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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

In re A.H., a Person Coming Under the Juvenile
Court Law.

MENDOCINO COUNTY HEALTH &
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

Alicia E.,

Defendant and Appellant.

A135981

(Mendocino County Super. Ct. No.
SCUK-JVSQ-11-16333-01)

This appeal has been taken by Alicia, the mother of the minor A.H., from an order following the six-month review hearing in a proceeding brought pursuant to Welfare and Institutions Code section 300, subdivision (b),¹ that terminated the mother's reunification services and placed the minor with non-related foster parents. In this second appeal in the case the mother challenges the adequacy of the reunification services provided to her and the termination of those services by the juvenile court. She also claims the juvenile court failed to adhere to placement preferences stated in the Indian Child Welfare Act (ICWA), and erred by failing to grant her a continuance of the six-month hearing due to the untimely presentation of an addendum to the review report. We conclude that the

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise indicated; all references to rules are to the California Rules of Court. For the sake of confidentiality, we will refer to the minor by her initials, the mother and father by their first names Alicia and Patrick, and other relatives by their first names or initials only.

mother was granted adequate reunification services, and those services were properly terminated. No violation of the ICWA placement preferences occurred, and the juvenile court did not abuse discretion by declining to grant the mother a continuance of the hearing. We therefore affirm the judgment.

STATEMENT OF FACTS AND PROCEDURAL HISTORY²

The minor was 12 months old when the present dependency proceeding commenced on September 15, 2011, with a petition that alleged the mother's continuing, unresolved substance abuse, her violation of probation, the father's failure to protect the minor, incidents of domestic violence between the parents and recent arrest of the mother for battery, and the extreme unsanitary and unsafe condition of the home. The home of the maternal grandparents, Roy and Linda, who were then the minor's temporary legal guardians as designated in a separate guardianship proceeding, was also alleged to be a health and safety hazard to the minor.

At the initial detention hearing on September 20, 2011, the parents reported that the minor had Indian ancestry. The father, Patrick, informed the court that he was registered with the Round Valley Indian Tribes (Round Valley Tribes), and the minor was "enrolled" in the tribe. The maternal grandmother indicated that she was "1/16th" Karuk tribe, and "there's a possibility" the maternal grandfather may have Indian heritage. The mother, who was in a residential drug treatment program, specified that she may have Indian ancestry, but did not name a tribe. The court ordered removal of the minor from current placement with the guardians, entered a temporary detention order, and suspended the guardianship proceeding.

The following day at the continued detention hearing the parents, maternal grandparents, along with their attorneys and counsel for the minor, and the Round Valley Tribes' representative Yolanda Hoaglin appeared. The parties submitted the matter on the allegations in the petition, and requested foster placement with the maternal

² Our recitation of the facts up to the point of the dispositional hearing will be repeated from our opinion in the prior appeal in this case (*In re A.H.; Mendocino County Health & Human Services Agency v. Alicia E.* (Dec. 12, 2012, A134387) [nonpub. opn.]).

grandparents. Hoaglin expressed support for return of the child to the guardians “once they get their place cleaned up.” The court found “a prima facie case” to support the allegations of the petition, and continued the prior temporary detention order.

On October 11, 2011, pursuant to the provisions of the ICWA, respondent Mendocino County Health and Human Services Agency (the Agency) sent an ICWA-030 notice of the dependency proceeding to the Round Valley Tribes, the Sacramento Director of the Bureau of Indian Affairs, and the Secretary of the Interior.³ The Round Valley Tribes responded that A.H. was “a member of the tribe,” and therefore the ICWA applied. The Round Valley Tribes also issued a resolution under the authority of the ICWA that specified the first order of placement preference for A.H. was with Tom and Rachael C., whose home “meets the tribes prevailing social and cultural standards which is in the best interests of this Indian child.”

The jurisdictional report filed by the Agency on October 17, 2011, reaffirmed that Alicia suffered from unrelenting substance abuse and admitted “mental health problems.” She was in violation of probation on drug charges. Investigation of the parents’ residence revealed that it was unsanitary in the extreme and unsafe for the child. The parents continued to engage in acts of domestic violence. The maternal grandparents’ home was also considered unsuitable for her as a placement. Following a jurisdictional hearing the court sustained the petition, with amendments to reflect: an additional allegation that the mother’s mental health condition interferes with her ability to care for the child; and, termination of the child’s guardianship with the maternal grandparents and dismissal of the allegation related to them.

On November 21, 2011, an ICWA-030 notice of the proceeding was sent to the Karuk Indian Tribes, the Round Valley Tribes, the Elk Valley Rancheria, the Quartz Valley Indian Reservation, the Secretary of the Interior, the Bureau of Indian Affairs, and the parents.

³ The jurisdictional report noted that the Karuk tribe had not yet received notice of the proceeding.

At a scheduled disposition hearing on December 8, 2011, the mother requested substitution of counsel. The court paused the hearing to conduct a *Marsden* inquiry,⁴ at which the mother claimed that her “defense [had] not been properly handled,” and counsel failed to properly communicate with her. The court found that counsel performed competently, and denied the motion.

When the disposition hearing resumed Alicia requested a transfer of the entire matter “to tribal court.” The court advised the mother that the Round Valley Tribes did not have a tribal court, and denied the request.⁵ The mother then made an additional request for transfer to the “Indian custodian,” the minor’s paternal aunt and uncle Francine and Carlos. The court responded that the “placement issue” with an “Indian custodian” would be addressed in the forthcoming disposition report to be filed before the continued disposition hearing.

