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S271809

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

In re ABIGAIL G.,
A Person Coming Under the Juvenile Court Law.

Michael G.,
Plaintiff and Appellant,
v.
Superior Court of Orange County
Respondent;
Orange County Social Services Agency.,
Real Party in Interest

Court of Appeal Case No. G060407 (Fourth Dist., Div. Three)
Superior Court Case No. 19DP1381 (County of Orange County)
Hon. Antony C. Ufland

APPLICATION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF AND [PROPOSED] BRIEF OF CHILDREN'S LAW CENTER OF CALIFORNIA, CHILDREN'S LEGAL SERVICES OF SAN DIEGO, AND DEPENDENCY LEGAL SERVICES

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APPLICATION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF ON BEHALF OF CHILDREN'S LAW CENTER OF CALIFORNIA, CHILDREN'S LEGAL SERVICES OF SAN DIEGO, AND DEPENDENCY LEGAL SERVICES

Children's Law Center of California, Children's Legal Services of San Diego, and Dependency Legal Services respectfully request leave to file the attached brief as amici curiae. (Cal. Rules of Court, rule 8.520(f).)

Amicus Children's Law Center ("CLC") is a non-profit public interest law firm that serves as appointed counsel for the over 33,000 abused and neglected children under the jurisdiction of the juvenile dependency courts in Los Angeles, Placer, and Sacramento counties. CLC's goal is to ensure that our clients have an effective voice and ability to actively participate in all aspects of the legal process while viewing children within the context of their families and the desire for all children to have loving permanent relationships.

As the largest legal services organization in the nation representing children in dependency proceedings, CLC has a substantial interest in protecting and promoting the safety, permanency, and wellbeing of children in foster care. CLC

employs over 500 attorneys, paralegals, and social work investigators committed to advocating for the rights and interests of children in the juvenile dependency system. In addition, CLC represents foster youth as minor or non-minor parents in the dependency cases involving their children.

CLC also engages in legislative and administrative advocacy at the federal, state, and county levels to promote reforms in the laws, policies, and public agencies affecting children, youth, and families in the foster care system. CLC's systemic advocacy efforts are founded on the day-to-day challenges and experiences of the thousands of individual clients spanning the thirty-one years that CLC has represented children in foster care.

Amicus Children's Legal Services of San Diego ("CLSSD") is a non-profit interdisciplinary legal organization that represents abused and neglected children in San Diego County in their dependency proceedings before the juvenile court. CLSSD protects and defends the rights of children and youth in the child welfare system through high-quality and compassionate legal representation. CLSSD employs a client-centered holistic

approach to zealously advocate for our clients' interests. CLSSD works collaboratively with others inside and outside of the San Diego juvenile court system to achieve long term stability either by family reunification or legal permanence with substitute caregivers.

Dependency Legal Services is a non-profit, public interest law firm that provides the finest legal representation to children, parents, guardians, and Native American custodians in the child welfare system. Our office is comprised of a multi-disciplinary team of professionals including attorneys, investigators/social workers, administrative staff, and parent mentors committed to client advocacy and empowerment that seeks to remove barriers to family reunification and support permanence. Our work in eight Northern California counties allows us to marshal the resources, influence, and experience of a large firm for the benefit of small and mid-size counties.

This case raises important questions regarding whether juvenile courts must be required to extend reunification services to a parent beyond the 18-month review hearing when the parent did not receive reasonable reunification services. Therefore, the

proper resolution of this matter is of significant concern to the clients of CLC, CLSSD, and Dependency Legal Services. Based on *amici's* day-to-day advocacy for families in foster care in eleven separate counties across California, and their advocacy regarding policy at a systemic level, amici can provide a valuable and unparalleled child-centered perspective that would be helpful to this Court in deciding the important issues presented in this case.

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Granting leave to file the attached amicus brief would not delay or complicate the proceedings in this case. The parties would have ample time to respond to the points discussed in this brief before the oral argument. No party or counsel for any party has authored the attached proposed amicus brief in whole or in part or funded the preparation of the brief.

Dated: June 9, 2022

Respectfully Submitted,

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ISSUES PRESENTED

1. Are juvenile courts required to extend reunification efforts beyond the 18-month review period when families have been denied adequate reunification services in the preceding review period?

