
Case No. 923-2015

IN THE SUPREME COURT OF THE STATE OF WHITTIER

January Term 2016

MARTA DOMINGUEZ
Defendant-Petitioner

v.

STATE OF WHITTIER
Ms. Kathryn Candler
Dir. of the Whittier
Dep't of Child Welfare
Plaintiff-Respondent

On Writ of Certiorari to the
State of Whittier Court of Appeal

BRIEF FOR RESPONDENT

January 6, 2016

Team #20
Brief for Respondent

QUESTIONS PRESENTED

- I. Did the Juvenile Court err when it took jurisdiction over Jasmine after Petitioner suddenly and without notice abandoned Jasmine in the middle of the night, adjudicated Jasmine neglected and abandoned, after Petitioner failed to arrange for Jasmine's care, and made an order for Special Immigrant Juvenile Status?

- II. Did the Juvenile Court err when it found the Department of Child Welfare (DCW) made reasonable efforts toward reunification when DCW worked with Ms. Dominguez to develop a reunification plan that directly addressed the problems leading to the termination of Ms. Dominguez's parental rights before terminating her reunification services?

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BRIEF FOR RESPONDENT

OPINION BELOW

The unreported opinion of the State of Whittier Court of Appeal appears on pages 1-14 of the record. *Marta Dominguez v. State of Whittier* (Whit. Ct. App. Nov. 16, 2015), *cert granted* (923–2015) (Whit. Nov. 16, 2015).

JURISDICTIONAL STATEMENT

This Court granted the petition for writ of certiorari on November 16, 2015 pursuant to 28 U.S.C. § 1257.

STATEMENT OF THE CASE

Preliminary Statement

On January 29, 2014, the Jennings County Juvenile Court detained Jasmine Dominguez, a minor child, under Whittier Juvenile Code §§ 100(b) and (g). R. 4. The Juvenile Court placed Jasmine with her aunt, Ana Ortiz, who had been taking care of Jasmine since January 2013, and ordered the Department of Child Welfare (DCW) to locate Petitioner. R. 4. At the hearing on February 28, 2014, the Juvenile Court sustained the findings of neglect and abandonment against Petitioner pursuant to Whittier Juvenile Code §§ 100(b) and (g), and declared Jasmine a dependent of the Juvenile Court. R. 4–5. The Juvenile Court ordered reunification services for Petitioner. R.5 Recognizing Petitioner’s circumstances, the Juvenile Court ordered her to complete the services from Guatemala unless Petitioner was able to return to the United States. R. 5.

At the August 2014 six-month review hearing, the Juvenile Court declined an order authorizing Special Immigrant Juvenile Status (SIJS) for Jasmine, instead setting the 12-month hearing for February 2015. R. 5–6. The Juvenile Court indicated it needed further time to determine if reunification was possible. R. 5–6.

At the February 2015 12-month hearing, the Juvenile Court found that DCW had made reasonable efforts toward reunification. R. 6. The court appointed Ms. Ortiz as Jasmine’s legal guardian. R. 6. The Juvenile Court found Jasmine is a dependent child who has been abandoned and neglected and cannot be reunified with Petitioner. R. 7. Further, because returning to Guatemala would put Jasmine’s life at risk, the Juvenile Court found it was in Jasmine’s best interest to remain in the United States. R. 7.

Petitioner appealed, challenging the adjudication of Jasmine as neglected and abandoned

which led to the SIJS order, and the adequacy and termination of reunification services. R. 7–8. The State of Whittier Court of Appeal affirmed the Juvenile Court and Petitioner filed a writ of certiorari, which the Whittier Supreme Court granted November 16, 2015. R. 8.

Statement of the Facts

On November 1, 2000, 20-year-old Marta Dominguez (“Petitioner”) gave birth to Jasmine Dominguez (“Jasmine”) in Guatemala. R. 1. Jasmine’s father was shot to death in their neighborhood prior to Jasmine’s birth. R. 1. Jasmine was diagnosed with a rare cardiac condition at birth. R. 1. The condition could not be treated in Guatemala, so doctors advised that Jasmine travel to the United States to get life-saving care. R. 1. In January 2002, Petitioner and Jasmine traveled to the United States to reside with Petitioner’s sister, Ana Ortiz. Ms. Ortiz, an unmarried nurse, lived in a 2-bedroom apartment in a safe neighborhood in Jennings County. R. 1–2.

Ten days after their arrival, Jasmine went into cardiac arrest and was transported by ambulance to the Jennings County Medical Center for life-saving surgery. R. 2. Although Jasmine was relatively stable by June 2002, she still required ongoing outpatient medical care. R. 2. Despite her daughter’s medical condition, Petitioner returned to Guatemala and left Jasmine with Ms. Ortiz. R. 2. Petitioner did not specify when she would return. R. 2.

Ms. Ortiz continued to provide a home and support for Jasmine from June 2002 to June 2005. R. 2. Ms. Ortiz was the sole caregiver for Jasmine during this time; she administered Jasmine’s medicine and ensured Jasmine received the health care she depended on by taking Jasmine to her monthly medical appointments. R. 2. Despite her child’s illness, the only communication Petitioner had with Jasmine was a yearly birthday card and phone call on Christmas. R. 2. Petitioner did not maintain a relationship with Jasmine, and she did not provide monetary support. R. 2. At no point did Petitioner inquire about Jasmine’s health. R. 2.

Once her health was mostly stabilized in June 2005, Jasmine returned to Guatemala to live with her mother. R. 2. Life in Guatemala was difficult for Jasmine; Petitioner did not maintain stable employment. R. 2. They were often homeless. R. 2. Petitioner did not ensure Jasmine had regular medical check-ups or access to crucial medication. R. 2.

