONIA COUNTY CHILD PROTECTIVE SRVS.

Real Party in Interest

FILE STAMP

Superior Court No. 19JP911

Superior Court No.

☐ 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.

Form Approved for Optional Use
Judicial Council of California
JV-825 [Rev. January 1, 2017]

Welfare and Institutions Code, §§ 366.26, 366.28;
Cal. Rules of Court, rules 8.452, 8.456
www.courts.ca.gov

CASE NAME:	CASE NUMBER:
JULIET CAPULET	

1. This *Petition for Extraordinary Writ (Juvenile Dependency)* is filed on behalf of petitioner.
   a. Name: Lady Capulet
   b. Address: 1 Shakespeare Road
      Verona, CA 99911
   c. Phone number: 969-555-1234
   d. E-mail:
2. Petitioner is the
   a. ☐ child
   b. ☒ mother
   c. ☐ father
   d. ☐ guardian
   e. ☐ de facto parent
   f. ☐ county welfare department
   g. ☐ district attorney
   h. ☐ other *(state relationship to child or interest in the case):*
3. The *Petition for Extraordinary Writ (Juvenile Dependency)* pertains to the following child or children *(specify number of children):* 1
   a. Name of child: Juliet Capulet
      Child's date of birth: 1/1/07
   b. Name of child:
      Child's date of birth:
   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):* Terminating reunification services
   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):* 11/3/20
6. The order was erroneous on the following grounds *(specify):*
   See Attached Memorandum of Points 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 Points and Authorities

☒ Additional pages attached.

CASE NAME:	CASE NUMBER:
JULIET CAPULET	

9. Points and authorities in support of the petition are attached *(number of pages attached):* 31

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

a. [x] 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. [x] Remand for hearing.

d. [x] Order that reunification services be
[ ] provided [x] continued.

e. [ ] Order visitation between the child and petitioner.

f. [ ] Return or grant custody of the child to petitioner.

g. [ ] Terminate dependency.

h. [x] Other *(specify):*
Increase in visitation.

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

a. Hearing date *(must specify):* 2/16/21

b. Reasons for stay *(specify):*
The department recommends termination of parental rights. If the juvenile court terminates parental rights, this court will lose jurisdiction to decide this petition.

Additional pages attached.

12. Total number of pages attached: 31

13 I am the [ ] petitioner [x] 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: 11/14/20

Jonathan Grossman 154452
(TYPE OR PRINT NAME)

▶
(SIGNATURE OF [ ] PETITIONER [x] ATTORNEY)

Address:
95 S. Market Street, Suite 570
San Jose, CA 95113
408-241-6171

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Respondent;	)	
	)	
FREDONIA COUNTY CHILD PROTECTIVE SERVICES, et al.,	)	
Real Parties in Interest.	)	
_____	)	

MEMORANDUM OF POINTS AND AUTHORITIES

SUMMARY OF THE CASE AND EVIDENCE

On October 2, 2019, Juliet was detained, and a dependency petition was filed on October 3, alleging that the juvenile court should assume jurisdiction under subdivisions (b)(1) and (c) of Welfare and Institutions Code section 300.[1] (1CT 1-4.)

Specifically, it was alleged that petitioner and the father were involved in the Capulet Gang, which endangered the safety of Juliet. (1CT 97-98.) Further, the father planned to marry 13 year-old Juliet with a man, Paris E. (1CT 99-102.) Juliet told the

[1] Unless otherwise specified, all further statutory references are to the Welfare and Institutions Code.

social worker that her father threatened to throw her out of the house and she would be a "street urchin" if she refused to marry Paris. She exhibited symptoms of emotional distress as a result. (1CT 99, 102, 104-105.)

At the jurisdictional and disposition hearing, held on November 5, 2019, the court sustained the petition. Petitioner objected to placing the child out of county and to the recommendation of supervised visitation occurring twice per week for one hour. She argued visits should be at least twice per week for four hours unsupervised. Nonetheless, the court ordered that Juliet be placed in foster care in Other County and reunification services be provided to the parents. The court adopted the department's recommendation concerning visitation, stating it would leave it to the social worker to determine when to increase visitation. (1CT 205-224.)

