

1 [REDACTED]
2 [REDACTED]
3 Telephone: [REDACTED] / Fax: [REDACTED]

4 Attorneys for Father
5 Father [REDACTED]

6 SUPERIOR COURT OF CALIFORNIA
7 COUNTY OF [REDACTED]
8 JUVENILE DIVISION

9 IN THE MATTER OF

10 Child [REDACTED] and Child [REDACTED]
11 Minors

)
) Case No., JV [REDACTED]; JV [REDACTED]
) **FATHER'S DISPOSITION BRIEF**
)
) Date: [REDACTED]
) Time: 9:30 am
) Dept: [REDACTED]

14 **Introduction**

15 This matter is before the court for a contested disposition hearing under Section 361.5(e)(1) of the
16 Welfare and Institutions Code.¹ The father, Father [REDACTED], seeks services so he may reunify with his
17 children. The Department of Social Services² seeks to by-pass services to this father, and wishes to set a
18 termination hearing so the children may be adopted. The Department fails to meet their burden of
19 establishing by clear and convincing evidence that providing reasonable services will be detrimental to
20 these children.³ Notably, the Department is seeking to move the children from their current foster
21 placement to an adoptive home out of state.

22 **Statement of Facts**

23 **History and Background:**

24 This case becomes before the court on the issue of by-pass of services to the father Father [REDACTED]
25 Father [REDACTED]. There was a disposition hearing held as to these children in [REDACTED]. The children were
26 removed from the mother and services were not offered to either parent. The Department recommended
27 by-pass as to this father based on WIC 361.5(b)(1). The father was not represented by counsel at this
28 hearing, as he had never been located. At the time of the hearing, the father, unbeknownst to anyone

¹ Hereinafter referred to as WIC

² Hereinafter referred to as the Department.

³ WIC 361(c) squarely places the burden of showing by clear and convincing evidence that the child is at substantial danger on the Department when recommending removal.

1 involved in the case, was being held at a detention facility in Texas by INS authorities, and was unaware of
2 the proceedings and unable to contact anyone. In early [REDACTED], less than a month after the
3 disposition hearing, the father contacted the social worker, [REDACTED], inquiring about his children. It
4 was at this time Father [REDACTED] learned for the first time of the legal proceedings involving his children.
5 It was also the first time the Department learned of his whereabouts for the previous months, and that he in
6 fact had been held by INS, then deported and was in Mexico with his family. Upon learning that his
7 children were in foster care and that legal proceedings had taken place, Father [REDACTED] agreed to stay in
8 touch with the Department and also made immediate plans to return to the US. He was caught by INS
9 again on his return trip for his children, and was sent to [REDACTED] in [REDACTED]. He is currently in
10 custody at the [REDACTED] jail and is awaiting INS proceedings and anticipates another deportation. His
11 children are currently in a foster home, and have had approximately 3 visits with him in a courtroom.

12 The father initially left to visit his extended family in Mexico in [REDACTED] and was
13 immediately detained by INS. He was stuck in an INS detention facility until he was deported in [REDACTED]
14 [REDACTED]. He called California to talk to his children and family but was not told about the legal proceedings
15 involving his children until [REDACTED]. He immediately contacted the social worker once he learned
16 of the situation, and upon learning his children were in foster care, made immediate plans to come back
17 into the country for his children. Unfortunately, he was detained immediately upon re-entering the country
18 in [REDACTED]. He was brought to [REDACTED] in [REDACTED], and requested legal representation
19 in these matters involving his children and has been unwavering in his request and desire for custody of his
20 children. [REDACTED] was appointed to represent Father [REDACTED] in late [REDACTED].

21 In summary, the whereabouts of Father [REDACTED] through the course of these proceedings:

22 [REDACTED]: Father leaves to visit family in Mexico. Detained and held by INS.

23 [REDACTED]: Deported to Mexico.

24 [REDACTED]: Learns of dependency proceeding, contacts social worker.

25 [REDACTED]: Attempts re-entry, detained by INS.

26 [REDACTED]: Transferred to [REDACTED] jail. Awaiting deportation.

27 **Father's involvement with the children:**

28 Father [REDACTED] was present at the births of both of his children and resided in the home with
them their entire lives. As the sole wage earner and provider for his children and their mother, he first
worked in landscaping, then in construction. Through his hard work he managed to procure and maintain
housing for him and his family, as well as all of the day-to-day necessities. While he worked during the
days, and often long hours, it is undisputed that he saw his infant children everyday and played with them
and participated in the normal day-to-day of their very young lives for the past 2 and 3 years. There were
never any allegations of abuse or neglect by this father.

