No. 923-2012

IN THE

SUPREME COURT OF THE STATE OF WHITTIER

SPRING TERM 2013

MEGAN MILES,
Petitioner,

v.

STATE OF WHITTIER,
Kathryn Candler, Director of the Whittier Department of Child Welfare,
Respondent.

ON WRIT OF CERTIORARI
TO THE STATE OF WHITTIER COURT OF APPEAL

BRIEF FOR RESPONDENT

January 4, 2013

Team # 13
Counsel for Respondent

QUESTIONS PRESENTED

I. Was it proper for the Juvenile Court to terminate reunification services at the twelve-month hearing when reunification efforts were reasonable, there was no substantial probability of return within given time limits and there was a substantial risk of detriment if Destiny was reunited with Petitioner?

II. Was it proper for the Juvenile Court to deny Petitioner's request to remove Destiny from the only home and family she has ever known in order to place Destiny with her aunt and siblings?

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OPINION BELOW

The unreported opinion of the State of Whittier Court of Appeal appears on pages 1-16 of the record. *Miles v. State of Whittier* (November 1, 2012).

JURISDICTION

The jurisdiction of this Court is invoked pursuant to Whittier Juvenile Code Section 100.

STATEMENT OF THE CASE

Preliminary Statement

In April 2011, Destiny Miles was adjudicated a dependent child under Whittier Juvenile Code Section 100(b), and a reunification plan was established for her mother, Petitioner, Megan Miles. (R. 2.) Destiny was placed with Carl and Chelsea Griffin. (R. 3.) When Petitioner's reunification services were terminated and her placement preference requests were denied, Petitioner appealed the Juvenile Court's orders to the Whittier Court of Appeal. (R. 7.)

On November 1, 2012, the Court of Appeal upheld the Juvenile Court's decisions to terminate reunification services and to keep Destiny placed with the Griffins. (R. 8, 13-14.) Petitioner filed a writ of certiorari, which this court granted on November 16, 2012.

Statement of the Facts

On April 1, 2011, 18-year-old Petitioner Megan Miles delivered a daughter, Destiny. (R. 1.) At birth, Destiny was one month premature, had a blood-alcohol level of .06 and also tested positive for methamphetamine exposure. (R. 2.) Petitioner had a blood-alcohol level of .05. (R. 2.) At the time of Destiny's birth, Petitioner was homeless and a known prostitute. (R. 2.) Petitioner started using drugs and alcohol at the age of fourteen. (R. 1.) Due to these factors, Destiny was placed in the protective custody of the Department of Child Welfare ("DCW") while she remained in the hospital for one month battling severe withdrawal symptoms. (R. 2.)

Petitioner has two other biological children, five-year-old Desiree and three-year-old Dakota. (R. 1.) The Juvenile Court previously involuntarily terminated Petitioner's parental rights to both Desiree and Dakota. (R. 1.) Shawna Stone, Petitioner's only sibling, adopted both children after they were placed in her home through foster care. (R. 2.) Because Destiny's father is unknown, her social worker contacted Ms. Stone to ask if Destiny could be placed in her

home as well. (R. 2.) Ms. Stone declined because she did not want to take on another child who was likely to have developmental delays and behavior problems like Desiree and Dakota. (R. 2.)

The Juvenile Court adjudicated Destiny as a dependent child of the court under Whittier Juvenile Code Section 100(b). (R. 2.) Destiny was placed in foster care with Chelsea and Carl Griffin when she was released from the hospital one month after her birth. (R. 3.) Ms. Griffin is a special education teacher and also grew up with a special-needs sister in her home. (R. 3.) Mr. Griffin owns and operates a bakery. (R. 3.)

Additionally, the Juvenile Court offered reunification services for Petitioner because she expressed a strong desire to parent Destiny. (R. 3.) The reunification plan required Petitioner to adhere to the following: (1) complete a 90-day residential substance abuse program; (2) obtain lawful employment and a steady legal source of income; (3) obtain housing for herself and Destiny; (4) conduct herself in a manner consistent with the law; and (5) avoid situations which might result in the child's continued dependency. (R. 2, 3.) The Juvenile Court also ordered weekly parenting classes and hour-long supervised visitations once a week at the residential house. The first month of the residential program was difficult for Petitioner; she was often distracted during her visits with Destiny and ended the sessions early. (R. 3.) During the next two months, however, Destiny's social worker observed that Petitioner had positive interactions with Destiny and was making progress. (R. 3.)

After three months, Petitioner was discharged from the substance abuse program. (R. 3.) Shortly after moving in with a friend, she smoked marijuana at a party and tested positive for the drug during a routine screening. (R. 3.) In September 2011, Petitioner started working and moved into a studio apartment where she prepared a space for Destiny. (R. 4.)

Petitioner's six-month review hearing was in October 2011. (R. 4.) Both Destiny's counsel and her social worker thought that reunification was not suitable as Petitioner had only been working for one month and used drugs shortly after leaving her program. (R. 4.) They were particularly concerned that Destiny had continuing developmental needs Petitioner was not equipped to handle. (R. 4.) Destiny had not reached the developmental milestones for a four-month-old and was showing signs of fetal alcohol syndrome. (R. 3.) Petitioner's counsel asked for six months of additional reunification services because Petitioner was progressing and there was a substantial probability Destiny may be returned to her custody within that time. (R. 4.) The Juvenile Court ordered six more months of reunification services and increased the frequency of visitations to three sessions a week with the possibility of overnight visits. (R. 4.)

Petitioner was upset that she failed to regain custody of Destiny and was sent home the next day from work for drinking beer during her shift. (R. 5.) Petitioner's co-worker, Bill Franklin, came to her house that night, and they drank vodka. (R. 5.) Petitioner tried to visit Destiny the next day but was not allowed to because she smelled of alcohol. (R. 5.) Petitioner became upset and blamed Destiny's social worker and the Griffins for trying to make her lose Destiny. (R. 5.) Petitioner continued to see Mr. Franklin, and he moved in with her. (R. 5.) When he was drinking, he sometimes hit Petitioner hard enough to leave visible bruises. (R. 5.)

In January 2012, Petitioner started taking GED classes and was promoted at work. (R. 5.) She also reconnected with her sister, Ms. Stone, and communicated her hope that Ms. Stone would adopt Destiny if she was not able to regain custody. (R. 5.) In March 2012, Petitioner passed her GED test, and Mr. Franklin gave her a black eye. (R. 5.) Petitioner left Mr. Franklin and moved, again making a space for Destiny. (R. 6.) Ms. Stone then told Petitioner that she

and her husband changed their minds and would adopt Destiny if Petitioner was unable to regain custody. (R. 5.) Petitioner conveyed this to Destiny's social worker. (R. 6.)

Petitioner continued her visitations but Destiny was not bonding with Petitioner. (R. 6.) Destiny always cried when Petitioner held her, and Destiny often reached for and clung to Ms. Griffin. (R. 6.) Petitioner reacted to this by becoming upset and saying she was not going to visit just to be rejected by Destiny. (R. 6.) Subsequently, Petitioner only attended two visitations per week and Destiny's social worker recommended against any overnight visits. (R. 6.) By the time of the twelve-month permanency hearing, Destiny had developed a healthy bond and attachment to the Griffins, who consistently responded appropriately to her needs. (R. 6.) She was also generally on track in her development. (R. 6.)

