

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION FIVE

**In re M.S., a Person Coming Under the
Juvenile Court Law.**

**SOLANO COUNTY HEALTH AND
SOCIAL SERVICES,**

Plaintiff and Respondent,

v.

M. C-S. et al.,

Defendants and Appellants.

A131380

**(Solano County
Super. Ct. No. J40409)**

In October 2010, the Solano County Department of Health and Social Services (Department) filed a Welfare and Institutions Code section 300¹ petition alleging M. C-S. (mother) and Kevin S. failed to protect M.S. (the minor) and that mother had failed to reunify with some of the minor's half siblings. (§ 300, subds. (b), (j).) The juvenile court detained the minor. Shortly thereafter, Kevin S. submitted a voluntary declaration of paternity (VDP) (form JV-505). The court declared Kevin S. (Kevin) the minor's

¹ Unless otherwise noted, all further statutory references are to the Welfare and Institutions Code.

presumed father and ordered him to undergo paternity testing. Later, the court declared the minor a dependent of the court. (§ 300, subs. (b), (j).)

Paternity test results excluded Kevin as the biological father, prompting the minor and the Department to file an application to set aside the VDP. The Department joined the application. The court denied the application. At the dispositional hearing, the court bypassed reunification services for mother pursuant to section 361.5, subdivision (b)(10), ordered the minor detained out of mother and Kevin's custody, and provided Kevin with reunification services.

The minor, mother, and Kevin appeal. The minor contends the court erred by denying the application to set aside the VDP.² Mother argues substantial evidence does not support the court's jurisdictional findings and claims the court erred by denying her reunification services. Kevin contends substantial evidence does not support the court's order placing the minor in foster care.

We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

The minor was born in late September 2010. A few days later, in early October 2010, the Department filed a petition pursuant to section 300, subdivisions (b) and (j) alleging: (1) mother's substance abuse placed the minor at risk of serious physical harm or illness; (2) Kevin was unable to maintain a safe and stable home for the minor or protect her from mother's behavior; (3) mother failed to provide care and support for two of the minor's half siblings "due to her chronic substance abuse, history of unstable housing, and frequent incarcerations;" and (4) mother failed to reunify with three of the

² In its respondent's brief, the Department contends the court abused its discretion by failing to set aside the VDP. The minor joins the Department's arguments. We need not address the Department's claims of error regarding the court's denial of the application to set aside the VDP because the Department has not appealed from any of the court's orders. (See Code Civ. Proc., § 906; *Building Industry Assn. v. City of Oceanside* (1994) 27 Cal.App.4th 744, 758, fn. 9 [respondent must file its own notice of appeal to obtain affirmative relief by way of appeal].) Mother joins Kevin's argument that the court did not err by denying the application to set aside the VDP. (See Cal. Rules of Court, rule 8.200(a)(5).)

minor's half siblings after they were removed from her care and her failure to "address her extensive history of substance abuse" placed the minor "at substantial risk of serious physical harm or illness."

On October 5, 2010, the court issued a temporary detention order. The next day, Kevin filed a VDP requesting a judgment of parentage. Kevin indicated he believed he was the minor's parent, alleged he had told several people the minor was his daughter, and claimed he had purchased supplies to enable him to care for the minor. The court determined Kevin was the minor's presumed father and ordered him to undergo paternity testing. The court detained the minor and granted both parents supervised visitation. The minor was later placed with a foster family.

Jurisdictional Report and Hearing

In its November 2010 jurisdictional report, the Department chronicled mother's lengthy criminal history: mother was arrested for methamphetamine possession in 2003 and 2006. In 2009, she was arrested for possession of methamphetamine pipes; she was also arrested in early 2010 for felony auto theft.³ The report also described Kevin's criminal history: from 2003 to 2010, Kevin had been arrested for, among other things, felony fraud and forgery, driving with a suspended license, and possession of methamphetamine and drug paraphernalia. As of the date of the report, Kevin had "approximately six months remaining on his parole sentence." In addition, the report described alleged father Alex D.'s lengthy criminal history, which included arrests for possession of methamphetamine and drug paraphernalia.

³ On October 5, 2010, Mother tested positive for propoxyphene, the active ingredient in the painkiller Darvocet. She also tested positive for amphetamine and methamphetamine. Mother told the social worker she "was prescribed Darvocet upon her release from the hospital from her Caesarian with [the minor]" but did not provide the social worker with a copy of the prescription, did not show her a prescription bottle showing "that she had Darvocet actually prescribed to her[.]" and did not allow the social worker to obtain a copy of the prescription. Mother also told the social worker she had not used methamphetamine in over two years and claimed she had not been arrested since 2002.

