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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re BOBBIE R., a Person Coming  
Under the Juvenile Court Law.

BARBARA R.,

Petitioner,

v.

THE SUPERIOR COURT OF  
LOS ANGELES COUNTY,

Respondent;

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN AND  
FAMILY SERVICES,

Real Party in Interest.

B277488

(Los Angeles County  
Super. Ct. No. CK01135)

ORIGINAL PROCEEDING. Petition for extraordinary writ. (Cal. Rules of Court, rule 8.452.) Stephen C. Marpet, Commissioner. Petition denied.

Los Angeles Dependency Lawyers, Inc. and Law Office of Marlene Furth, Nicole J. Johnson and Joseph Escobosa, for Petitioner Barbara R.

No appearance for Respondent.

Office of the County Counsel, Mary C. Wickham, County Counsel,  
Stephanie Jo Reagan, Principal Deputy County Counsel, for Real Party in Interest.  
Law Offices of Lori Schroeder and Lori Schroeder, for Minor.

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Barbara R. (mother), the mother of Bobbie R. (Bobbie), petitions for extraordinary relief pursuant to California Rules of Court, rule 8.452. She seeks review of an order setting a permanent plan hearing under Welfare and Institutions Code section 366.26.<sup>1</sup> Mother asserts the juvenile court's finding that a substantial risk to Bobbie remained, so as to prevent reunification, is not supported by substantial evidence. We deny the petition.

### **FACTS AND PROCEDURAL HISTORY**

Bobbie R., born in August 2005, came to the attention of the Los Angeles County Department of Children and Family Services (DCFS) on June 9, 2014. That day, DCFS received a telephone call indicating that sheriff's deputies responded to an episode of domestic violence between mother and Vincent W. (Vincent), the father of one of Bobbie's siblings. Bobbie was not in the family home at the time, as she had been sent to live with her godparents, to whom mother had given guardianship of Bobbie.

A social worker investigated, and after several interviews determined that there was ongoing domestic violence in the home, largely initiated by Vincent. Mother knew of Vincent's volatility but was either unwilling or unable to leave Vincent, or to keep him out of the house. The four minor siblings who resided in the home—M., 17, F., 14, Rubie, 13, and Jorge, 10—

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

were aware of the domestic violence, were upset by it, and were sometimes the subjects of Vincent's yelling. Vincent's son, Jorge, reported being punched or hit with a belt. Rubie had conflicts with mother, who accused Rubie of sleeping with Vincent. Rubie denied the allegation.

After approximately a month, a team decision meeting was held with the family. It was agreed that Vincent would leave the home in compliance with a restraining order that was entered against him.<sup>2</sup> He would have visits monitored by DCFS. The children would remain in mother's custody, though Bobbie would reside with her godparents. A section 300 petition would be filed, mother and Vincent would drug test in response to allegations of drug use, and the children would be referred to the Department of Mental Health. On August 1, 2014, that plan was affirmed by the juvenile court at a detention hearing, and DCFS was directed to provide family maintenance services.

It was not the first time DCFS had provided services to the family. Several section 300 petitions had been filed before Bobbie was born concerning mother's drug use interfering with her children's well-being. In fact, Jorge had been removed from mother and Vincent after being born with a positive toxicology screen for cocaine. Mother regained custody two years later when a section 388 petition was granted. M. and F. had been placed with their father at one point. There had also been numerous unfounded or inconclusive allegations that Bobbie was physically abused by Vincent, or was threatened by the physical abuse or neglect of several of her siblings.

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<sup>2</sup> Vincent was convicted of misdemeanor battery of a spouse after the domestic violence incident. The criminal court issued a restraining order requiring Vincent to stay 100 yards away from mother and her adult daughter.

Both mother and Vincent had extensive criminal histories, primarily for drug-related arrests and convictions.

Within days of the juvenile court's sustaining the detention plan, Vincent violated the agreement by entering the family home and initiated another episode of domestic violence involving mother and the children. Sheriff's deputies were called, but Vincent fled and mother minimized the events. Thereafter, Vincent was seen near the house, his car was seen in the driveway, and a relative and some of the children confirmed that he continued to live with the family and engage in domestic violence. The children were pressured to lie about Vincent's continued residence. Meanwhile, mother was inconsistent in making and keeping appointments, including drug tests, for herself and the children. That endangered Rubie's ability to obtain anti-depressant medication she had been taking. By August 20, 2014, Rubie was placed on a 72-hour hold for suicidal ideation, one of many over the years, and was later placed in foster care. In light of that information, the juvenile court ordered that the remaining children be removed from mother and placed at DCFS's discretion. Bobbie remained unaffected, as she had been living with her godparents, noting the best thing about their home was that they did not fight.

