Filed 5/30/14 In re Bryce R. CA2/1

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**



IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

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| In re BRYCE R., a Person Coming Under the Juvenile Court Law. | B248158<br>(Los Angeles County<br>Super. Ct. No. CK87636) |
| LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES,<br><br>Plaintiff and Respondent,<br><br>v.<br><br>K.P.,<br><br>Defendant and Appellant. | |

APPEAL from a judgment of the Superior Court of Los Angeles County. Terry Truong, Juvenile Court Referee. Affirmed.

Eva E. Chick, under appointment by the Court of Appeal, for Defendant and Appellant

John F. Krattli, County Counsel, James M. Owens, Assistant County Counsel, John C. Savittieri, Deputy County Counsel, for Plaintiff and Respondent

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K.P. (Mother) appeals from an order by the juvenile court removing her five year old son Bryce from her physical custody and a second order terminating reunification services for her and Bryce. We affirm.

FACTS AND PROCEEDINGS BELOW

Mother and her three sons, Bryce (3 years old), Shawn (2 years old), and Bryant (1 year old) came to the attention of the Department of Children and Family Services (DCFS) in March 2011 via a referral from the domestic violence shelter where they were staying. The shelter was evicting Mother and the children due to Mother's aggressive behavior toward a staff member, her failure to comply with the shelter's rules and her bizarre behavior including questioning whether the children were hers. DCFS found an alternative residence for Mother and the children.

DCFS remained in contact with Mother who continued to display irrational conduct so severe that in April 2011 a DCFS worker called the police to escort Mother to the Tri-City Mental Health Center for evaluation. Tri-City diagnosed Mother as suffering paranoid schizophrenia and prescribed lithium. DCFS removed the children from Mother's custody and filed a dependency petition. Mother was involuntarily committed at the Olive View Medical Center under Welfare and Institutions Code section 5150. [1]

In a report accompanying its petition, DCFS recounted Mother's statements concerning her past drug and alcohol use. Mother stated that in 1996 a juvenile court in Minnesota took away her twins because of her alcohol abuse. Since coming to California she was arrested for drunk driving in 2009 and convicted of child endangerment in February 2010. The drunk driving arrest occurred when Bryce was with her in a car seat in the back seat. The child endangerment arrest occurred when a neighbor and a police officer observed Mother through a window of her home passed out on the floor with her lower body covering Bryce's upper body. Three-month-old Shawn was asleep in his crib in a bedroom. An electric skillet filled with oil and "'extremely hot to the touch'" was on

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[1] Except where otherwise stated, all statutory references are to the Welfare and Institutions Code.

the bedroom floor. Mother admitted to using methamphetamine while she was pregnant with Bryant and doing "'a line of meth'" while she was in labor with him.

In June 2011, the juvenile court found that Mother's three sons were at risk of harm due to Mother's schizoaffective disorder, her history of illicit drug and alcohol use and her history of physical and verbal altercations with the children's father. (§ 300, subd. (b).) The court placed the children in a foster home and granted Mother monitored visits. The court ordered Mother to submit to random drug testing, attend psychiatric counseling, domestic violence and drug and alcohol abuse counseling and attend Mommy and Me classes with Bryce. Mother was also ordered to take prescribed psychotropic medications. The court investigated the father's claim of American Indian heritage and found the Indian Child Welfare Act (ICWA) not applicable. Mother did not appeal the jurisdictional or dispositional orders.

At a progress hearing in March 2012, the DCFS submitted a letter from a psychiatrist at Tri-City who noted that "Except for situational ang[ry] outbursts" Mother had "managed [her] symptoms fairly without psychotropic medication and [had] not shown any overt psychotic symptoms." The court granted Mother one unmonitored overnight visit with the children once a week.

In July and August 2012, DCFS submitted information to the court showing that Mother tested negative for drugs between December 2011 and June 2012, had been consistent in attending mental health services at Tri-City Mental Health Center and, according to Tri-City, was "showing progress" in her goals of stabilizing her moods and curbing her angry outbursts. DCFS reported, however, that Mother had cursed at one of its workers, calling her a "'f**king b**ch'" for not allowing her expanded visitation with the children and "'not helping me get my kids.'" The August 2012 report attached a letter from Tri-City stating that since May 2012 Mother had been attending therapy and case management sessions through the Center's Full Service Partnership program which "provides comprehensive mental health services for individuals and families experiencing significant emotional and psychological problems that would benefit from

intensive field-based services." The Tri-City letter stated Mother had been diagnosed as bipolar.

