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

DANIELLE D.,
Petitioner,

v.

THE SUPERIOR COURT OF SONOMA
COUNTY,

Respondent;

SONOMA COUNTY HUMAN
SERVICES DEPARTMENT et al.,

Real Parties in Interest.

A134645

(Sonoma County Super. Ct.
No. 3718-DEP)

On February 7, 2012, the juvenile court denied Danielle D. (mother) reunification services with respect to her daughter, Elise, pursuant to the bypass provisions of Welfare and Institutions Code section 361.5, subdivision (b),¹ and set a section 366.26 hearing. Mother has filed a petition seeking review by extraordinary writ of the juvenile court's order. She argues that substantial evidence does not support the court's finding, made pursuant to section 361.5, subdivision (b)(10) (hereafter, § 361.5(b)(10)), that she has not made reasonable efforts to treat the problems that led to the removal of Elise's two half siblings. Mother also requests a stay of the section 366.26 hearing. We deny the petition and the request for a stay.

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

I. STATUTORY BACKGROUND

“ ‘It is difficult, if not impossible, to exaggerate the importance of reunification in the dependency system.’ [Citation.]” (*In re Albert T.* (2006) 144 Cal.App.4th 207, 217 (*Albert T.*)). “Family preservation with the attendant reunification plan and reunification services, is the first priority when child dependency proceedings are commenced. [Citation.] Reunification services implement ‘the law’s strong preference for maintaining the family relationships if at all possible.’ [Citation.]” (*In re Elizabeth R.* (1995) 35 Cal.App.4th 1774, 1787.) Thus, “[t]here is a presumption in dependency cases that parents will receive reunification services. [Citation.] Section 361.5, subdivision (a) directs the juvenile court to order services whenever a child is removed from the custody of his or her parent unless the case is within the enumerated exceptions in section 361.5, subdivision (b). [Citation.]” (*Cheryl P. v. Superior Court* (2006) 139 Cal.App.4th 87, 95, italics omitted (*Cheryl P.*)).

Section 361.5(b)(10), is one such exception. That section provides: “Reunification services need not be provided to a parent . . . described in this subdivision when the court finds, by clear and convincing evidence, any of the following: [¶] . . . [¶] (10) That the court ordered termination of reunification services for any siblings or half siblings of the child because the parent . . . failed to reunify with the sibling or half sibling after the sibling or half sibling had been removed from that parent . . . pursuant to Section 361 and that parent . . . is the same parent . . . 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 sibling or half sibling” Accordingly, section 361.5(b)(10) “has two prongs or requirements: (1) the parent previously failed to reunify with a sibling of the child; and (2) the parent failed to make reasonable efforts to correct the problem that led to the sibling being removed from the parent’s custody.”² (*Cheryl P., supra*, 139 Cal.App.4th at p. 96, italics omitted.)

² Even if the juvenile court finds that bypass is warranted, pursuant to § 361.5(b)(10), the court may nonetheless order reunification services if doing so would

“Section 361.5 reflects the Legislature’s desire to provide services to parents only where those services will facilitate the return of children to parental custody.” (*In re Joshua M.* (1998) 66 Cal.App.4th 458, 470.) The exceptions to the general mandate of providing reunification services “demonstrate a legislative determination that in certain situations, attempts to facilitate reunification do not serve and protect the child’s interests.” (*In re Baby Boy H.* (1998) 63 Cal.App.4th 470, 474 (*Baby Boy H.*)). “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.] Nevertheless, as evidenced by section 361.5, subdivision (b), the Legislature recognizes that it may be fruitless to provide reunification services under certain circumstances. [Citation.] Once it is determined one of the situations outlined in subdivision (b) applies, the general rule favoring reunification is replaced by a legislative assumption that offering services would be an unwise use of governmental resources. [Citation.]” (*Baby Boy H.*, at p. 478; *Cheryl P.*, *supra*, 139 Cal.App.4th at p. 96 [in enacting § 361.5(b)(10), “ ‘the Legislature has made the decision that in some cases, the likelihood of reunification is so slim that scarce resources should not be expended’ ”]; see also *Renee J. v. Superior Court* (2001) 26 Cal.4th 735, 744–745 [superseded by statute in other respects.]) The exception “recognizes the problem of recidivism by the parent despite reunification efforts” and the fact that “when another child of that same parent is adjudged a dependent child, it is not unreasonable to assume reunification efforts will be unsuccessful.” (*Baby Boy H.*, at p. 478.)

But, “[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

be in the child’s best interest. (See § 361.5, subd. (c) [“[t]he court shall not order reunification for a parent . . . described in paragraph . . . (10) . . . of subdivision (b) unless the court finds, by clear and convincing evidence, that reunification is in the best interest of the child”].) Because mother does not argue that reunification services should be provided under subdivision (c), we do not address the issue further.

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” (*Renee J. v. Superior Court* (2002) 96 Cal.App.4th 1450, 1464, italics omitted.)

