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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re NATHAN S., et al., Persons  
Coming Under the Juvenile Court  
Law.

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN  
AND FAMILY SERVICES,

Plaintiff and Respondent.

v.

VIOLET S.,

Defendant and Appellant.

B298343

(Los Angeles County  
Super. Ct. No. 17CCJP02657A-B)

APPEAL from an order of the Superior Court of  
Los Angeles County. Michael E. Whitaker, Judge. Affirmed.

Law Office of Lisa A. Raneri and Lisa A. Raneri, under  
appointment by the Court of Appeal, for Defendant and  
Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles,  
Assistant County Counsel, and Kimberly Roura, Deputy County  
Counsel for Plaintiff and Respondent.

Violet S. (mother) appeals from an order of the juvenile court declining to return her children, Savannah S. (born Mar. 2016) and Nathan S. (born Dec. 2017), to her custody at a 12-month review hearing held pursuant to Welfare and Institutions Code section 366.21, subdivision (f).<sup>1</sup> We find that substantial evidence supports the juvenile court's determination that returning the children to mother would create a substantial risk of detriment to the children. Therefore, we affirm the order.

**STATEMENT OF FACTS AND PROCEDURAL HISTORY**  
**Family history**

Mother's three older children, Joshua S., Elyssa S., and Arianna S., were in the custody of maternal grandmother (MGM) when this proceeding commenced.<sup>2</sup> MGM became the legal guardian of the three older children as a result of mother's neglect of the children and abuse of methamphetamine. Mother would leave the children alone while she did drugs. MGM had to get a restraining order to prevent mother from showing up at the children's school unannounced and taking them out of school. MGM had no recent contact with mother.

Mother had a history of referrals due to domestic violence with the older children's father dating back to 2006. A referral from June 2013 indicated that mother had a "5 year history of heavy methamphetamine use" and that the older children's father had recently been deported from the United States. A referral dated February 21, 2014, was ordered by the probate court as part of a maternal aunt's petition for guardianship of the

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<sup>1</sup> All unspecified statutory references are to the Welfare and Institutions Code.

<sup>2</sup> The three older children are not subjects of this appeal.

three older children on the grounds that mother had abandoned them, and their father was in Guatemala. The referral was closed when MGM obtained legal guardianship of the three older children.

Mother tested positive for methamphetamine at Savannah's birth. Savannah was born with a positive toxicology screen for marijuana and methamphetamine. On June 28, 2016, the juvenile court ordered Savannah placed in the home of Savannah's father, on the condition that father and the child reside with the paternal grandparents.<sup>3</sup>

**Initial referral and section 300 petitions in this case**

Nathan was born prematurely and tested positive for methamphetamine at birth. Mother tested negative, unlike her positive test for methamphetamine during her delivery of Savannah the previous year. Mother initially denied using methamphetamine while pregnant with Nathan, but later admitted to using methamphetamine a week prior to giving birth to him. Nathan remained hospitalized due to his low birth weight, need for oxygen treatments, and feeding issues, until January 21, 2018.

On December 21, 2017, the Los Angeles County Department of Children and Family Services (DCFS) filed a dependency petition on behalf of Nathan pursuant to section 300. At the December 22, 2017 detention hearing, the juvenile court ordered Nathan detained from mother and released to father on the condition that father and Nathan reside in the paternal grandparents' home, that father be drug tested and comply with

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<sup>3</sup> The father of both Savannah and Nathan, and not the older three children, is Bernabe S. (father). Father is not a party to this appeal.

all court orders. Mother was granted monitored visits, with father not to be the monitor.

On January 26, 2018, mother reported being a victim of domestic violence. While at father's home, father punched mother. Paternal grandparents reported it as only a verbal altercation. Mother was not very coherent when speaking to the social worker and police officer on the scene. She indicated that father "doesn't let me do anything . . . doesn't let me leave or go to work." The social worker reminded her that she was not supposed to be around Nathan. Paternal grandmother claimed that mother came and went from the home as she pleased, and often did not want to leave. While interviewed about the incident, father stated that mother came to visit and he asked her to leave. Mother attempted to pick up Nathan. Father told her to put the child down and leave the home. Mother refused to leave, and father admitted to pushing her out of the home. Nathan and Savannah were then moved to the home of a paternal aunt and uncle.

On January 31, 2018, the juvenile court made emergency detention findings, detaining Nathan from father.

