

Filed 9/12/18 K.W. v. Superior Court CA2/5

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

K.W.,

Petitioner,

v.

THE SUPERIOR COURT OF
LOS ANGELES COUNTY,

Respondent;

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Real Party in Interest.

No. B290222

(Super. Ct. No. DK15577)

ORIGINAL PROCEEDING; petition for extraordinary writ.
Kim Nguyen, Judge. Petition denied.

Los Angeles Dependency Lawyers; Law Office of Rachel Ewing, Frank Ahn, Marcellous Glasper, for Petitioner.

No appearance for Respondent.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, Veronica Randazzo, Deputy County Counsel, for Real Party in Interest.

I.

INTRODUCTION

K.W. (mother) filed this petition for extraordinary relief after the juvenile court terminated reunification services despite her successful completion of her service plan. She contends the juvenile court's decision is not supported by substantial evidence. We affirm the juvenile court's order and deny the petition.

II.

FACTUAL AND PROCEDURAL BACKGROUND

Mother has five children: M.M. (born 2005), As.M (born 2007), J.M. (born 2010), An.M. (born 2011), and K.M. (born 2016). S.A. is the father of J.M. and K.M. Only K.M. is the subject of this writ proceeding.

A. Initiation of Dependency Proceedings

Between September 2007 and February 2016, mother had thirteen child welfare referrals in San Diego, Los Angeles, and Clark County, Nevada. On February 4, 2016, the Los Angeles County Department of Children and Family Services (DCFS)

received a referral regarding abuse by S.A. Mother and S.A. were arguing at a gas station when she got out of the passenger seat. S.A. then backed up the car while the door was still open, hitting mother with the car door. M.M., As.M, J.M., and An.M. were all in the car, and mother was pregnant with K.M. at the time. Mother fell onto the ground while S.A. continued to argue with her. After S.A. began fighting with bystanders, police arrived and took mother and the children to the hospital. Afterward, the family was taken to a domestic violence shelter.

The next day, DCFS received another referral from a case manager at the shelter who had concerns about the family. The case manager reported that mother was slow to respond and often appeared not to understand when spoken to. The family's belongings were extremely dirty, their room had a thick odor due to lack of cleanliness, and mother did not bathe the children or do laundry when asked to do so. When a social worker met with mother and the children at the shelter, mother denied the reports. Five minutes after the social worker left, the social worker received a call from the case manager saying mother was trying to leave the shelter with the children to avoid opening a DCFS case. DCFS determined mother was a flight risk and detained M.M., As.M., J.M., and An.M.

On February 16, 2016, the juvenile court ordered M.M., As.M., J.M., and An.M. detained. On March 15, 2016, a hospital social worker notified DCFS that mother had given birth to K.M. Three days later, a DCFS social worker met mother at the shelter where mother was staying. The social worker reported that mother appeared to have difficulty processing information. She responded slowly, often asked for questions to be repeated, and at times would gaze off as if she was having trouble concentrating.

K.M. appeared healthy, however, and mother was affectionate and attentive to the child.

On April 2, 2016, the social worker monitored a visit between mother and her children. Mother arrived an hour and a half late and seemed confused on the telephone when she called the social worker for assistance in getting to the meeting. When she arrived, she was going to hand K.M. over to her siblings to be held. The social worker intervened and showed the children how to hold a newborn baby. Mother did not check on K.M. to see if she needed to be fed or her diaper changed during the visit. However, K.M. appeared healthy with no visible marks or bruises. Mother smiled and seemed happy to see her children. As the social worker left with the four older children, mother appeared sad and began to cry as she waved to them.

On April 25, 2016, two social workers and a police officer arrived at the shelter where mother was staying to serve a child removal order. The shelter's executive director, Theresa Murphy, said she did not agree with the decision to remove K.M. She said mother had been a good mother to K.M., and that mother had been at the shelter for the last month and a half and there were no incidents of abuse or neglect. Murphy also said mother had been attending parenting education and domestic violence classes weekly.

Mother began feeding and kissing K.M., and holding her close while crying. Mother said, "I don't understand why you are taking my baby. The baby is a resident here, and she is safe. I went to the last court date, and they didn't tell me about my baby being taken away. You already took my other children." As the social worker drove away with K.M. in the back seat, mother stood in the parking lot, crying.

B. Dependency Petition and Detention of K.M.

Three days later, on April 28, 2016, DCFS filed a Welfare and Institutions Code¹ section 300 petition, alleging K.M. was at risk because mother and S.A. had a history of engaging in violent altercations in the presence of K.M.'s siblings. S.A. also physically abused K.M.'s siblings by striking them with a back scratcher.

On the same day, the juvenile court held a detention hearing and released K.M. to mother, on the condition mother remain at her current shelter. On May 11, 2016, the shelter informed DCFS that mother and K.M. had not returned to the shelter after attending parenting class the day before. In fact, mother had called the shelter three different times to ask how she could retrieve her belongings and her last check from the shelter. A social worker re-detained K.M. while mother was visiting her other children on May 11, 2016. Mother refused to tell the social worker where she was living or provide her contact information.