Adjudication of the section 300 petition went forward on December 3, 2014. By then, the record showed that Vincent was not in compliance with a domestic violence counseling program ordered by the criminal court, and was only partially in compliance with the case plan he had agreed to with DCFS. He denied hitting mother or the children, blaming mother for arguments in the household. Though mother temporarily went to a domestic violence shelter, she had reunited with Vincent and intended to stay with him. She continued minimizing Vincent's behavior, stating that Vincent had never

hurt the children; he just engaged in rough play to toughen them up so they would not be bullied at school. Mother and Vincent also denied using drugs, contrary to the children's statements and the implication of their frequently missing drug tests.<sup>3</sup> Mother actually tested positive for barbiturates on one occasion, though she attributed it to migraine medication.

Mother continued to blame Rubie for causing trouble in the home. F. and Jorge reported feeling safer in foster care than in mother's custody. Bobbie indicated she was happy with her godparents and wished to remain with them. Bobbie's godfather revealed that they had first taken Bobbie in as a newborn because mother was in jail when Bobbie was born. Despite their wishes, mother would thereafter pick Bobbie up for stretches of time. Once Bobbie was school-aged, she would miss substantial periods in school while in mother's care. The godmother reported that Bobbie was bed-wetting before mother agreed to permanently place Bobbie with the godparents. When Bobbie was eight or nine, mother signed a power of attorney permitting the godparents to keep Bobbie, and they wished for Bobbie to stay with them.

In the end, the trial court sustained the section 300 petition as to allegations of failure to protect the children. Reunification services were ordered, and the children were to remain in their placements, with Rubie going to her biological father. Mother was further required to participate in individual counseling, parenting, domestic and sex abuse counseling, and a substance abuse program with weekly, random drug tests. Bobbie and the other children were placed in therapy.

In the ensuing 18 months, there was lots of activity but little change. Mother enrolled in some of her required programs, only to drop out. She was

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<sup>3</sup> Some, but not all, of the missed tests may have been attributable to paperwork problems.

a frequent no-show at drug testing, usually offering excuses for her absences such as scheduling conflicts or medical issues. Mother received three positive tests for alcohol, and one for cocaine metabolite, though those may have been due to her medical conditions. Mother's visitation with the children was sporadic. Mother remained with Vincent, apparently having consented to modification of the restraining order. Like mother, Vincent had only partially participated in his case plan, and at one point was incarcerated for an assault.

During that same period, Bobbie continued doing well with her godparents, so well that her counseling sessions were ended. Rubie was in crisis. She was cutting and expressing suicidal ideation. She was repeatedly hospitalized. She was not happy with her father, but was also concerned that mother was not complying with her case plan and so would not reorder her life. F. and Jorge remained in their placements. Of all of the children, only Rubie wished to reunify with mother.<sup>4</sup>

By the time of the 18-month review hearing, DCFS still considered mother's home to pose a high risk of harm to the children. It recommended terminating reunification services. Mother requested a contested hearing, so the 18-month review was continued. Mother thereupon began complying with her case plan. Due to repeated continuances, she obtained an extra seven months of services. In that time, mother regularly attended drug testing, and consistently tested negative, missing only one test due to lateness. Mother also completed parenting and anger management classes, and eventually her domestic violence and substance abuse programs. By June 2016, two years after the initial domestic violence incident, the juvenile

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<sup>4</sup> M. had reached age 18 and gone into extended foster care, so was no longer part of reunification efforts.

court directed that mother receive unmonitored day visits with the children, to be liberalized to overnights if possible, even though mother's visits had remained sporadic. In addition, mother, who was still living with Vincent, was provided additional family maintenance services, was required to participate in continued counseling with weekly drug and alcohol testing, and was directed to enroll in an after-care program to support her sobriety.

The result of that increased visitation was distress to Bobbie. She reported that during overnight visits, her siblings were yelling and upset. Bobbie was afraid to tell her siblings, caregivers or the social worker that she was unhappy for fear of retaliation.<sup>5</sup> She was anxious and crying in anticipation of visits and had to re-start therapy. Bobbie was also observed to be pulling away from friends in anticipation of having to leave them. She did not want to change schools, and noted there were nine people living in mother's home. She wished to remain with her godparents.

