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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN THE COUNTY OF SANTA CLARA

In re _____,) No. JD0
A person Coming Under the Juvenile Court Law,)
_____) **POINTS AND AUTHORITIES IN**
SANTA CLARA COUNTY DEPARTMENT) **SUPPORT OF FINDING**
OF FAMILY AND CHILDREN’S SERVICES) **UNREASONABLE SERVICES**
Petitioner,)
v.)
_____,)
Respondent.)

I. PROCEDURAL BACKGROUND

{Provide a history of the relevant history of the case}

II. LEGAL BACKGROUND

{Generally, keep the introduction and the subparts that apply; adjust the arguments as appropriate. Unreasonable services come in many forms but there are some themes in the case law}

A. Introduction

Welfare and Institutions Code¹ section 366.21 states that if at the six month review hearing,

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

1 “the child is not returned to his or her parent or legal guardian, the court shall determine whether
2 reasonable services that were designed to aid the parent or legal guardian in overcoming the
3 problems that led to the initial removal and the continued custody of the child have been provided
4 or offered to the parent or legal guardian.” (§ 366.21, subd. (e)(8).) The same finding must be made
5 at subsequent review hearings. (§§ 366.21, subds. (f)(1)(A) & (g)(1)(C)(ii), 366.22, subd. (a)(3).)
6 The court cannot schedule a section 366.26 hearing if reasonable services have not been provided.
7 (§§ 366.21, subd. (g)(4), 366.22, subd. (b)(3) (C).) Further, section 366.26 states the court cannot
8 terminate parental rights if “[a]t each hearing at which the court was required to consider reasonable
9 efforts or services, the court has found that reasonable efforts were not made or that reasonable
10 services were not offered or provided.” (§ 366.26, subd. (c)(2)(A).)

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

23 “Family preservation, with the attendant reunification plan and reunification services, is the
24 first priority when child dependency proceedings are commenced.” (*In re Elizabeth R.* (1995) 35
25 Cal.App.4th 1774, 1787.) The “reunification plan, including the social services to be provided, must
26 accommodate the family’s unique hardship. The objective of the plan must be to provide services
27 to facilitate ‘the resumption of a normal family relationship . . .’ [Citation.] and ‘must be designed
28 to eliminate those conditions which led to the juvenile court’s jurisdictional finding.’ [Citation.]” (*Id.*

1 at p. 1790.)

2 The reasonableness of services is judged on content and implementation. As for the content
3 of a case plan, the “effort must be made to provide suitable services, in spite of the difficulties of
4 doing so or the prospects of success.” (*In re Dino E.* (1992) 6 Cal.App. 4th 1768, 1777.) To support
5 a finding reasonable services were provided, “ ‘the record should show that the supervising agency
6 identified the problems leading to the loss of custody, offered services designed to remedy those
7 problems, maintained *reasonable* contact with the parents during the course of the service plan, and
8 made *reasonable* efforts to assist the parents in areas where compliance proved difficult.’ (*In re Riva*
9 *M.* (1991) 235 Cal.App.3d 403, 414.)” (*In re J.E.* (2016) 3 Cal.App.5th 557, 566, emphasis in
10 original; cf. *Patricia W. v. Superior Court* (2016) 244 Cal.App.4th 397, 427 [a “mechanical approach
11 to a reunification plan is not what the Legislature intended” (internal quotation marks omitted)]; *In*
12 *re Taylor J.* (2014) 223 Cal.App.4th 1446, 1452 [“Family reunification services are not ‘reasonable’
13 if they consist of nothing more than handing the parent a list”].)

14 **B. Reasonable Services Were not Provided**

15 **1. The Court cannot delegated too much**

16 While the court may delegate how to implement the case plan, the court has the duty to
17 determine what the parent is expected to do to have the child returned. This is because “the power
18 to regulate visitation between minors determined to be dependent children and their parents rests in
19 the judiciary. The judicial power in this state is vested in the courts. (Cal. Const., art. VI, § 1.) The
20 judicial function is to declare the law and define the rights of the parties under it. . . . and to make
21 binding orders or judgments.” (*In re Jennifer G.* (1990) 221 Cal.App.3d 752, 756, internal quotation
22 marks and citations omitted.)