The twelve-month permanency hearing was held in Juvenile Court on April 2, 2012. (R. 4.) Both the DCW child psychologist and Destiny's social worker recommended that Destiny be adopted by the Griffins. (R. 6.) The DCW further reported that if Petitioner regained custody, there would be a substantial risk of detriment to Destiny because Petitioner occasionally drank, had been in an abusive relationship for five of the last six months, and reacted to Destiny's rejection by missing visits. (R. 6.) Destiny's counsel agreed with DCW's position. (R. 7.) Petitioner's counsel requested another six months of services and argued that Petitioner made significant progress and DCW had failed to provide domestic violence services. (R. 7.) He also requested that Destiny be placed with the Stones. (R. 7.)

The Juvenile Court terminated reunification services in favor of permanent adoption by the Griffins. (R. 7.) The court did not find a substantial likelihood Destiny would be returned to Petitioner under Whittier Juvenile Code Section 400(b)(1)-(3) and found there was a risk of substantial detriment to Destiny if she were placed with Petitioner. (R. 7.) The court also found

that DCW had provided reasonable reunification services to Petitioner. (R. 7.) The court declined to place Destiny with Ms. Stone, reasoning that the law on sibling placement was inapplicable because Destiny's sibling relationship with Desiree and Dakota was terminated when Petitioner's parental rights were terminated. (R. 7.)

SUMMARY OF THE ARGUMENT

The Juvenile Court properly upheld the termination of reunification services. The DCW provided reasonable reunification efforts because the services and efforts were timely and appropriate and Petitioner was offered regular visitation. Reunification services should be continued only if there is a substantial probability of return within the given time limits because Congress intended the limits to reduced foster care drift and promote early childhood development. Further, returning Destiny to Petitioner would create a substantial risk of detriment because Petitioner failed to complete her reunification plan and appropriately respond to Destiny's needs.

The Juvenile Court also properly denied Petitioner's request to place Destiny with her aunt and biological siblings, all of whom Destiny has never met. The relative preference does not apply in this case because that preference does not apply at permanency hearings. But if it does apply, the Juvenile Court properly weighed all relevant factors and found that it would be in Destiny's best interest to keep her in the Griffins' home. The sibling preference also does not apply here because Desiree and Dakota are not Destiny's siblings under Whittier law. Even if the preference does apply, the Juvenile Court properly acted within its discretion in determining that it is in Destiny's best interest not to live with her siblings. For these reasons, this court should affirm the Court of Appeals' decision upholding the Juvenile Court's holding.

STANDARD OF REVIEW

This court should review placement determinations using the abuse of discretion standard. *In re Adoption of Bernard A.*, 77 P.3d 4, 7 (Alaska 2003). *See also In re Jasmine D.*, 93 Cal. Rptr. 2d 644, 652 (Cal. Ct. App. 2000). Factual findings are reviewed under the clearly erroneous standard. *In re Adoption of Bernard A.*, 77 P.3d at 7.

ARGUMENT

I. TERMINATION OF REUNIFICATION SERVICES WAS PROPER BECAUSE THE DCW PROVIDED REASONABLE REUNIFICATION EFFORTS, THERE WAS NO SUBSTANTIAL PROBABILITY DESTINY WOULD BE RETURNED WITHIN GIVEN TIME LIMITS, AND REUNIFICATION WOULD CREATE A SUBSTANTIAL RISK OF DETRIMENT TO DESTINY.

The federal Adoption and Safe Families Act of 1997 ("ASFA") requires states to make reasonable efforts to reunite children with their parents and mandates specific time limits for states to make decisions about permanent placement once a child enters foster care. 42 U.S.C. § 661(a)(15)(B) (2010) (reasonable efforts); 42 U.S.C. § 675(5)(C) (2010) (specific time limits). The statute was enacted primarily to place greater numbers of foster children into adoption or permanent homes "more quickly and safely than ever before." Barbara Bennett Woodhouse, *Horton Looks at the Ali Principles*, 4 J.L. & FAM. STUD. 151, 159 (2002) (quoting 143 CONG. REC. § 12199 (daily ed. Nov. 8, 1997) (statement of Sen. Rockefeller)). In order to receive federal funding for child services, states must pass laws consistent with ASFA requirements and goals. *See* 42 U.S.C. § 671. Whittier's Juvenile Code follows both the directives and objectives of ASFA. *See* WHIT. JUV. CODE §§ 100-600.

A. The DCW Provided Reasonable Efforts To Reunite Petitioner with Destiny by Offering an Adequate Case Plan, Timely Services, and Ample Visitation Opportunities.

Reasonable reunification efforts are required to reunite children with their parents prior to termination of parental rights. 42 U.S.C. § 661(a)(15)(B) (2010). Although the ASFA does not define reasonable efforts, efforts are generally reviewed objectively based on the individual circumstances of each case. *State ex rel. K.F.*, 201 P.3d 985, 997 (Utah 2009). Three primary factors consistently emerge in courts' discussions of reasonableness: "(1) Whether the case plan and services address the problems that caused the child to be removed from the home; (2) whether the time period for the efforts was reasonable and the specific efforts during that period timely; and (3) whether there were arrangements for visitation." Kathleen S. Bean, *Reasonable Efforts: What State Courts Think*, 36 U. TOL. L. REV. 321, 343-44 (2005).

1. The DCW's reunification efforts were reasonable because the case plan and services were tailored specifically to Petitioner's circumstances.

In order to find reunification efforts reasonable, a case plan must be tailored specifically to address the "problems which led to [the] loss of custody." *In re Riva M.*, 286 Cal. Rptr. 592, 596 (Cal. Ct. App. 1991). In *In re Riva M.*, the father lost custody of his children due to excessive alcohol consumption and lack of stable housing and employment. *Id.* His case plan was created to include an alcohol rehabilitation program and requirements to maintain suitable residence and income. *Id.* at 598. The court held that the plan and services offered were specifically tailored and easily met the reasonableness requirements. *Id.*

Like *In re Riva M.*, the case plan and services were specifically tailored to address the problems that led to Petitioner losing custody of Destiny. Petitioner lost custody because she was homeless, had a long history with substance abuse problems and lacked legal employment. (R. 2.) In response, DCW enrolled Petitioner in a residential substance abuse program, offered

job training and placement, and offered weekly parenting classes. (R. 9.) All of these tailored services were subsequently utilized by Petitioner and easily meet the reasonableness threshold.

