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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT  
DIVISION FOUR

JURRELL B.,

Petitioner;

v.

SUPERIOR COURT OF LOS  
ANGELES COUNTY,

Respondent;

LOS ANGELES DEPARTMENT  
OF CHILDREN AND FAMILY  
SERVICES,

Real Party in Interest.

B297389

Los Angeles County  
Super. Ct. No.  
18CCJP06922A

ORIGINAL PROCEEDINGS; Petition for extraordinary writ. Robin Kesler, Juvenile Court Referee. Petition denied.

Law Office of Rachel Ewing, Frank Ahn, for Petitioner.

No appearance for Respondent.

Mary C. Wickham, County Counsel, Kristine P. Miles, Assistant County Counsel, and Peter Ferrera, Deputy County Counsel, for Real Party in Interest.

## **INTRODUCTION**

Jurrell B. (father) is the presumed father of J.B., a dependent of the juvenile court. At a disposition hearing, the juvenile court denied father reunification services pursuant to Welfare and Institutions Code section 361.5, subdivision (b)(10).<sup>1</sup> The court based its decision on a factual finding that father had not made reasonable efforts to treat the problems that led previously to the removal of J.B.'s older sibling, Jamilah. The court set a section 366.26 permanency planning hearing for July 17, 2019. Father petitioned for extraordinary writ relief, and we issued an order to show cause. We conclude the court's finding is supported by substantial evidence, and therefore deny the petition.

## **FACTUAL AND PROCEDURAL BACKGROUND**

### **1. Synopsis**

J.B.'s sibling, Jamilah, was removed from father's custody because of father's domestic violence toward mother and his interrelated anger management and mental health issues. Subsequently, less than one month after J.B. was born, father was arrested for violating a court order imposed to prevent domestic violence.<sup>2</sup> Less than a month after father's arrest, the Department of Children and Family Services (the Department) filed a section 300 petition concerning J.B. and ordered him detained.

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<sup>1</sup> Subsequent statutory references are to the Welfare and Institutions Code.

<sup>2</sup> J.B. was born September 14, 2018 and father was arrested October 4, 2018.

A disposition hearing was held on March 20, 2019. Father testified telephonically. About two weeks before the hearing, father had been released from prison to Atascadero State Hospital as a condition of his parole. Father testified that since arriving at Atascadero, he had been receiving services related to anger management, mental health, parenting skills, and coping skills. The court expressed its view that two weeks of services was insufficient to show he had made a reasonable effort to treat the problems that led to Jamilah's removal. The court asked father if he had received services to treat these problems while in prison before arriving at Atascadero. Father initially answered: "No. When I was in prison, my time was too short for me to start." When asked specifically if he had been receiving mental health services in prison, father changed his answer and said he had, but said he could not remember for how long, and estimated it had been roughly a year.

The court denied father family reunification services under section 361.5, subdivision (b)(10) based on the following findings: (1) father had not made reasonable efforts to treat the mental health and anger management issues that led to Jamilah's removal, and (2) it was not in J.B.'s best interest to offer services to father. Father argues the court's findings were not supported by substantial evidence.

## **2. Father's Other Child (Jamilah) and the Prior Dependency Petition**

In January 2017, father's older child, Jamilah, was declared a dependent of the juvenile court based in part on mother and father having a history of engaging in violent altercations. The sustained petition indicated, in December 2016,

father kicked open the locked door to mother's motel room, broke her cell phone, threw a gallon of water at her leg, and grabbed her by the throat.<sup>3</sup> The petition alleged the parents' conduct and father's failure to protect placed Jamilah at risk of serious physical harm. The juvenile court terminated family reunification services for mother and father in May 2018.

### **3. J.B.**

J.B. came to the attention of the Department in September 2018 after mother gave birth to him and she tested positive for opiates. A nurse at the hospital reported mother and father's behavior was very erratic, aggressive, and threatening, but described their interaction with J.B. in positive terms. When the social worker attempted to interview father, he was aggressive and would not provide information or answer any questions.

Mother was receiving services through Regional Center, and one of her treatment providers described the parents as argumentative. When the social worker asked father to submit to drug testing, he reportedly "barked yes" but refused to speak with her further.

