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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re BRAYAN O., a Person Coming Under the Juvenile Court Law.	B276591
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. DAMARIS O., Defendant and Appellant.	(Los Angeles County Super. Ct. No. DK04146)

APPEAL from an order of the Superior Court of Los Angeles County, Rudolph Diaz, Judge. Affirmed.

Terrence M. Chucas, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, and Stephanie Jo Reagan, Principal Deputy County Counsel, for Plaintiff and Respondent.

On March 18, 2014, the Department of Children and Family Services (DCFS) filed a Welfare and Institutions Code section 300 petition alleging that Brayan O., the son of Damaris O., had tested positive for methamphetamine at the time of his birth. Shortly after the petition was filed, Damaris was arrested and incarcerated. At the six-month status review hearing, the juvenile court terminated her reunification services, and scheduled a permanency plan hearing. The court subsequently ordered adoption as Brayan's permanent plan, and terminated Damaris's parental rights. Damaris now appeals that order, arguing that we should reinstate her parental rights because DCFS failed to provide her with reasonable services during her period of incarceration. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

A. Referral and Detention of Brayan O.

1. Events preceding the filing of DCFS's petition

Damaris O. (Mother) is the mother of three children: Alize O., born in 2007; Jacob O., born in 2010; and Brayan O., born in 2014.

In February of 2014, DCFS received a referral alleging Mother and Brayan had tested positive for methamphetamine at the time of the child's birth. The caller reported that Mother had denied using methamphetamine, and claimed the positive test was the result of having been around people who were "'smoking.'" On February 26, 2014, DCFS spoke with Raquel Preciado, a social worker at St. Francis Medical Center. Preciado informed the agency that Brayan had been born two months premature, and was currently receiving care in the neonatal intensive care unit (NICU). Preciado also reported that Mother had only visited the child once in the NICU, and had denied using any drugs during her pregnancy.

That same day, DCFS interviewed Brayan's maternal grandmother, Marie L., at her residence. Maria L. stated that she had been caring for Mother's other two children, Alize (then six) and Jacob (then four), since their birth. Marie L. explained that Mother had previously lived with her and the children, but had moved out of the home approximately two months earlier.

Marie L. denied any knowledge of current or former substance abuse by Mother, and did not know the identity of Brayan's father.

DCFS also interviewed Mother, who claimed that she lived in the maternal grandmother's home with Alize and Justin. After DCFS informed Mother that Marie L. had said she moved out of the residence two months earlier, Mother admitted that was true. Mother explained that she was currently renting a bedroom in a shared residence, but continued to spend a lot of time with her children at Marie L.'s house. Mother also stated that Alize and Jacob lived with their father, Edgar M., on the weekends. Mother explained that Brayan had a different father, who did not want to be a part of the child's life.[1] When asked about her methamphetamine consumption, Mother stated that she did not use the drug consistently. Mother admitted having used methamphetamine one week before giving birth to Brayan, but claimed it was the first time she had ever used the drug.

DCFS also interviewed Edgar M., who reported that he had not spoken to Mother in several months. Edgar stated that although he had no concerns for Alize and Justin's safety while in the care of Marie L., he had asked her not to leave the children alone with Mother. Edgar also stated that he had previously considered seeking custody of Alize and Justin, but was unable to pay the fees and costs of a custody action. Edgar told DCFS he wanted to take care of his children, and was ready to assume full responsibility for them.

On March 2, 2014, DCFS received the results of a drug test Mother had taken three days after Brayan's birth. The test was positive for methamphetamine, amphetamine and marijuana.

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[1] Brayan O.'s alleged father, whose parental rights were also terminated in these juvenile court proceedings, was not present at Brayan's birth and is not a party to this appeal. The juvenile court's findings with respect to the alleged father are not relevant to any of the issues Mother has raised in this appeal. Accordingly, we omit any further discussion of him.

2. DCFS's section 300 petition and detention

On March 18, 2014, DCFS filed a petition under Welfare and Institutions Code section 300[2] alleging Alize, Justin and Brayan were persons described under subdivision (b). The petition included two allegations against Mother. Subdivision (b)(1) of the petition alleged Brayan had been born with a "positive toxicology screen for methamphetamine," and that Mother's "substance abuse endanger[ed] his physical health and safety." Subdivision (b)(2) contained similar allegations regarding Alize and Justin, asserting that Mother's substance abuse endangered their well-being.

