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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

A.R., Petitioner, v. THE SUPERIOR COURT OF IMPERIAL COUNTY, Respondent; IMPERIAL COUNTY DEPARTMENT OF SOCIAL SERVICES, Real Party in Interest.	D086999 (Imperial County Super. Ct. No. JJP001566)

PROCEEDINGS for extraordinary relief after reference to a Welfare and Institutions Code section 366.26 hearing. William D. Quan, Judge. Petition granted.

Appellate Defenders, Inc. and Donna P. Chirco, under appointment by the Court of Appeal, for Petitioner.

No appearance for Respondent.

Kelly Ranasinghe, Deputy County Counsel, for Real Party in Interest.

A.R. (Mother) petitions for extraordinary relief pursuant to California Rules of Court, rule 8.452. (See Welf. & Inst. Code,[1] § 366.26, subd. (l).) She challenges the juvenile court's order bypassing services to Mother under section 361.5, subdivision (b)(6) and setting a section 366.26 hearing. She contends sufficient evidence did not exist to support the juvenile court's finding of "severe sexual abuse" (§ 361.5, subd. (b)(6)), and the court erred by failing to make a required factual finding that reunification services to Mother would not benefit J.M. (Child) or state specific supporting findings on the record (§ 361.5, subds. (b)(6), (c)(2) & (k)). An order to show cause issued pursuant to California Rule of Court, rule 8.452(d). The Imperial County Department of Social Services (the Department) responds that the court did not err by finding severe sexual abuse and its factual findings were sufficient to bypass services. We conclude the court properly found severe sexual abuse, but we agree with Mother that the court failed to make the factual finding that reunification services would not benefit Child or specify the factual bases for that finding as required to bypass reunification services. Accordingly, we grant the petition.

FACTUAL AND PROCEDURAL BACKGROUND

Child's Mother was married to Juan R.[2] Mother obtained an annulment in April 2024 after Child disclosed Juan R. had sexually abused her. Also in April 2024, Juan R. was arrested for domestic violence toward

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1 Undesignated statutory references are to the Welfare and Institutions Code.

2 Child's father had not been involved in her life since she was one year old. Father appeared later in the case at the jurisdiction hearing but did not seek custody. He eventually waived reunification services.

Mother with Child present, resulting in a criminal protective order protecting Mother and Child. After his release from jail, beginning in late 2024, Juan R. saw Mother and Child on multiple occasions despite the restraining order, including overnight visits at the home with them. Child reported that Mother lied to Child's teacher and to law enforcement about Juan R.'s presence in violation of the order. Mother repeatedly told Child she would not have to see him again.

In March 2025, when Child was nine years old, Juan R. asked Child to lie down in bed with him, and he hugged her from the back with clothes on while he slept, preventing her from leaving. In April, Juan R. touched Child's vaginal area, buttocks, and chest and kissed Child on the lips. A few days after the incident, on April 10, 2025, Child told Mother what happened; Mother failed to report the incident to law enforcement. Another time, Juan R. came into her room while she was sleeping and touched her thigh.

Juan R.'s touching made Child feel unsafe at home, and after the April incident, Child refused to go home and demanded to go to her adult sister's home instead. Mother reported that she believed Child was traumatized by Juan R.'s sexual abuse and witnessing domestic violence between him and Mother. Child also struggled with anxiety and depression and had thoughts of self-harm and intentionally cut herself with scissors on one occasion.

When speaking with the social worker, Mother initially denied Juan R. had been at her home since his incarceration. She admitted to sheriff's deputies investigating the incident, however, that he had spent the night on four occasions. Mother subsequently confirmed Juan R.'s March and April visits to the social worker. Mother explained she did not tell the truth because she feared Child would be taken away.

On April 15, 2025, Child was taken into protective custody and placed with her adult brother. The next day, the Department filed a juvenile dependency petition on behalf of Child alleging jurisdiction under section 300, subdivisions (b)(1) (failure to protect), (d) (sexual abuse), and (g) (no provision for support). The court held a detention hearing, finding the Department made a prima facie showing sufficient to support detention.