The Department's social worker on Jamilah's case reported when she met with the parents in May 2018, father admitted he was diagnosed with Bipolar Disorder, Schizophrenia, ADHD, depression, suicidal ideation, anxiety and anger issues. Father

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<sup>3</sup> The sustained petition further alleged: (1) the child was present during the incident; (2) mother reported 20 other domestic violence incidents with father; (3) father violated a court order by leaving the child alone with mother; and (4) father had sustained criminal convictions for inflicting corporal injury on a spouse or cohabitant.

was reluctant to admit his diagnoses because he believed they would be used against him. The social worker encouraged father to follow up with mental health treatment, and father said he would go to Kedren Mental Health Center but failed to do so.

Jamilah's social worker heard from the previously assigned social worker about an episode at a McDonald's Restaurant where father was hearing voices telling him to eat the baby. The social worker reported that during Jamilah's case, father had been in jail for harassing an aunt he previously lived with, and mother went to jail in July 2018 for running father over with her car. The paternal aunt, who was Jamilah's caretaker, had reported the parents were very toxic together, had several physical altercations, had anger issues and poor communication skills, and did not follow through with any court orders.

The paternal aunt informed the Department that father was arrested on October 4, 2018, for violating a restraining order. Father went to the paternal aunt's residence on October 3, 2018, stating mother was trying to kill him. According to father's criminal history, he was arrested on October 4, 2018, for violating a court order to prevent domestic violence. On May 7, 2018, he had been arrested for "Threaten Crime w[ith] intent to terrorize."

The social worker for Jamilah's case also reported father suffered auditory hallucinations and she had observed father responding to voices. She said, to her knowledge, father was not addressing his mental health issues and not taking psychotropic medication.

The paternal aunt reported father admitted he was using drugs, but she did not know what kind. She said to her knowledge father was not receiving any mental health services and was not taking psychotropic medication. She confirmed

father was currently incarcerated for violating a restraining order and reported three paternal family members had restraining orders protecting them from father.

The Department detained J.B. from mother's care on October 24, 2018. On October 26, 2018, the Department filed a section 300 petition alleging J.B. was at risk as the result of mother and father's history of violent altercations and failure to reunify with Jamilah, mother's history of substance abuse, and mother and father's mental and emotional issues. The juvenile court ordered J.B. detained from mother and father and scheduled a jurisdictional hearing.

The social worker visited father in prison but was unable to follow up and address the petition with him because he had already been transferred to Wasco State Prison.

In December 2018, the paternal aunt stated father has severe depression, hears voices, thinks people like mother are after him and trying to kill him, and gets nervous and scared all the time. Regarding mother and father, the paternal aunt stated they needed to work on their anger management and communication, get their mental health taken care of, stop using drugs, and get counseling. She stated these things were already court-ordered, but the situation was not improving.

The Department reported that in 2017 during Jamilah's dependency case, father admitted he had "anger issues" and had sought mental health services but never continued to receive services. It further reported that father was diagnosed as having paranoid schizophrenia and was prescribed medication.

The paternal aunt reported that in November 2017 during Jamilah's dependency case, father followed mother to her new residence and destroyed her personal items, which resulted in her

landlord asking her to leave. Mother obtained a restraining order against father. In her restraining order, mother stated father stalked her to her residence, forced his way in, refused to leave, and destroyed her belongings. The incident forced mother to cancel a court-ordered visitation with her daughter.

The juvenile court adjudicated the section 300 petition filed on behalf of J.B. on February 15, 2019. The court sustained an amended version of the petition. The court struck the count relating to father's history of domestic violence. It sustained the following allegations with regard to father pursuant to section 300, subdivision (b): "[Father] has mental and emotional problems, including diagnoses of Bipolar Disorder, Schizophrenia, Depression, suicidal ideation, anxiety, and auditory hallucinations, which render the father unable to provide regular care of the child. The father failed to obtain mental health services for the father's mental and emotional problems. Such mental and emotional condition on the part of the father endangers the child's physical health and safety and places the child at risk of physical harm and damage."

In March 2019, the Department reported that per condition of father's parole, he was released to the care of Atascadero State Hospital.

#### **4. Disposition Hearing and Aftermath**

The juvenile court conducted disposition proceedings on March 20, 2019. Father appeared telephonically and was represented by court-appointed counsel. The Department's reports were admitted into evidence. The Department did not recommend family reunification services be offered for either parent. For father, the proposed legal basis for denying him

services was section 361.5, subdivision (b)(10), based on the court having terminated family reunification services in Jamilah's case.

