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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

DESIREE R., Petitioner, v. THE SUPERIOR COURT OF LOS ANGELES COUNTY, Respondent; LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Real Party in Interest.	B240696 (Los Angeles County Super. Ct. No. CK89327)

ORIGINAL PROCEEDING; petition for extraordinary writ. Sherri Sobel, Juvenile Court Referee. Petition granted in part.

Law Offices of Alex Iglesias and Jason Steinberg for Petitioner.

No appearance for Respondent.

John F. Krattli, Acting County Counsel, James M. Owens, Assistant County Counsel, and Melinda S. White-Svec, Deputy County Counsel, for Real Party in Interest.

Desiree R. (Mother) challenges the March 1, 2012 adjudication order and the April 17, 2012 dispositional order removing her children from her custody under Welfare and Institution Code section 300, subdivisions (a), (b), (e), (i) and (j) and denying reunification services under section 361.5, subdivision (b)(4), (5) and (6).[1]

We determine that the juvenile court properly took jurisdiction over the three children because one of the three siblings, infant Evan G., suffered such severe injuries at the hands of Raul G., the infant's biological father, that the infant is currently on life support.[2] We also determine that all three children were properly detained because they face substantial danger in Mother's care. Finally, we determine that it would benefit the two older children to pursue reunification services. Accordingly, we order the juvenile court to vacate the hearing set pursuant to section 366.26 as to the two older minors and to provide family reunification services to them and Mother.

BACKGROUND

Mother has three children: N.R. (born February 2004), D.R. (born November 2006) and Evan G. (born June 2011). As children, both Mother and Raul G. were, themselves, dependents of the juvenile court.

The children came to the attention of the Los Angeles County Department of Children and Family Services (DCFS) on August 8, 2011, after a telephone call to the child abuse hotline reported that newborn Evan G. had been taken by paramedics to the emergency room of Greater El Monte Community Hospital. He was subsequently moved to Children's Hospital of Los Angeles. Evan, who retains brain stem function but no higher brain function, remains in a persistent vegetative state.

On August 5, a few days before Evan was taken to the emergency room, he was seen at Citrus Valley Medical Center for high fever and colic. He was referred to Queen

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[1] Undesignated statutory references are to the Welfare and Institutions Code.

[2] Raul G., father of Evan G., is not a party to this petition. Raul M., alleged father of D.R. and presumed father of N.R., was deported to Mexico in 2004.

of the Valley Hospital, which conducted laboratory tests and a chest X-ray. Mother told El Monte Police Detective J. Fisher that "they took an X-ray of Evan's body. [T]he hospital staff] did not reveal any injuries to [Mother and Raul G.] at the time of that treatment and she was not aware of any injuries or medical problems with [Evan] other than those previously treated at [Queen of the Valley Hospital]." In the August 15, 2011 detention report, Children's Social Worker (CSW) Elia Godinez summarized the hospital record. "[Evan's] physical exam was normal, he was noted to be able to take feedings, and his oxygen saturation was 95-100% on room air. His chest X-ray was negative, and the preliminary blood and urine results were negative. His temperature upon admission to the ER was 100.4. The diagnosis was Acute Fever; rule out infection. On this exam, no other concerns were noted. His skin was noted to be without rash/lesions, without petechiae, a normal color, and warm/dry. He was not noted to be in any respiratory distress. He was discharged from the ER; Tylenol and Motrin were advised, and follow-up with [primary care physician] in 1-2 days was advised. Also instructed to return to ER in case of any problems." Evan's symptoms worsened, but he was not taken to his physician or to a hospital until a few days later, on August 8, when he was unresponsive and in full cardiac arrest. Both Mother and Raul G. "denied any known history of trauma," but "reported a 3[-]day history of fever, increased fussiness, decreased feeding, progressing to vomiting, drooling, and eventually lethargy and full cardiac arrest."

Raul G. eventually admitted that he had struck Evan twice in the head.

DCFS filed a petition on August 15, 2011, as to all three children.

Allegations a-1, i-1 , and j-1 read: "On 8/7/11, six[-]week[-]old Evan G[.'s] father, Raul G. Jr. physically abused the child. On 8/8/11, the child was hospitalized in grave condition and diagnosed with a right parietal frontal hematoma with a midline shift of the brain and cerebral edema. The child has bilateral multilayer retinal hemorrhages and a healing right corneal abrasion. The child has a fracture of the child's right anterior first rib, left posterior eighth and ninth ribs and a fracture of the left tibia. Such physical abuse was excessive and caused the child unreasonable pain and suffering. The child's mother, Desiree R[.], knew or reasonably should have known of the physical abuse of the

child by the father and failed to protect the child. The physical abuse of the child by the father and the mother's failure to protect the child endangers the child's physical health and safety, placing the child and the child's siblings, N[.R.] and D[.R.] at risk of physical harm, damage, danger and failure to protect." The juvenile court struck the allegation that Mother "knew or reasonably should have known of the physical abuse of the child by the father and failed to protect" and replaced that language with "was unable to protect." As modified, those allegations were subsequently sustained at the March 1, 2012 dispositional hearing.

