No. 923-2012

IN THE STATE OF WHITTIER SUPREME COURT

MEGAN MILES,

Petitioner,

v.

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

Respondent.

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

BRIEF FOR THE RESPONDENT

January 4, 2013

Team 23
Counsel for Respondent

QUESTION PRESENTED

I. Whether the Juvenile Court's termination of reunification services at the 12-month hearing was proper when, there was a substantial risk of detriment to the child if returned to Petitioner's care, there was no substantial probability of return of the child to Petitioner's custody, and Department of Child Welfare's efforts in regard to the reunification plan were reasonable.

II. Whether the Juvenile Court's denial of Petitioner's request to place the child with her biological aunt and siblings is proper when the child has been with the foster parents since her release from the hospital, her biological aunt initially refused to have the child placed with her, and the child has no relationship with her biological siblings.

TABLE OF CONTENTS

QUESTION PRESENTED i

TABLE OF CONTENTS ii

TABLE OF AUTHORITIES iv

JURISDICTIONAL STATEMENT vi

OPINION BELOW vi

STATEMENT OF THE CASE 1

PRELIMINARY STATEMENT 1

STATEMENT OF THE FACTS 1

SUMMARY OF ARGUMENT 6

STANDARD OF REVIEW 7

ARGUMENT 7

I. TERMINATION OF REUNIFICATION SERVICES WAS PROPER AT THE 12-MONTH HEARING 7

A. Under Whittier Juvenile Code § 300(b), There was a Substantial Risk of Detriment if Destiny were Returned to Ms. Miles's Care 8

1. Returning Destiny to Ms. Miles's Care Will Impact Her Safety, Protection, Physical and Emotional Wellbeing 9

2. The Social Worker's Report Recommends That Destiny Be Placed with the Griffins and Not Return to the Care of Ms. Miles 9

3. Ms. Miles Made Efforts and Availed Herself to the Services Made Available to Her, but Has Not Been Able to Meet the Objectives of the Reunification Plan 11

B. Under Whittier Juvenile Code § 300(d), There Was Not a Substantial Probability of Return of Destiny to Ms. Miles's Care 12

1. Ms. Miles Had Consistent Contact and Visitation with Destiny, However, She Unilaterally Reduced the Amount of Visits Per Week with Destiny and Never Had an Overnight Visit with Destiny 12

2. Ms. Miles Made Some, but Not Significant, Improvements or Progress in Resolving the Problems that Led to the Removal of Destiny 13

3. Ms. Miles Has Not Displayed a Capacity or Ability to Complete Treatment Objectives or Provide for Destiny's Safety, Protection and Physical and Emotional Wellbeing 14

C. Under Whittier Juvenile Code § 300(e), DCW Made Reasonable Efforts to Alleviate the Problems that Led to Destiny's Removal 15

1. DCW's Services Were a Fair and Serious Attempt to Reunify Ms. Miles with Destiny Prior to the Termination of Parental Rights 15

2. DCW Has Made a Good Faith Effort to Reunify Ms. Miles with Destiny and the Services Provided Were Appropriately Tailored 16

II. THE JUVENILE COURT'S DENIAL OF THE PETITIONER'S REQUEST TO PLACE DESTINY WITH HER BIOLOGICAL AUNT AND SIBLINGS IS PROPER 17

A. Destiny's Placement with the Griffins, and Not with Her Biological Siblings, Is Proper 17

1. The Existence of Any Sibling Relationship Was Terminated When Ms. Stone Adopted Dakota and Desiree 17

2. Even if There Is a Legal Sibling Relationship, Destiny Does Not Have Any Meaningful Relationship With Dakota or Desiree 18

B. Destiny's Placement with the Griffins, and Not with Ms. Stone, Is Proper 20

1. Ms. Stone Was Given Preferential Consideration in the Placement of Destiny ... 20

2. When the Six Factors Set Forth in Whittier Juvenile Code § 500(c) Are Weighed, It Is Clear that Placement with the Griffins Is Proper and in Destiny's Best Interest . 22

CONCLUSION 25

APPENDIX A-1

TABLE OF AUTHORITIES

CASES

UNITED STATES SUPREME COURT

Troxel v. Granville, 530 U.S. 57 (2000) ---------- 23

STATE COURTS

A.H. v. Superior Court, 182 Cal. App. 4th 1050 (2010) ---------- 13

Adoption of Hugo, 700 N.E.2d 516 (Mass. 1998) ---------- 18

Amanda H. v. Superior Court, 166 Cal. App. 4th 1340 (2008) ---------- 16

Angela S. v. Superior Court, 36 Cal. App. 4th 758 (1995) ---------- 13

Browning v. Tarwater, 524 P.2d 1135 (Kan. 1974) ---------- 18

Care and Prot. of Three Minors, 467 N.E.2d 851 (Mass. 1984) ---------- 18

Cynthia D. v. Superior Court, 5 Cal. 4th 242 (1993)----------8

Foster v. Alston, 7 Miss. 406 (Miss. Err. & App. 1842) ---------- 22

In re Adoption of M.J.S., 162 P.3d 200 (Okla. 2007)---------- 23

In re Adoption of Schumacher, 458 N.E.2d 94 (Ill. App. Ct. 1983)---------- 17, 18

In re Alvin et al. v. Alvin Sr., 108 Cal. App. 4th 962 (2003) ---------- 9, 16

In re D.R.F., 693 S.E.2d 235 (N.C. App. 2010)---------- 22

In re Dustin et al. v. Catherine R., 53 Cal. App. 4th 1131 (1997)---------- 8, 9, 11, 14

In re Fox, 567 P.2d 985 (Okla. 1977) ---------- 18

In re Interest of Jorius G., 546 N.W.2d 796 (Neb. 1996) ---------- 7

In re Joseph T., Jr., 163 Cal. App. 4th 787 (2008) ---------- 23

In re Kayla S., 772 A.2d 858 (Me. 2001) ---------- 16

In re Valerie A., 152 Cal. App. 4th 987 (2007) ---------- 19

Jennifer A. v. Superior Court, 117 Cal. App. 4th 1322 (2004)----------9

Matter of Alicia Shante H., 245 A.D.2d 509 (N.Y. App. Div. 1997) ---------- 11

Matter of Austin A., 243 A.D.2d 895 (N.Y. App. Div. 1997) ---------- 16

Matter of Jennie KK, 239 A.D.2d 666 (N.Y. App. Div. 1997)---------- 11

Miles v. State of Whittier (Whit. Ct. App. 2012), cert. granted, (Whit. Nov. 16, 2012) (923-2012) ----------vi, 1, 6

New Jersey Div. of Youth & Fam. Services v. M.F., 815 A.2d 1029 (N.J. Super. App. Div. 2003) ---------- 23