INTRODUCTION

The central question this case presents is how to proceed at an 18-month review hearing when a family did not receive reasonable reunification services in the period leading up to the hearing. Courts have long balanced the seemingly conflicting interests of parents who desire reunification with their children and children who are in need of permanency. These interests are not as conflicting as they may first appear. Certainly, during the reunification period, these interests are in fact aligned, as the permanency children are seeking is with their parents.

This brief argues that a finding of reasonable services should be a requirement at every 18-month review hearing before a juvenile court can set a Welfare and Institutions Code section 366.26 selection and implementation hearing, and that if reasonable services were not provided in the preceding review period, that the juvenile court must grant further reunification services to the family. This amicus brief explains that authority already exists which allows a juvenile court to extend reunification services beyond the 18-month date, and due process requires that when a juvenile court orders reunification services it must ensure their adequacy at the 18-month hearing. Finally, this brief argues that children have an important and

independent interest in reunifying with their parents, which does not conflict with their later interest in permanency, as permanency with a parent is the most permanent plan for a child and the most desirable outcome in the dependency scheme[1].

ARGUMENT

I) A FINDING OF REASONABLE SERVICES SHOULD BE REQUIRED AT EVERY 18-MONTH HEARING BEFORE A WIC 366.26 HEARING CAN BE SET, AND FURTHER REUNIFICATION SERVICES SHOULD BE ORDERED TO ENSURE DUE PROCESS AND FUNDAMENTAL FAIRNESS.

A) Statutory Overview of the Dependency Scheme.

The Welfare and Institutions Code[2] is designed with two main purposes: the protection and safety of children and "to preserve and strengthen the minor's family ties whenever possible…." (§ 202, subd. (a).) There are four stages of a dependency proceeding – jurisdiction, disposition, reunification, and implementation of a permanent plan. (*In re Daniel G*. (1994) 25 Cal.App.4th 1205, 1209-1210; *In re Matthew C*. (1993) 6

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[1] While amici acknowledge the child's wishes in this case, and that a child's wishes should be valued and voiced as well as inform the advocacy on each case, amici do not express any opinion as to the facts of this specific case. Rather, this brief seeks to address the legal and policy ramifications of a failure to provide reasonable reunification services and the consequences that affect all families in the foster care system in California.

[2] All further statutory references are to the California Welfare Institutions Code unless otherwise specified.

Cal.4th 386, 391.) "[F]amily preservation is the first priority when dependency proceedings are commenced." (*In re Lauren Z.* (2008) 158 Cal.App.4th 1102, 1112.)

Once a case has progressed beyond the jurisdiction and disposition stages, the juvenile court is required, with some statutorily delineated exceptions, to provide reunification services to parents when their child is removed from their care. (§ 361.5, subd. (a).) The case plan has been identified by the Legislature as the "foundation and central unifying tool in child welfare services." (§ 16501.1, subd. (a)(1).) The case plan is intended to ensure the safety of the child and provide services, as appropriate, to improve conditions in the parent's home, facilitate the child's safe return or permanent placement, and meet the needs of the child while in foster care. (§ 16501.1, subd. (a)(2).)

When a child is under the age of three at the time of removal, the reunification services may be terminated at the six-month hearing. (§ 361.5, subd. (a)(1)(B).) When a child is over the age of three at the time of removal, a parent shall be provided with court-ordered reunification services for a minimum of 12 months. (§ 361.5, subd. (a)(1)(A).) In any case, services can be extended to the 18-month hearing if the juvenile court finds that the permanent plan for the child is to be returned and safely maintained in the parent's home during the time of the additional reunification services, or if reasonable services were not provided. (§ 361.5, subd. (a)(3)(A).) Finally, reunification services can be extended to the 24-month date if certain requirements are met. (§§ 361.5, subd. (a)(4)(A); 366.22, subd.

(b).) At each review hearing, the juvenile court must determine if the agency provided the family with reasonable reunification services. (§§ 366.21, subds. (e), (f), (g); 366.22, subd. (a).) If reunification services are terminated under section 366.21, subdivision (f), the juvenile court must set a selection and implementation hearing within 120 days, unless it finds that it is not in the best interest of the child, or that there is not clear and convincing evidence that reasonable services were provided. (§ 366.21, subd. (g)(4)-(5).)

B) The Juvenile Court is Statutorily Authorized to Go Beyond the 18-month Hearing Under Certain Exceptional Circumstances, Including When Reasonable Services Were Not Provided.

