IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

In re A.G., a Person Coming Under the Juvenile Court Law.	S271809
MICHAEL G., Petitioner, v. THE SUPERIOR COURT OF ORANGE COUNTY, Respondent; ORANGE COUNTY SOCIAL SERVICES AGENCY, et al., Real Party in Interest.	Court of Appeal No. G060407 Orange County Superior Court No. 19DP1381

PETITIONER'S REPLY BRIEF ON THE MERITS

After the Published Decision of the Court of Appeal
Fourth Appellate District, Division Three Filed October 6, 2021

MARTIN SCHWARZ
Orange County Public Defender
BRIAN OKAMOTO (SBN 217338)
Senior Deputy Public Defender
341 City Drive South, Ste 307
Orange, California 92868
(657) 251-6718
brian.okamoto@pubdef.ocgov.com

Attorneys for Petitioner, Michael G.

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REPLY BRIEF ON THE MERITS

Pursuant to California Rules of Court, rule 8.520(a)(3), Michael G. (Father) respectfully submits this Reply Brief on the Merits to the Answer Brief on the Merits filed on behalf of the Orange County Social Services Agency (SSA). In this reply, Father stands by the facts and arguments presented in his Opening Brief on the merits and does not concede that any of them have been rebutted or overcome by the facts and arguments contained in SSA's brief. Father herein will reply more specifically as necessary.

INTRODUCTION

Families deprived of reasonable services in the 18-month review period deserve an extension of services to ensure the protection of their fundamental liberty interests and due process. These families do not, as SSA argues, ask this Court to adopt a prophylactic rule that subverts the statutory scheme and penalizes the child by delaying his or her stable, permanent home (SSA, p. 35.), or to extend the portion of the child's fleeting youth in limbo. (SSA 50.) By framing the issue this way, SSA unfairly presumes that a child's interest at the 18-month review is in timeliness and finality, not family preservation.

As explained in the opening brief and further below, when the trial court considers whether to extend reunification services at the 18-month review, family preservation remains the permanent plan. Thus, emphasis on timeliness and finality in interpreting the statutory scheme at issue is misplaced. While SSA agrees that due process requires that parents be provided reasonable services, it erroneously reiterates the reasoning reflected in the Court of Appeal's opinion below that the child's interest in timeliness and finality supersedes the family's interest in reunification.

Father maintains that this Court should clarify the statutory scheme governing the 18-month review in a way that ensures families aggrieved by

the loss of reasonable services receive a remedy commensurate with their fundamental interests at stake. In the circumstances presented herein, a remedy that preconditions an order terminating reunification services and scheduling the section 366.26 hearing best protects these interests. Alternatively, section 352 may provide suitable relief if its requirements are clarified to ensure that families do not bear an unfair burden to merit relief.

ARGUMENT

I. A FAMILY'S RIGHT TO SUBSTANTIVE DUE PROCESS ENTITLES THEM TO RELIEF FROM THE DEPRIVATION OF REASONABLE SERVICES.

Father's due process claims, which SSA misconstrues, are not misplaced as a matter of law. (SSA 51.) Father does not argue that due process elevates the rights of parents over their children's interest in prompt permanent planning. (SSA, p. 51.) Rather, Father argues that due process ensures fundamental fairness in the decisions at the 18-month review affecting parents' fundamental liberty interests, and protects the family's interest in ensuring that the parent-child relationship is not erroneously abridged. As these interests are shared by both parents and children alike (*In re A.R.* (2021) 11 Cal.5th 234, 249.), the due process issue herein is not

narrowly premised on a direct conflict of competing interests as suggested by SSA.

While parents do not generally possess a constitutionally protected liberty interest in the state providing them with reunification services as SSA points out (SSA 52; *Renee J. v. Superior Court* (2001) 26 Cal.4th 735, 750 [determining § 361.5, subdivision (b)(10) bypass satisfies due process requirements]; § 361.5, subd. (b) [bypass provisions].), a parent's fundamental liberty interest in their child's companionship, care, custody and management is nonetheless entitled to the protections of the statutory scheme, substantive due process and fundamental fairness. (see, *In re A.S.* (2009) 180 Cal.App.4th 351, 359, ["It is axiomatic that due process guarantees apply to dependency proceedings"]; see also, *In re Emily D.* (2015) 234 Cal.App.4th 438, 445, ["In contested juvenile court proceedings, the due process clause of the Fourteenth Amendment requires that 'not only must there be actual fairness in the hearing but there must be the appearance of justice'"].)