Office of the Guardian ad Litem ex rel. S.M., 154 P.3d 835 (Utah 2007) ----------9

Petition of Beggiani, 519 So. 2d 1208 (Miss. 1988)---------- 21, 22

Petition of New England Home for Little Wanderers, 328 N.E.2d 854 (Mass. 1975) ---------- 18

S.W. v. Superior Court, 172 Cal. App. 4th 277 (2009)---------- 12

State ex rel. A.C., 97 P.3d 706 (Utah App. 2004)---------- 15

State ex rel. D.N., 76 P.3d 194 (Utah App. 2003) ---------- 21

State ex rel. KF, 201 P.3d 985 (Utah 2009) ---------- 15

Wilson v. Wallace, 622 S.W.2d 164 (Ark. 1981) ---------- 17

STATUTES

Whit. Juv. Code § 200 ----------7

Whit. Juv. Code § 300 ---------- 7, 8, 9, 11, 12, 15

Whit. Juv. Code § 400 ---------- 12

Whit. Juv. Code § 500 ---------- 20, 21, 22, 23, 24, 25

Whit. Juv. Code § 600 ---------- 17, 18

OTHER AUTHORITIES

Black's Law Dictionary (9th ed. 2009)---------- 20

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JURISDICTIONAL STATEMENT

The Supreme Court of Whittier is the highest court in the state of Whittier. Therefore, it may hear all cases that come from Whittier state courts, and its decisions are binding on all other Whittier state courts.

OPINION BELOW

The unreported opinion of the State of Whittier Court of Appeal appears on page 1-16 of the record. *Miles v. State of Whittier* (Whit. Ct. App. 2012), cert. granted, (Whit. Nov. 16, 2012) (923-2012).

STATEMENT OF THE CASE

PRELIMINARY STATEMENT

Petitioner appeals the order by the Jenning County Juvenile Court denying her an additional six months of reunification services. (Record at 1.) Petitioner further appeals the Juvenile Court's order denying her request that placement be with the child's biological aunt and siblings. (R. at 1.)

The Whittier Court of Appeals upheld the Juvenile Court's findings. (R. at 8; 13—4.) Petitioner appealed to this court and was granted certiorari to the Supreme Court of Whittier on November 16, 2012. *Miles v. State of Whittier* (Whit. Ct. App. 2012), cert. granted, (Whit. Nov. 16, 2012) (923-2012).

STATEMENT OF THE FACTS

Background

Destiny Miles ("Destiny") was born April 1, 2011 to an unknown father and Megan Miles ("Ms. Miles"), an 18-year-old former foster youth. (R. at 1; 2.) Ms. Miles's parental rights to her two other biological children, Desiree, age 5, and Dakota, age 3, were previously terminated. (R. at 1.) Ms. Miles's only sibling, Shawna Stone ("Ms. Stone"), adopted Ms. Miles's other children prior to Destiny's birth. (R. at 2.)

When Destiny was born, she had a blood-alcohol level of .06 and tested positive for methamphetamine. Ms. Miles had a blood alcohol level of .05. (R. at 2.) She was also "homeless, known for prostituting in the nearby neighborhood . . . [and] functionally illiterate." (R. at 2.) As a result, the Department of Child Welfare ("DCW") placed Destiny in protective custody. She remained at Jenning County Hospital to be treated for her symptoms of withdrawal. (R. at 2.)

As a result, Destiny was adjudicated as a dependent under Whittier Juvenile Code ("the Code") § 100(b), which invoked reunification services. DCW set up a reunification plan

requiring that Ms. Miles: (1) complete a drug and alcohol treatment program; (2) obtain lawful employment and a steady legal source of income; (3) obtain housing for herself and her child; (4) conduct herself in a manner consistent with the law; and (5) avoid circumstances which might result in the child's continued dependency." (R. at 2.)

Before Destiny was released from the hospital, Sonia White ("Ms. White"), the social worker for Destiny's case, contacted Ms. Stone in regards to possibly caring for Destiny. Ms. Stone refused, stating that she and her husband "had already done enough for Ms. Miles" and "could no longer bear the burden of Ms. Miles's struggles." (R. at 2.) She also "did not want to disrupt her family's routine with another child who would likely have behavioral problems and developmental delays like Desiree and Dakota." (R. at 2.) She requested that Ms. White never contact her again. Ms. White attempted to find another relative, but the search yielded no other family members. (R. at 2.)

As a result, when Destiny was released from the hospital at one-month-old, she was placed with Carl and Chelsea Griffin ("the Griffins"). (R. at 3.) Chelsea Griffin ("Ms. Griffin") is a special education teacher, has a special-needs sister, and she and her husband want to adopt a child from foster care. (R. at 3.)

Ms. Miles was given the opportunity to reunify with Destiny if she completed the reunification plan. (R. at 3.) As part of these services, Ms. Miles was required to participate in a 90-day residential substance abuse program, and after her completion, attend weekly parenting classes. (R. at 3.) In addition, Ms. Miles was to have 1-hour weekly supervised visits with Destiny. (R. at 3.) Although Ms. Miles also "enrolled in an additional infant development class," she often ended visits early and "seemed distracted during the time she spent with Destiny." (R. at 3.) Shortly after leaving the residential program, Ms. Miles smoked marijuana and tested

positive for drugs during a routine drug test conducted by Ms. White. (R. at 3.)

Early on in implementation of the reunification plan, Ms. White explained to Ms. Miles that Destiny "showed some signs of the facial features of fetal alcohol syndrome [sic], and that she was not reaching the developmental milestones that most four-month-old babies attain." (R. at 3—4.) Ms. Miles recognized that Destiny's developmental issues were directly related to her behavior during pregnancy. (R. at 4.)

In September 2011, Ms. Miles took a job at a local diner and moved into a new studio apartment, which had space for Destiny. She abstained from using drugs or alcohol for a short while and attended her visits with Destiny (R. at 4.)

At Ms. Miles's six-month review hearing in October 2011, Ms. White's report noted that she had completed her substance abuse program, attended her parenting classes, and had appropriate visits with Destiny. Ms. Miles had also obtained a job, an apartment, and supplies for Destiny. (R. at 4.) However, Ms. White's report "caution[ed] that reunification with Destiny was not yet appropriate given Destiny's ongoing developmental needs, and Ms. Miles's use of marijuana and because Ms. Miles had only been working for one month." (R. at 4.) Destiny's attorney agreed with Ms. White's position. (R. at 4.)

