

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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 TWO

PATRICIA M.,  
Petitioner,

v.

THE SUPERIOR COURT OF DEL  
NORTE COUNTY,  
Respondent.

DEL NORTE DEPARTMENT OF  
HEALTH & HUMAN SERVICES,

Real Party in Interest.

A134777

(Del Norte County  
Super. Ct. No. JVSQ11-6026)

BRYAN K.,  
Petitioner,

v.

THE SUPERIOR COURT OF DEL  
NORTE COUNTY,  
Respondent.

DEL NORTE DEPARTMENT OF  
HEALTH & HUMAN SERVICES,

Real Party in Interest.

A134779

(Del Norte County  
Super. Ct. No. JVSQ11-6026)

By this petition for extraordinary writ, authorized by California Rules of Court, rule 8.452, mother Patricia M. (Patricia or Ms. M.) and father Bryan K. (Bryan or Mr. K.)

seek review of the juvenile court’s February 21, 2012 order terminating reunification services and setting a Welfare and Institutions Code section 366.26<sup>1</sup> permanency hearing. In essentially identical petitions, they contend that the juvenile court erred in finding that respondent Del Norte Department of Health & Human Services (the Department) made “active efforts” as required by the Indian Child Welfare Act, Title 25 of the United States Code section 1912(d) (ICWA) to help them reunify with their daughter, A.K. We reject their contention, and deny the petitions on their merits.

### **BACKGROUND**

A.K. was born on February 23, 2011. Within two days, the Department had filed a section 300 petition alleging that she came within the juvenile court’s jurisdiction pursuant to subdivisions (b) and (j). Specifically, it alleged that her parents failed to protect her and were unable to provide for her care due to their substance abuse problems and “involvement in the drug culture.” As to Patricia, it also alleged that she was on “non-revocable parole out of Humboldt County due to her drug and criminal activity”; she had multiple positive drug tests during her pregnancy with A.K., although both she and A.K. tested clean at the time of A.K.’s birth; and due to her chronic substance abuse, her six older children lived with their maternal grandmother under a legal guardianship. As to Bryan, it also alleged that he admitted to having smoked marijuana within three weeks of A.K.’s birth.<sup>2</sup>

On March 1, 2011, Patricia signed a parental notification of Indian status, representing that she was a member of the Chickasaw tribe. Notice of the dependency proceeding was sent to the Chickasaw tribe in compliance with ICWA, and there is no dispute about the adequacy of the notice.

A.K. was not immediately detained. Instead, the court declared her a dependent and permitted her to remain in her parents’ care at the home of her maternal grandmother and six half-siblings, and the family was provided family maintenance services.

---

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

<sup>2</sup> The petition identified Bryan as the alleged father. There was no dispute about paternity.

A case plan identified the following objectives and responsibilities for both parents: remain free from illegal drugs and demonstrate ability to live free from drug dependency, including compliance with all required drug tests; abide by the law; have and maintain a legal source of income; comply with medical or psychological treatment; and participate in mental health, education, and substance abuse services, including the completion of a substance abuse treatment program. Patricia was to receive Alcohol and Other Drugs (AOD) services through United Indian Health Services (UIHS), while Bryan was to receive services through the Del Norte County AOD program.

On April 22, 2011, the Department filed a supplemental petition pursuant to section 387 requesting a more restrictive placement. It alleged that on April 15, 2011, both parents tested positive for amphetamines, with Bryan additionally testing positive for marijuana. A detention report filed the same day recommended that A.K. be detained, which recommendation the court adopted at a detention hearing. A.K. was removed from her grandmother's home and placed in a foster home.

At a jurisdictional hearing the following week, the parents pleaded no contest to the allegations in the supplemental petition, and the matter was continued for disposition.

In a May 19, 2011 disposition report, the Department recommended that A.K. remain a dependent and that the parents receive reunification services. It noted that both Patricia and Bryan had been seemingly enthusiastic about their recovery so they could parent their new child. Despite this, and despite warnings concerning the consequences of continued drug use while A.K. was in their care, they both relapsed. An updated case plan set forth essentially the same objectives as before: remain drug-free and comply with all required drug tests; comply with the law; obtain and maintain employment; and comply with medical or psychological treatment. It noted that Patricia had transferred her substance abuse treatment from UIHS to Del Norte County's AOD program, although the treatment requirements remained the same.