To these ends, the provision of reasonable services is indispensable. The Federal title IV-E program requires states to make reasonable efforts to preserve and reunify families and to make it possible for a child to safely return to the child's home. 42 U.S.C. § 671(a)(15) (2018). In accord, California law requires courts to order social workers to provide

reunification services unless an exception applies. (§ 361.5, subd. (a); *Renee J. v. Superior Court, supra*, 26 Cal.4th at p. 744, [reunification services "further[] the goal of preservation of the family, whenever possible"].) The provision of reasonable services is vital to the critical determinations the court must make at the 18-month review. If "appropriate services designed to mitigate risk to the child have not been provided to a parent, it is likely risk to the child will not have been mitigated. Thus, where reasonable services have not been provided or offered to a parent, there is a substantial likelihood the juvenile court's finding the parent is not likely capable of safely resuming custody of his or her child may be erroneous." (*In re M.F.* (2019) 32 Cal.App.5th 1, 18-19, internal citation omitted.)

Although this Court has noted in a different context that "[r]eunification services are typically understood as a benefit provided to parents, because services enable them to demonstrate parental fitness and so regain custody of their dependent children," (SSA 52; *In re Nolan W.* (2009) 45 Cal.4th 1217, 1228[1].), this Court has also recognized their

[1] This Court's reference to reunification services as a "benefit" was in the context of determining that a juvenile court may not punish a parent for contempt solely for failure to comply with a court-ordered service. (*In re Nolan W., supra,* 45 Cal.4th at p. 1238.) Notably, the analysis therein focused on the court's response to a parent's failure to participate in a reunification service, not on the agency's failure to provide it.

importance in ensuring the statutory scheme comports with due process and fundamental fairness. (*In re Marilyn H.* (1993) 5 Cal.4th 295, 307-308, referring to reunification services and review hearings at which services and progress are reviewed as among the "significant safeguards" built into the dependency scheme.) Further, "[p]roviding reasonable services is one of 'the precise and demanding substantive and procedural requirements ... carefully calculated to constrain judicial discretion, diminish the risk of erroneous findings of parental inadequacy and detriment to the child, and otherwise protect the legitimate interests of the parents.'" (*In re M.F.*, *supra*, 32 Cal.App.5th at p. 19, quoting *Cynthia D. v. Superior Court* (1993) 5 Cal.4th 242, 256.)

Thus, the provision of reasonable services is not just a "benefit,"[2] nor "simply" a statutory right. (SSA 52.) Despite utilizing such terminology, SSA ultimately agrees that due process requires parents be provided

[2] The term "benefit" to describe reunification services first appeared in *In re Christina A.* (1989) 213 Cal.App.3d 1073, which in analyzing a mother's due process claim suggested her interest in receiving reunification services was akin to a "property right to a 'benefit.'" (*Id.* at p. 1078.) Although such terminology may have been appropriate for that particular analysis, Father respectfully submits that this description should not be generally used to describe one of the "significant safeguards" in the statutory scheme that ensures due process in proceedings affecting a parent's "fundamental liberty interest" in the continued care, custody and control of their children, which is "commanding" and "far more precious than any property right." (*Santosky v. Kramer* (1982) 455 U.S. 745, 758–759.)

reasonable services. (SSA 52.) On that jointly understood premise, it follows that a family deprived of reasonable services is deprived of due process. Yet, when that deprivation has been determined at the 18-month review hearing, sections 366.22 and 361.5 fail to ensure a remedy for the aggrieved family. SSA argues this is justified by the Legislature's intent and policy decisions. Parents and their children, however, deserve a remedy commensurate with their fundamental interests at stake.