II. FACTUAL AND PROCEDURAL BACKGROUND

Mother has three children: Elise, E.R., and A.R. (born in 2011, 2004 and 2002 respectively). Elise’s alleged father is Eric W. Michael R. is A.R. and E.R.’s presumed father.³ We summarize the facts of both the current dependency matter and the prior proceedings involving A.R. and E.R. The proceedings span over three years and involved several different social workers.

2008 Dependency Proceedings Involving A.R. and E.R.

On December 10, 2008, the Sonoma County Department of Human Services (Department) filed a dependency petition on behalf of E.R. and A.R., pursuant to section 300, subdivisions (b), (c), and (g). The petition alleged that mother had failed to provide the children with adequate care, supervision, and a safe living environment. Specifically, it was alleged that the home was found in a filthy condition, with safety hazards and marijuana pipes within the children’s reach. The petition also alleged that mother had a history of substance abuse and domestic violence with Michael R., to which the children had been exposed.

A.R. and E.R. were found to be dependent children and were removed from mother’s care. Reunification services were provided. Mother’s case plan called for her to participate in individual counseling, complete a psychological evaluation, complete parenting education, obtain substance abuse treatment, attend regular AA/NA meetings, and submit to substance abuse testing.

³ Neither Eric W. or Michael R. are a party to this appeal. Thus, we mention them only when relevant to the issues raised in mother’s appeal.

At the six-month status review, the Department's newly assigned social worker, Elise Gressman-Weaver, noted that mother had consulted a therapist and psychiatrist, but suffered a break in treatment because of her loss of medical insurance. Gressman-Weaver recommended six additional months of services. At the 12-month status review, Gressman-Weaver again recommended that reunification services be continued for an additional six months. Mother had completed an inpatient substance abuse treatment program at Women's Recovery Services (WRS), had been attending an aftercare program and 12-step meetings, and had begun therapy with Lanie Abrams. Mother's therapy was to address, among other issues, domestic violence and codependency. The status review report also stated that mother had attended parenting classes and continued to submit to random drug and alcohol testing. On November 18, 2009, due to mother's level of participation in her case plan, A.R. and E.R. were returned to mother, on a trial home visit.

At the 18-month status review hearing, Gressman-Weaver recommended that family maintenance services be continued. Her report noted: "[Mother] has demonstrated her determination and commitment to improving her skills, circumstances, and life choices in order to provide and fully be there for her children."

By September 15, 2010, a new social worker, JoJo Pomerleau, had been assigned. Pomerleau reported: "There have been two incidents involving [mother] and her contact with male acquaintances who are known to be substance abusers. The first occurred in May of 2010 when [mother] reported to the previous social worker that a male acquaintance, 'Eric,' was at her home uninvited and under the influence of alcohol which resulted in a domestic violence incident. . . . The second incident occurred in July of 2010 when the undersigned social worker responded to the home unannounced due to an intake report that [mother] was again abusing substances and that known substance abusers were observed to be in and out of the family home. [Mother] was home when the undersigned social worker arrived accompanied by [a Sebastopol Police Department (SPD) officer]. Also in the home with her was Jon Wax who is known to SPD as a criminal and substance abuser. . . . [Mother] was directed to Redwood Toxicology Labs and her

subsequent test results were negative. Mr. Wax did not participate in a toxicology test as requested by the undersigned social worker.” Pomerleau also indicated that mother had stopped therapy sessions with Abrams while she looked for a job, but had been referred to the YWCA Domestic Violence Education and Psychotherapy Group. Pomerleau noted that mother had completed parenting classes, continued to drug test, and that the home was “usually very organized, clean, and well stocked with food, clothing and appropriate toys . . . for the children.” Pomerleau recommended six additional months of family maintenance services and observed: “[Mother] has a solid foundation in the form of sobriety, [but] she will need to utilize the remaining six months of continued services in order to live a life independent of the Court System.”

A status review report, filed February 24, 2011, was written by a newly assigned social worker, Jennifer Hall. Hall indicated that mother had given birth to Elise in January 2011. The report also noted: “An investigation of suspected child abuse was conducted by the undersigned on January 20, 2011. A report indicated that on January 14, 2011 [Michael R.] verbally and physically assaulted [mother] while she was asleep in bed with [E.R.]. . . . [E.R.] told the maternal grandmother that ‘daddy hit mommy.’ ” It was determined that, to secure the safety of the children, mother had to agree to a safety plan. Thus, mother agreed to limit her contact with Michael R., return to individual therapy, and participate in a domestic violence psychotherapy group. The social worker recommended continued family maintenance services, but noted: “It appears that [mother’s] co-dependency continues to compromise her ability to make healthy decisions. Although [mother] is committed to the well-being of her children, it appears she has not thoroughly addressed issues of domestic violence and the effects it has on her children.” Mother acknowledged to Hall that she had been referred to the YWCA in 2010, but stated she had been unable to connect with the director of the program. The case plan was amended to include the requirement that mother attend a weekly domestic violence victims’ group.