The Agency filed the disposition report on December 12, 2011. Reunification services were recommended for both parents. Alicia was referred to the Yuki Trails substance abuse treatment program, Project Sanctuary, mental health counseling, and domestic violence counseling. She was also directed to participate in an Empowerment Plan, and parenting classes. The father completed a Fatherhood parenting class through the Round Valley Tribe, and was provided with anger management and parenting classes. The minor continued her foster placement as approved by the Round Valley Tribe with Tom and Rachael C., who expressed willingness to continue to care for her and “adopt her if necessary.” The report noted that the parents visited the minor regularly, with the visits “going well.”

A contested disposition hearing was held on December 21, 2011. The Agency presented a declaration and expert testimony from Reuben Becerra, a council member with the Round Valley Tribe. Becerra reviewed the petitions and reports filed in the case, and was personally familiar with the family. He offered an expert opinion, which was

⁴ *People v. Marsden* (1970) 2 Cal.3d 118.

⁵ The court noted that any motions by the Round Valley Tribe for a transfer of jurisdiction would be considered.

shared by the tribe, based on his knowledge of Indian culture and review of the case, that custody of the minor with her parents was likely to result in serious emotional and physical damage to her. He added that the child's best interests would be served by continuing her placement in the "Indian home" of Rachael and Tom C. in Willits, California, while the parents participated in reunification services. Becerra added that he was aware of the parents' request for placement with the father's brother, but nevertheless concluded that the current foster placement was in the child's best interests until resolution of the "reunification issue."

At the conclusion of the disposition hearing the court found that the requisite notice under the ICWA had been provided. The Agency also properly consulted with the Round Valley Tribe "concerning the appropriate placement of the child," and adhered to both the case plan and the placement preferences mandated by the ICWA.⁶ The court found that custody with the parents is likely to result in substantial danger to the physical health, safety, or emotional well-being of the child. Custody of the child was removed from the parents and placed with the Agency, and the case was transferred for family reunification services, including substance abuse treatment and domestic violence services. Continued visitation was granted to the parents.

In the first appeal in the case by the mother she challenged the trial court's compliance with the provisions of the ICWA. She argued that the juvenile court and the Agency failed to give proper notice in the case as required by ICWA, and failed to transfer the proceeding to a tribal court, and failed to adhere to specified statutory placement preferences. We found no prejudicial error associated with the ICWA notice sent by the Agency. We further found that the trial court was prohibited from transferring the case to a tribal court due to the Round Valley Tribal Council's refusal to accept the transfer, and no violation of placement preferences occurred. We therefore affirmed the dispositional hearing order.

⁶ The Karuk Indian Tribes, the Elk Valley Rancheria, and the Quartz Valley Indian Reservation did not respond in the proceeding, and given the participation by the Round Valley Tribes the court determined that no further notice to those tribes would be provided.

The case proceeded in the juvenile court. As a result of misdemeanor charges filed against Alicia for being under the influence of methamphetamine in July and December of 2011, she was placed on probation and ordered to comply with the Yuki Trails drug treatment program. Substance abuse reviews for the mother were scheduled for January 24, and February 28, 2012, and a six-month review of family reunification services was scheduled for June 7, 2012.

An interim review report filed by the Agency on February 27, 2012, noted that a psychological evaluation of Alicia had been performed by Dr. Jacqueline Singer to determine the benefit of reunification services. Dr. Singer reported that Alicia exhibited long-standing characterological symptoms: substance abuse, paranoid ideation, poor impulse control and planning ability, lack of concrete thinking, highly inflated sense of self, distorted sense of reality, poor frustration tolerance, and extremely poor judgment. She diagnosed Alicia with a range of psychological maladies: polysubstance abuse, mood disorder, bipolar disorder, mixed personality disorder, and anxiety disorder. According to Dr. Singer, Alicia failed to acknowledge her difficulties or comprehend “the ways in which she places her child at risk.” Dr. Singer expressed the opinion that given the mother’s cognitive impairments and enduring psychological deficits she would not benefit from treatment within the statutory period.

The interim report also included a letter from Dr. Kianna Zielesch, a psychologist and interim director of the Yuki Trails substance abuse clinic, who stated that the mother sporadically attended psychotherapy sessions and failed to participate in substance abuse therapy following unsuccessful residential treatment. The mother also declined to submit to urinary analysis as required. A minimum of 12 months in residential substance abuse treatment was recommended for her.

At the 60-day substance abuse review hearing on February 28, 2012, the court ordered a second psychological evaluation of Alicia pursuant to section 361.5, subdivision (b)(2), to determine the potential effectiveness of reunification services. The mother indicated to the court “for the first time” that she agreed to substance abuse

testing with Yuki Trails and was receiving substance treatment as part of her “criminal case.”

A six-month status review was filed by the Agency on May 25, 2012. The child continued to be placed in a foster home in Willits. The reunification services provided to the parents, and their efforts at compliance, were enumerated in the report. On February 8, 2012, Alicia and Patrick engaged in a heated verbal argument outside a casino in Hopland, California, during which Alicia attempted to hit Patrick. A search of their car uncovered marijuana and they were both arrested by tribal police. Baggies of marijuana, a smoking pipe, and a prescription pill bottle in the name of a third person that contained a Schedule III narcotic were found in their vehicle. They were both arrested pursuant to sections 11350 and 11364 of the Health and Safety Code. The mother was also arrested for resisting a peace officer (Pen. Code, § 148), after she yelled and pushed Hopland Reservation police officers. The criminal case against Alicia was subsequently dismissed for lack of evidence.