In July 2012, the court granted Mother weekly unmonitored weekend visits with the children.

On August 8, 2012, the court ordered Bryce returned to Mother and continued her weekend visitation with Shawn and Bryant. It also ordered DCFS to provide Family Preservation Services.

The court conducted a status review in November 2012. In a report prepared for the hearing, DCFS informed the court that Mother had ceased her treatment at Tri-City but was receiving Family Preservation Services which included in-home counseling for the family and mental health, teaching and demonstration services. The report stated Mother tested negative for drugs on tests given in March through September 2012 with one no-show in June 2012. DCFS also reported more incidents of Mother's cursing and hostility toward its workers and asked the court to order a psychiatric examination of Mother. (Evid. Code, § 730.) The court declined to continue reunification services for Shawn and Bryant stating that "time has run out on the family reunification time period in this matter." As to those two children, the court set a permanent planning hearing for December 2012.[2] The court scheduled another review hearing for Bryce in May 2013.

In its report for the December 2012 permanent planning hearing for Shawn and Bryant, DCFS provided the following information to the court.

Mother told a DCFS worker that she was willing to return to Tri-City for mental health services. Tri-City reported, however, that during the screening process Mother "repeatedly expressed her distrust in Tri City Mental Health; how she was 'lied to' by Tri-City staff in her previous treatment with Tri City; how she doesn't believe that she is mentally ill; and that she doesn't believe she needs psychotropic medications nor

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[2] At the December 2012 hearing the court ruled that the goal for Shawn and Bryant was adoption or legal guardianship but that a permanent planning hearing under section 366.26 was not appropriate at the time because the children were not the proper subject for adoption and no one was willing to accept legal guardianship of the children.

psychotherapy. Tri-City further stated: "Despite the team's best effort to assist [Mother] the treatment was rather unsuccessful as [Mother] presented with a high level of distrust in mental health and refused to cooperate with the team's treatment recommendations. It is our recommendation that [Mother] will be enrolled in a different mental health program given her history of unsuccessful treatment at Tri City and her lack of trust in Tri City staff."

The Santa Anita Family Service Family Preservation program informed DCFS that Mother was enrolled in the family preservation program and receiving weekly in-home counseling services. The program reported that Mother did not have any unexcused absences and described her as "engaged during sessions," but "has appeared upset during sessions, and appears to have difficulty controlling her anger." The letter also stated that during teaching and demonstrating services, "[Mother]'s difficulty to manage her anger has made it difficult to provide this service to the client." Furthermore, the letter stated, Mother has made statements during her teaching and training sessions that she was not sure if Bryce was her child and that she believed that her child might have been switched with another child.

An evaluator with the Pomona Unified School District Family Preservation Program "reported that [Mother] believes that Tri-[C]ity and DCFS was responsible for the length of time she spent in the hospital" during her involuntary psychiatric hospitalization that precipitated the dependency proceedings. During the evaluation, Mother reported experiencing within the previous thirty days serious depression, serious anxiety or tension, and trouble understanding, concentrating, or remembering. Mother reported to the evaluator that she received Social Security disability benefits for having a diagnosis of bipolar disorder, "but denied that she has Bipolar disorder." The evaluator observed that Mother "appeared to display a number of symptoms in the interview that were some possible indicators of Bipolar Disorder such as tangential, rapid, excessive, and pressured speech, lability in her mood, tearfulness, hostility, and paranoia" and that her "level of insight appeared to be severely impaired due to her manic symptoms. In the

evaluator's opinion, Mother "appears to have a severe and chronic mental health issue that has impaired her ability to function in her relationships with her family, friends, and children" but "the specifics of the disorder were difficult to determine due to [the] client denying most of the symptoms and it being obtained mostly from observation." The evaluator noted that Mother expressed love for her children and a desire to care for them but was concerned that Mother "is currently not on any psychotropic medication nor is seeing a licensed therapist to address and stabilize her mental health issue. It is of concern that [Mother]'s lack of treatment could impair her ability to provide the basic needs for [herself] and her children." By the end of the interview, the evaluator noted, Mother "was crying profusely and speaking to this assessor in a hostile manner." The evaluator gave Mother a referral to a program near her home, but Mother "reported that she was not sure about that and would prefer to not receive mental health services from another facility."

