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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re J.P. et al., Persons Coming Under the Juvenile Court Law.	B245326 (Los Angeles County Super. Ct. No. CK 86662)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. MARINA H. et al., Defendants and Appellants.	

APPEAL from a judgment of the Superior Court of Los Angeles County, Debra Losnick, Juvenile Court Referree. Affirmed.

Andrea R. St. Julian, under appointment by the Court of Appeal, for Defendant and Appellant Marina H.

Robert McLaughlin, under appointment by the Court of Appeal, for Defendant and Appellant Francisco R.

John F. Krattli, County Counsel, James M. Owens, Assistant County Counsel, and Sarah Vesecky, Deputy County Counsel, for Plaintiff and Respondent.

Marina H. (mother) and Francisco R. (father) appeal from the juvenile court's judgment terminating their parental rights and freeing their children, J.P., Y.H., and M.R., for adoption.[1] Mother objects to orders and findings made at an earlier hearing on the ground that the court failed to adequately notify her of the requirement to file a writ challenging those earlier orders and findings. She contends the court erred in (1) denying her request to continue the earlier hearing and (2) finding Los Angeles County Department of Children and Family Services (DCFS) provided reasonable reunification services. Father contends the court erred in terminating his parental rights based solely on poverty and homelessness. We affirm.

FACTS AND PROCEDURE

1. Detention of Y.H. and J.P.

In February 2011, DCFS detained newborn Y.H. and then one-year-old J.P. when a referral from a hospital social worker alleged mother had given birth to Y.H. and it was unclear mother would be able to provide for her and her basic needs. Mother appeared to be homeless and did not have any clothing, diapers, or bottles for Y.H. The family had been staying for two to three weeks under a carport at an apartment building where some friends, Edwin and Esperanza L., lived. Mother said she was receiving cash aid and food stamps, but her cash aid had been terminated because she had not filled out the appropriate paperwork in time. She had left J.P. with Edwin and Esperanza. Edwin and Esperanza could not provide the family with a place to live because they did not have room in their one bedroom apartment. At the most, they could provide them with a temporary place to stay for two weeks. Mother thought it might be best if she went to Mexico where some family lived. Mother had no relatives here who could help or be considered for placement.

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[1] Father is the father of Y.H. and M.R. but not J.P. J.P.'s father, Alvaro P., is not a party to this appeal.

While visiting the hospital to pick up Y.H. for placement, the social worker encountered father, who was visiting mother. Father did not have an address to give the social worker. He did not have a job and was trying to find work by standing on street corners. He hoped to find work so he could get an apartment. The social worker gave mother and father referrals to a shelter and parenting classes and tokens for transportation.

DCFS filed the petition as to Y.H. and J.P. in February 2011. In its sustained form, the petition alleged mother had placed the children in a detrimental and endangering situation since November 2010 by causing them to reside on the street and sleep in a carport and had failed to provide them with the basic necessities of life, including food, clothing, shelter, and medical treatment. The court detained the children and ordered monitored visitation for the parents.

2. Adjudication and Disposition as to J.P. and Y.H.

Mother confirmed to DCFS the family was living in a carport, where J.P. slept in a stroller with blankets. They would occasionally rent a room in someone's home for $20 a night or so. Mother collected cans for income. She lost her government aid because the woman whose address they used for mail gave mother her mail late, and she did not get her paperwork done in time. Mother felt it would be best for her to return to Mexico, where she was born and had family. Father denied being homeless and reported the family was sleeping in his brother's car or renting rooms for a night. He provided for J.P. and treated him like a son. Mother did not know where J.P.'s biological father was located. He had not been in J.P.'s life or provided for him since birth. A later due diligence investigation showed he was deported to Mexico in January 2010.

Mother has two adult children and is no longer involved with their father. She immigrated to the United States with him, but they separated because of domestic violence. She believed he was deported due to these domestic violence issues. Mother reported she had been sexually abused during the time she lived in Mexico.

The paternal grandmother of mother's adult children is Christina C. Mother visited Christina C. occasionally with J.P. Christina C. had no idea mother was

homeless. She had told mother before that mother could stay with her -- there was "no need for [mother] to be out on the streets." Christina C. felt mother had bad luck with men. Mother and her kids were welcome to live with Christina C., but because Christina C. did not know father, she would not offer him a home. She noted mother had aunts and her father in Mexico who could also likely help. Father did not want the children living with Christina C. because he did not know her. Both mother and father expressed a willingness to do what was necessary to keep the children.

DCFS gave mother and father free parenting referrals, shelter referrals, and bus passes. Their free parenting class was set to begin in late March 2011, and DCFS had pre-enrolled them. DCFS encouraged mother and father to move into a shelter to facilitate reunification; father refused and insisted they had a place to live, though they could not provide an address or location for where they were residing.

Arranging visitation had been difficult because mother and father had a prepaid cellular phone that appeared to be out of service frequently. DCFS therefore set a regular visitation schedule for every Thursday at 10:00 a.m. Still, the parents had difficulties, either arriving late or not showing at all. As to one visit in March, they did not show up and did not call. As to another, they called 20 minutes after the scheduled time and said they were on their way and had stopped to eat, but they never did arrive.