A contested dispositional hearing followed, after which the court found that "[a]ctive efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and those efforts have been proved

unsuccessful.” As a result, it was necessary to remove A.K. from her parents’ custody. The court ordered that family reunification services be provided to both parents, who were ordered to comply with their case plan in order to regain custody of A.K. The matter was continued for a six-month review. As will be seen, during those six months, Patricia and Bryan failed to make progress on their case plans, and both parents had multiple positive drug tests.

On November 28, 2011, Indian Child Welfare (ICW) social worker Regena Frye moved, on behalf of the Chickasaw Nation, to intervene in the case pursuant to title 25 United State Code section 1911(c). The juvenile court granted the motion on December 9, 2011.

Meanwhile, on December 7, 2011, the Department filed a six month status report, advising the court that both parents were homeless, were still actively using drugs, and had made little to no progress on their case plans. In the report, the Department summarized at length Patricia’s history with treatment programs since A.K.’s birth:

“In May 2011, Ms. M. started receiving outpatient treatment through Del Norte County [A]lcohol and Other Drugs program. After struggling to stay clean in Del Norte County, on June 20, 2011, the agency arranged a bus ticket through the Department and Ms. M. was sent to inpatient treatment through Skyway House’s in Oroville, California. In spite [of] testing positive for methamphetamines when she arrived at the program . . . Ms. M. was allowed to stay. However, after being in treatment for seven days Ms. M. walked away from the program. It was believed the mother was too concerned about the child’s father and could not stay focused on treatment. Instead of returning to Del Norte AOD, the mother enrolled in Trillium House, a local substance abuse recovery program. The agency had wanted the mother to complete the 90 day program, but after 45 days of treatment was discharged. She was allowed to move[] into the agency’s clean and sober house. The mother was required to attend 3 groups and four community 12 Step meetings per week. After living in clean and sober and attending After Care for 60 days Ms. Martinez moved in to a trailer on her parents[’] property.

“Ms. M. stated she was not getting what she needed at Trillium and sought services through United Indian Health Services['] Alcohol and Substance Abuse program. The mother was assessed on November 7, 2011. According to her counselor, Bob Baker they had not seen the mother since her assessment on . . . November 7, 2011. The counselor reported that he spoke with the mother in Klamath and was prepared to terminate her per program rules for thirty days. After hearing her tell him the difficulty she was having with her brother’s death he decided to continue services but the mother was only willing to commit to one day per week. The social worker asked Mr. Baker if that was his professional recommendation and he stated no. He recommended that the mother attend four times per week and be enrolled into the intensive outpatient treatment program. The social worker informed him that should be the requirement. This was believed to be in Ms. M.’s best interest because after living independently for three weeks she relapsed.

“Ms. M. tested positive for Benzodiazepines medication she was prescribed in September 2011[] and was counseled by Tony Costa and her social worker. The mother also submitted a dilute test on September 15, 2011, positive methamphetamine tests on November 23, 2011 and November 28, 2011. Ms M. was reassessed for treatment through UIHS on December 5, 2011. She was asked to test on December 6, 2011. When asked by staff when she last used the mother self admitted to last using December 5, 2011, so test was conducted.”

The Department provided a similar summary concerning Bryan: “Mr. K. started treatment for his substance abuse problem in March of 2011. He struggled to stay clean and was late for groups and was terminated from the program. In June 2011 the father went to AOD and requested treatment. The Department sent the father to detox in Humboldt and [he] was scheduled to enter an inpatient program following detox. Instead the father left and returned to Del Norte County. Mr. K. made no effort to visit his child or contact the Department until September 2011. On his return the father was tested and was positive for Benzodiazepines, marijuana, and methamphetamines. He sought treatment through Jordan Recovery and was turned down for lying about being under the

influence and after engaging in a verbal altercation with the counselor was turned away and told not to return. In November 2011 the father sought treatment once more through Del Norte AOD and was provided a time to return for assessment. He was given a schedule of groups. Mr. K. would fail to show or show up late. He was again terminated from the program and told not [to] return until he went to 14 consecutive 12 step meetings. To this date that has not been accomplished.”