Murphy believed mother may have been persuaded to leave by two other residents who learned that mother was receiving checks from the shelter. Murphy also reported that mother had been taking bus routes with different men. Murphy did not know who the men were, but she had concerns one of them was S.A.

¹ Unless otherwise stated, further section references are to the Welfare and Institutions Code.

C. Jurisdiction/Disposition Report and Proceedings

On May 16, 2016, DCFS filed a disposition report. Mother, S.A., and the children were interviewed about the allegations in the section 300 petition.

Mother said S.A. has hit her, but did not leave any marks and her children were not present. The officers who responded to the gas station incident said she appeared afraid of S.A. She told the officers she was afraid S.A. would take the children if she reported him to the police.

S.A. denied hitting mother with the car door and said she tripped over a bag. S.A. accused mother of “whooping” her kids with a piano belt and back scratcher, and claimed mother coached the children to say S.A. hit them.

J.M., An.M, As.M., and M.M. all reported they have seen S.A. hit mother. J.M. said it makes him upset when he sees S.A. hit mother. An.M. said it makes him angry when he sees S.A. hit mother. As.M. said she is scared of S.A. when he hits mother, and that he hits her with a closed fist. M.M. said she feels very sad when S.A. hits mother.

DCFS recommended mother participate in a parent education program, domestic violence for victims program, and a domestic violence counseling program. On June 7, 2016, mother completed a 10-week Domestic Violence Personal Empowerment Program. She completed a parenting education course on June 21, 2016. She was also enrolled in individual therapy and a domestic violence support group for victims. The support group facilitator described mother as “consistent and determined.” In a last minute information filed on August 30, 2016, DCFS reported

mother's visits with the children have been consistent and without incident.

At the August 30, 2016 jurisdiction hearing, the juvenile court dismissed the allegations pursuant to section 300, subdivisions (a) and (b) for physical abuse and failure to protect as to K.M. It sustained the section 300, subdivision (j) allegations, which were premised on abuse of K.M.'s siblings. The juvenile court also struck mother from the j-2 through j-5 counts, which alleged mother's failure to protect K.M.'s siblings from S.A.'s physical abuse. The disposition hearing was continued to September 28, 2016, to allow DCFS to assess mother's progress and her ability to either resume custody or have liberalized visits.

On September 26, 2016, DCFS reported that mother was in compliance with court orders and that monitored visits have been going well. Mother was present at all visits, brought toys and snacks for the children, and engaged with them. DCFS sought permission to liberalize mother's visits from monitored to unmonitored. It opposed returning the children to mother's custody, however, because mother continued to lack stable housing and had recently been denied housing for the family at Union Rescue Mission. DCFS also requested mother complete a Regional Center Assessment because she exhibited processing delays and had acknowledged having an Individualized Education Plan (IEP) as a child.

At the September 28, 2016 disposition hearing, the juvenile court declared the children dependents and removed them from mother's custody. It ordered monitored visitation for mother and gave DCFS discretion to liberalize the visits. It ordered mother

to participate in a domestic violence support group for victims, a parenting education course, and individual counseling.

D. Non-Appearance Progress Hearing

On January 11, 2017, DCFS reported that mother continued to do well in her visits with the children. The caregiver to An.M. and J.M. reported that mother sometimes had a male friend who waited in another section of the park. When asked who he was, mother said he was “just somebody I know from the church services.” During mother’s twice-a-week visits with K.M., she played music and played with the child the entire visit.

Mother began individual therapy at the JWHC Institute on October 5, 2016. Her therapist, Estela Sanchez, reported she was making progress although she remained a little guarded during the sessions. Mother was living at the Los Angeles Union Mission and enrolled in domestic violence services and a parenting education group course.

The caregivers of K.M.’s siblings reported various concerns to DCFS. Among other things, the caregivers believed mother was in denial about her role and the reason why her children are under DCFS jurisdiction. Caregivers also believed mother may not understand the value in her children sleeping in beds at night, having three meals a day, wearing clean clothes and bathing every day, and attending school regularly. Finally, the caregivers were concerned “mother does not see the children as being vulnerable and unsafe in an environment with various strange men in their lives where the men do not consider the physical or emotional safety of the children.”

E. Six-Month Status Review Report and Hearing

In advance of the March 29, 2017 six-month status review hearing, DCFS filed a section 366.21, subdivision (e) report. Mother's visits with the children remained consistent. As.M. and M.M.'s caregiver reported that mother interacts well with the children and M.M. always has a smile on her face during the visits.

During this review period, mother disclosed that An.M. and J.M. were raped by an ex-boyfriend of hers, J.J., when the boys were three or four years old. As.M. told the social worker "that mother 'met the man that did those nasty thing[s] to my brother [An.M.] in a liquor store and then after two or three weeks he was living with us in our apartment.'"

