Filed 12/18/17 S.N. v. Superior Court CA2/4

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

S.N., Petitioner, v. LOS ANGELES COUNTY SUPERIOR COURT Respondent; LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Real Party in Interest.	B283982 (Los Angeles County Super. Ct. No. DK18159)

ORIGINAL PROCEEDING in mandate. Stephen C. Marpet, Temporary Judge. Pursuant to Cal. Const., art. VI,

§ 21.) Petition granted.

Law Office of Danielle Butler Vappie, Christina Samons and Zane S. Zeidler, under appointment by the Court of Appeal, for Petitioner.

No appearance for Respondent.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, Jacklyn K. Louie, Deputy County Counsel, for Real Parties in Interest Los Angeles County Department of Children and Family Services.

In this extraordinary writ proceeding, S.N. (father) challenges the juvenile court's order terminating his reunification services with his young daughter, D.N., and setting her dependency case for a permanency hearing. Father contends substantial evidence did not support the court's implicit finding that the Los Angeles Department of Children and Family Services (DCFS) provided him with reasonable reunification services. We agree.

The court ordered reunification services for father if and when he apprised DCFS of his whereabouts. Father alerted DCFS to his whereabouts in local custody in February 2017, four months before the six-month review hearing. He also informed DCFS at that time that he had enrolled in classes in jail and wanted to reunify with D.N. Father was not provided with guidance or assistance in locating services that complied with his case plan, nor was he provided any visitation with D.N. At most, the record demonstrates that DCFS called the jail once to verify father's participation in classes (and did not follow up when it received no response over the next four months), sent a social

worker to the jail for one or two undocumented "face-to-face visits" of unspecified duration and content with father, and made inquiry into father's Native American heritage. These efforts at reunifying father with D.N. were not reasonable under the circumstances, and we reject DCFS's suggestion that the deficiency was warranted due to father's early absence from the case and lack of effort at reunification.

FACTUAL AND PROCEDURAL HISTORY[1]

D.N., then two, and her maternal half-siblings J. (then 11), Sh., and Sk. (both then 9), came to the attention of DCFS on June 20, 2016. A reporting party informed DCFS that father pulled a knife on mother and threatened to kill her in the presence of the three older children. The three older children, father's stepchildren, independently told the DCFS children's social worker (CSW) that father threatened to kill mother and that J. broke up the argument by brandishing a knife at father.

While investigating the knife incident, DCFS learned of several other incidents involving the family. On the same day as the knife incident, J. was punched in the chest or stomach when father instigated a fistfight at a pawn shop. In January 2015, mother and father had an altercation during which father grabbed mother by the neck with both hands and left "large visible scratch marks and abrasions to her neck and chest." Sk. and J. reported separate, earlier incidents during which father

---

[1] Father and DCFS have set out the complete history of the juvenile court proceedings in their briefs. We include here only the facts most pertinent to the issues presented, the adequacy and termination of the reunification services provided to father. A more thorough recitation can be found in our recent opinion addressing mother's appeal from the court's dispositional order. (See *In re D.N.* (Sept. 11, 2017, B279596) [nonpub. opn.].)

"threw" Sk. Both Sh. and Sk. reported being fearful of father, particularly when he was mad.

During a June 22, 2016 interview with a CSW, mother denied domestic violence between father and herself, and between father and the children. Mother told the CSW that father had been living in a sober living home since his release from jail approximately two weeks earlier. She denied having contact information for the sober living home or for father, who she said did not have a phone. Nevertheless, mother reported that father had an overnight visit with D.N. over Father's Day weekend (June 18-19) before returning to the sober living home. Mother further reported that she and D.N. visited with father at a park near the sober living home "several times a week" and had plans to do so on Friday, June 24. The CSW provided mother with her contact information and asked mother to provide it to father. Mother said she would. A few days later, mother told the CSW she gave father the CSW's information.

The CSW contacted father's probation officer on June 23, 2016. The probation officer reported that father was in violation of his probation conditions, which included drug testing, a 52-week domestic violence program, and a one year residential program at a sober living home. The probation officer did not have any information about father's whereabouts or contact information; he reported that a warrant was going to be issued for father's arrest. The CSW also contacted father's parents, the paternal grandparents. Paternal grandmother stated she had not seen father in two years and did not know his whereabouts, but believed he was participating in a drug and alcohol program. Paternal grandfather reported that he did not have a close

relationship with father and had not seen him for four months, though he had spoken to him on Father's Day.