Allegations a-2 and j-2 read: "On 8/8/11 Evan G[.] was medically examined, hospitalized and diagnosed with a right parietal frontal hematoma with a midline shift of the brain and cerebral edema. The child has bilateral multilayer retinal hemorrhages and a healing right corneal abrasion. The child has a fracture of the child's right anterior first rib, left posterior eighth and ninth ribs and a fracture of the left tibia. The child's condition is grave and the child has minimal brain function. The child's injuries are consistent with the physical abuse of the child. Such injuries would not ordinarily occur except as the result of deliberate, unreasonable and neglectful acts by the child's father, Raul G[.] and the mother who had care, custody and control of the child. Such deliberate, unreasonable and neglectful acts on the part of the parents endangers the child's physical health, safety and well-being and places the child and the child's siblings, N[.R.] and D[.R.,] at risk of physical harm, damage, danger and death." (§ 300, subds. (a), (j).)

Subsequently, as to allegation a-2 and j-2, the juvenile court modified the last part of the paragraph to read: "Such injuries would not ordinarily occur except as the result of deliberate, unreasonable and neglectful acts by the child's father, Raul G[.] and mother. Such deliberate, unreasonable and neglectful acts on the part of the father endangers the child's physical health, safety and well-being and places the child and the child's siblings, N[.R.] and D[.R.,] at risk of physical harm, damage, danger and death." As modified, the allegations were sustained at the March 1, 2012 dispositional hearing.

Allegation e-1 concerns Evan, only, and not his siblings. It reads: "On 8/8/11, six[-]week[-]old Evan G[.] was medically examined, hospitalized and diagnosed with a

right parietal frontal hematoma with a midline shift of the brain and cerebral edema. The child has bilateral multilayer retinal hemorrhages and a healing right corneal abrasion. The child has a fracture of the child's right anterior first rib, left posterior eighth and ninth ribs and a fracture of the left tibia. The child's injuries are in different stages of healing. The child's mother, Desiree R[.], gave no explanation of the manner in which the child sustained the child's injuries. The child's injuries are consistent with the physical abuse of the child. The child's mother and father, Raul G[.] knew, or reasonably should have known, that the child was being physically abused and failed to protect the child. Such physical abuse of the child and the parents' failure to protect the child endangers the child's physical health, safety, and well-being, creates a detrimental home environment and places the child at risk of physical harm, damage, danger and death." (§ 300, subd. (e).) This allegation was modified to read the same as the modification to allegation a-2 and was sustained as modified.

N.R. and D.R. were detained with Theresa G., a maternal cousin to the third degree. They remain detained with Theresa G., who is willing to provide a permanent home for them.

The petition had a notation that an earlier case (No. CK54335) had been dismissed on January 22, 2009.

According to an August 11, 2011 El Monte Police Department Detective Bureau follow-up report, Mother was asked what she thought happened to Evan. She told Detective J. Fisher, "'Maybe the baby was crying. Maybe [Raul G.] got frustrated. . . . He is the kind of guy who does not have a lot of patience. . . . He probably did do it[;] he just doesn't want to be a man about it.'"

In the August 15, 2011 detention report, CSW Lisa M. Juarez stated that the family had an open investigation, dated July 27, 2011, "with allegations of physical abuse, emotional abuse and general neglect to children N[.R.] and D[.]R[.] by stepfather Raul G[.] According to that referral that was reported by an anonymous caller, 'Two days ago Stepfather Raul G[.] was seen smacking child Jane Doe ([female, age 6 years]) [minor N.R.] on her head and back. He was yelling "Shut the Fuck up" and the child was

seen crying. Mother was there with her two boys[,] ages 3 and 2 months[,] and did not interfere and mother seems to be afraid of father. It is unknown if children have marks and bruises. Father is always heard cursing at the children and he targets Jane Doe. Caller stated that two weeks ago mother was seen with bruises on her chin and arms. Caller believes that father ha[d] been beating her before she was pregnant and during her pregnancy with child ([male, age 2 months]). It is unknown if mother has sought medical treatment. Caller stated that children are present when father hits mother. The reporting party suspects that father may be a drug user[.]' At the time of this CSW's investigation, there was no indication of abuse or neglect, the children N[.R.] and D[.R.] denied any physical abuse or witnessing domestic violence and this CSW had the children disrobe, and did not observe any marks or bruises on their bodies to indicate abuse or neglect. Further, collateral contacts including Baldwin Park Police Department had no concerns for physical abuse towards the children." Although DCFS provided referrals, the matter was closed as inconclusive.

The detention report also included a report of a telephone conversation that CSW Bonnie Nibo had with maternal grandfather, Daniel, during which she questioned him regarding the death of Mother's biological child, K., at the age of one month "who passed away in Mexico 6 years ago. Grandfather told CSW that he really does not know what happened but heard that the child [K.] might have [been] rolled over by her sister N[.R.] while she was sleeping. Grandfather stated that he was not sure exactly what the story was but later heard that the coroner's office said that the child [K.] die[d] of [sudden infant death syndrome]. CSW asked grandfather if he had a copy of the report, he said[,] no[,] that it happened in Mexico and it has been a while ago. CSW asked grandfather if he had concerns about the mother and her boyfriend regarding the way they care about the children. Grandfather initially said he has lots of concerns but then stated that does not live with them to be able to see what is going on with them. Grandfather told CSW he was not suspecting any type of maltreatment from the parent but [would] really like to know why the child [K.] stopped breathing."