The Department noted that both parents had completed a Positive Indian Parenting Course offered by UIHS. They were required, however, to complete the Incredible Years Parenting Program. Neither one did so as they were both terminated, Patricia for being inattentive, not actively participating, and spending most of her class time texting, and Bryan for poor attendance.

The Department also represented that Patricia and Bryan had been referred to the Linkages program as part of their case plans.<sup>3</sup> The program was available to help with housing and other essential needs related to A.K.’s care. Through Linkages, Patricia was referred to Cal-Works for employment assistance, but the Department had not received any reports of her having attended Cal-Works. As to Bryan, the Department had coordinated service benefits and provided direct support to help him prepare for employment. Bryan began a job but walked away from it on the first day and was no longer eligible for services.

In terms of visitation, the Department noted that Patricia had been consistent in her visitation with A.K. until she relapsed on November 23, 2011. Although there was no question about the bond between Patricia and her daughter, the Department expressed concern that Patricia appeared to choose drug use and a relationship with Bryan over A.K., a pattern she exhibited with her other six children.

---

<sup>3</sup> As a social worker would later describe it, “What Linkages does is it provides additional financial assistance with families involved in child welfare to help them with paying deposits for housing, utilities. They can fund transportation. They can fund—they can help pay past due bills if it means stabilizing the family. It just offers an array of services to help the family to get some stability so kids can be returned.”

Bryan, on the other hand, did not have a stellar visitation record. He had no contact with A.K. from July 2011 to September 2011. When he did resume visitation—reportedly because Patricia told him his parental rights were going to be terminated—he had shown up for visits under the influence of drugs. His visits were inconsistent at the time of the report, and he was receiving only five hours of visitation per week as a result.

The Department also identified the following 34 “active efforts” it made to help the family reunify:

- “1. Emergency Response Services
- “2. Emergency foster care
- “3. Foster care payment
- “4. Assigned Social Worker
- “5. Assigned Social Service Aide
- “6. Referrals to Alcohol and Other Drugs
- “7. Referral to the Linkages program
- “8. Linkages Team meetings
- “9. Referral Parenting class
- “10. Monthly bus passes and dial a ride tickets
- “11. Purchase Orders to Joe’s Chevron for gasoline
- “12. Direct Transportation to Visits Mother and Father
- “13. Direct Transportation to Treatment Father
- “14. Payment for Detox—Father
- “15. Direct Transport for [sic]
- “16. Direct Payment Birth Certificate
- “17. Direct payment for three months of clean and sober living
- “18. Linkages Team meeting to discuss budget and income if child returned.
- “19. June 16, 2011, the social worker processed a ticket for the mother to travel to [S]kyway House treatment program.
- “20. June 29, 2011, social worker transported the father to Sutter Coast Clinic for a physical exam.

“21. June 20, 2011, the social worker transported the father to Eureka to enter Humboldt Detox.

“22. July 25, 2011, CWS team meeting attended by social worker, Unit supervisor Julie Cain, grandmother, Counsel, Chickasaw Tribe (by Phone and Smith River Rancheria.

“23. September 8, 2011, social worker met with the mother to discuss her going to UIHS after leaving Trillium and medication issues.

“24. September 12, 2011, social worker spoke with mother and Tony Costa of Trillium about mom attending groups, medication, and random testing.

“25. September 27, 2011, social worker spoke with foster parent regarding child’s re-occurring rash.

“26. October 13, 2011, social worker met with grandmother and foster parent . . . discuss possible transition and relative status.

“27. Social worker scheduled team meeting for family, foster parents, Smith River Tribal representative, and Chickasaw Tribe.

“28. October 20, 2011 social Worker discussed diaper rash, diaper changes, and foods with mother. Department approved voucher for mother to buy proper supplies [ordered] to limit rash outbreak.

“29. October 27, 2011, the social worker had a family and tribal team meeting to discuss the ongoing rash, feeding, keeping the child safe, visits, and housing.

“30. November 3, 2011, social worker met with the mother to discuss school (GED) and []case plan.

“31. Social worker maintained regular contact with the foster parents to discuss issues in placement and changes to the visitation schedule.

“32. Social worker maintained regular contact with relatives concerning placement and the application process.

“33. Social worker maintained regular contact with the child to determine care and concerns.