DCFS filed a detention report in support of the petition summarizing its initial investigation. The report noted that Mother had had tested positive for methamphetamine on the day of Brayan's birth, and then tested positive for the drug again several days later. The report also noted that Mother's criminal history showed she had been arrested for possession of a controlled substance in October of 2013. In its assessment and evaluation, DCFS concluded that Mother's drug use history and her past failure to care for Alize and Jacob demonstrated that she presented a high risk to her children. DCFS recommended the court: (1) detain Alize and Justin from Mother, and place them with Edgar M.; (2) detain Brayan upon his release from the hospital; and (3) provide Mother with reunification services, including substance abuse treatment, random drug testing, parenting education, individual counseling and monitored visitation.

At the detention hearing, the juvenile court found DCFS had made a prima facie showing that the children were persons described in section 300, and ordered them detained from Mother. The court directed DCFS to provide Mother with services, and scheduled a jurisdiction hearing on May 1, 2014.

B. Jurisdiction and Disposition Hearings

On April 17, 2014, DCFS filed a jurisdiction report that summarized additional interviews it had conducted with family members. During these subsequent interviews, Mother admitted she had used methamphetamine

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[2] Unless otherwise noted, all further statutory citations are to the Welfare and Institutions Code.

once while pregnant with Brayan, but denied having used the drug on any other occasion, and denied any history of substance abuse. Edgar M. confirmed to DCFS that he wanted custody of Alize and Justin, and stated that he was also willing to care for Brayan. DCFS reported that Alize and Justin appeared to be bonded with their father, and that both children had expressed a desire to continue living with him.

In its assessment and evaluation, DCFS concluded the evidence gathered during its investigation indicated that, contrary to her assertions, Mother had used methamphetamine on more than one occasion. DCFS explained that Mother had made inconsistent statements regarding her methamphetamine use, and that her criminal history showed several "arrests related to illegal drugs."[3] DCFS recommended the court: (1) grant Edgar M. full custody of Alize and Justin, and terminate jurisdiction over those children; (2) order Brayan detained from Mother; and (3) provide Mother reunification services, including parenting education, substance abuse testing, substance abuse treatment, individual counseling and monitored visitation.

Approximately one week after DCFS filed its jurisdiction report, Mother was arrested and incarcerated at the Century Regional Detention Facility in Lynwood, California (the Lynwood facility). Several weeks after her arrest, the court held a jurisdictional hearing regarding Alize and Justin. The juvenile court sustained the allegations set forth in subdivision (b)(2) of the petition, found both children were persons described under section 300, subdivision (b), and declared them dependents of the court. The court then ordered the children placed with Edgar M., and terminated jurisdiction.

On August 15, 2014, the court held a separate jurisdiction hearing for Brayan. The court sustained the allegations set forth in subdivision (b)(1) of petition, and declared Brayan to be a dependent child. The court ordered the

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[3] Mother's criminal history, set forth in the jurisdiction report, shows she was arrested for drug-related offenses in July of 2012 (being under the influence of a controlled substance); October of 2012 (possession of a controlled substance); June of 2013 (possession of unlawful paraphernalia); and October 2013 (possession of a controlled substance).

child to remain detained from Mother, and scheduled a disposition hearing for September 29, 2014.

At the disposition hearing, which Mother attended in custody, the court found that leaving Brayan in Mother's custody would present a substantial risk to the child, and that there were no reasonable means to protect him without removal. Consistent with DCFS's recommendations, the court ordered reunification services for Mother. The court's case plan required Mother to complete a drug program with random testing, participate in a parenting program and participate in individual counseling to address her case issues. The case plan also ordered two monitored visits per month, but did not indicate whether DCFS was required to hold those visits at the Lynwood facility. The case plan further directed that DCFS was to assess what services were available to Mother at the facility. The court scheduled a six-month review hearing (see § 366.21, subd. (e)) on March 27, 2015.

C. Status Hearings

1. Summary of DCFS's six-month status review report

On March 23, 2015, DCFS filed a status report in preparation for the six-month review hearing. The report stated that Mother remained incarcerated, and had been recently transferred from the Lynwood facility to the Central California Women's Facility in Chowchilla, California (the Chowchilla facility). DCFS stated that although it had attempted to determine Mother's release date, the facilities had not yet provided the agency with that information. DCFS reported that Brayan had been placed with a foster parent, and was receiving good care.