II. THE STATUTES DIRECTLY GOVERNING THE 18-MONTH REVIEW UNJUSTIFIABLY LEAVE FAMILIES WITHOUT AN ADEQUATE REMEDY.

SSA offers logical interpretations of sections 366.22 and 361.5, subdivision (a)(4)(A), but leaves unresolved the constitutional question presented herein. (SSA 41.) There is no dispute that under the plain language of section 366.22, relief from a deprivation of reasonable services in the critical 18-month review period is available only to a narrow subset of parents defined in subdivision (b). (SSA 35-38; Opening brief 48-51.) As for parallel section 361.5, subdivision (a)(4)(A), SSA makes a compelling argument that this provision likewise limits relief to the parents narrowly defined in section 366.22, subdivision (b), contrary to the conclusion reached by the Fourth District Court of Appeal, Division One in *In re M.F.*, *supra*, 32 Cal.App.5th at p. 23. (SSA p. 39-40.) Given that both sections

366.22 and 361.5, subdivision (a)(4)(A) were amended together, and section 361.5, subdivision (a)(4)(A) specifically references subdivision (b) of section 366.22, it is logical to interpret both sections as being consistent with one another. However, harmonizing sections 366.22 and 361.5, subdivision (a)(4)(A) in a way that deprives the majority of parents aggrieved by the denial of reunification services of a remedy only highlights the constitutional problem at issue.

SSA tries to justify the limited relief by referencing the Legislature's authority to make policy determinations that more favorably treat specific classes of parents. (SSA 44, 50.) Father of course appreciates the Legislature's expansion of circumstances by which parents who encounter significant barriers to reunification may have their services extended beyond the 18-month review. (See SSA 50, agreeing the distinction makes sense.) But the Legislature in amending sections 366.22 and 361.5 did not just add favorable treatment for a specific class of parents; it took away a remedy that ensured due process for the majority of families aggrieved by

the deprivation of reasonable services in the critical 18-month review period.[3]

"In substantive due process law, deprivation of a right is supportable only if the conduct from which the deprivation flows is prescribed by reasonable legislation that is reasonably applied; that is, the law must have a reasonable and substantial relation to the object sought to be attained. [Citation.]." (*In re Marilyn H., supra*, 5 Cal.4th at p. 306-307.) SSA suggests the statutes' limited relief is reasonably and substantially related to the Legislature's prioritization of the child's stability and permanency over continued reunification efforts. (SSA 35-36.) Specifically, SSA claims the Legislature's policy choices determined that at the point of the 18-month review hearing, family reunification and reasonable services were superseded by the child's interests in permanency and stability. (SSA, p. 51.) However, this is not reflected in the law.

"It must be remembered that up until the time the section 366.26 hearing is set, the parent's interest in reunification is given precedence over the child's need for stability and permanency." (*In re Marilyn H., supra*, 5

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[3] SSA's broader explanation for the Legislature's decision to deny relief to the majority of parents is that the Legislature prioritized the child's interest in permanency. It is unclear why children whose parents happen to fall within the narrow subset have a lesser interest in timely permanency than other dependent children.

Cal.4th at p. 310.) "Once reunification services are ordered terminated, the focus shifts to the needs of the child for permanency and stability." (*Id.* at p. 309.) Thus, the turning point at which permanency, or rather an alternative permanent plan, supersedes the goal of reunification is the decision terminating reunification services, not the posture of the hearing. Until that critical decision is made, families at the 18-month review hearing should still be assured the statutory presumption of reunification,[4] the provision of reasonable services in the preceding review period toward that end, and fundamental fairness in any decisions that may abridge the family's fundamental liberty interests. To weaken the family's constitutional protections at this critical juncture by terminating reasonable services when they have not been adequately provided to the family, eviscerates the fundamental fairness of the statutory scheme.

Although children have an interest in timeliness and finality, they "too, have a compelling independent interest in belonging to their natural family." (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 222–223.) As should be expected, a parent and child have a recognized "interest in each other's care and companionship" (*In re Jasmon O.* (1994) 8 Cal.4th 398,

[4] At status reviews, "there [is] a statutory presumption that the child should be returned to the custody of the parent." (*Cynthia D. v. Superior Court* (1993) 5 Cal.4th 242, 253, referencing section 366.22, subd. (a).)

419) and "share an interest in avoiding erroneous termination." (*Santosky v. Kramer* (1982) 455 U.S. 745, 765 [rejecting court's assumption that termination of the natural parents' rights invariably will benefit the child].)