In the report, the Department stated that “none of [mother’s] six (6) children reside with her” and noted mother had failed to reunify with several of the minor’s half siblings.⁴ The Department concluded mother’s “documented history of substance abuse” and her inability to “address her ongoing substance abuse issues” would place the minor “at very high risk of future maltreatment if returned” to mother’s custody. The Department determined placing the minor with Kevin would put her at “substantial risk of harm” because of Kevin’s recent arrest for resisting arrest and possession of burglary tools and a methamphetamine pipe, his history of drug use, his drug-related criminal history, and his association with mother.

Before the jurisdictional hearing, the court denied Kevin’s requests to have the minor placed with him. At the contested jurisdictional hearing in November 2010, Kevin’s parole officer testified Kevin was living in the garage of his mother’s house and had not taken advantage of education and job-placement services officered by his parole agency. On a visit to Kevin’s residence in late August 2010, the parole officer discovered methamphetamine, a glass pipe with methamphetamine residue, and a digital scale. Kevin’s participation in outpatient drug treatment was “poor” — he had missed several meetings and drug tests. Additionally, Kevin tested positive for methamphetamine in July 2009, May 2010, and October 2010. According to the parole officer, there was a possibility Kevin’s parole would be revoked.

Social worker Elizabeth Coudright testified she visited mother at the hospital after she gave birth to the minor; Coudright recommended removing the minor from mother’s custody in part because mother did not have a “definitive plan of where she was going to go with the baby and how she was going to care for the baby.” Coudright believed the minor was in danger because of mother’s uncertainty about where she was going to live, her previous history of drug use, and her inability to care for her other children. That the

⁴ The report noted: (1) the minor’s half sibling, T.B., was removed from mother’s custody and reunification services were terminated; and (2) custody of two of the minor’s other half siblings was granted to that half siblings’ respective father. The report attached documents related to the half siblings’ dependency cases.

minor tested negative for methamphetamine at birth did not, according to Coudright, mean mother did not use drugs while pregnant: mother had a history of drug use and the test on the minor at birth would not have detected mother's drug use earlier in the pregnancy. Coudright felt the minor would be in imminent danger if placed with Kevin because of his "housing situation" and his "substance abuse history."

Social worker Wendy Smith testified mother had a "history of criminal issues related to her ongoing substance abuse, as well as non-participation in case plan services with prior dependencies." According to Smith, mother had not participated in a treatment program since failing to reunify with some of the minor's half siblings. In addition, mother declined to participate in a substance abuse assessment in the current dependency matter because she claimed she "had been clean for two years and had no need to participate." At the time of the jurisdictional hearing, mother was homeless. Mother missed at least one supervised visit with the minor and wanted to "leave the visits" she did attend early. Mother often had a "difficult time focusing on the parent-child relationship during the visit[s]." Smith opined mother had "not addressed the issues which have brought her family to the attention of the court in the past, as well as with this current dependency."

Smith testified she visited the bedroom in Kevin's mother's house where Kevin claimed to be living. In the bedroom were baby supplies, including a bassinet. Smith, however, believed Kevin lived in the garage because the bedroom appeared "unlived in" and because Kevin's belongings were in the garage. Kevin refused to take drug tests and participate in substance abuse treatment. For the most part, Kevin interacted appropriately with the minor during supervised visits, but "became confrontational with the social worker" during a November 2010 visit. Smith opined that the risk to the minor remained "high if placed with [Kevin] given his continued involvement with the substance abuse culture, which appears to be . . . part of his life" and given his "arrest in August [2010] related to methamphetamine and continued criminal involvement related to methamphetamine use."

Mother testified she attended prenatal appointments and tried “really hard . . . to make sure [she] was doing the right thing” when she was pregnant with the minor. Mother “never had a dirty test” while she was pregnant: she tested negative for drugs on July 14, 2010, and October 4, 2010, and only took medication such as Ritalin and Albuterol for her asthma. Mother testified that although she was not homeless when she gave birth to the minor, she planned to have the minor live with Kevin.

At the conclusion of the jurisdictional hearing, the court found the minor came within section 300, subdivisions (b) and (j), specifically: (1) mother’s chronic substance abuse interfered with her ability to care for the minor; (2) mother failed to provide care and support for three of the minor’s half siblings “due to her chronic substance abuse, history of unstable housing, and frequent incarcerations;” and (3) mother failed to make a reasonable effort to treat the problems leading to the removal of the minor’s half siblings from her custody.