DCFS also reported that during the six-month review period, Mother had not "completed or started any of the court ordered programs." DCFS explained that although it had enrolled Mother in a drug testing program, she was arrested and incarcerated before the program began. DCFS also reported that in December of 2014, the agency had contacted an officer at the Lynwood facility to discuss what programs Mother might be eligible to participate in. The officer informed DCFS that the facility offered a program known as "Education Basic Incarceration" (EBI) to qualifying inmates, which

included group counseling, parenting classes and drug programs. However, on December 26, 2015, Mother notified DCFS that the facility had informed her she did not qualify for the EBI program due to her "criminal history." Mother also informed DCFS she had completed a DCFS "orientation" offered to inmates, and that she was willing to enroll in whatever programs were necessary to reunify with her children. DCFS indicated it had been unable to contact Mother since her transfer to the Chowchilla facility.

DCFS also reported that, during the review period, it had supervised only one visit between Mother and Brayan at the Lynwood facility, which had occurred on February 11, 2015. The social worker who monitored the visit reported that Mother appeared happy to see Brayan, and that the child was "receptive" toward her. The social worker also reported that Mother appeared to "enjoy[] watching her son play," and told Brayan she loved him.

DCFS recommended the court continue reunification services for an additional six-month period, and schedule another status hearing in September of 2015. The court continued the six-month review hearing until April 28, 2015.

2. The six-month status review hearing

On April 27, 2015, DCFS filed a last-minute information reporting that a counselor at the Chowchilla facility had told the agency Mother's release date was June 11, 2016. The counselor also informed DCFS that although the Chowchilla facility offered various parenting and drug courses to "permanent" inmates, Mother was not eligible to enroll because she was still classified as a "temporary" inmate. Based on this newly-obtained information, DCFS recommended that the court terminate Mother's reunification services due to her "release date and non-compliance with court ordered case plan." DCFS further recommended that the court schedule a permanency plan hearing pursuant to section 366.26.

At the continued six-month review hearing, held June 3, 2015, DCFS argued the court should terminate Mother's reunification services, explaining that her release date was "beyond even the [maximum] 24-month period from [Bayarn's] initial detention." (See § 361.5, subd. (a)(4) ["court-ordered services may be extended up to a maximum time period not to exceed 24

months after the date the child was originally removed from physical custody of his or her parent . . ."]; § 366.22, subd. (b) [if a child is not returned to parent at a permanency hearing, "the court may continue the case for up to six months for a subsequent permanency review hearing, provided that the hearing shall occur within 24 months of the date the child was originally taken from the physical custody of his or her parent"]; § 366.25, subd. (a)(1) ["When a case has been continued pursuant to subdivision (b) of Section 366.22, the subsequent permanency review hearing shall occur within 24 months after the date the child was originally removed from the physical custody of his or her parent or legal guardian"].) Brayan's attorney joined in DCFS's request to terminate reunification services. Mother's counsel, however, requested that the court continue services "for another year."

The court found Mother's request "unreasonable," explaining: "I don't think it would be appropriate. I think Mother has had a year, in fact, and she's been, I guess, in and out of jail. And now she's going to be incarcerated for at least another year. And we will have passed the [section 366.25] date if we did that. So I think the recommendation to terminate services for Mother at this time is appropriate." The court further explained: "[A]lthough [M]other was ordered a case plan back in September of this past year, she's not in compliance with it. But, further, Mother was re-incarcerated and is not expected to be released for more than [a year]. In fact, the date is [June 11,] 2016. The court finds that by clear and convincing evidence that the department has complied with the case plan in making reasonable efforts to return the child to a safe home and to complete any steps necessary to finalize the permanent placement of the child."

The court ordered the termination of Mother's reunification services, and scheduled a "hearing to select a permanent plan pursuant to section 366.26 on September 30, 2015." After the court announced its ruling, Mother's counsel stated: "For the record, . . . Mother objects to the termination of her reunification services."

D. Permanency Plan Hearing

1. DCFS's permanency plan report and requests for continuances

On September 30, 2015, DCFS submitted a section 366.26 permanency plan report stating that it was no longer "feasible for Brayan to reunify with [Mother] as she has . . . been sentenced to serving 1 year 8 months in prison." DCFS reported that Brayan's foster parent had brought the child to visit Mother at the Lynwood facility on August 2, 2014. The agency further noted, however, that although Brayan's foster parent had expressed a willingness to facilitate additional "monitored visit[s]," Mother had "failed . . . to follow through with arranging a visit." The foster parent had also transported Brayan to multiple visits with his maternal grandmother, and one visit with his half-siblings Alize and Justin.