Thus, the child's interest in timeliness and finality does not supersede the family's interest in reunification and due process at the 18-month review. While achieving timely permanency is undoubtedly a critical interest (*In re. A.R., supra*, 11 Cal.5th at p. 249.), "important too is the interest in producing 'an accurate and just resolution' of dependency proceedings."[5] (*In re Lucero L.* (2000) 22 Cal.4th 1227, 1247; see also, *In re A.R., supra*, 11 Cal.5th at p. 249, concluding that despite children's "critical interest" in timeliness, parents denied ability to appeal due to incompetent counsel must be afforded statutory right to appeal to ensure shared interests of parents and children in accurate decisions on parent-child relationship.)

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[5] It has also been recognized that "[p]lacing timeliness above the substance of thorough execution of case plans and reasonable or active efforts to achieve them runs the risk of placing process over substance and promoting shortcuts in practice that can be harmful to children and families." (Dept. of Health and Human Services, Office of Human Development Services Administration for Children and Families, Children's Bureau: ACYF-CB-IM-20-09, Achieving Permanency for the Well-being of Children and Youth, p. 10 (Jan. 5, 2021) <https://www.acf.hhs.gov/sites/default/files/documents/cb/im2101.pdf> [as of May 11, 2022].)

Additionally, SSA's reference to section 366.26, subdivision (c)(2)(A) raises questions about the Legislature's intent in amending the statute's governing the 18-month review. Had the Legislature truly prioritized timeliness and finality over reunification in deleting the reasonable services requirement from section 366.22, its contemporaneous amendment to section 366.26 is difficult if not impossible to reconcile. As noted by SSA, the 1991 amendments that deleted the reasonable services requirement in section 366.22 also added subdivision (c)(2)(A) to section 366.26, which bars termination of parental rights at the section 366.26 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 re T.M.* (2009) 175 Cal.App.4th 1166, 1172, referencing Stats. 1991, ch 820, § 5.)

While SSA credibly argues these amendments prove the Legislature envisioned that cases could reach the section 366.26 hearing without a reasonable services finding at the 18-month review (SSA 41.), SSA fails to address the absurd and frightening scenario these provisions contemplate for families in reunification.

Because a finding of reasonable services is a precondition to the setting of the section 366.26 hearing at the 6- and 12-month reviews, relief

from section 366.26, subdivision (c)(2)(A) can only come about after a finding of no reasonable services at the 18-month review. Thus, for the relief in section 366.26, subdivision (c)(2)(A) to apply, a trial court must have terminated reunification services after allowing the child's case to proceed 18 months without the family receiving any periods of reasonable services. The trial court would then have scheduled the section 366.26 hearing 120 days later to date at which the court would be barred from selecting the preferred permanent plan. (*In re Samantha H.* (2020) 49 Cal.App.5th 410, 414, ["Adoption is the permanent plan preferred by the Legislature"].) In total, the case would have progressed 22 months without any reasonable efforts toward family preservation, and the family's only remedy would be a permanent plan other than adoption as "return to the parent's custody is not an option at the section 366.26 hearing." (*In re Caden C.* (2021) 11 Cal.5th 614, 638.) Such a scenario is grossly out of line with dependency's principal focus on family preservation.

When considered as a whole, the Legislature's 1991 amendments removing the reasonable services requirement from section 366.22 and inserting the remedy in Section 366.26, subdivision (c)(2)(A) were not reasonably and substantially related to an objective consistent with the statutory scheme. SSA suggests the amendments were based on the Legislature's prioritization of permanency for the child. However, the

decision whether to remedy an agency's failure to provide reasonable services precedes the decision to terminate reunification services, which is before timeliness and finality becomes the primary focus.

SSA's emphasis on timeliness and finality, which reflects the approach adopted by the Court of Appeal below (*Michael G. v. Superior Court* (2021) 69 Cal.App.5th 1133, 1144-1145.), erroneously and unfairly undervalues the interests of children and parents in family preservation and accuracy in the critical decisions at the 18-month review affecting their protected relationships.