Because domestic violence was not initially what led to her loss of custody, Petitioner errs in arguing that the efforts were not reasonable because DCW failed to provide relevant services when Petitioner's relationship became a factor in the custody considerations. Services "need not be perfect." *In re Alvin R.*, 134 Cal. Rptr. 2d 210, 218 (Cal. Ct. App. 2003). The standard is not whether every possible service was made available, but rather if the totality of offered services was "reasonable under the circumstances." *Elijah R. v. Superior Court*, 78 Cal. Rptr. 2d 311, 313 (Cal. Ct. App. 1998). For example, even though the state mistakenly failed to provide a mother with domestic violence services, a Connecticut court found that the offered services were reasonable because other services, such as counseling, were given. *In re Charles A.*, 738 A.2d 222, 224 (Conn. App. Ct. 1999).

Here, like *In re Charles A.*, many other appropriate services were given, and the lack of domestic violence services is not sufficient to render the totality of reunification efforts unreasonable, particularly when the missing service was not integral to treat initial custody loss problems. Furthermore, it is important to note that both the weekly parenting classes and residential substance abuse program Petitioner attended contained messages on the importance of avoiding violent relationships yet Petitioner failed to avail herself of this guidance. (R. 9.)

2. The DCW's reunification efforts were reasonable because the period of efforts and services offered to Petitioner were time appropriate.

In order for reunification efforts to be found reasonable, it is critical that they are timely and offered at the outset of intervention. *In re C.B.*, 611 N.W.2d 489, 493 (Iowa 2000). For instance, in *Amanda H. v. Superior Court*, two children were removed from the home due to domestic violence between their parents. 83 Cal. Rptr. 3d 229, 230 (Cal. Ct. App. 2008). The

mother's case plan required domestic violence counseling, but social workers failed to refer her to the correct services until just one month before the permanency hearing. *Id.* at 232. The appellate court held that the reunification efforts were not reasonable because social workers knew of the error and failed to refer the mother to services in a timely manner. *Id.* at 234.

Contrary to *Amanda H.*, here, reunification services were offered to Petitioner in a timely and appropriate manner. Petitioner was referred to and enrolled in an in-patient substance abuse program at the very start of start of DCW intervention. (R.3.) Following the program, she was also provided with job training and placement – all before the six month review. (R. 9.) Thereafter DCW continued to do random drug tests and provide parenting classes for Petitioner. (R. 3.) Because she was offered appropriate services at the outset of intervention and throughout the reunification period, the DWC's efforts easily meet the reasonableness threshold.

3. The DCW's reunification efforts were reasonable because Petitioner was offered regular and increasing levels of visitation with Destiny.

In order for reunification efforts to be found reasonable, visitation must be provided as "frequent[ly] as possible" because it is an 'essential component of any reunification plan." *In Re Alvin R.*, 134 Cal. Rptr. 2d at 217. *See also In re Guardianship of DMH*, 736 A.2d 1261, 1274 (N.J. 1999) (affirming services "must assist in visitation"). Visitation is so essential in parent-child reunification that Whittier codified it as a statutory consideration for return of parental custody. WHIT. JUV. CODE § 400 (b)(1). Additionally, when visitation is difficult for parents, transportation should be included when "compliance prove[s] difficult." *In re Riva M.*, 286 Cal. Rptr. at 599. In *Audrey H. v. State, Office of Children's Services*, a mother contested the reasonableness of services provided in part because her visitations were suspended twice after she repeatedly missed the sessions. 188 P.3d 668, 680 (Alaska 2008). The Alaska Supreme Court held, however, that the state made reasonable and "repeated efforts to arrange visitation"

including facilitating daily phone calls, weekly visits, and providing bus passes so the mother could attend the visits, yet the mother was unwilling to participate in or show up to the visits *Id.*

In Petitioner's case, DCW's reunification efforts were reasonable because visitations with Destiny were regularly available from the outset of intervention. (R. 3.) Petitioner was provided with weekly visitations during the entire first six months of the reunification period. (R. 3.) Moreover, when Petitioner was enrolled in a residential substance abuse program, DCW arranged for visitations to take place where she was housed and provided transportation to bring Destiny to Petitioner. (R. 3.) Following the six-month hearing, visitations were increased to three times per week with the possibility of overnight visits. (R. 4.) Petitioner initially participated in the visitations but later only attended only two per week because she was angry Destiny was more bonded with her foster mother than with Petitioner. (R. 6.)

B. The DCW Properly Terminated Reunification Efforts Because Child Welfare Is Paramount and Reunification Efforts Can Only be Continued When There Is a Substantial Probability of Return to Parent Within Given Time Limits.

Under the ASFA, the federal government has emphasized meeting the needs of foster children by requiring that the health and safety of children "be of paramount concern." 42 U.S.C. § 671(a)(15)(A) (paramount in "determining reasonable efforts to be made"). In order to further emphasize the priority of child welfare, it also created a bypass where reunification efforts are not required under certain circumstances, such as where parental rights have previously been involuntarily terminated with other siblings. 42 U.S.C. § 671 (a)(15)(d)(iii).

1. Termination of Reunification efforts is proper when time limits are reached because ASFA was enacted to reduce foster care drift and protect early childhood development.

Time limits were enacted to reduce foster care drift – where foster children move from home to home without ever being permanently placed – and to effectively achieve permanent

placement when children are younger. *In re A.G.*, 868 A.2d 692, 709 (Vt. 2004). *See generally* David J. Herring, *The Adoption and Safe Families Act-Hope and Its Subversion*, 34 FAM. L.Q. 329, 338 (2000). Frequent moves and lengthy temporary placements often "resul[t] in significant harm to children." Herring, *The Adoption*, *supra*, at 332. Foster care children in temporary placements often "develop a lack of trust for others, form shallow attachments, and regress in their emotional growth." Sherry A. Hess, *Improving the Mandatory Dismissal Deadline to be Truly in the Best Interest of the Child*, 9 TEX. WESLEYAN L. Rev. 95, 97 (2002). Studies show they may also drop out of high school, hold low skill jobs, use drugs, and spend time on public assistance. *In Interest of Lilley*, 719 A.2d 327, 335 (Pa. Super. Ct. 1998) (quoting Amanda Spake, *Adoption Gridlock*, U.S. NEWS AND WORLD REPORT, June 22 1998 at 31). Furthermore, the longer children languish in foster care, the greater their chances for adoption dramatically decline. Robert M. Gordon, *Drifting Through Byzantium: The Promise and Failure of the Adoption and Safe Families Act of 1997*, 83 MINN. L. REV. 637, 656 (1999).

Many states have also created shorter and stricter time limits on reunification efforts for children under three years of age. *See* WHIT. JUV. CODE § 200 (twelve months); CAL. WELF. & INST. CODE § 361.5 (West 2012) (twelve months); IOWA CODE § 232.116(1)(h)(1)-(3) (West 2011) (six months). Infants and toddlers need permanency more quickly "because of their vulnerable stage of development." *Daria D. v. Superior Court*, 71 Cal. Rptr. 2d 668, 670 (Cal. Ct. App. 1998). Early experiences between birth and three years shape a child's brain development, personality, emotion and intelligence. K. BERNARD & MARY DOZIER, SOCIAL AND EMOTIONAL DEVELOPMENT IN INFANCY AND EARLY CHILDHOOD 12 (Janette B. Benson, 1st ed. 2009). Infant attachment generally develops within the first year of life and healthy attachments will help a child to trust and feel secure. *Id.* at 13. Infants who change caregivers in foster care

often show resistant behaviors to new caregivers, which in turn "elicit[s] non nurturing behavior from new caregivers" and can lead to childhood mal-attachment. *Id.* at 16. Subsequently, these children often develop behavioral problems in school, in peer relationships, and in self-control. *Id.* at 16-17.