DCFS noted some issues with communication, mainly because father tried to "control the situation" and did not allow mother to speak to the social worker alone. He became agitated when the social worker interviewed mother alone and made comments like, "[Mother] is not in charge of herself."

The court set the matter for a pretrial resolution conference on March 23, 2011. Mother and father called the social worker that day and said they were on their way to the hearing and left cell phone numbers with the social worker. They did not arrive for the hearing, and counsel was unable to contact them. The court thus continued the hearing. DCFS arranged court transportation for mother and father for the continued hearing. They made their first appearance in the matter and although they did not provide an address or residence, they provided a mailing address on Delano Street in Van Nuys.

The parents did not appear at the next hearing -- the adjudication hearing -- although the court did order them back when they made their initial appearance, and the social worker had shown them how to get to court. The parents' counsel indicated the parties had reached an agreement on the petition, and the court sustained the petition as described above. The court continued the matter for a contested disposition hearing. At the disposition hearing, the court found by clear and convincing evidence there would be a substantial danger to the physical health of the children if they were returned to their parents, and there was no reasonable means to protect their physical health without removal from the parents' custody. The court ordered mother and father to complete parenting classes and attend individual counseling to address case issues, and it ordered a mental health evaluation for mother only. The court appointed an expert to evaluate mother's mental health under Evidence Code section 730 so that the evaluation would be at no cost to mother. It further ordered monitored visits to continue and low- or no-cost referrals and transportation funds for the parents. Mother's counsel requested and the court ordered DCFS to investigate placing the children with maternal great aunts in Mexico.

DCFS conducted the investigation and concluded they could not place the children with their maternal great aunts. The maternal great aunts were 64 and 58 years old and lived mostly on retirement funds. They both suffered from diabetes. They said they did not have the financial means or energy to care for the children. They had raised mother's adult children and felt mother had never taken responsibility for their care. They did not want this to happen with J.P. and Y.H.

DCFS filed an ex parte application after the disposition to obtain an order that father undergo a psychological evaluation. It based the application on concerns over father's "inappropriate, paranoid, and passive aggressive behaviors" towards mother, described as follows. Besides father's insistence that mother not speak to DCFS alone, mother told the social worker father was controlling at times. They had also had a small altercation in the waiting room at the DCFS office in which father was verbally aggressive towards mother and a security guard, father aggressively grabbed mother's

arm, and father opened the women's restroom door several times while mother was attempting to use the bathroom. At one parenting class, father was screaming at mother and calling her names outside the classroom. During one visit in which the parents arrived four hours late, father abruptly stated, "This is an injustice," raised his hands, and began praying for the social worker who was monitoring the visit. During another visit, father said to the social worker, "I know you want [mother] and me to separate." He also asked mother repeatedly during the same visit, "Do you want to be with me or not?" At another visit scheduled for two hours, the parents arrived 25 minutes late and requested to cut the visit 30 minutes short because they had an important engagement. The social worker informed mother during the visit that her psychological exam had been scheduled, after which father interrupted the conversation and accused mother and the social worker of "conspiring against him," of faking the psychological exam so mother could meet up with her ex-husband, and of "planning the entire reunion." When the social worker assured father this was not true, he accused her of lying, and the social worker stepped out of the room. Father accused mother of being unfaithful several times and told her, "You better not be lying to me. I have put up with your lies and infidelity." An aide monitoring the visit had to ask father several times to stop the inappropriate behavior in front of the children.

The court found "just enough of a concern" to grant DCFS's ex parte application and order father to also undergo a psychological exam.

3. Psychological Exams

Dr. Alfredo Crespo performed the psychological exams of mother and father. Dr. Crespo noted he completed the exams with some difficulty because mother and father failed to keep the first three appointments scheduled with him. They arrived for their first appointment late -- in the afternoon when it was scheduled for early morning. For the second appointment, the social worker was going to transport them, but they never arrived at the designated pick-up location. After the second and third missed appointments, father called to apologize, citing work opportunities and oversleeping as the causes. Mother and father showed up for their fourth appointment, though the doctor

was only able to complete half the test. They left his office because they wanted to get something to eat, and they never came back.

Dr. Crespo concluded father "should be enrolled in individual therapy where he can be encouraged to identify concrete, gradual steps he may take to show that he can cooperate with DCFS to ensure the minor's best interests are met. The father should also ideally voluntarily undergo a psychiatric consultation with a Spanish-[s]peaking psychiatrist with access to the present report in order to determine the appropriateness and/or feasibility of psychotropic interventions." The doctor could not rule out the possibility father suffered from "a delusional disorder or from a paranoid personality disorder." He was resistant, defensive, and suspicious during the evaluation. Father attributed his resistance to undergoing an evaluation to concerns he would encounter mother's ex-husband, who is the father of mother's adult children, at the doctor's office. He expressed his belief that DCFS wanted to introduce her ex-husband into the case and wanted mother to live with him. The doctor opined it was reasonable to expect father would "continue to experience difficulty complying with court orders without forcing immediate attention to his suspicions rather than the more concrete, rather obvious problem he has and has had in meeting the basic needs of minors extremely vulnerable due to tender age."