On February 13, 2012, the social worker visited the parents’ home in Covelo. The area surrounding the residence was comprised of old, partially dismantled vehicles, unsafe buildings, burned metals and garbage. The social worker was told that the mother was “unavailable.” The following day the social worker and an assistant attended the parents’ visit with the minor. The mother disclosed that she refused random urinalysis testing. She expressed stress associated with the requirements imposed on her by the family and criminal courts, her inadequate living conditions, inadequate funds to meet demands, and lack of food. The parents and the child were cheerful during visitation.

During the remainder of February, Alicia attempted to “detoxify” from controlled substances by herself, with some difficulty, but by February 28, 2012, she reported that she was “12 days clean,” and agreed to provide a urinalysis. Patrick and Alicia engaged in positive visitation with their daughter. Alicia was encouraged to attend weekly Yuki Trails classes and continue to provide drug screenings. They were also attempting to obtain housing in the Fort Bragg area, and actively pursued other suitable housing, although they continued to remain essentially homeless.

Alicia's personal ongoing, grueling "meth withdrawal" and abstinence from use of controlled substances, other than medical marijuana, continued in March and April 2012. By March 21, 2012, Alicia was "over 35 days sober from drug use." She attended classes at Yuki Trails only sporadically, however, between January and May of 2012 – three of 24 required weekly visits. She also only intermittently complied with drug testing, making confirmation of her cessation of methamphetamine use difficult. By May of 2012, Alicia declined to engage in any further urinalysis screenings, and rejected any form of drug treatment. In May of 2012, Alicia's substance abuse counselor expressed that she was "in denial and could benefit from long-term residential treatment." Alicia also did not attend individual counseling, an intake support group, parenting classes, or other services as required.

Along with Patrick, Alicia engaged in visitation with some regularity, despite the distress of her persistent withdrawal symptoms, lack of funds, and intermittent difficulty of obtaining transportation. Alicia's interaction with her daughter during visitation gradually became more positive and active after her reported cessation of methamphetamine use.

On April 17, 2012, the social worker learned from Alicia's mother that Alicia suffered from a lengthy history of a medical condition that was diagnosed as reverse peristalsis of the intestine or fibromyalgia, and resulted in severe pain, vomiting, and intermittent hospitalization. The condition, which was not previously disclosed to the Agency, required Alicia to take a prescription pain medication called SOMA and medical marijuana. Alicia stated that she had been prohibited from remaining in a residential drug treatment facility due to the pain medication she was taking. She also indicated that she raised some money for food and gas by selling her prescription SOMA and marijuana.

Alicia's second psychiatric evaluation by Dr. Albert Kastl was postponed until April 10, 2012. Upon review of records and a mental status examination of Alicia, Dr. Kastl diagnosed her with Axis I Anxiety Disorder and Polysubstance Abuse, and Axis II Personality Disorder with prominent paranoid and dependant features. He offered the

opinion that in light of Alicia's diagnoses, resistance to treatment, denial of disorders, lack of acceptance of responsibility, and limitations of functioning, she was not likely to "successfully unify with her child over a 6- to 18-month period."

Alicia was informed on May 1, 2012 that the Agency recommended termination of reunification services. Alicia conveyed that she wished to continue services on her own.

With the six-month review approaching, the Agency held a formal "Signs of Safety" family team meeting with the parents on May 23, 2012, to discuss recommendations. The Agency noted that Alicia was more regularly attending classes and medical visits, engaged in commendable efforts to stop drug use, and engaged in timely, positive visitation with the child. The parents obtained "an RV," worked "on not arguing and fighting," and related well with the foster family. Alicia and Patrick remained homeless, but had been offered an opportunity to share a five-bedroom home in Mina, California. Concerns addressed in the meeting were: lack of housing and substandard, disordered, unhygienic living conditions, continued arguing and lack of communication by the parents, gambling by both parents despite financial struggles, lack of responsiveness to budget guidance, Alicia's resistance to drug treatment and counseling, continued drug use by Alicia, and her sale of prescription pills and marijuana.

In the six-month review report the Agency recommended termination of services to Alicia due to her opposition and failure to consistently engage in services, sporadic drug testing, and high level of denial. Continuation of services to Patrick was recommended, as was continued visitation. The current foster home for the child was considered appropriate and supportive of her well-being. The Round Valley Tribal Council advised the social worker that a legal guardianship was the only agreeable status for the family.

At the scheduled six-month review hearing, the matter was continued to consider Alicia's request for transfer of the case to the Round Valley tribal court. At the continued hearing on June 26, 2012, the juvenile court received a letter and resolution from the Round Valley Tribal Council (Council). The Council declined to accept jurisdiction of the case and authorized alteration of preferences mandated by the ICWA to establish a

long-term guardianship of A.H. with “Talisha and Simon M.,” with the “understanding that no adoption will be done.” The juvenile court adhered to the Council’s determinations and adopted the findings of the Agency’s six-month review report. Family reunification services to Alicia were terminated; services to Patrick were continued, as were the parents’ visitation rights.

DISCUSSION

I. The Reunification Services Offered to the Mother.

Alicia argues that the Agency failed to provide adequate reunification services to her. She particularly objects to the failure of the Agency to respond to her “special needs relat[ed] to her underlying medical condition, reverse peristalsis of the intestine,” which required prescription SOMA and medical marijuana, and impacted her “psychological symptoms.” Alicia also points out that the Agency failed to assist her with financial needs. She claims the finding that the Agency offered her reasonable reunification services is “not supported by substantial evidence.”