23 Further, the social worker is required to *identify* specific services. (§ 16501.1, subd. (g)(2).)
24 It is not sufficient to refer the parent to an evaluation with directions to follow the ensuing
25 recommendations of the evaluator. (*In re M.R.* (2020) 48 Cal.App.5th 412, 426-427 [case plan to
26 participate in a substance abuse evaluation and follow the recommendations for substance abuse
27 treatment was an improper].)

28 Improper delegation occurs most often in determining the frequency and length of visitation.

1 (See, e.g., *In re E.T.* (2013) 217 Cal.App.4th 426, 439 [order that the department “create a detailed
2 visitation schedule” was insufficient]; *In re Julie M.* (1999) 69 Cal.App.4th 41, 48-50 [giving minor
3 veto power during reunification was an abuse of discretion].) However, it can arise in other areas.
4 For example, the court can order counseling for an and rely on the reports of the program on the
5 parent’s progress, but it cannot completely delegate when there has been satisfactory progress. (See
6 *Daniel B., supra*, 231 Cal.App.4th at pp. 675-676.) In other words, a determination by the court that
7 the parent failed to comply with reunification services because the program said so amounts to an
8 unjustified delegation of judicial authority.

9 **2. Changes in the case plan left the parent with inadequate time to
10 complete them.**

11 The department must adjust the case plan as new problems arise. (See, e.g., *In re Elizabeth
12 R.* (1995) 35 Cal.App.4th 1774, 1789-1796 [unreasonable services when there was no adjustment
13 to services when the mother became hospitalized].) Nonetheless, services can be unreasonable if the
14 parent is not given enough time to do the services. (See, e.g., *In re M.F.* (2019) 32 Cal.App.5th 1,
15 15-16; *T.J. v. Superior Court* (2018) 21 Cal.App.5th 1229, 1242 [on waiting lists for most of the
16 reunification period]; see also *Rita L. v. Superior Court* (2005) 128 Cal.App.4th 495, 508-509;
17 *Kristin W., supra*, 222 Cal.App.3d at p. 255.)

18 Services can also be unreasonable when the social worker fails to inform the parent of the
19 need to do an essential program. In *Amanda H. v. Superior Court* (2008) 166 Cal.App.4th 1340, the
20 social worker assured the mother and the court she was enrolled in all programs but then argued at
21 the review hearing returning the child would be detrimental based on her failure to enroll in the
22 correct program. (*Id.* at pp. 1346-1347.)

23 **3 Inadequate visitation inhibited reunification efforts**

24 Reunification services can be unreasonable when visitation is unduly limited. (*In re T.W.*
25 (2017) 9 Cal.App.5th 339, 346-348; *Tracy J. v. Superior Court* (2012) 202 Cal.App.4th 1415, 1425-
26 1427; *In re Alvin R.* (2003) 108 Cal.App.4th 962, 973-974.) This can be the result of a failure to
27 progress to more liberal visitation. For example, in *Rita L. v. Superior Court* (2005) 128 Cal.App.4th
28 495, a trial home visit was not arranged until near the end of the reunification period and then

1 delayed beyond the hearing when the court terminated services. (*Id.* at pp. 508-509.)

2 Sometimes, there is a failure to adjust to a change in circumstances. In *In re Brittany S.*
3 (1993) 17 Cal.App.4th 1399, visitation did not occur when the mother was in custody. (*Id.* at p. 1407
4 [“Unfortunately, this appears to be a case where an incarcerated parent was destined to lose her child
5 no matter what she did. We cannot condone such a result.”]; see also *Elizabeth R., supra*, 35
6 Cal.App.4th at pp. 1791-1792 [failure to provide services while the parent was committed to a
7 mental institution].)