Dr. Crespo concluded mother could benefit from a program for victims of domestic violence that included supportive group therapy and legal aid in applying for United States residence on the basis of her domestic violence victim status. Mother indicated in her evaluation she had been a victim of domestic violence for years by her ex-husband. Dr. Crespo also concluded: "[Mother] is presently rather obviously dependent on the minor [Y.H.]'s father, a person with admitted difficulties functioning in the provider role himself. . . . [¶] . . . The mother does not appear presently able to function independently. As the father's combative and suspicious orientation vis-à-vis the child welfare system may be to some extent reality-based (inasmuch as any efforts to increase her ability to meet the minors' needs may threaten her dependency on him) the

father will likely remain suspicious of any interventions that threatens to decrease the mother's dependency on him by increasing her independence."

4. Six-Month Review

Mother and father were unreliable in their visits with J.P. and Y.H. and made "minimal efforts" towards reunification. The scheduled monitored visits had been modified several times to accommodate their schedules but they had still been chronically unavailable and tardy to visits. They arrived as little as 20 and as many as 50 minutes late to eight visits, three to four hours late for two others, and did not show at all for five visits. They left one hour early during three visits for which they also arrived late. They arrived on time for two visits. Father said it was their employment that prevented them from arriving on time. During the visits, the social worker often had to prompt mother and father to utilize parenting techniques they learned in class, interact with the children, show affection, or be attentive towards the children's needs. At times, mother and father would leave J.P. unattended or disengaged. J.P. and Y.H. would often cry during visits with mother and father. J.P. experienced separation anxiety with respect to his foster parents; he would stand by the door to the waiting room and repeatedly ask to see the foster parents.

As referenced above, father accused mother and the social worker at visits of conspiring against him to reunite mother with her ex-husband. After those accusations, he told the social worker during one visit that mother had something to say. Mother then said, "I want to be with [father]." Father reiterated his accusations that DCFS was trying to separate him from mother. The social worker told him her goal was to assist the children and the parents and asked father to lower his voice and take advantage of the time to visit. A few minutes later, father said, "[Mother,] tell the [social worker] you want to be with me."

DCFS regularly provided mother and father with transportation passes. DCFS offered them transportation as well, such as to their psychological evaluations, to the pretrial resolution conference, and to the six-month review hearing. It also provided them with referrals for local pantries, "ability-to-pay" and "reduced-cost" counseling

referrals, including referrals for domestic violence programs, and housing referrals. Parents reported they still did not have a stable home. DCFS had referred them to the local office of the Los Angeles County Department of Public Social Services (DPSS) office to obtain homeless assistance, but they had not gone.

The instructor for their parenting class reported they did not pass the class because of absences and excessive tardiness. They missed approximately four out of 10 classes, and when they did attend, they would sometimes arrive 15 minutes before the two-hour class ended. DCFS gave them a referral to another free parenting class starting soon. They failed to attend this class.

J.P. and Y.H. were well adjusted in their current placement together. The foster parents had developed a strong bond with them and were loving and affectionate with them. They were attending parenting classes and were active participants in the children's medical, developmental, educational, and speech therapy services.

The parents had notice of the six-month review hearing but did not appear. A DCFS aide had arranged to pick them up at their church and transport them to court. The aide was picking them up at their church because they were staying in a "lean-to shelter" behind the church. The parents were an hour late for their scheduled pick up and did not arrive to court on time because father could not find the key to the chain-link fence around their shelter. DCFS recommended the court terminate reunification services. The court did not rule and set the matter for a contested review hearing.

5. Detention of M.R.

Mother gave birth to M.R. in December 2011, while J.P. and Y.H.'s case was pending. Father is also the father of M.R. The referral alleged mother's other children had been detained for general neglect. The social worker interviewed mother at the hospital after she had given birth to M.R. The social worker did not speak to father because he was working and did not have access to a phone, and mother did not know when he would be back. Mother had not received prenatal services because she did not have transportation or finances to do so. Mother and father had been staying in different locations for the past several months, with friends from church or wherever they could

find a place. They had only been staying in the carport occasionally. Mother did not have a crib, diapers, or formula for M.R., but they would buy what they needed with the money father was making that day at work. Mother planned for her, father, and M.R. to stay with a friend from church, Maria C., when the hospital released her.

DCFS intended to detain and place M.R. in the same foster home with Y.H. and J.P. When mother and father tried to take M.R. from the hospital nursery, the staff told them they could not. They became aggressive and argumentative with the staff but did eventually leave. That same day, they went to the DCFS office to see the social worker. Father threatened to hurt the security guard, slammed his fist into the wall, and became verbally aggressive with the guard. He was escorted out of the office. Maria C. decided she did not want father staying with her. She had offered to let the family stay with her before meeting father. She accompanied the parents to the DCFS office and witnessed father's dispute with the security guard. After that, she did not feel comfortable with the arrangement and would fear for the safety of her child. Mother and M.R. were still welcome, and Maria C. pleaded with mother to stay with her, but father "'ordered' [mother] to shut up and leave with him," which she did.