“34. Social worker maintained regular contact [with] service providers.”

In light of the parents' failed efforts to achieve and maintain sobriety despite the Department's efforts to assist them in completing their case plans, the Department considered it unlikely that A.K. would be able to reunify with her parents within 12 months from detention. It therefore recommended termination of reunification services for both parents.

On December 20, 2011—two weeks after the Department recommended that reunification services be terminated—ICW social worker Frye submitted a report to the court on behalf of the Chickasaw Nation. In it, she advised that in a December 2 conversation with Department social worker Bob Beck, Beck had represented that despite Patricia's recent relapse, the Department would continue to offer reunification services, which representation he then contradicted in the December 7 six-month status report. Frye further advised that the Chickasaw Nation was recommending continued reunification services "in an 'Active Effort' to prevent the breakup of the Indian Family." She explained: "It is the position of The Chickasaw Nation that these parents have not been given the resources they need to address their substance abuse issues. Both parents exhibit the need for intensive, inpatient treatment of at least 1 year in order to address these issues, and to prevent the breakup of this Indian Family, per ICWA 25 U.S.C. 1912(f)."

On January 31, 2012, the Department filed an addendum report, this time recommending the continuation of reunification services to both parents. Explaining this change, the Department stated, "[A]fter staffing the case, the Department has decided to change the original recommendation of terminating reunification services to both parents. The Department is now recommending that services continue until the parents have received a year's worth of reunification services from the time of detention. . . . [¶] Additionally, [the] Department would like to notify the court that the case has changed social workers from Social Worker Bob Beck to Social Worker Heather Friedrich. This change was made in order to assist Ms. M. in focusing on her services and reunifying with her child, rather than her feelings of conflict towards SW Beck."

The Department advised the court that Patricia, who was in the process of moving back to her mother's property, wanted to continue to work with UIHS on her substance abuse issues and claimed that she would start to attend AA/NA meetings. It also advised that a week prior to the preparation of the report, Patricia admitted that she would test dirty if she were drug tested, and that both parents had positive drug tests on January 5, 2012.

Bryan, the Department advised the court, was homeless. He was not currently attending any AOD programs because he was not welcome to receive treatment there until he presented proof of having attended 14 consecutive 12-step meetings. Like Patricia, Bryan claimed that he would start attending meetings.

On February 15, 2012, the Department filed a letter (dated February 9) from a UIHS counselor to social worker Friedrich. According to the Department, the letter was prompted by questions during recent court hearings about the AOD services that had been made available to Patricia. It detailed Patricia's involvement with UIHS dating back to August 2004 and, as pertinent here, provided the following details concerning Patricia's participation in substance abuse treatment services over the course of the dependency proceeding:

"[Patricia] showed up [at] UIHS . . . on 4/8/11 one time and not to be seen again until 4/20/2011 to 4/21/2011 not to be seen again. She resurfaced at Del Norte County Substance abuse program on 4/26/2011 until 6/15/2011. She came back again to UIHS on 12/7/2011 until 1/31/2012. She now has requested to transfer back to Del Norte county [substance abuse] on 2/8/2012. Patricia's program there began on March 3d 2011 at that time she revoked all her [releases of information] and contacts and left the program on April 28th 2011 after not following a plan or showing for services regularly. Instead she entered Trillium residential treatment facility for women on 7/8/2011 and after one month of treatment at the Trillium facility she moved into their clean and sober housing 8/23/2011 staying a total of three month's leaving on 11/6/2011. On 11/8/2011 she began services again at United Indian Health Services substance abuse program. Her assessment showed she needs residential treatment. She asked for the primary residential

treatment and was adamant that she would go and how she needed to be in a cultural program she needed it and pushed me to complete the referral for her to go. I referred her to Friendship House a primary residential treatment facility culturally based. This is a six month program. I referred and set appointments to prepare[] client to enter the Friendship House in San Francisco. Client had TB test and physical appointments set and she did not comply and get the two things most needed for her to enter into residential treatment. Patricia was offered bus tickets to get to the Doctor appointments. I encouraged her to go letting her know we could schedule it for Wednesdays when I am up in Smith River and I could drive her back to town. We provided her with every avenue to attend Friendship House residential treatment. When questioned about the TB and physical she avoided her answers. Her bed at Friendship House had been ready for her since 12/2011. She did not communicate with our services, or with Friendship House that she did not intend to go. Her actions showed differently. Now, for the third or four time Patricia has opened her file at UIHS and closed it just as soon as she is asked to comply with treatment and has gone and done her own plan stating ‘United Indian Health Services substance abuse program is not strong enough for her.’ I see this as manipulative behavior that enables client to not receive the treatment that may save her life at some point. At this time I have made the referral to Del Norte County Drug Alcohol services, her file here at UIHS substance abuse program is discharged.”