Father concedes that interpreting the relief in section 366.22, subdivision (b)(3)(C) as applicable to all parents aggrieved by the denial of reasonable services (Opening Brief 59.) is a strain under the canons of statutory interpretation. Nonetheless, Father maintains that given the liberty interests at stake at the 18-month review, the statutory scheme as a whole should be interpreted so as to not deprive families of due process and fundamental fairness. While Father recognizes this Court cannot insert language into statutes (*LGCY Power, LLC v. Superior Ct. of Fresno Cty.* (2022) 75 Cal.App.5th 844, 861.) nor "construe a statute contrary to legislative intent merely to eliminate a potential constitutional conflict," (*Adoption of Kelsey S.* (1992) 1 Cal.4th 816, 849.), this Court may still

"[w]hen possible ... read a statute in a manner that avoids a potential for conflict with the federal Constitution." (*Ibid.*, internal citation omitted.)

Further, "[b]y examining the dependency scheme as a whole, we can better understand the consequences of a particular interpretation, avoid absurd or unreasonable results, and select the interpretation most consonant with the Legislature's overarching goals. [Citation]." (*Tonya M. v. Superior Court* (2007) 42 Cal.4th 836, 845.) As explained above, and in the opening brief, until the decision terminating reunification services is made and the section 366.26 hearing is set, the Legislature's overarching goal is family preservation. Thus, in order to harmonize the statutory provisions applicable at the 18-month review in line with this overarching goal, and to protect the interests of parents and children in due process and accuracy in the decisions affecting their protected relationships, the statutory scheme must ensure families a remedy from the denial of reasonable services at the 18-month review.

III. SECTION 352 MAY PROVIDE A SUITABLE REMEDY WITH CLEARER AND FAIRER STANDARDS.

As argued in the opening brief, section 352 offers a welcome, albeit imperfect, alternative remedy to section 366.22. (Opening brief 59.) SSA agrees that section 352 provides a potential remedy yet stops short of addressing the statute's limitations. (SSA 46-47) For instance, SSA

endorses the judicially crafted factors that include "the likelihood of success of further reunification services" (SSA 46-47; *Mark N. v. Superior Court* (1998) 60 Cal.App.4th 996, 1017; *In re Dino E.* (1992) 6 Cal.App.4th 1768, 1779-1780.) but offers no suggestion as to how parents would demonstrate such a likelihood when they were denied the services through which to do so in the preceding period. Nor does SSA explain why parents should bear the burden of persuading courts they should receive the services to which they were entitled yet denied.

SSA sidesteps these questions and instead advocates that a section 352 analysis should weigh countervailing factors as "it defies common sense to continue reunification efforts for a parent who has made minimal efforts throughout a case." (SSA 47, quoting, *Earl L. v. Superior Court* (2011) 199 Cal.App.4th 1490, 1505.) While this seems sensible at first blush, in practice, however, a weighing of countervailing interests, particularly with a "minimal interests" standard, is too discretionary to ensure decisions on section 352 are accurate to a degree commensurate with the liberty interests at stake.

There may be instances where a parent's perceived "minimal efforts" can be ascribed to the social worker's failure to assist with

services.[6] Further, the discretionary availability of the remedy, and lack of guidance on what constitutes "minimal efforts" leaves room for varying standards of proof. For instance, SSA claims that section 352 is available in those "rare instances" in which "the best interests of the child would be served by a continuance of the 18-month review hearing." (SSA 47.) A finding of no reasonable services may indeed be rare. However, SSA's suggestion that a showing of best interests is rare elevates the standard for families seeking the statute's relief. Moreover, section 352 does not require a showing of best interests; it requires courts to determine whether a continuance would be contrary to the interests of the child. (§ 352, subd. (a)(1).)

Varying interpretations and applications of section 352 are not uncommon. The trial court below applied the more onerous substantial probability of return factors in section 366.22, subdivision (b) and determined a continuance was not in the child's best interest in denying section 352 relief. (*Michael G. v. Superior Court*, *supra*, 69 Cal.App.5th at p. 1142, fn. 4, 1145.) The appellate court, despite agreeing that use of those factors was inappropriate, nevertheless applied the court's findings on those

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[6] In the present case, the social worker who failed to provide adequate services to address Father's psychological issues, testified against reunification because he felt Father "still need[ed] help psychologically, with psychological counseling and medication." (RT71-72, 91, 113.)

factors as well as best interests to affirm the denial of a section 352 continuance. (*Id.* at p. 1145.)