Dispositional Report

In its December 2010 dispositional report, the Department recommended adjudging the minor a dependent of the court and keeping her out of mother and Kevin’s custody. The Department noted Kevin had “been ruled out as the father of [the minor].” Kevin had violated parole six times since 2008 and had tested positive for methamphetamine on November 30, 2010. Kevin’s parole agency ordered him to attend a residential drug treatment program; he was on the waiting list for a program in Vallejo that did not allow children to reside with program participants.

The Department expressed concern that Kevin had “not followed recent criminal orders related to his status as a parolee, which puts him at risk for a subsequent prison term in the near future.” The Department opined “the minor would be at high risk of abuse/neglect if placed in [Kevin’s] physical custody” because of his “long history and pattern of drug abuse,” his parole violations, and his refusal to drug test. The Department, however, recommended providing Kevin with reunification services.

The Department recommended bypassing reunification services for mother pursuant to section 361.5, subdivision (b)(10) based on the termination of reunification

services as to three of the minor's half siblings and mother's "fail[ure] to take reasonable measures to address her substance abuse problems that led to the removal of the . . . half-siblings." The Department also noted mother left many supervised visits early and indicated she was not interested in visiting the minor.

Application to Set Aside the VDP

In late December 2010, the Department filed a motion excluding Kevin as the minor's biological father. In early 2011, the minor filed an application to set aside Kevin's VDP on the grounds that "[g]enetic testing has established that Kevin . . . is not the biological father of the [minor]."⁵ The minor argued it was in her best interest to have the VDP set aside based on the factors set forth in Family Code section 7575. The minor argued her age, the short length of time since Kevin executed the voluntary declaration, and the limited amount of time she had spent with Kevin since her birth militated in favor of setting aside the VDP. The minor also argued Kevin's conduct — signing the VDP after the Department detained her — prevented the Department from searching for and identifying her biological father and that being placed in Kevin's custody would "clear[ly] detriment" her given Kevin's criminal history and substance abuse problems.

In addition, the minor argued mother and Kevin "fraudulently executed the Declaration of Paternity" in her case just as they had in dependency proceedings involving the minor's half siblings, K.S. and Sean W. The minor noted similarities between Kevin's VDP in the current case and the one Kevin executed in K.S.'s case. In addition, the Department noted that mother used "the services of another man in an attempt to avoid the Child Welfare system with regard to her child, Sean W." According to the minor, mother's plan in both cases was to have a particular man declare paternity to avoid the Department's intervention; the man would then return the child to mother. The minor's application attached an order setting aside the VDP executed in the dependency case involving Sean W. In that case, the court determined the VDP in that case was "false."

⁵ The Department joined the minor's application.

Combined Hearing on Disposition and the Application to Set Aside the VDP

At the combined hearing on disposition and the application to set aside the VDP in February 2011,⁶ Smith testified mother had declined to participate in a substance abuse assessment or live in a residential treatment center. In December 2010, mother stopped visiting the minor and missed an appointment with Smith.

When he was released from prison, Kevin informed Smith he was not participating in any “services identified by” the Department. In addition, Kevin tested positive for methamphetamine on January 26, 2011, which he blamed on a prescription for Afrin. When he learned about the paternity test results, Kevin said “he wasn’t surprised that he was not the father.” Smith did not recommend returning the minor to Kevin’s care even though he visited the minor consistently, acted appropriately during most visits, and expressed a desire to have the minor returned to his custody. According to Smith, Kevin was “not complying with parole orders,” and he was not “participating” in substance abuse services; his incarcerations had “set back the opportunity for him to participate in developmental services and mental health services” provided for the minor. In addition, Smith was concerned Kevin was allowing mother to visit the minor at his residence.

The court adjudged the minor a dependent of the court (§ 300, subds. (b), (j)) and concluded by clear and convincing evidence that placing the minor with mother or Kevin would be detrimental to the minor’s well-being. The court determined placing the minor with Kevin would be detrimental because of his positive drug tests, his numerous parole violations, and because “he has not been willing to accept services both from parole and from Child Welfare Services[.]”⁷ The court ordered reunification services for Kevin.

⁶ The court continued the hearing so that Kevin, who was in prison for a parole violation, could attend.

⁷ The court’s written dispositional order refers to the removal of the minor from mother and Kevin pursuant to section 361, subdivision (c), which pertains to the removal of a minor from a parent’s physical custody. The court’s order also notes, however, that “[d]isposition is ordered as set forth in . . . [section] 361.2. . . .” The court’s comments at the dispositional hearing — at least with respect to Kevin — seem to contemplate the removal of the minor pursuant to section 361.2, which pertains to placing a minor with a nonoffending, noncustodial parent.

