Filed 9/17/12 In re Amber W. CA2/7

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re AMBER W. et al., Persons Coming Under the Juvenile Court Law.	B237935 (Los Angeles County Super. Ct. No. CK59707)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. RACHEL V., Defendant and Appellant.	

APPEAL from an order of the Superior Court of Los Angeles County. Rudolph A. Diaz, Judge. Reversed and remanded.

Lori A. Fields, under appointment by the Court of Appeal for Defendant and Appellant.

John F. Krattli, Acting County Counsel, James M. Owens, Assistant County Counsel, and Stephen D. Watson, Associate County Counsel, for Plaintiff and Respondent.

Appellant Rachel V. ("Mother"), the mother of minors Amber W. and Ayanna W., appeals from the juvenile court's disposition order denying reunification services to Mother pursuant to Welfare and Institutions Code section 361.5, subdivisions (b)(10) and (b)(11).[1] On appeal, Mother contends that the juvenile court committed reversible error in denying her reunification services because the court applied the incorrect legal standard under section 361.5, subdivision (b)(10) and (b)(11), and because the evidence was insufficient to support a finding that Mother failed to make reasonable efforts to treat the problem that led to the prior removal of the minor's half siblings. Mother also claims that the juvenile court abused its discretion in failing to order reunification services under section 361.5, subdivision (c) because there was clear and convincing evidence that reunification with Mother was in the minors' best interests. We agree with Mother that the juvenile court erred in denying her reunification services under section 361.5, subdivisions (b)(10) and (b)(11), and accordingly, reverse.

FACTUAL AND PROCEDURAL BACKGROUND

I. Juvenile Dependency History

Amber and Ayanna, born in December 2008, are the three-year-old twin daughters of Mother and Jeffry W. (Father).[2] Mother also has four older children from prior relationships – R.M. (born in January 1997), Ruben V. (born in September 1999), Brianna V. (born in June 2001), and A.V. (born in November 2003). In 2005 or 2006, Mother's four older children were declared dependents of the juvenile court pursuant to section 300, subdivision (b), based on sustained allegations that Mother had an unresolved history of substance abuse, failed to protect the children from inappropriate physical discipline by Mother's then boyfriend, and neglected the children's needs for proper hygiene and regular attendance in school.

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[1] All further statutory references are to the Welfare and Institutions Code.

[2] Father is not a party to this appeal.

In 2007, during the pendency of the older children's case, Mother enrolled in, but failed to complete, the Positive Steps drug treatment program. Later that year, Mother enrolled in the Salvation Army Bell Shelter Wellness Center's residential drug treatment program, which she successfully completed in February 2008. In March 2008, the case manager for Mother's treatment program reported that Mother had "achieved considerable progress in the program and . . . [became] a model client, due to her compliance participation and attendance." The case manager also noted that Mother "knows that she still has a lot of work to do, such as becoming independent of the program, obtaining housing and finding permanent employment, so that she may provide a stable environment for her children . . . ." Mother ultimately failed to reunify with her four older children. In or about May 2008, two of the children were placed in a legal guardianship with their maternal grandmother, and the other two children were adopted after Mother's parental rights were terminated.

Mother and Father were married in 2008, and Amber and Ayanna were born later that year. In March 2010 and September 2010, Father was arrested for spousal battery. On both occasions, Mother told the police that she and Father had been drinking alcohol and that Father hit her in the face during an argument. Mother also told the police that Father was drunk at the time of the incident, but denied that she was intoxicated. Following each arrest, the district attorney's office declined to file charges against Father due to a lack of sufficient evidence.

In 2010, the Los Angeles County Department of Children and Family Services (DCFS) received two anonymous referrals regarding Mother's care of Amber and Ayanna. In July 2010, the DCFS received a referral alleging physical abuse and alcohol use by Mother. The caller reported that Mother regularly consumed alcohol in the presence of the girls and that Mother hit both girls in the mouth on a prior occasion. In October 2010, the DCFS received a referral alleging drug use by Mother. The caller indicated that Mother often invited people into the family home to smoke

methamphetamines and that Mother used the drug in the presence of the children. The DCFS determined that both referrals were unfounded.[3]

II. Section 300 Petition

The current matter came to the attention of the DCFS on March 21, 2011, when the agency received a referral alleging Mother was using and selling methamphetamines out of the family home. At that time, Father was on active duty in the United States Navy and stationed in San Diego, while Mother stayed at home in Los Angeles caring for the twins. In a March 30, 2011 interview with the DCFS, Mother vehemently denied the allegations and agreed to submit to an on-demand drug test. On April 1, 2011, Mother tested positive for amphetamines and methamphetamines. When Mother was informed of the test results a week later, she again denied that she used drugs and stated that the results were wrong. However, she later contacted the case social worker for referrals to a drug treatment program and started making efforts to seek treatment. The DCFS advised Mother that, based on her positive drug test and prior case history, the agency would be filing a section 300 petition on behalf of Amber and Ayanna.