Finally, the DCFS reported that Mother continued to be "very aggressive" towards the Family Preservation representatives and DCFS workers. During a counselor's home visit Mother told the counselor that "those are her children and that she can do whatever she wants even if it means stealing them and leav[ing]." She also told the counselor that "she does not need their services and that she does not have any mental health issues." In a telephone conversation with Mother to discuss visitation with Bryant and Shawn during the holidays, Mother called the worker a "stupid bitch" and hung up the telephone. (Block capitals omitted.) The DCFS believed that Bryant and Shawn would be at risk of future abuse and neglect if they were returned to Mother's custody due to the state of Mother's mental health. It recommended that the court terminate Mother's reunification services for Bryant and Shawn because of Mother's "ongoing verbal aggression" and use of "bad language" in the children's presence.

At the December 20, 2012, permanent planning hearing for Shawn and Bryant, the juvenile court informed the parties of its intent not to return the children to Mother's custody. The court expressed discomfort with the visitation schedule because Mother

was not receiving mental health services and indicated that Mother's visits should be two instead of five days. While the court was speaking to the lawyers for the parties, Mother interrupted and informed the court that she was receiving counseling from the family preservation program and stated that she would not allow the service providers in her home if the court is "not going to count the stuff that we've been doing." The court instructed Mother to stop talking but she did not. Mother told the court: "This is ridiculous. There's no safety issue for months. [The children have] been in my home overnight for five days a week. My children need to be returned." The court requested the bailiff to remove Mother from the courtroom. Mother got up to leave with Shawn and Bryant but before leaving she told the court: "I would like to sign my children over to my family. . . . I'm done doing the case. . . . I was accused of things that I don't have and don't do. . . . And I never needed to be in any program as a matter of fact." With that, Mother and the children exited the courtroom.

The court found that Mother was in partial compliance with the case plan and that return of Shawn and Bryant to her physical custody would create a substantial risk of detriment to their well-being. The court terminated Mother's reunification services with Shawn and Bryant and found that DCFS made reasonable efforts to enable the children's safe return to Mother's custody. The court made no change in visitation.

On January 11, 2013, a DCFS worker met with Mother at Mother's home. Mother asked the worker why Shawn and Bryant were not being returned to her. The worker told Mother the reason was because she was not receiving mental health services. Mother responded that she did not need mental health services and informed the worker that she wanted to give her sister in Minnesota legal guardianship of all three children.

That same day, DCFS filed a request for an order removing Bryce from Mother's custody. In support of the request the DCFS informed the court that three-year-old Shawn reported to his foster mother that he had watched a movie at Mother's home in which a gun was fired and stated, "'Mama . . . has a gun and that she is going to shoot all the bad [p]eople.'" The DCFS also informed the court of its concerns regarding Bryce's

safety because Mother continues to deny that she has a "mental health problem," refuses to take her prescribed medication, "continues to minimize the issues that brought this case to the attention of DCFS" and has threatened to "take her children and leave the state." The court immediately issued an order removing Bryce from Mother's physical custody.

On January 16, 2013, DCFS filed a petition under section 387 to modify the order granting custody of Bryce to Mother. The petition alleged that Mother's mental and emotional problems and her failure to obtain recommended mental health treatment placed Bryce at risk of harm. At a detention hearing later that day, with Mother present, the court found that it was contrary to Bryce's welfare to continue living with Mother there were no reasonable means by which he could be protected without removing him from Mother's custody. The court also found that DCFS had made reasonable efforts to prevent the removal of Bryce and that there were no services available that would prevent the child's further detention. The court ordered monitored visits for Mother with Bryce and set the matter for adjudication and disposition hearings in March 2013. DCFS was ordered to submit a progress report in February 2013.