Father testified he was housed at Atascadero Hospital. He stated he was receiving anger management and parenting services. His social worker at Atascadero, Eugene O'Conner, interjected that father had just begun his services and was being acclimated. Father was asked about what classes and services he was receiving related to anger management, and he replied, "parent skills" and "coping skills." He said he was addressing coping skills in group sessions with a facilitator as well as individual sessions. He said the sessions took place twice per week. He started the sessions around March 8th or 11th, and had attended four sessions.

Father said the sessions were ongoing, and he also had parenting instruction twice per week. He was also receiving "mental health and awareness" and "psychiatric" services. He had started all his services around the same time, roughly two weeks before the dispositional hearing. Father said he met twice weekly with a psychiatrist at the facility and was prescribed medication, although he did not know the name of the medication.

Father was asked about his recent time in prison, and he first indicated he was not receiving services there. Then he stated he received "a bunch of health services" which involved a psychiatrist or counselor, but he could not remember the duration of the services. He said the services were for more than a month and then indicated the services were for about a year or more.

The attorneys for the Department and J.B. argued father and mother should be denied family reunification services. J.B.'s



attorney argued father had only participated in services for a few weeks since his hospitalization, and his recent efforts were insufficient to show he had made a reasonable effort to treat the issues that caused Jamilah's removal.

Father's attorney argued it would be improper to use section 361.5, subdivision (b)(10) to bypass reunification services because the basis for J.B.'s dependency was father's mental health, and that the domestic violence allegation, the basis for Jamilah's dependency, had not been sustained in J.B.'s case. He further argued it was in the child's best interest for father to receive family reunification services.

The attorney for the Department responded by noting father was incarcerated for violating a restraining order and had a history of domestic violence not only with mother but other family members. She argued his domestic violence issues were still ongoing.

The juvenile court found father's mental health issues led to his anger management issues. It declared the child a dependent and removed him from parental custody. It denied father reunification services pursuant to section 361.5, subdivision (b)(10), finding it was not in the child's best interest to offer services to father because he had not made reasonable efforts to solve the mental health and anger management issues that led to Jamilah's removal.

The juvenile court additionally noted father would not be released for approximately six months, father had a right to only a limited period of services as the child was under the age of three, and father would be unable to demonstrate he could maintain his mental health while not incarcerated. The court set a section 366.26 hearing for July 17, 2019.

On April 9, 2019, father filed a notice of his intent to file a writ petition. On June 10, 2019, we issued an order to show cause and ordered the July 17, 2019 section 366.26 permanency planning hearing stayed pending further order of this court. Father argues substantial evidence does not support the juvenile court's decision to bypass reunification services.

### **STANDARD OF REVIEW**

When the sufficiency of the evidence to support a juvenile court's finding or order is challenged on appeal, the reviewing court must determine if there is substantial evidence that supports it. (*In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1393; *Cheryl P. v. Superior Court* (2006) 139 Cal.App.4th 87, 96 ["A court reviews an order denying reunification services under section 361.5, subdivision (b) for substantial evidence"].) Under this standard of review, we examine the whole record in a light most favorable to the findings and conclusions of the juvenile court and defer to the lower court on issues of credibility of the evidence and witnesses. (*In re Tania S.* (1992) 5 Cal.App.4th 728, 733-734.) We must resolve all conflicts in support of the determination and indulge all legitimate inferences to uphold the court's order. (*In re John V.* (1992) 5 Cal.App.4th 1201, 1212.) We may not substitute our deductions for those of the trier of fact. (*Ibid.*)

### **DISCUSSION**

Although reunification of dysfunctional families is a fundamental goal of dependency law, section 361.5 permits the court to deny reunification services to a parent under a variety of circumstances, including where the following two prongs

are met: (1) “the court ordered termination of reunification services for any siblings or half sibling of the child because the parent . . . failed to reunify with the sibling or half sibling”; and (2) the parent “has not subsequently made a reasonable effort to treat the problems that led to removal of the sibling or half sibling . . . .” (subd. (b)(10).) If the court finds by clear and convincing evidence (subd. (b)) that a parent falls within subdivision (b)(10), the court shall not order reunification unless it also finds by clear and convincing evidence “that reunification is in the best interest of the child” (subd. (c)(2)). Here, the juvenile court found father fell within subdivision (b)(10) and that it was not in J.B.’s best interest to offer reunification services. Father argues the juvenile court’s findings were not supported by substantial evidence.