In an April 8, 2011 interview with the DCFS, Father stated that he was surprised by the allegations and was unaware that Mother was using drugs. Father wanted Amber and Ayanna to be placed in his care, and he made arrangements for a temporary leave

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[3] There are conflicting statements in the DCFS's reports concerning the disposition of these two referrals. In its April and May 2011 detention reports, the DCFS indicated that both referrals were closed as "unfounded." However, in its May and August 2011 Jurisdiction/Disposition Reports, the DCFS characterized the disposition of each referral as "situation stabilized."

The DCFS's April 2011 and May 2011 detention reports also described a third referral received by the agency on August 24, 2008, which alleged that Mother tested positive for drugs when she gave birth to the twins. These are the only references in the record to such referral, which would have been made four months before the twins were born. It is unclear if the DCFS simply misstated the correct date of the referral. In any event, the DCFS indicated in its detention reports that this referral also was closed as "unfounded."

from his military service to take custody of the children. On April 11, 2011, the DCFS removed the children from the care of Mother and released them to Father.

On April 14, 2011, the DCFS filed a section 300 petition on behalf of Amber and Ayanna, alleging that Mother had a four-year history of substance abuse and was a current user of amphetamines and methamphetamines which rendered her incapable of providing regular care for the children. The petition also alleged that Mother's four older children had received permanent placement services due to Mother's substance abuse, and that the DCFS might seek an order pursuant to section 361.5 that no family reunification services be provided.

III. Children's Detention from Mother

At the April 14, 2011 detention hearing, the juvenile court ordered that Amber and Ayanna be detained from Mother and released to Father. The court ordered monitored visitation for Mother to take place outside the family home and with a monitor other than Father. The court also ordered Mother not to live in or visit the family home. The DCFS was ordered to provide family reunification services to Mother, including referrals to an inpatient drug treatment program, and to work with Father on developing an appropriate child care plan when he returned to active duty. On April 20, 2011, nine days after the children were detained, Mother enrolled in the six-month Prototypes Residential Substance Abuse Treatment Program.

In its May 2011 Jurisdiction/Disposition Report, the DCFS informed the court that Amber and Ayanna continued to reside with Father in the family home. However, since Father's return to active military duty, the maternal grandmother and maternal aunt were assisting Father by caring for the children four days a week. The children did not have any known medical, developmental, or emotional issues, and appeared to be closely bonded with Father and their maternal relatives. In late April 2011, the DCFS conducted individual interviews with Mother and Father about the allegations in the section 300 petition. In her interview with the DCFS, Mother admitted to smoking methamphetamines on one or two occasions over a one-month period. Mother stated that she wanted to regain custody of Amber and Ayanna and to have them reside with her at

the treatment facility. In his interview with the DCFS, Father described Mother as a loving and caring parent to their children. Father reported that he never saw Mother using drugs and had no knowledge of her recent drug use, but acknowledged that he was aware of Mother's prior drug use and case history with the DCFS. Both Mother and Father denied any history of domestic violence, even though Father's criminal background check showed two prior arrests for spousal battery.

The DCFS also interviewed the maternal grandmother about Mother's drug use. The maternal grandmother stated that she thought Mother might be using drugs again because Mother had lost a significant amount of weight in the last few months and was talking rapidly. The maternal grandmother noted that Mother had completed a drug treatment program in the past, and that she believed Mother was only able to maintain her sobriety while in a program. She also reported that Mother had contacted Father on April 30, 2011, 10 days after she began her current treatment program, and had threatened to leave the program at that time. Based on the maternal grandmother's statements and Mother's unresolved drug history, the DCFS was concerned about placing the children with Mother prior to her completion of a treatment program. The DCFS recommended that the children not be released to Mother, but that Mother be offered family reunification services given the parents' stated intent to stay together.