Despite the consensus that father was nowhere to be found and unable to be contacted, he submitted to an on-demand drug test on June 27, 2016. His test result was negative. The record also indicates that the CSW was able to obtain a phone number for father and called him on June 29, 2016, "but was unable to leave a message because the voicemail box is not set up." There is no indication that DCFS made any additional attempts to contact father at this phone number.

DCFS detained D.N. on June 29, 2016 and placed her with paternal grandmother.[2] On July 5, 2016, DCFS filed a petition under Welfare and Institutions Code section 300,[3] alleging D.N. was a child described by subdivisions (a), (b), and (j) due to domestic abuse between the parents, father's abuse of Sk. and Sh., and father's substance abuse. Father was not provided with notice of the July 5, 2016 detention hearing and did not appear.

At the detention hearing, the juvenile court found that DCFS had established a prima facie case for detaining D.N. and placed her with paternal grandmother. The court also found that father was D.N.'s presumed father and ordered "appropriate family reunification services" for both him and mother. In light of mother's claims that father was living in a sober living home, the court ordered DCFS "to confirm that the father is currently in an in-patient substance abuse counseling facility." Upon such

---

[2] D.N.'s three older half-siblings lived with their father, who had full legal and physical custody of them pursuant to a Conciliation Court agreement and stipulated order. The dependency petition in this case concerned only D.N.

[3] All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

confirmation, the court ordered DCFS "to provide the father appropriate reunification service referrals." DCFS also was permitted to "look into allowing appropriate monitored contact for him at the DCFS office" or other approved setting. The court further directed DCFS to provide notice of the orders to Royal Palms sober living home, and to conduct a due diligence search for father. The court set the adjudication hearing for August.

DCFS submitted a declaration of due diligence in advance of the scheduled August hearing. This report documented DCFS's efforts to locate father, including searching various databases, including those covering jails and prisons; sending contact letters to 14 addresses associated with father; and calling various phone numbers associated with him (but not the one the social worker previously called). In its separate jurisdiction/disposition report, DCFS noted that it had contacted Royal Palms, the sober living home at which father purportedly was residing. An employee there reported that father checked into the facility on June 14, 2016, left the same day, and had not returned. DCFS also reported that the probation office had revoked father's probation and issued a warrant for his arrest. DCFS noted that father "has not made himself available to be interviewed for this report."

Despite its inability to locate father, DCFS expressly disclaimed reliance on section 361.5, subdivision (b)(1) of which states that reunification services need not be provided to a parent if the court finds by clear and convincing evidence "that the whereabouts of the parent . . . are unknown." It recommended that father receive family reunification services including parenting education, drug testing, substance abuse treatment, domestic violence classes, and individual counseling. It further

recommended that father receive monitored visitation, contingent upon his contacting DCFS.

The court continued the adjudication hearing to September. DCFS filed a last-minute information in advance of that hearing reporting that there had been no additional responses to its due diligence efforts and that father's whereabouts remained unknown. DCFS also provided the court with a report from a Multi-Disciplinary Assessment Team meeting, which indicated that mother had been referred to and was participating in services. Father did not participate in the meeting, and no such referrals were made for him.

At the September hearing, a deputy sheriff informed the court that father had been located in state custody. The court ordered DCFS to prepare and submit a statewide removal order for father on November 30, 2016, the date to which it continued the adjudication hearing. The court "set a trial setting hearing on 10-19-16 solely to allow [DCFS] to confirm the father[']s place of incarceration." The court further indicated it "intends to appoint counsel for father on that date."

In advance of the October 19, 2016 trial-setting hearing, DCFS filed a last-minute information in which it reported that it was unable to locate father in state or local custody. According to DCFS, "Searches on the Statewide and Sheriff's Department inmate locators on 9/28/2016, 10/5/2016, and 10/13/2013 [*sic*] did not locate father. The Sheriff's Dept. inmate locator indicates that father was released on 6/7/2016." DCFS further reported that the probation office also was still looking for father; the bench warrant for his arrest remained in effect.

The last-minute information also reported, however, that "father accompanied mother to a monitored visit on 9/21/2016.