According to the official death certificate, the cause of death for minor K. was anoxemia (absence of oxygen in the blood) by bronchoaspiration (inhalation of oropharyngeal or gastric contents into the lower respiratory tract).

DCFS was notified via facsimile sent on August 11, 2011, that Raul G. has an extensive juvenile and adult criminal history that includes acts of violence: in 2007, Raul G. was detained for bringing a firearm to school; in 2008, he was arrested in El Monte for battery with great bodily injury and was arrested in Apple Valley for battery. His criminal history also includes manufacture/possession of a dangerous weapon (2010); illegal possession of a concealed weapon (2010); receiving stolen property (2011); and grand theft (2011).

In the August 12, 2011 crime report, El Monte Police Officer Jacob Burse reported that when El Monte police officers interviewed Raul G., they saw and removed a large wad of marijuana from his person. Raul G. asked the officers to return the marijuana to him, stating, "'Well, I don't see why you get to take it[. I]t's not like I've done anything wrong.' G[.] also stated, 'I just feel like you are taking something that is mine.'" Officer Burse concluded that it seemed "that he was much more concerned about the disposition of his marijuana than he was about the situation with the child."

DCFS was notified via facsimile sent on August 11, 2011, that in 2009 Mother was arrested and later convicted of theft pursuant to Penal Code section 487c. She was placed on probation for three years on condition that she serve 180 days in jail.

The September 12, 2011 jurisdiction/disposition report showed two past referrals involving these minors. On September 24, 2010, a "reporting party" informed DCFS that Raul G. had spanked D.R. while changing D.R.'s diaper. That allegation was determined to be unfounded: "Investigation found the child sustained no injuries and [Raul G.] and sibling N[.R.] denied [Raul G.] spanked child." The second referral was the July 27, 2011 referral, discussed above, which was closed as "inconclusive."

In the September 12, 2011 jurisdiction/disposition report, Department Investigator CSW Desiree Robinson summarized her August 25, 2011 interview with Mother, who told CSW Robinson that on Friday, August 5, 2011, Evan had a fever of 103 degrees (in

other parts of the record, Evan's temperature was noted at 100.4 degrees) and that she "'looked it up (current brain injury to child) online, and it said that he could have gotten a brain injury that way.'" Mother told CSW Robinson that the fever started on Thursday, August 4, 2011. Mother "said she noticed the fever that Thursday and he did not want to drink his bottle. She said, 'That's unusual for him, cause he drinks those bottles. I took him to the doctor that Friday (8/05/11). When he had colic, he kept me up all day and night. I knew it was colic, cause when a baby's stomach gets hard, it's colic. My family said that. Before that, my son didn't cry. During the colic, he had a hard time going to sleep with the colic.' The mother said other than the stop feeding, the crying, and the fever, she noted no other problems, other than stiffening of the stomach. She went on to say[,] 'Mainly before the colic, he slept normal, and right away after he ate. Through the weekend (8/05/11 to 8/07/11) he still had colic through the whole weekend. I got Pediacare [(a fever reducer similar to Tylenol)] over the weekend to treat the fever.' The mother said she tried to soothe the child by rubbing him on the stomach and the back, and propping his legs up to 'help him pass gas.'"

When asked how Evan incurred all his injuries, Mother told CSW Robinson, "'With my baby's dad, he would panic even when the baby throws up. The detectives said he confessed. The detectives told me they [were] going to arrest him. They (DCFS) had already [taken] my kids. To me, whenever I see him, he protects that baby. I can't see him hurting that baby[.] [A]nd how he is around the kids. He is so good to my kids.'"

In the September 12, 2011 jurisdiction/disposition report, CSW Robinson also provided the account given by Sandy Himmelrich, coordinator for the CARES Team at Children's Hospital of Los Angeles: "Coordinator Himmelrich said the mother told the hospital staff at Children's Hospital that she took the child Evan to the store, when the baby was still sick the day before [August 7], and he wasn't given Tylenol as instructed. 'It looks like he was sick at least the entire week before. She said he was vomiting every single day after feeding—a lot, but he got to the point where he wouldn't even eat. This was a day before. This mom ha[d] a child that died, and she doesn't think she should

take him (child Evan) back to the hospital? Mom has two other children, and has lost a child, and she [should] be more hyper vigilant. How did she not know to give the child Tylenol—it doesn't make sense.'"

CSW Robinson reported that Mother told her that she had been a victim of domestic violence when she had lived with Raul M., father of N.R. and D.R.

CSW Robinson set forth the account of maternal aunt Wendy O., who visited Mother and Raul G. on Sunday afternoon, August 7, 2011. During the visit, Evan was very fussy and kept crying. Evan's eyes "rolled back intermittently." Wendy O. saw that Evan "'kept rolling his eyes back to his head. I kept telling her (mother) that she needed to ask more questions about why her baby had fever.'"

On September 19, 2011, Raul G. entered a plea of nolo contendere to one count of violation of Penal Code section 273a, subdivision (a), felonious child abuse/endangerment, and to one count of violating Penal Code section 273d, subdivision (a), felonious infliction of corporal injury. He was sentenced to state prison for an aggregate term of 10 years.