2011 Dependency Petitions

On August 24, 2011, the Department filed a section 300 petition on behalf of Elise, who was seven months old at the time. The petition alleged mother's failure to protect Elise (§ 300, subd. (b)), on the grounds that mother was unable to provide adequate care because she had recently been arrested for child endangerment and because of mother's history of substance abuse and domestic violence. The petition also alleged failure to provide for Elise's support (§ 300, subd. (g)), on the grounds that both mother and Eric W. were currently incarcerated. The petition also alleged that Elise's half siblings had been abused (§ 300, subd. (j)). Supplemental dependency petitions, raising the same allegations, were filed on behalf of E.R. and A.R. at the same time.

Detention Report and Hearing

The detention report attached police reports substantiating the petition's allegations. On August 19, 2011, mother had driven through a stop sign at 20 miles per hour. After being stopped, mother told the officer that she normally did not stop at stop signs for fear that her car would stall. The officer observed that mother had three children in the car. Mother was arrested for child cruelty, driving without a valid license, and violating the terms of her probation. The officer also observed that mother's car smelled of rotten food and that it contained exposed wiring, as well as a dirty diaper and other trash. Another police report indicated that mother was found on August 15, 2011, with her children, slurring her speech, smelling of alcohol, and in possession of a partially consumed 40-ounce beer. On or about May 3, 2010, Eric W. threatened to kill mother and then choked her, while she was caring for A.R. and E.R. All three children were detained in foster care.

Jurisdiction Report

The jurisdiction/disposition report, filed September 19, 2011, indicated that Elise had adjusted well to her foster parents and was described as an "easy" baby. The report indicates that mother visited twice weekly with the children and was appropriate during visits. The report also noted that mother was participating in individual therapy with Abrams, the YWCA's domestic violence survivors group, in-home parent education, and

substance abuse testing. The Department recommended that mother's reunification services, with respect to E.R. and A.R., be terminated. The social worker indicated: "With regards to [A.R. and E.R.], [mother] has exhausted the amount of services one can be provided It is unfortunate that despite her enthusiasm for services, [mother] does not appear to have fully benefited from them. She continues to exercise poor judgment in regards to the safety of her children. [¶] . . . [¶] . . . If the Court determines that [mother] should no longer receive services on behalf of [A.R. and E.R.], then the undersigned recommends the Court bypass services to [mother] on behalf of Elise," pursuant to section 361.5(b)(10).

Hall provided the following explanation of her recommendation: "Despite the many poor choices [mother] has made in regards to the company she keeps and the way she manages her life and the life of her children, she has undoubtedly provided many positive experiences in her children's lives, resulting in fairly well-adjusted young children who appear very connected to their mother. . . . If she possesses so many positive parenting skills why shouldn't she be given the opportunity to raise them? The answer is not so simple. . . . [¶] For over two and a half years, the Department has provided [mother] with the resources necessary to remedy the issues that resulted in [A.R.'s and E.R.'s] dependency in January 2009, yet in the last nine months there have been four significant situations that have forced the undersigned to question [mother's] judgment. The first incident was in January 2011 when [mother] allowed [Michael R.] to enter her home and stay the night on her couch. Shortly after [mother] and [E.R.] went to bed, [Michael R.] entered her bedroom, crawled on top of [mother], pinned her down and, according to [E.R.], 'yelled at mommy and hit the wall above mommy's head.' . . . [¶] The second incident that concerns the undersigned was when [mother] allowed Elise's father, [Eric W.], to come to her home no less than 24 hours after he was released from prison. On May 3, 2010, [Eric W.] was arrested and sent to jail for physically assaulting and threatening to kill [mother]. . . . Despite this violent episode, [mother] still allowed [Eric W.] to come to her home after his release because she did not want to deny their daughter a relationship with her father. As a result . . . , [Eric W.] was arrested while

Elise was in his arms because he violated a clear no contact order [¶] The third incident involved several reports from the manager of [mother's] apartment complex, complaining of a complete lack of supervision of the children, concerns among residents of a dangerous looking man living with [mother] and a filthy apartment. When the undersigned conducted the first of two unannounced visits . . . immediately following the reports, the undersigned found the apartment door wide open with nobody in the home and a filthy apartment with trash and food on the floors. During the second unannounced visit a day later, the undersigned and a colleague discovered that [mother] left the children with Jason Joyner, a parolee who had a warrant out for his arrest. Mr. Joyner appeared to be under the influence of possibly methamphetamine and quite nervous that the undersigned was at the door. . . . When she was informed . . . [mother] stated, 'I had no idea he was on probation and he may have had alcohol and marijuana in his system.' [¶] And lastly, it has taken an arrest for Child Endangerment, incarceration and allegations of alcohol use to finally convince the Department that [mother] does not possess protective capacity and should not be offered additional reunification services at this time.”