The court, however, bypassed reunification services for mother pursuant to section 361.5, subdivision (b)(10). The court ordered supervised visitation for both parents and set a date for an interim review hearing.

The court addressed the minor's application to set aside the VDP. Counsel for the minor urged the court to grant the application because mother and Kevin had used the VDP to circumvent the Department's involvement with the minor. Counsel argued it was in the minor's best interest to set aside the paternity declaration. In addition, counsel urged the court to find the VDP was "executed fraudulently by both parents and . . . overturn[]" it.

The court denied the minor's application to set aside the VDP. It concluded the minor had not shown it was in her best interest for the court to set aside the paternity declaration, noting "[t]he possibility of finding her biological father or the possibility of adoption being her immediate permanent plan . . . do not overcome the benefit of having a father. In addition, it would be pointless to set aside the declaration of paternity unless the judgment of paternity is also set aside." The court further concluded it would deny the application to set aside the VDP even if it treated the application "as one to set aside the judgment of paternity" because "[t]he minor appeared through counsel at the time paternity was established. The facts set forth by counsel at the hearing to set aside the declaration were largely known to counsel when the court established paternity. If fraud occurred, it was intrinsic fraud, which does not provide grounds for setting aside a paternity judgment."

Mother, Kevin, and the minor appealed from the court's dispositional order. While this appeal was pending, the juvenile court set a date for the section 366.26 hearing (.26 hearing). Kevin petitioned for extraordinary writ review of the order setting the .26 hearing. This court denied the petition. (*Kevin S. v. Superior Court* (A133241).)

DISCUSSION

I.

Substantial Evidence Supports the Court's Jurisdictional Findings

Mother contends there was insufficient evidence to support the court's jurisdictional findings. "When the sufficiency of the evidence to support a finding or order is challenged on appeal, the reviewing court must determine if there is any substantial evidence, that is, evidence which is reasonable, credible, and of solid value to support the conclusion of the trier of fact. [Citation.] In making this determination, all conflicts [in the evidence and in reasonable inferences from the evidence] are to be resolved in favor of the prevailing party, and issues of fact and credibility are questions for the trier of fact. [Citation.] In dependency proceedings, a trial court's determination will not be disturbed unless it exceeds the bounds of reason. [Citation.]" (*In re Ricardo L.* (2003) 109 Cal.App.4th 552, 564 (*Ricardo L.*))

A juvenile court may determine a child is subject to its jurisdiction under section 300, subdivision (b) if it finds by a preponderance of evidence that "[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent . . . to adequately supervise or protect the child, or the willful or negligent failure of the child's parent . . . to adequately supervise or protect the child from the conduct of the custodian with whom the child has been left, or by the willful or negligent failure of the parent . . . to provide the child with adequate food, clothing, shelter, or medical treatment, or by the inability of the parent . . . to provide regular care for the child due to the parent's . . . mental illness, developmental disability, or substance abuse."

Here, the court determined the minor came within section 300, subdivision (b) because mother's criminal history, "chronic substance abuse," and her refusal to complete a substance abuse treatment program interfered with her ability to adequately care for the minor. The court also determined mother had failed to provide care and support for three of the minor's half siblings "due to her chronic substance abuse, history

of unstable housing, and frequent incarcerations” and failed to address these issues, which put the minor “at substantial risk of serious physical harm.”

Substantial evidence supports the court’s findings. At the jurisdictional hearing, the evidence established mother had an untreated substance abuse problem even though she denied it. Mother was arrested for methamphetamine possession in 2003 and 2006. In 2009, she was arrested for possession of methamphetamine pipes, belying her claim that she had been clean for two years preceding the minor’s birth. She was also arrested in early 2010, contradicting her claim that she had not been arrested since 2002. In addition, the mother tested positive for amphetamine and methamphetamine shortly after the minor was born and her explanation for the positive test — that she was prescribed pain medication after her Cesarean section — was unconvincing given her failure to provide the social worker, Smith, with the prescription, show the pill bottle to her, or allow Smith to obtain a copy of the prescription.⁸ And despite her long history of substance abuse, mother refused to participate in substance abuse treatment.

Moreover, Coudright testified at the jurisdictional hearing that she recommended removing the minor from mother’s custody in part because mother did not have a “definitive plan of where she was going to go with the baby and how she was going to care for the baby.” Coudright believed the minor was in danger because of mother’s uncertainty about where she was going to live, her previous history of drug use, and her inability to care for her other children. The evidence at the jurisdictional hearing established mother lost custody of three of the minor’s half siblings due to her substance abuse problem.

