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5 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
6 IN AND FOR THE COUNTY OF XXX
7 JUVENILE DIVISION

8 In the Matter of

9 XX

10 Minors

MOTHER'S POINTS AND AUTHORITIES
IN SUPPORT OF RETURNING THE
CHILDREN TO THE MOTHER AT THE
EIGHTEEN MONTH REVIEW AND
ORDERING FAMILY MAINTENANCE
SERVICES FOR THE MOTHER AND
MINORS

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16 **Statement of Facts**

17 The minors were placed in protective custody on X, 2004 because of physical abuse. The
18 Court took Jurisdiction over the minors on X, 2004 by finding allegations of 1st amended petition
19 filed under Welfare and Institutions Code Section 300 true by a preponderance of the evidence. The
20 allegations consisted of drug abuse by the mother and father as well as incidents described as
21 domestic violence. The parents were ordered reunification services for the minors. The mother's
22 case plan consisted of a parenting adolescents class, family counseling once deemed appropriate by
23 the children's individual counselors, random drug testing 2 times a week, 12 step meetings and
24 sponsor, a drug and alcohol assessment and follow the recommendations, and a domestic violence
25 support group.
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27 The Court held several interim review hearings. On X, the Court continued the interim
28 review hearing until X. On X, the Court held an interim review hearing. The report indicates that

1 mother was re-referred to a parenting adolescence class, drug testing vouchers were in place, a
2 referral for a 12-step program was made; mother had completed her drug and alcohol assessment and
3 was number 24 on the waitlist for X outpatient program and mother was on a waiting to start her
4 Domestic Violence support group. On X, the Court held another interim review. On that date, the
5 parenting adolescents class was scheduled to begin, the mother was not drug testing, the mother was
6 not going to meetings, the mother was number 17 on the wait list for X outpatient, and the mother
7 had started her Domestic Violence support group.
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9 At the six-month review hearing, the Court ordered continued reunification for these minors,
10 but terminated services on a younger sibling. The Court ordered the same services as the
11 dispositional plan. The parents began engaging in their case plan. Mother completed her parenting
12 class and her domestic violence support group. Father was engaged in his services. Mother was
13 drug testing and going to meetings. At the 12 month review, the Court granted services to the 18
14 month review. At this time, mother was pregnant with another baby. Mother has a medical
15 condition and she had a very hard pregnancy. As a result, she missed classes at her outpatient
16 program and was dropped from the program. The mother had a healthy baby boy. The Department
17 of Social Services attempted to obtain a protective custody warrant for the baby. The Court denied
18 the warrant
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21 At the 18-month review, the Department recommended termination of reunification services
22 and setting a 366.26 hearing under the Welfare and Institutions Code. The Department still had
23 these minors, both teenagers, on supervised visitation with their parents. At the pre-trial settlement
24 conference, Mother asked for increased visitation. The Court, at that time, granted, in a written
25 order, three unsupervised, overnight visits, non-consecutive to the mother pending this trial.
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Questions

- 1) Under 366.22 (e), the court must return the child to the physical custody of the parent unless the Court finds, by a preponderance of the evidence that return of the child would create a substantial risk of detriment to the safety of the child. Does return of the children to the mother create a substantial risk?
- 2) In the alternative, has the Department provided the Mother with Reasonable Services?

Legal Analysis

a. No risk exists to return the children to the mother.

Under Welfare and Institutions code section 366.22, at the 18-month review hearing the Court must return the children to the care of their parent unless the court can find by a preponderance of the evidence that return would create a substantial risk of detriment.

In this case, the evidence clearly supports the contention that the court must return the children to their mother. One of the allegations in the petition was regarding mother's drug use. She is currently clean and sober and has been for over 20 months. She has been attending AA/NA meetings and was attending an intensive outpatient treatment program until she was discharged in November. Mother contends she was discharged from her program because she missed too many sessions due to a high-risk pregnancy and health issues with her medical condition. Regardless, mother did have a healthy baby boy and did receive prenatal care. She continues to drug test clean for social services.