By January 2013, Jasmine's health again took a turn for the worse. R. 2–3. Fearing heart failure, Jasmine returned to the United States for the necessary treatment. R. 3. Petitioner sent Jasmine back to Ms. Ortiz. R. 3. Ms. Ortiz again took care of Jasmine, enrolling her in school and taking her to medical appointments. R.3. In January 2013, Jasmine had successful open-heart surgery; however, doctors said Jasmine would require a heart transplant, as her heart would eventually fail. R. 3. Despite Jasmine's heart surgery and increasingly severe diagnosis, Petitioner remained in Guatemala and failed to inquire about her daughter's health. R. 3.

Due to Jasmine's "unorthodox" caregiving arrangement and immigration status, Jasmine was denied inclusion on the heart transplant list. R. 3. After Ms. Ortiz informed Petitioner that Jasmine would be barred from receiving the transplant until her immigration status changed, Petitioner returned to Jennings in June 2013 on a six-month visa R. 3. However, on July 12, 2013 Petitioner, unable to handle her child's health condition, left in the middle of the night and abandoned her daughter without telling Ms. Ortiz or saying goodbye to Jasmine. R. 3. Ms. Ortiz continued to care for Jasmine despite not knowing when, or if, Petitioner would return. R. 3. Seeking to ease Jasmine's confusion and distress, Ms. Ortiz told Jasmine her mother would return, despite not knowing if it was true. R. 3.

Jasmine's health continued to be an issue, and on January 6, 2014, after not being able to breathe, Jasmine had to again be transported by ambulance to the Jennings County Medical Center. R.3. Jasmine was left alone in the Pediatric Intensive Care Unit for several hours until a

hospital social worker was informed that Ms. Ortiz cared for Jasmine. R. 3. After contacting Ms. Ortiz, the social worker contacted the Department of Child Welfare (DCW) to inform them that Jasmine lacked a legal guardian in the United States. R. 4. At this time, Sam Wells, a social worker from DCW, began an investigation into the circumstances. R. 4.

Upon conducting an interview and home visitation with Ms. Ortiz, Mr. Wells learned that Petitioner failed to provide financial support for Jasmine. R. 4. Mr. Wells attempted to reach Petitioner in Guatemala to no avail. R. 4. After five attempted phone calls and two attempts to contact Petitioner by mail failed, Mr. Wells filed a petition alleging neglect and abandonment pursuant to Whittier Juvenile Code §§ 100(b) and 100(g). R. 4.

Jasmine remained in the hospital, and on January 29, 2014 the Jennings County Juvenile Court detained Jasmine pursuant to Whittier Juvenile Code §§ 100(b) and 100(g) based upon Jasmine's heart condition, her urgent need for medical care, and Petitioner's disappearance. R. 4. The Juvenile Court appointed Jeffrey Stone as counsel for Jasmine, and Maria Sanchez to represent Petitioner. R. 4. Under the court's order, DCW located Petitioner living in a rural Guatemalan town with her new boyfriend. R. 4. Petitioner remained in Guatemala, waiving her future appearances in the Juvenile Court. R. 4. DCW proceeded to complete a background check and home study for Ms. Ortiz, ultimately authorizing her as Jasmine's caretaker, a legal designation and responsibility she gladly accepted. R. 4.

At the February 28, 2014 adjudication and disposition hearings the Juvenile Court took jurisdiction over Jasmine, finding that Petitioner failed to supervise Jasmine, failed to provide Jasmine with proper medical treatment and financial support, and failed to maintain a parental relationship with Jasmine. R. 4-5. The Juvenile Court ordered reunification services for Petitioner as her counsel requested, which included a class on parenting medically fragile

children and a class on employment skill building. R. 5. The Court further ordered Petitioner maintain regular contact with both Jasmine and her DCW social worker, Mr. Wells. R. 5.

Pursuant to Whittier law, the Court held a six-month review hearing in August 2014. R. 5. Mr. Wells reported to the Court that he had made contact with Petitioner, and that it could take Petitioner over a year to obtain the visa necessary for her to return to the United States. R. 5. Further, Mr. Wells stated that despite Petitioner's desire to reunite with Jasmine, the services she needed were unavailable in Guatemala, making her compliance with the Court orders difficult. R. 5. Mr. Wells also noted in his report, however, that Petitioner failed to maintain contact with Jasmine due to Petitioner's difficulty in finding a reliable phone or Internet access on a predictable schedule. R. 5. Despite Jasmine's unstable medical condition and the Court's orders, Petitioner had not contacted her child since July 2013. R. 5. Accordingly, Jasmine's counsel, Mr. Stone, then asked the Juvenile Court for an order authorizing SIJS for Jasmine, which was denied due to the Court's need for additional time in determining whether reunification between Petitioner and Jasmine was possible. R. 5. The Court then set the matter for a 12-month hearing in February 2015, warning Ms. Sanchez that her client must attempt reunification within the following six months. R. 5-6.

Petitioner's circumstances in Guatemala did not improve between August 2014 and February 2015. R. 6. Petitioner did not find work and lived in a church sponsored by American missionaries. R. 6. Petitioner only spoke with Jasmine on the telephone three times in the six months, and Petitioner failed to send any funds for Jasmine's care. R. 6. Petitioner did not find available employment classes, and while she attended three parenting classes at the church, the classes were not the court-ordered class on parenting medically fragile children. R. 6. Petitioner did maintain contact with Mr. Wells and informed him that she would return to the United States

at the end of the year if she received her visa. R. 6.

Petitioner appeared at the 12-month hearing via phone. R. 6. Mr. Wells also informed the Court that Ms. Ortiz was growing frustrated with Petitioner's lack of support for Jasmine. R. 6. He explained that Jasmine was successful both in school and in Ms. Ortiz's home. R. 6. Jasmine testified that she preferred to live with Ms. Ortiz where she was safe and had reliable healthcare. R. 6. Jasmine indicated she did not want to return to Guatemala, where she was unable to attend a good school and frequently witnessed violence. R. 6. Jasmine's doctor wrote a letter to the Court that stressed that if Jasmine returned to Guatemala, she would likely die. R. 6. Although the Juvenile Court acknowledged Petitioner's progress, the Juvenile Court held that DCW made reasonable efforts toward reunification and terminated the reunification services. R. 6.