By March 2020, the outbreak of the Covid-19 virus had become a pandemic. As reflected in the social worker report for the 12 month review hearing, people in the region, and soon much of the country, were ordered to shelter in place in order to reduce the spread of the disease. (2CT 324.) As a consequence, respondent court ordered that in-person visitation cease. (2CT 303, 325.) The only contact petitioner had with her daughter since March 19, 2020 has been by video "virtual visits" through Skype. (2CT 334.) However, petitioner has failed to appear for about half of the visits, and many of the remaining visits were suddenly cut short. (2CT 335-337.)

The six month review hearing was originally scheduled for

March 26, 2020. (2CT 301.) But it was repeatedly continued because of the pandemic. (2CT 303, 305, 307, 309, 311, 313.) The six month review hearing was combined with the 12 month review hearing and held in October and early November 2020 by video. (2CT 361-362, 366-367, 371-373.)

Child Protective Services asserted that petitioner's "failure" to visit consistently has exacerbated Juliet's sense of abandonment and behavioral problems. (2CT 339-340, 342-343.) Because all visits have been supervised, and most of them "virtual," petitioner has not demonstrated she could parent Juliet safely. (2CT 343.) Further, Juliet exhibited behavioral problems around visits, and the social worker asserted this was a result of petitioner's poor parenting in the past. She did not want to visit petitioner. The department argued services were reasonable under the circumstances and that in-person visits would have required a much greater expenditure of resources to make sure everyone was safe. (2CT 344.)

Petitioner testified at the review hearing that she was indigent and owned an outdated cell phone. She did not have access to other electronic devices. (3RT 621-622, 631, 634.) Skype often caused her cell phone to crash, causing her to miss visits. (3RT 622, 632.) Further, an hour-long Skype session drained the battery, and consequently her visits were often cut short. (3RT 622, 634.) She also said Juliet has appeared to have a crush on Romeo, the son of the foster parents, and petitioner was concerned that Juliet was becoming suicidal at the prospect of leaving his home, which was interfering with efforts to return her

home. (3RT 636-637.)

In rebuttal, the social worker testified petitioner was not accepting responsibility for her behavior that has put Juliet at risk and was instead shifting blame and not putting the chid's interests before her own. (4RT 911-912.) Further, petitioner should have made more of an effort to ensure her cell phone was fully charged before visits and should have tried to open the program sufficiently before the scheduled visits to account for the possibility of the computer crashes. (4RT 912-914.) Juliet has been in counseling since the beginning of the dependency, but the counselor did not think she was ready for more liberal visitation with petitioner. (4RT 915.)

Petitioner's trial counsel argued that services were unreasonable because virtual visits were not working properly and were not conducive to permitting petitioner demonstrate she could safely parent Juliet. (5RT 1011.) Further, Juliet was not at risk of harm from unsupervised in-person visits. (5RT 1013.) She moved the court order in-person visits, preferably unsupervised or in the alternative that the department provide adequate technology for petitioner to be able to do virtual visits and that the visits be unsupervised and at least two hours four times per week. (5RT 1014-1015.)

The court found on November 3, 2020 that it would be detrimental to return Juliet and reasonable services were provided. (5RT 1024.) It denied petitioner's motion to order in-person visits, to increase the number of visits, to make them unsupervised, or to order the department to provide devices to

facilitate the virtual visits. (5RT 1025.) It terminated reunification services and ordered visitation to be at least once per month to be held virtually and to be supervised by the foster parents. (2CT 361-368; 5RT 1025.) It said it would leave it to the social worker's discretion to increase visitation or to modify the manner visitation occurs. (5RT 1026.) The court set a hearing under section 366.26 for February 16, 2021. (2CT 361.)

A notice of intent to file a writ petition was filed on November 3, 2020. (2CT 371-372.) The record was filed on November 10, 2020. (2CT 374.)

ARGUMENT

I. The Order Terminating Services Must be Reversed Because Petitioner did not Receive Reasonable Services.

Petitioner's trial counsel argued that services were unreasonable because virtual visits were not working properly and were not conducive to permitting petitioner demonstrate she could safely parent Juliet. (5RT 1011.) She moved the court order in-person visits, preferably unsupervised or in the alternative that the department provide adequate technology for petitioner to be able to do virtual visits and that the visits be unsupervised and at least two hours four times per week. (5RT 1014-1015.)

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reunification services and ordered visitation to be at least once per month to be held virtually and to be supervised by the foster parents. (2CT 361-368; 5RT 1025.)