DCFS filed the petition as to M.R. on December 27, 2011. In its sustained form, the petition alleged M.R.'s siblings were dependents of the court due to mother's failure to provide them with the necessities of life, and mother and father had failed to regularly participate in court ordered individual counseling and parenting classes. The court detained M.R. and ordered family reunification services. It set the matter for adjudication on the same day as the contested review hearing in J.P. and Y.H.'s case.

6. Termination of Reunification Services as to J.P. and Y.H. and Setting of Permanency Planning Hearing

Mother did not make herself available to DCFS for an interview after M.R. was detained. She "appear[ed] content with following father's lead" and listened to his instructions to remain silent. The social worker located and interviewed father near an outdoor storage area turned into a makeshift shack, which was where mother and father had been staying. Before the storage area, they had been staying at an address on

Hazeltine Avenue. They were sharing a room with other people and had been "kicked out" because the city said it was a fire hazard. They did not use the shelter referrals DCFS gave them because they did not "like the kind of people who live in shelters . . . drug addicts, people with serious problems." Father asked DCFS about "Section 8" but no one ever helped him with that. He felt if DCFS could help them in getting a small room, "that would be enough."

Father admitted he and mother had been inconsistent with court ordered programs and visits. They did not go sometimes because mother did not feel well. Other times the people who offered them rides would be working or otherwise busy. They also did not have the money to pay for the classes or sessions. The agencies wanted to charge $10 to $25 for classes. He would "go to the corner" to find work but could not find some for weeks. Sometimes they missed visits because he was trying to find work. Father told the social worker his Bible was his "weapon" and God would punish all involved in this case if he failed to reunify.

During the period since the last review hearing, mother and father continued to be chronically unavailable or tardy to visits. They were 30 minutes to 45 minutes late to the two visits they attended. They did not show up at all for four visits. The foster parents had to cancel one visit because they were ill. The social worker monitoring the visits observed they continued to have difficulties demonstrating appropriate parenting skills, and she had to redirect them often. The social worker terminated one visit because father became verbally aggressive with a security guard in front of the children. Father was upset because DCFS had reported his aggressiveness with mother to the court, and he accused the social worker of reporting lies.

DCFS again provided mother and father with monthly transportation funds and referrals for housing, parenting classes, and counseling, as well as for food pantries and the Los Angeles County Department of Mental Health (DMH) homeless outreach program. The parents told DCFS they had enrolled in parenting classes, but they could not provide evidence of their enrollment or information about the classes, such as when and where they occur. A worker with the homeless outreach program contacted the

social worker because she had encountered father living in his makeshift dwelling. The outreach worker offered father assistance with housing and he refused it. He denied having children or a spouse.

Mother and father did not appear at the contested review hearing, which was also supposed to be the adjudication hearing on M.R. DCFS had arranged to pick up mother and father and transport them to court. The worker who was supposed to pick them up was involved in an automobile accident the day before the hearing and was unable to take them as arranged. The worker called father the day before the hearing and informed him they would need to get to court themselves. Father's counsel requested a continuance of the hearing. The court continued the adjudication of the petition on M.R. because it was unclear whether the parents had been properly served with the petition, but it denied the request to continue the contested review hearing on J.P. and Y.H. The parents had received proper notice of the contested review hearing. The court noted the parents failed to appear more often than not at hearings even though they had notice of them. The court stated: "I don't think good cause exists in this case. If this were the very first time the parents had ever been to the court system, I might have a different opinion. Parents have been coming to this court at least since February of 2011. That is at least a full year. I think they need to know that alternative plans -- transportation plans may be needed. They were given 24-hour notice. They have been given transportation funds."

Mother's counsel requested further reunification services and argued she had been visiting "consistently." Father's counsel argued the primary reason he could not comply with court orders was that he could not afford to pay for the services or secure housing. The court noted neither parent had complied with the case plan and found reasonable services had been provided. It found there was a substantial risk of detriment in returning the children to either parent and terminated reunification services. The court set the matter for a permanency planning hearing and a contest on termination of parental rights. The clerk's office served the parents with their writ notices five days after the hearing, at 6939 Hazeltine Avenue, No. 7.

7. Adjudication and Disposition as to M.R.

DCFS again provided the parents with bus passes, but they continued to be tardy and unavailable for scheduled visits. They did not appear for three visits. They called and said they were one and a half hours late for another visit; DCFS rescheduled it. They were 30 to 40 minutes late for the two visits they attended. They informed the social worker they were also going to end both of those visits early. The first visit ended when father threatened to attack and used foul language with another father who was visiting his children in the same play room. The social worker terminated that visit.

At the adjudication and disposition hearing on M.R., the court sustained the petition and declined to order reunification services for the parents and M.R. pursuant to Welfare and Institutions Code section 361.5, subdivision (b)(10) (reunification services need not be provided when the court finds by clear and convincing evidence that it terminated reunification services for any siblings because the parents failed to reunify with the siblings and the parents have not made a reasonable effort to treat the problems that led to removal of the siblings).[2] The court ordered monthly monitored visits for both parents and M.R. At the hearing, father and mother stated their mailing address was 6939 Hazeltine Avenue, No. 11.