However, Ms. Miles's attorney argued that with an additional six months of services, there was a substantial probability that Destiny may be returned to her. (R. at 4.) The Juvenile Court subsequently "ordered six more months of services and enhanced the visitation schedule to 3 visits per week for 2 hours, with overnight visits to be scheduled at DCW's discretion." (R. at 4.) Ms. Miles adversely reacted to the court's order and accused the Griffins of "trying to steal Destiny from her." (R. at 5.)

Ms. Miles dealt with her emotions by consuming alcohol the next day during her shift at

work, and was sent home without pay as a result. (R. at 5.) After being sent home, Ms. Miles and her co-worker, Bill Franklin ("Mr. Franklin") drank vodka at her apartment. (R. at 5.) Although Ms. Miles attempted to attend her visit with Destiny the following day, was denied visitation because she smelled of alcohol. (R. at 5.) Again, Ms. Miles became upset and accusatory, claiming that Ms. White was trying to keep Destiny from her. (R. at 5.)

Ms. Miles became involved with Mr. Franklin, and he ultimately moved into her apartment. (R. at 5.) Mr. Franklin soon became abusive when he drank–hitting her, leaving visible bruises. (R. at 5.) In January 2012, Ms. Miles began attending GED classes and subsequently passed her test. Mr. Franklin responded by saying "that she thought she was too good for him" and gave her a black eye. (R. at 5.) Eventually, Ms. Miles ended her relationship with Mr. Franklin, although she "still welcomed seeing [him] at the diner." (R. at 6.) Subsequently, she moved into a new apartment that included space for Destiny. (R. at 6.)

After Ms. Stone, Desiree and Dakota came into the diner and reconnected with Ms. Miles, they began coming in for weekly lunches. (R. at 5.) Ms. Miles told her that she was trying get Destiny returned to her, but if it were not possible, proposed that Ms. Stone adopt Destiny. (R. at 5.) In March 2012, after reconnecting, Ms. Stone told Ms. Miles that the Stones would adopt Destiny if she were not returned to Ms. Miles. (R. at 5—6.) Ms. Miles shared this information with Ms. White. (R. at 6.)

When Ms. Miles attended her visits, she tried to hold and rock Destiny – but Destiny pulled away and appeared to want to be held by Ms. Griffin. "During one visit, Destiny buried her face in Ms. Griffin's shoulder and clung to her." (R. at 6.) Once again, Ms. Miles became upset, complaining that she was not attending visits with Destiny only to be rejected for Ms. Griffin. (R. at 6.) Ms. Miles subsequently only attended two of three visits per week. Ms. White

decided that an overnight visit was inappropriate. (R. at 6.)

On April 2, 2012, the 12-month permanency hearing was held. (R. at 4.) Ms. White's report explained that Ms. Miles wanted to care for Destiny, or have Ms. Stone adopt her. However, Ms. Miles missed some visits "after feeling rejected by Destiny." (R. at 6.) The report stated that Ms. Miles had an abusive relationship with Mr. Franklin, which she claimed had ended. Nevertheless, "Destiny [was] thriving in the Griffins' care" and was "mostly on track"– despite initial concerns about her development. (R. at 6.) Ms. White indicated that Destiny had bonded with the Griffins, as she "clings to Ms. Griffin during visits, cries for Ms. Griffin when held by Ms. Miles and appears both comforted by and attached to Ms. Griffin." (R. at 6.) Furthermore, Ms. Griffin "responds appropriately to Destiny's needs." (R. 6.) The Griffins want to adopt Destiny, and DCW's child psychologist recommends that they do so. (R. at 6.)

It is the position of DCW that "there was a substantial risk of detriment to Destiny if she were returned to the care of Ms. Miles." (R. at 7.) "DCW therefore asked the court to terminate services and proceed with a permanent plan of adoption by the Griffins." (R. at 7.) Destiny's attorney agreed that Destiny had bonded with the Griffins, was making "developmental progress," and supported adoption by the Griffins. (R. at 7.)

Ms. Miles's attorney argued that Ms. Miles had made progress in the last year, that her behavior had not "presented a substantial risk of detriment to Destiny's safety or well-being," and that DCW did not provide services to remedy its domestic violence concerns. As a result, she is entitled to an additional six months of services. (R. at 7.) Alternatively, Destiny should be placed with the Stones if return to Ms. Miles's custody is not possible. (R. at 7.)

Proceedings Below

The Juvenile Court held that there was not a "substantial likelihood that Destiny would be returned to Ms. Miles under Whittier Juvenile Code § 400(b)(1)—(3) and explained that there was a risk of substantial detriment if Destiny were returned to Ms. Miles." (R. at 7.) The Juvenile Court found that "DCW made reasonable efforts to assist Ms. Miles in correcting the problems that led to Destiny's removal." (R. at 7.) Furthermore, Whittier Juvenile Code § 600 is not applicable because the sibling relationship between Destiny and Desiree and Dakota was terminated when Ms. Stone's adopted Dakota and Desiree. (R. at 7.) In addition, the Juvenile Court declined to remove Destiny from the Griffins' care and place her with the Stones. (R. at 7.) Reunification services were terminated and a permanent plan of adoption by the Griffins was put into place. (R. at 7.) "A hearing to terminate parental rights was scheduled." (R. at 7.)

Ms. Miles appealed the rulings of the Juvenile Court (R. at 7.) The Whittier Court of Appeals upheld the Juvenile Court's rulings. (R. at 8; 14.) Ms. Miles subsequently appealed the ruling of the Appellate Court. (R. at 1.) The Supreme Court of the State of Whittier granted certiorari on both issues. *Miles v. State of Whittier* (Whit. Ct. App. 2012), cert. granted, (Whit. Nov. 16, 2012) (923-2012).

SUMMARY OF ARGUMENT

First, the Juvenile Court's termination of reunification services at the 12-month hearing was proper. Returning Destiny to Ms. Miles's care would pose a substantial risk of detriment because Ms. Miles cannot properly care for Destiny. Further, Ms. White recommends that the Griffins adopt Destiny because Ms. Miles was unable to meet the objectives of the reunification plan. In addition, there was not a substantial probability of return. Ms. Miles has not made significant improvements to resolve the problems that led to Destiny's removal and she has not

displayed the capacity or ability to complete the treatment plan or provide for Destiny's safety and wellbeing. Finally, DCW made in good faith reasonable, fair and serious, and appropriately tailored efforts to alleviate the problems that led to Destiny's removal.

Second, the Juvenile Court's denial of Ms. Miles's request to place Destiny with her biological aunt and siblings is proper. Any sibling relationship between Destiny and Dakota and Desiree was terminated when Ms. Stone adopted Dakota and Desiree. However, even if there is a legal sibling relationship, Destiny does not have any meaningful relationship with Dakota or Desiree, but has bonded with the Griffins. Although Ms. Stone was given preferential consideration in the placement of Destiny, she refused to have Destiny placed with her. Furthermore, when the six factors set forth in § 500(c) of the Code are weighed, it is clear that placement with the Griffins is proper and in Destiny's best interest. Therefore, Respondent respectfully requests that this Court uphold the rulings of the Juvenile and Appellate Courts.