The Multidisciplinary Assessment Team summary of findings, prepared pursuant to the September 15, 2011 meeting, reported that when Evan was first admitted to Children's Hospital, tests revealed that Evan had "a tibia fracture that was spiral, going from ankle to his mid shin. This fracture was in a state of healing, indicating it was an older injury." It was also reported that Mother did not have any prenatal care during her pregnancy with Evan, but his birth was "normal." At birth, he weighed 6 pounds, 11 ounces, "with no medical concerns reported."

Karen Kay Inagawa, M.D., Evan's physician at Children's Hospital, summarized Evan's condition in a January 2012 report: "In summary, Evan sustained significant traumatic brain injury (extensive intracranial hemorrhages, cerebral edema leading to ischemia and infarction) which has left him in a neurologically devastated state, dependent on tube feedings and a breathing machine, and not gaining any developmental milestones. In addition, he sustained significant retinal hemorrhages involving both eyes, a tibia fracture, and multiple rib fractures (right 1st rib, left 2nd, 3rd, 6th, 8th, 9th, 10th

ribs) that were noted on various radiographic studies. Evan's clinical picture and constellation of injuries are compatible with non-accidental/inflicted trauma.

"The family sought medical care for Evan on 08/05/11 due to fever and irritability, however it is unclear why they did not seek further care over the next few days as both mother and father acknowledged that Evan[']s symptoms were progressing and worsening, and discharge information from the 08/05/11 emergency department visit recommended such follow-up. Depending on when the trauma insult(s) occurred, prompt medical care *may* have avoided Evan progressing to full cardiac arrest.

"Initially the family reported no history of trauma. Subsequently, per verbal report from law enforcement, father reportedly admitted to hitting Evan twice on the head, although the force and details of this disclosure are unclear. Evan's intracranial bleeding, cerebral edema, and retinal hemorrhages are injuries compatible with violent shaking, however blows to the head with such significant force to cause the head to spin along the axis of the neck and cause significant angular accelerations (such as occurs with violent shaking), *may* also produce these injuries. However, at this time, Evan's multiple acute rib fractures and healing tibia fracture remain unexplained. Rib fractures, particularly posterior rib fractures, are uncommon injuries in infants/children and have a high degree of specificity for non-accidental/inflicted trauma and are generally due to a significant compression of the chest from front to back on an unsupported back, such as occurs when forcefully grasping and severely squeezing the chest. (CPR would not adequately explain the multiple posterior rib fractures as CPR is performed with the back supported.) Lateral rib fractures may result from direct blow but are more usually caused by significant compression of the chest. Due to the flexibility/pliability of the rib cage in infants, significant force is required to fracture ribs."

As part of the "Last Minute Information for the Court," submitted for the March 1, 2012 adjudication hearing, CSW Tonnette K. Caldwell reported that Mother did not visit often nor did she engage with her two older children when she was with them: "According to the Caregiver for N[.R.] and D[.R.], Theresa G[.], the mother visits about once a month. The mot[h]er visited on 02/02/12, 01/10/12, about 12/29/11 and 11/07/11

and about 11/02/11. The mother called late on 12/07/11 and wanted to visit the children, however, the children were already in bed when she called. The mother brought D[.R.] a birthday cake on November 7, 2011. According to the Caregiver the mother seems distant with the children and raises their expectations by telling them that they will be going home with her soon. The mother did not bring the children Christmas presents when she visited in December and January. On 3/01/12 the Caregiver, Theresa G[.], said, 'The mother will call about two to three days before court. She called on Monday, 2/27/12, to cancel the visit for that day. She has not called since Monday. The children don't ask to see their mother. When they do see their mother there is not much engagement. The children don't run up to her. They don't seem excited to see her. The children don't ask to see the mother. She does not show much interest in the children. What concerns me is that these kids need their mother but she [d]oesn't visit the children as ofte[n] as she should.'"

At the March 1, 2012 adjudication hearing, Mother testified that she had been with Raul G. for two years; he never hit the children; and the two older children were not afraid of him. Sometimes Raul G. "would get mad" at the children, but then he "would walk out." Mother had previously left the children with Raul G. "four or five times." On August 8, 2011, she left the residence that she shared with Raul G. and the children to take D.R. to a doctor's appointment. When she returned, she saw a note on the door of the residence that Evan had been taken to the hospital. Mother immediately went to a pay phone to call Raul G., who had Mother's cell phone. Raul G. told Mother that Evan had stopped breathing. Her aunt took her to the hospital. When Mother asked Raul G. about what had happened, "[h]e just kept telling me the same thing, that Evan just stopped breathing; that Evan just stopped breathing." Mother testified that for two days before August 8, Evan had "colic" and was "real fussy. He was crying a lot."

Mother further testified that she would "not get involved with anyone who has a past violent history. . . to keep my kids, like, with people that I know I can trust, family members that I know I can trust for safety." She testified that she was not involved in a relationship currently and lives alone.

Upon conclusion of the March 1, 2012 adjudication hearing, the juvenile court made the following determinations: "Having read and considered the reports, the court finds, by a preponderance of the evidence . . . these children are children described under [Welfare and Institutions] Code section 300.