8. Permanency Planning Hearing and Termination of Parental Rights

The parents' pattern with respect to visitation continued. They were on time for one visit. They were 20 to 35 minutes late to two visits, and they did not appear for one visit. The children were irritable and crying during the visits and repeatedly asked to see the foster parents. Father spoke negatively to mother in front of the children. For example, when the children were crying, he said, "[Mother,] if you were a good mother the children would not be crying." Mother rarely spoke during the visits. DCFS's proposed permanent plan for all three children was adoption by their foster parents, who had a strong bond with the children and desired adoption.

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[2] Further undesignated statutory references are to the Welfare and Institutions Code.

At the permanency planning hearing, counsel for both parents argued they had done their best to keep in contact with the children but they struggled with limited resources, and they objected to termination of their rights. The court found there was no showing the children would benefit from an ongoing relationship with the parents such that it should not terminate their parental rights. It further found the children were likely to be adopted and were adoptable, and it therefore terminated parental rights and selected adoption as the permanent plan. Mother and father timely appealed.

DISCUSSION

1. Challenges to Orders/Findings at the Referral Hearing

Mother challenges certain orders or findings the court made at the hearing terminating reunification services for J.P. and Y.H. and setting the matter for permanency planning, which we will call the "referral hearing." She argues the court failed to timely serve her with a writ notice after the referral hearing such that we may review the orders and findings in this appeal. She further argues the court erred at the referral hearing by (1) denying her request to continue and (2) finding she had been provided reasonable reunification services. Because of these errors, mother asserts we must reverse all the orders the court made at the referral hearing. Father joins in these arguments. We assume the parents did not receive sufficient notice of the writ requirement after the referral hearing and review the merits of their contentions. Having done so, we conclude (1) the court did not err in denying the continuance request, and (2) the parents forfeited their argument regarding reasonable services, and even had they not, the court did not err.

a. The Writ Requirement

Section 366.26, subdivision (*l*) bars review of an order setting a permanency planning hearing unless the parent has sought timely review by extraordinary writ. (*In re Rashad B.* (1999) 76 Cal.App.4th 442, 447.) If the parent does not comply with the writ requirement, we may not review the order on appeal from the final order terminating parental rights. (§ 366.26, subd. (*l*)(1), (2); *Joyce G. v. Superior Court* (1995) 38 Cal.App.4th 1501, 1507.) This writ requirement applies to all "findings subsumed within" the order setting a permanency planning hearing. (*Joyce G. v. Superior Court*,

supra, at p. 1507, fn. 3.) Because mother and father were not present at the referral hearing, the court was required to advise them of the writ requirement by first-class mail at their last known address within one day of the referral hearing. (§ 366.26, subd. (*l*)(3)(A); Cal. Rules of Court, rule 5.590(b)(2).) If the juvenile court, through no fault of the parent, fails to give the parent timely, correct notice of the writ requirement, we may review the orders and findings of the referral hearing on appeal from the order terminating parental rights. (*In re Cathina W.* (1998) 68 Cal.App.4th 716, 722, 724.)

The parents assert the court sent the writ notice to the incorrect address -- it went to 6939 Hazeltine Avenue, No. 7, when the parents had designated unit No. 11 as their mailing address. Moreover, they assert, the notice was untimely because the court mailed it five days after the referral hearing. It is unclear from the record whether mother and father are without fault for the court sending the writ notice to No. 7 as opposed to No. 11. Mother and father informed the court at their first appearance they would use a mailing address on Delano Street. The court then advised them to notify the court, their attorneys, and DCFS in writing if they changed their mailing address. The record does not contain a written notice from the parents changing their mailing address.

At some unidentified point, the parents began using the Hazeltine address. The first mention of a Hazeltine address in the clerks transcript appears to be in DCFS's ex parte application for a psychological evaluation of father in August 2011. The ex parte application lists mother's last known address as 6939 Hazeltine Avenue, No. 7. A report filed by DCFS in October 2011 lists the same address for both parents, and the petition on M.R., filed in December 2011, lists the same address. Various reports filed by DCFS after that and before the referral hearing list the same address. The referral hearing took place on January 12, 2012, and the court sent the writ notices five days later. It was not until February 24, 2012, when the parents appeared at the adjudication on M.R.'s petition, that the parents orally advised the court of their mailing address at 6939 Hazeltine Avenue, No. 11. While it is possible the parents inadvertently communicated the wrong address to DCFS before, it is also possible DCFS took down the address wrong. None of the parties shed any light in their briefing on who bears responsibility

for the error. The real problem is that we have no written record of the change of address, which could conclusively determine the issue.