“Other than in cases of voluntary relinquishment, the general rule is that when a dependent child is removed from the parent’s or guardian’s physical custody, child welfare services, including family reunification services, must be offered. (§ 361.5, subd. (a).)” (*In re Ethan C.* (2012) 54 Cal.4th 610, 626.) “ ‘ “Reunification services implement ‘the law’s strong preference for maintaining the family relationships if at all possible.’ . . .” . . . The department must make a “ ‘ “good faith effort” ’ ” to provide reasonable services responsive to the unique needs of each family. . . . “[T]he plan must be specifically tailored to fit the circumstances of each family . . . , and must be designed to eliminate those conditions which led to the juvenile court’s jurisdictional finding. . . .” . . . The effort must be made to provide reasonable reunification services in spite of difficulties in doing so or the prospects of success. . . . The adequacy of the reunification plan and of the department’s efforts to provide suitable services is judged according to the circumstances of the particular case. . . . “[T]he record should show that the supervising agency identified the problems leading to the loss of custody, offered services designed to remedy those problems, maintained *reasonable* contact with the

parents during the course of the service plan, and made *reasonable* efforts to assist the parents in areas where compliance proved difficult” [Citations.]” (*In re K.C.* (2012) 212 Cal.App.4th 323, 329–330.) In reviewing the reasonableness of the reunification services, we “recognize that in most cases more services might have been provided, and the services which are provided are often imperfect. The standard is not whether the services provided were the best that might have been provided, but whether they were reasonable under the circumstances.” (*Elijah R. v. Superior Court* (1998) 66 Cal.App.4th 965, 969.) A court-ordered reunification plan must be tailored to fit the circumstances of each family and designed to eliminate the conditions that led to the juvenile court’s jurisdictional finding. (*In re Dino E.* (1992) 6 Cal.App.4th 1768, 1777.)

Having failed to challenge the content of the services plan at the dispositional hearing in the juvenile court, the mother has waived her right to argue the services provided were inadequate. (*In re Julie M.* (1999) 69 Cal.App.4th 41, 47.) A party may not stand by in silence and permit the proceedings to reach a conclusion in which the party could acquiesce if favorable and avoid if unfavorable. (*In re Jesse W.* (2001) 93 Cal.App.4th 349, 355; *In re Lorenzo C.* (1997) 54 Cal.App.4th 1330, 1338–1339.)

Consequently, we focus our review on the reasonableness of the Agency’s efforts to implement the services as ordered. “[W]ith regard to the sufficiency of reunification services, our sole task on review is to determine whether the record discloses substantial evidence which supports the juvenile court’s finding that reasonable services were provided or offered.” (*Angela S. v. Superior Court* (1995) 36 Cal.App.4th 758, 762; see also *In re Misako R.* (1991) 2 Cal.App.4th 538, 545.) Substantial evidence is “reasonable, credible evidence of solid value” (*In re Brian M.* (2000) 82 Cal.App.4th 1398, 1401.)

“We must view the evidence in the light most favorable to the department and indulge all legitimate and reasonable inferences to uphold the order.” (*Mark N. v. Superior Court* (1998) 60 Cal.App.4th 996, 1010 (*Mark N.*)). “The adequacy of the reunification plan and of the department’s efforts to provide suitable services is judged according to the circumstances of the particular case.” (*Id.* at p. 1011.)

The record before us demonstrates that the Agency furnished Alicia with a vast array of reunification services to respond to her extensive needs. She was directed to participate in an Intake Support Group, substance abuse treatment and testing, parenting classes, individual and couples counseling, a domestic violence support or treatment group, and two psychological evaluations. She and Patrick were also afforded transportation support in the form of gas vouchers to facilitate attendance at classes and therapy, and on at least one occasion Alicia was even personally transported to a psychological evaluation. Housing assistance was also provided repeatedly throughout the reunification process: the Agency interfaced with the Round Valley Tribe and an ICWA agent to seek available housing; social workers and assistants advised Alicia and Patrick often on subsidized housing alternatives or vouchers, worked with them to complete and submit housing applications, checked on available housing on tribal lands, and discussed planned moves into a mobile home, to Fort Bragg, or a shared residence in another location. Alicia and Patrick were given budgeting advice by a social worker. They were even provided with personal hygiene articles and a shower facility.

Alicia criticizes the failure of the Agency to take into account her “underlying medical condition,” and its relationship to her “psychological symptoms,” in fashioning a plan to deal with her drug abuse and psychological issues. Her foremost complaint is that the Agency ignored the impact of the symptoms of her reverse peristalsis or fibromyalgia on her ability to comply with substance abuse treatment, particularly given the medication she took for pain management. As we read the record the Agency was aware of Alicia’s medical and mental health history, along with her need to take medical marijuana and the prescription pain medication SOMA, by September of 2011.⁷ Nothing in the record indicates that Alicia’s physical infirmities compromised her ability to participate in and complete the considerable reunification services offered to her, specifically the outpatient drug treatment services at Yuki Trails. Also, both psychological evaluators learned of Alicia’s physical maladies and symptoms during the

⁷ In April of 2012, Alicia’s mother informed the social worker that Alicia’s condition was diagnosed as reverse peristalsis rather than fibromyalgia.

evaluation process and before their conclusions were offered. Thus, their opinions that Alicia was not likely to benefit from treatment or successfully unify with her child within the statutory period were not rendered erroneous by misinformation or lack of awareness.