Mother acknowledges she had a “criminal history and positive drug tests in her past.” She contends, however, that her past history is insufficient to establish a substantial risk of harm to the minor. She relies on *In re James R.* (2009) 176 Cal.App.4th 129 (*James R.*), where the appellate court reversed the trial court’s finding of

⁸ On appeal, mother claims “it [was] unclear” whether she used drugs during her pregnancy with the minor “or if she was only testing positively due to the drugs administered during her [Cesarean] section or for her asthma.”

jurisdiction under section 300, subdivision (b). In *James R.*, the mother was hospitalized after taking ibuprofen and consuming alcohol. The section 300 petition alleged the four-year-old and three-year-old minors were “at substantial risk of harm because [the mother] had a mental illness, developmental disability or substance abuse problem” and because the father “was unable to protect” the children. (*Id.* at p. 132.) The trial court found jurisdiction pursuant to section 300, subdivision (b) but the *James R.* court reversed. (*Id.* at pp. 134, 138.)

The appellate court explained, “[h]ere, the evidence showed the minors came to the Agency’s attention when [the mother] had a negative reaction to taking ibuprofen and drinking beer. However, there was no evidence of actual harm to the minors from the conduct of either parent and no showing the parents’ conduct created a substantial risk of serious harm to the minors. Further, nothing in the record supported a finding the parents were unable to provide regular care for the minors as a result of [the mother’s] mental health problems or continued use of alcohol.” (*James R.*, *supra*, 176 Cal.App.4th at p. 136.) The court noted, “[t]he Agency also did not show with specificity how the minors were or would be harmed by [the mother’s] alleged substance abuse. . . . [T]here was no evidence [the mother] used illegal drugs after the minors were born and the Agency’s report refers only to ‘possible substance abuse.’ . . . The mere possibility of alcohol abuse, coupled with the absence of causation, is insufficient to support a finding the minors are at risk of harm within the meaning of section 300, subdivision (b).” (*Id.* at p. 137.) According to the court, “[t]he evidence showed the minors were healthy, well cared for and never unsupervised. . . . The parents communicated well with each other, had an organized home and had the support of extended family members. The parents loved their children and were meeting their medical and academic needs. There was no evidence of a specific, defined risk of harm to the minors resulting from [the mother’s] mental illness or substance abuse, and no evidence [the father] did not or could not protect them.” (*Id.* at p. 137.)

James R. is inapposite. Here — and in stark contrast to *James R.* — mother tested positive for amphetamine and methamphetamine after the minor was born and refused to

seek treatment for her chronic substance abuse problem. In addition, mother did not have a “definitive plan” of how she was going to take care of the minor and had lost custody of several of her other children. This evidence created a specific risk of harm to the minor and from this evidence, the juvenile court could reasonably conclude mother’s substance abuse placed the minor at risk of suffering physical harm. The risk that mother would not be able to care for the minor while she was using methamphetamine was clear. Here, there was “some reason beyond mere speculation to believe” that the mother’s previous acts of neglect would “reoccur.” (*Ricardo L.*, *supra*, 109 Cal.App.4th at p. 565.) We cannot conclude the court’s jurisdictional findings “exceed[ed] the bounds of reason. [Citation.]” (*Id.* at p. 564.)

Having reached this result, we need not address mother’s contention there was insufficient evidence to support the court’s finding that the minor came within section 300, subdivision (j).

II.

The Court Properly Bypassed Reunification Services Pursuant to Section 361.5, Subdivision (b)(10)

Mother contends the court erred by bypassing reunification services pursuant to section 361.5, subdivision (b) because she “made a reasonable effort to treat the problems that led to the removal of [the minor’s] siblings.” “As a general rule, reunification services are offered to parents whose children are removed from their custody in an effort to eliminate the conditions leading to loss of custody and facilitate reunification of parent and child. This furthers the goal of preservation of family, whenever possible. [Citation.]” (*In re Baby Boy H.* (1998) 63 Cal.App.4th 470, 478 (*Baby Boy H.*); *In re Allison J.* (2010) 190 Cal.App.4th 1106, 1112.) Section 361.5, subdivision (b) sets forth certain exceptions — called reunification bypass provisions — to this “general mandate of providing reunification services[.]” (*In re Joshua M.* (1998) 66 Cal.App.4th 458, 470 (*Joshua M.*)). “Section 361.5, subdivision (b) ‘reflects the Legislature’s desire to provide services to parents only where those services will facilitate the return of children to

parental custody.’” (*Allison J.*, *supra*, 190 Cal.App.4th at p. 1112, quoting *Joshua M.*, *supra*, 66 Cal.App.4th at p. 470.)