STANDARD OF REVIEW

This Court should review the termination of reunification services at the 12-month hearing and the denial of Petitioner's request to place the child with the biological aunt and siblings *de novo*. *In re Interest of Jorius G.*, 546 N.W.2d 796, 797 (Neb. 1996).

ARGUMENT

I. TERMINATION OF REUNIFICATION SERVICES WAS PROPER AT THE 12-MONTH HEARING.

When a child enters foster care in the state of Whittier, the parent(s) are provided with reunification services. Whit. Juv. Code § 200(a). When a child enters foster care and reunification services have been granted, a status review hearing must be held to determine if and when the child can be returned to his/her parent. Whit. Juv. Code § 300.

In reviewing the termination order, the court must examine whether: (1) there was a

substantial risk of detriment to Destiny if returned to Ms. Miles; (2) there was substantial probability of return of Destiny to Ms. Miles; and (3) the DCW made reasonable efforts to alleviate the problems that led to the removal through the reunification plan. Whit. Juv. Code § 300. At the 12-month hearing, the Juvenile Court determined that reunification services should be terminated and Destiny should be placed with the Griffins permanently. (R. at 7.)

Termination of reunification services was proper because DCW made reasonable efforts to remedy the problems that led to the removal of Destiny, but Ms. Miles was not able to eliminate the substantial risk of detriment to Destiny or guarantee that she could remedy the risk within the next six months.

A. Under Whittier Juvenile Code § 300(b), There was a Substantial Risk of Detriment if Destiny were Returned to Ms. Miles's Care.

According to the Code, in order for the court to deny returning the minor to the parent(s), it must find by a preponderance of the evidence that there is a substantial risk of detriment to the child. Whit. Juv. Code § 300(b). In making its determination, the court considers the social worker's recommendations and report of the efforts and progress displayed by the parent, and the extent to which the parent has availed him/herself to the services provided. Whit. Juv. Code § 300(b).

Courts have found that "[t]here is a statutory presumption that the child will be returned to parental custody unless the court finds that '[there is] a substantial risk of detriment to the physical or emotional wellbeing of the minor.'" *Cynthia D. v. Superior Court*, 5 Cal. 4th 242, 249 (1993). If at the 12-month hearing it finds there is not a substantial probability of return, a court must terminate reunification services. *Id.*

1. Returning Destiny to Ms. Miles's Care Will Impact Her Safety, Protection, Physical and Emotional Wellbeing.

Courts have terminated services when return would detrimentally impact the minor's emotional wellbeing, even though a parent had completed the reunification plan. *In re Dustin et al. v. Catherine R.*, 53 Cal. App. 4th 1131, 1140 (1997). The court will consider the child's needs, which outweigh the parent's completion of the reunification plan. *Id.*; *See e.g. Office of the Guardian ad Litem ex rel. S.M.*, 154 P.3d 835, 846 (Utah 2007).

Here, although Ms. Miles has completed the substance abuse program, she has not remedied her substance abuse. She still "drinks on occasion" and "used marijuana" after her completion of the substance abuse program. (R. at 4; 6.) Furthermore, she cannot guarantee Destiny's safety, protection, and physical and emotional wellbeing. Ms. Miles was in an abusive relationship during her participation in the reunification plan. Although she has since ended the relationship, she still welcomes her abuser at her place of work. (R. at 5—6.) Though domestic abuse was not the problem that led to Destiny's removal, it shows that Ms. Miles cannot guarantee a safe home. (R. at 2; 6.) Ms. Miles's inability to maintain sobriety is prima facie evidence that the return of custody would be detrimental to Destiny. Whit. Juv. Code § 300(c). Therefore, there is a substantial risk of detriment to Destiny.

2. The Social Worker's Report Recommends That Destiny Be Placed with the Griffins and Not Return to the Care of Ms. Miles.

Courts have considered the social worker's reports and recommendations when determining the risk of detriment to the child. *See In re Alvin et al. v. Alvin Sr.*, 108 Cal. App. 4th 962, 975 (2003) (finding that there was a substantial risk of detriment when the social worker's report stated that returning the child to his father would have an adverse effect on the child's emotional wellbeing and when the child expressed fear about returning to his father's custody).

On the other hand, courts have also found termination of reunification services improper when the social worker's report determines that the parent is capable of parenting. *See Jennifer A. v. Superior Court*, 117 Cal. App. 4th 1322, 1327 (2004) (finding that termination of reunification services was improper where a social worker testified on a mother's behalf indicating that the mother made substantial progress and there was a substantial probability of return within the next six months because the mother had a stable home, a good job, displayed necessary parenting skills and did not have a substance abuse problem).

Here, Ms. Miles has not made substantial changes or progress to the point that the Court can conclude there is a substantial probability of Destiny's return to her mother's care within the next six months. Ms. Miles does not have a stable home and has moved twice since the original order was given, including once in-between the six-month and 12-month hearings. (R. at 4; 6.) She recently ended an abusive relationship, however, her abuser is still in her life and she still welcomes seeing him at her place of work. (R. at 6.) Ms. Miles also has a substance abuse problem and used drugs and alcohol even after technically completing the reunification plan. (R. at 6.) Ms. White indicates that Ms. Miles, "attends most visits; however, recently she missed a few visits after feeling rejected by Destiny." (R. at 6.) In addition, Destiny cries and clings to Ms. Griffin when Ms. Miles tries to hold Destiny, suggesting that Destiny is uncomfortable with Ms. Miles. (R. at 6.) Additionally, Ms. White reports that, "Ms. Miles was subject to domestic violence in her last relationship . . . [and] occasionally consumes alcohol and attended one visit smelling like alcohol." (R. at 6.) DCW, Ms. White, DCW's child psychologist, and Destiny's attorney all agree that it is in Destiny's best interest to be placed with the Griffins. (R. at 6—7.)

Ms. White's report and Ms. Miles's inability to meet the criteria of the reunification plan lead to the conclusion that the Juvenile Court properly terminated reunification services.

3. Ms. Miles Made Efforts and Availed Herself to the Services Made Available to Her, but Has Not Been Able to Meet the Objectives of the Reunification Plan.