There is a split in authority as to the provision of reunification services beyond 18 months for a parent who has not received reasonable reunification services. The two governing statutes are section 361.5, subdivision (a), and section 366.22. Section 361.5 subdivision (a)(4)(A) states that the court may extend services up to 24 months if the requirements in section 366.22, subdivision (b) are met, or if reasonable services have not been provided. Section 366.22, subdivision (b), allows for the provision of additional reunification services for parents who meet certain requirements.[3] The Court of Appeal for the Fourth

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[3] Section 366.22, subdivision (b) specifies: a parent or guardian "making significant and consistent progress in a court ordered residential substance abuse treatment program, a parent who was either a minor parent or a nonminor dependent parent at the time of the initial hearing making significant and consistent

District (Division One) in *In re M.F.* (2019) 32 Cal.App.5th 1 held that section 361.5, subdivision (a)(4)(A) explicitly authorizes additional reunification services up to the 24-month date if the enumerated circumstances listed in section 366.22 subdivision (b) are met *or* if reasonable services were not provided. (*In re M.F., supra,* 32 Cal.App.5th at p. 22.) Division Three of the Court of Appeal for the Fourth District, however, disagreed with that interpretation of the statutes. (*Michael G. v. Superior Court* (2021) 69 Cal.App.5th 1133, 1143 at fn. 5 ["a court only has the ability to extend reunification services past the 18-month mark if subdivision (b) of section 366.22 applies…not in any and all cases where reasonable services were not offered"].)

While there is a split in authority as to whether a juvenile court can go to the 24-month hearing date if no reasonable services were provided in the last review period, it is important to read section 366.22 in conjunction with the rest of the statutory scheme. "Dependency provisions must be construed with reference to the whole system of dependency law, so that all parts may be harmonized." (*In re Corrine W.* (2009) 45 Cal.4th 522, 529.) A court is required to interpret the language of a statute so as to "effectuate the purpose of the law […] [w]here a statute is theoretically capable of more than one construction [a court must] choose that which most comports with the intent of the Legislature." (*Renee J. v. Superior Court* (2001) 26 Cal.4th 735,

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progress in establishing a safe home for the child's return, or a parent recently discharged from incarceration, institutionalization, or the custody of the United States Department of Homeland Security…"

744 [internal citations omitted].) Courts "must consider the [statutory language] in the context of the entire statute [citation] and the statutory scheme of which it is a part." (*Id.* at p. 743.) Further, a court should avoid interpreting a statute in such a way as to render absurd results. (*In re I.A.* (2019) 40 Cal.App.5th 19, 26-27.) An interpretation of the statutes which would allow a court to grant further reunification services to an 18-month date, but which provides no remedy for families if those services are not reasonably provided, would lead to absurd results and fail the purpose of the dependency system. Alternatively, "interpreting the statutes to provide the juvenile court with discretion to order continued family reunification services at the 18-month review is consistent with the legislative intent to preserve the family unit whenever possible and with the specific statutory provisions addressing the requirements for family reunification services…without this discretion the Legislature's expectation the family will receive reasonable reunification services is reduced to a mere hope." (*In re Daniel G.*, *supra*, 25 Cal.App.4th at pp. 1214-1215.) Given the overriding goal during the reunification stage of a dependency case of preserving the family unit and reuniting children with their parents when it is safe to do so, the interpretation of sections 361.5, subdivision (a)(4)(A) and 366.22 in *In re M.F.* should prevail. "[D]ue to the critical nature of providing reasonable services as a substantive and procedural requirement, and the difficulty in determining the parent's progress (towards mitigating the underlying problems that led to removal) *but for* the failure to provide reasonable

services, the better view is that a lack of reasonable services finding alone should suffice to extend services past 18 months." (Seiser & Kumli, Cal. Juvenile Courts Practice and Procedure (2022) § 2.152[4][e], p. 2-651.)