8 Sometimes, the difficulty is a child who displays signs of emotional trauma. It is not be
9 acceptable to halt or limit visitation in the hopes that therapy might some day remedy the situation.
10 (*In re Nicholas B.* (2001) 88 Cal.App.4th 1126, 1138; see also *In re Julie M.* (1999) 69 Cal.App.4th
11 41, 49-51.) “It is hard to imagine how the problems faced by this family could be resolved without
12 . . . visitation. To provide the minor and/or his therapist with a veto power over this essential
13 reunification service seems to us to undermine any hope of actual reunification.” (*Id.* at p. 1139.)
14 Instead, it is incumbent on the court to facilitate the means by which visitation can occur without
15 detriment. “Visitation is an essential component of any reunification plan. To promote reunification,
16 visitation must be as frequent as possible. Where the minor is reluctant to visit, and family therapy
17 is needed to promote visitation, such therapy may be critical to reunification.” (*Alvin R., supra*, 108
18 Cal.App.4th at p. 972, citations omitted; *Serena M. v. Superior Court* (2020) 52 Cal.App.5th 659,
19 674 [never received therapeutic visits]; *In re David D.* (1994) 28 Cal.App.4th 941, 953 [“Due to the
20 court’s order prohibiting visitation between this mother and her children, adequate reunification
21 services were not provided.”].)

22 It is important to maintain regular visitation if the child is displaying fear around the time of
23 visits. The proper purpose of supervised visitation is to facilitate visitation when the child is fearful.
24 If reunification efforts are eventually going to be terminated because, in part, there is a lack of a
25 trusting relationship between the child and the parent, then reasonable services would necessarily
26 include efforts to repair and strengthen the relationship. (See, e.g., *Alvin R., supra*, 108 Cal.App.4th
27 at p. 973 [“The longer parent and child live with no visitation, the less likely there will ever be any
28 meaningful relationship.”]; *Kristin W., supra*, 222 Cal.App.3d at p. 255 [“[T]he problems leading

1 to the dependency could only have been resolved by petitioner having some responsibility for the
2 care of the children. The plan’s limitation on visitation prevented petitioner from demonstrating and
3 improving his skills with respect to the care of the children.”].) If the child continues to have little
4 or minimal contact with the parent, then the strain between them only becomes worse. Reasonable
5 services have not been provided when the parent is not given the tools for reunifying with the child.
6 While the wishes of the child are relevant in the court’s visitation ruling, “[i]n no case may a child
7 be allowed to control whether visitation occurs.” (*In re Hunter S.* (2006) 142 Cal.App.4th 1497,
8 1505.)

9 **4. Services failed to account for the parent’s poverty**

10 Services are unreasonable when the parent’s poverty interferes with the ability to do the
11 services. For example, reasonable services are not provided if the parent cannot afford them and
12 financial assistance is insufficient. (*In re Taylor J.* (2014) 223 Cal.App.4th 1446, 1452.) In *David*
13 *B. v. Superior Court* (2004) 123 Cal.App.4th 768, the department was concerned with the parent’s
14 homelessness, but there had been no effort to assist in finding housing. (*Id.* at pp. 795-796; see also
15 *In re D.N.* (2020) 56 Cal.App.5th 741, 763-764; *In re S.S.* (2020) 55 Cal.App.5th 355, 373-379.)

16 **5. Inadequate mental health services inhibited reunification efforts**

17 A case plan is unreasonable when a problem in the dependency is the parent’s mental health
18 issues but there are not adequate services to address them. In *Patricia W.*, *supra*, 244 Cal.App.4th
19 397, the mother ran out of medication and became psychotic. (*Id.* at p. 401.) The only service
20 provided was to schedule two psychological evaluations to determine if she should be denied
21 services. (*Ibid.*) In the meantime, she had on her own her medication refilled, and she was
22 functioning again. The social worker, however, did not investigate whether she could safely care for
23 the child or if services could alleviate the problem. (*Ibid.*) The court concluded reasonable services
24 had not been provided. (*Ibid.*)

25 In *In re K.C.* (2012) 212 Cal.App.4th 323, the department appropriately had the father
26 assessed to determine his mental health needs, but it quickly recommended terminating services
27 when he expressed resistance to taking medication. “It is true that the reasonableness of the services
28 provided may depend to some degree upon the parent’s willingness to cooperate in the completion

1 of his or her reunification plan The psychologist’s report indicated, however, that this
2 less-than-full cooperativeness was itself a product of psychological conditions that might be
3 responsive to pharmacological treatment.” (*Id.* at p. 330.) Due to the Catch-22 that the father’s
4 mental illness was a barrier in him obtaining the help he needed to treat the mental illness, the
5 department was required to make an effort to resolve the problem, such as a medication evaluation.
6 (*Ibid.*)