Petitioner's counsel objected on the grounds that DCW's efforts were not reasonable. R. 7. Petitioner argued her failure to complete the reunification plan was due to no fault on her part. R. 7. The Court overruled the objection and made the following required findings for SIJS pursuant to federal law: 1) Jasmine is and has been a dependent child; 2) Jasmine is unable to reunify with Petitioner because Jasmine was ruled a neglected and pursuant child under state law; and 3) it is in Jasmine's best interest to remain in the United States where she can continue to receive life-saving medical care. R. 7.

Fearing Jasmine would forget her heritage; Petitioner appealed the Court's finding of abuse and neglect, its correlation to reunification, and the termination of the reunification services. R. 7-8. Ms. Sanchez filed a timely appeal on March 15, 2015. R. 8. Jasmine remains in the care of Ms. Ortiz. R. 8. Petitioner remains in Guatemala. R. 8.

SUMMARY OF ARGUMENT

The Juvenile Court has jurisdiction over Jasmine because she faces a substantial risk of

physical illness as a result of Petitioner's failure to adequately supervise her. Whittier Juvenile Code § 100(b) (2015). While living in Guatemala, Petitioner failed to supervise or care for Jasmine's medical condition, which resulted in open-heart surgery. Further, Petitioner neglected Jasmine while she lived with Ms. Ortiz. Additionally, prima facie evidence exists to demonstrate that Petitioner abandoned Jasmine, further demonstrating the Juvenile Court's proper jurisdiction over Jasmine. Whittier Juvenile Code § 100(g) (2015). Between July 2013 and August 2014, Petitioner never provided financial support for, or communicated with, Jasmine.

As a result of Petitioner's neglect and abandonment, the Juvenile Court correctly found that Jasmine was a dependent pursuant to 8 U.S.C. § 1101(a)(27)(J). Once a court has correctly found that a child was neglected or abandoned, reunification is prevented. *In re Mario S.*, 954 N.Y.S.2d 843, 851 (N.Y. Fam. Ct. 2012). Jasmine cannot receive life-saving medication and surgery in Guatemala. As a result, the Juvenile Court correctly found that it was in Jasmine's best interest to remain in the United States.

STANDARD OF REVIEW

Factual findings are reviewed under the clearly erroneous standard. *In re Haylea G.*, 745 S.E.2d 532, 537 (W. Va. 2013). Clearly erroneous findings of fact "are marked by a lack of competent and material evidence in the record to support the decision." *In re Dany G.*, 117 A.3d 650, 658 (Md. Ct. Spec. App. 2015). The ultimate determination should be reviewed under the sufficiency of the evidence standard. *Amanda H. v. Superior Ct.*, 83 Cal. Rptr. 3d 229, 233 (Cal. Ct. App. 2008). Under the sufficiency of the evidence standard the appellate court construes the evidence in the light most favorable to sustaining the judgment of the trial court. *United States v. Ramos*, 685 F.3d 120, 130 (2d Cir. 2012).

The standard of review on appeal of the termination of parental rights is whether the

challenged finding is clearly erroneous. *In re Mindy F.*, 105 A.3d 351, 357 (Conn. App. Ct. 2014). Further, “great weight is given to the judgment of the trial court because of [the trial court’s] opportunity to observe the parties and the evidence.” *Id.* The trial court’s finding is clearly erroneous when “either there is no evidence in the record to support it, or the reviewing court is left with the definite and firm conviction that a mistake has been made.” *Id.*

ARGUMENT

I. **THE JUVENILE COURT DID NOT ERR WHEN IT FOUND THAT JASMINE WAS NEGLECTED AND ABUSED UNDER WHITTIER JUVENILE CODE §§ 100(B) AND (G) BECAUSE PETITIONER FAILED TO PROVIDE ANY SUPPORT OR MAINTAIN A PARENTAL RELATIONSHIP WITH JASMINE AND PETITIONER’S FAILURE TO DO SO RESULTED IN A COURT FINDING FOR SIJS.**

- A. The Juvenile Court correctly found that Jasmine was neglected under Whittier Juvenile Code § 100(b) because Jasmine was brought into the United States as a result of the appellant’s failure to adequately supervise Jasmine’s medical condition in Guatemala, which resulted in her requiring open heart surgery.

The Juvenile Court has jurisdiction over a child if there is a substantial risk that the child will suffer serious illness, as a result of the parent’s negligent failure to provide the child with adequate medical treatment. Whittier Juvenile Code § 100(b). To find medical neglect, a court must determine that the parent did not seek or accept medical treatment and that failure resulted in an impairment to the child’s condition. *Matter of Faridah W.*, 579 N.Y.S.2d 377, 378 (N.Y. App. Div. 1992). A neglected child is one whose physical condition “has been impaired or is in imminent danger of being impaired as a result of the failure of a parent to exercise a minimum degree of care.” *Id.* at 378. Between 2005 and 2013 Petitioner failed to adequately supervise Jasmine’s medical condition. Specifically, Petitioner did not take Jasmine to necessary, regular, medical check-ups or provide Jasmine her necessary medication. Although Jasmine’s health had stabilized in 2005, as a result of Petitioner’s failure to adequately supervise Jasmine’s heart condition, she was rushed into the United States in 2013 and received open heart surgery.

Further, Petitioner failed to provide any financial support for Jasmine, between 2002 and 2005, as well as 2013 through the present.