The 18-month review hearing finally went forward on September 1, 2016. By that time, Bobbie still did not wish to continue visits, or to return to mother's care. She was unhappy during overnight visits, felt crowded by Rubie, and noted that mother and Vincent engaged in a couple of yelling matches. Several visits were cancelled, once by Bobbie and seven times by mother, at least two of which mother claimed were due to health issues. F. was also resisting visitation with mother, and had changed his mind about returning to her care. He reported that during visits, mother was distracted,

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<sup>5</sup> By the time of the overnight visits, F. and Jorge had been placed in their adult sister's home, and were interested in returning to mother's care. Rubie also wished to return to mother's care, inasmuch as she had been removed from her father for neglect and abuse, and was placed in a group home or foster care. Before the final hearing in this matter, the juvenile court actually returned Jorge and Rubie to mother on the condition that she and Vincent test clean for drugs and alcohol.

did not really spend time with the children, and sometimes cut the visits short. For her part, mother had drug tested regularly, with one missed test due to an appointment with Rubie, and had enrolled in a substance abuse after-care program, but had not yet attended.

Given that information, DCFS assessed mother to be in partial compliance with her case plan. It further found the risk inherent in returning the children to her care to be high. Nevertheless, it could not identify any child safety worries, and so recommended that F. and Bobbie, like Jorge and Rubie, be returned to mother's home. After taking the matter under submission, the juvenile court disagreed. It found that mother had received more than 18 months of reunification services, but was still not ready to reunify with Bobbie. She was in only partial compliance with her case plan. Bobbie was regressing in the face of overnight visits with mother, and at risk of deteriorating further should she be returned to mother's care. Moreover, the court recognized that Bobbie had lived most of her life with her godparents, and was situated differently than the older children. With regard to F., who was then almost 17 years old and was residing at his adult sister's home, the court entered a home of parent order for mother, noting her plan to have F. remain with his adult sister to complete high school. This petition followed, challenging the juvenile court's ruling only as to Bobbie.

## **DISCUSSION**

The question before this court is whether substantial evidence supports the trial court's conclusion that a substantial risk to Bobbie remained in returning her to mother's care. (*In re B.S.* (2012) 209 Cal.App.4th 246, 252; *Angela S. v. Superior Court* (1995) 36 Cal.App.4th 758, 763.) In determining whether such evidence supports the juvenile court's determination, the appellate court will not reweigh the evidence or exercise independent



judgment regarding the ruling. (*In re Matthew S.* (1988) 201 Cal.App.3d 315, 321.) All inferences from the evidence will be drawn in favor of the juvenile court's ruling, and the record viewed in the light most favorable to the judgment below. (*Kevin R. v. Superior Court* (2010) 191 Cal.App.4th 676, 689.) Given those standards, the juvenile court's order must be affirmed.

We begin with mother's history of being in and out of the dependency system, raising a question as to her ability to sustain a risk-free environment for her children. In this very case, mother went 18 months without serious efforts to comply with her case plan. It was not until she was threatened with termination of services that she committed to performing as expected. And even then, her compliance with the case plan was only partial, and she failed to enroll in or actually attend counseling and a substance abuse after-care program as ordered by the court, suggesting a rather lax commitment to her sobriety.

What is more, there was evidence that mother's home remained chaotic. She and Vincent were still arguing in front of the children, engaging in the very type of behavior that brought the case into the juvenile court to begin with. A fair inference exists that their relationship remains on the same footing as before, and will deteriorate into violence, minimization, and pressure on the children to conceal the hostility. Indeed, the children themselves were upset and fighting, just as they had been when last in mother's custody. Meanwhile, Bobbie had been given little chance to develop a relationship with mother, which might have eased her transition back into the family, due to mother's sporadic visits and reported inattentiveness during visits. Bobbie's description of her experience in mother's home was that of an outsider.

The record further shows that Bobbie's emotional state regressed once she spent extended periods with mother. She was anxious and crying, and dreaded overnight visits. She became withdrawn, and was again in need of therapy. She was intimidated by the turbulent atmosphere of mother's home, and yet afraid to say so. That demonstrates there was, at least, a risk of emotional harm to Bobbie in returning her to mother's care, a full two years after she was removed. The juvenile court correctly recognized that risk in making its ruling.

As for the fact that the older children were permitted to return to mother's custody, the record demonstrates them to have been in a substantially different position than Bobbie. Moreover, there has been no challenge to the juvenile court's decisions to return the older children, and so this court has no occasion to consider whether those rulings were supported.

#### **DISPOSITION**

The petition for extraordinary relief is denied. The stay of the Welfare and Institutions Code section 366.26 hearing is dissolved. This opinion shall become final immediately upon filing. (Cal. Rules of Court, rule 8.264(b)(3).)

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\_\_\_\_\_, Acting P.J.  
ASHMANN-GERST

We concur:

\_\_\_\_\_, J.  
CHAVEZ

\_\_\_\_\_, J.  
HOFFSTADT