Paternal grandmother had informed CSW Wallace about the visit prior to it taking place and was instructed by CSW Wallace not to permit father to participate in the visit without first speaking to CSW Wallace. Paternal grandmother told DI [dependency investigator] CSW Bussell that she allowed father to participate in the visit without obtaining permission from CSW Wallace. Paternal grandmother stated she does not have an address or telephone number for father." Mother also denied having any information about father's whereabouts. "When asked about the 9/21/2016 visit, mother denied participating in a visit with father and stated that the last time they participated in a visit together was on Father's Day (6/19/2016), prior to [D.N.] being detained from mother." DCFS "respectfully request[ed] that the Court admonish paternal grandmother to follow the Court's orders regarding visitation and to prohibit father from visiting [D.N.] without first making contact with DCFS."

Father did not appear at the October 19, 2016 hearing. The minute order states, "The court is informed that the father is not in custody. The Dept [is] to follow up on notice to the father by the next hearing," which remained scheduled for November 30.

On November 29, 2016, DCFS submitted another last-minute information to the court. DCFS reported that paternal grandmother, D.N.'s current guardian and visitation monitor, "disclosed that father was present with mother during a monitored visit on 11/19/2016." DCFS reminded the court of father's previous unauthorized visit in September and reported that it had revoked paternal grandmother's authorization to monitor mother's visits with D.N.

The adjudication hearing was trailed from November 30 to December 1. Father did not attend. The court sustained all of

the allegations in the section 300 petition and found by clear and convincing evidence that D.N. would face substantial danger if not removed from parental custody. The court ordered DCFS to provide mother with "appropriate family reunification services." It further ordered that "father is also to be offered family reunification services if and or when he contacts the Dept." The court prepared a case plan for father, ordering him to participate in a six-month drug program, random drug testing, a 12-step recovery program, parenting classes, individual counseling, and a 52-week class for perpetrators of domestic violence. The case plan expressly made family reunification services contingent upon father contacting DCFS: "FR services if Father contacts DCFS in Next 6 mo." Father's visits with D.N., "if and or when he contacts the Dept.," were to be monitored and separate from mother's.

The court found June 1, 2017 to be the likely date by which D.N. may be returned to and safely maintained in the home or placed for adoption, appointed a legal guardian, placed permanently with a relative, or placed in another living arrangement. The court cautioned mother that, because D.N. was under age 3 when she was removed from parental custody, the court would likely end reunification services on June 1, 2017 if mother did not make adequate progress. The court set a section 366.21, subdivision (e) hearing for June 1, 2017. The court also set a progress hearing on February 27, 2017 "to allow the Dept to update the court as to how well the mother is doing in her counseling programs, test results, and visits. The report [is] to also address how the child is doing and status of the father's whereabouts."

DCFS filed a last-minute information in advance of the February 27, 2017 progress hearing. It reported that mother and father had been arrested together in early January and were incarcerated in the Orange County Jail. Mother called DCFS to inform it of her incarceration on February 1. She also explained she was unable to participate in any of her court-ordered services while in jail because there was a waiting list to enroll. A CSW confirmed this with the jail.

DCFS also reported that father called a CSW from the Orange County Jail on February 17, 2017; this marked his first effort at formal participation in the proceedings. Father told the CSW he was "participating in drug counseling and parenting" classes at the jail. He also stated, "once he is released he is going to do everything necessary to reunify with [D.N.]." The report continued: "CSW has contacted the jail to confirm father's participation in any services. As of the writing of this report, CSW has not received a return call, however once CSW receives a return call regarding father's participating [*sic*] CSW will notify the court."

Mother appeared at the February 27, 2017 hearing; father did not. The court ruled that all of its previous orders were to remain in full force and effect. The court further ordered "Parent(s) to . . . keep DCFS informed of current address and telephone number," and reminded mother that her reunification services would be terminated in June if she did not comply with her case plan.

DCFS filed a status review report on June 1, 2017. The report, which was dated May 16, 2017, stated that mother told the CSW that father would be released from custody on May 20,

2017 into a one-year in-patient drug program.[4] Mother additionally reported that father "has completed parenting, he is participating in NA/AA meetings and participating in a substance abuse class. He also took and completed an eight week computer course." Nothing in the record suggests DCFS attempted to contact father or his place of incarceration to verify this information. The report merely noted, in verbatim language from the February last-minute information: "On 02/17/2017 CSW received a phone call from father, [S.N.], informing CSW that he was participating in drug counseling and parenting. Father also reported that once he is released he is going to do everything necessary to reunify with [D.N.]. CSW has contacted the jail to confirm father's participation in any services. As of the writing of this report, CSW has not received a return call, however once CSW receives a return call regarding father's participating [*sic*] CSW will notify the court."