A juvenile court has jurisdiction over a child if her parent is unavailable or unable to arrange proper care for the child. *In re S.D.*, 121 Cal. Rptr. 2d 518, 525 (Cal. Ct. App. 2002). The social service agency failed to allege that the mother in *S.D.* was unable to arrange care despite her incarceration. *Id.* at 524. As the Court of Appeals noted, the mother in *S.D.* was in the country and could be located, therefore she was not unavailable. *Id.* Additionally, at the time the child was taken from her parents, she was described as happy and healthy, and there was never any evidence that the child's parents had neglected her. *Id.* at 520. Finally, the only reason the child entered social services was the mother was unable to care for the child during her incarceration. *Id.*

Petitioner was unable to arrange proper care for her daughter when she returned to Guatemala. Unlike the mother in *S.D.*, Petitioner could not be located. In fact, the inability to locate Petitioner resulted in DCW's involvement with Jasmine. Petitioner snuck out of her sister's home and returned to Guatemala without making any arrangements with Ms. Ortiz. In addition, Ms. Ortiz did not know if Petitioner ever intended to return and care for her daughter. Unlike the child in *S.D.*, Jasmine was described as confused and distraught after her mother left her. Petitioner was unavailable and unable to arrange care while Jasmine was in intensive care. R. 3. It is questionable if Petitioner would have ever reached out to her daughter or Ms. Ortiz to arrange care absent the involvement of DCW.

Further, Petitioner failed to supervise Jasmine's medical condition while in Guatemala which resulted in Jasmine returning to the United States for open-heart surgery. This failure to supervise or arrange for medical care continued after Jasmine returned to the United States.

Petitioner was aware that Jasmine required open-heart surgery, but left the country without making any arrangements for her medical care. At best, Petitioner simply assumed her sister would continue to provide adequate care for Jasmine. Further, between July 2013 and August 2013, Petitioner never contacted Ms. Ortiz to arrange or approve medical care and failed to send any financial support. The evidence clearly demonstrates that Petitioner was unable to arrange for Jasmine's supervision, and that Petitioner neglected Jasmine. Therefore, this Court should affirm the Juvenile Court's finding that Jasmine was neglected.

B. The Juvenile Court correctly found that Jasmine was abandoned under Whittier Juvenile Code § 100(g) because Petitioner, without notice, abandoned Jasmine during the night, and failed to maintain a parental relationship or provide financial support for a period of well over six months.

A parent's failure to "maintain a normal parental relationship with the child without just cause for a period of six months constitutes prima facie evidence of abandonment." Whittier Juvenile Code § 100(g). Abandonment can be shown by demonstrating that the parent "intentionally withheld [her] presence, care, love, protection, maintenance and the opportunity for display of filial affection from the child." *In Interest of V.C.N.C.*, 458 S.W.3d 443, 448 (Mo. Ct. App. 2015) (citation omitted). To demonstrate abandonment, the mother must have willfully failed to maintain a normal parental relationship and the mother lacked just cause for this failure. *In re Doe*, 314 P.3d 187, 190 (Idaho 2013). Once the state has demonstrated that the parent has failed to communicate with or support the child, the burden shifts to the parent to demonstrate "an inability to maintain contact or that [she] was prevented or discouraged from doing so by the petitioning agency." *In re Erving BB.*, 976 N.Y.S.2d 255, 256 (N.Y. App. Div. 2013).

Jasmine entered the United States alone in January 2013 and underwent open-heart surgery without her mother. The record does not demonstrate any contact or attempted contact with Jasmine until June 2013, when Petitioner entered the United States. Although Petitioner's

visa allowed her to remain for up to six months, she suddenly, willingly, and without notice abandoned Jasmine in the middle of the night in July 2013. Jasmine was confused and distraught after her mother abandoned her. In August 2014 the Juvenile Court learned that Petitioner had not had any contact with Jasmine since July 2013 and had failed to provide financial support. The State demonstrated prima facie evidence of abandonment and it was Petitioner's responsibility to rebut this presumption. Petitioner instead stated that her failure to maintain any contact with her daughter was justified by her absence from the United States and she was unable to comply with the reunification plan. As the Court of Appeal correctly found, none of these excuses qualify as just cause for abandonment.

A parent that intentionally withholds her presence, care, love, and filial affection from her child has willfully abandoned the child. *Matter of T.C.M.*, 651 W.2d 525, 529 (Mo. Ct. App. 1983). Intermittent homelessness, lack of resources, and lack of accessible phone services will not automatically justify a parent's failure to support or communicate with a child. *Erving BB*, at 256 (finding it would "not have been impossible or unfeasible" for the parent to contact her child at some time during that period). The court in *Erving* found that although the mother had been intermittently homeless during the six-months preceding the court's intervention, at some points she was employed and had housing, and could have contacted her child during those periods, but failed to do so. *Id.*

Petitioner willfully withheld her presence, care, love, and filial affection from Jasmine when she suddenly, and without notice, returned to Guatemala in July 2013 and failed to contact Jasmine for over a year. Like the mother in *Erving*, Petitioner's difficult financial situation does not justify her absolute failure to have any contact with Jasmine. Petitioner was originally found living with a new boyfriend in a small town and has not explained why she was unable to have

any contact with Jasmine. Further, it was not until DCW intervened in Jasmine's case, that Petitioner suddenly expressed an interest in her daughter's life. Petitioner did not allege that between July 2013, when she first completely abandoned Jasmine, and August 2014, when Mr. Wells began working with Petitioner, that she was completely unable to contact Jasmine. In fact, Petitioner was able to maintain contact with Mr. Wells during the reunification process. Further, the court found that during this time Petitioner did not even inquire about Jasmine's medical condition, despite knowing that her daughter had undergone open-heart surgery. Petitioner did not know, because she never attempted to learn, that Jasmine had been alone in Pediatric Intensive Care for hours. Petitioner did not demonstrate that her failure to support Jasmine was justified by her intermittent homelessness or her presence outside the country.