In a February 13, 2013, interview with a DCFS worker, Mother denied the allegations in the section 387 petition and claimed that she had been wrongly involuntarily psychiatrically hospitalized under section 5150 at the inception of the dependency proceedings. Mother further denied her previous diagnosis of schizoaffective disorder. She admitted that she had been prescribed psychotropic medication but stated that she stopped taking it because it made her feel nauseous. Mother told the worker, "I would like to have Bryce returned to me, because I do not have a mental health problem." According to the worker, Mother "became very loud and was pointing in [the worker's] face" and called the worker "(bleeping) stupid."

The DCFS submitted a report with several attachments for the March 2013 jurisdiction and disposition hearings.

A letter from the Santa Anita Family Service Family Preservation program reported that on December 13, 2012, Mother admitted to one of its counselors that she was no longer sober from alcohol, prompting the counselor to further question Mother about her sobriety. Mother called the counselor "a profane name and stated that she would steal her children and leave the state whenever she wanted." The counselor further reported that Mother "appears engaged and honest during sessions. However, throughout her time in Family Preservation, she appeared to have difficulty controlling her anger." According to the counselor, the sessions with Mother "have focused on addressing [Mother's] anger and educating [her] on healthy ways to deal with anger and stressors. Sessions have also focused on linking [Mother] to mental health services . . . ." The counselor reported that Mother was referred to Project Sister for individual counseling, but she did not enroll for services at that agency. Mother's family preservation services with Santa Anita were terminated upon the court's order removing Bryce from her care.

A discharge summary from the Tri-City Mental Health Center stated that Mother "presented with severe paranoia regarding other individuals stealing from client and plotting against client. Client in the past and currently believes that she does not have a mental illness. Currently client continues to have the assumption that other individuals are working against client to have her children taken from her. Client engages in impulsive anger and irritability." Tri-City further stated that Mother was offered mental health services, including psychiatry, therapy, and case management, but was inconsistent with treatment due to her belief that she did not have a mental illness and that the treatment team was working against her. Mother's case was closed in August 2012 because she was receiving family preservation services. Tri-City reported Mother's diagnosis as "bipolar disorder, NOS [not otherwise specified]" and that she was prescribed Lamictal, but did not take the medication as prescribed because, according to Mother "the medication was ineffective due to [Mother] not having a 'mental illness.'" Tri-City described Mother's prognosis as "[f]air."

Also attached to the DCFS report was a copy of a letter to Mother dated February 28, 2013, from the La Puente Valley Mental Health Center confirming that Mother's case was opened on February 5, 2013, and that she underwent an initial psychiatric medication evaluation on that date. As a result of that evaluation, the Center's treatment team determined that Mother was not in need of medication, but recommended individual therapy and parenting classes and scheduled an appointment with a nurse practitioner at the Center. The letter instructed Mother to contact the agency to schedule an individual therapy session. The record doesn't show whether Mother scheduled or attended that session.

The DCFS recommended that the juvenile court remove Bryce from Mother's custody, order no additional reunification services for Mother, and set a section 366.26 hearing to address a permanent plan for the child.

The court sustained the section 387 petition as amended to read: "The previous disposition has not been effective in the protection or rehabilitation of the child. The child[']s Mother] has a history of mental and emotional problems, including a diagnosis of bipolar disorder. The mother has failed to obtain recommended mental health treatment and to follow up with her mental health treatment. The mother's condition and her failure to comply with mental health treatment placed the child at risk of harm." The court found that it was contrary to Bryce's welfare to reside with Mother, that there were no reasonable means by which he could be protected without removing him from Mother's custody, and that the previous disposition of the court had not been effective in the protection of the child. The court also found that DCFS made reasonable efforts to prevent and eliminate the need for removal of Bryce from Mother's custody. The court did not order additional reunification services to Mother, stating: "At this point, I don't know if I can find that there is a substantial probability of return, given [Mother's] past history of not complying with the court's orders in this case." The court ordered monitored visits for Mother with Bryce and set the matter for a review hearing under section 366.3.