Under the heading "Services Provided," DCFS informed the court it "provided the following Family Reunification Services" during "this period of supervision" "monthly face-to-face contact with the child," "maintained contact with mother," "monitors the child's health, safety and well being," "maintained contact with [D.N.]'s therapist," "maintained contact with mother's service providers," "arranged transportation to the last two placements," "provided mother with a bus pass," "submitted a Human Services Adie [*sic*] for mother's monitored visits," and "assessed relatives for placement and visitation monitors." None of these reported efforts pertained to father.

---

[4] Elsewhere in the report, DCFS stated that father was scheduled to be released on June 20, 2017. It is unclear from the record which, if either, date is accurate.

On the subject of father's visitation, DCFS wrote, "CSW was previously informed that father had sporadic visits with [D.N.]. Since the court orders of 12/01/2016 father has not had any visits with [D.N.]. On 01/02/2017 father was arrested and he is currently incarcerated." As for its "contacts" with father, DCFS reported a single phone contact, the call father initiated from the Orange County Jail on February 17. "The face-to-face visit for May 20176 [*sic*] is pending as of the writing of this report."

In its assessment of detriment and likelihood of D.N. returning home, DCFS reported: "Father is currently incarcerated and has not been fully participating. Nor has he been in contact with the child or DCFS prior to his incarceration. However he had one phone contact with DCFS after his incarceration." DCFS also noted that mother "continues to maintain some type of contact with father who is currently incarcerated." DCFS recommended that the court terminate services for both parents and set the matter for a section 366.26 permanency planning hearing.

The June 1, 2017 hearing was trailed to June 2, 2017. Father appeared for the first time in these proceedings at the June 2, 2017 hearing and was assigned counsel. The court continued the hearing to June 8, 2017 to enable father's newly appointed counsel to "review the legal file to see if a notice issue might be argued." On that date, however, the court trailed the hearing "to tomorrow to bring the father in from local custody." On June 9, 2017, "father refused to come to court through local custody." His counsel did not raise any notice issues. The court continued the matter to July 14, 2017 and issued a removal order for father. It also ordered DCFS to "submit an appropriate . . .

report for the next hearing to include updated information and recommendations."

DCFS submitted two last-minute informations in advance of the July 14, 2017 hearing. The first concerned mother's progress in her reunification services and possible visitation monitors and placements for D.N. The second detailed DCFS's efforts to comply with the Indian Child Welfare Act and included the following: "On 07/12/2017 CSW Patricia Hefley went to Men's Central Jail to conduct a courtesy visit for CSW Andrea Wallace to interview father regarding his Indian ancestry. CSW Hefley was informed by the jail personnel that father was transferred to another agency. During CSW's visit last month with father he reported that he was going to be released to Canon House in Los Angeles. CSW called Canon House and spoke to father regarding his Indian ancestry."[5] The CSW also called father's relatives to discuss father's heritage. Attached to the last-minute information was a letter verifying that father enrolled in a residential drug treatment program at Canon Human Services Center, Inc. on July 12, 2017. The letter stated that father's program included individual counseling, group meetings, 12-step meetings, random drug testing, relapse prevention, and spiritual guidance.

Father was present at the July 14, 2017 hearing. His counsel urged the court to extend father's period of reunification services. Counsel argued that father did not receive any reunification services after he contacted DCFS despite the court's

---

[5] The record does not contain any other information about the "visit last month." It is thus unclear whether the visit was the scheduled May visit or another visit in June, and what was discussed at the visit(s).

order that he was to receive services upon doing so. The court asked, "Wasn't he still in custody then when he contacted the department?" Father's counsel confirmed that father was in custody at the time, but contended DCFS "should still be providing him with reunification services." The court responded, "The services he needed was a six month drug program and couldn't do that in custody, 52 week DV class for perpetrators, couldn't do it in custody." Father's counsel responded by reminding the court that father had been in custody "essentially since disposition" and that he enrolled in an inpatient drug program promptly upon his release from custody. Father's counsel submitted into evidence the letter documenting father's July 12, 2017 enrollment in the program.