Adding to the varying applications of section 352, SSA tangentially suggests that at a combined 12- and 18-month review hearing, section 352 should be the exclusive means by which courts may extend services beyond the 18-month period. (SSA 47-48.) However, section 352 is an imperfect remedy in this scenario as well. If a court were to deny section 352's discretionary relief to a family deprived of reasonable services from the six-month review, the family would not receive the 12-month statutory minimum period of reunification services.[7] To avoid this result, which essentially reduces the statutory minimum provision of services to a hollow right[8], an extension of services should be automatic via section 366.21, subdivision (g)(1)(C)(ii), which forbids the setting of the section 366.26 where reunification services were not provided up to the 12-month review. Although SSA expresses optimism that the family would have a strong

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[7] This Court in *Tonya M v. Superior Court*, *supra*, 42 Cal.4th 836, in stating that "[d]elays in the timing of one of the hearing should not affect either the timing of subsequent hearings or the length of services to be ordered," contemplated the parent having received "extra services" by the time of delayed hearing, "as well as a few extra weeks or even months to demonstrate commitment to his or her child and a realistic chance of reunification." (*Id.* at p. 847, fn. 5.) Thus, this Court did not appear to be referencing parents being denied reasonable services.

[8] "[T]he Legislature could not have intended to create a 'hollow right.'" (*In re A.R.*, *supra*, 11 Cal.5th at p. 248.)

argument for relief under section 352 (SSA 48), the decisions made below in this case both at the trial level and in the Court of Appeal give reasons to be wary.

Lastly, SSA argues that a narrow interpretation of sections 366.22 and 361.5 would not incentivize agencies statewide to provide subpar reunification services.[9] (SSA 49.) SSA attempts to alleviate these concerns by arguing that the trial court's discretion under section 352 to extend services would compel agencies to not tempt such a continuance intentionally. (SSA 49.) But a failure to provide reasonable services does not have to be deliberate for it to deprive families of due process and fundamental fairness at the 18-month review. More importantly, a mandatory remedy would encourage the timely provision of services much more effectively than a discretionary remedy. As noted in the opening brief, it is not unfairly burdensome to expect the social worker to fulfill his or her statutory duty to provide reasonable services. (Opening Brief 57-58.)

SSA also suggests that significant losses of federal funding are sufficient incentive to ensure social workers provide reasonable services. (SSA 49-50.) SSA even claims that the greatest financial incentive to avoid

[9] Admittedly, the quote included in the opening brief that prompted SSA's response was broadly worded. (Opening Brief 57) Father did not mean to suggest that all social workers in the state would feel compelled to provide subpar reunification services.

would be the child remaining in foster care, while simultaneously losing federal funding to pay for maintaining that child in foster care. (SSA 50, fn. 9.) Sadly, that incentive made no difference in the present case where the social worker after failing to provide reasonable services, recommended against the child reunifying with the parents. Further, "[t]he permanent plan will virtually never be to return the child to the parent in a situation where the agency is seeking to terminate reunification services, as is often the case when the issue of extension arises." (*T.J. v. Superior Court* (2018) 21 Cal.App.5th 1229, 1256.) At any rate, the loss of federal funding is not a remedy for families who were denied reasonable services during the critical 18-month review period. If anything, families who have had their services terminated will suffer the further loss of federal funding for the support of the child while in foster care for the length of the case. (SSA 49.)

In summary, while courts have the authority to extend reunification efforts beyond 18-months pursuant to section 352, the provision's discretionary availability does not fully ensure due process and fundamental fairness for families aggrieved by an agency's failure to provide reunification services. Should this Court adopt section 352 as the appropriate remedy, Father respectfully submits that a failure to provide reasonable services in the preceding review period should constitute good

cause and a finding that extending services is not contrary to the interests of the child.