Child reported her brother was more protective than Mother. Child stated she would eventually like to return to Mother's care if she would protect her, otherwise she wanted to stay with her brother.

At the time of the jurisdiction hearing in June 2025, Mother was in custody. Mother submitted to the Department's Jurisdiction Report, and the court made a true finding on the Department's petition.

The court appointed a Court Appointed Special Advocate (CASA) for Child. Without addressing the allegations of sexual abuse, the CASA recommended Mother received reunification services.

Prior to the disposition hearing, the Department filed a report recommending no reunification services be offered to Mother based on section 361.5, subdivision (b)(6). The Department contended that section applied because Child suffered "stimulation involving genital [contact], [or] the penetration or manipulation of the child's genital organs or rectum by any animate or inanimate object for the sexual gratification of the parent or guardian, and for the sexual gratification of another person with the actual or implied consent of the parent or guardian." Providing reunification services to Mother would not be in the best interest of Child, the Department continued, because Mother failed to protect Child from sexual abuse, declined to report known incidents of sexual assault to law enforcement, and permitted Juan R. to have contact with Child despite the restraining order in

place. The Department acknowledged that Mother "has expressed a willingness to comply with the department and do whatever she needs to reunify with her child." Her criminal case, however, prevented her from being able to receive services.

The court held a contested disposition hearing on October 13, 2025. Mother remained in custody but may be released soon. Mother's counsel argued the restraining order violations were not implied consent. The court inquired whether her inaction despite knowing of the abuse constituted implied consent. The court also wondered, given the "domestic violence circle of [the victim] returning back to the abuser, wouldn't that require a little bit of counseling or education, then, on behalf of Mom?" Counsel responded that there was no implied consent because Mother was a victim of Juan R.'s domestic violence. Her "victim status" prevented implied consent, and she "need[ed] to have services to help her deal with this situation."

After hearing argument, the court stated, "The Court will go ahead and note that the bypass was found to be correct under . . . Welfare and Institutions Code 361.5(b)(6)—fear of physical harm or sexual abuse. Court will note the findings were stated earlier." The court ordered that Mother would not receive reunification services pursuant to section 361.5, subdivision (b)(6) and found that Child's best interest would be to implement a permanent plan at a section 366.26 hearing.[3] In making this ruling, the court noted "the disclosures that were made by the minor" and the length of time the abuse took place despite her ongoing disclosures. The court ordered reasonable visitation for Mother.

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[3] On November 25, 2025, we denied Mother's request to stay the section 366.26 hearing.

DISCUSSION

Mother contends: (1) the evidence did not support a finding of section 361.5, subdivision (b)(6) severe sexual abuse; and (2) the court failed to consider whether bypassing reunification services would be in the best interest of Child and to read factual findings as to benefit into the record.

When a child is removed from the parents' custody, the juvenile court is generally required to order reunification services to the parents "to 'eliminate the conditions leading to loss of custody and facilitate reunification of parent and child[,] . . . further[ing] the goal of preservation of family, whenever possible.' " (§ 361.5, subd. (a); *Jennifer S. v. Superior Court* (2017) 15 Cal.App.5th 1113, 1120.) Section 361.5, subdivision (b) provides exceptions to the general rule, under which the court "need not" provide reunification services to the offending parent. These exceptions are known as bypass provisions. (*Jennifer S. v. Superior Court*, at p. 1121.) "Consonant with the general presumption in favor of mandatory reunification services, the bypass provisions are 'narrow in scope' and reach situations where ' "the likelihood of reunification" ' is ' "so slim" ' due to a parent's past failures that 'expend[ing]' the Department's " 'scarce' " resources on reunification services is likely to be 'fruitless,' or when 'attempts to facilitate reunification' would otherwise not 'serve and protect the child's interest.' " (*In re Jayden M.* (2023) 93 Cal.App.5th 1261, 1271.)