The second problem identified by the Department at Jurisdiction was domestic violence. Mother has completed a domestic violence support group. Mother and Father are not living together and Mother has demonstrated that she can follow Court orders in terms of contact with her children. There have not been any incidents of domestic violence between mother and father since the

1 inception of this case. Thus, Mother has eliminated any substantial risk to the children and allowing
2 them to return to the Mother's care would not be detrimental.

3 In dependency court cases, we do not ask our clients to be perfect (*Rita L. v. Superior*
4 *Court*, 128 Cal.App. 4th 495) In *Rita L.*, the Court held that the termination of reunification services
5 at the 18 month review was improper because 1) mother's ingestion of a pain killer did not raise to
6 the level of substantial risk; 2) the Court improperly considered the quality of the child's
7 relationship with the caregivers in reaching its decision, and 3) Mother was denied the full benefit of
8 the reunification period by the court not allowing the child to go on a 60-day trial visitation release.
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10 The facts in the case before this Court coincide nicely with *Rita L.* In *Rita L.*, mother was a
11 bit slow starting her reunification services, but did participate in her reunification plan. She
12 participated in drug testing and completed a parenting program and complied with her requirements
13 of the reunification plan (p. 499). In quoting *Jennifer A. vs. Superior Court* (2004) 117 Cal App. 4th
14 1322, the *Rita L.* court states, "The question we face is not whether Mother has an unblemished drug
15 testing record or whether Mother is a perfect parent. Rather, the question is whether substantial
16 evidence supports the juvenile court's finding that returning the children to the Mother's custody
17 would create substantial risk of physical or emotional detriment to the children." (504)
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19 Mother, in this case, is not a perfect parent. She was dropped from her outpatient program
20 and she has missed some drug testing, but, this does not create a substantial risk of detriment to the
21 children. Further, *Rita L.* goes on to quote, *David B. v. Superior Court* (2004) 123 Cal.App.4th 768
22 regarding the standard for substantial risk; "The standard, while vaguely worded to be sure, must be
23 construed as a fairly high one. It cannot mean merely that the parent in question is less than ideal,
24 did not benefit from reunification services as much as we might have hoped, or seems less capable
25 than any available foster parent or other family member." (505)
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1 Mother clearly benefited from services. She is clean and sober, as evidenced by her healthy
2 newborn, and there have not been any domestic violence incidents in the last 18 months. These
3 children are not at substantial risk of harm if returned to the mother. The children have spent
4 overnight visits with the Mother. The letter from child 1's therapist in the addendum report dated X
5 states that the therapist wants sessions with the Mother prior to her return. There is no indication in
6 the letter how many sessions would be needed. There is also no indication in the letter that if Family
7 Counseling were happening that the children could not be returned home. The letter also indicates
8 the child 1 is suffering from Post Traumatic Stress Disorder from being removed from her home; it
9 begs the question, if child 1 returned to her mother's home, wouldn't it be improve her emotional
10 well-being? The children look at the mother for emotional and physical support. It is time for these
11 children to return to the Mother's care.
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14 In the alternative, Mother also has the alternative of moving in with the girls at the Paternal
15 Grandmother's residence. In this way, the children can return to the care of the mother and, at the
16 same time, have the stability of the residence with the paternal grandmother.

17 It is also important for the Court to note the children's wishes. These girls want to go home.
18 They want to be back with their mother and younger brother. They want to get back to a normal life.
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20 **b. Reasonable Services must be found at each Statutory Review Hearing. In this**
21 **case, Reasonable Services were not provided in that the Social Worker failed to**
22 **increase visitation as required under Welfare and Institutions Code Section**
23 **362.1 and include Family Therapy in the process. The Court must continue the**
24 **18-month review hearing under Welfare and Institutions Code Section 352.**

25 Reasonable Services are required to be provided to the family. *Mark N. (Mark N. vs.*
26 *Superior Court of Los Angeles*, 60 Cal.App.4th 996) states, "Family preservation is the first priority
27 when dependency proceedings are commenced." (Citing *In re Precious J.* 42 Cal App. 4th 1472).
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29 In this case, the Department failed to provide reasonable services to this family. The
30 reunification plan is a vital part of the dispositional orders. In those orders, the trial court ordered

1 the children to individual counseling and then family therapy when deemed appropriate. At this
2 time, only child 1 is in individual therapy.