The court pointed out that father "never showed up since July of last year when the case first came into the system." It remarked, "He had five months to do that before he got arrested." Father's counsel again emphasized father's immediate post-custody enrollment in a drug treatment program, and asked the court "to take into consideration the barriers to reunification services which were incarceration for the last period of seven months and the efforts he made once he was released from custody . . . ." Counsel also asserted that father completed some classes while incarcerated, but conceded father "doesn't have that paperwork." Counsel requested "that the court find that he is in partial compliance with the reunification services and that the court grant him a further period, as well as we would be asking the court to find no reasonable services as he did contact the social worker while incarcerated and there's no information about any of the steps that they took to provide him with reasonable

services towards reunification in this last period of supervision." D.N.'s counsel joined father's argument.

Counsel for DCFS asked the court to find that DCFS had provided reasonable services to father and to terminate those services. She emphasized that the case was a year old and argued that father "never came to court" during the first six months of the case and visited D.N. without contacting DCFS. She also asserted that DCFS talked to father "about the services that he was receiving while he was incarcerated," and "made attempts to contact him again and was not able to contact him or the counselor."

The court ruled, "[t]here is just no likelihood. And I have to find that at this point to terminate these services is imperative to get this child permanence." It continued, "I am terminating services today finding that both parents are not in compliance with the case plan. This is a child under the age of two [*sic*], needs permanence and I'm setting this matter over for a permanent plan hearing 120 days from today to the date of November 7." The court emphasized that it had to balance parents' efforts at reunification "with the fact that I'm dealing with a baby under the age of three, that the statute indicates mother and father should have six months of services. We're now one year into the case and at this point I have to - -." The court granted father's request that he receive visitation with D.N. while he was enrolled in his inpatient program, "if the Department is willing to take the child over there for visits."

Both parents timely filed notices of intent to file writ petitions. (Cal. Rules of Court, rule 8.450(e).) Only father subsequently filed a petition. We issued an order to show cause, established a briefing schedule, stayed the November 7, 2017

section 366.26 hearing, and set the matter for oral argument on December 13, 2017. (Cal. Rules of Court, rule 8.452(d), (g).) Father did not file a reply in response to DCFS's return, and he did not request oral argument. We submitted the matter for decision on December 13, 2017.

DISCUSSION

"'The paramount goal in the initial phase of dependency proceedings is family reunification. [Citation.]' [Citation.] 'At a disposition hearing, the court may order reunification services to facilitate reunification between parent and child.' [Citation.] Reunification services must 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. (c).)" (*In re T.G.* (2010) 188 Cal.App.4th 687, 696.)

The reunification plan is ordered at the disposition hearing, and parents of children who were under three years of age on the date of initial removal from parental custody are entitled to receive six months of reunification services from that point. (§ 361.5, subd. (a)(1)(B).) Parents of such young children are generally restricted to a total of 12 months of services, calculated from "the earlier of the date of the jurisdictional hearing . . . or the date that is 60 days after the date on which the child was initially removed from the physical custody of his or her parent or guardian." (§§ 361.49, 361.5, subd. (a)(1)(B).) If the court finds by clear and convincing evidence at the six-month review hearing that a parent of a young child failed to participate in and make substantive progress in his or her reunification plan, the court may schedule a hearing to terminate parental rights under section 366.26 within 120 days. (§ 366.21, subd. (e)(3).) "If, however, the court finds there is a substantial probability that the child. . ., may be returned to his or parent . . .within six months or that reasonable services have not been provided, the

court shall continue the case to the 12-month permanency hearing." (*Ibid.*) The court may not set a hearing to terminate parental rights (§ 366.26) unless it finds by clear and convincing evidence that reasonable services have been provided or offered to the parent. (§ 366.21, subd. (g)(1)(C)(ii).)

The reasonable services provided for in a parent's case plan "must be appropriately based on the particular family's 'unique facts.'" (*In re T.G.*, *supra*, 188 Cal.App.4th at p. 696.) A family's "unique facts" may include the incarceration of one or both parents. An incarcerated parent is entitled to receive reasonable reunification services, "unless the court determines, by clear and convincing evidence, those services would be detrimental to the child." (§ 361.5, subd. (e)(1).) No such finding was requested or made here.