Mother spoke highly of her domestic violence support group and enjoyed participating and bonding with other women in the group. She looked forward to talking to Sanchez about whatever was troubling her. Mother reported she did not want to attend counseling initially but now she sees the benefits for herself and her children.

However, by the March 29, 2017 review hearing, Sanchez was reporting that mother had repeatedly showed up late or missed her appointments. Sanchez felt mother would benefit from a psychological evaluation because mother seemed not to comprehend the severity of the issues in the case. Sanchez's assessment was that mother did not understand her role or responsibility for DCFS' intervention, nor did she understand she should not rely on friends to take care of her children. Mother made reunification sound really easy, saying all she had to do was "get a job."

DCFS had liberalized mother's visits with the two oldest children, M.M. and As.M. on March 10, 2017, and the unmonitored visits were going well. However, when DCFS asked Sanchez if mother was ready for unmonitored visits with the three younger children, Sanchez said she could not answer because mother had not consistently attended counseling since December and had shown a lack of responsibility for her role in the case.

On March 29, 2017, the juvenile court found mother in partial compliance with her case plan and continued family reunification services. It ordered mother to undergo a psychological examination pursuant to Evidence Code section 730 to address "any psychological disorders and/or diagnosis which affects mother's ability to comprehend and parent."

F. Progress Hearing and Psychological Exam Report

On June 28, 2017, DCFS submitted a report of mother's psychological examination to the court. The evaluator, Sara Hough, Psy.D., noted that mother "minimized the issues leading to the current situation and also did not appear to have significant insight into her behavior and general concerns that led to the removal of her children." She processed information slowly, and Hough had concerns about mother's comprehension skills. Hough opined that mother appeared to suffer from cognitive and psychological distress. She recommended that visits with all children remain monitored, that mother receive psychiatric evaluation for medication and housing assistance, and that she complete parenting classes and individual therapy.

Mother continued to have unmonitored visits with As.M. and M.M., who looked forward to spending time with mother. She had monitored visits with the three younger children. K.M.'s caregiver reported that mother continued to read and play music for K.M. during the visits. However, the caregiver told DCFS that K.M. "shuts down" when she returns from her visits with mother and does not want to look at or babble with a caregiver. It would take an hour of playing before K.M. would even look at the caregiver.

G. Twelve-Month Status Review Report and Hearing

In advance of the July 17, 2017 twelve-month status review hearing pursuant to section 366.21, subdivision (f), DCFS reported that mother continued to live at Los Angeles Rescue Mission. DCFS also interviewed mother and the children. Mother felt she needed to work so she could get housing "and get [her] kids back." J.M. thought mother had three boyfriends and said he liked the third one the most. He told his caregiver that he saw a picture of mother kissing a man on her telephone. M.M. wanted to go home to mother but she was afraid mother would have another baby. As.M. wanted to be with mother, while An.M. wanted to stay with caregiver.

DCFS concluded the children were at very high risk of future abuse and neglect if they were returned to mother's care at that time. The social worker felt mother was "careless" in her male relationships and did not realize the danger in allowing her male friends to have access to her children. Mother continued to live at Los Angeles Rescue Mission. At the social worker's urging, she had applied for general relief (GR) twice in the last

year. However, mother had not completed the job searches needed to receive GR. When asked why she had not obtained GR yet, she said, “I’ve been doing fine without it.” After much explanation and urging, mother finally understood that most housing referrals require recipients to have a steady income of some type, such as GR or a part-time job. DCFS acknowledged mother had completed her court-ordered services but felt she needed additional time to address the case issues that brought her into the dependency system. It recommended the court continue reunification services to allow mother time to address her role in her children’s detention.

The 12-month status review hearing was held on July 17, 2017. Mother requested a contested hearing. The juvenile court set the matter for trial on August 16, 2017, as a combined contested 12-month and 18-month status review hearing.

H. Status Report and Combined 12-Month and 18-Month Hearing

DCFS filed an updated status review report in advance of the August 16, 2017 hearing. It reported it had received a referral on June 28, 2017, regarding J.M. and An.M. performing sex acts on one another. When interviewed, the children said they saw mother and J.M.’s father doing those things when they were living in the car.

In mid-July 2017, mother stopped going to counseling. She moved to a different shelter, which meant counseling was no longer across the street. She told the social worker she refuses to return to counseling and had asked her therapist to write a letter saying she no longer needed therapy. Her therapist refused to

write the letter. According to mother's therapist, mother seemed to understand how abusive partners might endanger her children. However, mother frequently minimized the circumstances that led to the children's removal and felt she had been victimized by DCFS for reporting domestic violence. Mother was also reluctant to discuss her depression or her children's abuse, and instead focused on her concerns about the foster parents and how they communicated with her and parented the children.