Even when considered in light of Alicia’s physical infirmities, the reunification services granted to her were not only reasonable, but commendable in nature and scope. We are persuaded that the Agency made a good faith effort to identify the problems leading to the loss of custody, offered services responsive to the mother’s unique needs and designed to remedy those problems, maintained reasonable contact with the parents during the course of the service plan, and made reasonable efforts to assist the parents in areas where compliance proved difficult. (See *In re Jasmon O.* (1994) 8 Cal.4th 398, 424–425; *Amanda H. v. Superior Court* (2008) 166 Cal.App.4th 1340, 1345; *Mark N., supra*, 60 Cal.App.4th 996, 1010–1011; *In re Christina L.* (1992) 3 Cal.App.4th 404, 417.) The reunification services provided to Alicia were not inadequate.

II. The Termination of Reunification Services.

We turn to the order terminating Alicia’s reunification services at the six-month hearing. “When a dependent child is removed from parental custody, the court generally orders services for the family to facilitate its reunification. (§ 361.5, subd. (a); *In re Baby Boy H.* (1998) 63 Cal.App.4th 470, 478 [73 Cal.Rptr.2d 793].)” (*In re Katelynn Y.* (2012) 209 Cal.App.4th 871, 876.) Where, as here, the child was under the age of three years when removed from parental custody, reunification services are presumptively limited to six months. (§ 361.5, subd. (a)(1)(B); *Daria D. v. Superior Court* (1998) 61 Cal.App.4th 606, 611, 612 (*Daria D.*))

“[U]nder section 361.5, subdivision (a)(2), . . . services shall not exceed six months if the child is under three years of age on the initial removal date, unless the court finds there is a substantial probability the child can be returned to the parents’ custody within an extended twelve- or eighteen-month period. Under section 366.21, subdivision (e), . . . the court may on the six-month review date schedule a selection and implementation hearing under section 366.26 if it finds by clear and convincing evidence that the parents failed to regularly participate in reunification services.” (*Daria D.*,

supra, 61 Cal.App.4th 606, 610.) “Construed together, sections 361.5, subdivision (a)(2) and 366.21, subdivision (e) provide the court with the option to terminate reunification services after six months when a parent of a minor under the age of three has ‘made little or no progress in [his or her] service plan[] and the prognosis for overcoming the problems leading to the child’s dependency is bleak.’ ” (*In re Jesse W.* (2007) 157 Cal.App.4th 49, 64, quoting *Daria D.*, *supra*, at p. 612.) Even if the court finds regular compliance with a reunification plan, it may terminate services if it determines that there is no substantial probability that the minor will be returned to the parent’s custody within the extended services period. (*Armando D. v. Superior Court* (1999) 71 Cal.App.4th 1011, 1019 (*Armando D.*)) In order to find a substantial probability of return, the court must find the parent regularly visited the child, made significant progress in resolving the problem prompting removal of the child, and demonstrated the capacity and ability to complete the objectives of the case plan and provide for the child’s safety, protection and well-being. (§ 366.21, subd. (g)(1).)

Again, we review the juvenile court’s order terminating reunification services to determine if it is supported by substantial evidence. (*In re Shaundra L.* (1995) 33 Cal.App.4th 303, 316.) “The issue of sufficiency of the evidence in dependency cases is governed by the same rules that apply to all appeals. If, on the entire record, there is substantial evidence to support the findings of the juvenile court, we uphold those findings. [Citation.] We do not pass on the credibility of witnesses, attempt to resolve conflicts in the evidence or evaluate the weight of the evidence. Rather, we draw all reasonable inferences in support of the findings, view the record most favorably to the juvenile court’s order, and affirm the order even if other evidence supports a contrary conclusion. [Citation.] The appellant has the burden of showing the finding or order is not supported by substantial evidence.” (*In re Megan S.* (2002) 104 Cal.App.4th 247, 250–251.)

The juvenile court was presented with ample evidence to support the finding that A.H. would not be reunited with Alicia within the extended 12- or 18-month period. Alicia was evaluated by two qualified experts, both of whom determined that she suffered

from specified cognitive impairments and psychological disabilities – Axis I Anxiety Disorder and Polysubstance Abuse, and Axis II Personality Disorder with prominent paranoid and dependant features, mood disorder and bipolar disorder – that prevented her from benefitting from reunification services or reunifying with her child within 18 months. The experts found that Alicia was resistant to treatment, denied her disorders, lacked acceptance of responsibility, and failed to comprehend the ways in which she placed her child at risk.

Although Alicia engaged in regular visitation with A.H. and embarked on her own efforts to curtail drug use, she failed to attend substance abuse therapy despite her chronic history of substance abuse. She also did not successfully participate in psychotherapy sessions, individual counseling, an intake support group, parenting classes, or other required services. She refused to comply with random drug testing requirements. She and Patrick failed to secure hygienic living arrangements, continued a pattern of arguing and lack of communication, gambled despite financial struggles, and lacked responsiveness to budget guidance. Throughout the reunification period she resisted drug treatment and counseling. Her substance abuse counselor recommended long-term residential treatment for Alicia, but stated that she continued to be “in denial” about her drug use.

Based on the evidence presented, particularly the psychiatric evaluations which were supported by Alicia’s performance during the reunification period, the juvenile court was justified in finding that A.H. would not be reunified with Alicia within the statutory period. The order terminating her reunification services was therefore proper. (*In re Lana S.* (2012) 207 Cal.App.4th 94, 109; *Curtis F. v. Superior Court* (2000) 80 Cal.App.4th 470, 473–474; *In re Levi U.* (2000) 78 Cal.App.4th 191, 200–201; *Armando D., supra*, 71 Cal.App.4th 1011, 1022.)