One exception to the provision of reunification services exists "when the court finds, by clear and convincing evidence . . . [¶] . . . [¶] "[t]hat the child has been adjudicated a dependent pursuant to any subdivision of Section 300 as a result of severe sexual abuse . . . to the child . . . by a parent or guardian, as defined in this subdivision, and the court makes a factual finding that it would not benefit the child to pursue reunification services with the offending

parent or guardian." (§ 361.5, subd. (b)(6)(A).) Thus, bypass under this subdivision requires findings by clear and convincing evidence: (1) of severe sexual abuse; and (2) that reunification services would not benefit the child.

We review the trial court's findings regarding the application of the bypass provisions for substantial evidence, "presum[ing] 'in favor of the order, considering the evidence in the light most favorable to the prevailing party, giving the prevailing party the benefit of every reasonable inference and resolving all conflicts in support of the order.' " (*In re G.L.* (2014) 222 Cal.App.4th 1153, 1164.) To the extent an issue involves statutory interpretation, we review the issue de novo. (*A.A. v. Superior Court* (2012) 209 Cal.App.4th 237, 242.)

A. *Severe Sexual Abuse*

The statute explains that a finding of severe sexual abuse "may be based on, but is not limited to, sexual intercourse, or stimulation involving genital-genital, oral-genital, anal-genital, or oral-anal contact, whether between the parent or guardian and the child . . . or between the child . . . and another person or animal with the actual or implied consent of the parent or guardian; or the penetration or manipulation of the child's . . . genital organs or rectum by any animate or inanimate object for the sexual gratification of the parent or guardian, or for the sexual gratification of another person with the actual or implied consent of the parent or guardian." (§ 361.5, subd. (b)(6)(B).)

Mother contends the evidence here was not sufficient for the court to find severe sexual abuse. We disagree. We conclude the evidence that Juan R. touched Child's vaginal area, buttocks, and chest and kissed Child on the lips qualifies as, and was sufficient for the court to find, " 'manipulation of [Child's] . . . genital organs . . . by [an] animate . . . object for the sexual

gratification of' " Juan R.[4] (See *In re A.M.* (2019) 37 Cal.App.5th 614, 620 [finding section 361.5, subdivision (b)(6)(B) applied where "there is evidence that father manipulated minor's vagina by rubbing it, and also that he penetrated her vagina. That he did so over her clothing does not discount such heinous invasions"].) Juan R.'s touching made Child fearful of being at her home. Even if that evidence did not qualify under the specific language of the statute, the statute makes clear severe sexual abuse "is not limited to" the scenarios expressly described. (§ 361.5, subd. (b)(6)(B).) Evidence of Juan R.'s vaginal touching of nine-year-old Child after prior instances of sexual abuse causing the Child to fear being in her home is sufficient to establish severe sexual abuse.

B. *Benefit of Reunification Services to Child*

In determining the benefit of reunification services to the child under the second prong of section 361.5, subdivision (b)(6) bypass, the statute *requires* the court to "consider any information it deems relevant, *including* the following factors:

> "(1) The specific act or omission comprising the severe sexual abuse or the severe physical harm inflicted on the child or the child's sibling or half sibling.
>
> "(2) The circumstances under which the abuse or harm was inflicted on the child or the child's sibling or half sibling.
>
> "(3) The severity of the emotional trauma suffered by the child or the child's sibling or half sibling.

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[4] Here, Mother does not dispute the element of her implied consent to Juan R.'s touching of Child. Nonetheless, we note that a parent's knowledge of another individual's prior sexual abuse and permitting the individual to stay overnight in the house is sufficient evidence to find implied consent under section 361.5, subdivision (b)(6). (*Amber K. v. Superior Court* (2006) 146 Cal.App.4th 553, 561.)

> "(4) Any history of abuse of other children by the offending parent or guardian.
>
> "(5) The likelihood that the child may be safely returned to the care of the offending parent or guardian within 12 months with no continuing supervision.
>
> "(6) Whether or not the child desires to be reunified with the offending parent or guardian." (§ 361.5, subd. (i), italics added.)