On May 14, 2011, after less than a month of treatment, Mother left the Prototypes drug treatment program against the advice of the facility. Two days later, on May 16, 2011, Mother and Father attended a scheduled pretrial resolution conference. At that hearing, the juvenile court was informed that Mother was no longer enrolled in a drug treatment program, and that she was staying with a friend until she could enter another program.

IV. Children's Detention from Father

On May 24, 2011, the DCFS filed a section 385 petition seeking to remove Amber and Ayanna from Father's care on the ground that Father had allowed Mother unlimited access to the children in violation of the juvenile court's prior order. According to the case social worker, the maternal grandmother reported that, on May 14, 2011, the

children's maternal uncle saw Mother, Father, and the children together in the family car, and he confronted Mother at that time about why she was no longer in a drug treatment program. The maternal grandmother further reported that she believed Mother was now residing in the family home with Father and the children. Additionally, the case social worker claimed that, at the May 16, 2011 pretrial resolution conference, Mother had falsely represented to the juvenile court that she had been granted permission to leave the drug treatment program and that she had taken public transportation to the courthouse that day.[4] The DCFS recommended that the children be placed with the maternal grandmother.

At the May 24, 2011 detention hearing, the juvenile court found that Mother and Father had violated the prior order prohibiting Father from monitoring Mother's visitation with the children. The court ordered that the children be detained from Father and placed with the maternal grandmother. The court also ordered monitored visitation for both Mother and Father on the condition that they not visit the children together.

V. Adjudication of Section 300 Petition

On May 26, 2011, the juvenile court held an adjudication hearing on the section 300 petition. Mother waived her right to a trial on the petition and submitted on the reports filed by the DCFS. The court sustained the petition as alleged and declared Amber and Ayanna dependents of the court pursuant to section 300, subdivision (b). The court ordered monitored visitation for Mother to take place outside the maternal grandmother's home. At Mother's request, the court set the matter for a contested disposition hearing.

On June 8, 2011, three and a half weeks after leaving the Prototypes drug treatment program, Mother was admitted to the Angel Step Too Residential Treatment Program. Mother left the Angel Step Too program approximately six weeks later on

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[4] As the DCFS concedes in its respondent's brief, the reporter's transcript of the May 16, 2011 hearing does not reflect any such misrepresentations by Mother or her counsel.

July 18, 2011. Mother told the DCFS that she voluntarily left the program because it was taking her eight hours of travel time to attend her visits with the children at the DCFS's office. However, a program supervisor reported that Mother was terminated from the program for being disrespectful to staff. On July 20, 2011, two days after her stay at the Angel Step Too program ended, Mother enrolled in a third residential drug treatment program at the Stepping Stones Recovery Home.

VI. Section 342 Petition

On July 5, 2011, the DCFS filed a section 342 petition on behalf of Amber and Ayanna alleging that Father and Mother had a history of domestic violence within the family home and that Father had failed to protect the children from Mother's unresolved substance abuse problem. The DCFS later amended the section 342 petition to include an additional allegation that Father tested positive for amphetamines and methamphetamines on two occasions in July 2011, and that Father's current drug use rendered him incapable of providing regular care for the children. The juvenile court set the matter for an adjudication hearing on the first amended section 342 petition and continued the contested disposition hearing on the section 300 petition. At Mother's request, the court also ordered that Mother's monitored visitation with the children be increased to at least two times a week.

In its August 2011 Jurisdiction/Disposition Report, the DCFS informed the court that Amber and Ayanna remained placed in the home of the maternal grandmother. The children were attending two weekly monitored visits with Mother and one weekly monitored visit with Father, and the visits with both parents were going well. In their individual interviews with the DCFS, both Mother and Father denied that they had a history of domestic violence despite Father's two prior arrests for spousal battery. They also denied making statements to the police at the time of Father's arrests about any physical altercations between them. After testing positive for amphetamines and methamphetamines on July 17 and 27, 2011, Father admitted to the DCFS that he recently had used the drugs, but related that it had been an isolated incident. Father also stated that he was willing to attend an outpatient substance abuse treatment program.

A counselor at the Stepping Stones Recovery Home reported that Mother was making satisfactory progress in her treatment program and had tested negative for drugs on June 22, 2011 and July 22, 2011. Both Mother and Father conveyed to the DCFS that they wanted to reunify with the children. In its August 2011 report, the DCFS recommended that reunification services be offered to Father, but not to Mother.