DCFS thus had an obligation to make a "good faith effort" to provide reasonable reunification services to father during his incarceration, "in spite of difficulties in doing so or the prospects of success." (*Mark N. v. Superior Court* (1998) 60 Cal.App.4th 996, 1010-1011 (*Mark N.)*, superseded by statute on other grounds as indicated in *Earl L. v. Superior Court* (2011) 199 Cal.App.4th 1490, 1504.) DCFS is not permitted to delegate to an incarcerated parent the responsibility for identifying appropriate services, or to conclude that reunification services are not feasible solely due to the parent's incarceration. (*Earl L. v. Superior Court*, *supra*, 199 Cal.App.4th at p. 1502.) Reasonable reunification services for an incarcerated parent "may include," among other things, "[m]aintaining contact between the parent and the child through collect telephone calls," "[v]istation services, when appropriate," or requiring the parent "to attend counseling, parenting classes, or vocational training programs . . . if actual access to these services is provided." (§ 361.5, subds.

(e)(1)(A)-(D).) "The social worker shall document in the child's case plan the particular barriers to an incarcerated . . . parent's access to those court-mandated services and ability to maintain contact with his or her child." (§ 361.5, subd. (e)(1)(D)(ii).)

"'[T]he 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. . . .' [Citations.]" (*Mark N.*, *supra*, 60 Cal.App.4th at p. 1011.) We "recognize that in most cases more services might have been provided, and the services which are provided are often imperfect. The standard is not whether the services provided were the best that might have been provided, but whether they were reasonable under the circumstances." (*Elijah R. v. Superior Court* (1998) 66 Cal.App.4th 965, 969.)

We review the juvenile court's implicit finding that reasonable services were offered or provided to father under the substantial evidence test. (*Mark N.*, *supra*, 60 Cal.App.4th at p. 1010; *Amanda H. v. Superior Court* (2008) 166 Cal.App.4th 1340, 1346.) "[O]ur sole task on review is to determine whether the record discloses substantial evidence which supports the juvenile court's finding that reasonable services were provided or offered. [Citations.]" (*Angela S. v. Superior Court* (1995) 36 Cal.App.4th 758, 762). "'When the sufficiency of the evidence to support a finding or order is challenged on appeal, even where the standard of proof in the trial court is clear and convincing evidence, the reviewing court must determine if there is any substantial evidence—that is, evidence which is reasonable, credible and of

solid value—to support the conclusion of the trier of fact. [Citations.]' [Citation.]" (*In re Alvin R.* (2003) 108 Cal.App.4th 962, 971.)

Here, the record does not contain substantial evidence to support a finding that reasonable services were offered or provided to father. His case plan, which the court signed on December 1, 2016, explicitly provided that he was to be offered reunification services and monitored visitation with D.N. "if Father contacts DCFS in Next 6 mo." Father, who to that point had been "whereabouts unknown," reached out to DCFS on February 17, 2017, to inform it that he wanted to reunify with D.N. and was enrolled in parenting and drug classes at the Orange County Jail. This phone call was well within the six-month window provided in father's case plan and triggered DCFS's obligation to make a good faith effort to offer father appropriate reunification services. At that point, it became "the social worker's job to maintain adequate contact with the service providers and accurately to inform the juvenile court and [father] of the sufficiency of the enrolled programs to meet the case plan's requirements." (*Amanda H. v. Superior Court*, *supra*, 166 Cal.App.4th at p. 1347.)

Instead, the CSW placed a single phone call to the Orange County Jail "to confirm father's participation in any services." The CSW did not receive a return call before the February 27, 2017 progress hearing. There is no evidence in the record that the CSW made any additional effort to contact the Orange County Jail over the ensuing months; the June 1, 2017 status review report simply reiterated, in verbatim language from the previous report, that the CSW had called the jail once after father's February contact and had not yet received a return call.

There is likewise no evidence that the social worker investigated the services available to father at the Orange County Jail or his other places of incarceration, advised father what services might be available to him, adapted father's case plan to reflect his incarcerated status, or arranged any sort of contact between father and D.N.

DCFS argues that "[t]he only person who prevented true reunification efforts was the father himself." It emphasizes the efforts it made to locate father during the first several months of the case, as well as father's failure to contact DCFS during that time and to immediately inform the social worker when he transitioned from jail to Canon House. Relying on *In re T.G.*, *supra,* 188 Cal.App.4th at p. 698, DCFS asserts that the social worker cannot reasonably provide services or maintain contact with a parent "without some degree of cooperation from the parent."

DCFS is correct that father "could have made more of an effort" at reunification, particularly in the early stages of the case. (*In re Taylor J.* (2014) 223 Cal.App.4th 1446, 1451.) However, its argument entirely discounts not only the later efforts father made, but also DCFS's affirmative obligation to furnish services. A child welfare agency must attempt to provide reasonable services even when a parent's efforts to comply with his or her case plan are lacking. (See *id.* at pp. 1451-1453.) DCFS did not carry its burden of showing it did that here.