A parent cannot rely on a superficial relationship with a child or rely on token efforts to avoid a finding of abandonment. *V.C.N.C.*, 458 S.W.3d at 448. The parents in *V.C.N.C.* visited their children four times between October 2013 and June 2014, and argued that these visits precluded a finding of abandonment. *Id.* The court found that the parents had failed to attend a single medical appointment for the children, and these visits were only token visits. *Id.*

It is the parent's responsibility to "maintain a reasonable degree of interest in the welfare of his or her child", which is not met by "a sporadic showing of the indicia of interest, concern or responsibility for the welfare of a child. *In re Oreoluwa O.*, 116 A.3d 400, 408 (Conn. App. Ct. 2015). The minimum requirements of parenthood include: expressing "concern over the health, education and general well-being of the child" and supplying "the necessary food, clothing, and medical care." *Id.* Further, a parent's absence from the country does not excuse his or her failure to do all the parent is able to do to "demonstrate a reasonable degree of interest, concern and responsibility" for the child. *Id.* at 409. The father in *Oreoluwa*, attempted to visit his son, but

was prevented by immigration law, asked to Skype with his son, and asked about his son's medical condition. *Id.* The court found that this represented "limited interest and concern" for the child and upheld the trial court's determination that the child had been abandoned. *Id.* at 410. Finally, the court had no information, which demonstrated that the father would be able to enter the United States and remain with his child. *Id.*

Petitioners own actions have created a nonexistent relationship between her and Jasmine, and her actions during the court proceedings are at best token efforts. Petitioner did not contact her daughter or inquiry about her daughter's medical condition between July 2013 and August 2014. Further, between August 2014 and February 2015, at the Court's insistence, Petitioner spoke with Jasmine only three times. As a result between July 2013 and February 2015, Petitioner spoke with her daughter a total of only three times and never provided financial support. Despite knowing her daughter needed a heart transplant, Petitioner never inquired about her daughter's medical condition or her life in the United States. These three token phone calls over a period of six months do not rebut the presumption that Petitioner has abandoned her child because they were too little, too late.

Petitioner's absence from the United States does not excuse her from fulfilling the requirements of parenthood, which include expressing concern over Jasmine's medical condition and supplying medical care and other necessities. Although the father in *Oreoluwa* had asked about his son's medical condition, the court found that his "sporadic showing" of interest did not preclude a finding of abandonment. Here, Petitioner did not ask about her daughter's condition despite knowing that Jasmine had already undergone open-heart surgery and needed a heart transplant. Like the father in *Oreoluwa*, Petitioner was not excused from demonstrating a reasonable degree of concern over her daughter. Instead after suddenly abandoning her daughter,

Petitioner never once inquired about her daughter, or spoke to her daughter, or attempted to support her daughter, or even attempt to send her a letter or email. Instead Petitioner appears to have ignored the fact that she had an ill daughter. Like the father in *Oreoluwa*, Petitioner has presented no evidence, other than her own belief that she will be able to obtain a visa and reenter the United States. Assuming that Petitioner will be able to legally reenter the country, this does not prevent a finding that Petitioner abandoned Jasmine. Petitioner had a visa to remain in the country for six months but instead chose to abandon her daughter after remaining in the country for just over one month.

Petitioner willfully abandoned her daughter on July 12, 2013 when, in the middle of the night, she returned to Guatemala without telling Jasmine or Ms. Ortiz. The evidence clearly supported the trial court's finding that Petitioner had failed to maintain any relationship with Jasmine for the six-month period between July 2013 and January 2014. This clearly demonstrates prima facie evidence of abandonment and it was Petitioner's responsibility to rebut this presumption. Three phone calls over a six-month period does not rebut this presumption.

- C. The Juvenile Court correctly made an order for Special Immigrant Juvenile Status (SIJS) because it is in Jasmine's best interest to remain in the United States because removing Jasmine to Guatemala will deprive her of a life-saving heart transplant, which may result in her death.

To qualify for SIJS the child must demonstrate that: 1) a juvenile court has found that the child is a dependent of the court, 2) reunification with one or both parents is not viable because of neglect or abandonment, and 3) it is not in the child's best interest to return to his or her home country. 8 U.S.C. § 1101(a)(27)(J). Congress created SIJS to protect children from being deported and returned to a parent that has abandoned, abused, or neglected the child. *Dany G.*, 117 A.3d at 654. The Juvenile Court correctly found that Jasmine was a dependent, that she

could not be reunified with her mother, and that it was not in her best interest to return to Guatemala because she would be unable to obtain life-saving medical care. The Juvenile Court correctly found that Jasmine was a dependent of the court because she is a neglected and abandoned child under Whittier Juvenile Code §§ 100(b) and 100(g). As a result of Petitioner's neglect and decision to abandon her daughter, Jasmine cannot be reunified with Petitioner. Finally, returning Jasmine to Guatemala is not in her best interest because she will not attend school, she will witness constant violence, and she will likely die as a result of her medical condition.

1. *After Finding that Jasmine was Neglected and Abandoned, the Juvenile Court Correctly Found that Reunification was Not Viable.*

State courts lack jurisdiction to determine if a child qualifies for SIJS. *Leslie H v. Superior Court*, 168 Cal. Rptr. 3d 729, 737 (Cal. Ct. App. 2014) (“State courts play no role in the final determination of SIJ status”). Finding that a parent abandoned his or her child prevents a finding that reunification is possible. *Mario S.*, 954 N.Y.S.2d at 843 (“The determination that Mario has been abandoned by his father prevents and makes inappropriate the reunification of the child with his father”). When a family or juvenile court correctly finds that a child was abandoned, the record will support a finding that reunification is not viable. *Diaz v. Munoz*, 989 N.Y.S.2d 52, 54 (N.Y. App. Div. 2014) (“ Since the Family Court correctly found that the child was abandoned by her father, the record supports a finding that reunification with one of the child's parents was not viable”).

The Juvenile Court correctly found that Petitioner abandoned and neglected Jasmine. The finding that Jasmine was abandoned and neglected prevents reunification with Petitioner. Similar to the father in *Mario*, Petitioner abandoned her daughter when she returned to Guatemala and therefore reunification is not viable because of abandonment. Additionally, the

finding of neglect provides a second ground for concluding that reunification with Petitioner is not viable. Similar to the father in *Diaz*, the Juvenile Court correctly found that Jasmine has been neglected and abandoned, therefore the record supports a finding that reunification is not viable.