In making its findings, the court explained: "What is concerning to me is [Mother's] statements indicating that she does not believe she has any mental health issues. That shows to me that she does not recognize there is a problem in this case and that she has a resistance to continuing with such mental health treatment. [¶] While I will take the documents submitted today on its face that she may be in a different program at this time, it does not tell me much of anything, whether she will continue to comply because she has a history of not complying. And there was several months' period of time later last year where [Mother] was not in compliance. And I did not detain in the hope that she would comply, and she failed to. . . . As I indicated, not only am I concerned about [Mother's] statements regarding the fact that she does not believe she has an issue, I am also concerned . . . about [Mother] indicating she would take the children and flee with the children."

Mother filed a timely appeal of the orders removing Bryce from her custody and terminating her family reunification services with him.

## DISCUSSION

### I. THE COURT COMPLIED WITH THE NOTICE REQUIREMENTS OF THE INDIAN CHILD WELFARE ACT.

Prior to the initial jurisdictional and dispositional hearings in May 2011 the children's father claimed "Ottawa-Chippewa" heritage on his paternal grandfather's side. The DCFS contacted the father's paternal aunt (the grandfather's daughter) who informed the Department that the paternal grandfather belonged to the Little Traverse Bay Bands of Odawa Indians. The DCFS sent letters to the tribe and the federal Bureau of Indian Affairs regarding each child. The tribe responded that none of the children were currently eligible for enrollment in the tribe. The court found that "the children are not Indian children as defined by the Indian Child Welfare Act."

Mother now challenges that ruling on the ground that DCFS should have contacted every federally recognized tribe that includes the word Chippewa, Ottawa, Ottowa or Odawa in its name. Assuming Mother did not forfeit her challenge by delaying two years in raising it (see *In re Z.W.* (2011) 194 Cal.App.4th 54, 63-64) we find it lacks merit. The

DCFS contacted the tribe to which it was directed by the father's aunt. Having been given the name of a specific tribe with which the father was affiliated, the DCFS was not required to contact every tribe that shared a portion of that tribe's name.[3]

## II. SUFFICIENT EVIDENCE SUPPORTS BRYCE'S REMOVAL FROM MOTHER'S PHYSICAL CUSTODY.

A child welfare agency may file a supplemental petition for an order to remove a dependent child from the physical custody of his or her parent and to direct an out-of-home placement on a showing "that the previous disposition has not been effective in the rehabilitation or protection of the child." (§ 387.)

The parties agree that in this case a showing of ineffectiveness must be made under section 361, subdivision (c)(1) which states in relevant part: "A dependent child may not be taken from the physical custody of his or her parents or guardian or guardians with whom the child resides at the time the petition was initiated, unless the juvenile court finds clear and convincing evidence . . . [t]here is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home, and there are no reasonable means by which the minor's physical health can be protected without removing the minor from the minor's parent's or guardian's physical custody."

Here, the court found that Mother "has a history of mental and emotional problems including a diagnosis of bipolar disorder" and that she "failed to obtain recommended mental health treatment and to follow up with her mental health treatment." The court concluded from these facts that Mother's "condition and her failure to comply with mental health treatment place[d] the child at risk of harm." We view the record in the light most favorable to the order and decide if the evidence is reasonable, credible and of solid value. (*In re Casey D.* (1999) 70 Cal.App.4th 38, 52-53.)

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[3] Section 224.2, subdivision (a)(3) states that: "Notice shall be sent to all tribes of which the child may be a member or eligible for membership."

We find substantial evidence supports the trial court's finding of detriment to Bryce if he was not removed from Mother's custody. The record shows that after a lengthy reunification period, Mother failed to meaningfully address the conditions that brought Bryce and his brothers to the attention of the juvenile court. The evidence was undisputed that Mother repeatedly denied her well-documented mental health problems, refused to take prescribed psychotropic medication, refused to attend therapy sessions, was angry and aggressive toward service providers, threatened to take the children and return to Minnesota and admitted to no longer staying sober.