On February 21, 2012, the matter came on for the six-month review. Patricia appeared at the hearing, while Bryan did not. Similarly, ICW social worker Frye made no appearance, despite the report she filed and notice of the hearing.<sup>4</sup> At the hearing, counsel for A.K. contested the Department’s new recommendation to continue reunification services.

Social worker Beck, who handled the case from March 2011 to early 2012, was the first to testify. Beck prepared the December 2011 report recommending termination of services, a recommendation, he explained, that was based on the belief that sufficient

---

<sup>4</sup> Several attempts were made to contact her telephonically.

services had been offered to the parents and that extending services would not change the outcome.

According to Beck, it had been left to Patricia to decide whether she wanted to participate in substance abuse treatment programs through the Del Norte County AOD or UIHS. She had entered a program at Skyway House, but walked away from the program. And after that, she pursued services through UIHS, where her counselor recommended four meetings a week given her level of substance abuse, but at Patricia's urging, he permitted her to attend only one meeting a week, which she failed to comply with. The only program she completed was a 45-day, in-patient program through the Trillium House, and even that was typically a 90-day program. Patricia maintained her sobriety when she was in a clean and sober living after-care facility, but she relapsed shortly after living independently, testing positive for methamphetamines on November 23 and 28, 2011. She also admitted using on December 5, four days prior to the preparation of the six-month status report.

Beck also testified that the Department made Linkages services available to Patricia, but she did not engage in the services. Likewise, she did not complete the 12-week Incredible Years Parenting Program.

Under cross-examination by Patricia's counsel, Beck explained that he had been removed from the case because Patricia was unhappy with his recommendation to terminate services and felt that he was biased against her. In order to eliminate any distractions for Patricia, the decision was made to replace Beck with Heather Friedrich.

Under cross-examination by county counsel, Beck indicated that as of January 16, 2012, there was still a bed available for Patricia at Friendship House. She did not, however, go to the Friendship House and participate in services.

Social worker Friedrich, who prepared the January 31, 2012 report recommending the continuation of services, testified next. She confirmed that Patricia tested positive for methamphetamine on January 5, admitted she would test dirty on January 24, and was not compliant with her drug and alcohol treatment program. Friedrich also confirmed that at

the time of the hearing, the bed that had been available at the Friendship House was no longer available because Patricia delayed too long in taking a TB test.

When asked by counsel for A.K. why she believed reunification services should be continued, Friedrich responded that that was a decision made by her superiors prior to her being assigned the case. Despite this recommendation, Friedrich conceded that she did not think it likely that Patricia would be able to complete her case plan by the one-year mark because “she has a lot of work to do.”

Patricia then took the stand. She admitted that she learned about the bed at Friendship House in December 2011, and claimed that she delayed in taking the physical examination and TB test because she wanted to know where A.K. was going to be placed. She further admitted that she continued to use drugs in December, January, and February. She claimed, however, that, at that point, she was “trying to get into anything basically.”

At the conclusion of the hearing, counsel for the Department advised the court that it was now the Department’s position that active efforts had been made to reunify the family. Its prior decision to recommend continued services was made before receipt of the February 9 letter from the UIHS counselor.

After closing arguments, the court set forth its position concerning active efforts as follows:

“I find that by clear and convincing evidence that active efforts were used. And while any—while some of them could be attacked on—as not being terribly substantial of the 34 things listed as active efforts in the status review report for the December 9th hearing, overall as in total, I think that those do show that active efforts were made.