Section 361.5, subdivision (b)(10) is a reunification bypass provision. Pursuant to that statute, “[r]eunification services need not be provided to a parent . . . when the court finds, by clear and convincing evidence, any of the following: . . . That the court ordered termination of reunification services for any . . . half siblings of the child because the parent . . . failed to reunify with the . . . half sibling after the . . . half sibling had been removed from that parent . . . and that parent . . . is the same parent or guardian described in subdivision (a) and that, according to the findings of the court, this parent . . . has not subsequently made a reasonable effort to treat the problems that led to removal of the . . . half sibling of that child from that parent[.]” Therefore, “[t]o apply section 361.5, subdivision (b)(10) . . . the juvenile court must find both that (1) the parent previously failed to reunify with a sibling [or half sibling] and (2) the parent has not subsequently made a reasonable effort to treat the problems that led to removal of the sibling [or half sibling]. [Citations.]” (*In re Albert T.* (2006) 144 Cal.App.4th 207, 217, fn. omitted.) We affirm the court’s order bypassing reunification services pursuant to section 361.5, subdivision (b) if it is supported by substantial evidence. (*Cheryl P. v. Superior Court* (2006) 139 Cal.App.4th 87, 96.)

Mother concedes the Department satisfied the first prong of section 361.5, subdivision (b)(10) because she failed to reunify with the minor’s half siblings. Mother contends, however, that there “was a lack of substantial evidence to support the second prong” of section 361.5, subdivision (b)(10) because she made a reasonable effort to treat the problems leading to the removal of the minor’s half siblings, “namely her substance abuse issues.” Mother claims she had been “clean and sober for the last few years, was willing to drug test, occasionally attended AA and NA meetings, and no longer associated with people who used drugs.” She also argues she “communicated her ability and willingness to be free of substances and wanted to bond and connect with [the minor].” We are not persuaded. As discussed above, mother was arrested for methamphetamine possession in 2003 and 2006 and for possession of methamphetamine

pipes in 2009. Contrary to her claim, mother tested positive for amphetamine and methamphetamine shortly after the minor was born and offered an unconvincing explanation for the positive test. She continued to associate with Kevin and Alex D., known drug users. In addition, mother did not demonstrate a willingness to bond with the minor. She missed numerous visits with the minor and left the visits she did attend early. She declined to meet with the social worker and missed the permanency team meeting. Mother's explanation in her reply brief about why she missed visits and did not communicate with the social worker are unavailing. We are required to resolve conflicts in the evidence in favor of the prevailing party. (*Ricardo L.*, *supra*, 109 Cal.App.4th at p. 564.)

Mother correctly notes the “reasonable efforts to treat” standard under section 361.5, subdivision (b)(10) “is not synonymous with ‘cure.’” (*Renee J. v. Superior Court* (2002) 96 Cal.App.4th 1450, 1464). But to be reasonable, the parent's efforts must be more than “lackadaisical or half-hearted[.]” (*Cheryl P.*, *supra*, 139 Cal.App.4th at p. 99.) Here, mother's efforts were — at best — half-hearted.

III.

The Court Did Not Abuse Its Discretion by Denying the Application to Set Aside the VDP

The minor contends the court erred by denying the application to set aside the VDP. As described above, the court concluded the minor had not shown setting aside the paternity declaration was in her best interest. The court explained, “[t]he possibility of finding [the minor's] biological father or the possibility of adoption being her immediate permanent plan . . . do not overcome the benefit of having a father.” The court also determined “it would be pointless to set aside the declaration of paternity unless the judgment of paternity is also set aside.” Finally, the court concluded it would deny the application to set aside the VDP even if it treated the application “as one to set aside the judgment of paternity” because “[t]he minor appeared through counsel at the time paternity was established. The facts set forth by counsel at the hearing to set aside the declaration were largely known to counsel when the court established paternity. If fraud

occurred, it was intrinsic fraud, which does not provide grounds for setting aside a paternity judgment.”

A VDP “executed on or after January 1, 1997 that has been filed with the Department of Child Support Services ‘shall establish the paternity of a child and shall have the same force and effect as a judgment for paternity issued by a court of competent jurisdiction.’” (Seiser & Kumli, Cal. Juvenile Courts Practice and Procedure (2012) § 2.60[5][c], p. 2-113, quoting Fam. Code, § 7573; see also *Kevin Q. v. Lauren W.* (2009) 175 Cal.App.4th 1119, 1132 (*Kevin Q.*.) A VDP serves as a basis for presumed father status under the Uniform Parentage Act and entitles the presumed father to reunification services under section 361.5, subdivision (a). (Fam. Code, § 7611; *In re Jerry P.* (2002) 95 Cal.App.4th 793, 801.)