DCFS recommended adoption as the "most viable and appropriate plan," explaining that Brayan was "adoptable due to his young age." DCFS had not yet identified a prospective adoptive family, and requested that the matter be continued for 120 days. The court granted the Department's request, and continued the matter until November 3, 2015. DCFS subsequently requested an additional continuance, which the court granted, delaying the hearing until March 1, 2016.

2. Mother's petition for modification

On February 16, 2016, Mother filed a section 388 petition for modification requesting that the court cancel the scheduled section 366.26 hearing, and reinstate her reunification services. The petition argued these modifications were warranted because Mother had now "completed a significant portion of the court ordered case plan while incarcerated." In support of her petition, Mother provided certificates showing she had completed courses in "parenting, parenting for prevention of drugs and alcohol, . . . substance abuse treatment, and . . . life scripting." The court summarily denied the modification request.

3. The permanency plan hearing

On March 1, 2016, DCFS filed a last-minute information notifying the court that the agency had identified a family who wanted to adopt Brayan, and requested that the court permit more time to allow for the completion of a home study. The court continued the permanency plan hearing until June 28, 2016.

DCFS filed an additional status report on June 1, 2016 explaining that Brayan had been placed with the prospective adoptive parents in January of 2016, and that the agency was "currently awaiting finalization of the adoption." DCFS reported that Brayan appeared to be doing "exceptionally well" in his new home," and that the "adoptive parents ha[d] gone above and beyond to make sure . . . the child is growing and thriving in their home."

At the permanency hearing, held June 30, 2016, DCFS announced that the adoption home study had been approved, and requested the court order adoption as the child's permanent plan, and terminate Mother's parental rights. Mother, however, requested that the court delay the hearing because she was set to be released from prison in approximately one week. Mother argued that once she was out of custody, she would "have a better chance of prevailing" in any subsequent challenge to the termination of her parental rights. The court denied the request, explaining that Bryan's case had been pending for more than two years.

After reviewing DCFS's reports, the court found Brayan adoptable, and that returning him to Mother would be detrimental to his well-being. After the court had announced its intended ruling, Mother's counsel stated that Mother was "object[ing] to the termination of her parental rights." Counsel provided no further argument in support of the objection. The court terminated Mother's parental rights, and transferred custody to DCFS.

DISCUSSION

The sole claim Mother raises in her appeal to the June 30, 2016 order terminating her parental rights is that the juvenile court erred in terminating her reunification services at the six-month review hearing held on June 3, 2015. Mother contends we should reinstate her parental rights

because there is insufficient evidence to support the juvenile court's finding that "DCFS had provided her with reasonable reunification services."

A. Mother Has Not Waived Her Claim by Failing to File a Writ Petition Seeking Review of the Termination of her Reunification Services

Generally, an order terminating reunification services and setting a permanency hearing must be challenged by a writ petition in order to preserve any issues for review following the order terminating parental rights. (*In re Zeth S.* (2003) 31 Cal.4th 396, 413; *In re X.Z.* (2013) 221 Cal.App.4th 1243, 1248 (*X.Z.*); § 366.26, subd. (l).) An exception applies, however, when the parent was not provided proper notice of this writ requirement: "[Our] courts have consistently held that when a parent is not properly advised of his or her right to challenge the setting order by extraordinary writ, and consequently the parent does not timely file a writ petition, good cause exists to consider issues relating to the setting hearing in an appeal from the order terminating parental rights." (*In re A.A.* (2016) 243 Cal.App.4th 1220, 1235; see also *X.Z., supra*, 221 Cal.App.4th at pp. 1249-1250.) "The notice [of the writ requirement] must be 'made orally to a party if the party is present at the time of the making of the order [setting the permanency hearing] or by first-class mail by the clerk of the court to the last known address of a party not present at the time of the making of the order.' [Citation.]" (*X.Z., supra*, 221 Cal.App.4th at pp. 1249-1250; § 366.26, subd. (l); Cal. Rules of Court, Rule 5.590(b).)