2. Termination of reunification efforts was proper because there was no substantial probability Destiny would be reunited with Petitioner within ASFA time limits.

To mitigate long-term harmful effects on infants in foster care, reunifications services for a child under three years of age shall only be continued for longer than six months if there is a "substantial probability that the child *may* be" reunited with his or her parent within the next six months. WHIT. JUV. CODE § 300(d) (emphasis added). At twelve months, there remains the possibility of an extension of services only if the court finds a substantial probability the child *will* be reunited with the parent within that time. WHIT. JUV. CODE § 400(b) (emphasis added). Once the parent has been given a reasonable amount of time to succeed in reunification, "the child's interest in permanency and stability takes priority." *In re Marilyn H.*, 851 P.2d 826, 835 (Cal. 1993). *See also In re C.B.*, 611 N.W.2d at 494 (discussing no indefinite wait for parents to address their problems). At the twelve-month permanency hearing, the focus necessarily shifts from reunification efforts to "selection and implementation of a permanent plan for the child." *In re S.B.*, 46 Cal 4th 529, 531 (Cal. 2009). S*ee also Tonya M. v. Superior Court*, 42 Cal. 4th 836, 845 (Cal. 2007) (finding that reunification efforts are disfavored after twelve months).

In order for the court to find a substantial probability that the child will be returned to the parent within the six months following the permanency hearing, the court must find the parent: (1) regularly visited the child; (2) made significant progress in resolving the issues that led to the custody removal; and (3) demonstrated the capacity and facility to complete the case plan and

meet the child's safety, protection and physical and emotional needs. WHIT. JUV. CODE § 400(b)(1)-(3). In *Tonya M.*, a mother lost custody when her child was born prematurely and tested positive for drug exposure. 42 Cal 4th at 840. She was in compliance with her drug program, showed motivation, and had tested negative for drugs over the previous four months. *Id.* at 842. However, the court terminated reunification efforts despite her recent progress because she failed to fully comply with her case plan by missing visits, skipping two drug tests, and associating with the infant's father who was still using drugs. *Id.* at 841-42. She failed to comply with "the objectives of the treatment program" and demonstrated the inability to provide for the infant's "safety, protection, physical and emotional health and special needs." *Id.* at 842.

Like *Tonya M.*, Petitioner's case is one of inconsistencies and efforts being made too late. Petitioner made some progress before her six month hearing so the Juvenile Court ordered continued reunification efforts. (R. 4.) Petitioner reacted negatively to her continued separation from Destiny, however, and faltered in her progress. She used drugs and alcohol, entered into a violent relationship, missed visitations after feeling rejected by Destiny and failed to earn even a single overnight visit. (R. 5-6.) Petitioner failed to meet the objectives of her plan and like *Tonya M.*, she failed to demonstrate the ability to provide for Destiny's "safety, protection and physical and emotional well-being" as required by Whittier Juvenile Code Section 400(b)(3). The court rightly followed the intent of the law and refused to leave Destiny in foster care limbo. Furthermore, it correctly held under Whittier law that there was no substantial probability Destiny would be returned to Petitioner within the next six months.

C. The DCW Correctly Chose Adoption as the Permanent Plan for Destiny Because Returning Her to Petitioner Would Constitute a Substantial Risk of Detriment to Destiny's Safety, Protection, or Physical or Emotional Well-Being.

Whittier requires that a child be returned to his or her parent unless reunification would "constitute a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child." WHIT. JUV. CODE § 300(b). The court will consider the social worker's recommendations and report, as well as the parent's efforts or progress. *Id.* The ultimate determination hinges on "whether the child may be safely" reunited with his or her parent. *In re A.S.A.*, 279 P.3d 419, 421 (Utah Ct. App. 2012).

1. Returning Destiny to Petitioner would constitute a substantial risk of detriment because Petitioner failed to make substantial progress and fully participate in her reunification plan.

Petitioner argues that "substantial risk of detriment" is too vague and undefined. (R. 12.) There is, however, "nothing vague or subjective" about this standard. *In re Cody W.*, 36 Cal. Rptr. 2d 848, 852 (Cal. Ct. App. 1994). This standard is "well understood to simply mean – weighing all relevant factors – expected [] harm to a child as a result of" reunification. *Id.* Furthermore, a parent's failure to participate in his or her case plan or make substantive progress constitutes prima facie evidence of detriment. WHIT. JUV. CODE § 300(c). In *In re Brian R.*, a father lost custody of his son and his reunification plan required a substance abuse program, stable housing, and parenting classes. 3 Cal. Rptr. 2d 768, 770-71 (Cal. Ct. App. 1991). Though the father made substantial strides in resolving the problems which led to his loss of custody, the juvenile court found the father failed to make any progress towards reunification during the second six months, which was prima facie evidence that return would be detrimental. *Id.* at 772.

Similarly here, Petitioner failed to fully comply with her case plan. She still occasionally used alcohol and drugs. (R.5.) She also entered into an abusive relationship with a man who

regularly drank alcohol, then subsequently let him move in with her. (R. 5.) Furthermore, she missed visits with Destiny and failed to earn a single overnight visit. (R. 6.) These factors establish that Petitioners failed to reach the goals of her reunification plan; therefore, the prima facie evidence that reunification would be detrimental to Destiny has been met.

2. Returning Destiny to Petitioner would constitute a substantial risk of detriment because Petitioner fails to appropriately respond to Destiny's needs.

Fundamentally, children have the right to a placement that is permanent and stable. *In re Marilyn H.*, 851 P.2d at 833. "It is within the court's discretion to decide that a child's interest in stability" outweighs the parent's interest in reunification. *In re Jasmon O.*, 878 P.2d 1297, 1307 (Cal. 1994). A parent's satisfaction of the reunification plan does not automatically entitle the parent to reunification. *In re Joseph B.*, 49 Cal. Rptr. 2d 900, 902 (Cal. Ct. App. 1996). For example, in *In re Jasmon O.*, a father lost custody and was in compliance with his reunification plan. 878 P.2d at 1300. Even so, the court held that there would be a substantial risk of detriment to return the child to her father because she experienced separation anxiety during visits and the father was unable to empathize with her distress. *Id.* Both the child psychologist and social worker recommended against returning the child to the father because she had developed no bond with him and would suffer mental and emotional harm. *Id.* at 1301.

Similarly here, Destiny is at substantial risk of detriment if she is returned to her mother. Both the DCW psychologist and social worker recommend against reunification because Destiny's needs are best served by being adopted by the Griffins. Destiny has bonded with the Griffins and they have helped her to catch up developmentally. (R. 6.) Like *In re Jasmon O.*, she experiences separation anxiety during visits with Petitioner. (R. 6.) Furthermore, instead of empathizing with Destiny, Petitioner responded to Destiny's emotional distress by skipping visits

and ignoring her emotional needs. (R. 6.) The appellate court correctly held that returning Destiny to Petitioner constitutes a substantial risk of detriment. This decision should be upheld.