Services were unreasonable for failing to provide adequate visitation. The failure to provide more liberal visitation as the dependency progressed resulted in the failure to provide services that could have repaired and strengthened the relationship between petitioner and her daughter.

A. Unduly Restricted Visitation Led to Unreasonable Services.

Whether reunification services were reasonable is reviewed for substantial evidence. (*In re Alvin R.* (2003) 108 Cal.App.4th 962, 971; *In re Monica C.* (1995) 31 Cal.App.4th 296, 306; *In re David D.* (1994) 28 Cal.App.4th 941, 954; but see *In re James B.* (1991) 227 Cal.App.3d 524, 530 [abuse of discretion].)

Section 366.21 states that if at the six month review hearing, "the child is not returned to his or her parent or legal guardian, the court shall determine whether reasonable services that were designed to aid the parent or legal guardian in overcoming the problems that led to the initial removal and the continued custody of the child have been provided or offered to the parent or legal guardian." (§ 366.21, subd. (e)(8).) The same finding must be made at subsequent review hearings. (§§ 366.21, subds. (f)(1)(A) & (g)(1)(C)(ii), 366.22, subd. (a)(3).) The court cannot schedule a section 366.26 hearing if reasonable services have not been provided. (§§ 366.21, subd. (g)(4), 366.22, subd. (b)(3) (C).) Further, section 366.26 states the court cannot

terminate parental rights if "[a]t each hearing at which the court was required to consider reasonable efforts or services, the court has found that reasonable efforts were not made or that reasonable services were not offered or provided." (§ 366.26, subd. (c)(2)(A).)

The department was required to develop a case plan if the child is removed, unless the court decides not to provide services. (*In re Kristin W.* (1990) 222 Cal.App.3d 234, 254.) "This statutory scheme contemplates immediate and intensive support services to reunify a family where a dependency disposition removes a child from parental custody. A good faith effort to develop and implement a family reunification plan is required. A reunification plan must be appropriate for each family and be based on the unique facts relating to that family. This reunification plan is a crucial part of the dispositional order." (*Ibid*., internal quotation marks and citations omitted.) "It is difficult, if not impossible, to exaggerate the importance of reunification services in the dependency system." (*In re Luke L.* (1996) 44 Cal.App.4th 670, 678.) "The program in which a parent or guardian is required to participate shall be designed to eliminate those conditions that led to the court's finding that the child is a person described by Section 300." (§ 362, subd. (d); *In re Daniel B.* (2014) 231 Cal.App.4th 663, 675.)

"Family preservation, with the attendant reunification plan and reunification services, is the first priority when child dependency proceedings are commenced." (*In re Elizabeth R.* (1995) 35 Cal.App.4th 1774, 1787.) The "reunification plan,

including the social services to be provided, must accommodate the family's unique hardship. The objective of the plan must be to provide services to facilitate 'the resumption of a normal family relationship . . .' [Citation.] and 'must be designed to eliminate those conditions which led to the juvenile court's jurisdictional finding.' [Citation.]" (*Id.* at p. 1790.)

The reasonableness of services is judged on content and implementation. As for the content of a case plan, the "effort must be made to provide suitable services, in spite of the difficulties of doing so or the prospects of success." (*In re Dino E.* (1992) 6 Cal.App. 4th 1768, 1777.) To support a finding reasonable services were provided, " 'the 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.' (*In re Riva M.* (1991) 235 Cal.App.3d 403, 414.)" (*In re J.E.* (2016) 3 Cal.App.5th 557, 566, emphasis in original; cf. *Patricia W. v. Superior Court* (2016) 244 Cal.App.4th 397, 427 [a "mechanical approach to a reunification plan is not what the Legislature intended" (internal quotation marks omitted)]; *In re Taylor J.* (2014) 223 Cal.App.4th 1446, 1452 ["Family reunification services are not 'reasonable' if they consist of nothing more than handing the parent a list"].)