DCFS filed a first amended petition on behalf of Nathan on February 1, 2018, pursuant to section 300, subdivisions (b) and (j). Under subdivision (b), the petition alleged that Nathan had been born suffering from a positive toxicology screen for methamphetamine; that mother had a history of substance abuse and was a current user of methamphetamine; that mother and father had a history of engaging in violent altercations, including the one that took place on January 26, 2018; and that father had a criminal record including arrests for carrying a loaded firearm, possession of a controlled substance for sale, and domestic

violence. Under subdivision (j), the petition alleged that Nathan's sister Savannah was a former dependent of the juvenile court due to mother's substance abuse and father's failure to protect the child.

On February 2, 2018, DCFS filed a petition on behalf of Savannah. The petition included similar allegations to those set forth in Nathan's petition, under section 300, subdivisions (a), (b), and (j).<sup>4</sup>

Nathan was detained at the February 2, 2018 detention hearing. Father was given monitored visits. At the detention hearing for Savannah held on February 5, 2018, she too was detained from both parents, with monitored visits.

#### **Jurisdiction/disposition**

Mother was interviewed for the jurisdiction/disposition report on February 19, 2018. She admitted that despite the court orders, she had been living with father during the time Savannah was in father's custody. Mother disclaimed having a problem with drugs, and said she could stop using at any time, but added that father gave her drugs to keep her under his control. She stated that father used drugs with her and purchased synthetic urine from the smoke shop for his urine tests. Mother admitted to ongoing violence between father and her. She stated that he often beat her. He also kept drugs and guns in the home. When the social worker asked mother why she did not call the police or make a police report, mother stated it was because if she did, she would never get to see Savannah.

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<sup>4</sup> DCFS subsequently filed a second amended petition on behalf of Nathan, including an allegation under section 300, subdivision (a), that Nathan was at risk of serious physical harm due to the parents' history of domestic violence.

Mother was homeless, but was staying with friends. Mother worked as a certified nursing assistant at a nursing home. Mother remained legally married to her three older children's father, although he had been deported to Guatemala. She had been attending a substance abuse program and was willing to do whatever was necessary to have her children returned to her.

When father was interviewed on February 23, 2018, he denied that mother lived with him during her most recent pregnancy, stating that she was staying with friends. Father indicated that he did not know that mother was using drugs, and that he and mother were not in a relationship, but they would get together when mother was at his home visiting Savannah. Father denied drug use, and denied using fake samples for his drug tests.

Jurisdiction/disposition reports were filed on May 16, 2018, on behalf of Nathan and Savannah. Mother had tested negative for drugs on six occasions between December 19, 2017, and April 18, 2018. She failed to appear for one test on January 26, 2018.

The adjudication hearing was held on May 16, 2018. The juvenile court sustained the allegations in the petitions filed on behalf of Nathan and Savannah. The juvenile court found that though DCFS made reasonable efforts to avoid it, removal of the children from parental control and custody was necessary. The parents were granted monitored visits and reunification services. Mother's reunification plan required a full drug and alcohol program with aftercare; weekly drug and alcohol testing; a 12-step program with a court card and sponsor; a domestic violence program for victims; parenting; and individual counseling.

### **August 2018 progress review**

In August 2018, DCFS reported that mother continued to be enrolled in substance abuse recovery services. Mother's program manager confirmed that mother was current with the program and was making progress. Mother had also been attending domestic violence support groups and fully participating. Mother's therapist confirmed to DCFS that she would soon be initiating the first session with mother. Mother had tested negative for drugs 11 times between February 10, 2018 and July 13, 2018. On July 25, 2018, mother was turned away from the testing site due to the expiration of her testing referral. DCFS renewed mother's random drug and alcohol test referral on July 26, 2018.

Mother had been visiting the children twice a week for two hours per visit. Mother's visits were consistent and appropriate. Mother brought the children diapers, clothing and other necessities. In May 2018, mother's visits had been liberalized, and she was permitted four-hour unmonitored visits with the children. Thereafter a recent unmonitored visit did not go well. Mother called the caregivers to pick up the children early because they were fussy. Mother seemed overwhelmed with two fussy children at the same time. However, in general, the visits were going well. The only criticism noted by the caregivers was that mother was not always willing to wake up early to receive the children. In August 2018, mother was living in paternal relatives' home. Mother had consulted with DCFS rental assistance and was trying to find another place to live, but had been unsuccessful. Mother mentioned moving to Victorville to live with her sister, but had no concrete plans.

In July 2018, Nathan was found to be eligible for early intervention services at the Regional Center. Savannah was receiving speech services, but continued to appear delayed in her verbal skills.