Courts have found that even though a parent has technically completed a reunification plan, there can still be a substantial risk of detriment to the child if completion of the requirements is not enough to overcome the risk. *In re Dustin*, 53 Cal. App. 4th at 1141—42. Parents who have limited awareness of the emotional and physical needs of their children and who fail to recognize how past behavior and maltreatment affect a child's development pose a substantial risk of detriment to the child. *Id.* If the parent has not mitigated or alleviated the causes of the child's removal, there is a risk of detriment to the child even with completion of the plan. *Id.*; *See e.g. Matter of Jennie KK*, 239 A.D.2d 666, 668 (N.Y. App. Div. 1997).

In determining if there is a risk of detriment, courts consider compliance with the reunification plan, substantial progress with meeting objectives, and visiting with the child. *In re Dustin*, 53 Cal. App. 4th at 1143; *See also Matter of Alicia Shante H.*, 245 A.D.2d 509, 510 (N.Y. App. Div. 1997).

Here, Ms. Miles has complied with, but has not met, the objectives of the reunification plan. Ms. Miles has met the technical requirement of the reunification plan, which was to complete a substance abuse course. (R. at 4.) However, Ms. Miles has not met the objectives of the reunification plan, which aim to remedy the problems that led to Destiny's removal. She engaged in smoking marijuana on at least one occasion and attended a visitation with Destiny smelling of alcohol. (R. at 5—6.) She occasionally drinks alcohol and has failed to maintain sobriety. Therefore, she failed to meet the objectives of the reunification plan. (R. at 6.) Placement with Ms. Miles would place Destiny at a substantial risk of detriment. (R. at 7.)

In addition, the Code states that a parent's failure to participate or make substantial

progress in the reunification plan is prima facie evidence that there is a risk of detriment. Whit. Juv. Code § 300(c). Ms. Miles's failure to maintain sobriety should be considered a failure to make substantial progress in the court-ordered treatment program.

Termination of the reunification services at the 12-month hearing was proper because there was a substantial risk of detriment to Destiny if she were returned to Ms. Miles's care.

B. Under Whittier Juvenile Code § 300(d), There Was Not a Substantial Probability of Return of Destiny to Ms. Miles's Care.

According to the Code, services may be extended for an additional six months if there is a substantial probability of the child's return to the parent's custody within that time. Whit. Juv. Code § 300(d). In order to determine that there is a substantial probability of return, the Code requires a court find that: (1) the parent had consistent contact and visitation with the child; (2) the parent has made significant progress in resolving the issues that led to removal; and (3) the parent is capable and able to complete the objectives of the reunification pan and provide for the child's safety, protection, and physical and emotional wellbeing. Whit. Juv. Code § 400(b).

1. Ms. Miles Had Consistent Contact and Visitation with Destiny, However, She Unilaterally Reduced the Amount of Visits Per Week with Destiny and Never Had an Overnight Visit with Destiny.

In California, courts have found that contact and visitation require the parent to (1) contact the child and (2) visit the child in order to receive additional reunification services. *S.W. v. Superior Court*, 172 Cal. App. 4th 277, 282—83 (2009). Contact with the child must be substantial and cannot be "casual or chance" or "nominal" interactions. *Id.*

Here, Ms. Miles did have regular visitations with Destiny. (R. at 6.) The record is silent to contact, but Ms. Miles usually attended the court-ordered visits. (R. at 6.) However, Ms. Miles missed a few visits after she felt rejected by Destiny, thus disobeying the court order. (R. at 6.) Ms. Miles unilateral determined to reduce the amount of times a week that she would visit with

Destiny, and was never granted permission to have an overnight visit because Ms. White found an overnight visit to be inappropriate. (R. at 6.)

Therefore, termination of reunification services is proper because Ms. Miles violated her court-ordered visitation with Destiny.

2. Ms. Miles Made Some, but Not Significant, Improvements or Progress in Resolving the Problems that Led to the Removal of Destiny.

Termination of reunification services can be proper even when the parent makes an effort to use the reunification services. *See A.H. v. Superior Court*, 182 Cal. App. 4th 1050, 1062—63 (2010) (finding that termination of services was proper even though the father made a good faith effort to utilize services because the father's substance abuse problems had not been ameliorated and the court determined that, based on past performance, the father could not ameliorate this problem within the next six months). The potential return of the child to his/her parent's care must go beyond possibility and must be a substantial probability by the next court date. *Id.; See also Angela S. v. Superior Court*, 36 Cal. App. 4th 758, 763—64 (1995) (finding that termination of reunification services was proper where a mother continued to test positive for drug usage, moved frequently from place to place, failed to regularly attend therapy and parenting classes, and continued to expose herself to domestic violence).

Here, Ms. Miles has completed substance abuse and parenting classes. (R. at 3.) However, Ms. Miles's good faith attempt has not ameliorated her substance abuse. (R. at 6.) It is not likely that Ms. Miles will be able to remedy her problems within the next six months because she was never reunified with her two other children. (R. at 1.) Ms. Miles has tested positive for drugs, has attended a visiting session smelling of alcohol, has changed residences twice, and has been in an abusive relationship. (R. at 3; 6.) Ms. Miles has failed to maintain sobriety and cannot provide a stable home. Therefore, she has failed to meet the objectives of the treatment.

Termination of reunification services is proper because Ms. Miles has not made enough progress to make it likely that she will regain custody of Destiny.

3. Ms. Miles Has Not Displayed a Capacity or Ability to Complete Treatment Objectives or Provide for Destiny's Safety, Protection and Physical and Emotional Wellbeing.

Ms. Miles has not remedied the problem that led to the Destiny's removal. Ms. Miles has failed to display an awareness of the emotional and physical needs of Destiny. *In re Dustin*, 53 Cal. App. 4th at 1141—42. Ms. Miles must show that she recognizes how her past behavior and maltreatment of Destiny has influenced Destiny's development. *Id.*

Based on Ms. Miles's behavior it is apparent that she does not understand the impact that her actions have on Destiny. Though Ms. Miles has admitted fault for Destiny's developmental delays, Ms. Miles's behavior demonstrates that she does not understand her role in Destiny's removal. Ms. Miles does not act in the best interest of Destiny. This is evidenced by the fact that she becomes visibly upset when she feels her interests are not the primary focus, such as when she was not allowed to visit with Destiny after she arrived smelling of alcohol. (R. at 5.) Furthermore, Ms. Miles cannot care for the needs of Destiny and does not react well when Destiny rejects her. (R. at 6.) After feeling rejected by Destiny, Ms. Miles did not make a greater attempt to connect with Destiny. Rather, Ms. Miles reduced the time that she spent with Destiny. (R. at 6.) Ms. Miles continues to drink, even though her drinking and substance abuse led to Destiny's removal. (R. at 3; 6.) She also became upset with Destiny when Destiny cried or clung to Ms. Griffin when Ms. Miles tried to hold Destiny. (R. at 6.) Instead of making an effort to become more recognizable to Destiny, Ms. Miles determined that she would reject Destiny just as Destiny rejected her. (R. at 6.)