III. The Mother’s Due Process and Equal Protection Rights.

Alicia also asserts that by terminating her reunification services, while continuing to grant services to Patrick, the juvenile court violated her due process and equal protection rights. She points out that Patrick was also arrested for possession of a

controlled substance and only partly complied with his case plan. The “different treatment” of the two of them, she argues, contravened her constitutional rights.

Alicia’s constitutional claim has no merit. The statutory scheme recognizes that services may be provided or continued for one parent but not the other, depending on the circumstances presented and the minor’s best interests. (*In re Katelynn Y.*, *supra*, 209 Cal.App.4th 871, 877–878; *In re Jesse W.*, *supra*, 157 Cal.App.4th 49, 59.) “ ‘Because reunification services are a benefit, not a constitutional entitlement, the juvenile court has discretion to terminate those services at any time, depending on the circumstances presented. [Citation.] In deciding whether to terminate the services of one parent who has failed to participate or make progress toward reunification, the court is not constrained by a consideration of the other parent’s participation in services.’ (*In re Jesse W.* (2007) 157 Cal.App.4th 49, 60, 59 [68 Cal.Rptr.3d 435] [at six-month review hearing involving child under the age of three, court is not required to continue services for one parent when reunification efforts continue for the other parent and court does not set a § 366.26 hearing]; accord, *In re Gabriel L.* (2009) 172 Cal.App.4th 644, 651 [91 Cal.Rptr.3d 193] [during reunification period, court’s offer of continued services to one parent is not based solely on other parent’s participation in services]; *In re Alanna A.* [(2005)] 135 Cal.App.4th [555,] 559 [court has discretion at 12-month review hearing involving child over the age of three to terminate reunification for one parent while continuing services to the other parent to the 18-month hearing].)” (*In re Katelynn Y.*, *supra*, at p. 877.)

While the facts related to Patrick and Alicia were in some respects similar, in total they were by no means identical. The six-month review report indicated that Patrick completed his intake support group and fatherhood parenting classes, attended some of his anger management classes, and began a family empowerment group, whereas Alicia failed to participate regularly or make any substantive progress with her court ordered treatment plan. She also refused urinary analyses and rejected drug treatment as unnecessary. Psychiatric evaluations concluded that she would not benefit from services and treatment within the statutory period. Termination of Alicia’s services alone did not

violate her statutory or constitutional rights. (*In re Katelynn Y.*, *supra*, 209 Cal.App.4th 871, 878–879; *Pablo S. v. Superior Court* (2002) 98 Cal.App.4th 292, 303; *In re Levi U.*, *supra*, 78 Cal.App.4th 191, 200–201.)

IV. The ICWA Relative Placement Preferences.

Alicia repeats her contention made in the prior appeal that the Agency failed to “take any steps to evaluate and facilitate relative placement with the Indian paternal uncle and aunt, who were a preferential placement option under both the ICWA and state law, and had to be considered first before the foster placement.” She adds that the juvenile court “failed to (1) exercise its independent judgment to determine whether relative placement with the paternal uncle and aunt was appropriate, and (2) state its reasons for deciding against relative placement on the record.” She again requests that we reverse the judgment and order a remand for a determination on relative preferential placement with the paternal uncle and aunt.

“To meet its goal to place children in foster or adoptive homes which reflect the unique values of Indian culture, ICWA establishes placement preferences for Indian children who have been removed from their families. (25 U.S.C. §§ 1902, 1915(b); Welf. & Inst. Code, § 361.31.) An Indian child in foster care must be placed in ‘the least restrictive setting which most approximates a family . . . within reasonable proximity to his or her home, taking into account any special needs of the child.’ (25 U.S.C. § 1915(b); see Welf. & Inst. Code, § 361.31, subd. (b).) In the absence of good cause to the contrary, the preferred placement order for an Indian child is with a member of the child’s extended family; a foster home approved by the Indian child’s tribe; an Indian foster home; or an institution for children approved by an Indian tribe or operated by an Indian organization.” (*In re Anthony T.* (2012) 208 Cal.App.4th 1019, 1027.)

“California’s placement-preference law for Indian children is contained in section 361.31. In large part, it restates the ICWA provision in 25 United States Code section 1915 which mandates that preference in any adoptive placement of an Indian child be given, in the absence of good cause to the contrary, a placement with (1) a member of the child’s extended family; (2) other members of the child’s tribe; and (3) other Indian

families. (25 U.S.C. § 1915(a); see Welf. & Inst. Code, § 361.31, subs. (c), (h).) Also, the standards to be applied in meeting the placement preferences shall be the prevailing social and cultural standards of the Indian community where the parent or extended family resides or with which they maintain social and cultural ties. (25 U.S.C. § 1915(d); Welf. & Inst. Code, § 361.31, subd. (f).)” (*In re A.A.* (2008) 167 Cal.App.4th 1292, 1326–1327, fn. omitted.) Absent good cause to the contrary, “the court *shall* give preference to placement with a member of the child’s extended family” (*In re Anthony T.*, *supra*, 208 Cal.App.4th 1019, 1029.)⁸

However, “Notwithstanding the placement preferences listed in subdivisions (b) and (c), if a different order of placement preference is established by the child’s tribe, the court or agency effecting the placement shall follow the order of preference established by the tribe, so long as the placement is the least restrictive setting appropriate to the particular needs of the child as provided in subdivision (b).” (§ 361.31, subd. (d), rule 5.484(b)(4).)