Mother had one conjoint counseling session with J.M. and An.M, but the children's therapist discontinued the conjoint sessions because they were traumatic for An.M. Mother continued to have monitored visits with J.M. and An.M. At one visit, mother brought a female "friend from work" to the visit. When An.M. made a negative remark to mother, the friend immediately chastised An.M. The social worker spoke to mother, and mother agreed not to bring friends to her visits.

Mother's monitored visits with K.M. also continued. The monitor reported that mother was uncooperative and harassed K.M.'s caregiver when K.M. was picked up. In fact, the caregiver had submitted her third seven-day notice to remove K.M. from her care because she felt intimidated by mother. The caregiver was frustrated she had to see mother at the end of K.M.'s visits because mother insisted on waiting at the monitoring agency's lobby, even when she had been asked not to wait there. The agency informed DCFS that it would not allow mother to visit K.M. at the agency anymore because she refused to follow the rules. K.M.'s caregiver also refused to transport K.M. to visits.

Mother told the social worker she has learned she cannot trust strangers around her children. Her plan was to keep her friends away from her children.

DCFS recommended the juvenile court terminate reunification services and set a hearing pursuant to section 366.26 to select a permanent plan for the children. DCFS expressed concern that mother was no longer participating in individual therapy and that without therapy, she will be unable to adequately protect her children. DCFS was also concerned about mother's conflicts with other residents at the Union Rescue Mission and with K.M.'s caregiver.

In a last minute information update filed August 16, 2017, DCFS reported that J.M. and An.M.'s therapist believed unmonitored visits with mother would be dangerous. Mother triggered An.M.'s destructive behavior. She also talked about sex and semen in front of the boys. The therapist felt mother did not know her role and responsibility for the sexual abuse that the boys experienced from her ex-boyfriend. J.M. also told his therapist that mother had sex in front of him and that he saw S.A. naked outside of the car. When mother realized he was awake, she told him to go back to sleep.

At the combined contested 12-month and 18-month status review hearing held on August 16, 2017, the juvenile court exercised its discretion to extend family reunification services yet again. In doing so, the juvenile court recognized the discretion was "very rare[ly]" exercised but felt it appropriate "given the circumstances of this case." It ordered a psychiatric evaluation for mother.

I. Status Report and Continued 18-Month Review Hearing

In a status review report filed February 13, 2018, DCFS reported mother was now living at the Los Angeles Restoration Church (LARC). LARC provided a letter stating the home was a “no-charge” restoration home and that mother came into the home on October 3, 2017, “with a great desire to change her life and become a law-abiding member of the community and a better mother.” Since mother joined the home, she has become “more positive during her classes and tries to participate in everything that is happening around her.”

Mother also re-entered individual therapy in August 2017. Following her psychiatric assessment, she was diagnosed with recurrent and moderate major depressive disorder. Mother resumed conjoint therapy with An.M. and J.M., but the boys’ therapist reported that mother has trouble grasping the seriousness of her role in her sons’ traumatic experiences. When J.M. and An.M. shared their trauma with mother, mother became uncomfortable and tried to redirect the conversation, thus negating their feelings. Mother did not take responsibility for failing to protect the children from abusive men in the home and each other. She was apologetic about the past but characterized the abuse as something that happened to them as a family and felt it was unfair for her to have to continue to apologize.

Mother continued visitation with all of the children. M.M. and As.M.’s caregiver reported the children gave their allowances to mother because mother asked them for money during visits. A social worker monitored three of mother’s visits with K.M. and

reported that mother “interacts and engages beautifully with [K.M.]. They play, they sing, they talk, they draw and communicate well in a loving manner.” K.M. did not want to leave mother and cried at the end of the visits. However, following a visit monitored by K.M.’s caregiver, the caregiver reported mother was on the telephone with a male for much of the visit. K.M. was being assessed for developmental delays. She began walking at 19 months of age. She repeated words and said a few words, such as “bye” and “hi.”

Again, DCFS recommended termination of reunification services. It was concerned mother would be unable to protect An.M. from being sexually assaulted by J.M. It noted that mother’s last therapy session was in September 2017, but acknowledged mother had completed all other court-ordered services. The social worker reported that mother was able to anticipate the children’s needs when shown, but expressed concerns that mother would not be able to do so if left on her own.

On February 14, 2018, mother requested a contested hearing on whether the children should be returned to her care. In a last minute information filed March 15, 2018, DCFS reported mother had resumed therapy. Sanchez had left the JWHC Institute so mother began seeing John Matsumoto. Matsumoto described her as “stable” and said she would move from weekly to biweekly sessions. DCFS recommended mother be given unmonitored visits with K.M., and overnight visits with M.M. and As.M. J.M. and An.M.’s therapist believed the two boys were not ready for unmonitored or overnight visits with mother due to their past trauma.

J. Further Continued 18-Month Review Hearing

On March 22, 2018, the juvenile court again continued the 18-month review hearing. It ordered referrals for mother for sexual abuse counseling and for a new individual counselor. It also ordered mother to have four hours a week of unmonitored visits with K.M.