The parties do not dispute the clerk untimely mailed the writ notices. But DCFS asserts the delay was not prejudicial because the parents' time for filing a "notice of intent to file a writ petition" did not commence running until the clerk mailed the writ notices, whether the mailing was late or not. (Cal. Rules of Court, rule 8.450(e)(4)(B).) We will assume for the sake of argument that either the incorrect address or the untimely notice renders the orders and findings at the referral hearing reviewable on this appeal.

b. The Request to Continue the Referral Hearing

The parents contend the court should have granted their counsel's request to continue the referral hearing. Under section 352, the juvenile court may continue a hearing upon the request of a parent for good cause shown and "only for that period of time shown to be necessary by the evidence." (§ 352, subd. (a).) The court shall not grant a continuance "that is contrary to the interest of the minor." (*Ibid.*) "In considering the minor's interests, the court shall give substantial weight to a minor's need for prompt resolution of his or her custody status, the need to provide children with stable environments, and the damage to a minor of prolonged temporary placements." (*Ibid.*) We review the court's ruling on a request for a continuance for abuse of discretion. (*In re B.C.* (2011) 192 Cal.App.4th 129, 143-144.)

The court did not abuse its discretion when it found good cause for a continuance did not exist in this case. Counsel's request for a continuance of the referral hearing was based on mother's and father's absence at the hearing. The parents had notice of the hearing. DCFS had arranged for an employee to pick them up and transport them to court. When that employee became unavailable because of an automobile accident the day before the hearing, DCFS informed father the day before the hearing that the parents would need to get to court themselves. The record shows DCFS provided them with monthly bus passes since the beginning of the case, including for the month in which the referral hearing took place. Still, the parents were late to or missed many visits and court hearings, including this one. Even when they had transportation through DCFS, they did

not always appear for appointments. For instance, they missed the six-month review hearing, which was the hearing before the referral hearing, because they were one hour late for their pick-up by the DCFS employee who was transporting them to court. This was so even though the employee went to the location where they were living in a makeshift shelter. The parents demonstrated a pattern of not appearing despite notice of proceedings. Moreover, counsel argued the parents' case at the referral hearing by requesting further reunification services and arguing they could not comply with court-ordered programs because of lack of resources. Counsel made no showing that the parents' presence would have impacted their strategy.

Under all these circumstances, we cannot say the court abused its discretion in denying a continuance, especially given the substantial weight the court must give to prompt resolution of the children's custody status and the need to provide them with stable environments. The children had been living with nonrelative foster parents for nearly a year while mother and father had been visiting sporadically and otherwise making minimal efforts in the reunification services offered to them. The court had to consider the children's interest in a permanent plan. Given the parents' track record, there was no guarantee they would have appeared at a continued hearing. The court did not err. (*In re Angela R.* (1989) 212 Cal.App.3d 257, 265-266 [juvenile court did not abuse its discretion in denying mother's request for a continuance of permanency planning hearing when mother had notice of hearing date but did not attend].)

c. Reasonable Reunification Services

The parents contend DCFS failed to offer them reasonable reunification services because the services did not address their lack of resources, which was the basis for dependency jurisdiction. DCFS contends the parents waived this argument by failing to raise it below. "'A party forfeits the right to claim error as grounds for reversal on appeal when he or she fails to raise the objection in the trial court. [Citations.] Forfeiture, also referred to as "waiver," applies in juvenile dependency litigation and is intended to prevent a party from standing by silently until the conclusion of the proceedings. [Citations.]' [Citation.] A party may not assert theories on appeal which were not raised

in the trial court." (*Kevin R. v. Superior Court* (2010) 191 Cal.App.4th 676, 686.) Although both parents objected to the termination of reunification services, neither one contended below DCFS had not provided reasonable services. They have thus forfeited the argument. (*In re Joy M.* (2002) 99 Cal.App.4th 11, 17 [father forfeited claim that evidence was insufficient to deny reunification services by failing to object to evidence in juvenile court].)

Even if the parents had not forfeited this claim, we would find no error. Under section 361.5, the juvenile court shall order the social worker to provide child welfare services to children and the children's parents whenever the court removes children from their parents' custody. (§ 361.5, subd. (a).) When the children are under three years old when initially removed, family reunification services shall be provided for six months from the dispositional hearing but no longer than 12 months from the date the children entered foster care, unless the children are to be returned to the home of the parents. (§ 361.5, subd. (a)(1)(B), (3).) At the status review hearings, if the court does not return the children to their parents, "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).)

"'Reunification services implement "the law's strong preference for maintaining the family relationships if at all possible." [Citation.]' [Citations.] Therefore, reasonable reunification services must be offered to a parent." (*Mark N. v. Superior Court* (1998) 60 Cal.App.4th 996, 1010.) "The adequacy of a reunification plan and of [DCFS]'s efforts are judged according to the circumstances of each case. [Citation.] With respect to the plan itself, '[e]ach reunification plan must be appropriate to the particular individual and based on the unique facts of that individual. [Citations.]' [Citation.] . . . [Citation.] '[T]he focus of reunification services is to remedy those problems which led to the removal of the children. . . .' [Citation.] '[T]he record should show that [DCFS] 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 when] compliance proved difficult . . . .' [Citation.]" (*In re Ronell A.* (1996) 44 Cal.App.4th 1352, 1362.) "'In almost all cases it will be true that more services could have been provided more frequently and that the services provided were imperfect. The standard is not whether the services provided were the best that might be provided in an ideal world, but whether the services were reasonable under the circumstances.' [Citation.]" (*In re Julie M.* (1999) 69 Cal.App.4th 41, 48.)