A.R. 's and E.R. 's Jurisdiction/Disposition Hearing

On November 21, 2011, mother submitted on the allegations at the jurisdiction and disposition hearing for A.R. and E.R. The juvenile court found the allegations of the supplemental petition to be true, found that removal was necessary, and denied family reunification services to mother and Michael R. The juvenile court provided: “The parents are further advised that family reunification services will not be offered . . . because the maximum allowance period for reunification services has expired; [¶] The Court hereby terminates family maintenance services to the mother and finds: [¶] The extent of progress made by the mother toward alleviating or mitigating the causes necessitating placement has been minimal[.]”

Elise 's Contested Disposition Hearing

On January 17, 2012, the juvenile court held a contested disposition hearing in Elise's case. The court took judicial notice of E.R.'s and A.R.'s court files. Hall, who

was assigned the case in January 2011, provided a summary of the case history, consistent with the facts set forth in greater detail above.

In 2008, the Department received several reports of domestic violence and substance abuse involving A.R. and E.R. A.R. and E.R. were detained, in December 2008, when it was discovered that they were living in a filthy home, in which the children had access to illegal substances. The Department was also concerned that known criminals were living in the home. Mother was arrested for public intoxication in April 2009.

In 2009, mother started therapy with several different therapists, but didn't follow through. She was prescribed medication for depression and anxiety. Eventually, in October 2009, mother began therapy with Abrams, after she completed a residential substance abuse program. Mother attended therapy regularly until March 2010, and then attended only once until therapy was resumed in February 2011. As a result of her progress in substance abuse treatment, A.R. and E.R. were returned to mother's care in November 2009.

Although mother was to continue with family maintenance services, Hall reported several concerning incidents after the return of the children. In May 2010, Eric W. choked mother while he was under the influence of alcohol. Next, in July 2010, the Department made an unannounced visit to the home and found a known criminal and substance abuser present in the home. In January 2011, Michael R. crawled on top of mother, who was sleeping with Elise and E.R., screamed at her, and punched the wall or headboard above the bed. Michael R. left only after a neighbor called mother and threatened to call the police. The Department did not remove the children at that time because mother agreed to a safety plan, agreed to resume individual therapy, and agreed to enroll in a domestic violence program. But, in March or April 2011, mother allowed Eric W. into her home to see Elise four hours after he had been released from prison. Eric W. was arrested for violating a no contact order.

Hall made several unannounced visits during 2011. On one occasion, Hall found the apartment uninhabitable, with food on the floor and tables. On another occasion, Hall

found all three children with Joyner, who was on parole and appeared to be under the influence of methamphetamine. Joyner refused to submit to a drug test.

Hall explained that all three children were removed from mother's custody in August 2011, after her arrest. Mother blamed the arrest on an officer "who has it out for her." The children were not removed earlier because the Department had hoped to avoid the trauma of multiple removals. Hall testified that mother's progress since November 2011—when services were terminated as to E.R. and A.R.—had been "minimal." Mother had originally been referred to a YWCA domestic violence support group, by the previous social worker, in 2010. Mother had not followed through. Hall referred her again in January 2011, but mother did not start until June 2011 and was later dropped for failure to attend. Hall had confirmation that mother had attended only four sessions. Mother claimed to have difficulties finding childcare. However, Hall had offered to have the Department pay for childcare. Mother had also missed therapy sessions with Abrams, as well as visits with her children. Hall said: "[T]he Department has been working with [mother] for almost three years now, and in those three years she has made some progress in some areas, especially the substance abuse issues. . . . But especially the domestic violence piece, that seems to be the most worrisome [¶] . . . [¶] . . . And she continues to demonstrate that even in therapy and the brief time she was in domestic violence counseling she is unable to make sound choices, good choices around the men in her life. And it is my opinion that she . . . doesn't see how this impacts her children."

Abrams testified that she saw mother regularly between November 2009 and April 2010, and possibly once in May or June 2010. Abrams thought conclusion of therapy was appropriate in April 2010 because mother "had found resolution in how to deal with the men in her life, which was to exclude men in her life" Abrams testified that she consulted the Department, in April 2010, about concluding mother's therapy.

When Abrams began seeing mother again, in February 2011, mother was trying to resolve her codependency issues. Abrams said "co-dependency is something that is

really a long-term thing and that people work over a few year period, if not longer, to continue to evaluate their decision-making and their ability to take better care of themselves and make good judgments.” Abrams and mother discussed Eric W.’s release from prison and mother said she would not see him for at least a year. Abrams saw mother for three sessions, on a pro bono basis, after reunification services were terminated for A.R. and E.R. Abrams indicated that mother was making strides in working through her codependency issues. Abrams thought mother was forthright, honest, and authentic. However, Abrams acknowledged that change in behavior is a good indicator of commitment to change.

Mother testified that she started inpatient substance abuse treatment with WRS in June 2009. During her inpatient treatment, she attended classes on relationships, domestic violence, relapse prevention, and parenting. She has been sober ever since.⁴ After 90 days of inpatient treatment, in approximately October 2009, mother engaged in weekly “after care” and 12-step meetings. She also began therapy with Abrams. She continues to attend 12-step meetings. Mother testified that she was initially guarded with Abrams, but eventually told Abrams about her relationships involving domestic violence.