7 **6. Adequate services must be provided when the parent is in custody**

8 When a parent is incarcerated and offered reunification services, the department must identify
9 the services available to the parent. (*Mark N. v. Superior Court* (1998) 60 Cal.App.4th 996, 1013,
10 superseded by statute on other grounds as stated in *Earl L. v. Superior Court* (2011) 199 Cal.App.4th
11 1490, 1504; *In re Monica C.* (1995) 31 Cal.App.4th 296, 307; *In re Brittany S.* (1993) 17
12 Cal.App.4th 1399, 1406-1407; see also *In re Maria S.* (2000) 82 Cal.App.4th 1032, 1040.) The
13 department cannot delegate to an incarcerated parent the responsibility for identifying the services
14 (*Monica C.*, at pp. 307-308), and it may not simply be concluded reunification efforts are not feasible
15 on the sole ground the parent is incarcerated (see *Elizabeth R.*, *supra*, 35 Cal.App.4th at pp. 1791-
16 1792).

17 **7. Services are inadequate when the parent cannot understand them**

18 Services are unreasonable if the parent cannot understand them. For example, in *In re J.P.*
19 (2017) 14 Cal.App.5th 616, services were in a language the parent could not understand. (*Id.* at pp.
20 625-626.) In *In re Victoria M.* (1989) 207 Cal.App.3d 1317, there was a failure to provide services
21 that the developmentally disabled parent could comprehend. (*Id.* at p. 1327.) Analogously, in *Tracy*
22 *J. v. Superior Court* (2012) 202 Cal.App.4th 1415, there were not services provided to overcome
23 problems with the parent’s physical and developmental disabilities. (*Id.* at p. 1428.)

24 **8. Reasonable services must be provided for a parent being deported**

25 If services have been ordered, the department must make efforts to provide services for a
26 parent being deported. (*In re A.G.* (2017) 12 Cal.App.5th 994, 1003.)

27 **III. THE FACTS SHOW REASONABLE SERVICES WERE NOT PROVIDED.**

1 {Describe here facts that show a how the parent did not receive reasonable services}

2
3 **IV. REMEDY**

4 “[W]here reasonable services have not been provided or offered to a parent, there is a
5 substantial likelihood the juvenile court's finding the parent is not likely capable of safely resuming
6 custody of his or her child may be erroneous. [Citation.] Providing reasonable services is one of ‘the
7 precise and demanding substantive and procedural requirements ... carefully calculated to constrain
8 judicial discretion, diminish the risk of erroneous findings of parental inadequacy and detriment to
9 the child, and otherwise protect the legitimate interests of the parents.’ (*Cynthia D. v. Superior Court*
10 (1993) 5 Cal.4th 242, 256.) Therefore, ‘to meet due process requirements at the termination stage,
11 the court must be satisfied reasonable services have been offered during the reunification stage.’
12 [Citations.]” (*In re M.F.* (2019) 32 Cal.App.5th 1, 19.)

13 Most appellate courts have held that when reasonable services have not been provided, the
14 court shall provide six more months of services. (§§ 366.21, subd. (g)(2), 366.22, subd. (b); *M.F.*,
15 *supra*, 32 Cal.App.5th at p. 23 [beyond the 18 month review hearing]; *J.E.*, *supra*, 3 Cal.App.5th at
16 pp. 564-566 [same]; *Elizabeth R.*, *supra*, 35 Cal.App.4th at p. 1793; *In re Monica C.* (1995) 31
17 Cal.App.4th 296, 310; *Dino E.*, *supra*, 6 Cal.App.4th at p. 1776; contra *Michael G. v. Superior Court*
18 (2021) 69 Cal.App.5th 1133, 1142-1143, review granted Jan. 19, 2022; *Earl J. v. Superior Court*
19 (2011) 199 Cal.App.4th 1490, 1501-1509.) The issue is pending in the Supreme Court in *Michael*
20 *G.* Therefore, the court should order six more months of reunification services be provided.

21 **V. CONCLUSION**

22 The court should find that reasonable services were not provided and order the department
23 to provide six more months of services.

24 DATED: _____

25 Respectfully submitted,
26 OFFICES OF _____

27 By: _____,
28 _____, Esq.
Attorney for _____

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In re _____, JD0_____
POINTS AND AUTHORITIES FOR FINDING OF UNREASONABLE SERVICES