Section 352 further authorizes the juvenile court to continue the 18-month hearing to allow for further reunification time if exceptional circumstances have been met.[4] A continuance under section 352 is appropriate where external forces prevented a parent from reunifying with their child. (*See In re D.N.* (2020) 56 Cal.App.5th 741, 766-767 [reunification services continued beyond the 24-month date when the only reason the child was not returned was due to a lack of housing and not a lack of sincere effort on the part of the father]; *In re Elizabeth R.* (1995) 35 Cal.App.4th 1774, 1793-1799 [exceptional circumstances were met when a mother was hospitalized during a critical stage of the reunification period].) Reunification can also be extended under section 352 when the reunification services provided to a parent

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[4] Section 352 provides, in relevant part, as follows:

"(a) Upon request of counsel for the parent, guardian, minor, or petitioner, the court may continue any hearing under this chapter beyond the time limit within which the hearing is otherwise required to be held, provided that no continuance shall be granted that is contrary to the best interests of the minor…Continuances shall be granted only upon a showing of good cause and only for that period of time shown to be necessary by the evidence presented at the hearing on the motion for the continuance..."

by the child welfare agency were not reasonable. (See *In re Daniel G., supra,* 25 Cal.App.4th at pp. 1213-1214 [extending service beyond the 18-month date when the reunification services provided were described as "a disgrace"]; *In re Dino D.* (1992) 6 Cal.App.4th 1768, 1778 [extending reunification services when no reunification case plan was ever created for the parent].) To gain a continuance under section 352, there must be evidence of an external factor preventing the parent from participating in their case plan and not a barrier of the parent's own making. (*Andrea L. v. Superior* Court (1998) 64 Cal.App.4th 1377, 1388-1389.)

While section 352 allows for a continuance of any hearing, continuances are generally not encouraged in dependency cases, and continuances should be difficult to obtain. (*Jeff M. v. Superior Court* (1997) 56 Cal.App.4th 1238, 1242.) In the context of continuing reunification services beyond the 18-month date, section 352 provides "an emergency escape valve" for families where it is in the best interest of the child to continue the 18-month hearing. (*In re Elizabeth R., supra,* 35 Cal.App.4th at pp. 1798-1799.) What families deserve, however, is a *guarantee* of extended reunification services at the 18-month hearing if adequate services were not provided, as it should be presumptively in a child's best interest for the family to receive reasonable reunification services.

C) Terminating Reunification Services Without First Ensuring That Services are Reasonable Unlawfully Strains the Parent's Right to a Parent-Child Relationship and Violates Due Process.

This Court held a parent's interest in the care, custody, and management of his or her children to be "a compelling one, ranked among the most basic of civil rights." (*In re Marilyn H.* (1993) 5 Cal.4th 295, 306.) "The relationship between parent and child is so basic to the human equation as to be considered a fundamental right, and that relationship should be recognized and protected by all of society … [i]nterference with that right should only be justified by some compelling necessity…." (*In re Smith* (1980) 112 Cal.App.3d 956, 968-969; see also *Stanley v. Illinois* (1972) 405 U.S. 645, 651; *Van Atta v. Scott* (1980) 27 Cal.3d.424, 436.) The sanctity of the family is so deeply rooted "in the traditions and conscience of our people as to be ranked as fundamental" that they are afforded protection under the Due Process Clause of the U.S. Constitution. (*Moore v. East Cleveland* (1977) 431 U.S. 494, 504; *Michael H. v. Gerald D.* (1989) 491 U.S. 110, 122.) The fundamental liberty interest of parents "does not evaporate simply because they have not been model parents or have lost temporary custody of their child to the State." (*Santosky v. Kramer* (1982) 455 U.S. 745, 753.) Persons faced with forced dissolution of their parental rights "retain a vital interest in preventing the irretrievable destruction of their family life." (*Ibid.*)

Following the decisions in *Santosky v. Kramer*, *supra,* 455 U.S. 745 and *Stanley v. Illinois*, *supra,* 405 U.S. 645, the California Court of Appeal held that it is unquestionable that dependency court proceedings are afforded the due process guarantees under the Due Process Clause of the Fourteenth Amendment. (*Ingrid E. v. Superior Court* (1999) 75 Cal.App.4th 751, 756-757.) Due process "expresses the requirement of 'fundamental fairness,'" (*Lassiter v. Dep't of Soc. Svcs.* (1981) 452 U.S. 18, 24) and "the sense of fair play...” (*Galvan v. Press* (1954) 347 U.S. 522, 530) between the state and individual. Due process must comport with the "general requirement that States ... respect certain decencies of civilized conduct" and "the community's sense of fair play and decency." (*Rochin v. California* (1952) 342 U.S. 165, 173.)