Father does not dispute that the first prong of section 361.5, subdivision (b)(10) has been satisfied: The court terminated reunification services for J.B.’s older sibling, Jamilah, on May 21, 2018. Father’s argument goes to the second prong of subdivision (b)(10). He contends substantial evidence does not support the court’s conclusion that he did not make a reasonable effort to treat the problems that led to Jamilah’s removal.

Specifically, father argues the problem that led to removal in Jamilah’s case was domestic violence, and because the court dismissed domestic violence allegations in J.B.’s case and instead sustained his petition on mental health grounds, the court was precluded from bypassing reunification services under subdivision (b)(10). We disagree. Father’s argument construes too narrowly the language of subdivision (b)(10) and its intended purpose of allowing juvenile courts the discretion to protect children’s best interests. (See *In re Lana S.* (2012) 207

Cal.App.4th 94, 108 [“Interpreting section 361.5, subdivision (b)(10) . . . in the manner [father] urges – to restrict the term ‘problems that led to removal’ to problems alleged in the petition – would lead to an absurd result.”].)

In support of his argument, father asserts *In re D.H.* (2014) 230 Cal.App.4th 807 is directly on point and that we should follow it. *D.H.* is different from this case. The father in *D.H.* was denied reunification services under subdivisions (b)(10) and (11).<sup>4</sup> (*Id.* at p. 809.) On appeal, he argued the denial of services was not supported by substantial evidence. (*Ibid.*) The Third District agreed. (*Ibid.*) The court explained the problems that led to removal of the half siblings (unsafe and unhealthy conditions) were different from those presented in D.H.’s case (alcohol abuse, anger management problems and domestic violence). (*Ibid.*) The court further explained that the record did not “establish any connection between the two sets of problems . . . .” (*Ibid.*) Here, by contrast, the record shows father’s mental health and anger management issues were directly connected to the domestic violence that led to Jamilah’s removal.<sup>5</sup>

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<sup>4</sup> Subdivision (b)(11) allows the juvenile court to bypass reunification services when the court 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 that, 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.”

<sup>5</sup> Father notes that in *D.H.*, the record did not contain a case plan for the siblings’ case, any report of specific services provided to father in the context of that case, or any indication that father had an alcohol abuse problem in 1997. These facts are inapposite

The record contains ample evidence to support the trial court's conclusion that father had not made reasonable efforts to treat the interconnected mental health, anger management, and domestic violence issues that led to Jamilah's removal. Three relatives had restraining orders against father. At the time of the disposition hearing at which reunification services were bypassed, father was in a state hospital as a parole condition for violating a restraining order intended to prevent domestic violence. Before being transferred to the state hospital, father was incarcerated for violating the restraining order. These facts demonstrate father had not adequately addressed the problems that led to Jamilah's removal by the time of the disposition hearing.

In denying reunification services, the court found it significant that father testified he had started services only two weeks prior to the disposition hearing. The court was well within its discretion to conclude father receiving two weeks of services did not rise to the level of reasonable effort within the meaning of subdivision (b)(10). (See *R.T. v. Superior Court* (2012) 202 Cal.App.4th 908, 914, italics omitted ["We do not read the 'reasonable effort' language in the bypass provisions to mean that any 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. It 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

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to father's case because, as discussed below, here the record supports the juvenile court's finding that father has not made a reasonable effort to treat the problems that led to Jamilah's removal.

relating to the quality and quantity of those efforts, when evaluating the effort for reasonableness.”].)

Father contradicted himself when testifying at the disposition hearing about whether he received treatment while in prison prior to being moved to Atascadero, at one point testifying he did not receive treatment in prison, and at another point testifying he received mental health treatment for more than a month and perhaps for a year. It was proper for the juvenile court to assess father’s contradictory testimony and make its decision accordingly. When conducting substantial evidence review, we defer to the lower court on issues of the credibility of the evidence and witnesses. (*In re Tania S.*, *supra*, 5 Cal.App.4th at p. 733.)

For the foregoing reasons, we conclude substantial evidence supports the juvenile court’s findings that: (1) father did not make reasonable efforts to treat the problems that led to Jamilah’s removal; and (2) it would be in J.B.’s best interests to bypass reunification services.

## **DISPOSITION**

The petition for extraordinary writ relief is denied on the merits. The stay imposed by this court is lifted. This opinion is final as to this court. (Cal. Rules of Court, rules 8.452(i) & 8.490(b).)

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

CURREY, J.

WE CONCUR:

MANELLA, P. J.

WILLHITE, J.