Mother discovered she was pregnant, around September 2010, when she was 16 weeks along. While she was pregnant, mother stopped taking her medication. Mother stopped seeing Abrams, in June 2010, because she began to feel ill and her pregnancy with Elise was very high risk. However, at the time, mother felt she needed to continue therapy. At the time of the contested hearing, mother was no longer seeing Abrams, but had seen a new therapist for one session.

Mother testified that, before Eric W.’s release from prison, she spoke to his parole officer “to make sure that there was not going to be a problem if I allowed him to see the baby.” She did not believe that a no contact order was in place. She spoke to Abrams

⁴ According to mother, the officer writing the August 19 report had lied when he wrote that she admitted drinking beer. She also stated that she was unaware, on August 19, 2011, that her license had been suspended. The car she was driving was not a hazard.

about possibly seeing Eric W. after his release and wondered if having a baby “was going to mellow him out and help him get it together” She allowed Eric W. to come to her home after his release because she was comfortable and not afraid of him at that time. She also met with him briefly, in the fall of 2011, to give him copies of papers related to Elise’s dependency proceedings.

Mother testified that Joyner was a childhood friend, who stayed at her home on occasion. Mother knew that he occasionally drank and smoked marijuana, but testified that he never did so at her home. She did know he had previously been “in trouble for stealing a car” and had arrests for drug-related offenses. By having Joyner care for her children, she did not believe she put them at risk. However, Joyner later admitted to her that he would not submit to a requested drug test “because he had marijuana in his system.”

Mother acknowledged that she was referred to the YWCA domestic violence group shortly after May 2010. She called and left numerous messages, but never received a return call. Mother said she was referred again in March 2011, attended 13 sessions, and then quit going.

After the close of evidence, the Department agreed that mother had made reasonable efforts to treat her substance abuse issues. However, the Department contended that reasonable efforts had not been made with respect to domestic violence and codependency issues. The Department emphasized that mother had only been sporadically attending therapy and had been terminated from a YWCA domestic violence program for failure to attend. The Department also argued that mother’s behavior showed that she was not integrating what she was learning in therapy. “[S]he was just sitting in the seat.” Elise’s attorney made similar contentions. Mother’s counsel argued that the Department had approved mother’s efforts when it returned A.R. and E.R. to her care. Mother’s counsel also argued: “[T]he Court needs to look at [whether] those efforts that were made by Mother [were reasonable], not the specific instances that shows those efforts may have failed. . . . The [section] 361.5(b)(10) rule looks at whether the efforts were made to treat the problem, not the success [or] failure of those efforts.”

On January 24, 2012, the juvenile court issued its findings and orders after hearing. The juvenile court found Elise to be a dependent child and ordered Elise removed from parental custody. The court determined that mother would not receive reunification services. The court found: “[Mother] has made a reasonable effort to treat the problems that led to removal however, reunification, based on the current evidence, is not in the child’s best interest.”

Reconsideration

On January 30, 2012, the juvenile court indicated that it had reconsidered its prior ruling, on its own motion. The juvenile court’s reconsidered order, entered on February 7, 2012, provides: “Court finds [m]other has made efforts to deal with the problems that led to each of the two prior removals. Regarding substance abuse, [m]other’s efforts were both reasonable and successful as she appears to have become clean and sober for an extended period of time. [¶] Both prior dates of removal, 12/08/08 and 8/25/11, contain similar and identical problems including unsafe living environment, inadequate care and supervision, and codependence. [¶] Mother has clearly engaged in numerous efforts to address the problems including private therapy, parenting classes, DV classes and [WRS]. Most of the efforts are between 2008 and 2010. [¶] The issue is were her efforts ‘reasonable.’ Given that in 2011, [m]other had significant episodes involving the problems that led to removal in both 2008 and 2011, specifically, in January, May, July, August, November, and December, Court find[s] [m]other’s efforts were not reasonable when considering the duration, extent, and context of the efforts along with the quality and quantity. [¶] The Court evaluates reasonableness by considering the progress both in the long term, from December 8, 2008 and in the short term, from August 25, 2011. [¶] The Court finds [m]other’s efforts were not reasonable”

Thus, the court found: “[I]t would not benefit the child or be in the child’s best interest for the parents to receive reunification services; There is clear and convincing evidence that the Court ordered termination of reunification services for the mother related to any sibling or half-sibling of the child because the parent failed to reunify with

the sibling or half-sibling after the sibling or half-sibling had been removed from the parent pursuant to . . . [s]ection 361 and the Court finds that the parent has not subsequently made a reasonable effort to treat the problems that led to removal of the sibling or half-sibling.” Elise’s section 366.26 hearing was scheduled for June 7, 2012. This writ proceeding followed.