CONCLUSION

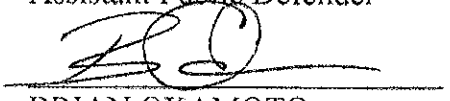
SSA's emphasis on timeliness and finality, which reflects the reasoning of the Court of Appeal below (*Michael G. v. Superior Court, supra,* 69 Cal.App.5th at pp. 1144-1145.), erroneously and unfairly undervalues the interests of children and parents in family preservation and accuracy in the critical decisions at the 18-month review. As explained *supra*, because the decision whether to extend reunification services precedes the decision to terminate services, family preservation "is given precedence over the child's need for stability and permanency." (*In re Marilyn H. supra,* 5 Cal.4th at p. 310.) Thus, review of the statutory scheme at issue should instead be premised on the understanding that a parent and child have a recognized "interest in each other's care and companionship" (*In re Jasmon O., supra*, 8 Cal.4th at p. 419) and "share an interest in avoiding erroneous termination." (*Santosky v. Kramer, supra,* 455 U.S. 745, 765 [rejecting court's assumption that termination of the natural parents' rights invariably will benefit the child]; see also, *In re A.R., supra*, 11 Cal.5th at p. 249.)

For all of the reasons herein, and for those in the Opening Brief, Father submits that this Court should clarify the statutory scheme governing the 18-month review in a way that ensures families aggrieved by the loss of reasonable services receive a remedy commensurate with their fundamental interests at stake. In the circumstances presented herein, a remedy that preconditions an order terminating reunification services and scheduling the section 366.26 hearing best protects these interests. Should this Court determine that section 352 is the exclusive remedy, its criteria in the context at issue should be clarified to ensure that families are not unfairly burdened with having to meet an elusive and varying standard to merit relief. This would entail establishing that a deprivation of reasonable services constitutes good cause for a continuance under section 352, and that the circumstances warrant a finding that a continuance would not be contrary to the child's interests.

Dated: May 11, 2022

Respectfully submitted,

MARTIN SCHWARZ
Public Defender
SETH BANK
Assistant Public Defender



BRIAN OKAMOTO
Senior Deputy Public Defender

CERTIFICATE OF WORD COUNT

I, Brian Okamoto, hereby certify that pursuant to California Rule of Court, rule 8.520(c), the enclosed brief was produced using 13-point, Times New Roman type font and has approximately 5,464 words, including footnotes, based on the word count of Microsoft Word, the computer program used to prepare this brief.

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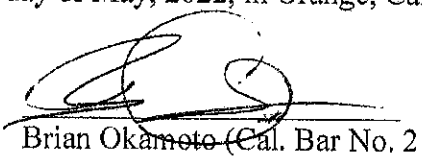


Brian Okamoto (Cal. Bar No. 217338)
Senior Deputy Public Defender
ORANGE COUNTY PUBLIC DEFENDER
Counsel for Father Petitioner

CERTIFICATE OF SERVICE

I Jessica Herrera hereby declare: I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action. My business address is 341 The City Drive South, Suite 307, Orange, California. On May 11, 2022, I served a true and correct copy of the REPLY BRIEF ON THE MERITS, by placing copies thereof in a sealed, fully pre-paid envelope for collection with FedEx, addressed as follows:

California Court of Appeal
Fourth District, Division Three
P.O. Box 22055
Santa Ana, CA 92702

Orange County Juvenile Court
Hon. Antony Ufland, Judge
341 City Drive, Dept. L34
Orange, CA 92868

I also electronically served copies to the following via email:

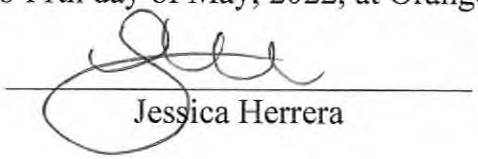
Donna Chirco [mother's appellate counsel]
sdpc10@yahoo.com

Orange County Counsel Juvenile Writs & Appeals
OCCoCo.Appeals-Service@coco.ocgov.com

Juvenile Defenders, Amanda Tarby, [mother's trial counsel]
Juveniledefenders@gmail.com

Offices of Harold LaFlamme, Hannah Gardner [minor's counsel]
sfulford@hlaflamme.com, hlaflamme@gmail.com

I declare under penalty of perjury that the foregoing is true and correct. Executed this 11th day of May, 2022, at Orange, California.



Jessica Herrera