2. *Returning to Guatemala is Not in Jasmine's Best Interest Because She Will Be Unable to Receive Critical Medical Care and Will Die as a Result.*

The Juvenile Court correctly found that it was not in Jasmine's best interest to return to Guatemala because she will not attend school, witnessed violence, and will not receive necessary medical care, resulting in her death. Courts should not send "a child back to wretched conditions that our state has found to be abusive, neglectful, or to constitute abandonment solely because those conditions are considered acceptable in the child's home country." *Dany G.*, 117 A.3d at 657. A child that qualifies for SIJS can pursue lawful permanent residency. *Mario S.*, 954 N.Y.S.2d at 848. To determine the best interest of the child in the context of SIJS the court must employ a comparison to determine where the child will be better off. *Dany G.*, 117 A.3d at 659.

In the context of SIJS courts compare the child's living conditions in the United States with the country conditions that the child left. *Id.* at 659. The reviewing court in *Dany*, reversed a lower court's determination that it was in the child's best interest to return to Guatemala, because it did not consider the neglect the child suffered prior to fleeing Guatemala. *Id.* The child in *Dany*, fled Guatemala because he was forced to work in dangerous conditions and would not attend school. *Id.* Comparing the child's life in Guatemala, with his life in the United States, the court found that it would be in the child's best interest to remain in the United States where he could attend school. *Id.*

It is in Jasmine's best interest to remain in the United States because she will receive life-saving medication and is able to attend school regularly. Jasmine has been forced to leave Guatemala twice to save her life. Between 2002 and 2005, while living in the United States

without Petitioner, Jasmine received her necessary medication and attended her monthly medical checkups. In fact her health improved enough that she returned to Guatemala. However, upon returning to Guatemala her life drastically declined. In Guatemala, Jasmine was often homeless, did not receive her necessarily medical care, did not attend monthly checkups, did not regularly attend school, and regularly witnessed violence. As a result of her inability to receive medical care, Jasmine was rushed into the United States and underwent open-heart surgery. Further, doctors have advised that Jasmine needs a heart transplant but is unable to receive one due to her immigration status. Receiving SJIS will give Jasmine legal status in the United States and will enable her to receive a life-saving heart transplant. Finally, Jasmine's doctor submitted a letter stating that Jasmine will likely die if returned to Guatemala because her necessary medication is not available there.

The evidence clearly supports the Juvenile Court's finding that it is in Jasmine's best interest to remain in the United States. While living with her aunt, Jasmine has received all necessary medical care, has a stable home, and attends school. Returning Jasmine to Guatemala will subject her to homelessness and violence. Finally, for Jasmine, this is a question of life or death. Returning Jasmine to Guatemala is like signing her death sentence because she will not receive a heart transplant and will not have access to the medication keeping her alive.

The Juvenile Court correctly made the necessary factual findings for Jasmine to apply for SIJS. Petitioner has not presented any evidence to rebut this finding. The Juvenile Court's findings should be affirmed.

II. THE JUVENILE COURT DID NOT ERR WHEN IT FOUND THE DEPARTMENT OF CHILD WELFARE MADE REASONABLE EFFORTS TOWARDS REUNIFICATION AND ONLY TERMINATED HER SERVICES AFTER SHE FAILED TO CORRECT THE CONCERNS THAT LED TO JASMINE'S REMOVAL FROM HER CUSTODY.

The record includes competent and material evidence that supports the Juvenile Court’s finding that the Department of Child Welfare (DCW) “made reasonable efforts towards reunification.” R. 6. Despite the fact that Petitioner “had made some progress,” she failed to comply with the Court-ordered reunification plan, requiring the termination of her reunification services. R. 6.

Federal child protection law, including the Adoption and Safe Families Act, requires states to make “reasonable efforts” to reunite children with their families before permanent removal from their homes. Adoption and Safe Families Act, 42 U.S.C. § 671 (2015). The Adoption and Safe Families Act (AFSA) requires that in making reasonable efforts towards reunification, “the child’s health and safety shall be of paramount concern.” *Id.* § 671(15)(A). The term “reasonable efforts” has not been defined by the legislature, as the directive’s meaning must be applied on a case-by-case basis. *Suter v. Artist M.*, 503 U.S. 347, 358 (U.S. 1992). *State ex rel. K.F.*, 201 P.3d 985, 997 (Utah 2009). The goal of reunification services is to “remedy those problems which led to the removal of the children.” *In re Lana S.*, 142 Cal. Rptr. 3d 792, 804 (Cal. Ct. App. 2012). Thus, efforts are to be “tailored to the specific needs of the family.” *In re Alvin R.*, 134 Cal. Rptr. 2d 210, 218 (Cal. Ct. App. 2003). However, reasonable efforts are looked at in their entirety; DCW is not required to do everything possible to reunify Petitioner with her child. *State ex rel. Children, Youth, and Families Dep’t v. Alfonso M.-E.*, No. 33-896, 2015 WL 9019554 (N.M. Ct. App. Dec. 14, 2015).

A. The Department of Child Welfare made reasonable efforts towards reunification because it worked with Petitioner to develop a reunification plan specific to the family’s needs.

In developing reunification plans, states are tasked with identifying and offering appropriate family support services. *Jeff A.C., Jr. v. State*, 117 P.3d 697, 706 (Alaska 2005). This

includes creating a meaningful process that will help parents remedy any issues preventing them from being reunited with their children. *Div. of Family Servs. v. N.X.*, 802 A.2d 325, 333 (Del. 2002). Reasonable and adequate reunification efforts vary depending on the circumstances of each case. *See Suter*, 503 U.S. at 358; *In re A.C.*, 191 Cal. Rptr. 3d 701, 713 (Cal. Ct. App. 2015) (Even in light of the new guidelines information, the general principle still applies, that “[t]he adequacy of reunification plans and the reasonableness of [the Agency’s] efforts are judged according to the circumstances of each case.” (citation omitted)); *State ex rel. K.F.*, 201 P.3d 985, 997 (Utah 2009) (“reasonableness is an objective standard...dependent upon a careful consideration of the facts of each particular case”).