In a September 2011 supplemental report, the DCFS provided the court with additional information about the parents' progress with drug treatment. Father began attending an outpatient treatment program on August 11, 2011, and he tested negative for drugs on August 5, 2011, August 15, 2011, and September 14, 2011. Mother remained enrolled in the residential treatment program at the Stepping Stones Recovery Home, and she tested negative for drugs on August 11, 2011 and September 13, 2011. An August 18, 2011 progress report from the Stepping Stones program stated that Mother was "in full compliance [with the] program rules and displays a lot of determination and willingness to change her life. [Mother] has shown a significant amount of progress in the few weeks she has been here." The program assistant advised the DCFS that the children could reside with Mother at the treatment facility if reunification occurred.

In an October 2011 supplemental report, the DCFS informed the court that Mother continued to reside at the Stepping Stones Recovery Home and had regular visitation with the children two times per week. The DCFS attached an October 17, 2011 progress report from the Stepping Stones program which stated that Mother was in full compliance with the program and had shown a significant amount of progress in her treatment. Mother had attended 54 Alcoholics Anonymous and Narcotics Anonymous meetings, 79 self-help groups, 57 recovery groups, 15 education groups, 4 individual and family development groups, and 6 parenting classes. Mother also was participating in weekly individual sessions with a primary counselor and a parenting specialist. As reported by the program, the "[p]rimary counselor observes a lot of growth in [Mother], she is displaying assertiveness and the ability to express her emotions which is something she had difficulty doing when she entered treatment. [¶] [Mother] remains willing to go to any length to maintain a relationship with her daughters."

VII. Adjudication of Section 342 Petition

On October 27, 2011, the juvenile court held an adjudication hearing on the first amended section 342 petition. Both Mother and Father submitted a waiver of rights and pleaded no contest to the petition. The juvenile court sustained the amended petition pursuant to section 300, subdivision (b) and set the matter for a disposition hearing on November 16, 2011. The court also ordered the DCFS to provide a supplemental report addressing the parents' progress and any revisions in its recommendations.

In a November 2011 interim review report, the DCFS indicated that Father was still participating in an outpatient drug treatment program and had tested negative for drugs on October 5, 2011, October 20, 2011, and November 4, 2011. Mother continued to reside at the Stepping Stones Recovery Home and had tested negative for drugs on October 12, 2011, October 25, 2011, and November 7, 2011. Mother also maintained regular visitation with the children at least twice a week at the treatment facility. The DCFS attached a November 9, 2011 progress report from the Stepping Stones program which reflected that Mother now had attended 72 Alcoholics Anonymous and Narcotics Anonymous meetings, 80 self-help groups, 68 recovery groups, 21 education groups, 8 individual and family development groups, and 8 parenting classes. The program assistant reported that Mother continued to show "a significant amount of progress" and remained "proactive in setting reasonable goals for herself regarding parenting and specific life skills that are going to benefit not only her future as a parent but as a productive member of society."

In its report, the DCFS noted that Mother had a six-year history of substance abuse, and still had not addressed why her four older children had been removed from her care or why she had failed to reunify with them. The DCFS also expressed concern that Mother had participated in three different drug treatment programs since April 2011, and had been enrolled in the Stepping Stones Recovery Home for only a "brief period" of three months. The DCFS continued to recommend that the juvenile court deny family reunification services to Mother pursuant to section 361.5, subdivisions (b)(10) and (b)(11).

VIII. Disposition

On November 16, 2011, the juvenile court held the disposition hearing on the sustained petitions. The court ordered that Amber and Ayanna be removed from the custody of both parents and placed in the care of the DCFS for suitable placement. The court ordered family reunification services for Father pursuant to a stipulated case disposition plan, which included monitored visitation with the children and participation in a drug and alcohol treatment program with random drug testing, a 52-week domestic violence program, a parenting education program, and individual counseling to address case issues. After admitting into evidence the reports filed by the DCFS, the court heard argument from the parties as to whether Mother should be offered reunification services.