Once reunification services are terminated, a parent’s right to custody, control, and companionship with their child is no longer the paramount concern. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 317.) At the section 366.26 hearing, which takes place only after the juvenile court has terminated reunification services, a permanent plan must be selected for a child. (§ 366.26, subd. (b)(1).) At the section 366.26 hearing, the Legislature has directed that, unless one of the enumerated exceptions applies, the juvenile court shall terminate parental rights and order the child placed for adoption if it finds, by clear and convincing evidence, that “it is likely that the child will be adopted.” (§ 366.26, subd. (c)(1).) It is this hearing that is specifically designed to protect a child’s compelling right to a stable and permanent

placement. (*In re Celine R.* (2003) 31 Cal.4th 45, 53-54; *In re Marilyn H.*, *supra*, 5 Cal.4th at p. 306.) Prior to the setting of the section 366.26 hearing, the overriding goal is to reunify the family, and the protection of the child's interest in permanence focuses on permanence with the parents.

This Court has held that the California dependency scheme comports with due process and fundamental fairness, largely due to the significant due process safeguards built into the system. (*In re Marilyn H., supra,* 5 Cal.4th at pp. 307-308.) These safeguards are the right to counsel, notice of the hearings, the clear and convincing standard necessary for removal from custody at disposition, reunification services, and periodic review hearings to review services and progress persist throughout the life of the case. (*Ibid*.) Presumably, before ever reaching a section 366.26 hearing, the juvenile court has made consistent findings that there is a substantial risk of detriment to the child in the parent's care. (§ 366.21, subds. (e), (f); 366.22, subd. (a).) By making these findings, a parent has been found to be "at fault." (*Cynthia D. v. Superior Court* (1993) 5 Cal.4th 242, 254.) The procedure for terminating parental rights under section 366.26 is constitutional because "the precise and demanding substantive and procedural requirements the petitioning agency must have satisfied before it can propose termination are 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." (*Id. at p.* 256.) However, when a parent is not provided

with reasonable reunification services, the finding of parental unfitness is not reliable and possibly erroneous. Thus, in cases such as this, part of the "precise and demanding substantive and procedural requirements" – reasonable services – is lacking, implicating a parent's due process rights. As the *M.F.* Court held, "to meet due process requirements at the termination stage, the court must be satisfied reasonable services have been offered during the reunification stage." (*In re M.F. supra,* 32 Cal.App.5th at p. 19; *In re Daniel G., supra*, at pp. 1215–1216; *T.J. v. Superior Court* (2018) 21 Cal.App.5th 1229, 1256.)

For a parent to receive reunification services beyond the 12-month review hearing, the juvenile court must find that there is a substantial probability that the child will be returned to the parent within the next six months. (§ 366.21, subd. (g)(1).) The factors the juvenile court considers when deciding whether there is a substantial probability that the child will be returned to the parent are: 1) that the parent has consistently and regularly contacted and visited the child, 2) the parent has made significant progress in resolving problems that led to the child's removal from the home, and 3) the parent has demonstrated the capacity and ability both to complete the objectives of his or her treatment plan and to provide for the child's safety, protection, physical and emotional well-being, and special needs. (§ 366.21, subd. (g)(1)(A) - (C).) Thus, a parent who meets these requirements and is provided reunification services to the 18-month date has demonstrated the substantial likelihood and the

capability to have their child returned to their care with additional time and assistance from the child welfare agency.

When a parent is ordered by the juvenile court to receive further reunification services, the reciprocal order is that the child welfare agency must provide those services. The parent must be able to rely on the governmental agency tasked with satisfying the court order granted in their favor. When a promise goes unfulfilled, the principle of fundamental fairness requires that the juvenile court hold the government to its agreement. Case law is clear, "when a prosecutor makes a promise that induces a defendant to waive a constitutional protection and act to his or her detriment in reliance to that promise, the promise must be enforced." (*People v. Quartermain* (1997) 16 Cal.4th 600, 618.) Such a practice is rooted in fundamental fairness and due process concerns. (*Id.* at p. 619.) In the context of dependency law, the obligation of the child welfare agency to provide reasonable services is not simply a promise, but a duty. At an 18-month review hearing, the child welfare agency must show they provided reasonable services to the parents. (§ 366.22, subd. (a)(3).) "The effort must be made to provide suitable services, in spite of the difficulties of doing so or the prospects of success." (*Robin V. v. Superior Court* (1995) 33 Cal.App.4th 1158, 1164.) This means the record must demonstrate the reasonable efforts the child welfare agency made to assist the parents in reunifying with their child. The agency should have identified the issues causing the family to be brought before the juvenile court, offered services specifically considered to remedy the issues, maintained

reasonable contact with the parents, and made reasonable efforts to help the parents when it was difficult for them to comply with any portion of their case plan. (*Ibid.*)