For services to be considered reasonable, agencies must: 1) identify the problem(s) leading to the loss of custody; 2) offer services designed to remedy those problems; 3) maintain reasonable contact with parents throughout; and 4) make reasonable efforts to assist parents in areas where complying with the plan is proved difficult. *A.C.*, 191 Cal. Rptr. 3d at 713 (citation omitted). In considering the facts of this case, the Juvenile Court correctly determined DCW offered reasonable reunification services to Petitioner.

1. *DCW Identified the Problems Leading to Petitioner’s Loss of Custody.*

Reasonable reunification efforts require DCW to first identify the problems that led to Jasmine’s removal from Petitioner’s custody. *Amanda H.*, 83 Cal. Rptr. 3d at 232. DCW first became involved in Jasmine’s life after being notified that Jasmine was alone in the hospital with no legal guardian in the country. Petitioner failed to care for Jasmine by abandoning her child despite serious ongoing health concerns, a problem DCW promptly and correctly identified. This is evidenced by DCW’s prompt appointment of Mr. Wells as Jasmine’s social worker, and Mr. Wells’s subsequent investigation and communication with both Ms. Ortiz and Petitioner. Mr.

Wells did not immediately recommend Jasmine be removed from Petitioner's custody. Rather, he diligently attempted to locate Petitioner in Guatemala by telephone five times and mail two times. Further, he thoroughly examined Jasmine's current living situation and her caregiver, Ms. Ortiz. It was only after completing this investigation that the Juvenile Court detained Jasmine. Clearly, DCW identified the problems that led to Petitioner's loss of custody over Jasmine prior to even creating the reunification plan.

2. *DCW Offered Reunification Services Which Specifically Addressed Petitioner's Identified Problems.*

After identifying the obstacles the family has in caring for a child, DCW then must tailor a plan to fix those particular problems. *Id.* DCW fulfills this requirement if it sets out the types of services of which Petitioner should avail herself. *Frank E. v. State, Dept. of Health and Social Servs., Div. of Family and Youth Servs.*, 77 P.3d 715, 719 (Alaska 2003).

Petitioner's absence and failure to act as caregiver despite Jasmine's medical issues were the impetus for the Juvenile Court to take jurisdiction over Jasmine. DCW offered Petitioner specifically tailored services to address Petitioner's shortcoming as a parent. First, DCW ordered Petitioner to take a class on parenting medically fragile children. DCW did not merely order Petitioner to take a general parenting class, rather it specifically indicated Petitioner needed to take a class that would give her the skills necessary to deal with Jasmine's unique needs as a medically fragile child. Petitioner abandoned Jasmine in the middle of the night because she was overwhelmed by Jasmine's medical condition. By ordering this particular class, DCW specifically sought to address not only Petitioner's parenting skills, but also her mental and emotional ability to care for a child with health concerns. Similarly, noting Petitioner's economic obstacles in caring for Jasmine, DCW ordered employment skill building courses, aiming to provide Petitioner additional skills that could lead to her gaining meaningful employment and

steady income. The reunification plan's inclusion of such specific classes is evidence of DCW's thoughtful consideration of which services would most benefit Petitioner and help her overcome the issues that led to her loss of custody.

The reunification plan also addressed the lack of a parent-child relationship between Petitioner and Jasmine, another of DCW's identified concerns. At the time when the Juvenile Court took jurisdiction over Jasmine, Petitioner had not spoken to Jasmine in over six months, despite Petitioner being informed that Jasmine was in the hospital due to serious heart complications. DCW sought to remedy the lack of parental relationship by ordering Petitioner to make regular contact with Jasmine. DCW, taking into account Petitioner's difficulties in finding reliable communication, explicitly indicated Petitioner could make such contact by phone or mail. Going one step further, Mr. Wells attempted to work with Petitioner to create a predictable schedule for her to contact Jasmine. Petitioner incorrectly contends that this was not enough however, and attempts to cite to *Oreoluwa* as support for her position that DCW could have done more to facilitate the conversation. This contention is flawed, as DCW is not tasked with assuring the offered services be successful. *In re Max M*, 116 A.3d 185, 195 (R.I. 2015) (citation omitted).

3. *DCW Maintained Contact with Petitioner Throughout the Reunification Plan Whenever Possible.*

Once the reunification plan is created, DCW must maintain contact with Petitioner. *See A.C.*, 191 Cal. Rptr. 3d at 713. In *State ex rel. DHS v. H.S.C.*, an immigrant father successfully argued the state failed to provide reasonable services due to its failure to maintain contact with him. *State ex rel. DHS v. H.S.C.*, 180 P.3d 39 (Or. Ct. App. 2008). There, the state failed to contact, or even attempt to contact, the father until ICE detained him. *Id.* And even after learning of his detainment, the state made only one attempt to contact him. *Id.* As a result of the state's

deficiency, the court found the state had failed to provide reasonable reunification services. *Id.*

Here, unlike *State ex rel. DHS*, although Petitioner's circumstances in Guatemala made it difficult, DCW went above and beyond its requirement to maintain contact with her. DCW repeatedly contacted Petitioner even though her unstable living arrangements created incredible obstacles to do so. Petitioner was essentially homeless; her most stable living arrangement was at a shelter run by American missionaries. Still, DCW stayed apprised of Petitioner's situation and progress. The record clearly reflects that Mr. Wells was in consistent contact with Petitioner, as his reports indicate sufficient detail regarding Petitioner's circumstances throughout the time the services were offered. DCW would not have this information had they failed to maintain regular contact with Petitioner.

