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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re ANTHONY D., a Person  
Coming Under the Juvenile  
Court Law.

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN  
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

MCKENZIE T.,

Defendant and Appellant.

B278786

(Los Angeles County  
Super. Ct. No. CK79986)

APPEAL from an order of the Superior Court of Los Angeles County, Julie Fox Bradshaw, Judge. Affirmed.

Frank H. Free, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, and Jeanette Cauble, Principal Deputy County Counsel, for Plaintiff and Respondent.

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## INTRODUCTION

Mother, McKenzie T., appeals from a disposition order denying her reunification services with respect to her 12-month-old son, Anthony D. The juvenile court made the order pursuant to subdivisions (b)(10) and (b)(11) of Welfare and Institutions Code<sup>1</sup> section 361.5, which provide reunification services need not be offered to a parent if the court has previously terminated reunification services or parental rights with respect to the child's sibling or half sibling and the parent "has not subsequently made a reasonable effort to treat the problems that led to removal of the sibling or half sibling." (§ 361.5, subds. (b)(10) & (b)(11).) Mother contends the evidence was insufficient to support the court's finding that she failed to make a reasonable effort to treat the drug abuse problem that led to termination of her parental rights over Anthony's half sibling. We disagree and affirm.

## FACTS AND PROCEDURAL BACKGROUND

Consistent with our standard of review, we state the facts in the light most favorable to the juvenile court's findings, drawing all reasonable inferences in favor of the court's order. (*Cheryl P. v. Superior Court* (2006) 139 Cal.App.4th 87, 96; *Jennifer S. v. Superior Court* (2017) 15 Cal.App.5th 1113, 1121-1122 (*Jennifer S.*))

The family consists of Mother, the dependent child, Anthony D. (born January 2015), and Father, Anthony S.<sup>2</sup>

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<sup>1</sup> Statutory references are to the Welfare and Institutions Code, unless otherwise indicated.

<sup>2</sup> Father is not a party to this appeal.

In April 2013, Mother gave birth to the child's half sibling, Sean H. In August of that year, a juvenile court sustained a dependency petition on behalf of Sean, finding Mother had a history of illicit drug use and that Mother's home was filthy and unsanitary. The court granted Mother reunification services, but she failed to reunify with Sean. The court terminated services in May 2014. In October 2014, the court terminated Mother's parental rights as to Sean.

On January 2, 2016, the Los Angeles Department of Children and Family Services (the Department) received a Probate Court request to investigate a petition for non-related legal guardianship of Anthony. The investigation indicated that Anthony had been residing with the prospective guardian, Starr M., since July 2015. Starr M. had known Mother for approximately five or six years at the time. She reported that she found Mother and Anthony living on the streets and offered to help Mother care for the child. They had agreed Starr M. would watch Anthony for only two days, but Mother never returned. Starr M. eventually learned that Mother had been incarcerated and was not released until October 2015. Father was also incarcerated at the time. Anthony remained in Starr M.'s care after Mother's release, and Mother had visited the child four or five times over the past three months. Starr M. reported that Mother was " 'strung out on meth' " and continued to abuse illicit substances.

The Department's investigation indicated that Starr M. had an extensive history with child protective services, which included the removal of her children, and a history of substance abuse. On February 10, 2016, the Probate Court denied Starr

M.'s petition for legal guardianship. The Department thereafter detained Anthony and placed him in foster care.

On February 16, 2016, the Department filed a dependency petition on behalf of Anthony, alleging Mother was a current abuser of methamphetamine and that she failed to make an appropriate plan for the child's care and supervision. The Department later amended the petition to allege Father also had a history of methamphetamine abuse. With the original petition, the Department notified Mother that it would seek an order denying family reunification services pursuant to section 361.5.

Following Anthony's birth, Mother had taken residence at St. Anne's, a maternity home servicing unwed Mothers with programs to address the special needs of at-risk young women, children and families. However, just three months after Anthony's birth, Mother was convicted of possession of a controlled substance for sale and, a month later, she was required to register as a controlled substance offender. By July 2015, Starr M. found Mother living on the streets, with Anthony, "strung out" on methamphetamine. Mother's family advocate at St. Anne's reported that Mother came to the facility infrequently to retrieve personal items, but she had not seen Mother there since December 2015.