As of August 11, 2018, mother's visits had been extended to six hours per visit. However, the caregiver, who had recently asked mother to extend her visits to five hours due to a family event, found that mother seemed reluctant. The caregiver informed the social worker that mother seemed more concerned with her freedom than increasing her time with the children. DCFS wanted to work with mother towards overnight visits, but mother did not have room for the children while she was sharing a bedroom in the home of relatives.

#### **October and November 2018 progress reviews**

DCFS filed a status review report in October 2018, noting that mother continued to be enrolled in substance abuse recovery services, where she was participating and making progress. She was required to attend a minimum of eight groups per month and weekly individual meetings. She had a few excused absences and was working on making up classes. In October 2018, mother's substance abuse case manager indicated that mother continued to miss visits occasionally but had not been dismissed from the program because she attended at least once per week.

DCFS noted that it appeared that mother and father were no longer in a relationship and were not in contact with each other. Mother had stopped attending domestic violence classes. She informed her counselor that she had changed jobs and needed to temporarily stop attending until she figured out her schedule. Mother stated that she intended to resume her domestic violence program on October 11, 2018. Mother missed



her first individual counseling session in August 2018 and had not rescheduled. Mother reported that she continued to have a changing schedule and requested permission to enroll in individual counseling at the location where she did her drug testing.

Mother tested negative for drugs twice in both August and September 2018, and once as of the date of the report in October 2018.

In August 2018, mother's unmonitored visits had increased from four hours to six hours on Saturdays. On October 13, 2018, the length of the visits increased again from six hours to eight hours, however, on October 24, 2018, mother's eight-hour visits were reduced back to six hours. Mother was reportedly having difficulty caring for Nathan. On September 22, 2018, the caregivers picked up the children two hours early because mother was having trouble feeding Nathan. On October 13, 2018, mother again called the caregivers to pick up the children early because Nathan kept crying and did not want to eat. That day, the caregivers picked up the children five hours early. The caregiver had offered tips to mother to assist her in caring for Nathan, and also offered to "face time" with mother so mother and Nathan could spend more time together, but mother did not show interest.

Mother requested adding Sunday visits. The caregivers objected to Sunday visits, as it was a family day, but offered mother an additional weekday visit. Mother claimed that due to her court ordered programs, she was not available for weekday visits. Neither mother nor the caregivers could agree on an appropriate schedule for additional visits. However, the social

worker later learned that mother had not been attending some of her weekday classes and was not as busy as she had described.

Mother continued to reside with paternal relatives, sharing a bedroom with their teenage daughter. Mother was having trouble finding a residence she could afford. She inquired about DCFS rental assistance, but had not yet requested assistance. Mother informed the social worker that she was repairing her relationship with MGM, who had custody of mother's three older children. Mother hoped to resolve her court issues and move out of the county to reside with her sister and other relatives.

The juvenile court held a six-month review hearing on November 14, 2018. The court found that return of the children to the parents would create a substantial risk of detriment to the children, and that DCFS provided reasonable services towards reunification. The parents had made partial progress toward mitigating the circumstances necessitating removal. The court ordered an additional six months of reunification services. The court ordered DCFS to meet with the parents within the next few weeks regarding liberalization of visitation.

### **Twelve-month review reports**

DCFS filed a status review report in March 2019. The children remained placed with the paternal relatives, where they had been since January 2018. There had been no concerns with the relative caregivers, who were willing to provide permanency to the children through adoption or legal guardianship should the parents fail to reunify.

Mother continued to reside with other paternal relatives, sharing a bedroom with their teenage daughter. During the period of review, mother maintained steady employment, continued to make progress with her court-ordered programs, but

had not completed domestic violence education or individual counseling, and had not located a substance abuse sponsor. Mother informed DCFS that she had trouble maintaining all of her classes at the same time and decided to slow down and focus on one class at a time.

Mother continued to have unmonitored day visits with the children for six hours on Saturdays. She had not expressed any further interest in increasing her hours. Due to mother's partial compliance with her court ordered programs, and lack of interest in increasing visits, DCFS did not recommend increased visitation at that time.