“It appears to me that the biggest problem facing mom and dad were the drug issues and continuing drug issues and the need to detox and to fight that. I think that there were certainly much higher than usual efforts made to try to address the drug problems, the Skyway House, the Trillium House, the after-care for Trillium, the—when I say Trillium House, I’m talking about Jordan Recovery Center. And when that failed or mom walked away from Skyway. So she was sent off to a residential program, and she

came back and did Trillium and the after-care. And then as late as December, Friendship House, long-term program in San Francisco became available, UIHS worked with her.

“I don’t find that was all just mom’s doing, but also through the program providers, through the department, AOD and the tribe, UIHS. I don’t mean tribe, I mean UIHS. And that was available.

“But the problem is mom was in the midst of continuing to use and found reasons why not to do it. I find if she wanted to find—or have closure on the de facto [parent] petition to me is certainly not a good excuse not to deal with her problem, the fact that she testified today that she would still be dirty, she would be dirty today if she was tested.

“It appears to me that active efforts to reunify and to provide the services necessary were given and mom simply has not taken advantage of them. Mom did not take the Incredible Years Parenting Program that was in the case plan. Apparently there was no agreements made that—what program she took previously from the tribe or UIHS would take the place of that and no evidence was received that that was adequate.

“With regard to active efforts, that letter from the department, from the UIHS filed on December—February 15th was very convincing that efforts have been made to address mom’s problems and mom has not been able to take advantage of it, that mom is not in a—has not been able to take sufficient advantage of the Linkages program, drug use continues to keep her ineligible for HUD assistance for housing, the concerns about—indicated in the report where mom’s inability to take care of the hygiene of her child resulting in rashes, lack of job skills that the mother has, has not taken advantage of things that were offered and try to develop financial resources. Just general lack of progress on the case plan.

“I find no substantial likelihood that the child could be returned to the mother at the end of the twelve months.

“With regard to the father, most of the things that we’ve talked about with regard to the father—with the mother would apply. The father simply doesn’t appear to make any progress. His visits haven’t been regular. He was denied treatment at the Jordan Recovery Center because of being under the influence.

“He started the Alcohol and Other Drug Program, but was terminated for failure to show up or showing up late. He was told that he could get back into the program if he would go to 14 twelve-step meetings and provide proof. He never did that. So he never came back.

“He was terminated from the Incredible Years that he was ordered to do. He refused to—or he was referred to Linkages as well as Cal-Works, but basically lost services there when he walked away from a job for no apparent reason.”

With that, the court terminated reunification services to both parents, and set the matter for a section 366.26 permanency hearing on June 15, 2012.

On March 14, 2012, Bryan filed a petition for extraordinary writ, arguing that the juvenile court erred in finding that the Department made “active efforts” to reunify the family. Patricia’s followed a week later, replicating Bryan’s petition word for word, save for the addition of Frye’s December 20, 2011 report as Exhibit A.

On April 4, 2012, we ordered the matters consolidated for all purposes.

### **DISCUSSION**

Congress enacted ICWA in 1978 “to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families . . . .” (25 U.S.C. § 1902.) ICWA and California law provide that any party seeking foster care placement or termination of parental rights of an Indian child shall satisfy the court that “active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful.” (25 U.S.C. § 1912(d); § 361.7, subd. (b); see also Cal. Rules of Court, rule 5.484(c).) The statutory law does not define “active efforts,” and no formula exists for distinguishing active efforts from efforts that are merely passive. (*In re K.B.* (2009) 173 Cal.App.4th 1275, 1286). Section 361.7, subdivision (b) provides guidance, however: “What constitutes active efforts shall be assessed on a case-by-case basis. The active efforts shall be made in a manner that takes into account the prevailing social and cultural values, conditions, and way of life of the Indian child’s tribe. Active efforts shall utilize the available resources of the Indian child’s extended family, tribe, tribal and other

Indian social service agencies, and individual Indian caregiver service providers.” (See also *Adoption of Hannah S.* (2006) 142 Cal.App.4th 988, 998; *In re Michael G.* (1998) 63 Cal.App.4th 700, 714.)

“Whether active efforts were made is a mixed question of law and fact.” (*In re K.B., supra*, 173 Cal.App.4th 1275, 1286.) The reviewing court determines the services that were provided by reference to the record. “Whether those services constituted ‘active efforts’ within the meaning of section 361.7 is a question of law which we decide independently.” (*Id.* at p. 1286.)