On April 22, 2016, the Department reported that Mother was recently arrested and incarcerated on charges of credit card fraud. Before her incarceration, she had been homeless and living on the streets. Mother said she gave Starr M. temporary custody of Anthony because she "wasn't mentally stable" at the time and she was unaware that Starr M. had a history with child protective services. She admitted her past drug abuse, but denied she was a current user, claiming she had been "clean for

two and a half months.” Father, who also was incarcerated at the time, said he was aware of Mother’s past methamphetamine use, but did not know whether she continued to use the drug.

The Department recommended that Father receive family reunification services, but petitioned the court to deny Mother services pursuant to section 361.5, subdivisions (b)(10) and (b)(11). The Department stressed that Mother had made an inappropriate plan for Anthony’s care, apparently due to her methamphetamine use, and had a three-year history of substance abuse, which resulted in the termination of her parental rights with respect to Anthony’s half sibling, Sean. And, despite 11 months of court-ordered reunification services in Sean’s case, Mother continued to abuse drugs. The Department also noted that Mother had not sought to contact Anthony since his detention.

On June 7, 2016, the court held a combined jurisdiction and disposition hearing.<sup>3</sup> Mother disputed the jurisdictional allegations regarding her conduct, and offered the following seven documents, which the court admitted into evidence: (1) an October 2014 Certificate of Completion from the Transition-Age Youth Collaborative; (2) a March 4, 2015 letter from Casey Family Programs, indicating Mother had enrolled in supportive case management services aimed at former foster children; (3) a March 4, 2015 letter from St. Anne’s indicating Mother was participating in the Partnership for Family Program; (4) a March 5, 2015 letter from St. Anne’s indicating Mother was enrolled in the Workforce Development Program; (5) a March 5, 2015 letter

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<sup>3</sup> Father pled no contest to the jurisdictional allegation regarding his conduct.

from St. Anne's indicating Mother was a guest of St. Anne's Transitional Housing Program; (6) a May 2016 Certificate of Completion for a 1.5 hour class regarding dependency court procedures; and (7) a June 2, 2016 Notification of Disposition from the Los Angeles County Sheriff's Department noting Mother's request to start a drug treatment program within the detention facility where Mother was currently incarcerated, and indicating that Mother would be moved into the program if she was deemed eligible.

The juvenile court sustained the count regarding Mother's methamphetamine abuse and struck the other counts. As the basis for its finding, the court cited statements by Starr M. and staff members at St. Anne's, all of whom confirmed Mother had been living on the streets and using methamphetamine when caring for the infant.

Turning to disposition, the court invited evidence and argument regarding the Department's request to bypass reunification services pursuant to section 316.5, subdivisions (b)(10) and (b)(11). Mother's counsel referred back to the documents offered in opposition to the jurisdiction finding, arguing that evidence demonstrated Mother had made reasonable efforts to address the substance abuse issues that led to the termination of her parental rights with respect to Anthony's half sibling, Sean. Counsel also stressed that Mother had been sober for a few months, she had voluntarily participated in programs during her incarceration, and that, upon her release, she pledged to register for a residential drug treatment program that would allow her to reunify with Anthony.

The juvenile court denied Mother reunification services, finding she had not made reasonable efforts to address the drug abuse issues that led to the termination of her parental rights over Sean. The court acknowledged Mother made an attempt in early 2015 to address those issues while residing at St. Anne's, but found her efforts were short-lived and "things went terribly bad after that." Citing Mother's relapse into drug abuse, the time she spent living on the streets with Anthony, and her subsequent decision to give the infant to an inappropriate caregiver, the court found there was no likelihood that reunification efforts would succeed or that they would be in Anthony's best interest. However, the court emphasized that it was not setting a permanency planning hearing, as Father was entitled to reunification services, and if Mother "show[ed] a commitment" to ending her cycle of drug abuse for "more than a few months," she could petition for services.