When appropriate services designed to assist the parents in reunifying with their child have not been provided there is a substantial risk the juvenile court's finding that the parent is not capable of safely resuming custody of his or her child may be erroneous. (*In re Daniel G.*, *supra,* 25 Cal.App.4th at pp. 1215–1216.) The "precise and demanding" substantive requirements, enumerated by the Court in *Cynthia D.*, that must be met before a court may terminate parental rights are rendered meaningless if one link in the chain is not upheld by the child welfare agency. Principles of fairness and due process require the reunification services of a parent to be extended beyond the 18-month hearing when reasonable services are found not to be provided at the 18-month review hearing. "While the Legislature was concerned with reducing delays in arriving at a permanent resolution of the child's placement, we do not believe the Legislature intended a speedy resolution of the case to override all other concerns including 'the preservation of the family whenever possible' especially given the lengths to which the Legislature went to try to assure adequate reunification services were provided to the family." (*In re Daniel G.*, *supra*, 25 Cal.App.4th at p. 1214.) Leaving a family without recourse when the child welfare agency fails to provide reunification services that are reasonable violates due process, fundamental fairness, and the principles upon which the dependency system was founded.

II) CHILDREN HAVE AN INDEPENDENT INTEREST IN THEIR PARENTS RECEIVING REASONABLE REUNIFICATION SERVICES.

A) Children Have Their Own Constitutional Right to Family.

A child has a right to be raised by his or her family of origin whenever possible. California recognizes the principle that children are not merely chattels belonging to their parents, but rather have fundamental interests of their own. (*In re Jasmon O.* (1994) 8 Cal.4th 398, 419.) These fundamental interests are of a constitutional dimension. (*In re Bridget R.* (1996) 41 Cal.App.4th 1483, 1490.) "The intangible fibers that connect parent and child have an infinite variety. They are woven throughout the fabric of our society, providing it with strength, beauty and flexibility. It is self-evident that they are sufficiently vital to merit constitutional protection in appropriate cases." (*Id.* at p. 1502.)

The Constitutional interest in familial companionship protects parents from unwarranted state interference with their relationships with their children, but also extends to protect *children* from unwarranted state interference with their relationships with their parents. (*Smith v. City of Fontana* (9th Cir. 1987) 818 F.2d 1411, 1418, overruled on other grounds by *Hodgers-Durgin v. de la Vina* (9th Cir. 1999) 199 F.3d 1037.) Children deserve a fair chance at reunifying with their parents and a genuine effort on the part of child welfare agencies to reach that goal. "The companionship and nurturing interests of parent and child in maintaining a tight familial bond are reciprocal, and

we see no reason to accord less constitutional value to the child-parent relationship than we accord to the parent-child relationship." (*Smith v. City of Fontana, supra*, 818 F.2d at p. 1418.) This right is fundamental to a child's well-being, as "'establishment of the parent-child relationship is the most fundamental right a child possesses to be equated in importance with personal liberty and the most basic of constitutional rights.'" (*Kristine M. v. David P.* (2006) 135 Cal.App.4th 783, 791, citing *County of Shasta v. Caruthers* (1995) 31 Cal.App.4th 1838, 1844.)

A child's interest in their family receiving reasonable reunification services is immense. Termination of reunification services is a "fateful step down the path toward terminating parental rights." (*In re A.B.* (2014) 230 Cal.App.4th 1420, 1437.) After reunification services have been terminated, the focus shifts to the need for the child's permanency and stability, and it is presumed that continued out-of-home care is in the child's best interests. (*In re Marilyn H.*, *supra*, 5 Cal.4th at pp. 309-310.) The focus shifts to a child's need for permanence because when a court has found that a child has "spent a substantial period in foster care and attempts at reunification have proved fruitless," a child's interest in permanency outweighs the parent's interest in custody. (*In re Jasmon O., supra*, 8 Cal.4th at pp. 419-420, citing *In re Marilyn H.*, *supra*, 5 Cal.4th at pp. 307-309.) However, in cases where reunification services were not reasonably provided, it cannot be said that reunification proved "fruitless" because the parents were not given a fair chance at meeting the expectations of the case plan.