A VDP may be rescinded or set aside on four grounds. First, either parent may rescind the declaration within 60 days by filing a rescission form with the appropriate entity. (Fam. Code, § 7575, subd. (a).) Second, ““a court may set a declaration aside when court-ordered blood tests [citation] establish that the declarant is not the child’s father.”” (*Kevin Q.*, *supra*, 175 Cal.App.4th at p. 1132, quoting *County of Los Angeles v. Sheldon P.* (2002) 102 Cal.App.4th 1337, 1340.)⁹ Third, either parent may seek to set aside the paternity judgment resulting from the VDP pursuant to Code of Civil Procedure section 473 for mistake, inadvertence or excusable neglect. (See Fam. Code, § 7575, subd. (c); *In re William K.* (2008) 161 Cal.App.4th 1, 9.) Fourth, an “equitable collateral attack on the VDP is available on the grounds of extrinsic fraud.” (*In re William K.*, at p. 10.)

⁹ “The notice of motion for genetic tests under [Family Code section 7575] may be filed not later than two years from the date of the child’s birth by a local child support agency, the mother, the man who signed the voluntary declaration as the child’s father, or in an action to determine the existence or nonexistence of the father and child relationship pursuant to [Family Code] [s]ection 7630 or in any action to establish an order for child custody, visitation, or child support based upon the [VDP].” (Fam. Code, § 7575, subd. (b)(3)(A).)

“Even when genetic tests show that a man who signed a declaration of paternity is not the child’s biological father, the court may decide that denying an action to set aside the declaration is in the child’s best interests, considering factors” (*Kevin Q.*, *supra*, 175 Cal.App.4th at p. 1132) set forth in Family Code section 7575, such as: (1) the child’s age; (2) the length of time since the execution of the VDP; (3) the nature, duration, and quality of the relationship between the declarant and the child, “including the duration and frequency of any time periods during which the child and the [declarant] resided in the same household or enjoyed a parent-child relationship;” (4) the request of the declarant “that the parent-child relationship continue;” (5) “[t]he benefit or detriment to the child in establishing the biological parentage of the child;” (6) “[w]hether the conduct of the [declarant] has impaired the ability to ascertain the identity of, or get support from, the biological father;” and (7) “[a]dditional factors deemed by the court to be relevant to its determination of the best interest of the child.” (Fam. Code, § 7575, subd. (b)(1)(A), (B), (C), (D), (F), (G), (H).) We review the court’s denial of the application to set aside the VDP for abuse of discretion. (*In re William K.*, *supra*, 161 Cal.App.4th at pp. 9-10.)

Here, the court denied the application to set aside the VDP for two reasons. First, it concluded the minor had not shown it was in her best interest for the court to set aside the paternity declaration, noting “[t]he possibility of finding her biological father or the possibility of adoption being her immediate permanent plan . . . do not overcome the benefit of having a father.” The minor seems to suggest the court erred by denying the application to set aside the VDP because it did not consider all of the Family Code section 7575 factors. We are not persuaded for several reasons. First, the court reviewed the minor’s application to set aside the VDP, which discussed all of the Family Code section 7575 factors. Second, at the hearing on the application to set aside the VDP, the court listened to the arguments in favor of granting the application, and the arguments against it.

Counsel for the minor opined that providing reunification services for Kevin would be unproductive because he needed residential drug treatment and “there is no guarantee whatsoever that reunification will be successful. And to create a bond and to

minimize the opportunity for permanence at the earliest possible date for my client is detrimental to her.” Counsel urged the court to bypass reunification services for mother, “make [Kevin] alleged father and go directly to a .26 hearing.” And counsel for mother and Kevin discussed all of the Family Code section 7575 factors as they urged the court to deny the minor’s application. Because the court reviewed the minor’s application to set aside the VDP and listened to counsel’s arguments at the hearing, we presume the court properly performed its duty to consider the relevant Family Code section 7575 factors. (See, e.g., *People v. Myers* (1999) 69 Cal.App.4th 305, 310.) That the court weighed one or more factors more heavily than others does not demonstrate the court abused its discretion.