In this case, it is undisputed that Mother was not properly advised of the writ requirement because: (1) she was not present at the six-month review hearing; and (2) the court's certificate of mailing indicates the notice advising Mother of the writ requirement was sent to an address associated with Brayan's alleged father, rather than the jail facility where Mother was known to be residing at the time the order setting the permanency plan hearing was issued. Accordingly, the exception to the writ requirement applies, and we may properly consider Mother's claim regarding the adequacy of DCFS's efforts to provide services.

B. Mother has Failed to Establish the Court Erred in Terminating Her Reunification Services

1. Summary of applicable legal principles

Subject to certain exceptions set forth in section 361.5, subdivision (b), the juvenile court is required to provide reunification services whenever a child is removed from parental custody. (§ 361.5, subd. (a); see also *In re William B.* (2008) 163 Cal.App.4th 1220, 1227 ["When a child is removed from the custody of his [or her] parents, reunification services must be offered to the parents unless one of several statutory exceptions applies"].) When, as here, the child was under three years of age at the time of removal, the parent is generally entitled to six months of reunification services. If, at the six-month review hearing (see § 366.21, subd. (e)), "the court finds by clear and convincing evidence that the parent [of such a child] failed to participate regularly and make substantive progress in a court-ordered treatment plan, the court may schedule a [permanency plan] hearing pursuant to Section 366.26. . . . If, however, the court finds . . . that reasonable services have not been provided, the court shall continue the case to the 12-month . . . hearing." (§ 366.21, subd. (e)(3).) Section 366.26, subdivision (c)(2)(A) further provides that a court cannot terminate parental rights at the permanency hearing if "[a]t each hearing at which the court was required to consider reasonable efforts or services, the court has found that reasonable efforts were not made or that reasonable services were not offered or provided." In this case, Mother argues that she did not receive reasonable services prior to the six-month review hearing, and that the court therefore had no basis to set a permanency plan hearing or terminate her parental rights, but rather was required to continue reunification services until the 12-month review hearing.

The adequacy of a social service agency's efforts to provide suitable services "is judged according to the circumstances of the particular case." (*Mark N. v. Superior Court* (1998) 60 Cal.App.4th 996, 1011 *(Mark N.*).) "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 J.E.* (2016) 3 Cal.App.5th 557, 566 (*J.E.*); see also *Melinda K. v. Superior Court* (2004) 116 Cal.App.4th 1147,

1159 (*Melinda K.*).) "'[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 (such as helping to provide transportation and offering more intensive rehabilitation services where others have failed).' [Citation.]" (*Robin V. v. Superior Court* (1995) 33 Cal.App.4th 1158, 1165.)

Section 361.5, subdivision (e)(1) sets forth the requirements for reasonable reunification services for incarcerated parents. "[T]he court shall order reasonable services unless the court determines, by clear and convincing evidence, those services would be detrimental to the minor. . . . Services may include, but shall not be limited to, all of the following: [¶] (A) Maintaining contact between parent and child through collect phone calls. [¶] (B) Transportation services, where appropriate. [¶] (C) Visitation services, where appropriate. [¶] (D) Reasonable services to extended family members or foster parents providing care for the child if the services are not detrimental to the child. [¶] An incarcerated parent may be required to attend counseling, parenting classes, or vocational training programs as part of the reunification service plan if actual access to these services is provided."[4]

We review a finding reasonable services were provided for substantial evidence, viewing the evidence in the light most favorable to the Department and indulging all reasonable inferences in favor of that determination. (*In re Precious J.* (1996) 42 Cal.App.4th 1463, 1472; see also *Melinda K., supra,* 116 Cal.App.4th at p. 1158; *Mark N., supra*, 60 Cal.App.4th at p. 1010.) "'If there is substantial evidence supporting the judgment, our duty ends and the judgment must not be disturbed.' [Citation.] [Mother] has the burden to

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[4] The statutory language quoted above reflects the version of section 361, subdivision (e)(1) that was in effect at the time of the juvenile court proceedings. Effective January 1, 2017, the Legislature adopted minor organizational changes to section 361.5, subdivision (e). (See Stats. 2016, c. 124 (A.B.1702), § 1, eff. Jan. 1, 2017; Stats. 2016, c. 612 (A.B.1997), § 74.5, eff. Jan. 1, 2017.) Those amendments do not affect the statute's substance.

demonstrate that there is no evidence of a sufficiently substantial character to support the juvenile court's order. [Citation.]" (*Christopher D. v. Superior Court* (2012) 210 Cal.App.4th 60, 70 (*Christopher D.*).)