Reunification services can be unreasonable when visitation is unduly limited or do not become more liberal as the parent

successfully works on other portions of the case plan. (*In re T.W.-1* (2017) 9 Cal.App.5th 339, 346-348; *Tracy J. v. Superior Court* (2012) 202 Cal.App.4th 1415, 1425-1427; *In re Alvin R., supra,* 108 Cal.App.4th at pp. 973-974.) For example, in *Rita L. v. Superior Court* (2005) 128 Cal.App.4th 495, services were unreasonable when a trial home visit was not arranged until near the end of the reunification period and then delayed beyond the hearing when the court terminated services. (*Id.* at pp. 508-509.) Similarly, the failure to liberalize visitation in this case led to the department failing to address the problems in Juliet's and petitioner's relationship that led to the dependency. (See § 362, subd. (d); *In re J.E.* , *supra*, 3 Cal.App.5th at p. 566.)

1. Services as Designed were Inadequate and Violated Due Process Because Visitation was Insufficient from the Start.

Robust visitation is an essential component of any case plan designed to address the problems that have led tot he dependency and is vitally important for the child and the parents. "Visitation rights arise from the very 'fact of parenthood' and the constitutionally protected right ' "to marry, establish a home and bring up children." ' [Citation.]" (*In re Julie M.* (1999) 69 Cal.App.4th 41, 49.) Due process (U.S. Const., 14th Amend.; Cal. Const., art. I, § 7) requires visitation to be as often as possible, unless the visits themselves are detrimental to the child. (*In re Jennifer G.* (1990) 221 Cal.App.3d 752, 756-757.) "As to visitation, '[t]he relationship between parent and child is so basic to the human equation as to be considered a fundamental right, and

that relationship should be recognized and protected by all of society . . . . " (*In re Smith* (1980) 112 Cal.App.3d 456, 428.)

"[C]hildren have strong emotional ties to even the worst of parents." (*In re James R.* (2007) 153 Cal.App.4th 413, 429.) Indeed, "the child's interest in the parent-child relationship is at least as important and as worthy of protection of the parent's interest." (*Ibid.*) "Continuity of the relationships is extremely important to children." (*Hansen v. California Dept. of Social Srvs.* (1987) 193 Cal.App.3d 283, 292, internal quotation marks omitted.)

The court, in "ordering reunification services, shall provide . . . [¶] . . . for visitation between the parent[2] or guardian and the child. Visitation shall be as frequent as possible, consistent with the well-being of the child." (§ 361.2, subd. (a)(1)(A).) However, "[n]o visitation order shall jeopardize the safety of the child." (§ 361.2, subd. (a)(1)(B).) "It is the purpose of the Juvenile Court Act that the bond between the minor and his or her family be '[preserved] and [strengthened]' (§ 202) through the provision of appropriate services. (§ 307, subd. (a).) 'The legislative scheme contemplates immediate and intensive support services to reunify a family where a dependency disposition removes a child from parental custody.' [Citation.]" (*Hansen v. California Dept. of*

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[2] Only a presumed father is entitled to visitation if it would not be detrimental. A biological father who is not a presumed father may be granted services or visitation, but it is not mandatory. (§ 361.5, subd. (a); *In re Zacharia D.* (1993) 6 Cal.4th 435, 451; *In re D.M.* (2012) 210 Cal.App.4th 541, 544.)

*Social Srvs., supra,*193 Cal.App.3d at pp. 292-293.) "An obvious prerequisite to family reunification is regular visits between the noncustodial parent or parents and the dependent children 'as frequent[ly] as possible, consistent with the well-being of the minor.' " (*In re Julie M., supra,* 69 Cal.App.4th at p. 49.)

This means visitation must be more frequent than an hour or two once or twice a week. A parent-child relationship cannot be maintained by seeing a child 52 or 104 hours a year. Visitation should be longer, more frequent and unsupervised whenever possible. Contact with the child should include appointments with doctors and other services, participation in preschool, scholastic, and extracurricular activities, as well as involvement in the activities and hobbies of the child. "When the Agency 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 . . . and does not constitute reasonable services." (*Tracy J. v. Superior Court* (2012) 202 Cal.App.4th 1415, 1427.)

Despite petitioner's request at the disposition hearing for visits to be be at least twice per week for four hours, the court ordered only two hours of supervised visits per week, stating it would leave it to the social worker to determine when to increase visitation. (1CT 206.) There was no showing that visits of more than two hours per week would have been detrimental to the child. On the contrary, the social worker reported that Juliet lacked a sufficient bond with petitioner because she had not spent enough time with her while living with her father. (1CT 108.)