3 Also, visitation is a crucial part to the reunification plan. In *In re Elizabeth R*, (1995) 35
4 Cal.Ap.4th 1774, the Court concluded that reunification services could be extended beyond the 18-
5 month review primarily because the mother had been prohibited from visiting after the 6-month
6 review hearing. According to Welfare and Institutions Code section 352.1,

8 In order to maintain ties between the parent or guardian and any siblings and the child, and to
9 provide information relevant to deciding, if and when, to return a child to the custody of his
10 or her parent or guardian..., any order placing a child in foster care, and ordering
11 reunification services, shall provide as follows:

... Visitation shall be as frequent as possible, consistent with the well-being of the child.

12 In this case the Social worker did not create visitation as frequently as possible for the well-being of
13 the children. The children and the parents have continually asked for increased visitation. It finally
14 took a written order from the Court at the 11th hour for the children to have increased visitation with
15 their mother. "Visitation and compliance with the reunification plan should be indicia of progress
16 toward family preservation." (*In re Elizabeth R* at 1790)

17 The remedy for Social Services not providing reasonable visitation is continuing the 18-
18 month review hearing. In *Elizabeth* (supra) and *David* (supra), both mothers had made progress in
19 their case plan and visitation had increased and then something happened and social services reduced
20 visitation and recommended termination of services at the 18-month review. In *David* (supra), the
21 mother had done well and finally left an abusive relationship and was hospitalized on a psychiatric
22 hold; mother voluntarily placed her children with social services. The Court found in that case that
23 reasonable services were not offered because visitation had been decreased when mother went into
24 the psychiatric hospital and the mother was granted additional reunification services beyond the 18-
25 months.
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1 Finally, *In re Elizabeth R*, clarifies that under Welfare and Institutions Section 352, the Court
2 may continue the 18-month review. The Court concludes that because of the lack of visitation,
3 reasonable services were not offered to the mother. Thus, the termination of reunification services
4 was overturned and remanded to the trial court. In quoting *In re Dino E.* (1992) 6 Cal.App.4th 1768,
5 the Court in *In re Elizabeth R* (supra, 1798) states:
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7 No motion was brought under section 352. We believe that statute indicates, however, that
8 the court has discretion upon a showing of good cause to continue juvenile dependency
9 hearings beyond the statutory time limits. Had the court here been inclined to continue the
10 18-month review hearing on the basis that adequate services had not been offered, we believe
it could have done so. On remand the court may entertain a section 352 motion for
continuance of services beyond the statutory time.

11 In this line of cases cited in *In re Elizabeth R.*, the Court makes it clear that visitation is a crucial and
12 key element to reunification of parents and children. The Court also makes it clear that if visitation
13 is not increased, this lack of increase in visitation is a violation of reasonable services and therefore
14 the parents are entitled to more services.

15 In the case before us, the Department has had the discretion to increase visitation for 18
16 months. These teenagers have been limited to supervised visitation at an agency for a year and a
17 half, while the parents have been engaged in services and participated in their case plan. Mother has
18 been entitled to increased visitation. She has been clean and sober for 20 months and there have not
19 been any incidents of domestic violence for this entire case. Mother and father are living separately.
20 The Department has failed to offer reasonable services to both Mother and the children by not
21 increasing visitation. Although it is Mother's contention that the Court must return the children to
22 her care, in the alternative, the Court must continue reunification services so that Mother can
23 successfully reunify with her children.
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1 **Conclusion**

2 The children must be returned to the care of their mother. The department has not met their
3 burden to prove by a preponderance of the evidence that returning the children to the care of their
4 mother would create a substantial risk of detriment to their well-being. There is no indication that
5 child 1 cannot return home and continue therapy with her mother. There is no discussion of risk if
6 Mother moved in with both children. This mother is not perfect, but she does not pose a substantial
7 risk to her children. The Court must order the children to return to their mother. In the alternative,
8 the Court may order a transition plan home for the children and continue the 18-month review
9 hearing for the transition to occur.
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13 DATED: X

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15 By: _____
16 XXX
17 Attorney for Mother
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