While the present appeal seeks review of placement preferences at a different stage of the proceedings – the six-month hearing rather than the dispositional hearing – and the context of the foster placement of A.H. changed somewhat in the interim – she was placed in a new foster home, and a second placement preference resolution was passed – the critical facts remained the same, as does our conclusion.⁹ The Council altered the placement preferences for A.H. by two formal resolutions: the first, on October 11, 2011, specified a placement preference for A.H. with Tom and Rachael C., and opposed adoption; the second, resolution No. RV-2012-028 on June 19, 2012, approved a long-term guardianship for A.H. with Talisha and Simon M., with the understanding that no adoption would occur. The second resolution stated that the home of Talisha and Simon M. “meets the Tribe[’]s prevailing social and cultural standards

⁸ The party opposing the placement has the burden to show there is good cause not to follow the stated preferences. (§ 361.31, subd. (j); BIA Guidelines, 44 Fed.Reg. 67584, 67594–67595, § F.1, 3 (Nov. 26, 1979).)

⁹ Thus, we do not dismiss the contention under principles of law of the case.

which is in the best interest of this Indian child.” Both resolutions noted the authority of the tribe under the ICWA and California law to alter placement preferences. Nothing in the record indicates that the placement preferences designated by the Council are not in the child’s best interests. Under section 361.31, subdivision (d), the Agency and the court were therefore required to adhere to the tribe’s stated placement preferences. (See also rule 5.484(b).) No evaluation of placement with the paternal aunt and uncle by the Agency was necessary; no determination of the suitability of relative placement or statement of reasons for declining to order relative placement by the juvenile court was required. In short, no error was committed.

V. The Failure of the Juvenile Court to Grant a Continuance of the Hearing.

Alicia objects to the juvenile court’s failure to grant her a continuance of the six-month review hearing. She maintains that in violation of section 366.21, subdivision (c), on the morning of the scheduled hearing the Agency submitted an addendum to the six-month review report on June 26, 2012, which referred to the two documents received from the Round Valley Tribe: the letter from the Council declining to take jurisdiction of the case; and, Resolution No. RV-2012-028, which expressed the “wishes of the tribe” for A.H. to be placed with Talisha and Simon M., who had “been live scanned by the Agency” and whose home had been determined to meet “the tribe’s prevailing social and cultural standards.” The addendum did not change or even refer to the recommendations in the report, but stated that the Agency intended to “follow the tribe’s placement preference following this hearing unless the Court orders otherwise.” Alicia argues that the report addendum “was untimely, as it should have been filed at least 10 days in advance” of the hearing, and the court erred by denying her request for a continuance requested to investigate the issues of transfer of jurisdiction and relative placement of the child. She adds that the failure of the Agency to provide her with timely notice was a “structural error requiring a per se reversal” of the judgment terminating her reunification services.

We proceed with our inquiry into the adequacy of the notice provided to the mother with recognition of the established premise “that parents are entitled to due

process notice of juvenile proceedings affecting their interest in custody of their children. [Citation.] And due process requires ‘notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.’ [Citation.]” (*In re Melinda J.* (1991) 234 Cal.App.3d 1413, 1418.) Until parental rights have been terminated, the parents must be given such notice at every stage of the proceedings. (*In re Jennifer O.* (2010) 184 Cal.App.4th 539, 545; *David B. v. Superior Court* (1994) 21 Cal.App.4th 1010, 1018.)

Alicia relies on the notice requirements specified in section 366.21, subdivision (c), and the decision in *Judith P. v. Superior Court* (2002) 102 Cal.App.4th 535 (*Judith P.*), to support her claim that the addendum was not timely filed. Section 366.21 provides in part: “At least 10 calendar days prior to the hearing, the social worker shall file a supplemental report with the court regarding the services provided or offered to the parent or legal guardian to enable him or her to assume custody and the efforts made to achieve legal permanence for the child if efforts to reunify fail . . . ; the progress made; and, where relevant, the prognosis for return of the child to the physical custody of his or her parent or legal guardian; and shall make his or her recommendation for disposition. . . . If the recommendation is not to return the child to a parent or legal guardian, the report shall specify why the return of the child would be detrimental to the child. The social worker shall provide the parent or legal guardian, counsel for the child, and any court-appointed child advocate with a copy of the report, including his or her recommendation for disposition, at least 10 calendar days prior to the hearing.” (§ 366.21, subd. (c).)

In *Judith P.*, *supra*, 102 Cal.App.4th 535, 542, the court terminated reunification services at the 12-month review hearing in accordance with the recommendations of the social worker contained in the status report, although neither the mother nor her counsel was served with a copy of the report until the morning of the hearing, in violation of the 10-day notice requirement of section 366.21, subdivision (c). The court stated, “[T]he impact of having less than the statutorily mandated minimum time within which to (1) confer with one’s lawyer, (2) contact witnesses, (3) obtain documents, (4) prepare for

examination and cross-examination, and (5) hone one's arguments, is impossible for either a trial court or an appellate court to assess. Thus, these factors indicate that the error is [structural] error." (*Judith P.*, *supra*, at p. 557.)

The lack of notice, if any occurred in the present case, is quite distinct in nature and effect from the failure of the social worker to file a review report in *Judith P.* The six-month review report, with a statement of the services provided or offered to the parent, the progress made, the compliance with services, the prognosis for return of the child to the physical custody of the parents, and the recommendation for disposition, was filed by the Agency and served on Alicia well before the 10-day deadline in compliance with section 366.21, subdivision (c). Only the addendum, with updated evidence of the jurisdictional and placement preference determinations of the Council, was not filed within the 10-day time limit. Thus, the Agency did not violate section 366.21, subdivision (c).