On February 8, 2019, mother completed an online parenting program.<sup>5</sup> Mother provided DCFS with a completion certificate but the social worker was unable to contact the instructor. Mother completed her substance abuse recovery program on February 20, 2019. Mother continued to attend 12-step meetings but had not yet found a sponsor. Mother was aware that she had to find a sponsor. Mother had not re-enrolled in a domestic violence program, as she was overwhelmed and focused on completing her substance abuse education. Mother indicated that she would re-enroll in the remaining court ordered classes by February 28, 2019. However, on March 12, 2019, DCFS was informed by someone at the domestic violence program that mother had not returned to the program. When the social worker followed up with mother, mother indicated that she was trying to get time off of work to attend the class, which took place on Thursday mornings. Mother had been assigned to an individual therapist and had completed a few sessions. She had

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<sup>5</sup> The record indicates a completion date of February 8, 2018, but this appears to be a typographical error.

stopped in order to focus on her substance abuse program, but had been assigned a new therapist and had recently begun therapy again.

Mother continued to consistently test negative for drugs. Mother's visits with the children were also consistent and going well. She had not recently called the caregivers to pick up the children early.

On March 12, 2019, DCFS held a meeting with mother and mother's sister, who resides out of the county, and participated via telephone. They discussed mother's goals for completing the required services, which she was close to completing. DCFS wrote, in a last minute information for the court, that in this telephone discussion "it was determined the only barrier that prevents the mother from reunifying with the children . . . is the mother's current housing situation as the mother does not currently have the room in her current home where the children can be accommodated." Mother was on a waiting list for homeless assistance but an alternative plan was that mother could move out of the county with her sister. DCFS recommended that the court continue the matter for 30 days in order to work with the mother in locating housing, either through local services or moving out of the county to be with her sister.

On April 2, 2019, the 12-month review hearing was continued for a contest.

On April 23, 2019, mother's therapist wrote a progress letter stating that mother had completed comprehensive assessment and treatment, and had fulfilled the necessary requirements for treatment to be terminated. On May 1, 2019, mother's case manager verified that mother had completed her domestic violence program.

Mother continued to have day visits with the children on Saturdays. There were no changes to mother's visitation schedule. Mother confirmed that she was moving to her sister's home in Hesperia.

On May 8, 2019, DCFS provided another last minute information for the court. A DCFS social worker had visited mother at her new Hesperia residence, and found that mother was sharing a two-bedroom home with MGM, maternal aunt, and mother's older children: Joshua (age 16); Elyssa (age 12); and Arianna (age nine). Mother had applied for food stamps and was actively seeking employment. Mother intended to share a bedroom with her sister, and alternate sleeping on the couch. Mother's bedroom was furnished with a crib for Nathan and a toddler bed for Savannah.

Mother expressed concern regarding the interruption of her drug testing. As a result of her relocation, the closest Los Angeles County testing site was approximately 50 miles away. Mother was willing to travel, but would need special funding to utilize public transportation. A closer test site charged \$45.00 per test. The DCFS social worker would continue to search for better options.

DCFS recommended that mother's visits be liberalized to overnight visits.

### **Twelve-month review hearing**

The contested 12-month review hearing took place on May 8, 2019. The juvenile court received into evidence joint statements as well as the last minute information statements that had been submitted. The court also received a letter from mother's substance abuse treatment program, which was marked and entered into evidence.

The court began by noting its tentative decision that DCFS had not provided reasonable services during the most recent review period. Based on the delivered service logs, DCFS “did not contact or attempt to contact either mother or father in the months of November, December, and January.” In February, there was contact with father and attempted contact with mother, and in April, there was no contact or attempted contact with either mother or father. As a result, the court was inclined to continue reunification services for an additional six months, with DCFS discretion to liberalize both mother’s and father’s visits with the children.

The court reviewed the information it had regarding mother’s partial completion of services. The court understood that mother had completed a full drug program, but noted that with respect to the 12-step program, there was no confirmation of her compliance. As to the parenting class, it remained uncertain whether DCFS was going to accept the online program that mother had completed. In addition, mother had only recently restarted her individual counseling, thus it did not appear complete.<sup>6</sup> The court acknowledged that mother had completed her domestic violence requirement.

Mother’s counsel argued that DCFS had provided information to the court indicating that the only remaining issue was housing.<sup>7</sup> Mother’s counsel stated that because mother had

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<sup>6</sup> Mother’s counsel pointed out to the court that mother had provided confirmation of completing her individual counseling, and the court accepted this evidence.

<sup>7</sup> Counsel for DCFS disagreed with mother’s interpretation of the reports.

recently found housing on her own, there was no remaining risk to the children and they should be returned to mother. Mother was willing to cooperate with family maintenance services.