Argument

1 As relevant to this case, the law under WIC 361.5 is clear. Once children are removed from the
2 custody of their parents, even incarcerated parents are legally entitled to services unless the Department can
3 meet its burden of proving by clear and convincing evidence that such services would be detrimental to the
4 children. The Department fails to appreciate and fully comprehend their burden of proving detriment by
5 presenting this court with factual evidence. Notably, the Department states: "The detriment to the children
6 if services are not offered is slim to non-existent." (Disposition report, [REDACTED] page 14, line 21) This is
7 the incorrect standard, as the law requires a showing of detriment to the children if services *are* offered, not
8 if services are by-passed.

9 The Department relies heavily on their assertion that "the children appear to have little or no
10 relationship with their father," (Disposition report page 14, line 20.) in an effort to show that providing
11 services would be detrimental. This determination is presented in the report as evidence after a social
12 worker observed 3 visits between the father and the children in a courtroom for less than 45 minutes at a
13 time. Notably, these young children had not seen their father for close to a year prior to their first visit, and
14 this first visit took place in a courtroom. The father has not had an opportunity to try to explain to his
15 young children where he has been. He has not had the opportunity to address why the children are no
16 longer living with him and the mother. It stands to reason that the children are in general confused,
17 conflicted, upset, perhaps angry with their father. What should be considered by this court is the fact that
18 these children knew Father [REDACTED] as their father and resided with them from the time of their birth until
19 [REDACTED]. They did not see their father for a period of less than one year, but saw him every day
20 prior to this recent absence. At the young ages of 3 and 4, efforts to re-establish the relationship between
21 this father and his children, as well as with a large extended paternal family could be very successful,
22 beneficial. Arguably, these children are developmentally at a stage where they are learning to form
23 attachments, thus would benefit from increased visits with their father and their extended paternal family.
24 There is no factual evidence before the court showing otherwise. There are no facts to support the idea that
25 providing the services to allow the children increased contact and communication with their father will in
26 fact harm them in any way. There are no facts to support the fact the children will suffer a detriment from
27 being offered services.

28 The father is currently incarcerated and awaiting deportation for being an illegal in this country. It
is likely he will be deported within the next 6 months, and will return to Mexico where he has a large
extended family willing and ready to assist him with raising his children.

The burden is on the Department to provide facts showing detriment to these children if services
are provided to them. Under 361.5(e), the court is to consider a number of factors in determining⁴ the

⁴ WIC 361.5(e)(1) If the parent of guardian is incarcerated or institutionalized, the court shall order reunification
services unless the court determines by clear and convincing evidence, those services would be detrimental to the

1 detriment if services are offered. Unsupported opinion of a social worker does not constitute clear and
2 convincing evidence of detriment to children. Without sufficient evidence, the court must order services.

3 Clear and convincing evidence is a very high standard to meet. It requires finding of "high
4 probability" and clarity so great as to "leave no substantial doubt." What the Department provides, in an
5 effort to support their recommendation of bypass, leaves ample substantial doubt as to their
6 recommendation. Here, Father [REDACTED], as the father of these young children, is in the difficult position
7 of needing to dispute that services would NOT be detrimental to his children, where there is a lack of actual
8 facts for him to dispute.

9 Conclusion

10 In the absence of clear and convincing evidence that offering services would be detrimental to the
11 children, the court must order services to the family. Here, there are insufficient facts to support the
12 Department's recommendation of bypass. This father is fully cooperative with the Department, and
13 welcomes assistance and services, however this father is also very strong in his desire that his children if
14 not with him, be with his family. The Department was given information about the father's family, and has
15 contacted his sister who has on more than one occasion expressed without hesitation her willingness to
16 provide these children with a home be it temporary or permanent. It would be a benefit, not a detriment to
17 these children, for the Department to look further into this relative as a possible placement. This is a
18 reasonable service these children and father should be afforded.

19 Rather, the father argues that services would be beneficial to his children and accordingly requests
20 that this court deny the Department's recommendation of bypass and order that services be provided.

21 Dated: _____

Respectfully submitted

[REDACTED]
[REDACTED]

Attorneys for Father [REDACTED]

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27 child. In determining detriment, the court shall consider the age of the child, the degree of parent-child bonding, the
28 length of the sentence, the nature of the treatment, the nature of the crime or illness, the degree of detriment to the
child if services are not offered and, for children 10 years or older, the child's attitude toward the implementation of
family reunification services, and other appropriate factors. (emphasis added).