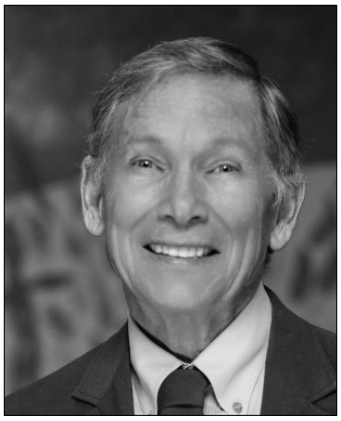

Judge Leonard Edwards
Santa Clara Superior Court (Ret.)

An Instructive Dependency Case Involving Reasonable Efforts[1]

Some cases raise issues that go to the heart of the juvenile dependency court process and society at-large. *In re T.J.* (A153034) from the First Appellate District (Division 4) is one of those cases. The intellectually disabled mother was raising three children, 8, 4 and 2. The mother had not been giving the eldest boy needed medications for severe asthma, eczema, and environmental allergies and when the social workers visited the home, they discovered the children were living in unsanitary conditions. A petition was filed, the juvenile court removed the children, sustained jurisdiction, and ordered reunification services for the mother. The amended petition declared that the mother "requires the Agency's assistance in providing adequate care and supervision of the children in that she has mental health and developmental disabilities that impede her ability to care for the children." At the twelve-month hearing, the court terminated reunification services and set a hearing pursuant to W & I §366.26. Mother filed a writ claiming she did not receive reasonable reunification services.

This case raises the question whether a poor, intellectually disabled mother can safely rear three children in a city where housing resources are limited and services inadequate.

The court-ordered case plan included the following, Mother was to:

(1) Reactivate her regional center case management services to attain deeper knowledge and demonstrate understanding of her independent living needs;

(2) Participate in the regional center's long-term case management and follow up with the recommended treatment plan;

(3) Participate in individual therapy and follow recommended treatment, which could include a medication evaluation;

(4) Engage in anger management services or address anger management as a part of the mental health treatment plan;

(5) Participate in family therapy through the Infant Parent Program with the two younger boys and family therapy with the eldest boy, to get support with the ongoing mental health needs of her children;

(6) Get access to AFW through the regional center, complete the program and allow the child welfare worker and other in-home support providers to assess how effectively she was applying the program's parenting skills;

(7) Work with the child welfare worker to enroll in an in-home supportive services program, complete an assessment, and follow recommended assistance in activities of daily living such as cleaning, laundry, shopping, cooking, washing dishes, bathing, grooming, dressing, and getting transportation to appointments; and

(8) Secure housing and keep the home clean and organized.

Two issues arise in the writ. First, mother claims she was denied adequate reunification services. Second, if this claim is true, what remedies does the court have at its disposal since at the time of the appellate decision, the children had been out of the mother's care for over 18 months? As to the first issue, the appellate court acknowledged that the Agency identified appropriate services for the mother given her cognitive and other disabilities, but that mother was not able to participate in these services because of delays in providing the services by the placing agencies. "Maintaining Mother on a waiting list was not equivalent to 'providing' or 'offering' services." (at p. 13)

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The appellate court pointed out that time is of the essence in dependency proceedings, particularly when children younger than three are involved. That is one reason for the law permitting review of reunification services at 6 months for children under three years of age. But at the six-month hearing mother had been provided with no actual services except therapeutic family visitation. The appellate court described the services provided by the Golden Gate Regional Center (GGRC). As to individual therapy, it did not begin for 11 months. By the time that the trial court terminated services, mother had engaged in only two therapy sessions. The court concluded that the services provided "must not only be appropriately tailored. They must also be accessible." (at p. 16).

The appellate court's concern was not the Agency's identification of services, but in the delays that occurred throughout the dependency process in actually getting Mother engaged in the identified services. The Mother had no anger management services during the reunification period. In-home counseling and parenting support were to be provided by AFW, but they did not start for 8 months. After an initial assessment these services were ineffective because the mother refused to work with the assigned case worker, which the Agency acknowledged was clearly a result of her mental disability. Thereafter, the Agency made no efforts to get the mother engaged with similar services. The court noted that the Mother never refused to participate in these services. Instead her disability (the disability the individual therapy and anger management components of the case-plan were intended to address) made engaging her difficult. The appellate court found that this did not relieve the Agency from its obligation to follow through with the independent living skills component of the case plan.

The case plan also required the mother to secure housing and maintain the physical conditions of the home clean and organized. The Agency offered no assistance to her in finding housing or teaching her basic independent living skills. The Agency referred her to a service provider where she was placed on a waiting list estimated to be six to 12 months. Due to the waiting list, that service provider never provided her any assistance. Simultaneously the housing authority failed to complete the repairs on the Mother's rental.

The appellate court concluded that the Agency essentially put the Mother in a holding pattern for 11 months before therapy began, gave her no help with anger management, a delay of eight months for in-home counseling and parenting support, no help with practical independent living skills, and no housing assistance. It concluded that the trial court erred when it concluded that the Agency offered reasonable services to the Mother. It summarized the case as one involving "an intellectually disabled parent with some accompanying mental illness, struggling to raise her children in conditions of abject poverty." (at p. 23). The appellate court concluded the Mother was penalized for a common problem for families in San Francisco: being able to provide secure, clean and well-kept housing. Compounding this problem, she received no assistance with the special challenges of doing so as a developmentally disabled person.

The appellate court then addressed the remedy. Although the 18-month mark fell in February (two months before the issuance of the appellate opinion), citing Welfare & Institutions Code §352 and several other cases that addressed this issue, the court concluded that the Mother was entitled to a total of 24 months of family reunification services.

Whether the Mother will be successful in reuniting with her children in the few remaining months remains to be seen. The appellate court noted that the social worker was skeptical at the outset of the case whether the Mother would ever be capable of reunifying with her children. Yet the delays and the lack of timely follow-up when services were not provided, arguably led the court to conclude that "the Agency allowed this attitude to become a self-fulfilling prophesy, thus draining its efforts of vigor based on a 'forecast of failure.'" Citing *Patricia W. v Superior Court, 244 Cal.App.4*th at p. 429.

Rearing children in a city where the average home costs more than 1 million dollars and where rents average over $3,500 a month is a challenge for anyone, but for an impoverished, disabled mother of three, it is almost impossible. Yet our social service system is mandated to assist parents who are at risk of losing their children. Our legislature has made it clear that "[a] child shall not be found to be a person described by this subdivision solely due to lack of an emergency shelter for the family."[2]

Yet, this case exemplifies the impossible tasks facing families and social workers. Service providers are overwhelmed with clients, creating waiting lists of months while state dependency time lines require parents to solve their issues quickly. These factors have led to a massive exodus of poor to less expensive parts of our state and to other states while more affluent persons continue to arrive.[3] Helping similarly situated mothers may be beyond the reach of our social service system.

Endnotes

1 Thanks to Attorney Daniel Richardson from the Center for Families, Children and the Courts for his assistance in the preparation of this paper.

2 W & I §300(b)(1)

3 Reese, Phillip, "California exports its poor to Texas, other states, while wealthier people move in." Sacramento Bee, March 5 and 12, 2017. *http://www.sacbee.com/news/state/california/article136478098.html#storylink=epy.*