The court inquired of mother's counsel regarding mother's compliance with an after-care program, which had been ordered for mother. Mother's counsel had no additional information, other than that mother had completed two substance abuse programs. The court articulated the difference between a 12-step program and an aftercare program. The court then asked whether mother had obtained a sponsor and which step she had achieved with her 12-step program. Mother's counsel responded that mother had a sponsor named Gloria, and that she was on step number three.

DCFS argued that it was not ready to recommend more than overnight visits. Mother had some "starts and stops" with her services, and DCFS was not prepared to recommend a home of parent order.

The court summarized its position as follows: "[T]here needs to be confirmation about mother's 12-step program, court card and sponsor, and mom needs to be in [an] after-care program. And [DCFS] needs to ensure that mother continues with her drug and alcohol testing wherever it may be."

The court found continuing jurisdiction over the children necessary. It found by a preponderance of the evidence that a return of the children to the physical custody of the parents created a substantial risk of detriment. The court found mother in partial compliance with her case plan, and continued family reunification services, with another review hearing scheduled for November 26, 2019. DCFS was granted discretion to liberalize

mother's visits, and could "walk on" a request for a home of parent order at any time before the hearing date.

DCFS was ordered to meet and confer with mother on or before May 29, 2019, to go over the components of her case plan, case plan compliance, and her requests to further liberalize her visits. In particular, DCFS was required to follow up with respect to mother's continued drug and alcohol testing. DCFS was ordered to provide transportation assistance to mother.

Mother filed her notice of appeal on May 8, 2019.

## **DISCUSSION**

### **I. Applicable law and standard of review**

At the 12-month review hearing pursuant to section 366.21, the court is required to "order the return of the child to the physical custody of his or her parent or legal guardian unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child." (§ 366.21, subd. (f)(1).) The failure of a parent "to participate regularly and make substantive progress in court-ordered treatment programs shall be prima facie evidence that return would be detrimental." (§ 366.21, subd. (f)(1)(B).)

However, completion of the technical requirements of the reunification plan alone is insufficient to require return of the children to the parent's care. (*In re Dustin R.* (1997) 54 Cal.App.4th 1131, 1141.) While taking advantage of the services provided is one consideration, "the court must also consider the progress the parent has made towards eliminating the conditions leading to the children's placement out of home." (*Id.* at pp. 1141-1142.)



A juvenile court's finding that return of the children to the parent would create a substantial risk of detriment to the child is reviewed for substantial evidence. (*In re E.D.* (2013) 217 Cal.App.4th 960, 966.) We must consider the substantial risk of detriment standard to be a high standard. (*Ibid.*) Substantial evidence of the risk of detriment must be "reasonable, credible and of solid value; it must actually be substantial proof of the essentials that the law requires." (*Ibid.*) We review the evidence in the light most favorable to the juvenile court's decision, drawing all reasonable inferences from the evidence to support such findings. (*In re Joaquin C.* (2017) 15 Cal.App.5th 537, 560.) The ultimate test is "whether it is reasonable for a trier of fact to make the ruling in question in light of the whole record." [Citation.] [Citation.] (*In re David M.* (2005) 134 Cal.App.4th 822, 828.)

## **II. Substantial evidence supported the juvenile court's decision**

The failure of a parent to participate regularly, and make substantive progress, in court-ordered programs is *prima facie* evidence that return of the children to the parent would be detrimental. (§ 366.21, subd. (b)(1).) As part of mother's reunification services, she was required to participate in a full drug and alcohol program with aftercare, weekly drug and alcohol testing, and a 12-step program with a court card and sponsor, among other requirements. At the time of the 12-month review hearing, mother was not enrolled in an aftercare program. In addition, while she had previously successfully participated in drug and alcohol testing, she had recently moved to a new living situation out of the county, which made her drug testing difficult. It was not clear to the juvenile court how or where mother was

going to continue with her drug testing. Further, the court needed confirmation of mother's participation in the 12-step program, her court card and sponsor.

Mother's failure to provide evidence of her participation in these court-ordered programs is prima facie evidence that return of the children to her would be detrimental. (§ 366.21, subd. (b)(1).) Mother had recently relocated, and would likely need to establish herself at a new 12-step program, with a new sponsor. In addition, she needed to find an aftercare program and determine how she was going to comply with her drug testing requirement. Mother's failure to provide evidence of her ability to participate in, and maintain, these court-ordered requirements, supports the juvenile court's decision not to return the children to her care.