It was not sufficient that the juvenile court gave the social worker's discretion to increase visitation. The juvenile court can delegate to the department how to do the visits, but the court generally must decide how frequently and how long the visits occur. (*In re Korbin Z.* (2016) 3 Cal.App.5th 511, 518-519 [could not delegate to child when visitation would occur, even when the parent had no reunification services]; *In re E.T.* (2013) 217 Cal.App.4th 426, 439 [order that the department "create a detailed visitation schedule" was insufficient]; *In re Julie M., supra,* 69 Cal.App.4th at pp. 48-50 [giving child veto power during reunification was an abuse of discretion].) This is because "the power to regulate visitation between minors determined to be dependent children and their parents rests in the judiciary. The judicial power in this state is vested in the courts. (Cal. Const., art. VI, § 1.) The judicial function is to declare the law and define the rights of the parties under it. . . . and to make binding orders or judgments." (*In re Jennifer G., supra,* 221 Cal.App.3d at p. 756, internal quotation marks and citations omitted.)

The court had an obligation under the statutes and due process to require visitation as often as possible for services to be reasonable. It was not permissible for it to delegate to the department to make this decision.

2. Visits Should Have Been Unsupervised as Soon as Possible.

Visitation should have been unsupervised within a couple of months, if not immediately, unless there is new evidence to warrant otherwise. Properly utilized, supervised visits serve to protect children when there is concern over abuse or that the child could be significantly neglected during the short period of visitation. If threatening or significant neglectful behavior is not exhibited at visits, then visitation should progress to unsupervised. This serves several important functions. First, it provides a more realistic assessment of the parent's skills when he or she is alone with the children for a few hours. Second, it allows the parent an opportunity to implement what has been learned from services in a more realistic setting. Third, it builds the bond between the children and the parent. Fourth, reunification cannot occur if visitation never progresses. Fifth, it makes resources available for supervised visitation in other cases.

The concerns about petitioner centered on her not being sensitive to Juliet's desire not to marry Paris. (1CT 99-102.) There were not problems with beating or neglecting her. There was no showing that Juliet's physical or emotional safety would be in danger by spending a few hours alone with petitioner.

Here, visits became *more* restrictive due to no fault of petitioner. With the pandemic, in-person visitation was suspended and replaced by visitation by Skype. While this was better than no visits, it was not as good as in-person visits. Petitioner was unable to soothe Juliet due to lack of personal

contact at visits. The department failed to provide visitation that was designed to eliminate the problems that led to the dependency.

3. Failure to Change the Case Plan as Circumstances Changed Rendered Services to be Unreasonable.

The department has the duty to change services when circumstances change. In *In re Brittany S.* (1993) 17 Cal.App.4th 1399, visitation did not occur when the mother was in custody. (*Id.* at p. 1407 ["Unfortunately, this appears to be a case where an incarcerated parent was destined to lose her child no matter what she did. We cannot condone such a result."]; see also *In re Elizabeth R.*, *supra*, 35 Cal.App.4th at pp. 1791-1792 [failure to provide services while the parent was committed to a mental institution].)

The department did not change the case plan when the pandemic hit. If anything, visitation became more restrictive due to no fault of her own. Petitioner was receiving no contact visits and only two times per week for one hour by video. There was never an attempt to increase visitation due to there only be video visits. There was no attempt to change the method of visitation when the current arrangement of video visits proved to be inadequate purely because of technical reasons.

The department argued services were reasonable under the circumstances and that in-person visits would have required a much greater expenditure of resources to make sure everyone was safe. (2CT 343.) The test for reasonable services, however, is

whether services were "designed to eliminate those conditions that led to the" dependency (§ 362, subd. (d); *In re J.E.*, *supra*, 3 Cal.App.5th at p. 566.) By the department's own standard, petitioner could not reunify with Juliet because she did not show she could safely parent while interacting alone with the child. (2CT 343.) Because the department failed to provide services aimed at addressing this problem, reunification services were inadequate.

4. Visitation Should Occur Even If the Child Displays Anxiety.

The other concern expressed by the social worker was that Juliet exhibited anxiety or fear around the time of visits. (4RT 915.) "There is currently a split of authority as to whether section 362.1 mandates visitation absent evidence of a threat to the minor's physical safety (see, e.g., *In re C.C.* (2009) 172 Cal.App.4th 1481, 1491–1492) or whether courts may also deny visitation based on potential harm to the minor's emotional well-being ([*In re*] *T.M.* [(2016)] 4 Cal.App.5th [1214,] 1219-1220.)" (*In re Matthew C.* (2017) 9 Cal.App.5th 1090, 1101.) In either event, if the child displays anxiety around the time of visits, this is insufficient evidence of detriment when it cannot be shown what the source of the anxiety is. The social worker assumed the anxiety stemmed from past experience of neglect or abuse by petitioner.