"The a-1 is sustained as amended: [Mother] knew or reasonably should have known of the physical abuse [of Evan] by the father and failed to protect. On the a-1 count, I will strike that ['failed to protect'] and put 'was unable.' Mother was not present.

"On the a-2 [allegation], . . . deliberate, unreasonable, and neglectful and/or neglectful acts by the father, Raul G[.], and the mother will be sustained for the a-2. [The] b-1 [allegation] is stricken. [The] b-2 [allegation] is stricken. [The] b-3 [allegation] is sustained both as to the mother and the father. The e-1 [allegation] is sustained as [the same allegation as set forth in] the a-1. The i-1 [allegation] is sustained as the [same allegation as set forth in] a-1. [The] j-1 [allegation] is sustained as the [same allegation as set forth in] a-1, j-2 [allegation] as the [same allegation as set forth in] a-2, j-3 as the [same allegation as set forth in] b-3."

Via letter dated March 29, 2012, Theresa Karanik, LCSW, psychotherapist at Homeboy Industries, informed DCFS that Mother began individual psychotherapy at Homeboy Industries on November 10, 2011, and met with Camile Warnberg, Ph.D., once per month in November and December 2011 and once in January 2012. Mother was transferred to Karanik's care, and Mother completed three sessions. Karanik stated that "[p]sychotheraputic work has included articulation, validation and processing issues of grief and loss surrounding case circumstances. [¶] Ms. R[.] is also receiving case management services as a component of her work at Homeboy Industries."

In the "Last Minute Information for the Court" submitted for the dispositional hearing, CSW Mayerling Castro reported that Mother has been inconsistent in visiting Evan. Of the quarterly care plan meetings held at All Saints Healthcare, where Evan is currently under care, Mother attended only the first meeting. Mother "rarely" calls All Saints to inquire as to Evan's status. On April 6, 2012, CSW Castro told Mother that, if

Mother wanted to reunify with Evan, Mother would have to obtain medical training to give him the proper care he now requires. CSW Castro advised Mother to speak to Moon Venegas, an All Saints social worker, regarding such training, but, as of April 12, Mother had not done so.

Mother told CSW Castro that her work schedule prevented Mother from visiting Evan. When CSW Castro pointed out that Mother's work schedule of 40 hours per week allows time for visits, Mother then stated that she had to run errands. When CSW Castro asked Mother to clarify, Mother simply stated that she needs to do "'this and that' to pay for her rent." Mother then set up a visitation schedule for three hours every Saturday.

CSW Castro concluded that Mother's "participation in the child's life is minimal at best. Ms. R[.] expresses to CSW Castro that she feels she is able to unify with the child and provide him with the level of care he needs in her home. It is CSW Castro's assessment that Ms. R[.] has unrealistic expectations of the child's prognosis and that she stated that she can provide care for the child Evan[,] who[] is medical[ly] fragile[,] and her two other children. CSW Castro has explained to Ms. R[.] the importance of being consistent in her visits with the child Evan and her involvement in his medical care; however, through her actions, Ms. R[.] has demonstrated [a] minimal level of participation in regards to the child Evan."

Mother did not set up a schedule to visit the two older children until late March 2012.

On April 10, 2012, the first day of the dispositional hearing, Theresa G. testified that, when D.R. was first placed in her home at the age of four and one-half years, he could not identify basic colors and could not count from one to five. She testified that she "had to work with him just to learn basic colors—red, white, black and blue—and at least count up to one to five." Theresa G. further testified that Mother does not call to ask about the school work or health of N.R. and D.R. Theresa G. answered affirmatively when asked if she would be willing to provide a permanent placement for the two older children, N.R. and D.R.

The dispositional hearing was continued to April 17, 2012. The juvenile court found, by clear and convincing evidence, the following: "In terms of [section 361.5, subdivision (b)](5), the child was brought within the jurisdiction of the court under subdivision (e) because of the conduct of that parent or guardian.

"I believe that most of the case law indicates that it is not just the parent who has provided the injury but the other parent as well, or the parent who allowed the injury or the parent who should have known. This mother should have known.

"This—there were two prior [complaints to DCFS] in this case.

"The father's main question when he was picked up was, 'Where's my weed?'

"This baby is, again, on life support and we don't know for how much longer but the outcome is not going to be that he's coming out of this.

"Same for [section 361.5, subdivision (b)](6), and I would also note that the parent or guardian of the child has caused the death of another child. This would be the mother, and that would be [section 361.5, subdivision (b)](4), through abuse or neglect. And we know that there was another child that the mother had while living, I believe, in Mexico that also died under circumstances that we don't have any further information about.

"I cannot find that these children have the kind of relationship with the mother or her with them that would provide me any confidence at all that she could appropriately parent these children with the assistance of anything.

"We are months and months and months and I have one short letter from Homeboys that [Mother has] had three sessions with a therapist and the sessions are dealing with her grief. I have no information that she has in any way indicated that this guy [Raul G.] was a problem for her and mostly she didn't throw him out. He was arrested. She didn't call the police, screaming and carrying on that he hurt her child. In fact, she didn't even take him to the doctor.