K. Last Minute Information and Trial

In a last minute information filed May 14, 2018, DCFS reported mother had reengaged in individual therapy with a new therapist, Lani Walker. J.M. and An.M. told their therapist they did not want to have conjoint therapy with mother. The therapist believed mother did not respond well when the boys expressed their fears about not being safe in her care. The overnight visits with M.M. and As.M. went well, and the social worker reported that mother was using new parenting skills and appeared more aware of the children's actions and her role in ensuring their safety. For example, As.M. was pushing K.M. on the toddler bicycle too fast and mother immediately stopped her and showed her how to push K.M. more gently. The social worker observed that mother "lovingly handles [M.M.] and [As.M.]'s difficult attitudes possibly associated with pre-teen issues with patience and gentle encouragement." Unmonitored visits with K.M. were also going well.

The trial was held on May 17, 2018. Counsel for DCFS called mother to testify. When counsel asked mother why the family was in court, mother said it was because she was homeless

and going through domestic violence. Counsel reminded mother that it was also because of physical abuse by S.A.

Mother testified regarding the domestic violence and parenting programs she completed and what she learned from them. In the domestic violence programs, mother learned that “red flags” included having a temper and jealousy. Before taking the domestic violence classes, she thought those were signs that a male companion was being protective.

When asked about safety, mother stated that she could not trust everybody and that she had to have a secure and stable place where the children will feel safe and loved. As to parenting, mother talked about different disciplinary methods. She learned that she should not grab the children or yell at them. Instead, she should tell them to sit and think about what they had done and how they could have hurt someone. If that failed, then she could take away their phone or tablet or a toy they liked. She said she had been able to put those techniques into practice during her visits with her children, and described specific instances. When asked how she would discipline two-year-old K.M., she said K.M. was too young to understand a time out, so she would just tell her, “no, that’s not safe,” or “no, that’s not yours.”

Mother confirmed she was staying at LARC. One of the shelter’s rules is that a representative of LARC must accompany her at all times. She explained she had a room at LARC with bunk beds that M.M. and As.M. had been using during their overnight visits. She intended to set up a crib for K.M. Mother testified she could stay at LARC as long as she needs. There is no time limit and there are residents who remain long after their children are grown.

The juvenile court directly questioned mother. The court asked mother how she would protect her children. Mother said she would not be around certain people or bring the children around a lot of people or strangers. When the court asked about mother's understanding of her role in the family being in court, mother said, "I wasn't stable with the home and I dealt with his [S.A.'s] madness." She said she had nowhere else to go and no one to help her. The court then asked mother what she would have done differently. The following exchange occurred:

"[Mother]: I would have stayed where he was and stuck it out.

"The Court: Stayed with him?

"[Mother]: No. I tried to do that. I tried to leave. I didn't have anywhere to go. He would take my things, my money, ID, and stuff. And, you know, I just -- I wouldn't have stuck it out with him. I would have stuck it out for I --"

The court then moved on to questions concerning the sexual abuse of J.M. and An.M. and what mother had learned. Mother stated that she has to be aware of their surroundings and talk to them about "[t]he rights and the wrongs of people touching them, and places on their bodies and people doing stuff. I have to talk to them about it, not let anyone touch their private parts, their areas, no one should touch that." The court asked mother if she thought she played a role in the children being sexually abused. Mother said, "That I didn't know, and I should have been more aware of it. And I trusted people." Mother said she should have questioned them and she should not have been trusting like she was.

Following mother's testimony, her counsel argued for the return of all five children. Counsel for DCFS contended that

reunification services should be terminated for all five children, although she conceded M.M. and As.M. may be differently situated. Counsel for the three girls believed M.M. and As.M. should be returned to mother's care, but argued that services should be terminated for K.M. Counsel for the two boys asked the court to terminate reunification services as to J.M. and An.M.

L. Juvenile Court Ruling

The juvenile court acknowledged mother was compliant with her case plan and that she continued to participate in individual therapy. The juvenile court then explained that compliance with the case plan is not the deciding factor of whether the children can be returned home. The juvenile court pointed out that during the pendency of the case sexual abuse disclosures were made by J.M. and An.M., and those disclosures involved the children seeing mother engaged in sexual activity, mother inappropriately discussing sex, a former boyfriend of mother sexually assaulted the children, and J.M. reported that he viewed pornography while in mother's care. The juvenile court observed that mother did seem to have some insight into domestic violence and the warning signs and also that mother was able to articulate appropriate parenting techniques.

The juvenile court expressed concerns about mother's ability to protect the younger children. When mother was questioned about what she would have done differently in the relationship with S.A., mother said she would have stayed and stuck it out. But when the juvenile court attempted to clarify, mother said she would not have stayed, but she still would have stuck it out. The juvenile court stated these answers did not

show insight into protective measures that mother could have taken such as leaving the home, going into a shelter, or seeking a temporary restraining order.