Child specialists, however, caution that although children are often not able to articulate it, they grieve and become more anxious when they perceive the loss of parent. This threatens

their ability to form healthy bonds later in life. As Judge Leonard Edwards (Ret.) wrote:

> Whatever the reason for the removal, it is a traumatic event for the child and the parents. A child who is placed in foster care fears the unknown and may feel abandoned, helpless, and hopeless. She may worry about her family, imagining that her parents have died or are looking for and cannot find her. She may feel guilty for whatever has happened to her parents. The trauma of separation is potentially overwhelming to children. They may become despondent and depressed. They are often angry. The trauma can be increased when they are separated from both their parents and their siblings. These observations are true even in many cases of serious abuse and cases in which the child expresses fear of a parent or a reluctance to visit. (Edwards, Judicial Oversight of Parental Visitation (Summer 2003) Juvenile and Family Court Journal 1, 2, fns. omitted.)[3]

"Separation in these circumstances can affect the connections that a child has formed with her parents, siblings, and family members. Depending on the age of the child, the separation can damage relationships and have long-term implications for a child's ability to form new attachments and relationships. Connectedness is necessary for healthy child development." (*Ibid.*, fns. omitted.)

Juliet has been in counseling since the beginning of the

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[3] Available on the Internet at www.judgeleonardedwards.com/docs/JudicialOversightofVisitationSummer03.pdf. (as of May 14, 2020). See also https://judgeedwards.wordpress.com/category/publications (as of May 14, 2020).

dependency, but the counselor did not think she was ready for more liberal visitation with petitioner. (4RT 915.) Even if the child displays signs of more significant emotional trauma around visits, it would not be acceptable to stall visitation in the hopes that therapy might some day remedy the situation. (*In re Nicholas B.* (2001) 88 Cal.App.4th 1126, 1138; see also *In re Julie M., supra,* 69 Cal.App.4th at pp. 49-51.) Instead, it is incumbent on the court to facilitate the means by which liberal visitation can occur without detriment. (*In re Alvin R.* (2003) 108 Cal.App.4th 962, 972; *In re David D., supra,* 28 Cal.App.4th at p. 953 ["Due to the court's order prohibiting visitation between this mother and her children, adequate reunification services were not provided."].)

It might be somewhat counterintuitive, but it is important to maintain regular contact if the child is displaying fear of visiting a parent. The proper purpose of supervised visitation is to facilitate visitation when the child is fearful, there are concerns of the parent being abusive, or there is a substantial chance of the child suffering harm from neglect during the hours of the visitation. If reunification efforts are eventually going to be terminated because, in part, there is a lack of a trusting relationship between the child and the parent, then reasonable services would necessarily include efforts to repair and strengthen the relationship. (See, e.g., *In re Alvin R.*, *supra*, 108 Cal.App.4th at p. 973 ["The longer parent and child live with no visitation, the less likely there will ever be any meaningful relationship."]; *In re Kristin W.* (1990) 222 Cal.App.3d 234, 255

["[T]he problems leading to the dependency could only have been resolved by petitioner having some responsibility for the care of the children. The plan's limitation on visitation prevented petitioner from demonstrating and improving his skills with respect to the care of the children."].)

If the child continues to have little or minimal contact with the parent, then the strain between them only becomes worse. Reasonable services have not been provided when the parent is not given the tools for reunifying with the child. While the wishes of the child are relevant in the court's visitation ruling, "[i]n no case may a child be allowed to control whether visitation occurs." (*In re Hunter S.* (2006) 142 Cal.App.4th 1497, 1505.) The department reported visits should not be more liberal because Juliet did not want to visit petitioner. (2CT 344.) While the wishes of Juliet were relevant, there was no evidence that increased time with petitioner would lead to a legally significant increase in the risk of harm.