"This is only, I believe, the second time in 15 years on the bench that I have not been able to find that it's by clear and convincing evidence that it's in the best interest of the children, when you have children this age, to provide services to the mother.

"I couldn't be more clear about this mother's inability to protect her children, to parent her children, to care for her children, to care about her children.

"No reunification services will be provided to the mother.

"The only way she can appeal this is by way of extraordinary writ, which we will send to her last-known address.

"Visitation for this mother, however, will continue one time per week, one hour, monitored."

DISCUSSION

In general, upon the filing of a petition, the juvenile court must determine whether a child is a person described by section 300. If so, the juvenile court takes jurisdiction over the child. The juvenile court next considers whether that child will be at substantial risk of harm if left in the custody of the parent. (§ 361.) If there is a substantial risk of harm, the juvenile court removes the child from parental custody. (§ 361, subd. (c)(1).) The juvenile court then determines whether family reunification services are to be provided to the family.

I. Jurisdiction

Mother contends that the allegations that were sustained should not have included her. While there is nothing in the record to show that Mother's actions were, in any way, deliberate, the record amply demonstrates that Raul G. posed a threat to all three children and that Mother was aware, or reasonably should have been aware, of that threat.[3]

First, the juvenile court properly took jurisdiction over all three children, who were at risk of further harm. "It is commonly said that the juvenile court takes jurisdiction over children, not parents. [Citations.] While this is not strictly correct, since the court exercises *personal* jurisdiction over the parents once proper notice has been

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[3] Mother contends that the allegations of "deliberate, unreasonable and neglectful" acts on her part are not supported by the record. Given the amendments made by the juvenile court, we conclude that the juvenile court did not find any deliberate acts by Mother, but it was by oversight that Mother was included in the deliberate acts of Raul G.

given [citation], it captures the essence of dependency law. The law's primary concern is the protection of children. [Citation.] The court asserts jurisdiction with respect to a child when one of the statutory prerequisites listed in section 300 has been demonstrated. [Citation.]" (*In re I.A.* (2011) 201 Cal.App.4th 1484, 1491, italics in original.)

"As a result of this focus on the child, it is necessary only for the court to find that one parent's conduct has created circumstances triggering section 300 for the court to assert jurisdiction over the child. [Citations.] Once the child is found to be endangered in the manner described by one of the subdivisions of section 300 . . . , the child comes within the court's jurisdiction, even if the child was not in the physical custody of one or both parents at the time the jurisdictional events occurred. [Citation.] For jurisdictional purposes, it is irrelevant which parent created those circumstances. A jurisdictional finding involving the conduct of a particular parent is not necessary for the court to enter orders binding on that parent, once dependency jurisdiction has been established. [Citation.] As a result, it is commonly said that a jurisdictional finding involving one parent is '"good against both. More accurately, the minor is a dependent if the actions of either parent bring [the minor] within one of the statutory definitions of a dependent."' [Citation.] For this reason, an appellate court may decline to address the evidentiary support for any remaining jurisdictional findings once a single finding has been found to be supported by the evidence." (*In re I.A.*, *supra*, 201 Cal.App.4th at pp. 1491–1492.)

The juvenile court has jurisdiction over all three children. The record establishes—and Mother does not challenge—the fact that Evan was severely abused by Raul G. His brutal abuse of Evan is sufficient to bring Evan and his two siblings within the jurisdiction of the juvenile court. And Raul G.'s abuse of Evan exposed the other children to a substantial risk of serious physical or emotional harm, providing an additional basis for taking jurisdiction over the three siblings. (*In re Rocco M.* (1991) 1 Cal.App.4th 814, 823.)

Additionally, Mother should have been aware of the risk that Raul G. posed to all three children. Evan had a healing injury, which constitutes substantial evidence that Evan had suffered previous trauma for which Mother had not sought medical treatment.

Dr. Inagawa, Evan's physician at Children's Hospital, noted that, in addition to the injuries Evan suffered when Raul G. struck him, Evan's healing tibia fracture "remain[s] unexplained." A newborn infant, who has little movement on his own, is highly unlikely to suffer a tibia fracture without active abuse or neglect by a caregiver. Mother was most likely alerted to such a fracture by swelling or by Evan's reaction to being touched in the affected area. Yet, even with this fracture, Mother did not hesitate to leave Evan alone with Raul G. and vulnerable to his unrestrained temper. Again, Mother was well familiar with Raul G.'s temperament, as demonstrated by her having told Officer Burse that Raul G. "does not have a lot of patience" and "probably" did strike Evan out of frustration. Mother knew that Raul G. "would panic even when the baby throws up," yet she entrusted their newborn infant, who was fussy and had cried and vomited for days, to his care, with the possibility that, if frustrated or angered, Raul G. might leave the newborn infant alone or take out his frustration or anger on the infant.

Mother was on notice that her two older children were at risk of physical harm in Raul G.'s presence. She knew that someone had reported that Raul G. was a chronic drug user and had abused N.R. in the presence of Mother, D.R. and Evan. The caller had also stated that Raul G. habitually beat Mother, who had bruises visible to the caller. While DCFS determined that the report was "inconclusive," DCFS did not determine the report to be unfounded. Thus, this report indicated to Mother that any child left in the care of Raul G. would be subject to harm. Given the subsequent tragedy, it is likely that the report of Raul G.'s drug use and physical violence was accurate. And Mother tried to deflect responsibility for Evan's injuries away from Raul G. When CSW Robinson interviewed Mother on August 25, 2011, Mother told Robinson that Evan's fever was substantially higher than it actually had been and blamed his brain injury on the fever.