Counsel for the DCFS and counsel for the children joined in opposing family reunification services for Mother. They asserted that Mother had not made a reasonable effort to treat the substance abuse problem that led to the removal of the children's half siblings, and that reunification services for Mother were not in the children's best interests. Mother and Father joined in requesting that Mother be provided with reunification services because she had made reasonable efforts to address her substance abuse problem, as evidenced by her significant progress in her current drug treatment program. Counsel for Father noted that "reasonable efforts does not require a cure," and that it might be more difficult for Father to reunify with the children if services were not made available to the entire family unit. Counsel for Mother reasoned that recovery from a drug addiction was "something that a parent has to consistently keep on attending and fighting for," and that the children would benefit from reunifying with Mother given their young age.

At the conclusion of the hearing, the court denied family reunification services for Mother pursuant to section 361.5, subdivisions (b)(10) and (b)(11). In support of its ruling, the court stated on the record as follows:

> "With respect to [Mother's] consideration for reunification, I think . . . the Department is correct in this instance – I think [Mother's] substance abuse situation is – severe. And I do recognize that in the last three and a half months

> that she's been able to put together an impressive showing. But I don't think it's enough. I am concerned that with the history of the loss of two children on a permanent basis, and that after the filing of this matter in April, she continues to abuse substances. And, frankly, I don't consider her an evil person. I think she is a person who is just so addicted that she is out of control. And I think based on this court's experience, children are the strongest motivating factor for mothers to recover, and in this instance, it hasn't proven so. As I indicated, she's already lost two children, and at this point on the verge of losing two more. And after the children were removed in April, she continued to use substances. So I think that she's got a serious problem. Even what is demonstrated, showing for the last three and a half months, is just not enough. I think she's got to do more and I look forward to her filing a [section] 388 [petition] in the near future, demonstrating a sincere change of circumstances, and not for just a couple of months or three months that she's been able to keep sober. Because I think she's got to demonstrate that she's really overcome her problem and I don't think she's able to do that at this point. At least prove it at this point."

Following the disposition order, Mother filed a timely notice of appeal.

DISCUSSION

On appeal, Mother argues that the juvenile court's order denying her family reunification services under section 361.5, subdivision (b)(10) and (b)(11) suffered from two fundamental defects. First, she contends that the court applied the wrong legal standard by requiring Mother to effectively prove that she had overcome her substance abuse problem, rather than evaluating whether she had made a reasonable effort to treat the problem. Second, she claims that the evidence was insufficient to support a finding, whether express or implied, that Mother did not make a reasonable effort to treat her substance abuse problem following the removal of the children's half siblings from Mother's custody. We address each of these arguments below.

I. Standard of Review

When the sufficiency of the evidence to support a juvenile court's order is challenged on appeal, the reviewing court must determine whether there is substantial evidence, contradicted or uncontradicted, to support it. (*In re Albert T.* (2006) 144 Cal.App.4th 207, 216; *In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1393.) Under this standard of review, we must examine the whole record in the 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 Albert T.*, *supra*, at p. 216.) We must also resolve all conflicts in the evidence in support of the juvenile court's order and indulge all legitimate inferences to uphold the lower court's order. (*Ibid.*) On the other hand, the determination of whether the juvenile court applied the correct legal standard in making its finding or order presents a question of law, which we review de novo. (*In re Marriage of David & Martha M.* (2006) 140 Cal.App.4th 96, 100-101; *Enrique M. v. Angelina V.* (2004) 121 Cal.App.4th 1371, 1378.)

II. Denial of Reunification Services under Section 361.5, Subdivision (b)

As this Court has observed, "'[i]t is difficult, if not impossible, to exaggerate the importance of reunification in the dependency system.' [Citation.]" (*In re Albert T.*, *supra*, 144 Cal.App.4th at p. 217.) Accordingly, there is a presumption in dependency proceedings that parents will receive reunification services. (*Cheryl P. v. Superior Court* (2006) 139 Cal.App.4th 87, 95; *Riverside County Dept. of Public Social Services v. Superior Court* (1999) 71 Cal.App.4th 483, 487.) When a child is removed from the custody of his or her parent, the juvenile court is required to order family reunification services under section 361.5, subdivision (a) unless the court finds by clear and convincing evidence that one of the enumerated exceptions in section 361.5, subdivision (b) applies. (*In re Albert T.*, *supra*, at p. 217; *Cheryl P. v. Superior Court*, *supra*, at p. 95.) These statutory exceptions are often referred to as the "reunification bypass provisions." (*In re Allison J.* (2010) 190 Cal.App.4th 1106, 1112.)

The bypass provisions set forth in section 361.5, subdivisions (b)(10) and (b)(11) seek to address "'the risk of recidivism by the parent despite reunification efforts.'"