2. Mother has failed to establish the juvenile court erred in finding DCFS provided reasonable services

Shortly after Brayan was detained in this matter, Mother was arrested and remained incarcerated for the duration of the proceedings. At the disposition hearing, held in September of 2014, the court ordered DCFS to provide Mother reunification services, which were to include drug rehabilitation with random testing, a parenting program, individual counseling and monitored visitation. The case plan also directed DCFS to assess what services were available for Mother at her place of incarceration. Mother does not challenge, nor has she ever challenged, the adequacy of the court's case plan. Instead, she challenges only whether DCFS made a reasonable effort to provide her the services set forth in the plan.

First, Mother asserts DCFS did not take adequate steps to ensure she had access to programs that would satisfy her case plan. The evidence in the record, however, demonstrates that DCFS contacted the facilities where Mother was incarcerated to inquire about services that might be available to her. On December 3, 2014, DCFS spoke with an officer at the Lynwood facility to "request[] information regarding programs that [M]other [could] complete." The officer informed DCFS that "qualified" inmates were permitted to participate in group counseling, a parenting class, and drug programs. The facility, however, deemed Mother, ineligible for the programs "due to her criminal history." Following Mother's transfer to the Chowchilla facility in February of 2015, DCFS again contacted a counselor to discuss the availability of services for Mother. The counselor informed DCFS that although the facility did offer parenting and drug classes to permanent residents, Mother was not currently eligible because she did not qualify as a "permanent resident."

The record thus shows that DCFS made repeated efforts to identify programs available to Mother during her incarceration. The fact that the facilities' policies prohibited Mother from participating in services is not sufficient to show that DCFS's efforts were unreasonable. Indeed, our courts

have repeatedly held that a social service agency cannot be held responsible for the unavailability of services within a specific institution. For example, in *Mark N., supra,* 60 Cal.App.4th 996, the court explained that a social agency supervising an incarcerated parent should "contact[] the relevant institutions to determine whether there [is] any way to make services available to the [parent]." (*Id.* at p. 1013.) The court further explained, however, that "[i]f . . . no services [a]re available to [the parent] in prison . . . , [the parent's] inability to participate [is] not the department's fault. The prisons are run by the Department of Corrections, not by the department. [Citation.]" (*Ibid.*) Similarly, in *In re Ronell A.* (1996) 44 Cal.App.4th 1352 (*Ronell A.*), the court concluded that DCFS had reasonably attempted to provide services by investigating what services were available to mother in the facility where she was incarcerated. The court noted that the fact "mother was only able to participate in such programs at the end of her sentence [was] not the fault of the department. Nor was the department in any position to rectify this problem: prisons are run by the department of corrections, not the department of children's services." (*Id.* at p. 1363.) In this case, the record likewise demonstrates that DCFS contacted both of the facilities where Mother had been placed to identify services she could participate in. The record further indicates that the facilities' policies, rather than any actions taken by DCFS, prohibited Mother from participating.[5]

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[5] In her brief, Mother contends that although she was not eligible to participate in the facilities' programs, DCFS could have referred her to "other educational material such as books which may have been in the prison library and . . . made no effort to provide [her] with information which would enable her to address the requirements of her reunification plan." Mother has, however, neither cited any evidence suggesting there were other resources available to her in the prisons that would have enabled her to comply with her reunification plan, nor provided any legal authority in support of this argument. Her contention that there may have been other materials available to her that would have aided her reunification efforts appears speculative in nature. Moreover, we fail to see how Mother's review of "education[al] materials such as books" would have enabled her to satisfy a case plan that required, among other things, drug counseling and drug testing.

Mother also challenges DCFS's efforts to facilitate visitation with Brayan. DCFS's reports show Brayan, then less than one year old, was transported to the Lynwood facility to visit with Mother on at least two occasions. The child's custodial foster parent brought Brayan to the facility in August of 2014, and DCFS supervised a second visit in February of 2015. A quarterly report that DCFS submitted to the court indicated the custodial foster parent had offered to schedule more visits at the facility, but Mother had "failed to follow through." Moreover, there is no evidence that Mother or her counsel ever requested additional visits with Brayan, or otherwise objected to the lack of visitation.