Mother, herself, was neglectful. Mother must have been aware of Evan's tibia fracture. It is highly likely that Mother observed swelling around the tibia break or Evan's reaction to pain when the area was touched. Yet she did not seek medical attention for the injury. Mother's explanation that Evan's X-ray taken at Queen of the

Valley Hospital did not disclose the tibia break appears to be disingenuous, as the X-ray was taken of Evan's chest, not his entire body.

After Evan was seen for his fever, Mother failed to follow the emergency room discharge instruction that Evan see a physician or be returned to the emergency room if his symptoms worsened. Evan's symptoms did worsen: he refused to eat, had a hard stomach, could not sleep and was crying and irritable. Mother has provided no explanation as to why she did not seek professional medical help for Evan when his condition deteriorated.

II. Removal of the children from the home

We have reviewed the record to conclude that substantial evidence demonstrates the existence of clear and convincing evidence to support the removal of all three children from Mother's custody. (*In re Henry V.* (2004) 119 Cal.App.4th 522, 529.)

Evan

Section 361, subdivision (c) provides, in pertinent part: "A dependent child may not be taken from the physical custody of his or her parents . . . with whom the child resides at the time the petition was initiated, unless the juvenile court finds clear and convincing evidence of any of the following circumstances . . . :

"(1) There is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home, and there are no reasonable means by which the minor's physical health can be protected without removing the minor from the minor's parent's or guardian's physical custody. The fact that a minor has been adjudicated a dependent child of the court pursuant to subdivision (e) of Section 300 shall constitute prima facie evidence that the minor cannot be safely left in the physical custody of the parent or guardian with whom the minor resided at the time of injury. The court shall consider, as a reasonable means to protect the minor, the option of removing an offending parent or guardian from the home."

Subdivision (e) of section 300 provides, in pertinent part, that a child may be adjudged a dependent child of the court if: "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 . . . ; or more than one act of physical abuse, each of which causes bleeding, deep bruising, significant external or internal swelling, bone fracture, or unconsciousness . . . ."

Evan's having been determined to have suffered brutal and severe injuries at the hands of Raul G. constitutes prima facie evidence that Evan cannot be left in Mother's care without risk of physical harm. (§ 361, subd. (c).) The juvenile court made the factual finding, based on clear and convincing evidence, that Mother reasonably should have known of Raul G.'s abuse of Evan. (Cf. *In re Kenneth M.* (2004) 123 Cal.App.4th 16, 21.) Substantial evidence in the record amply supports this finding. Dr. Inagawa concluded that infant Evan had a healing spiral tibia fracture consistent with abuse. Mother must have known that Evan, as a newborn infant, had little locomotion and could not even turn over his own body; she must have suspected that Raul G. twisted and broke Evan's tibia. She certainly knew of Raul G.'s low tolerance for frustration and his lack of patience, yet she left her cranky baby alone with the man who had most likely already hurt him.

There are no reasonable means by which Evan can be protected without removing him from Mother's physical custody. Evan is currently on life support. Mother has done nothing since August 2011 to obtain the training necessary to provide him the supportive care he requires in his vegetative state.

N.R. and D.R.

The juvenile court determined that clear and convincing evidence shows that there would be a substantial danger to the physical health, safety, protection, or physical well-being of the two older children if they were returned to Mother's home, and there are no reasonable means by which they can be protected without removing them from Mother's

physical custody. (§ 361, subd. (c)(1).) Substantial evidence in the record supports the juvenile court's findings.

Mother knew that Raul G. had been reported as having abused both N.R. and D.R. While DCFS did not take action on the report concerning D.R., it found the allegations of abuse as to N.R. to be "inconclusive," thus requiring Mother to take extra steps to ensure that Raul G. did not take any actions that might cross the line over to abuse. Mother continued to live with Raul G., despite his extensive criminal history, which was replete with acts of violence, and despite his low tolerance for frustration. Mother placed her two older children, as well as Evan, in harm's way by staying with Raul G. We recognize that Raul G., who is behind bars, no longer resides in Mother's home and does not, himself, constitute a current threat to the safety of the children. (Cf. *In re Henry V.*, *supra*, 119 Cal.App.4th at pp. 530–531.) Notwithstanding her vows to avoid anyone with a violent history, Mother faces a difficult challenge to overcome her partnering history. The record shows that Raul G. is not Mother's sole partner who has engaged in violence: Raul M., father of N.R. and D.R., committed acts of domestic violence against Mother. Having chosen two violent men as her companions, it is to be expected that, without professional intervention, Mother could repeat her attachment to a man with a history of violence and again place her children at serious risk of substantial physical harm. (Cf. *In re Andres G.* (1998) 64 Cal.App.4th 476, 480.)