The DCW's reunification efforts easily meet the reasonableness threshold. Additionally, there is no substantial likelihood Destiny will be returned to Petitioner within the given time limits, and if Destiny is returned, there is a substantial likelihood of detriment. For these reasons, the Whittier Supreme Court should uphold the lower court's decision that the termination of reunification services was proper.

II. OUT OF CONCERN FOR THE BEST INTEREST OF THE CHILD, THE JUVENILE COURT PROPERLY DENIED PETITIONER'S REQUEST TO REMOVE DESTINY FROM THE HOME WHERE SHE HAS LIVED HER ENTIRE LIFE TO PLACE HER WITH HER AUNT AND SIBLINGS, WHO SHE HAS NEVER MET.

A child's sense of stability is immediately disrupted once that child is taken from her parents and placed in foster care. Therefore, a court's goal in determining the child's best interest is to assure "stability and continuity." *In re Stephanie M.*, 867 P.2d 706, 718 (Cal. 1994). Congress suggests achieving stability and continuity by placing juvenile dependents with their relatives and/or their siblings. 42 U.S.C. § 671(19), (31). The State of Whittier requires the court to consider a variety of factors. WHIT. JUV. CODE §§ 500, 600. Based on the totality of the circumstances as viewed in light of Destiny's best interest, the Juvenile Court acted properly in denying Petitioner's request to place Destiny with her aunt, Ms. Stone, and her siblings.

A. <u>The Court Properly Denied Petitioner's Request Because the Relative Preference Statute Should Not Apply in this Case and the Best Interest of Destiny Outweighs All Other Factors in Determining Her Placement.</u>

This court should uphold the Juvenile Court's denial of Petitioner's request to place her with Ms. Stone for two reasons. First, Whittier's relative preference statute does not apply in this case. Second, even if the statute does apply, Destiny's best interest is to remain with the Griffins.

1. Whittier Juvenile Code Section 500 does not apply because relative preference statutes should not apply once the Juvenile Court has terminated reunification services, as the court has done here.

The relative preference does not apply when the request is made at a permanency hearing, as is the case here. The goal of a permanency hearing is "to provide a stable, permanent home in which a child can develop a lasting emotional attachment to his or her caretakers." *In re Baby Girl D.*, 257 Cal. Rptr. at 3. *See also In re Jessica Z.*, 275 Cal. Rptr. 323, 327 (Cal. Ct. App. 1990). At this point, preferential consideration should be given to foster parents to whom the child has developed "substantial emotional ties." *In re Baby Girl D.*, 257 Cal. Rptr. at 3. Here, that would mean that the Griffins should be given preference over Ms. Stone.

Had Petitioner's request been presented at Destiny's initial dispositional hearing, the relative preference would apply. The goal of dispositional hearings is "to find a temporary caretaker who will meet the child's physical and psychological needs while cooperating in reunification efforts." *In re Baby Girl D.*, 257 Cal. Rptr. 1, 3 (Cal. Ct. App. 1989). In this case, not only did Petitioner originally fail to request that Destiny be placed with a relative, but Ms. Stone also turned down placement when approached by DCW. (R. 2.)

Not every state prohibits parties from introducing the relative preference at permanency hearings, but Whittier is distinguishable from those states. For example, the California Legislature amended a California statute to expressly include language stating that the relative preference applied at permanency hearings. CAL. WELF. & INST. CODE § 361.3 (West 2012). *See also Cesar V. v. Superior Court*, 111 Cal. Rptr. 2d 243, 250 (Cal. Ct. App. 2001). However, the Whittier statute does not include language stating that the relative preference applies at permanency hearings. Therefore, the relative preference should not apply here.

2. Even if the relative preference statute applies, that preference is not determinative and fails to outweigh all other relevant factors.

Even if the court decides that the relative preference statute applies in this case, Petitioner still loses her appeal because it is in Destiny's best interest to be adopted by the Griffins. Adoption statutes and dependency proceedings are construed to promote the best interest of the child, which is determined on a case-by-case basis by examining many factors. *In the Interest of M.F.*, 1 S.W.3d 524, 532 (Mo. Ct. App. 1999). No single factor is determinative of an outcome, even the natural parent's request. *Id. See also In re T.W.M.*, 964 A.2d 595, 602 (D.C. 2009) (recognizing that even when state law requires the natural parent's request be given weighty consideration, that request is only one of many factors). Here, the Juvenile Court properly examined the totality of the circumstances and rationally concluded that Destiny's best interest was served by placing her with the Griffins.

When deciding which factors to consider during placement proceedings, courts turn to the language of the respective state's statutes. *See Harold K. v. Ryan B.*, 730 N.E.2d 88, 94 (Ill. App. Ct. 2000) (applying factors listed in the relevant Illinois statute). In the State of Whittier, Section 500(c) lists six factors that must be considered when evaluating whether a relative should be preferred over a non-relative. (App. A-6-7) The evidence presented before the Juvenile Court fails to satisfy several of these factors.[1]

The first factor the court must consider is the best interest of the child, "including special physical, psychological, educational, medical, or emotional needs." WHIT. JUV. CODE § 500(c)(1). Because of circumstances surrounding Destiny's birth, it is very likely that she will experience developmental delays and behavioral problems as ages. (R. 2.) The Griffins are

[1] Respondent does not dispute that the evidence satisfies Section 500(c)(2) (wishes of parents and relatives) and (4) (moral character of relatives). The evidence fails to satisfy Section 500(c)(3) because Desiree and Dakota are not Destiny's siblings for purposes of this statute, as discussed below. Finally, as discussed previously, Section 500(c)(6) is not met because Petitioner's request occurred at a permanency hearing, not a dispositional hearing.

well-equipped to deal with these obstacles: Ms. Griffin is a special education teacher and grew up with a special-needs sister, so she has had training and years of experience working with developmentally delayed children. (R. 3.) Additionally, both Mr. and Mrs. Griffin have stable jobs, suggesting that they have the resources to provide Destiny with the additional help she may need in the future. (R. 3.) Finally, the Griffins have already demonstrated their ability to meet Destiny's needs, as evidenced by the fact that Destiny's development is now mostly on track, despite showing signs of fetal alcohol syndrome at birth. (R. 4, 6.) On the other hand, Ms. Stone previously expressed that she could not "bear the burden" of taking care of another child, much less another developmentally delayed child. (R. 2.) While Ms. Stone's change of heart should be taken into consideration, so, too, should her previous statements and the fact that she is already struggling to take care of two developmentally delayed children. Therefore, it is in Destiny's best interest to keep her in the Griffins' home.