We begin with Bryan, who concedes that his participation was “minimal and poor.” And we conclude that the Department made active efforts to reunify him and A.K., arranging at least four separate treatment programs for Bryan. The Department initially assisted Bryan in getting into a drug treatment program at Del Norte County AOD, but he failed to complete the program. It then helped Bryan get into a detox program, after which he was scheduled to enter an inpatient treatment program, but he left after two days and returned to Del Norte County. The Department again arranged treatment services through AOD, but rather than engaging in treatment, he disappeared for three months. Once Bryan resurfaced, the Department again directed him to a treatment program, this one at Jordan Recovery Center, but he was rejected for testing dirty. He later re-enrolled in the County’s AOD program, but again failed to engage in services. He continued to have dirty drug tests and admitted to using drugs on days he visited with A.K.

Beyond drug treatment programs, Bryan failed to avail himself of other programs offered by the Department. He was required to complete the Incredible Years Parenting class, but was terminated from the program for poor attendance. He was referred to Linkages and provided with a job opportunity. Rather than hold gainful employment as required by his case plan, however, Bryan walked away from the job on the first day.

This history illustrates that the Department made “active efforts” to reunify Bryan and A.K.

Turning to Patricia, the Department provided Patricia with all the tools necessary to complete her case plan but, like Bryan, she failed to avail herself of these services. Patricia initially sought substance abuse treatment services through UIHS, as was her prerogative. By May 2011, she had transferred her services to AOD, which, in June 2011, arranged for her to attend an inpatient program through the Skyway House. After only seven days of treatment, however, Patricia walked away from the program and returned to Del Norte County, reportedly to be closer to Bryan. Instead of reenrolling in AOD, Patricia entered into a treatment program at the Trillium House. To her credit, she completed a 45-day inpatient treatment program, although the recommendation was for a 90-day program. From there, she moved into a County clean and sober living facility, where she resided for over two months, before moving to a trailer on her parents' property.

Patricia's recovery derailed in November 2011 when—within weeks of her living independently—she relapsed into drug abuse. She switched her treatment back to UIHS, where she was assessed on November 7, 2011. After that assessment, Patricia did not return to UIHS until December 5, when another assessment indicated she needed residential treatment. UIHS arranged for a bed at the Friendship House in San Francisco, which was conditioned on Patricia taking a physical examination and TB test. Appointments for the tests were scheduled, but Patricia did not show. In fact, Patricia delayed for so long in getting the physical and TB test that the bed eventually became unavailable.

Additionally, like Bryan, Patricia was referred to the Incredible Years Parenting Program, but was terminated for inattention, lack of participation, and disruptive behavior. Patricia was also referred to Linkages, but she did not engage in the services. Patricia was also offered mental health services to help her cope with trauma she had experienced in her life. She failed, however, to keep her appointments with her UIHS mental health counselor.

In her petition, Patricia relies on Frye's opinion that the parents had "not been given the resources they need to address their substance abuse issues" and that she

needed inpatient treatment to urge that the Department did not provide active efforts. But Patricia *was* offered a bed at a residential treatment program, which offer she ignored. As her UIHS counselor described it, Patricia bounced back and forth between County AOD programs and UIHS services, “manipulative” behavior that allowed her to avoid treatment. At the end of the day, it cannot be said that the Department did not make active efforts to reunify the mother and child, or that its efforts were somehow “mechanical” and or not tailored to Patricia’s specific needs, as Patricia would have it. Rather, it is a case of the Department making the required efforts, and the Patricia not availing herself of them.

In closing, we note that the Chickasaw Nation intervened in this case in November 2012 and filed a report in December 2012. ICW social worker Frye appeared at multiple hearings and was given notice of the February 21, 2012 evidentiary hearing. Attempts were made to reach Frye at the outset of the hearing, but no appearance was made on behalf of the tribe.

#### **DISPOSITION**

The petitions of mother Patricia M. and father Bryan K. for extraordinary writ relief are denied on their merits. (Cal. Rules of Court, rule 8.452(h)(1).) This decision is final as to this court forthwith. (*Id.*, rule 8.490(b)(1).).

---

Richman, J.

We concur:

---

Kline, P.J.

---

Haerle, J.