In no less than three places in California's dependency scheme the Legislature has declared with respect to the statutory review periods, "The failure of the parent or legal guardian to participate regularly and make substantive progress in court-ordered treatment programs shall be prima facie evidence that return would be detrimental." (§§ 366.21, subd. (e), 366.21, subd. (f) and 366.22, subd. (a).) These statutes create a rebuttable presumption of detriment and shift the burden of producing contrary evidence to the parent. (*In re Heather B.* (1992) 9 Cal.App.4th 535, 561.) Here we are reviewing the removal of a child under section 387, not the failure to return a child at one of the six-month review periods, but the quoted statutes are relevant because they evince a legislative intent that the parent's failure to participate in court-ordered treatment programs is prima facie evidence that parental custody would be detrimental to the child. This makes sense because "court-ordered treatment programs are tailored by the court to remedy the circumstances that required removal of the child from parental custody[.]" Therefore, "it is reasonable to conclude that in the absence of contrary evidence the failure to participate in such programs is sufficient to establish that the circumstances still exist." (*Ibid.*)

Mother offered no evidence that the treatment programs the court ordered were no longer necessary. She simply argued that she did not suffer from a mental disability. This was not sufficient to rebut the presumption that the circumstances giving rise to Bryce's initial removal from Mother's custody still exist.

## III. THE EVIDENCE SUPPORTS THE COURT'S FINDING THAT DCFS PROVIDED REASONABLE SERVICES TO MOTHER.

Section 361, subdivision (d) states: "The court shall make a determination as to whether reasonable efforts were made to prevent or to eliminate the need for removal of the minor from his or her home . . . ." The reasonableness of the efforts are judged according to the circumstances of each case. (*Robin V. v. Superior Court* (1995) 33 Cal.App.4th 1158, 1164.)

Mother argues that DCFS failed to provide her with "reasonable services" to prevent Bryce's removal from her custody~(AOB at 40)~ but she does not name any specific services she was denied and does not explain why the services that were provided were not reasonable.

The record establishes that DCFS provided Mother with family preservation services from the Santa Anita Family Service Family Preservation program plus individual mental health counseling from Tri-City Mental Health Center and psychiatric evaluations from the Pomona Unified School District Family Preservation Program and the La Puente Valley Mental Health Center. Tri-City prescribed psychotropic medicine that Mother refused to take and offered mental health counseling that Mother refused to attend on the ground that "I don't have mental health issues."

The foregoing is substantial evidence that reasonable efforts were made to prevent the need for detention of the children.

## IV. THE COURT PROPERLY DENIED FURTHER REUNIFICATION SERVICES.

The court terminated Mother's reunification services with Bryce at the review hearing on March 4, 2013. Mother argues the court abused its discretion in not continuing services to May 2013. We disagree.

Under section 361.5, subdivision (a)(1)(B), Mother was entitled to six months of family reunification services because Bryce was under three years of age when he was first detained. The statute provides that services for such a child may be extended "no longer than 12 months from the date the child entered foster care" (which, in Bryce's

case, was June 30, 2011) "unless the child is returned to the home of the parent or guardian."[4]

Bryce was returned to the home of his Mother at the 12-month review in August 2012. Returning Bryce to his Mother triggered California Rules of Court, rule 5.565, subdivision (f), which states: "If a dependent child was returned to the custody of a parent or guardian at the 12-month review or the 18-month review or at an interim review between 12 and 18 months and a [section] 387 petition is sustained and the child removed once again, the court must set a [permanency planning] hearing under section 366.26 unless the court finds there is a substantial probability of return within the next 6 months or, if more than 12 months had expired at the time of the prior return, within whatever time remains before the expiration of the maximum 18-month period." The 18-month period from the time of Bryce's initial removal expired in December 2012. Therefore, when Bryce was again removed in March 2013, Mother was no longer eligible for reunification services.

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[4] The "[d]ate of foster care entry" is defined as "the date of the jurisdictional hearing . . . or the date that is 60 days after the date on which the child was initially removed from the physical custody of his or her parent or guardian." (§ 361.49.) The jurisdictional hearing in this case was held on June 30, 2011, which was less than 60 days from the date Bryce was initially removed from Mother's custody, so June 30, 2011 is the beginning date for measuring reunification services.

## DISPOSITION

The orders are affirmed.

NOT TO BE PUBLISHED.

ROTHSCHILD, Acting P. J.

We concur:

CHANEY, J.

MILLER, J.*

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