While children have a "fundamental interest to be protected from neglect and to have a placement that is stable and permanent" (*In re Bridget R.*, *supra*, 41 Cal.App.4th at p. 1504; *In re Jasmon O.*, *supra*, 8 Cal.4th at 419.) this interest does not override their constitutionally protected right to a child-parent relationship. The Court in *In re Vincent M.* (2007) 150 Cal.App.4th 1247 held that a child's *interest* in a permanent and stable placement, however significant, is not a constitutionally protected *right*. (*Id.* at p. 1266.) "[W]e can find no federal constitutional basis for elevating a child's interest in remaining in a stable home above all federal and state laws." (*Ibid*.) Further, this interest does not even become the focus of a case until reunification services are terminated and a section 366.26 hearing is set, triggering the shift in focus. Thus, there is no inherent conflict in a child's right to a child-parent relationship and their interest in a stable and permanent home. Terminating a parent's reunification services when they were inadequate in the preceding review period unjustly triggers a shift in the focus of the case without the necessary determination that reunification services were proven "fruitless."

While a child has a clear interest in safety and stability, a child's fundamental right to be raised by their parent is a fundamental right under the United States Constitution. Depriving a child of the opportunity to be reunited with a parent because of a failure on the part of the agency tasked with providing court-ordered reunification services not only violates the parent's Constitutional rights but the child's as well.

B. Permanency With a Parent is the Most Permanent Plan Available for a Child.

The goal of the dependency scheme is to return a child to parental custody, if possible. (*In re Pedro Z., Jr.* (2010) 190 Cal.App.4th 12, 20.) Even after a case has progressed beyond the reunification period, there is a recognition that reunifying with a parent is the most desirable outcome for a child. (*In re Priscilla D.* (2015) 234 Cal.App.4th 1207, 1218 [describing the return to parental custody as "the most desirable permanent plan," where parent sought to terminate legal guardianship under section 388].) This Court held in *In re Marilyn H., supra,* 5 Cal.4th 295 that "*[e]ven after the focus has shifted from reunification*, the scheme provides a means for the court to address a legitimate change of circumstances while protecting the child's need for prompt resolution of his custody status." (*Id.* at p. 309, italics added.)

The return of a child to their family of origin is of such importance that even after the reunification timelines are over, there is a way to petition the court for, essentially, a second chance. After a case has reached the post-permanency plan review stage under section 366.3, the juvenile court can authorize further reunification services for a parent if their parental rights are still intact and further services are in the best interest of the minor. (*In re Malick T.* (2022) 73 Cal.App.5th 1109, 1124-1125.) This is consistent with the overall dependency scheme. Courts have held that it is not uncommon for a parent to begin to address the issues that brought them before the juvenile court

after reunification services have been terminated, and the process of filing a section 388 petition to request further reunification services is a safety mechanism to ensure families can be reunited once it is safe to do so. (*In re Kimberly F.* (1997) 56 Cal. App. 4th 519, 528 [emphasizing the importance of a child's interest in preserving existing family units and familial attachments].)

Terminating family reunification services for a parent who could have reunified, but for the lack of reasonable services, does not further a child's interest in achieving a quick, stable permanent placement. What it achieves instead is the severance of the most permanent placement available for a child and the undermining of the Legislature's strong preference for maintaining family relationships when at all possible. It additionally violates a child's constitutionally protected right to the parent-child relationship.

For a child who does not reunify with their parent, a permanent plan is implemented at the section 366.26 hearing. The preferred permanent plan is that of terminating parental rights and placing the child for adoption. (§ 366.26, subd. (b)(1).) However, a child's trauma and desire to be with their family of origin are not resolved simply by being adopted. Even after adoption, a child maintains "significant psychological ties" to their biological family and grieves the loss of that family, much like grieving the death of a loved one. (*See* Johnson, *Examining Risks to Children in the Context of Parental Rights Termination Proceedings* (1996) 22 N.Y.U. Rev. L. & Soc. Change 397, 414.)