(*Cheryl P. v. Superior Court, supra*, 139 Cal.App.4th at p. 95.) They authorize the denial of family reunification services to a parent whose prior reunification services or parental rights were terminated over a child's sibling or half sibling if the court finds, by clear and convincing evidence, that the parent "has not subsequently made a reasonable effort to treat the problems that led to removal of the sibling or half sibling of that child" from the parent. (§ 361.5, subds. (b)(10), (b)(11).) Therefore, before applying either of these bypass provisions, the juvenile court must find that (1) the parent previously failed to reunify with the child's sibling resulting in a termination of reunification services or parental rights, and (2) the parent has not subsequently made a reasonable effort to treat the problems that led to removal of the sibling. (*In re Albert T., supra*, 144 Cal.App.4th at p. 217; *Cheryl P. v. Superior Court, supra*, at p. 96.)

"The 'no reasonable effort' clause provides a means of mitigating a harsh rule that would allow the court to deny services based only upon the parent's prior failure to reunify with the child's sibling 'when the parent had in fact, in the meantime, worked toward correcting the underlying problems.' [Citation.]" (*Cheryl P. v. Superior Court, supra*, 139 Cal.App.4th at p. 97.) Consequently, "[i]f the evidence suggests that despite a parent's substantial history of misconduct with prior children, there is a reasonable basis to conclude that the relationship with the current child could be saved, the courts should always attempt to do so. . . . The failure of a parent to reunify with a prior child should never cause the court to reflexively deny that parent a meaningful chance to do so in a later case. To the contrary, the primary focus of the trial court must be to *save* troubled families, not merely to expedite the creation of what it might view as better ones." (*Renee J. v. Superior Court* (2002) 96 Cal.App.4th 1450, 1464.)

III. The Juvenile Court Erred in Denying Reunification Services to Mother

Mother does not dispute that the first prong of section 361.5, subdivisions (b)(10) and (b)(11) has been satisfied. As Mother concedes, in 2005 or 2006, her four older children were declared dependents of the juvenile court under section 300, subdivision (b), and she failed to reunify with the children following their removal from her custody. Mother's reunification services for all four children were terminated in 2008, and her

parental rights over two of the four children also were terminated. Mother's argument on appeal instead is directed at the second prong, and specifically, at whether the juvenile court properly determined, by clear and convincing evidence, that Mother had not made a reasonable effort to treat the substance abuse problem that led to the prior removal of her four older children. Based on the record before us, we conclude that the juvenile court's denial of reunification services to Mother constitutes reversible error.

A. The juvenile court applied the incorrect legal standard.

First, the juvenile court erred by evaluating the applicability of section 361.5, subdivisions (b)(10) and (b)(11) using the wrong legal standard. The requirement that a parent has to make a reasonable effort to treat the problems that led to the removal of a child's sibling "focuses on the extent of a parent's efforts, not whether he or she has attained 'a certain level of progress.'" (*R.T. v. Superior Court* (2012) 202 Cal.App.4th 908, 914, quoting *Cheryl P. v. Superior Court*, *supra*, 139 Cal.App.4th at p. 99.) "To be reasonable, the parent's efforts must be more than 'lackadaisical or half-hearted.' [Citation.]" (*K.C. v. Superior Court* (2010) 182 Cal.App.4th 1388, 1393.) However, "the 'reasonable effort to treat' standard . . . is not synonymous with 'cure.'" (*Renee J. v. Superior Court*, *supra*, 96 Cal.App.4th at p. 1464.) Thus, "[t]he mere fact that [a mother] had not entirely abolished her drug problem would not preclude the court from determining that she had made reasonable efforts to treat it." (*Ibid*.)

In *In re Albert T.*, this court considered whether the juvenile court erred in denying reunification services to the mother of a dependent child under section 361.5, subdivision (b)(10) without making any finding that she had failed to make a reasonable effort to treat a domestic violence problem. (*In re Albert T.*, *supra*, 144 Cal.App.4th at pp. 220-221.) The evidence demonstrated that the mother had completed both court-ordered and voluntary programs addressing the issue of domestic violence, but had not "resolved" the problem by the disposition hearing. (*Id*. at p. 221.) We concluded that, if the juvenile court "applied any standard at all in denying reunification services to [the mother], the juvenile court applied the wrong standard." (*Ibid*.) As we explained, the reasonable effort requirement "is directed to the parent's reasonable efforts to treat the problem, not

the success or failure of those efforts." (*Ibid*.) Because the DCFS failed to satisfy its burden of proving the mother had not made such reasonable efforts, we reversed the order denying reunification services. (*Id*. at pp. 221-222; see also *Cheryl P. v. Superior Court, supra,* 139 Cal.App.4th at p. 97 [reversing order denying reunification services where juvenile court based its ruling on parents' "lack of sufficient progress," not on whether parents "had failed to make a reasonable effort to treat their problems"].)