Father contacted DCFS, expressed an interest in reunifying with D.N., and told DCFS that, to that end, he had enrolled in parenting and substance abuse classes at the Orange County Jail. These efforts surpass those made by the father in *In re T.G.*, *supra*, 188 Cal.App.4th at p. 698, who made no progress

addressing his issues prior to his incarceration despite being referred for programs and never advised DCFS that he was incarcerated.[6] Father's efforts, while late, may not necessarily have been too little if the classes conformed with father's case plan or helped him progress toward addressing the issues that brought D.N. into the child welfare system. We do not know, however, whether the classes complied with the case plan, whether father progressed in or completed them, or whether there were additional classes or programs offered at the jail, because DCFS did not pursue the matter beyond making a single phone call to the jail. When the jail did not timely respond, no follow-up call was made, and the social worker did not visit the jail until late May 2017 at the earliest, three months after father reached out to DCFS. These minimal efforts by DCFS were not reasonable under the circumstances of this case.

The case plan required DCFS to provide father with reasonable reunification services if he contacted DCFS within six months of the adjudication hearing. At the time the plan was drafted, DCFS and the court knew father had not been cooperating with DCFS or responding to its efforts to locate him.

---

[6] We note the efforts made by the social services agency in *In re T.G.* also surpassed those made by DCFS here. The social worker referred the father to various services, followed up with a letter, made contact with the father about visitation, wrote him a letter in prison, left a phone message with the father's prison counselor, and prepared a new case plan to account for father's incarceration. (*In re T.G.*, *supra*, 188 Cal.App.4th at pp. 697-698.) Moreover, the social worker recommended that reunification services continue upon learning that the father "had enrolled in classes and appeared motivated to complete his case plan objectives while incarcerated." (*Id.* at p. 699.)

If DCFS believed reunification services were inappropriate due to father's initial absence from the case and illicit visitation with D.N., it should have brought this to the court's attention at the disposition hearing. (*In re Daniel G.* (1994) 25 Cal.App.4th 1205, 1216.) DCFS instead advised the court it "has identified no current circumstances under which [section] 361.5 applies to mother or father."[7] It cannot now rely upon father's initial absence from the case to absolve it of its obligation to make a good faith effort at reunifying the family.

We acknowledge, as DCFS points out, that then-three-year-old D.N. "had been waiting for her parents to do what they needed to reunify with her for a year." The court was very concerned about permanency for her, and rightly so; it is well recognized that "[c]hildhood does not wait for the parent to become adequate." (*In re Marilyn H.* (1993) 5 Cal.4th 295, 310.) Nevertheless, until reunification services are terminated and a section 366.26 hearing is set, "the parent's interest in reunification is given precedence over the child's need for stability and permanency." (*Ibid.*) Father should have been given the chance to demonstrate that his interest in reunification was genuine and that he was making substantial progress toward that goal.

Generally, the remedy for a failure to provide reasonable reunification services is an order for the continued provision of services, even beyond the 18-month review hearing. (*In re Alvin R.*, *supra*, 108 Cal.App.4th at p. 975.) However, if a parent is

---

[7] Section 361.5, subdivision (b)(1) authorizes the court to withhold reunification services if it finds by clear and convincing evidence that a parent's whereabouts are unknown after "a reasonably diligent search has failed to locate the parent. . . ."

incarcerated at the time of remand, the court may, under section 361.5, subdivision (e), find by clear and convincing evidence that further reunification services would be detrimental to the child. (*Mark N.*, *supra*, 60 Cal.App.4th at p. 1018.) If such a finding is made pursuant to section 361.5, subdivision (e)(1), the respondent court may reissue its order pursuant to section 366.22 and proceed to the section 366.26 hearing. Otherwise, it must order reunification services commensurate with the goals of the case plan and father's current needs.

DISPOSITION

Let a peremptory writ of mandate issue, directing respondent court to vacate its July 14, 2017 order terminating father's reunification services and setting a permanency planning hearing under Welfare and Institutions Code section 366.26. The court shall order DCFS to provide father with additional reunification services that are appropriate and in the best interests of D.N., unless a finding of detriment is made. Our decision is final as to this court immediately. (Cal. Rules of Court, rule 8.490(b)(2)(A).)

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

COLLINS, J.

We concur:

WILLHITE, Acting P. J. MANELLA, J.