III. DISCUSSION

In her writ petition, mother argues that the juvenile court erred by ordering the bypass of reunification services in Elise’s dependency case, pursuant to section 361.5(b)(10). We disagree. As noted *ante*, section 361.5(b)(10) “has two prongs or requirements: (1) the parent previously failed to reunify with a sibling of the child; and (2) the parent failed to make reasonable efforts to correct the problem that led to the sibling being removed from the parent’s custody.” (*Cheryl P.*, *supra*, 139 Cal.App.4th at p. 96, italics omitted.) Mother does not challenge the juvenile court’s finding with respect to the first prong of section 361.5(b)(10), but, rather, argues that substantial evidence does not support the juvenile court’s finding that she failed to make reasonable efforts to correct the problems leading to A.R.’s and E.R.’s removal.

We review an order denying reunification services, under section 361.5, subdivision (b), for substantial evidence. (*Cheryl P.*, *supra*, 139 Cal.App.4th at p. 96.) When we review the juvenile court’s findings for substantial evidence, “[w]e do not reweigh the evidence, evaluate the credibility of witnesses, or resolve evidentiary conflicts. [Citation.]” (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 228.) We uphold the court’s findings “if [they are] supported by substantial evidence, even though substantial evidence to the contrary also exists and the trial court might have reached a different result had it believed other evidence. [Citation.]” (*Ibid.*) “ ‘On review of the sufficiency of the evidence, we presume 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.’ [Citations.]” (*In re Tanis H.* (1997) 59 Cal.App.4th 1218, 1227.) “The ultimate determination is whether a reasonable trier of fact could have found for the respondent

based on the whole record. [Citations.]” (*Kuhn v. Department of General Services* (1994) 22 Cal.App.4th 1627, 1633, italics omitted.)

“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., supra*, 139 Cal.App.4th at p. 97.) “The reasonable effort requirement focuses on the extent of a parent’s efforts, not whether he or she has attained ‘a certain level of progress.’ [Citation.]” (*R.T. v. Superior Court* (2012) 202 Cal.App.4th 908, 914 (*R.T.*)) “The ‘reasonable effort to treat’ standard ‘is not synonymous with “cure.”’ (*Renee J. v. Superior Court*[, *supra*,] 96 Cal.App.4th [at p.] 1464.) The statute provides a ‘parent who has worked toward correcting his or her problems an opportunity to have that fact taken into consideration in subsequent proceedings.’ [Citation.] 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, parallel citations omitted.)

First, we must determine from what reference point we should look at mother’s efforts. Mother argues that the juvenile court should have examined her efforts after A.R.’s and E.R.’s removal in December 2008, rather than her efforts after either August 2011 or November 2011. On the other hand, the Department maintains that the court should look only at mother’s efforts after the August 25, 2011 removal.

Although we are not aware of any published authority dealing with the precise situation we address—when the sibling or half sibling was removed on two occasions—there is a conflict among the courts of appeal on whether “subsequently,” as used in section 361.5(b)(10), refers to the sibling’s removal or the parent’s later failure to reunify, in cases when the failure to reunify occurs close in time to consideration of bypass. (Compare *Cheryl P., supra*, 139 Cal.App.4th at p. 98 with *In re Harmony B.*, (2005) 125 Cal.App.4th 831, 842–843 (*Harmony B.*)) Mother relies on *Cheryl P.*, in which the Fourth District Court of Appeal, Division One said: “[W]hen a case involves the almost simultaneous termination of services in the sibling’s case and the denial of services at the

child’s dispositional hearing, the statutory language ‘has not *subsequently* made a reasonable effort to treat the problems’ ([§ 361.5(b)(10)], italics added) refers to reasonable efforts made since the removal of the sibling. [Citation.] Otherwise, the word ‘subsequently’ would require an extremely truncated period—in some cases, a matter of minutes—for the parent to demonstrate a ‘reasonable effort’ to treat the problems that led to the sibling’s removal.” (*Cheryl P.*, *supra*, 139 Cal.App.4th at p. 98.)

In *Harmony B.*, *supra*, 125 Cal.App.4th 831, the Fourth District Court of Appeal, Division Two took a different view. “[W]hen some time has elapsed after the termination of reunification services with respect to one child, the court appropriately must take into account the parent’s reasonable efforts to correct the underlying problems in the interim before the court denies reunification services with respect to a second child. When, however, as in the instant case, the two proceedings occur in immediate proximity, the trial court required finding under the ‘no-reasonable effort’ clause is a formality because the parent’s circumstances necessarily will not have changed. In our view, the statute was amended to provide a parent who has worked toward correcting his or her problems an opportunity to have that fact taken into consideration in subsequent proceedings; it was not amended to create further delay so as to allow a parent, who up to that point has failed to address his or her problems, another opportunity to do so.” (*Id.* at pp. 842–843, fn. omitted.)

We need not decide the statutory interpretation issue. As the Department suggests, even if we consider mother’s efforts since December 2008, as the trial court did, we would reach the same result. In both 2008 and 2011, A.R. and E.R. were removed from mother’s custody because of her substance abuse, their exposure to domestic violence, and mother’s inability to maintain a clean and safe home. In its February 7, 2012 order denying reunification services, the juvenile court found that mother had made “both reasonable and successful” efforts with respect to substance abuse, but with respect to the other issues—“unsafe living environment, inadequate care and supervision, and codependence” —the court found mother’s efforts were not reasonable.