We further conclude that the failure of the Agency to file the addendum to the report until the date of the hearing was also not structural error that requires reversal *per se*. Reversible structural error was found in *Judith P.* and other cases in which parents were not given notice of impending hearings. (See *In re Jasmine G.* (2005) 127 Cal.App.4th 1109, 1113–1114, 1117.) In the present case, however, Alicia received notice and the full review report, and was only denied evidence of the tribe's decisions on jurisdiction and placement preference until the date of the hearing.

Also, after *Judith P.* and *Jasmine G.*, the California Supreme Court clarified and limited the application of the structural error doctrine in dependency proceedings in *In re James F.* (2008) 42 Cal.4th 901 (*James F.*), where the juvenile court appointed a guardian ad litem for a mentally incompetent father without conducting an appropriate hearing on the appointment. (*Id.* at pp. 906–907.) The guardian acted on behalf of the father in the subsequent proceedings, which resulted in the termination of the father's parental rights. (*Id.* at pp. 907–910.) In rejecting the claim that the error was reversible *per se*, the Supreme Court identified "significant differences between criminal proceedings and dependency proceedings [that] provide reason to question whether the

structural error doctrine . . . should be imported wholesale, or unthinkingly, into the quite different context of dependency cases.” (*Id.* at pp. 915–916.) After enumerating how the differences between the rights and protections afforded parents in a dependency proceeding differ from those afforded defendants in criminal proceedings, the court in *James F.* concluded that the error in the appointment of the guardian was amenable to harmless error analysis — unlike the task often presented by structural error — and did not defy the assessment of harm or “require ‘a speculative inquiry into what might have occurred in an alternate universe.’ ” (*Id.* at p. 915, quoting *United States v. Gonzalez-Lopez* (2006) 548 U.S. 140, 150.) After noting that the appointment of the guardian resulted in no actual prejudice to the father, whom the record unequivocally demonstrated to be mentally incompetent, the court declared that “[i]f the outcome of a proceeding has not been affected, denial of a right to notice and a hearing may be deemed harmless” (*James F.*, *supra*, at p. 918.)

In *In re A.D.* (2011) 196 Cal.App.4th 1319, 1323–1324, the court re-examined in light of *James F.* the structural error rulings of *Judith P.* and *Jasmine G.*, in the context of the failure of the social services agency to provide a mother with the statutorily mandated notice of a hearing at which the juvenile court terminated her reunification services and ordered long-term foster care as the permanent plan for her child. Although the mother was aware of the hearing, she arrived at the courthouse after the hearing occurred, and the juvenile court later denied her request for relief from the rulings at the hearing. (*In re A.D.*, *supra*, at p. 1324.) On appeal, the mother relied on decisions holding inadequate notice to be structural error, including *Judith P.* and *Jasmine G.* (*In re A.D.*, *supra*, at pp. 1325–1326.) The court declined to follow these decisions, noting that *James F.* “cautioned against using the structural error doctrine in dependency cases.” (*In re A.D.*, *supra*, at p. 1326.) After determining that the error in notice was amenable to harmless error analysis, the court held that the mother failed to show prejudice from the error. (*Id.* at pp. 1327–1328.)

In view of the decisions in *James F.* and *A.D.*, we find that the purported defect in notice before us is properly subject to assessment for prejudice because it does not defy

“harmless error” analysis or “require ‘a speculative inquiry into what might have occurred in an alternate universe.’ ” (*James F.*, *supra*, 42 Cal.4th 901, 915, 916–917; see also *In re Angela C.* (2002) 99 Cal.App.4th 389, 393 [defect in notice of continued section 366.26 hearing was not structural error].) Furthermore, we conclude that the defect was harmless, even under the stringent beyond-a-reasonable-doubt test for federal constitutional error stated in *Chapman v. California* (1967) 386 U.S. 18, 24. Alicia received the six-month review report, appeared at the hearing with counsel, and was afforded full opportunity to present argument in opposition to the Agency’s recommendations.

As for denial of the mother’s request for a continuance to contest the information in the addendum, “Welfare and Institutions Code section 352, subdivision (a) provides that if it is not contrary to the interests of the minor child, a trial court may grant a continuance in a dependency case for good cause shown, for the period of time shown to be necessary, and further provides that when considering whether to grant a continuance the court ‘shall give substantial weight to a minor’s need for prompt resolution of his or her custody status, the need to provide children with stable environments, and the damage to a minor of prolonged temporary placements.’ The trial court’s ruling on whether a request for a continuance came within those guidelines is reviewed for abuse of discretion.” (*In re B.C.* (2011) 192 Cal.App.4th 129, 143–144.)

We find no abuse of discretion here. The tribe’s decision to refuse a transfer of the case to the tribal court required the juvenile court to find good cause to deny the mother’s petition for transfer of jurisdiction. (§ 305.5, subd. (c)(1)(C); see also rule 5.483(d)(1)(C); *In re Jack C.* (2011) 192 Cal.App.4th 967, 982–983.) A continuance of the hearing would not have afforded Alicia an opportunity to convince the court to transfer jurisdiction to the tribe in contravention of settled law. The Round Valley Tribe’s placement preference resolution also was not subject to modification by the juvenile court unless the placement was not the least restrictive setting appropriate to the particular needs of the child. (§ 361.31, subd. (d), rule 5.484(b)(4).) Alicia has not demonstrated that a continuance was necessary for her to prove the tribe’s placement

preference was not in the best interests of the child, or should otherwise have been disregarded by the court. The request for a continuance was not supported by the requisite good cause.

Accordingly, the judgment is affirmed.

Dondero, J.

We concur:

Margulies, Acting P. J.

Banke, J.