Termination of reunification services was proper because Ms. Miles's actions do not suggest that there is a substantial probability of the return.

C. Under Whittier Juvenile Code § 300(e), DCW Made Reasonable Efforts to Alleviate the Problems that Led to Destiny's Removal.

According § 300(e) of the Code, to terminate reunification services, a court must find that DCW made reasonable efforts to alleviate the problems that led to removal. Whit. Juv. Code § 300(e). To make this determination, courts in other jurisdictions have considered whether the effort was a good faith, fair and serious attempt to reunify the parent and the child. *See State ex rel. KF*, 201 P.3d 985, 997—98 (Utah 2009).

1. DCW's Services Were a Fair and Serious Attempt to Reunify Ms. Miles with Destiny Prior to the Termination of Parental Rights.

A fair and serious attempt is made when the child services agency tries to help the parent complete the reunification plan. *KF*, 201 P.3d at 997—98. However, completion of the plan is ultimately the responsibility of the parent. *Id.* (citing *State ex rel. A.C.*, 97 P.3d 706, 713 (Utah App. 2004)).

Here, Ms. Miles was provided with services to treat substance abuse and to prepare her to become a parent. (R. at 3.) DCW also scheduled weekly visits between Destiny and Ms. Miles, and Ms. White kept in touch with Ms. Miles and followed her progress on a regular basis. (R. at 6.) DCW made a fair and serious attempt to reunite Ms. Miles and Destiny by forming a program to help Ms. Miles remedy the problems that led to Destiny's removal. (R. at 3.) However, in the end, the success of the program rested with Ms. Miles. She did not meet the objectives and continued to engaged in the behavior that initially led to Destiny's removal. (R. at 6.)

Termination of services was proper because DCW made a fair and serious attempt to reunify Ms. Miles and Destiny.

2. DCW Has Made a Good Faith Effort to Reunify Ms. Miles with Destiny and the Services Provided Were Appropriately Tailored.

The California Court of Appeals determined that services are not reasonable when the social worker's efforts fail to adequately address the issues that led to the child's removal. The social worker must also keep the parent informed about completing the correct programs. *Amanda H. v. Superior Court*, 166 Cal. App. 4th 1340, 1345—47 (2008). Reunification services need not be perfect, but should be tailored to the specific needs of the family, which means the services: (1) identify the problems leading to the loss of custody; (2) offer services designed to remedy those problems; (3) maintain reasonable contact with the parent during the course of the service plan; and (4) make reasonable efforts where the parent's compliance proves to be difficult. *In re Alvin*, 108 Cal. App. 4th 962 at 972—73; *See also Matter of Austin A.*, 243 A.D.2d 895, 897 (N.Y. App. Div. 1997). In addition, the parent must make a good faith effort to comply with the reunification program. *In re Kayla S.*, 772 A.2d 858, 863 (Me. 2001).

Here, DCW has made a good faith effort, with the resources available, to help Ms. Miles remedy the problems that led to Destiny's removal. (R. at 3.) However, Ms. Miles did not make a good faith effort to meet the objectives of the reunification plan. Though she completed the substance abuse and parenting courses, she did not maintain a sober lifestyle. (R. at 6.) She did not create a stable, safe environment for Destiny, and she was not able to completely remedy the problems that led to Destiny's removal. (R. at 6.) It was the responsibility of Ms. Miles, not DCW, to meet the objectives and complete the reunification plan. Failure to do so should not be imputed on to DCW, as DCW made reasonable efforts and provided Ms. Miles with ample opportunity to succeed and to reunify with Destiny. (R. at 6.)

Therefore, termination of services was proper because DCW made reasonable efforts to remedy the problems that led to the loss of custody.

As a result, termination of reunification services at the 12-month hearing was proper because DCW made reasonable efforts to alleviate the problems that led to Destiny's removal, there was not a substantial probability of Destiny's return to Ms. Miles's custody, and there was a substantial risk of detriment if Destiny returned to Ms. Miles's custody.

II. THE JUVENILE COURT'S DENIAL OF THE PETITIONER'S REQUEST TO PLACE DESTINY WITH HER BIOLOGICAL AUNT AND SIBLINGS IS PROPER.

A. Destiny's Placement with the Griffins, and Not with Her Biological Siblings, Is Proper.

Ms. Miles claims that the state should place Destiny with her two biological siblings, Dakota and Desiree. (R. at 14.) The response of Whittier Court of Appeals to this claim was twofold. First, the sibling relationship was terminated when Ms. Stone adopted Dakota and Desiree. Second, even if there is a legal sibling relationship between Destiny and Dakota and Desiree, Destiny has lived with the Griffins since she left the hospital at the age of one month. She has no meaningful relationship with Dakota or Desiree, but is connected to the Griffins. (R. at 3; 14; 6.) As a result, placement with the Griffins is in Destiny's best interest. (R. at 15.)

1. The Existence of Any Sibling Relationship Was Terminated When Ms. Stone Adopted Dakota and Desiree.

A sibling is "a child who is related to another person by blood, adoption, or affinity through a common parent." Whit. Juv. Code § 600(a). The Code further states, "[w]henever 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." Whit. Juv. Code § 600(b). However, as the Court of Appeals noted, adoption terminates all legal relationships with natural family members, including those between siblings. (R. at 14) (citing *In re Adoption of Schumacher*, 458 N.E.2d 94, 97 (Ill. App. Ct. 1983)); *See also Wilson v. Wallace*, 622 S.W.2d 164 (Ark. 1981).

As a result, Destiny's sibling relationship with Dakota and Desiree was terminated when they were adopted. (R. at 14.) Severing ties between a child and his or her biological family is consistent with the "aim of promoting the best interests and welfare of the child." *Schumacher*, 458 N.E.2d at 97; *See also In re Fox*, 567 P.2d 985 (Okla. 1977); *Browning v. Tarwater*, 524 P.2d 1135 (Kan. 1974). There is no compelling reason to place Destiny with Desiree and Dakota.

2. Even if There Is a Legal Sibling Relationship, Destiny Does Not Have Any Meaningful Relationship With Dakota or Desiree.

Even if the Court finds that there is a legal sibling relationship under Whittier Juvenile Code § 600(a), Destiny should not be placed with the Stones. Destiny has no meaningful relationship with Dakota or Desiree. In fact, because "Destiny is a stranger to Desiree and Dakota," the Court of Appeals refused to "uproot Destiny from [the Griffins,] the only family she has ever known[,] to place her with individuals who are strangers to her." (R. at 15.)