4. *DCW Made Reasonable Efforts to Assist Petitioner in Compliance.*

If compliance with a reunification plan becomes difficult, the state should provide reasonable assistance to the parent. *In re Riva M.*, 286 Cal. Rptr. 592, 599 (Cal. Ct. App. 1991). However, even if DCW might have been able to provide additional assistance in fulfilling with the plan's requirements, the Petitioner is ultimately responsible for compliance. *In re T.D.H.*, 356 P.3d 457, 167 (Mont. 2015) (citation omitted).

Petitioner asserts that DCW should have provided specific assistance including providing her with the funds to use the phone and send letters. While it may be true that Petitioner's ability to comply with the reunification plan may have been difficult due to being out of the country, the Court took this into consideration when ordering the services, as is evidenced by its explicit instructions to Petitioner to comply from Guatemala. Even more unreasonably, Petitioner attempts to convince the Court that DCW should have provided her immigration counsel by pointing to *Oreluwa*. There is no authority that requires states to provide such a resource; the

Juvenile Court correctly denied this argument, just as the *Oreoluwa* court denied a similar argument. *Oreoluwa*, 116 A.3d at 405. Petitioner also argues that the State should have provided her with the ordered parenting class online. However, considering Petitioner does not have internet access, it is implausible that such a service would have changed the result. DCW is not required to make such futile attempts to bring Petitioner into compliance. *See, e.g., State of New Mexico ex rel. Children, Youth & Families Dept.*, 47 P.3d 859 (N.M. Ct. App. 2002). Despite Petitioner's argument to the contrary, efforts to assist Petitioner in compliance do not require DCW to "guarantee that [she] succeed in overcoming her predicaments." *Matter of Sheila G.*, 462 N.E.2d 1139, 1148 (N.Y. App. Div. 1984).

Further, if Petitioner needed additional services to comply, she is required to request them prior to her termination hearing. *In Interest of L.M.W.*, 518 N.W.2d 804, 807 (Iowa Ct. App. 1994). Petitioner failed to make this argument until after her services had been terminated, despite many opportunities for her to express this demand during her communications with Mr. Wells. DCW is not expected to provide services Petitioner failed to request, or even indicate she may need prior to the termination hearing. *See generally, In re C.B.*, 611 N.W.2d 489 (Iowa 2000). However, even if Petitioner demanded these services in a timely manner, DCW is required only to do "everything reasonable, not everything possible." *In re Ebony H.*, 789 A.3d 1158, 1163 (Conn. App. Ct. 2002); *see also State of New Mexico ex rel.*, 47 P.3d at 864. Although Petitioner attempts to persuade the Court that her suggested additional services would have brought her into compliance, there must be "more than just mere hope additional services will facilitate reunification." *A.H. v. Superior Court*, 107 Cal. Rptr. 3d 78, 84 (Cal. Ct. App. 2010). Regardless, "the mere fact that more services could have provided does not render [DCW's] efforts unreasonable." *Alvin R.*, 134 Cal. Rptr. 2d at 218.

DCW took all factors into consideration when creating a reunification plan tailored to Petitioner's parental inadequacies. The State communicated the plan to Petitioner, clearly indicated to her that the services should be made from Guatemala if necessary, and continued to stay in contact with her despite several obstacles. The plan and services ordered were themselves reasonable efforts to assist Petitioner in complying with the plan. Thus, the Juvenile Court properly found that DCW made reasonable efforts to reunify Petitioner and her daughter Jasmine.

B. The Juvenile Court correctly terminated services after Petitioner failed to meet the requirements of her individualized reunification plan.

Prior to terminating services, the state must make a "fair and serious attempt to reunify" the family. *K.F.*, 201 P.3d at 997. However, the law does "not require herculean efforts." *In the Matter of K.L.*, 318 P.3d 691, 699 (Mont. 2014). Notably, courts also must take into account the "conduct and cooperation" of the parent in determining whether to terminate services. *In re Nicole B.*, 703 A.2d 612, 618 (R.I. 1997). Even if a parent participates in reunification services, the termination may be proper. *A.H.*, 107 Cal. Rptr. 3d at 8586. Although the Petitioner made progress and partially complied with the reunification plan, it is well-established that partial compliance with a treatment plan is insufficient to preclude termination of parental rights. *See generally, K.L. 318 P.3d at 691.*

Although Petitioner may no longer be homeless, and may be creating a more stable life for herself, she is still not in a position to care for Jasmine. Petitioner is still unable to articulate when she can get a visa. She is yet to find a source of consistent income. She continuously fails to maintain meaningful contact with Jasmine. Despite any progress she has made, Petitioner is unable to provide Jasmine with the stability and care she requires. The important thing to consider when determining whether termination of services is proper is "not whether the parent

has improved her ability to manage her own life, but rather whether she has gained the ability to care for the particular needs of the child.” *In re Daniel C.*, 776 A.2d 487, 498-499 (Conn. App. Ct. 2001) (citation omitted). Petitioner does not have the ability to care for Jasmine’s individual needs, particularly in regards to her healthcare. The Juvenile Court properly determined that given Jasmine’s medical condition, there is no proper location for reunification other than in the United States. Not only has Jasmine’s current doctor testified that returning to Guatemala would essentially be a death sentence, but also the Guatemalan doctors have repeatedly warned Petitioner that Jasmine needs to go to the United States in order to get life-saving treatment. Without the ability to stay in the United States with Jasmine, Petitioner will remain unable to provide Jasmine with the stable and predictable environment where she can receive both the education and medical attention she needs.

Despite the State’s reasonable efforts at reunification, Petitioner met neither the requirements nor the intent of the reunification plan. Petitioner has not remedied the issues that led to her loss of custody, and thus the Juvenile Court correctly determined that termination of services was proper.

CONCLUSION

For the foregoing reasons, Respondent respectfully requests this Court affirm the ruling of the State of Whittier Court of Appeal.

Dated January 6, 2016

Respectfully submitted,

Team #20

Counsel for Respondent