Mother cites *Jennifer A. v. Superior Court* (2004) 117 Cal.App.4th 1322 (*Jennifer A.*) as support for the proposition that mother "was not required to demonstrate perfect compliance" in order to have the children returned to her. (*Id.* at p. 1343.) *Jennifer A.* is distinguishable. In *Jennifer A.*, the children were detained from their mother because, on one occasion, the mother left them alone because she had to go to work. No evidence was presented linking marijuana or alcohol use with the mother's lapse in judgment. (*Id.* at pp. 1343-1344.) While the mother later missed drug tests, there was no evidence of any detriment in returning the children to the mother's custody based on the underlying reasons for the detention. (*Id.* at p. 1345.)

Here, in contrast, mother's failure to enroll in aftercare, provide sufficient evidence of participation in a 12-step program with a sponsor, and provide evidence of a workable plan for drug testing, are all directly related to the problem that led to the

children's removal in the first place. Mother's history of drug use dated back to when her older three children were removed from her care. Those children were placed with MGM, who ended contact with mother and got a restraining order to prevent mother from contacting the children at school. Mother tested positive for methamphetamine at the time of Savannah's birth in March 2016. Mother began a substance abuse program at that time, but relapsed. Nathan also tested positive for methamphetamine after his premature birth in December 2017. Thus, there was substantial evidence that mother's history of drug abuse was long and significant, and had lasted through her loss of custody of her older children. The juvenile court had sufficient evidence before it to determine that, absent completion of the missing components of her plan, the children were at substantial risk of detriment if returned to mother's care.<sup>8</sup>

Further, the juvenile court's decision not to return the children to mother's custody was reasonable in light of the record as a whole. Mother had not yet progressed to overnight visits with the children. She had a history of day visits with the children, lasting from two to six hours per visit. Mother had not yet demonstrated the ability to care for any child full time.

In addition, mother had recently moved to a new residence, and was living with previously-estranged MGM and mother's three older children who had been removed from her care due to drug abuse. Mother needed to find employment and reestablish

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<sup>8</sup> *In re E.D., supra*, 217 Cal.App.4th 960 is similarly distinguishable because the father had completed all his reunification programs and there was no evidence of substantial risk of detriment to the minor. (*Id.* at pp. 966-967.)

her participation in programs and drug testing. There was no evidence that mother would be able to meet the requirements of her program, and thus remain drug-free, in this new setting. These circumstances further supported the juvenile court's decision that placing two toddlers in her care, full time, posed a substantial risk of detriment to those two young children.

### **III. The juvenile court was not required to order return of the children to mother's custody with family maintenance**

Mother argues that the juvenile court was required to return Nathan and Savannah to mother's physical custody under the less drastic alternative of family maintenance services. In support of this argument, she cites *In re Yvonne W.* (2008) 165 Cal.App.4th 1394. In *Yvonne W.*, the evidence was insufficient to support the juvenile court's finding that return of the child to her mother would be detrimental. The mother had completed her case plan and was residing in a shelter where she could stay for two years. The child had been visiting mother at the shelter. The juvenile court found that although mother had complied with her case plan and had maintained her sobriety, it would be detrimental to return the child to the mother's care because the child was unhappy with the mother's living arrangement and was in the middle of an individual education plan (IEP) assessment. These concerns did not constitute detriment, thus the order was reversed. (*Id.* at pp. 1403-1404.)

The *Yvonne W.* court noted that the juvenile court "had authority" to return the minor to the mother "and, at the same time, order family maintenance services under court supervision." (*Yvonne W.*, *supra*, 165 Cal.App.4th at p. 1403.) Such an order "would achieve the legislative goal of family preservation," yet would "ameliorate" concerns for the child's

interests. (*Ibid.*) Nothing in the court's language suggests that such an order was mandatory -- only that such an order would serve to mitigate the concerns expressed by the child.

Here, the court was not merely considering the mitigation of minor concerns. Mother failed to complete her case plan, and failed to submit compelling evidence that she would be able to continue drug treatment in her present living situation. The juvenile court's justification for not returning the children to mother was directly related to the circumstances which led to the detention of Savannah and Nathan. Under the circumstances of this case, the record supports the juvenile court's finding of substantial risk of detriment to the children upon return to mother's custody at this time. A less drastic alternative would not protect the children from this substantial risk.

#### **DISPOSITION**

The order is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

\_\_\_\_\_, J.  
CHAVEZ

We concur:

\_\_\_\_\_, P. J.  
LUI

\_\_\_\_\_, J.  
ASHMANN-GERST