We review for substantial evidence the court's finding that reasonable reunification services were provided. (*In re Julie M., supra*, 69 Cal.App.4th at p. 46.) "We construe all reasonable inferences in favor of the juvenile court's findings regarding the adequacy of reunification plans and the reasonableness of [DCFS]'s efforts." (*Ibid*.)

Here, substantial evidence supported the court's finding that the parents were provided with reasonable reunification services. The sustained allegations were that mother had placed J.P. and Y.H. in a detrimental and endangering situation by causing them to sleep in a carport and failing to provide them with the basic necessities of life, including food, clothing, and shelter. (§ 300, subd. (b) [jurisdiction exists if the child "has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of . . . the willful or negligent failure of the parent or guardian to provide the child with adequate food, clothing, shelter, or medical treatment"].) There were no allegations against father in the petition, but he was a custodial parent, as the family lived together. The court ordered reunification services for both mother and father. The court ordered parenting classes, individual counseling to address case issues, mental health evaluations, low- or no-cost referrals, and transportation funds for both parents. Additionally, the court ordered regular visitation, which "is an essential component of a family reunification plan." (*Kevin R. v. Superior Court, supra*, 191 Cal.App.4th at p. 691.)

The parents contend the services did not adequately address their lack of resources, and it was this lack of resources that prevented them from using most of the services offered to them. They contend they were forced to work most of the time to

secure the most minimal of food and housing and did not have time or money to travel to and attend parenting classes, therapy, or visits. The record does not support the charge that DCFS's failure to provide reasonable services is responsible for their noncompliance with the case plan. DCFS gave the parents food pantry referrals. It is unclear whether the parents ever used those. It also gave the parents shelter referrals. They did not take advantage of those shelter referrals because they insisted they had a place to live, and father later told the social worker they did not like the type of people who went to shelters. DCFS also referred them to the DPSS homeless assistance programs, which they again did not use. And DCFS referred them to the DMH homeless outreach program. An outreach worker actually contacted father, and he refused her help. We also note DCFS investigated possible homes for mother and the children with friends. DCFS interviewed Christina C., the paternal grandmother of mother's adult children, and Maria C., mother's church friend. Father did not want mother living with either, so mother rejected those offers. The parents complain DCFS did not do enough to help them, but they consistently rejected the help offered.

To the extent mother was merely following father's lead due to an inability to challenge father, DCFS cannot be faulted for this either. Dr. Crespo evaluated her at no cost, and he recommended a program for victims of domestic violence. DCFS referred both parents to no-cost and low-cost counseling programs, including domestic violence programs, which might have addressed some of the issues mother had with overdependence on father. The parents never went to counseling, despite the fact DCFS gave them no-cost and low-cost referrals and regularly provided them with free monthly transportation passes. They demonstrated similar behavior with respect to parenting classes. DCFS enrolled them twice in free parenting classes; they missed almost half of the first session and arrived very late to the classes they did attend, and they never attended the second session of classes. This is to say nothing of their minimal efforts to visit the children, an essential component of family reunification. They missed or were tardy or left early for the majority of their visits. The claim that the parents had no time to do these things because they had to work so much just to get food and housing is

undercut when DCFS offered them help with food pantries and homeless services, but the parents refused it. DCFS needs to provide parents with skills or resources to remedy the cause of problems, not eradicate the problems themselves. (*In re Riva M.* (1991) 235 Cal.App.3d 403, 414.) That much is up to the parents, who must cooperate. "Reunification services are voluntary, and cannot be forced on an unwilling or indifferent parent." (*In re Jonathan R.* (1989) 211 Cal.App.3d 1214, 1220.) The court did not err in finding the parents had been provided reasonable services.

Given our resolution of this issue, we need not address mother's remaining contentions that the error in finding reasonable services infected the court's orders (1) terminating reunification services as to J.P. and Y.H., (2) denying reunification services as to M.R., and (3) terminating her parental rights. These arguments are moot.

2. The Court's Termination of Parental Rights

Father contends the court erred in terminating his parental rights because the order was based "solely upon the parents' chronic poverty and homelessness." Mother joins in this argument. The parents' argument relies on faulty premises. We conclude the court did not err in terminating parental rights.

The parents' argument relies largely on our opinion in *In re G.S.R.* (2008) 159 Cal.App.4th 1202 (*G.S.R.*). *G.S.R.* teaches that before a court terminates parental rights, due process requires the court to find, by clear and convincing evidence, that a parent is unfit. (*Id.* at pp. 1205, 1210-1211.) California's dependency system comports with the requirements of due process because, by the time a court terminates parental rights, the court must have made prior findings that the parent was unfit. (*Id.* at p. 1211.) "'[T]he grounds for initial removal of the child from parental custody have been established under a clear and convincing standard [citation]; in addition, there have been a series of hearings involving ongoing reunification efforts and, at each hearing, there was a statutory presumption that the child should be returned to the custody of the parent. (§§ 366.21, subds. (e), (f), 366.22, subd. (a).) Only if, over this entire period of time, the state continually has established that a return of custody to the parent would be detrimental to the child is the section 366.26 stage even reached.'" (*G.S.R.*, *supra*, at

p. 1211, quoting *Cynthia D. v. Superior Court* (1993) 5 Cal.4th 242, 253.) These findings of detriment equate to a finding that the parent was unfit. (*G.S.R.*, *supra*, at p. 1211.)