The court must also consider "the nature and duration of the relationship between the child and the relative, and the relative's desire to care for the child." WHIT. JUV. CODE § 500(c)(5). Destiny has never met Ms. Stone and has no preexisting relationship with her. Ms. Stone initially turned down DCW's request to place Destiny with her, and has only recently come forward as a willing candidate for placement. (R. 1, 6.) Conversely, Destiny has lived with the Griffins her entire life and has bonded with them. (R. 6.) The Griffins have also consistently expressed a desire to adopt Destiny. (R. 7.) While Ms. Stone has failed to meet these factors, the Griffins have met them. Therefore, Ms. Stone should not be given any preference in Destiny's placement, regardless of being Destiny's relative.

Additionally, Petitioner cannot rely on the shared cultural background between Destiny and Ms. Stone as a factor the Juvenile Court should have considered because culture is not listed

in Section 500(c). Even when a Missouri court was required to considered culture in *In the Interest of M.F.*, which petitioner erroneously relies on in her appeal, the court found that the relatives' shared cultural background weighed equally with the non-relatives' efforts to attend to the ethnic and racial background of the child. 1 S.W.3d at 535. The court ultimately ordered placement with the non-relatives. *Id.* at 538. Here, if the court was required to consider culture, that factor would weigh equally in favor of both the Griffins and Ms. Stone. Ms. Stone may share the same cultural background as Destiny, but there is no evidence that the Griffins would not meet Destiny's cultural needs. Therefore, Petitioner's reliance on culture is misplaced and should not affect the balance of the totality of the circumstances test in this case.

Courts give relatives preferential consideration only when such placement is appropriate. WHIT. JUV. CODE § 500(c). Here, despite the fact that Ms. Stone is biologically related to Destiny, placing Destiny with Ms. Stone would not be appropriate. Destiny's educational, psychological, and emotional needs are better met by the Griffins, and Destiny has a deeply-rooted bond with the Griffins. Destiny is twelve months old. This is a time in her life "when the interest of the child in stability ha[s] become paramount," *In re Stephanie M.*, 867 P.2d at 722, because this is the age at which Destiny's emotional and psychological development is most vulnerable, Bernard *supra* at 12. The chief concern here is Destiny's best interest, which is best served by allowing the Griffins to keep Destiny as their adoption proceedings go forward.

B. Because There Is No Requirement that a Court Place a Child with Her Siblings, the Court Acted Within Its Discretion in Determining that it Is in Destiny's Best Interest Not to Live with Desiree and Dakota.

The sibling relationship can be one of life's most significant connections, mostly due to the fact that siblings develop strong bonds early in life. *See* Jill Elaine Hasday, *Siblings in Law*, 65 VAND. L. REV. 897, 899-900 (2012). But in order for those bonds to form, siblings must have

close contact and a meaningful relationship. *Id.* In this case, there is no meaningful sibling relationship at stake. Destiny has never met Desiree or Dakota; they have never lived together, interacted, or shared any common experiences. Petitioner's request that Destiny be placed with Desiree and Dakota in Ms. Stone's home should be denied for three reasons. First, the court is not required to place siblings together. Second, Desiree and Dakota are not Destiny's legal siblings. Third, even if the children are considered Destiny's siblings, it is not in Destiny's best interest to place her in Ms. Stone's home.

1. There are no constitutional or statutory rights requiring that siblings be placed together.

Petitioner's request that Destiny be placed with her siblings should be denied on the ground that there is no constitutional or statutory requirement that siblings be placed together. Petitioner misapplies the Court's holding in *Smith v. Organization of Foster Families* by suggesting that the due process right recognized in that case establishes a right to siblings' placement with one another. 431 U.S. 816, 848-49 (1977). Rather, the due process right recognized in *Smith* refers to the fact that state dependency procedures must satisfy constitutional standards. *Id.* at 849. Whittier's dependency procedures are not at issue here. What is at issue is whether the sibling relationship includes a right to placement together. To that point, the Court has "never concluded that there exists a fundamental liberty interest in the sibling relationship." *In re Adoption of Pierce*, 790 N.E.2d 680, 685 (Mass. App. Ct. 2003). There is no constitutional right to siblings' placement in the same home.

Additionally, no such right exists in any federal or Whittier statute either. There is no federal statutory right to siblings' placement together. The ASFA only requires that state foster care and adoption plans provide reasonable efforts to place siblings in the same foster care home "unless such placement would be contrary to the best interest of any of the siblings." 42 U.S.C.

§ 671(a)(31)(A). This language recognizes that siblings will not always be placed together. Hasday, *Siblings*, *supra*, at 906.

There is no state statutory right to siblings' placement together either. The only Whittier statute that refers to sibling placement states that "the social worker shall to the extent that is practical and appropriate, place the minor together with any siblings or half-siblings who are also detained or include in their detention report [. . .] the reasons why the siblings are not placed together." WHIT. JUV. CODE § 600(b). At most, this statute creates a preference that siblings will be placed together unless there is a documented reason why they should not be. In this case, that reason is because Destiny has never met her biological siblings and has no relationship with them. Therefore, no statutory right has been violated here.

2. For purposes of Whittier state law, Desiree and Dakota are not Destiny's "siblings" because they have previously been adopted.

Not only should Petitioner's request be denied because Whittier law does not create a statutory right to siblings' placement together, but it should also be denied on the ground that Desiree and Dakota are not Destiny's siblings under the law. When a parent has relinquished her parental rights to some children before another child was born, it would be imprudent to conclude that a "sibling relationship somehow rises from the ashes of a lawfully terminated or relinquished parent-child relationship." *In re Meridian H.*, 798 N.W.2d 96, 107 (Neb. 2011).

Every state recognizes that terminating parental rights extinguishes the parent-child relationship under the law. *Id*. All parties in this case agree that the court terminated Petitioner's parental rights to Desiree and Dakota before Destiny was born, and that the children's legal mother is now Ms. Stone. (R. 1-2.)

There is a jurisdictional split, however, regarding whether the termination of parental rights terminates the legal relationship between siblings as well. Some states, such as Illinois

and Nebraska, treat the sibling relationship as terminated once parental rights have been terminated and the other siblings have been adopted. *See Harold K. v. Ryan B.*, 730 N.E.2d at 95; *In re Meridian H.*, 798 N.W.2d at 107. California, on the other hand, does not terminate the sibling relationship when parental rights are terminated. *In re Valerie A.*, 43 Cal. Rptr. 3d 734, 736 (Cal. Ct. App. 2006). S*ee also In re Miguel A.*, 67 Cal. Rptr. 3d. 307, 310 (Cal. Ct. App. 2007). Nevertheless, this case is distinguishable from the California cases.

California courts do not terminate the sibling relationship upon termination of parental rights because "sibling" is defined as "a child related to another person by blood, adoption, or affinity through a common legal or *biological* parent." CAL. WELF. & INST. CODE §§ 362.1(c) (West 2011), 388(b) (West 2012), 16002 (West 2012) (emphasis added). California courts have interpreted this definition to mean that even when biological siblings are adopted by different parties, they share a common biological parent and thus remain siblings under California law. *In re Miguel A.*, 67 Cal. Rptr. 3d. at 310.