The court granted both parents monitored visitation with Anthony. Mother's appeal followed.

### **DISCUSSION**

Mother contends there was insufficient evidence to support the juvenile court's finding that she failed to make reasonable efforts to address the drug abuse issues that led to termination of her parental rights over Anthony's half sibling, Sean. We review the order denying reunification services under subdivision (b) of section 361.5 for substantial evidence. (*Jennifer S., supra*, 15 Cal.App.5th at p. 1121.)

“As a general rule, when a child is removed from parental custody under the dependency laws, the juvenile court is required to provide reunification services to ‘the child and the child’s mother and statutorily presumed father . . . .’ (§ 361.5, subd. (a).) The purpose of reunification efforts is to ‘eliminate the conditions leading to loss of custody and facilitate reunification of parent and child. This furthers the goal of preservation of family, whenever possible.’ ” (*Jennifer S.*, *supra*, 15 Cal.App.5th at p. 1120.) However, once it is determined that the parent of a dependent child has failed to reunify with a sibling or half sibling, “the general rule favoring reunification is replaced by a legislative assumption that offering services would be an unwise use of governmental resources.” (*In re Baby Boy H.* (1998) 63 Cal.App.4th 470, 478 (*Baby Boy H.*)). “Specifically, section 361.5, subdivision (b), exempts from reunification services ‘ “those parents who are unlikely to benefit” ’ [citation] from such services or for whom reunification efforts are likely to be ‘fruitless.’ ” (*Jennifer S.*, at p. 1120; *In re Joshua M.* (1998) 66 Cal.App.4th 458, 474; *Baby Boy H.*, at p. 478.) If the juvenile court finds a provision of section 361.5, subdivision (b) applies, the court “shall not order reunification for [the] parent . . . unless the court finds, by clear and convincing evidence, that reunification is in the best interest of the child.” (§ 361.5, subd. (c)(2).)



The juvenile court denied reunification services to Mother under section 361.5, subdivision (b)(11).<sup>4</sup> Under the statute, the court is authorized to bypass reunification services if it finds by clear and convincing evidence that “the parental rights of a parent over any sibling or half sibling of the child had been permanently severed, and . . . , according to the findings of the court, this parent has not subsequently made a reasonable effort to treat the problems that led to removal of the sibling or half sibling of that child from the parent.” (§ 361.5, subd. (b)(11).) Like section 361.5, subdivision (b)(10) (see fn. 4, *ante*), this subdivision “recognizes the problem of recidivism by the parent despite reunification efforts.” (*Baby Boy H.*, *supra*, 63 Cal.App.4th at p. 478.)

Pointing to the court’s finding that Mother “didn’t succeed” in her efforts to battle her substance abuse problems, Mother contends the juvenile court applied the wrong legal standard by focusing on her failure to eradicate her drug abuse issue, as opposed to the reasonableness of her efforts to treat the problem. It is true that “the ‘reasonable effort[s]’ necessary to avoid . . . bypass are not synonymous with ‘“cure.”’” (*Jennifer S.*, *supra*, 15 Cal.App.5th at p. 1121; *Renee J. v. Superior Court* (2002)

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<sup>4</sup> The court also denied reunification services pursuant to section 361.5, subdivision (b)(10), which authorizes the court to bypass reunification services where it previously ordered termination of reunification services for any sibling or half sibling of the child and the parent subsequently failed to make reasonable efforts to treat the problems that led to the sibling’s removal. However, because only one valid ground is necessary to uphold the juvenile court’s bypass decision, we focus here on subdivision (b)(11) alone. (See *Jennifer S.*, *supra*, 15 Cal.App.5th at p. 1121.)

96 Cal.App.4th 1450, 1464.) However, “not every ‘effort by a parent, even if clearly genuine, to address the problems leading to removal will constitute a reasonable effort and as such render these provisions inapplicable.’” (*Jennifer S.*, at p. 1121.) On the contrary, “‘[i]t is certainly appropriate for the juvenile court to consider the *duration, extent and context* of the parent’s efforts, as well as any other factors relating to the *quality and quantity* of those efforts, when evaluating the effort for reasonableness. And while the degree of progress is not the *focus* of the inquiry, a parent’s progress, or lack of progress, both in the short and long term, may be considered to the extent it bears on the *reasonableness* of the effort made.’” (*Ibid*; *R.T. v. Superior Court* (2012) 202 Cal.App.4th 908, 914.)