In this case, the juvenile court did not specifically find that Mother had failed to make a reasonable effort to treat her substance abuse problem. Rather, the court denied reunification services to Mother because she failed to prove that she had resolved the problem by the time of the disposition hearing. The court noted that Mother had made "an impressive showing" since she enrolled in the Stepping Stones residential drug treatment program, but found that it was "not enough" to warrant further services. The court stated that Mother had to "do more" to obtain family reunification services and suggested that she file a section 388 petition "in the near future, demonstrating a sincere change of circumstances." In the court's view, Mother had to "demonstrate that she's really overcome her problem and I don't think she's able to do that at this point. At least prove it at this point."

The juvenile court's ruling should have focused on the reasonableness of Mother's rehabilitation efforts, "not the success or failure of those efforts." (*In re Albert T., supra,* 144 Cal.App.4th at p. 221.) Notably, however, the court never addressed whether Mother's effort to treat her substance abuse problem following the removal of her four older children was in fact "reasonable." Rather, the court's analysis of Mother's right to reunification services was directed at the severity of her drug addiction and her degree of success in overcoming that addiction. By requiring that Mother demonstrate that she had "really overcome" her substance abuse problem, the court effectively placed the burden on Mother to prove she was cured of the problem. It then denied family reunification services to Mother based on a finding that she had failed to meet that burden. The juvenile court's order was therefore based on an application of the wrong legal standard.

B. The evidence was insufficient to support a finding that Mother failed to make a reasonable effort to treat her substance abuse problem.

Second, even if this court were to assume the juvenile court implicitly found that Mother failed to make reasonable efforts to treat her substance abuse problem, that finding was not supported by substantial evidence. In denying reunification services to Mother, the court focused its ruling on an unsupported finding that Mother continued to use drugs after Amber and Ayanna were detained. In fact, the court twice referenced Mother's purported drug use following the children's detention to support its conclusion that Mother's substance abuse problem was "severe." However, the record reflects that the last time Mother tested positive for drugs was on April 1, 2011, 10 days before the children were detained. The DCFS did not offer any evidence to establish that Mother continued to use drugs after that date. To the contrary, the evidence showed that, in the seven months following the children's detention, Mother submitted to eight random drug tests as part of her rehabilitation efforts, and tested negative for drugs each time.

The DCFS speculates that, because the juvenile court had no evidence that Mother had stopped using drugs, its finding that Mother continued to use drugs after the twins' detention "could have been correct." This claim lacks merit. "'[W]hile substantial evidence may consist of inferences, such inferences must be "a product of logic and reason" and "must rest on the evidence" [citation]; inferences that are the result of mere speculation or conjecture cannot support a finding [citations].' [Citation.]" (*In re Savannah M.*, *supra*, 131 Cal.App.4th at pp. 1393-1394, italics omitted.) Moreover, as the party seeking bypass of reunification services, the DCFS bore the burden of proving, by clear and convincing evidence, that Mother had not made a reasonable effort to treat her substance abuse problem. (*In re Angelique C.* (2003) 113 Cal.App.4th 509, 521 ["the party seeking bypass of reunification services under section 361.5, subdivision (b) has the burden of proving that reunification services need not be provided"].) The DCFS could not meet that burden by showing that Mother theoretically could have been using drugs during the dependency proceedings. The juvenile court's factual finding that Mother

continued to use drugs after the children's detention was not supported by substantial evidence.