Although DCFS certainly could have done more in the way of visitation, we find no basis to conclude DCFS's efforts were unreasonable under the circumstances. This is not a case where the court simply declined to provide visitation to an incarcerated parent who had actively sought such visits. (Compare *In re Monica C.* (1995) 31 Cal.App.4th 296, 306 ["The failure of the reunification plan to provide for visitation between the child and appellant represents a grave shortcoming that was only partially remedied by appellant's own efforts [to secure visitation]"]; *In re Brittany S.* (1993) 17 Cal.App.4th 1399, 1407 [services found unreasonable where "the service plan . . . fail[ed] to provide for visitation "]; see also *Christopher D., supra,* 210 Cal.App.4th at p. 72 [distinguishing *Monica C.* and *Brittany S.* on the basis that the reunification plans in those cases "failed to provide for any visitation for the incarcerated parent"].) Instead, the record contains evidence that the case plan did provide for visitation, that some visits did in fact occur and that Mother did not pursue additional visitation opportunities. (See *Ronell, supra*, 44 Cal.App.4th at p. 1365 [mother failed to demonstrate inadequacy of visits where the evidence showed she had "manifested little interest in . . . . following through with any visitation plan"].)

In evaluating the overall reasonableness of DCFS's efforts to provide services, we further note that the record contains no evidence that Mother ever requested additional services, or otherwise informed the court (or the agency) that she believed the services offered to her were inadequate. Even after the court announced its intent to terminate services at the six-month review hearing, Mother did not raise any objection regarding the adequacy of

her services. Instead, she argued only that her services should be continued. Although a parent is "not required to complain about the lack of reunification services as a prerequisite to the department fulfilling its statutory obligations" (*Mark N., supra*, 60 Cal.App.4th at p. 1014), we believe Mother's failure to raise any issue related to the adequacy of her services is a factor we may consider in assessing the reasonableness of the agency's conduct. (See *In re Christina L.* (1992) 3 Cal.App.4th 404, 416 ["If Mother felt during the reunification period that the services offered her were inadequate, she had the assistance of counsel to seek guidance from the juvenile court in formulating a better plan"]; *Ronell, supra,* 44 Cal.App.4th at p. 1365, fn. 6 ["mother never complained to the department or to the court about the reunification services provided"]; cf. *J.E., supra,* 3 Cal.App.5th at p. 566 ["The standard is . . . whether the services were reasonable under the circumstances'"].)

Finally, even if we agreed with Mother's assertion that her services were not adequate (a contention we have rejected), she has presented no argument explaining how the provision of additional services or visitation would have increased the chances of reunifying with Brayan given her extended period of incarceration. At the six-month review hearing, held June 3, 2015, the juvenile court emphasized that additional services would not aid in reunification because her release date was not until June 11, 2016, more than 24 months after the date on which Brayan had been removed from her custody. Under section 361.5, subdivision (a)(4) the maximum period of reunification services is 24 months. Section 366.22, subdivision (b) similarly requires that the permanency hearing "shall occur within 24 months of the date the child was originally taken from the physical custody of his or her parent. . ." (See also *San Joaquin Human Services Agency v. Superior Court* (2014) 227 Cal.App.4th 215, 222 ["[t]he juvenile court may extend reunification services beyond 18 months from the date of initial removal, to 'a maximum time period not to exceed 24 months after the date the child was originally removed from physical custody of his or her parent'"]; see also *Sara M. v. Superior Court* (2005) 36 Cal.4th 998, 1008-1009 ["[i]f, after the specified time period has expired, the efforts to reunify the family have failed, "'the court must terminate reunification efforts and set the matter for a

hearing pursuant to section 366.26 for the selection and implementation of a permanent plan"""]; see also § 366.25.) Given her release date, even if Mother had completed all of the requirements of her case plan, it does not appear she could not have reunified with her child within this 24-month period. As a result, it does not appear "reasonably probable" that the provision of additional (or more adequate) services would have resulted in a different outcome. (See *Ronell, supra*, 44 Cal.App.4th at pp. 1365-1366 ["even if the court erred in ruling the reunification services were reasonable, . . . Mother . . . would not be released until . . . well past the [maximum] period [for reunification services]. Stated otherwise, a different reunification plan would not have made a difference in the outcome"]; *In re Jonathan B.* (1992) 5 Cal.App.4th 873, 876 ["We will not reverse for error unless it appears reasonably probable that, absent the error, the appellant would have obtained a more favorable result"].)

DISPOSITION

The juvenile court's orders are affirmed.

ZELON, J.

We concur:

PERLUSS, P. J.

SEGAL, J.