To the extent the juvenile court considered Mother’s ultimate lack of progress, it appropriately did so as part of a broader inquiry into the duration, extent and context of Mother’s efforts to address her problems with drug abuse. The court acknowledged that Mother took initial steps to treat her methamphetamine addiction by securing residency at St. Anne’s shortly after Anthony’s birth. However, the court reasonably concluded those efforts were short-lived, as evidenced by Mother’s subsequent conviction on charges of drug possession just three months later. And, as the court appropriately observed, only a few months after that, Mother had left St. Anne’s and was living on the streets, with her infant child, using methamphetamine. The court’s comments were thus consistent with a proper focus on Mother’s recidivism, and do not suggest that the court applied an improper legal standard.

Unfortunately, Mother's earlier efforts to attain sobriety were overshadowed by her subsequent slide back into habitual drug use while Anthony was in her care. Although she presented evidence at the disposition hearing that she had recently requested to join a substance abuse program within her place of incarceration, the court reasonably concluded that given Mother's history of drug abuse, she needed to demonstrate a "much more committed effort" for "more than a few months" in order to justify receiving reunification services. (See *Jennifer S.*, *supra*, 15 Cal.App.5th at p. 1122 ["find[ing] no fault with the juvenile court's observation that 'it takes a long time . . . to make reasonable efforts sometimes when you've had such a long history'"]; *Baby Boy H.*, *supra*, 63 Cal.App.4th at p. 478 [where parent has "had at least one chance to reunify with a different child through the aid of governmental resources and fail[ed] to do so[,] . . . it is not unreasonable to assume reunification efforts [with current dependent child] will be unsuccessful"].) Substantial evidence supports the court's finding that Mother did not make a reasonable effort to treat the substance abuse problem that led to the termination of her parental rights as to Anthony's sibling.

Finally, because the juvenile court ordered six months of reunification services for Father, Mother contends it should have done the same for her, as "there was no danger that [doing so] would have delayed the setting of a permanent plan" for Anthony. The argument seems to suggest that reunification services were in Anthony's "best interest" (§ 361.5, subd. (c)(2)), given Mother's expressed intention to again address her substance abuse issues and the lack of any immediate action on

setting a permanent plan. The evidence did not compel a best interest finding.

In assessing what course will serve the child's best interest under section 361.5, subdivision (c), the juvenile court must consider a child's need for stability and continuity, the strength of the bond between parent and child, the parent's history, current efforts and fitness, and the gravity of the problem that led to the child's dependency. (*In re Ethan N.* (2004) 122 Cal.App.4th 55, 66-67.) Mother left Anthony with Starr M. when the child was only six months old, and he remained with Starr M. for another six months, during which Mother visited Anthony only four or five times. Thereafter, the Department placed Anthony in foster care, yet Mother did not contact the Department to arrange a visit or even inquire as to her infant's well-being after the child's detention. The record thus contains scant evidence of a bond between Mother and Anthony, and affords no basis from which to conclude that granting Mother reunification services would serve Anthony's need for stability and continuity. Further, although Mother had recently stated her intention to obtain substance abuse treatment while incarcerated, the record showed Mother's problems with drug abuse were long-standing, resulted in the termination of her parental rights over Sean, and posed an ongoing and serious risk of harm to Anthony. Except for the brief period when she was a resident at St. Anne's following Anthony's birth, Mother was either living on the streets with her infant or incarcerated due to her persistent troubles with methamphetamine abuse. The trial court plainly was not compelled to find, by clear and convincing evidence, that offering reunification services to Mother would be in Anthony's best interest. (See § 361.5, subd. (c)(2).)

**DISPOSITION**

The disposition order is affirmed.

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STONE, J.\*

We concur:

EDMON, P. J.

LAVIN, J.

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\* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.