This case is distinguishable because Whittier state law defines "sibling" as a "child who is related to another person by blood, adoption, or affinity through a common parent." WHIT. JUV. CODE § 600(a). The Whittier statute does not include "a common *biological* parent" like the California statute. Therefore, Whittier courts, like those in Nebraska and Illinois, should interpret the statute to mean that once the legal parent-child relationship has been terminated, so has the legal sibling relationship. Consequently, Desiree and Dakota are not Destiny's siblings, and the Juvenile Court did not need to consider whether it should place Destiny with them.

3. Even if Section 600 applies, the Juvenile Court acted within its discretion in denying Petitioner's request that Destiny be placed with her siblings.

Because Section 600 does not compel the court to place siblings together, the Juvenile Court acted properly when it held that Destiny should not be removed from the Griffins to live

with her siblings. The Juvenile Court's holding was initially based on the fact that a legal sibling relationship does not actually exist between Destiny and Desiree and Dakota. (R. 14.) If this court is not persuaded by that argument, the Juvenile Court's holding should still stand because its reliance on this conclusion is harmless error. The Juvenile Court also based its holding on the fact that Destiny has no pre-existing relationship with her siblings, demonstrating that the outcome would have been the same even if Section 600 applies. (R. 14.)

Furthermore, the court's decision was proper in light of the facts of this case. For example, in *In re Miguel A.*, the court had terminated Miguel's mother's parental rights to her other son, Jose, and completed adoption proceedings for Jose before Miguel was born. 67 Cal. Rptr. 3d. at 308.[2] When Jose petitioned for visitation with Miguel, the lower court denied the petition because Miguel and Jose did not have a preexisting relationship. *Id.* at 312. The appellate court held that even though a sibling relationship still existed, the lower court properly considered the fact that the siblings had never had contact with each other in determining the best interest of the child. *Id.*

Similarly here, it is not in Destiny's best interest to be placed with her siblings. The court terminated Petitioner's parental rights over Desiree and Dakota before Destiny was born. (R. 1.) Even if this court finds that a sibling relationship exists, it was nonetheless proper for the Juvenile Court to consider the fact that Destiny has had no contact with her siblings in determining Destiny's best interest. Additionally, even though *In re Miguel A.* dealt with a request for visitation and not a request for placement, that difference makes the argument in this case even stronger. If a court properly denied *visitation* because there was no preexisting relationship, then it is proper for a court to deny *permanent placement* for the same reason.

[2] Because *In re Miguel A.* is a California case, the termination of parental rights did not terminate the sibling relationship between Miguel and Jose. *Id.* at 310.

It is important not to lose sight of the fact that every legal decision should be made in Destiny's best interest. The Griffins are the only family Destiny has ever known. Granting Petitioner's request would mean uprooting Destiny from her stable environment to live with strangers for the second time in her young life. Such a decision would not be in Destiny's best interest, and the detriment of granting Petitioner's request outweighs the relative and sibling placement preferences. Therefore, this court should uphold the Court of Appeal's holding.

CONCLUSION

DCW properly terminated reunification services because reasonable efforts were provided, there was no substantial probability Destiny would be returned within statutory time limits and there was a substantial probability of detriment if she was returned. Petitioner's requests that Destiny be placed with her aunt and biological siblings should also be denied because neither the relative nor the sibling preferences apply in this case. But even if this court finds that one or both of those preferences applies here, neither overcomes what is in the best interest of the child: for Destiny to be adopted by the Griffins. For the aforementioned reasons, this court should affirm the holding of the Whittier Court of Appeals.

Dated: January 4, 2013

Respectfully submitted,

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Team # 13
Counsel for Respondent

APPENDIX

APPENDIX

Whittier Juvenile Code § 100 – Conditions of Abuse or Neglect

Any child who comes within any of the following descriptions is within the jurisdiction of the juvenile court which may adjudge that person to be a dependent child of the court:

(a) The child has suffered, or there is a substantial risk that the child will suffer, serious physical harm inflicted non-accidentally upon the child by the child's parent or guardian. For the purposes of this subdivision, a court may find there is a substantial risk of serious future injury based on the manner in which a less serious injury was inflicted, a history of repeated inflictions of injuries on the child or the child's siblings, or a combination of these and other actions by the parent or guardian which indicate the child is at risk of serious physical harm. For purposes of this subdivision, "serious physical harm" does not include reasonable and age-appropriate spanking to the buttocks where there is no evidence of serious physical injury.

(b) The child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child, or the willful or negligent failure of the child's parent or guardian to adequately supervise or protect the child from the conduct of the custodian with whom the child has been left, or by the willful or negligent failure of the parent or guardian to provide the child with adequate and appropriate food, clothing, shelter, or medical treatment, or by the inability of the parent or guardian to provide regular care for the child due to the parent's or guardian's mental illness, developmental disability, or substance abuse.

(c) The child is suffering serious emotional damage, or is at substantial risk of suffering serious emotional damage, evidenced by severe anxiety, depression, withdrawal, or untoward aggressive behavior toward self or others, as a result of the conduct of the parent or guardian or who has no parent or guardian capable of providing appropriate care. No child shall be found to be a person described by this subdivision if the willful failure of the parent or guardian to provide adequate mental health treatment is based on a sincerely held religious belief and if a less intrusive judicial intervention is available.

(d) The child has been sexually abused, or there is a substantial risk that the child will be sexually abused, by his or her parent or guardian or a member of his or her household, or the parent or guardian has failed to adequately protect the child from sexual abuse when the parent or guardian knew or reasonably should have known that the child was in danger of sexual abuse.

(e) The child is under the age of five years and has suffered severe physical abuse by a parent, or by any person known by the parent, if the parent knew or reasonably should have known that the person was physically abusing the child. For the purposes of this subdivision, "severe physical abuse" means any of the following: any single act of abuse which causes physical trauma of sufficient severity that, if left untreated, would cause permanent physical disfigurement, permanent physical disability, or death; any single act of sexual abuse which causes significant bleeding, deep bruising, or significant external or internal swelling; or more than one act of physical abuse, each of which causes bleeding, deep bruising, significant external or internal

swelling, bone fracture, or unconsciousness; or the willful, prolonged failure to provide adequate food. A child may not be removed from the physical custody of his or her parent or guardian on the basis of a finding of severe physical abuse unless the social worker has made an allegation of severe physical abuse.

(f) The child's parent or guardian caused the death of another child through abuse or neglect.

(g) The child has been left without any provision for support; physical custody of the child has been voluntarily surrendered and the child has not been reclaimed within a 14-day period; the child's parent has been incarcerated or institutionalized and cannot arrange for the care of the child; or a relative or other adult custodian with whom the child resides or has been left is unwilling or unable to provide care or support for the child, the whereabouts of the parent are unknown, and reasonable efforts to locate the parent have been unsuccessful.

(h) The child has been freed for adoption by one or both parents for 12 months by either relinquishment or termination of parental rights or an adoption petition has not been granted.

(i) The child has been subjected to an act or acts of cruelty by the parent or guardian or a member of his or her household, or the parent or guardian has failed to adequately protect the child from an act or acts of cruelty when the parent or guardian knew or reasonably should have known that the child was in danger of being subjected to an act or acts of cruelty.