In *Adoption of Hugo*, a court held that a child's best interests would be served by placing him with his aunt for adoption, even though he had lived with his sister and her adoptive family. *Adoption of Hugo*, 700 N.E.2d 516, 524 (Mass. 1998). The court reasoned that its focus must be on the best interests of the child. Thus, "the weight to be accorded to several considerations, including the importance of sibling relations, 'will vary with the circumstances.'" *Id*. (quoting *Petition of New England Home for Little Wanderers*, 328 N.E.2d 854 (Mass. 1975)). "Even when siblings spen[d] time together and express[] desire to live together, sibling relationship is not dispositive." *Hugo*, 700 N.E.2d at 524 (Mass. 1998) (citing *Care and Prot. of Three Minors*, 467 N.E.2d 851 (Mass. 1984)).

In this case, unlike in *Adoption of Hugo*, Destiny does not have a relationship with Dakota or Desiree. (R. at 15.) Destiny has lived with the Griffins since being released from the hospital at the age of one month. (R. at 3.) There is nothing in the record to suggest that Destiny

has ever met Dakota or Desiree. This difference is significant, as the court opined in *Adoption of Hugo* that even when there is a relationship between siblings that has developed while living together, the "sibling relationship is not dispositive." Furthermore, Destiny has a close relationship with the Griffins: "Destiny clings to Ms. Griffin during visits [with Ms. Miles], cries for Ms. Griffin when held by Ms. Miles and appears both comforted by and attached to Ms. Griffin." (R. at 6.) As a result, there is no reason for the court to place Destiny with Desiree and Dakota merely because of a legal relationship when, in reality, they are strangers. (R. at 15.)

The Code provides no further guidelines in examining sibling relationships. However, in *In re Valerie A.*, a California Appellate Court directed juvenile courts to consider a variety of factors when examining sibling relationships and their impact on placement. The factors included: "(1) [w]hether the child was raised with a sibling in the same home; . . . (2) [w]hether the child shared significant common experiences [or] has existing close and strong bonds with a sibling; . . . [and] (3) [w]hether ongoing contact is in the child's best interest, including the child's long-term emotional interest, as compared to the benefit of legal permanence through adoption." *In re Valerie A.*, 152 Cal. App. 4th 987, 998 (2007). These factors are useful in examining the sibling relationship in the case at bar.

First, Destiny was not raised in the same home as Dakota or Desiree. (R. at 3; 6.) Second, Destiny "is a stranger to Desiree and Dakota," making it unlikely that Destiny shared any significant common experiences with them. (R. at 15.) Furthermore, Destiny has lived with the Griffins since being released from the hospital and there is no indication that she has had any visits with Dakota or Desiree, making it impossible for them to have developed any bonds. (R. at 2.) Third, Ms. White has established that Destiny has bonded with the Griffins, and that it is in her best interest to be adopted by the Griffins. Additionally, the DCW child psychologist,

Juvenile Court and the Court of Appeals each opined that it is in Destiny's best interest to remain with the Griffins. (R. at 6; 1; 14.) These factors weigh heavily in favor of placing Destiny with the Griffins, rather than placing Destiny with Dakota and Desiree.

B. Destiny's Placement with the Griffins, and Not with Ms. Stone, Is Proper.

1. Ms. Stone Was Given Preferential Consideration in the Placement of Destiny.

The Code provides that only an adult who is a grandparent, aunt, uncle or sibling of the child shall be given preferential consideration for placement of a child. Whit. Juv. Code § 500(a). The record states that Ms. Stone is Ms. Miles's only sibling. (R. at 2.) The Code further provides that a "[r]equest 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." Whit. Juv. Code § 500(b). "DCW conducted a diligent search, but no other family members could be located." (R. at 2.) Therefore, Ms. Stone is the only family member who is entitled to preferential consideration.

The Code does not indicate at what point placement occurs or provide any further direction on defining placement. However, Black's Law Dictionary defines "Out-of-Home-Placement" as: "In a child-abuse or child-neglect case, state action that removes a child from a parent's or custodian's home and places the child in foster care or with a relative, either temporarily or for an extended period." *Black's Law Dictionary* (9th ed. 2009). This suggests that placement occurs when the child is first removed from a parent's custody and placed with other individuals who intend to care for the child.

Based on this definition, Ms. Stone was owed preferential treatment only when Destiny was first removed from the care of Ms. Miles–which Ms. Stone was given when Ms. White contacted her before Destiny was released from the hospital. (R. at 2.) Not only did Ms. Stone

decline to have Destiny placed with her, but requested that Ms. White "not contact her again." (R. at 2.) Ms. Stone explained that she and her husband "had already done enough for Ms. Miles." (R. at 2.) She had no interest in "disrupt[ing] her family's routine with another child who would likely have behavioral problems and developmental delays like Desiree and Dakota." (R. at 2.) Destiny was subsequently placed with Carl and Chelsea Griffin. (R. at 3.)

Ms. Stone only expressed an interest in caring for Destiny after she reconnected with Ms. Miles and Ms. Miles exhibited some progress. (R. at 5). Ms. Stone's sudden change of heart did not come until March of 2012–approximately eleven months after Ms. Stone refused to take Destiny into her home and asked that Ms. White "not contact her again." (R. at 2); *See State ex rel. D.N.*, 76 P.3d 194, 196 (Utah App. 2003) (finding that "[a]ny preferential consideration that a relative may be initially granted . . . expires 120 days from the date of the shelter hearing . . . and a relative who has not obtained custody or asserted an interest in a child may not be granted preferential consideration by the division or the court") (brackets in original).

The Code does not give Ms. Stone an absolute right to care for Destiny. As Whittier Juvenile Code § 500(a) requires, she was given preferential consideration when Destiny was first released from the hospital. Whit. Juv. Code § 500(a). Ms. Stone's rights as a relative were not violated in any way, and Destiny's best interest must be the primary concern of the Court. (R. at 6.) Now that Destiny has spent the nearly her entire life with the Griffins and has bonded with them, it is in her best interest to remain with the Griffins. As a Mississippi court explains, it can be in the best interest of a child to remain with non-relatives over relatives:

> As early as 1842, this Court held that: The law has given to our courts the most unbounded jurisdiction over minors. Fathers may be preferred to mothers-mothers to fathers-relatives to parents-*or strangers to either,* for the custody and care of minors, where the interests of the child require its exercise.

Petition of Beggiani, 519 So. 2d 1208, 1211—12 (Miss. 1988) (citing *Foster v. Alston*, 7 Miss.