Regarding the sexual abuse, the juvenile court cited to mother's testimony that the only thing mother learned was to talk to the kids about how other people should not touch their private parts. The juvenile court found that mother took minimal responsibility for what transpired and that she continued to minimize her role in the abuse that took place. The juvenile court pointed out that J.M. was five years old and An.M. was four years old at the time of the initial detention, so all of the abuse occurred when they were very young. The juvenile court found "that mother's lack of insight into her role as a protective force for the children and her ongoing minimization about her own role exposes the younger children to continued harm and it places [J.M., An.M., and K.M.] at risk of serious physical harm."

The juvenile court noted that at the time of the hearing, K.M. was only two years old, the age that J.M. and An.M. were when they were abused. Because K.M. was not verbal and not able to defend herself, the juvenile court found DCFS had met its burden to show risk of serious physical harm. The juvenile court distinguished M.M. and As.M. because they were beyond the age when the sexual abuse occurred to J.M. and An.M., they were able to advocate for themselves, and they were very articulate.

The juvenile court ordered M.M. and As.M. to be returned to mother on the condition she reside at LARC and that mother continue to undergo individual counseling. The juvenile court maintained J.M., An.M., and K.M. in out-of-home care and terminated mother's family reunification services. The juvenile court set a hearing pursuant to section 366.26 to select a

permanent plan for K.M. and continued mother's unmonitored visits. Mother filed a timely notice of intent to file a writ petition. We issued an order to show cause and now deny the petition.

III. DISCUSSION

A. Standard of Review

Section 366.22, provides that within 18 months after a dependent child was originally removed from the physical custody of his parent, a permanency review hearing must occur to review the child's status. At the hearing, "[t]he court shall order the return of the child to the physical custody of his or her parent . . . unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent . . . would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child." (§ 366.22, subd. (a)(1).)

We review the juvenile court's detriment finding for substantial evidence. (*Angela S. v. Superior Court* (1995) 36 Cal.App.4th 758, 763.) This means, among other things, that we must uphold the decision of the juvenile court even if substantial evidence might also support a different conclusion. (*In re Charlotte V.* (2016) 6 Cal.App.5th 51, 57 [under substantial evidence analysis "[m]ere support for a contrary conclusion is not enough to defeat the finding"].)

B. The Juvenile Court’s Detriment Finding

At the 18-month review hearing, a detained child must be returned to his or her parents unless DCFS shows it would be detrimental to do so. (*Blanca P. v. Superior Court* (1996) 45 Cal.App.4th 1738, 1748 (*Blanca P.*.)

As courts before us have noted, “the easy cases are the ones where there is a clear failure by the parent to comply with material aspects of [his or her] service plan.” (*Blanca P.*, *supra*, 45 Cal.App.4th at p. 1748.) “The harder cases are, like the one before us, where the parent *has* complied with the service plan, but for some reason has not convinced a psychologist or social worker that it would be safe to return the child to the parent. The problem is not, as it were, quantitative (that is, showing up for counseling or therapy or parenting classes, or what have you) but qualitative (that is, whether the counseling, therapy or parenting classes are doing any good). These are sensitive cases, fraught with emotional overtones, because they invariably deal with an evaluation of the *personality, character and attitudes* of the parent.” (*Ibid.*)

As the juvenile court acknowledged, mother has complied with all aspects of her case plan. She completed a domestic violence for victims program on June 7, 2016, and a parenting education course on June 21, 2016. She enrolled in a second domestic violence course on June 15, 2016, and completed it on June 23, 2017. She had enrolled in individual therapy by August 30, 2016. Although there were breaks in her participation in counseling, mother was again enrolled and participating in individual counseling at the time of trial. She maintained a consistent visitation schedule with the children during the two-

year period after the children's detention. Because the children were placed with three different caregivers, this involved travel to three different visitation sites each week, plus monthly sibling visits with all of the children together.

Moreover, mother made demonstrable strides in her parenting skills. In the final last minute information filed with the court, the social worker praised mother's new parenting skills and observed that she "lovingly handle[d]" the older children's difficult attitudes with patience and gentle encouragement. Mother's visits with M.M., As.M., and K.M. were gradually liberalized to overnight visits with the older girls and unmonitored visits with K.M. Even though K.M. had been out of mother's custody since K.M. was two months old, mother had developed a parental bond with K.M. In a status review report filed on February 4, 2018, a social worker who monitored three of mother's visits with K.M. reported that mother "interacts and engages beautifully with [K.M.]. They play, they sing, they talk, they draw and communicate well in a loving manner." K.M. did not want to leave mother and cried at the end of the visits.

Nonetheless, while full compliance with a reunification plan by a parent is an important consideration, it is not the only concern of a juvenile court at a section 366.22 hearing. (*Constance K. v. Superior Court* (1998) 61 Cal.App.4th 689, 704 (*Constance K.*)). Among other things, the court may also consider "whether changing custody will be detrimental because severing a positive loving relationship with the foster family will cause serious, long-term emotional harm," "properly supported psychological evaluations which indicate return to a parent would be detrimental to a minor," "limited awareness by a parent of the emotional and physical needs of a child," "failure of a minor to

have lived with the natural parent for long periods of time,” “and the manner in which the parent has conducted himself or herself in relation to a minor in the past.” (*Id.* at pp. 704–705, citations omitted.)