While initially separating a child from their parents is sometimes necessary, it is nonetheless traumatic. Special consideration should be given to the long-term trauma of family separation brought on by the necessities of the foster care system, and special care should be required by juvenile courts to ensure that safeguards are followed to minimize this trauma. Studies of long-term risks for children in foster care bear this out:

> "While the long-term risks of maltreatment have received extensive recognition by professionals, less recognized and often underappreciated is the severe risk endured by the child as a result of separation from the caregiver, and the long-term effects of separation on the child. In keeping with the best interest of the child, decisions about child placement must look beyond maltreatment as a single risk factor, giving additional consideration to the emotional costs of separation on a child's developing attachments and examining how system responses and legal decision making may help or harm the child's attachment system. Thus, both maltreatment and attachment concerns are critically important factors in child placement decisions, which may have long-term consequences for a child's overall life adjustment."

(Goldsmith, Oppenheim & Wanlass, *Separation and Reunification: Using Attachment Theory and Research to Inform Decisions Affecting the Placements of Children in Foster Care,* Juvenile and Family Court Journal (2004), found at https://pcaaz.org/wp-content/uploads/2016/03/Separation-and-Reunification-Using-Attachment-Theory.pdf.)

Simply applying reunification timelines and then moving on to permanency, regardless of the adequacy of those services,

does not serve the best interests of children. What this does is build upon the existing layer of trauma imposed on the child from the initial system-enforced family separation. The services provided to families need to be appropriate and trauma-informed in order to protect not just the rights of the families, but the long-term stability of the children whose best interests this system is designed to serve. Legal permanence does not guarantee secure attachments. (U.S. Department of Health and Human Services, Administration on Children, Youth and Families, *Achieving Permanency for the Well-being of Children and Youth*, ACYF-CB-IM-21-01 (Jan. 5, 2021), p. 12, found at https://www.acf.hhs.gov/sites/default/files/documents/cb/im2101.pdf.) "When a child's experience in foster care is marked by safety, meaningful family time, preserved and nurtured connections, and high quality, family-centered, trauma-informed service provision, children and youth have a better chance of achieving meaningful permanency in a way that enhances their well-being." (*Id.* at p. 4.)

While many permanent plans are successful, many still fail to achieve the stability and legal permanence the child deserves. Approximately five to twenty percent of children who leave the dependency system as a result of legal permanence through adoption or legal guardianship experience discontinuity—the ending, permanently or temporarily, of an adoption due to the child re-entering the dependency system. (Children's Bureau, *Discontinuity and Disruption in Adoptions and Guardianships* (2021) p. 3, found at

https://www.childwelfare.gov/pubPDFs/s_discon.pdf.) Further, approximately ten to fifteen percent of adoptions are disrupted prior to their finalization. (*Id*. at p. 6.)

The trauma of not reunifying with a parent causes lifelong injury that should not be unnecessarily inflicted upon children in the dependency system simply because a timeline has run, especially when their family was not given a proper chance to succeed at reunification. Supreme Court Justice Potter Stewart was quoted as saying "[f]airness is what justice really is." Here, without a parent receiving reasonable services throughout the entirety of the reunification plan, justice cannot be served.

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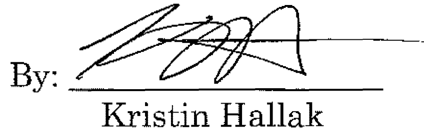
CONCLUSION

For all of the foregoing reasons, *amicus curiae* Children's Law Center of California respectfully requests that this Court find that the juvenile courts are required to extend reunification services beyond the 18-month review hearing when families have been denied reasonable services in the preceding review period.

Dated: June 9, 2022

Respectfully Submitted,

By: 
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CERTIFICATE OF WORD COUNT

In compliance with California Rules of Court, rule 8.520(c)(1), I hereby certify that the foregoing Brief of Amici Curiae Children's Law Center of California, Children's Legal Services of San Diego, and Dependency Legal Services, consists of 5551 words, not including the cover sheet, the Application, the Tables of Contents and Authorities, the Certificate of Service, or this Certificate, as counted by Microsoft Word computer program used to generate this Brief.

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I am employed in the County of Los Angeles, State of California, I am over the age of 18 years and not a party to the within action; my e-mail address is hallakk@clcla.org; my facsimile number is (323) 859-9499; my business address is 101 Centre Plaza Drive, Monterey Park, California 91754-2175.

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Executed on June 09, 2022 at Monterey Park, California.

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S271809

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Children's Law Center 5

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