(j) The child's sibling has been abused or neglected, as defined in subdivision (a), (b), (d), (e), or (i), and there is a substantial risk that the child will be abused or neglected, as defined in those subdivisions. The court shall consider the circumstances surrounding the abuse or neglect of the sibling, the age and gender of each child, the nature of the abuse or neglect of the sibling, the mental condition of the parent or guardian, and any other factors the court considers probative in determining whether there is a substantial risk to the child.

As used in this section, "guardian" means the legal guardian of the child.

Whittier Juvenile Code § 200 – Family Reunification Services

(a) For a child under 3, reunification services shall be provided for no less than six months from the date of disposition and no longer than twelve months from the date the child entered foster care.

(b) Reunification services need not be provided to a parent or guardian described in this subdivision when the court finds, by clear and convincing evidence, any of the following:

(1) That the whereabouts of the parent or guardian is unknown.

(2) That the parent or guardian is suffering from a mental disability that renders him or her incapable of utilizing those services.

(3) That the child or a sibling of the child has been previously adjudicated a dependent pursuant to any subdivision of Section 100 as a result of physical or sexual abuse, removed from the parent or guardian, then returned, and is now being removed again.

(4) That the parent or guardian of the child has caused the death of another child through abuse or neglect.

(5) That the child was brought within the jurisdiction of the court under subdivision (e) of Section 100 because of the conduct of that parent or guardian.

(6) That the child has been adjudicated a dependent pursuant to any subdivision of Section 300 as a result of severe sexual abuse or the infliction of severe physical harm to the child, a sibling, or a half sibling by a parent or guardian and the court makes a factual finding that it would not benefit the child to pursue reunification services with the offending parent or guardian.

(7) That the child has been found to be a child described in subdivision (g) of Section 100; that the parent or guardian of the child willfully abandoned the child, and the court finds that the abandonment itself constituted a serious danger to the child; or that the parent or other person having custody of the child voluntarily surrendered physical custody of the child.

(8) That the court ordered termination of reunification services for any siblings or half siblings of the child because the parent or guardian failed to reunify with the sibling or half sibling after the sibling or half sibling had been removed from that parent or guardian and that parent or guardian is the same parent or guardian in the present matter and that, according to the findings of the court, this parent or guardian has not subsequently made a reasonable effort to treat the problems that led to removal of the sibling or half sibling of that child from that parent or guardian.

(9) That the parental rights of a parent over any sibling or half sibling of the child had been permanently severed, and this parent is the same parent in the present matter and that, according to the findings of the court, this parent has not subsequently made a reasonable effort to treat the problems that led to removal of the sibling or half sibling of that child from the parent.

(10) That the parent or guardian of the child has been convicted of a violent felony.

(11) That the parent or guardian of the child has a history of extensive, abusive, and chronic use of drugs or alcohol and has resisted prior court-ordered treatment for this problem during a three-year period immediately prior to the filing of the petition that brought that child to the court's attention.

(12) That the parent or guardian of the child has advised the court that he or she is not interested in receiving family maintenance or family reunification services or having the child returned to or placed in his or her custody and does not wish to receive family maintenance or reunification services.

(13) The parent or guardian shall be represented by counsel and shall execute a waiver of services.

(14) That the parent or guardian has on one or more occasions willfully abducted the child or child's sibling or half sibling from his or her placement and refused to disclose the child's or child's sibling's or half sibling's whereabouts, refused to return physical custody of the child or child's sibling or half sibling to his or her placement, or refused to return physical custody of the child or child's sibling or half sibling to the social worker.

Whittier Juvenile Code § 300 – Status Review Hearing

(a) The first status review hearing shall be held six months after the disposition. The purpose of this hearing is to determine whether reunification services should continue.

(b) The child must be returned to his or her parent unless the court finds by a preponderance of the evidence that the return of the child would constitute a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The Department of Child Welfare carries the burden of proof. In making its determination, the court shall review and consider the social worker's report and recommendations and shall consider the efforts or progress, or both, demonstrated by the parent or legal guardian and the extent to which he or she availed herself to services provided.

(c) A parent's failure to participate regularly in their reunification plan and to make substantial progress in court ordered treatment programs constitutes prima facie evidence that the return of the child would be detrimental.

(d) For a child under three, at the time of the six month hearing, services may only be extended an additional six months if there is a substantial probability that the child may be returned to the parent's custody within the next six months.

(e) Where a child is not returned to the parent, the court must determine whether the Department of Child Welfare made reasonable efforts to alleviate the problems that led to removal. If services were not reasonable, services may be extended an additional six months.

Whittier Juvenile Code § 400 – Permanency Hearing

(a) The permanency hearing shall be held no later than twelve months after the child entered foster care. The purpose of this hearing is to determine the child's permanent plan.

(b) For a child under three, at the time of the twelve month hearing, services may only be extended an additional six months if there is a substantial probability that the child will be returned to the parent's custody within the next six months. To determine whether there is a substantial probability that the child will be returned to the parent, the court must find:

(1) The parent has consistently contacted and visited the child;

(2) The parent has made significant progress in resolving the problems that led to the child's removal; and

(3) The parent has demonstrated the capacity and ability to complete the objectives of the treatment plan and provide for the child's safety, protection and physical and emotional well-being.

(c) If the court terminates reunification services, it must find by clear and convincing evidence that the Department of Child Welfare has offered reasonable services to the parent(s) and then order termination of parental rights within 120 days. If reasonable services were not offered, services may be continued an additional six months.

Whittier Juvenile Code § 500 – Relative Placement

(a) Only the following relatives shall be given preferential consideration for placement of the child: an adult who is a grandparent, aunt, uncle or sibling of the child.

(b) Request for placement made by a relative of the child shall be given preferential consideration. Preferential consideration means that the relative seeking placement shall be given priority over non-relative placement.

(c) In determining whether placement with a relative is appropriate, the Department of Child Welfare shall consider the following factors:

(1) The best interest of the child, including special physical, psychological, educational, medical, or emotional needs;

(2) The wishes of the parent, the relative and the child, if appropriate;

(3) Placement of siblings and half-siblings in the same home, if that placement is found to be in the best interest of each of the children;

(4) The moral character of the relative and any other adult living in the home, including whether any individual residing in the home has a prior history of violent criminal acts or has been responsible for acts of child abuse or neglect;

(5) The nature and duration of the relationship between the child and the relative, and the relative's desire to care for the child; and

(6) The ability of the relative to provide a safe and stable environment for the child, exercise proper care and control of the child, protect the child from her parents and provide legal permanence if reunification fails.

Whittier Juvenile Code § 600 – Siblings

(a) Sibling means a child who is related to another person by blood, adoption, or affinity through a common parent.

(b) Whenever a child is taken into protective custody, the social worker shall to the extent that is practical and appropriate, place the minor together with any siblings or half-siblings who are also detained or include in their detention report the continuing efforts to place the siblings together, or the reasons why the siblings are not placed together.