For example, the court in *In re Dustin R.* (1997) 54 Cal.App.4th 1131 (*Dustin R.*) affirmed the termination of reunification services even though the mother had substantially complied with her case plan. There was evidence the parents were “oblivious” to their children’s emotionally disturbed behavior, which was likely caused by their history of physical abuse. (*Id.* pp. 1135–1136.) After observing the parents interact with their children, a therapist concluded the parents had limited awareness of the children’s complicated needs and that the mother remained in denial about her husband’s inappropriate interactions with the children. (*Id.* at p. 1136.) Based on this evidence, the juvenile court concluded the mother had not alleviated the conditions that required the children’s detention. (*Id.* at p. 1142.) The appellate court affirmed, noting that the decision to return a child to parental custody is not determined solely by whether the parents have completed the case plan, which is only “an indicium of progress toward family preservation.” (*Id.* at pp. 1139–1140.) The court also had to consider the parents’ progress and capacity to meet the plan’s objectives. (*Id.* at p. 1143.)

Here, there was substantial evidence mother had not developed the awareness, insight, and skills to adequately protect her children from abuse, despite her completion of the case plan. There were several indicators that mother seemed not to fully appreciate her role in the events leading to her children’s abuse and detention by DCFS. After initial conjoint therapy sessions

with J.M. and An.M. were cancelled because they were traumatizing to An.M., the boys' therapist reported that mother did not know her role and responsibility for the sexual abuse that J.M. and An.M. experienced from her ex-boyfriend.

In a report filed on February 13, 2018, DCFS noted that conjoint therapy sessions with the boys had resumed, but the boys' therapist continued to report that mother had trouble grasping the seriousness of her role in her sons' traumatic experiences. When J.M. and An.M. shared their trauma with mother, mother became uncomfortable and tried to redirect the conversation. There were reports mother continued to talk about sex and semen in front of J.M. and An.M. By May 17, 2018, the boys were saying they did not want to have conjoint therapy with mother. The boys' therapist reported, "In my observations with mom, she does not respond well when the boys express their fears that they would not be safe in her care." The therapist further noted that while mother had "apologized," she had "not convinced the boys that she understands the role she played their repeated sexual assault and what it would mean to protect them in the future."

At trial, mother was able to articulate specific examples of how to discipline her children and why that discipline must differ depending on the age of the child. By contrast, she remained vague when asked how she would protect them from abuse, saying only that she should talk to them about not letting anyone touch their private parts and not bring them around strangers. When asked whether she thought she played any role in the children's sexual abuse, she said she should have been more aware of it and she trusted people. As the juvenile court noted, mother took no responsibility for allowing J.M. to view

pornographic material or for engaging in sexual acts in front of the boys. Nor did she express any appreciation or understanding of how children of different ages might require from her different levels or types of protection.

In rendering its decision, the juvenile court explained that “the court has serious concerns about mother’s ability to protect her younger children from danger,” and found mother did not show “sufficient insight into the dangers of domestic violence or protective measures.” In support of this finding, the juvenile court cited, as one consideration, statements made by mother in response to the court’s question about what she would have done differently when S.A. became physically abusive. Mother said, “I would have stayed where he was and stuck it out.” The court asked, “Stayed with him?” Mother replied, “No. I tried to do that. I tried to leave. I didn’t have anywhere to go. He would take my things, my money, ID, and stuff. And, you know, I just -- I wouldn’t have stuck it out with him. I would have stuck it out for I --”

Mother contends on appeal that the juvenile court’s finding regarding her lack of insight was based solely on a misinterpretation or misunderstanding of this testimony. Although the meaning of mother’s equivocal testimony is unclear from the written transcript, as the trier of fact, the juvenile court is in the best position to assess the import of witness testimony and resolve the meaning of any inconsistencies. The juvenile court’s ability to assess a witness face-to-face gives it additional information that cannot be gleaned from a record on appeal, such as the look on mother’s face, the tone of her voice, or how quickly or slowly she answered questions. All of these impressions go into a decision about the mother’s insights and ability to protect

the child. (See *In re Ana C.* (2012) 204 Cal.App.4th 1317, 1329 [“It was the dependency court’s face-to-face role in the courtroom to assess [the witness’s] testimony in light of the nature and tenor of her testimony, her demeanor, and the impeaching factors. We see nothing in the record to suggest that the dependency court failed to perform that task. That the dependency court reasonably could have assessed her credibility less favorably or that our court could reasonably make a different assessment of credibility is not sufficient grounds for reversal”]; *In re Casey D.* (1999) 70 Cal.App.4th 38, 52 [“It is the trial court’s role to assess the credibility of the various witnesses, to weigh the evidence to resolve the conflicts in the evidence”].)