The Department concedes that mother has made reasonable efforts with respect to her substance abuse problem. The issue is then whether substantial evidence supports the juvenile court's finding that mother has not made reasonable efforts to treat the remaining issues.⁵ The juvenile court wrote: "Mother has clearly engaged in numerous efforts to address the problems including private therapy, parenting classes, DV classes and [WRS]. . . . [¶] . . . *Given that in 2011, Mother had significant episodes involving the problems that led to removal in both 2008 and 2011, specifically, in January, May, July, August, November, and December, Court find[s] Mother's efforts were not reasonable when considering the duration, extent, and context of the efforts along with the quality and quantity. [¶] The Court evaluates reasonableness by considering the progress both in the long term, from December 8, 2008 and in the short term, from August 25, 2011.*" (Italics added.)

The juvenile court's explanation is somewhat ambiguous. If the juvenile court focused solely on the inadequate results of mother's efforts, it would have applied the wrong legal standard. Successful efforts cannot be what section 361.5(b)(10) requires. Had mother's efforts been entirely successful, it might never have been necessary to remove Elise from mother's care.

Evidence of tangible progress is not necessarily required to establish "reasonable efforts." (*Cheryl P.*, *supra*, 139 Cal.App.4th at p. 99.) The *Cheryl P.* court explained: "Agency states the statutory language requirement of '*reasonable efforts* . . . implies the efforts need to be likely to actually ameliorate the problems, which further implies the court should be able to see progress.' We disagree. In our view, it is more likely the Legislature used the adjective 'reasonable' to ensure that lackadaisical or half-hearted

⁵ We cannot agree with mother that her efforts in the substance abuse area alone preclude bypass. Section 361.5(b)(10), applies when "[the] parent . . . has not subsequently made a reasonable effort to treat *the problems* that led to removal of the sibling or half sibling . . ." (Italics added.) The use of the plural "problems" in the statute belies mother's suggestion that a parent with several problems is necessarily entitled to many years of reunification services if he or she works through the issues only one at a time.

efforts would not be deemed adequate rather than to additionally require a certain level of progress.” (*Ibid.*)

The *Albert T.* court reached a similar conclusion. (*Albert T., supra*, 144 Cal.App.4th 207.) In *Albert T.*, the mother surrendered her six-year-old son (Alan), who suffered from bipolar disorder and attention deficit hyperactivity disorder. (*Id.* at p. 210.) While Alan’s dependency case was pending, the mother reported domestic violence by the father of another child, Albert. The mother, who suffered cognitive delays and had an intelligence quotient of 55, received mental health services, parenting instruction, and joint therapy, but was unable to obtain the skills to handle Alan’s special needs. The mother’s reunification services were terminated, but she continued to receive voluntary family maintenance services with respect to Albert. (*Id.* at pp. 210, 212–213.) A petition filed on behalf of Albert was sustained when it was discovered that the mother had left Albert with an aunt, the mother did not visit Albert or provide financial support, the mother had slapped a seven-year-old girl, and that the mother was in a relationship with a man who had a history of domestic violence. The mother was denied reunification services, pursuant to section 361.5(b)(10). (*Id.* at pp. 212–213, 216.)

The Court of Appeal assumed that domestic violence was a problem that led to Alan’s removal and observed that the mother had engaged in *and completed* individual counseling, as well as parenting classes addressing the impact of domestic violence on children. (*Albert T., supra*, 144 Cal.App.4th at pp. 220–221.) The court reversed, reasoning as follows: “What then is the evidence to support an implied finding [the mother] has not made a reasonable effort to treat her problem of entering into relationships that involve domestic violence? Apparently the fact that [she] has not resolved the problem Although the [agency’s] account of [the mother’s] failure to avoid relationships with violent men may be true, . . . section [361.5(b)(10)] . . . is directed to the parent’s reasonable efforts to treat the problem, not the success or failure of those efforts. . . . [¶] . . . Although further reunification services may ultimately be unsuccessful in allowing the child to return home, [the mother] has earned the right to try.” (*Albert T., supra*, at pp. 221, 222.)

However, we do not read *Cheryl P.* or *Albert T.* to forbid assessment of progress as one indicator of whether the parent is making only lackadaisical or half-hearted efforts. In *R.T.*, *supra*, 202 Cal.App.4th 908, the Third District Court of Appeal recently reached a similar conclusion. In that case, the minor was removed from his parents' care after his father was arrested for domestic violence and the mother admitted drug and alcohol use. The parents had previously failed to reunify with the minor's sibling, P.T., who was removed based on the parents' substance abuse and chronic homelessness. (*Id.* at p. 911.) The parents had made only minimal efforts to engage in reunification services in P.T.'s case. But, two months after the minor's removal, the mother moved to a safe residence, separated from the father, was following mental health recommendations, and had started attending a drug treatment program and 12-step meetings. Notwithstanding these efforts, the juvenile court ordered bypass of reunification services, citing the termination of parental rights in P.T.'s case and finding the parents had not made reasonable efforts to treat the underlying problems. (*Id.* at pp. 911–913.)