The court abused its discretion because there was no evidence to support a conclusion that spending less time with petitioner would reduce Juliet's anxiety or that spending more time with her would make things worse. Limiting visitation, however, made the outcome terminating services inevitable. The department never attempted to alleviate Juliet's anxiety in the visits. It instead simply let the anxiety continue to limit visitation until it was time to terminate services. Because the department failed to properly address the problems that led to the dependency, petitioner did not receive reasonable services.

5. Services Failed to Account for Petitioner's Poverty.

Services are unreasonable when the parent's poverty interferes with the ability to do the services. For example, reasonable services were not provided if the parent could not afford them and financial assistance is insufficient. (*In re Taylor J.* (2014) 223 Cal.App.4th 1446, 1452.) In *David B. v. Superior Court* (2004) 123 Cal.App.4th 768, the department was concerned with the parent's homelessness, but there had been no effort to assist in finding housing. (*Id.* at pp. 795-796.)

The department said return of the child would be detrimental because petitioner's visitation was irregular, exacerbating Juliet's anxiety around visits. (2CT 339-340.) Petitioner, however, was indigent and owned an outdated cell phone. She did not have access to other electronic devices. (3RT 621-622, 631, 634.) Skype often caused her cell phone to crash, causing her to miss visits. (3RT 622, 632.) Further, an hour-long Skype session drained the battery, and consequently her visits were often cut short. (3RT 622, 634.)

Social worker testified petitioner was not accepting responsibility for her behavior that has put Juliet at risk and was instead shifting blame and not putting the chid's interests before her own. (4RT 911-912) Further, petitioner should have made more of an effort to ensure her cell phone is fully charged before visits and to try to open the program sufficiently before the scheduled visits to account for the possibility of the computer crashes. (4RT 912-914.) None of this provided substantial

evidence that services were reasonable. Even assuming someone who babied their cell phone could have been able to increase the amount of time of a successful visit, the fact remained that the largest barrier toward regular visitation was petitioner's lack of resources, which was not addressed by the department.

B. Petitioner is Entitled to Additional Services.

"[W]here reasonable services have not been provided or offered to a parent, there is a substantial likelihood the juvenile court's finding the parent is not likely capable of safely resuming custody of his or her child may be erroneous. [Citation.] Providing reasonable services is one of 'the precise and demanding substantive and procedural requirements . . . carefully calculated to constrain judicial discretion, diminish the risk of erroneous findings of parental inadequacy and detriment to the child, and otherwise protect the legitimate interests of the parents.' (*Cynthia D. v. Superior Court* (1993) 5 Cal.4th 242, 256.) Therefore, 'to meet due process requirements at the termination stage, the court must be satisfied reasonable services have been offered during the reunification stage.' [Citations.]" (*In re M.F.* (2019) 32 Cal.App.5th 1, 19.)

When reasonable services have not been provided, the court shall provide six more months of services. (§§ 366.21, subd. (g)(2), 366.22, subd. (b); *In re M.F., supra,* 32 Cal.App.5th at p. 23 [beyond the 18 month review hearing]; *In re J.E., supra,* 3 Cal.App.5th at pp. 564-566 [same]; *In re Elizabeth R., supra,* 35 Cal.App.4th at p. 1793; *In re Monica C., supra,* 31 Cal.App.4th at p. 310; *In re Dino E., supra,* 6 Cal.App.4th at p. 1776.)

Therefore, the court should order six more months of reunification services be provided.

II. Even if Services Were Properly Terminated, Visitation Should not have been Decreased.

Petitioner moved the court to order in-person visits, preferably unsupervised or in the alternative that the department provide adequate technology for petitioner to be able to do virtual visits and that the visits be unsupervised and at least two hours four times per week. (5RT 1014-1015.) Instead, the court reduced visitation to once per month to be held virtually and to be supervised by the foster parents. (2CT 361-368; 5RT 1025.)

Visitation orders reviewed for abuse of discretion. (*In re James R., supra*, 1523 Cal.App.4th at p. 435; *In re Julie M., supra*, 69 Cal.App.4th at p. 48; but see *In re Mark L.* (2001) 94 Cal.App.4th 573, 581, disapproved on other grounds in *Conservatorship of O.B.* (2020) 9 Cal.5th 989, 1010 [substantial evidence test].) Even when the abuse of discretion standard applies, the court does not have discretion to depart from the governing legal standards. (*People v. Reardon* (2018) 26 Cal.App.5th 727, 737.)