Here, the court accurately noted the inconsistency in mother’s statements and explained its reasons for finding her testimony displayed a lack of insight into the dangers of domestic violence. Specifically, the court noted that mother did not mention other protective measures she might take in response to domestic violence, including leaving the home with her children, going to a shelter, or obtaining a restraining order. The court also noted that mother stated the domestic violence took her by surprise, even though the children’s statements showed there had already been ongoing violence between mother and S.A.

In totality, we believe the evidence substantially supports the trial court’s conclusion that mother had not developed the awareness and skills to protect her three younger children, and in particular, K.M. (See *Dustin R.*, *supra*, 54 Cal.App.4th at pp. 1142–1143 [termination of reunification services justified where parents showed limited awareness of children’s complicated needs, as juvenile court must consider not only parents’ completion of case plan but also their capacity to meet the case

plan's objectives].) Because K.M. was only two-years-old at the time of the 18-month review hearing and nonverbal for the most part, she was entirely dependent on mother to protect her. We agree with the juvenile court that these factors render her differently situated from her pre-teen sisters, M.M. and As.M.

Mother relies on *In re Heather P.* (1988) 203 Cal.App.3d 1214 (*Heather P.*), which reversed an order terminating reunification services. In *Heather P.*, the only evidence presented by the department were reports by the social worker. (*Id.* at p. 1227.) In the most recent report, dated August 27, 1987, the social worker noted that mother had met all of the elements of her service plan. (*Ibid.*) Nonetheless, she could not recommend parental custody because mother had not received a positive evaluation from her therapist indicating the child would be at low risk of neglect or endangerment if placed in mother's case. (*Ibid.*) The appellate court found the social worker's comments "outdated," as she merely repeated verbatim the contents of a report written three months earlier. (*Id.* at p. 1229.) It also noted that the last time the social worker contacted mother's therapist was April 1987, some five months before the September 18, 1987 review hearing. (*Id.* at pp. 1229–1230.) In April 1986, another psychologist had made some "general statements" about the mother's psychological condition and its negative influence on her parenting ability, but failed to provide any specific information about how the child would be harmed. (*Id.* at p. 1229.) The court found this evidence insufficient to carry the department's burden to show detriment by a preponderance of the effort, and further found that it impermissibly shifted the burden of proof to mother. (*Id.* at pp. 1227–1228.)

Based on *Heather P.*, mother argues it was impermissible for the juvenile court to rely on the June 2017 psychological evaluation that faulted her for “minimiz[ing] the issues leading to the current situation” and lacking “significant insight into her behavior and general concerns that led to the removal of her children.” By the time of the May 17, 2018 trial, the psychological evaluation was 11 months old. In fact, on March 9, 2018, Matsumoto, mother’s new therapist, described mother as “stable” and said she was moving from weekly to biweekly counseling sessions. Mother argues Matsumoto’s more recent assessment indicates the June 2017 findings are not only outdated in time, but also outdated in substance.

We agree the June 2017 psychological assessment was outdated and could not be used to support the juvenile court’s decision. However, the trial court did not cite the June 2017 psychological evaluation in making its ruling. Nor do DCFS’ reports merely repeat earlier information verbatim. The juvenile court had before it some two years of DCFS reports, including a last minute information filed on the date of the trial. Reports filed after June 2017, suggest mother had made great strides in her parenting skills and in obtaining housing, but they consistently reported that mother was unable to appreciate how her actions and inactions were responsible for J.M. and An.M.’s sexual abuse when they were three or four years old and for their continued trauma stemming from that abuse. The information presented at trial in May 2018, included up to date reports of the boys’ therapist suspending conjoint therapy because of mother’s failure to understand her own role in their sexual abuse and how to protect them in the future.

Equally important, unlike *Heather P.*, DCFS' reports were not the only evidence before the juvenile court in this case. Mother testified at trial and answered questions about what she had learned and how she would protect her children today. The juvenile court was able to evaluate her demeanor, attitudes, and credibility. Together, the evidence presented was sufficient to carry DCFS' burden. (See *Constance K.*, *supra*, 61 Cal.App.4th at p. 692 [affirming juvenile court's decision to terminate reunification services based on social worker reports that are "not merely written in a conclusory fashion [but] are corroborated by specific acts of conduct on the part of the mother indicative of her inability to parent and protect the children," even though mother had successfully completed case plan].)

We do not suggest this was not a close case. It was. Mother's compliance with the case plan, her securing of stable housing, her continued visits with her five children over a two-year period, and the demonstrable improvements in her parenting skills are commendable. However, as an appellate court, we do not reweigh the evidence. As there is substantial evidence to support a finding of detriment, we uphold the juvenile court's decision even if substantial evidence supports a different conclusion.

IV.
DISPOSITION

The petition for extraordinary writ is denied.

MOOR, J.

We concur:

BAKER, Acting P. J.

SEIGLE, J.*

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