None of the other evidence before the juvenile court was sufficient to support a finding that Mother had failed to make reasonable efforts to treat her substance abuse problem. The record reflects that Mother's four older children were removed from her care in 2005 or 2006 based, in part, on Mother's unresolved history of substance abuse. Mother sought treatment for her substance abuse problem at two different facilities in 2007, and successfully completed a six-month treatment program through the Salvation Army Bell Shelter Wellness Center in February 2008. Amber and Ayanna were born in December 2008, and there was no evidence that Mother was abusing any substances prior to, or at the time of, their birth. There was also no evidence that Mother was using illegal drugs during the three-year period from February 2008, when she successfully completed a drug treatment program, to April 2011, when she relapsed and the twins were removed from her care.[5]

On April 20, 2011, nine days after the twins were detained, Mother began seeking treatment for her substance abuse problem at a residential drug treatment program. On two occasions, Mother changed treatment programs, but there was no indication that she was removed from the other programs because she had relapsed. In July 2011, Mother enrolled in a comprehensive drug treatment program at the Stepping Stones Recovery Home, where her progress was reported to be exemplary. By the disposition hearing in November 2011, the Stepping Stones program stated that Mother was "in full compliance with [the] program rules," "displays a lot of determination and willingness to change her life," and "remains willing to go to any length to maintain a relationship with her

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[5] Although the DCFS did receive three referrals during this time period alleging alcohol and substance abuse by Mother, the DCFS ultimately determined that each of these referrals was unfounded. Additionally, while there was evidence that both Mother and Father had consumed alcohol during two domestic violence incidents that occurred in 2010, there was no indication that Mother was intoxicated or under the influence of any illegal drugs at the time of these events.

daughters." Since her enrollment in the program, Mother had participated in 72 Alcoholics Anonymous and Narcotics Anonymous meetings, 80 self-help groups, 68 recovery groups, 21 education groups, 8 individual and family development groups, and 8 parenting classes. She also was attending weekly individual sessions with a primary counselor and a parenting specialist. Additionally, as discussed, all of Mother's drug tests since April 2011 had been negative.

The DCFS contends that Mother's initial denial of any drug use and claim that the April 2011 drug test result was inaccurate constitute substantial evidence to support the juvenile court's ruling. It is true that when Mother was informed of the positive test result on April 8, 2011, she denied that she used any drugs at that time and asserted that the test result must be wrong. However, within a week, Mother had contacted the case social worker regarding referrals to a substance abuse treatment program and "started making efforts to seek out treatment." The DCFS also argues that Mother's failure to address the family's history of domestic violence and violation of a court order restricting Mother's contact with the children are sufficient to support the denial of reunification services. However, as this court recognized in *In Re Albert T.*, the reasonable efforts prong of section 361.5, subdivisions (b)(10) and (b)(11) is not intended to address all the issues that a parent may confront in a dependency proceeding, but rather is directed "specifically to 'the problems that led to the removal of the sibling.'" (*In re Albert T.*, *supra*, 144 Cal.App.4th at p. 220.) Thus, the only relevant inquiry in this case is whether the evidence shows that Mother failed to make a reasonable effort to treat the substance abuse problem that led to the removal of her four older children.

A review of the entire record reflects that Mother did make significant efforts to treat her substance abuse problem starting in 2008 and that she was able to maintain a substantial period of sobriety until 2011. Although Mother ultimately relapsed in April 2011 resulting in the detention of Amber and Ayanna, she renewed her efforts at rehabilitation by promptly seeking treatment for her substance abuse problem. By the disposition hearing in November 2011, Mother had demonstrated seven months of rehabilitation efforts without a positive drug test and four months of exemplary

participation in a comprehensive drug treatment program. Mother also maintained regular visitation with the children throughout the dependency proceedings and they were closely bonded to her. Under these circumstances, we conclude that any implied finding by the juvenile court that Mother had failed to make a reasonable effort to treat her substance abuse problem was not supported by substantial evidence.[6]

DISPOSITION

The portion of the juvenile court's November 16, 2011 disposition order denying reunification services to Mother is reversed. The matter is remanded to the juvenile court to conduct a new hearing to determine the appropriate reunification services to be offered to Mother and to conduct further proceedings consistent with this opinion.

ZELON, J.

We concur:

WOODS, Acting P. J.

JACKSON, J.

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[6] In light of our conclusion that the juvenile court erred in denying reunification services to Mother under section 361.5, subdivisions (b)(10) and (b)(11), we need not address Mother's alternative argument that the court should have ordered reunification services under section 361.5, subdivision (c) based on the best interests of the children. (See *R.T. v. Superior Court*, *supra*, 202 Cal.App.4th at p. 913, fn. 3 [section 361.5, subdivision (c) "becomes relevant *only if* one of the enumerated bases for denying reunification services applies"].)