The minor argues the court’s best interest determination was not supported by substantial evidence. She addresses each of the Family Code section 7575 factors in an effort to demonstrate why the court erred by denying her application to set aside the VDP. We disagree. Here, substantial evidence supports the denial of the minor’s application to set aside the VDP. The minor was four months old when the application was filed and Kevin had been the presumed father for virtually her entire life. (Fam. Code, § 7575(b)(1)(A)(B).) Although the minor never lived with Kevin, he visited her regularly, was engaged in appropriate behavior during the majority of the visits, and had a bond with her. In addition, Kevin demonstrated a willingness and desire to parent the minor even after he was excluded as her biological father. (Fam. Code, § 7575(b)(1)(C), (D), (E).) He also purchased supplies to enable him to care for the minor and had secured his mother’s support in helping care for her. Moreover, Kevin’s conduct had not impaired the Department’s ability to search for the minor’s biological father because there was a court order to test Alex. D. for paternity. (Fam. Code, § 7575, subd. (b)(1)(G).)

We are mindful that Kevin had substance abuse issues and a significant criminal history. We are also aware — as counsel for the minor argued at the hearing — that Kevin’s attempt to reunify with the minor may be unsuccessful. We cannot conclude, however, that the court failed to consider the appropriate Family Code section 7575

factors or that the court's denial of the application to set aside the VDP is an abuse of discretion. When we review for abuse of discretion, "[t]he test is not whether we would have made a different decision had the matter been submitted to us in the first instance. Rather, the discretion is that of the trial court, and we will only interfere with its ruling if we find that under all the evidence, viewed most favorably in support of the trial court's action, no judge reasonably could have reached the challenged result.' [Citation.]" (*Estate of Billings* (1991) 228 Cal.App.3d 426, 430.) Where — as there — there is substantial evidence, contradicted or uncontradicted, supporting the trial court's finding, we must uphold it regardless of whether the evidence is subject to more than one interpretation. We do not reweigh the evidence. (See, e.g., *Von Beltz v. Stuntman, Inc.* (1989) 207 Cal.App.3d 1467, 1481.)

The Department contends the court should not have denied the application to set aside the VDP based on "the existence or nonexistence of extrinsic fraud." As noted above, the court determined "it would be pointless to set aside the declaration of paternity unless the judgment of paternity is also set aside" and concluded, for the sake of argument, that it would deny the application to set aside the voluntary paternity declaration even if the application were treated "as one to set aside the judgment of paternity" because "[t]he minor appeared through counsel at the time paternity was established. The facts set forth by counsel at the hearing to set aside the declaration were largely known to counsel when the court established paternity. If fraud occurred, it was intrinsic fraud, which does not provide grounds for setting aside a paternity judgment." We need not address this claim of error because the Department has not appealed from any of the court's orders and because the court's determination regarding fraud was an alternative basis to deny the application to set aside the VDP. We have already concluded the court did not abuse its discretion by denying the application to set aside the voluntary paternity declaration because it would not serve the minor's best interest under Family Code section 7575.

IV.

Substantial Evidence Supports the Court's Decision to Place the Minor in Foster Care

Kevin contends the court's dispositional order placing the minor in foster care is not supported by substantial evidence. Specifically, Kevin argues the court should have placed the minor with him because he was a nonoffending parent under section 361.2 and the Department did not demonstrate placing the minor in his custody would be detrimental to her. He also claims placing the minor with him would not present a substantial danger to the minor's physical health, safety, protection, or physical or emotional well-being under section 361, subdivision (c).

When a juvenile court orders a child removed from a custodial parent, it must determine whether there is a noncustodial parent who desires custody of the child. Section 361.2, provides: "If [the noncustodial] parent requests custody, the court shall place the child with the parent unless it finds that placement with that parent would be detrimental to the safety, protection, or physical or emotional well-being of the child." (§ 361.2, subd. (a).) A juvenile court's ruling under section 361.2, subdivision (a) that a child should not be placed with a noncustodial, nonoffending parent requires a finding of detriment by clear and convincing evidence. (*In re Luke M.* (2003) 107 Cal.App.4th 1412, 1426.) Section 361, subdivision (c)(1) provides that removal from a custodial parent is proper where there is 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 . . . physical custody." We address detriment under sections 361.2, subdivision (a) and 361, subdivision (c).

Here, substantial evidence supports the court's finding that living with Kevin would be "detrimental" to the minor's safety, protection, or physical or emotional well-being under section 361.2, subdivision (a). Kevin had a lengthy criminal history, numerous parole violations, and had tested positive for methamphetamine in November

2010 and January 2011. Kevin needed residential drug treatment and was on the waiting list to attend a program that did not allow children to live with participants. As of the date of the dispositional hearing, Kevin's substance abuse issues were unresolved. Under the circumstances, the minor would suffer detriment if placed in Kevin's custody. For these same reasons, substantial evidence supports the court's removal of the minor under section 361, subdivision (c)(1).

DISPOSITION

We affirm.

Jones, P.J.

We concur:

Simons, J.

Needham, J.