406 (Miss. Err. & App. 1842)) (emphasis in original). The most important consideration when the custody of a child is at issue should always be the child's best interest. *Beggiani*, 519 So. 2d at 1211—12. "Kinship is only a factor to be considered and is not determinative of the issue." *Id.*

In this case, as the Whittier Court of Appeals aptly noted:

> Ms. Stone had the opportunity to care for Destiny—she declined it. This is not a matter of the state placing the child in the care of a non-relative and thus denying the relative an opportunity to bond with the child. Rather, Ms. Stone cited concerns about Destiny's development and possible disabilities, which the Griffins welcome and are familiar with.

(R. at 15.) As Ms. Stone was given preferential consideration and there was no violation of her rights as a relative, Destiny's continued placement with the Griffins is proper.

2. When the Six Factors Set Forth in Whittier Juvenile Code § 500(c) Are Weighed, It Is Clear that Placement with the Griffins Is Proper and in Destiny's Best Interest.

Whittier Juvenile Code § 500(c) provides that in determining whether placement with a relative is appropriate, DCW shall consider six factors.

First, DCW must consider "[t]he best interest of the child, including special physical, psychological, educational, medical, or emotional needs." Whit. Juv. Code § 500(c)(1). Although the Code provides little guidance in determining a child's best interests, a North Carolina Appellate Court considered factors including: (1) the age of the child; (2) the likelihood of adoption; (3) the strength of the bond between the child and foster parents; and (4) whether child has been provided with a safe, loving and stable home. *In re D.R.F.*, 693 S.E.2d 235, 239—40 (N.C. App. 2010).

If the same factors are applied to this case, it is clear that remaining with the Griffins is in Destiny's best interest. First, Destiny has been with the Griffins since she was released from the hospital at one month old, and is now approximately twenty-two months. (R. at 3.) Second, the

Griffins would like to adopt Destiny–achieving the goal of permanency. (R. at 6.) Third, the Griffins are the only family that Destiny knows. It is also clear that she has a strong bond with the Griffins, as evidenced by the fact that she clings to Ms. Griffin and cries when she is not holding her. (R. at 6.) Fourth, "Ms. Griffin responds appropriately to Destiny's needs and reports that she and her husband would like to adopt Destiny." (R. at 6.) Although her development is "mostly on track now," Ms. Griffin has a special needs sister and is a special education teacher–equipping her to address any special needs Destiny may have in the future. (R. at 6; 3.) DCW and its child psychologist agree that it is best for Destiny to be adopted by the Griffins. (R. at 6.)

Additionally, the Griffins have been Destiny's primary caregivers since she was released from the hospital. (R. at 2; 6.) The Court of Appeals explained that "[t]he passage of time is a significant factor in a child's life; the longer a successful placement continues, the more important the child's need for continuity and stability becomes in the evaluation of her best interests." (R. at 15) (citing *In re Joseph T., Jr.*, 163 Cal. App. 4th 787, 800 (2008)). Furthermore, "changes in a child's primary caregiver can disrupt the child's attachment and result in trauma due to the loss of their primary relationship." *Id*. The United States Supreme Court has held that although connections with biological relatives are significant, a child's best interest must be the chief concern of a court. *Troxel v. Granville*, 530 U.S. 57 (2000); *See also In re Adoption of M.J.S.*, 162 P.3d 200, 208 (Okla. 2007); *New Jersey Div. of Youth & Fam. Services v. M.F.*, 815 A.2d 1029, 1037 (N.J. Super. App. Div. 2003). Thus, placement with the Griffins is in Destiny's best interest.

Second, DCW must consider "[t]he wishes of the parent, the relative and the child, if appropriate." Whit. Juv. Code § 500(c)(2). Ms. Stone did not express any interest in caring for Destiny, nor did Ms. Miles express any interest in having Destiny placed with Ms. Stone, until

March 2012–eleven months after Ms. White first contacted Ms. Stone. (R. at 5–6.) In addition, Ms. Stone refused to have Destiny placed with her, and requested Ms. White to not contact her again. (R. at 2.) To allow relatives to claim a sudden interest in caring for a child at any time would compromise permanency, a priority of juvenile courts. As the Court of Appeals stated, "[a]t her young age, Destiny has been through enough trauma—this Court will not subject her to more by removing her from the only parents she has ever known." (R. at 16.)[1]

Third, DCW must consider the "[p]lacement 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." Whit. Juv. Code § 500(c)(3). Because Destiny is a stranger to Dakota and Desiree, and she has bonded with the Griffins, it is clear that considering the placement of siblings is not in the best interest of Destiny, Dakota or Desiree. (R. at 6; 15.)

Fourth, DCW must consider "[t]he 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." Whit. Juv. Code § 500(c)(4). There is nothing in the record to suggest that there are any questions as to the moral character of Ms. Stone or her husband.

Fifth, DCW must consider "[t]he 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). Ms. Stone did not express any desire to care for Destiny until March 2012. (R. at 5–6.) In addition, Ms. Stone's relationship with Ms. Miles is clearly tenuous, and her commitment to

[1] The Code does not specify an age or method of determining whether a child's wishes should be considered. As Destiny is under the age of two years, it is not likely that her wishes should or will be taken into account by the Court. Nevertheless, Ms. White's report for the 12-month permanency hearing indicates that Destiny exhibits an attachment and preference for the Griffins. "Destiny clings to Ms. Griffin during visits, cries for Ms. Griffin when held by Ms. Miles and appears both comforted by and attached to Ms. Griffin." (R. at 6.)

Destiny is unreliable. She could easily change her mind about caring for or adopting Destiny again in the future. Furthermore, there is nothing in the record to suggest that Ms. Stone and Destiny have ever met, let alone have any relationship.

Sixth, DCW must consider "[t]he 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." Whit. Juv. Code § 500(c)(6). Although Ms. Stone has adopted Dakota and Desiree, at times, she has questioned her ability to properly care for Destiny. She stated that caring for Destiny would "disrupt her family's routine," and that she did not want to be inconvenienced by "another child who would likely have behavioral problems and developmental delays." (R. at 2.) As DCW and the child psychologist both believe that the Griffins can provide a safe and stable environment and exercise proper care for Destiny, it is clear that Destiny's placement with the Griffins is proper.

When these six factors are weighed as dictated by Whittier Juvenile Code § 500(c), it is clear that Destiny's placement with the Griffins is proper and therefore should be upheld.

Placement with the Griffins, and not Destiny's biological siblings or aunt, is proper. Thus, Respondent respectfully requests that the rulings of the Juvenile and Appellate Courts be affirmed.

CONCLUSION

Respondent thereby respectfully requests that this Court affirm the orders of both the Juvenile and Appellate Courts.

Dated: January 4, 2012

Respectfully Submitted,

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Team 23
Counsel for Respondent

APPENDIX

STATE OF 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.

§ 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.

§ 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.

§ 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.

§ 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.

§ 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.