The Court of Appeal explained: “We do not read the ‘reasonable effort’ language in the bypass provisions to mean that *any* effort by a parent, even if clearly genuine, to address the problems leading to removal will constitute a reasonable effort and as such render these provisions inapplicable. It is certainly appropriate for the juvenile court to consider the *duration, extent and context* of the parent's efforts, as well as any other factors relating to the *quality and quantity* of those efforts, when evaluating the effort for reasonableness. And while the degree of progress is not the *focus* of the inquiry, a parent's progress, or lack of progress, both in the short and long term, may be considered to the extent it bears on the *reasonableness* of the effort made. [¶] Simply stated, although success alone is not the sole measure of reasonableness, the *measure* of success achieved is properly considered a factor in the juvenile court's determination of whether an effort qualifies as reasonable.” (*R.T.*, *supra*, 202 Cal.App.4th at pp. 914–915.)

In concluding that substantial evidence supported the juvenile court's finding, the *R.T.* court observed: “There is *no* evidence that mother made *any* effort to address her substance abuse issues after minor was returned to her, until minor was once again

removed and bypass was recommended. By then, mother had been using drugs again for nearly a year, if not longer, and minor was once again languishing without proper care as a result. There is no evidence in the record that mother, in the month or two of services following minor's second removal, had engaged in these services in any meaningful way. [Citation.] In any event, the juvenile court properly could conclude this recent effort, even assuming the effort was substantiated, was simply too little, too late." (*Id.* at p. 915.)

Taken together, *R.T.*, *Cheryl P.*, and *Albert T.* teach that progress (or lack thereof) is not the determinative factor, but it is one factor that can be considered. Such an analysis is, necessarily, fact intensive. We find this case distinguishable from *Cheryl P.* and *Albert T.* The record contains more than just evidence of mother's lack of progress.

Mother did complete some parenting classes and, at least sporadically, cleaned her home, attended individual therapy, and attended a domestic violence support group. However, the duration, extent, and context of mother's efforts reveal a pattern that, especially when combined with mother's actual progress, could reasonably lead the juvenile court to conclude that mother's efforts were only superficial.

There had been multiple referrals related to domestic violence incidents before and after detention of A.R. and E.R. in 2008. Mother failed to follow through with a referral to therapy in 2009. Mother was referred to a domestic violence program at the YWCA in 2010, but mother did not actually begin the program until June 2011, despite another domestic violence incident in January 2011. In March or April 2011, within hours after his release from prison for assault on her, mother invited Eric W. into her home with Elise present. Once she began the domestic violence program, she attended as few as four sessions. Mother was ultimately dropped from the program, sometime in the fall of 2011, for attendance problems, despite being offered childcare services so that she would be able to attend. It is also undisputed that mother had only one therapy session with Abrams between April 2010 and February 2011.

We are mindful of what else was going on in mother's life in 2010 and 2011. Specifically, E.R. and A.R. were returned to mother in November 2009, she was attacked

by Eric W. in May 2010, and then discovered she was pregnant with Eric W.'s child a few months thereafter. Despite the latter two incidents, mother was not engaged in therapy or the support group. Instead, mother waited until she was threatened with another removal, after the January 2011 incident with Michael R., to sporadically participate in these services.

Although there are other inferences that can be drawn, the timing of mother's efforts does reasonably suggest that she was not motivated by a genuine desire to change. Rather, one could reasonably infer that mother was only prompted to resume therapy and begin the long-postponed domestic violence program by the social worker's January 2011 intervention.⁶ Whatever mother may have learned from her limited participation in the services she was offered, she was clearly unable or unwilling to apply. In 2011, mother continued to allow her past abusers into her home while her children were present and made questionable judgments regarding the care of her children and the maintenance of their home.

When the record is viewed in the light most favorable to the judgment, the trial court could reasonably conclude that mother's efforts to deal with persistent domestic violence issues, and to provide for the safety and security of her children, were "lackadaisical and half-hearted" considering the duration, extent and context of her efforts. Substantial evidence supports the court's finding that mother has not made reasonable efforts to address the problems that led to removal of E.R. and A.R.

IV. DISPOSITION

The writ petition is denied on the merits. The request for a stay is also denied. Because the section 366.26 hearing is set for June 7, 2012, our decision is final as to this court immediately. (Cal. Rules of Court, rules 8.452(i), 8.490(b)(3).)

⁶ Mother is not spared by her attempt to shift the blame to the Department. She asserts: "The formal requirement that she attend domestic violence victims' group was not even added to her case plan until the case was two years old," in February 2011. But, it is undisputed that therapy was a requirement and that she was referred by the social worker, in 2010, when mother had stopped therapy sessions with Abrams.

Bruiniers, J.

We concur:

Simons, Acting P. J.

Needham, J.