In *G.S.R.*, we held the order terminating the father's rights violated due process because there was no judicial finding he was unfit, nor could there have been -- the record did not support a finding of detriment. (*G.S.R.*, *supra*, 159 Cal.App.4th at pp. 1212, 1214-1215.) The father was both a nonoffending and noncustodial parent. (*Id.* at p. 1211.) He had a history of domestic violence and substance abuse, but the evidence showed he had resolved those issues before the court took jurisdiction. (*Ibid.*) He had been involved with his children throughout their lives, provided financial support, visited regularly, participated in their schooling, and maintained contact with DCFS even when he lacked a place to live. (*Id.* at p. 1212.) The court ordered him to attend Alcoholics Anonymous (AA) meetings as part of the case plan, which he did for 20 weeks and then stopped. (*Id.* at pp. 1207, 1212-1213.) The court made detriment findings at two review hearings based on the father's lack of housing and failure to attend AA meetings. (*Id.* at pp. 1207, 1208, 1213.) We concluded the record strongly suggested the *only* reason the father did not obtain custody of his children "was his inability to obtain suitable housing for financial reasons" because his sobriety was never in issue, and there was no evidence his failure to attend AA meetings endangered the children. (*Id.* at pp. 1212, 1213.) We held the father's lack of housing and poverty alone could not support a finding of detriment, particularly when DCFS might have assisted the father to obtain affordable housing but did not do so. (*Id.* at p. 1213.) We reversed the order terminating parental rights and remanded the case to the juvenile court with instructions to "revisit the issue of whether, based on [the] facts and circumstances as they exist *at this time*, there exist legally sufficient grounds to find it would be detrimental to return the boys to [the father], recognizing poverty is not such a ground." (*Id.* at p. 1215.)

Based on the record before us, we reject the parents' implication that the court violated their due process rights as in *G.S.R.* The facts and circumstances here are distinguishable from *G.S.R.* Unlike the appealing parent in *G.S.R.*, mother was an

offending and custodial parent, and while the court did not sustain allegations against father, he was a custodial parent. The court made a finding at the disposition hearing, by clear and convincing evidence, that there was a substantial danger to the children's physical health if they were returned to their parents' custody, and the court therefore placed them in DCFS's custody for suitable placement. At the referral hearing, the court found a substantial risk of detriment if it were to return the children to the parents' custody. (§ 366.21, subd. (e).)

The court's detriment finding satisfied due process because it was both supported by substantial evidence and it was not based on the parents' poverty or lack of housing. (*In re P.A.* (2007) 155 Cal.App.4th 1197, 1212 [court's findings removing child from nonoffending father at disposition hearing and denying him reunification services were sufficient to satisfy due process before terminating parental rights]; *Angela S. v. Superior Court* (1995) 36 Cal.App.4th 758, 763 [court's detriment finding reviewed for substantial evidence].) The failure of parents to participate regularly and make substantive progress in court-ordered programs is prima facie evidence that return would be detrimental. (§ 366.21, subd. (e).) Moreover, in making the detriment determination, the court must consider the efforts and progress demonstrated by the parents and the extent to which they have availed themselves of services provided. (*Ibid.*) Here, the evidence shows the parents failed to meaningfully participate in reunification services. They missed much of the time set aside for visits. When they did visit, the visits often did not go well. The children were crying and irritable, and the social worker often gave the parents direction on how to interact with the children. Their irregular and minimal visiting and their failure to attend the free parenting classes no doubt contributed to their lack of progress with the children. The parents also eschewed assistance with housing, which could have helped stabilize their situation and free up time for other reunification services. And they never utilized the free and low-cost referrals for counseling. As Dr. Crespo found, both of the parents could have benefitted from counseling. Mother seemed overly dependent on father and unable to accept help when father objected to it. Father, for his part, demonstrated inappropriately aggressive and troubling behavior toward DCFS workers,

another parent visiting with his children, hospital workers, and mother. He also demonstrated an odd and unfounded belief that DCFS was trying to reunite mother with her ex-husband in offering her services.

These circumstances present a situation much different than that in *G.S.R.*, where the father provided financial support for his children, participated in their schooling, attended AA for 20 weeks even though he had no demonstrated sobriety issues, and visited the children regularly. There was no indication the visits went poorly or the father demonstrated any type of inappropriate behavior. There was also no indication the father did not comply with the case plan, apart from his eventual failure to attend the totally unnecessary AA meetings. Moreover, DCFS never attempted to assist the father in *G.S.R.* with housing, whereas here DCFS offered and the parents refused. Because the *G.S.R.* record did not support a finding of detriment, we remanded the case for the court reconsider the issue, noting that homelessness due to a lack of financial resources could not support a detriment finding. There would be no purpose in remanding here, as the record supports a detriment finding that is not based on poverty, especially when DCFS essentially made it free for the parents to comply with their case plan.

DISPOSITION

The judgment is affirmed.

FLIER, J.

WE CONCUR:

BIGELOW, P. J.

GRIMES, J.