When the court terminates reunification services, "[t]he court shall continue to permit the parent or legal guardian to visit the child pending the hearing unless it finds that visitation would be detrimental to the child." (§§ 366.21, subd. (h), 366.22, subd. (a)(3).)

It is important not to reduce visitation when terminating services for two reasons. First, as explained above, there is a due

process right to maintaining the parent-child relationship, and the child naturally benefits from continuing the relationship unless there is overriding evidence to the contrary. "Absent a showing of detriment caused by visitation, ordinarily it is improper to suspend or halt visits even after the end of the reunification period. [Citations.] Visitation may be seen as an element critical to promotion of the parents' interest in the care and management of their children, even if actual physical custody is not the outcome. [Citation.]" (*In re Luke L.* (1996) 44 Cal.App.4th 670, 679.) "Courts have long recognized that, in the context of dependency proceedings, a lack of visitation may 'virtually assure[ ] the erosion (and termination) of any meaningful relationship' between mother and child. [Citation.] Even after family reunification services are terminated, visitation must continue unless the court finds it would be detrimental to the child. (§ 366.21, subd. (h).)" (*In re Hunter S., supra,* 142 Cal.App.4th at p. 1504.)

Second, a strong parent-child relationship through regular visitation is a reason for not terminating parental rights. While it is proper to terminate parental rights when the relationship between the child and the parent drifts apart on its own, it violates due process for the state to interfere with the relationship leading up to the section 366.26 hearing. (*In re David D., supra,* 28 Cal.App.4th at pp. 954-955.) "The Supreme Court has held the statutory procedures used for termination of parental rights satisfy due process requirements only because of the demanding requirements and multiple safeguards built into

the dependency scheme at the early stages of the process. [Citations.] If a parent is denied those safeguards through no fault of her own, her due process rights are compromised. Meaningful visitation is pivotal to the parent-child relationship, even after reunification services are terminated. [Citation.] Under section 366.26, subdivision (c)(1)(A) [now subdivision (c)(1)(A)(i)], the Legislature has provided a means by which even a parent to whose custody a child cannot currently be returned has a final chance to avoid termination of parental rights if she can show she has maintained regular contact and visitation with her child, and the child would benefit from continuing the relationship. Obviously, the only way a parent has any hope of satisfying this statutory exception is if she maintains regular contact with her child." (*In re Hunter S., supra*, 142 Cal.App.4th at pp. 1504-1505.)

The court reduced visitation to be once per month. (2CT 361.) But there was never a showing that the original order of two hours per week was detrimental to the child. Because there was no legal authorization for reducing visitation simply because services were terminated, the court abused it discretion.

CONCLUSION

For the foregoing reasons petitioner, Lady C., respectfully requests that this Court issue an extraordinary writ, reverse the juvenile court's order terminating services and order that petitioner receive at least six months of services. Alternatively, this Court should issue an extraordinary writ, reverse the order reducing visitation.

DATED: November 14, 2020

Respectfully submitted,

SIXTH DISTRICT APPELLATE PROGRAM

By: */s/ Jonathan Grossman*
Jonathan Grossman
Attorney for Petitioner
Lady C.

CERTIFICATION OF WORD COUNT

I, Jonathan Grossman, certify that the attached Memorandum of Points and Authorities contains 5976 words.

Executed under penalty of perjury at San Jose, California, on November 14, 2020.

/s/ Jonathan Grossman
Jonathan Grossman

PROOF OF SERVICE

I declare that I am over the age of 18, not a party to this action and my business address is 95 S. Market Street, Suite 570, San Jose, California 95113. On the date shown below, I served the within *PETITION FOR EXTRAORDINARY WRIT* to the following parties hereinafter named by:

__X__ BY ELECTRONIC TRANSMISSION - I transmitted a PDF version of this document by electronic mail to the party(s) identified on the attached service list using the e-mail address(es) indicated.

Served electronically via TrueFiling.com:

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__X__ BY MAIL - Placing a true copy thereof, enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at San Jose, California, addressed as follows:

Clerk of the Superior Court
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Clarence Darrow
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[attorney for Lord C.]

I declare under penalty of perjury the foregoing is true and correct. Executed this 14th day of November 2020, at San Jose, California.

/s/ Jonathan Grossman
Jonathan Grossman