The court is additionally required to "specify the factual findings used to determine that the provision of reunification services to the offending parent or guardian would not benefit the child." (§ 361.5, subd. (k).)

Here, the juvenile court did not make a finding that providing reunification services to Mother would not benefit Child (§ 361.5, subd. (b)(6)(A)) or specify factual findings that would support such a determination (§ 361.5, subd. (k)). The court noted Mother's need for services for her own benefit as a victim of domestic violence who returned to her abuser, but did not consider the potential benefit of Mother's services to Child. Notably, the court did not address evidence in the record that Child desired to be reunited with Mother—an enumerated factor in section 361.5, subdivision (i)(6)—if Mother could protect child. Services provided to Mother to break the domestic abuse cycle may enable her to do just that.

As argued by the Department, the court engaged in a "discussion about the facts of the case," including noting Mother's inaction over a long period of time despite Child's repeated disclosures, in finding Mother's implied consent to Juan R.'s abuse. These considerations, however, did not amount to a finding that services to Mother would not benefit Child, nor did the court specify these factual findings as a basis for a finding of no benefit. The record lacks any discussion on the effect on Child of offering services to Mother.

And that the disposition report discussed benefit to Child does not remedy the absence of factual findings required by statute to be stated on the record with specificity.

In this context, we are unwilling to imply findings. As explained by the court in *In re T.R.* (2023) 87 Cal.App.5th 1140, 1152: "the burden remained with the department to prove [Child] would not benefit from services, as that finding is necessary for applying section 361.5, subdivision (b)(6) in the first place. Thus, because the department had to prove no benefit by clear and convincing evidence and because the record contains some evidence indicating they would benefit, we cannot infer the necessary finding." (Italics omitted.) And, " '[g]iven the importance of reunification services in the dependency system, we have considerable doubt as to the propriety of implying findings from an otherwise silent record to justify denial of those services, particularly when the Legislature has . . . mandated findings by clear and convincing evidence before applying any section 361.5, subdivision (b).' [Citation.] This reasoning applies with even greater force to section 361.5, subdivision (b)(6) which, unlike the other bypass provisions, requires the court to state its reasons for applying the provision into the record. (§ 361.5, subd. (k).)" (*Id.* at p. 1152.) For the same reasons, and given the preference for reunification to preserve families, we decline to find forfeiture.

Finally, the Department contends we should affirm the juvenile court's ruling because Mother failed to object based on or to provide evidence to support a finding under section 361.5, subdivision (c)(2). That section provides: "The court shall not order reunification for a parent or guardian described in paragraph . . . (6) . . . of subdivision (b) unless the court finds, by clear and convincing evidence, that reunification is in the best interest of the

child." (§ 361.5, subd. (c)(2).) By its plain language, however, this section is relevant only if a court exercises its discretion to order reunification services notwithstanding a section 361.5, subdivision (b)(6) finding. Here, the court did not do so and section 361.5, subdivision (c) was not relevant.

While the court found that it was in Child's best interests to set a section 366.26 hearing, the court made that finding without taking the required intermediate step for bypassing services under section 361.5, subdivision (b)(6) of making a finding that services to Mother would not benefit Child and specifying the factual bases for that finding. If, on remand, the court does not make a finding of no benefit to Child of reunification services, it must order reunification services and need not engage in the section 361.5, subdivision (c) best interest analysis because Mother would not be "a parent . . . described in paragraph . . . (6) . . . of subdivision (b)" as required for section 361.5, subdivision (c).

DISPOSITION

Let a writ of mandate issue directing the juvenile court to (1) vacate its order denying Mother reunification services and setting a section 366.26 hearing, and (2) conduct further proceedings consistent with this opinion. This opinion shall become final immediately upon filing. (Cal. Rules of Court, rule 8.490(b)(2)(A).)

KELETY, Acting P. J.

WE CONCUR:

CASTILLO, J.

RUBIN, J.