III. Reunification services

The juvenile court abused its discretion in ordering no family reunification services to be provided to Mother and her two older children, N.R. and D.R. "There is a presumption in dependency cases that parents will receive reunification services. [Citation.] Section 361.5, subdivision (a) directs the juvenile court to order services *whenever* a child is removed from the custody of his or her parent *unless* the case is within the enumerated exceptions in section 361.5, subdivision (b). [Citation.]" (*Cheryl P. v. Superior Court* (2006) 139 Cal.App.4th 87, 95.)

"Family reunification services play a critical role in dependency proceedings. [Citation.] Unless a specific statutory exception applies, the juvenile court must provide

services designed to reunify the family within the statutory time period. [Citations.]" (*Tyrone W. v. Superior Court* (2007) 151 Cal.App.4th 839, 845.) "There is no general bypass provision; the court must find by clear and convincing evidence that one or more of the subparts described in section 361.5, subdivision (b) apply before it may deny reunification services to a parent. [Citations.]" (*Id.* at p. 846.)

The juvenile court has the discretion to refuse to provide family reunification services upon finding, by clear and convincing evidence, any one of the conditions set forth in that section. The juvenile court found true the following three sets of facts as set forth in section 361.5, subdivision (b):

"(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 300 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, as defined in this subdivision, and the court makes a factual finding that it would not benefit the child to pursue reunification services with the offending parent or guardian."

Substantial evidence does not support that any of these sets of factors exist.

Subdivision (b)(4)

Section 361.5, subdivision (b)(4) allows the juvenile court to exercise its discretion to deny family reunification services to a parent when clear and convincing evidence establishes "[t]hat the parent . . . of the child has caused the death of another child through abuse or neglect." The juvenile court found that Mother's child K. died in infancy in Mexico. But little evidence exists that Mother caused the death of that child. According to the official death certificate, the cause of K.'s death was anoxemia by bronchoaspiration, without any indication of non-accidental cause of the death. The consensus of the adults in Mother's family was that the child died of sudden infant death

syndrome. Such evidence does not constitute "clear and convincing" evidence or even "substantial" evidence that Mother caused K.'s death.

Subdivision (b)(5)

Section 361.5, subdivision (b)(5) allows the juvenile court to exercise its discretion to deny family reunification services to a parent when clear and convincing evidence establishes "[t]hat the child was brought within the jurisdiction of the court under subdivision (e) of Section 300 because of the conduct of that parent or guardian."

This subdivision applies to Mother because "a parent need not personally abuse his or her child in order to be denied reunification services under section 361.5, subdivision (b)(5)." (*In re Joshua H.* (1993) 13 Cal.App.4th 1718, 1721.) There must be clear and convincing evidence that the parent knew, or reasonably should have known, of the abuse for the juvenile court to deny reunification services. (*Id.* at p. 1730 [*Joshua H.*'s mother admitted she knew of the abuse].) While subdivision (b)(5) applies to Mother with respect to Evan, it does not apply to Mother with respect to N.R. and D.R., who were not directly abused. (*In re Kenneth M.*, *supra*, 123 Cal.App.4th at p. 22.) Thus, the juvenile court acted within its discretion in denying reunification services for Mother with Evan, but it abused its discretion in denying reunification services to Mother with N.R. and D.R.

Subdivision (b)(6)

Subdivision (b)(6) of section 361.5 allows the juvenile court to exercise its discretion to deny reunification services to a parent when "the child has been adjudicated a dependent pursuant to any subdivision of Section 300 as a result of . . . the infliction of severe physical harm to the child, a sibling, or a half sibling by a parent or guardian, as defined in this subdivision, and the court makes a factual finding that it would not benefit the child to pursue reunification services with the offending parent or guardian."

The finding that Mother should have known of the abuse does not prohibit the juvenile court from ordering reunification services to her. "[T]he statutory language in section 361.5, subdivision (b)(6) is clearly stated, and does not authorize the court to deny reunification services to a negligent parent, that is, a parent who did not know the

child was being physically abused or injured (although the parent should have reasonably known of the abuse or injury)." (*Tyrone W. v. Superior Court*, *supra*, 151 Cal.App.4th at p. 848.)

The evidence does not support a finding that it would "not benefit the child[ren] to pursue reunification services" with Mother. The older children had lived with Mother from the time of their births until the tragedy occurred on August 8. On her own initiative, Mother has been proactive in seeking out and regularly participating in individual psychotherapy and case management services. Family reunification services may assist Mother in providing her children with timely and appropriate professional medical care and in her plan to avoid future attachments to violent men.

We note that the two older children are doing well in their placement with Theresa G. We recognize that Mother has not asked Theresa G. about the schooling or medical concerns of the two older minors and they do not ask to call her. While these matters are of great concern, they do not support a factual finding that it would not benefit the children to pursue reunification services.

DISPOSITION

The petition is granted in part. The matter is remanded with directions: (1) to take the Welfare and Institutions Code section 366.26 hearing as to minors N.R. and D.R. off calendar; and (2) to provide family reunification services as to Mother and minors N.R. and D.R. for six months, after which the juvenile court shall determine whether to extend services or to terminate services and schedule a hearing pursuant to section 366.26.

This opinion is final forthwith. (Cal. Rules of Court, rule 8.490(b)(3).)

NOT TO BE PUBLISHED.

MALLANO, P. J.

We concur:

ROTHSCHILD, J.

CHANEY, J.