

NOT TO BE PUBLISHED IN OFFICIAL REPORTS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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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

STEPHANIE R.,

Petitioner,

v.

THE SUPERIOR COURT OF SONOMA
COUNTY,

Respondent;

SONOMA COUNTY HUMAN
SERVICES DEPT.,

Real Party in Interest.

A136924

(Sonoma County
Super. Ct. No. 3872-DEP)

INTRODUCTION

Petitioner Stephanie R., mother of two-year-old Z.R., seeks review by extraordinary writ, pursuant to California Rules of Court, rule 8.452,¹ of the juvenile court's findings and orders denying her reunification services and setting the matter for a permanency planning hearing pursuant to Welfare and Institutions Code section 366.26.² Petitioner challenges the court's denial of reunification services pursuant to section 361.5, subdivision (b)(2). Petitioner does not argue that the court's bypass of services was not supported by substantial evidence or that statutory requirements were not followed. Rather, she argues that her evidence "rebutted" the evidence presented by real

¹ All rule references are to the California Rules of Court.

² All statutory references are to the Welfare and Institutions Code, unless otherwise indicated.

party Sonoma County Human Services Department (Department) sufficiently to conclude that reunification could succeed, that she demonstrated her willingness to comply with her medication recommendations, and that she acknowledged she suffers from mental illness. We shall determine the court did not abuse its discretion in bypassing reunification services and its determination was supported by substantial evidence presented by two mental health professionals as required under the statute. Therefore, we shall deny the extraordinary writ petition.

FACTUAL AND PROCEDURAL BACKGROUND

On February 24, 2012, the Department filed a juvenile dependency petition alleging the two-year-old child came within section 300, subdivisions (a), (b), and (g). The petition alleged that on or about February 19, petitioner was observed in a local Whole Foods market to be shaking the child in an aggressive and unsafe manner, that she exhibited delusional and psychotic behaviors and that as a result of the incident, petitioner was placed on an involuntary psychiatric hold pursuant to section 5150. The petition alleged petitioner had mental health issues that rendered her unable to provide adequate care and supervision for the child, placing him at substantial risk of harm. The petition further alleged that the child's father was incarcerated in state prison, rendering him unable to provide care and support for the child.

The jurisdiction report filed by the Department on March 23, related that petitioner had a 20-year history of mental illness and had approximately five to six section 5150 involuntary psychiatric holds since 2005, as well as recent psychiatric hospitalizations. The maternal grandmother stated that recently, petitioner had been saying that she talks to Jesus and that she has implants from the CIA. The grandmother could see petitioner was going into a psychotic break. During the incident at Whole Foods, the report relates the bizarre behavior engaged in by petitioner in addition to her aggressively shaking the child, including, among other things, her talking gibberish loudly on the phone, singing at one point, throwing objects, including a jar of baby food across the child's head into the basket, and trying to wrap the child in her shawl like a mummy. When confronted,

petitioner began to yell and scream up and down the store's aisles, grabbed the child and at one point threatened to run into traffic with him.

Petitioner was admitted to psychiatric care from February 20 to February 22. She was released and readmitted a day later on February 23, when, while caring for the child, she was observed to be exhibiting unsafe and aggressive behaviors resulting in law enforcement intervention. An emergency protective custody warrant was necessary for the child's safety. Petitioner remained in psychiatric care from February 23 to March 8. During that hospitalization, petitioner had to be given a *Riese*³ hearing to force her to take Risperidone, the psychotropic medication prescribed for her. After her release, she did not take the recommended medication, despite having stated upon release that she saw the benefits of continuing on Risperidone after her discharge, and she was again admitted to the psychiatric hospital on March 13. Upon her release from that hospitalization on March 20, petitioner stated she was willing to take the Risperidone and added she had been taking it and it had been helping her.

Family members recounted instances of petitioner physically abusing her two older children (now adults) when they were young, including her breaking the nose of her then three-year-old son. Because of her mental illness, petitioner did not raise her older children who lived with other family members. The report lists several prior welfare referrals for petitioner's older children. Others had witnessed mother behaving toward the child as she had toward her older children, shouting at him for no reason and handling him very roughly. Petitioner denied being aggressive with the child at Whole Foods and denied ever being aggressive toward him. She explained that the child was controlling the cart and making it go back and forth. She believed she had waited too long to take her Valium for her chronic pain.

³ *Riese v. St. Mary's Hospital & Medical Center* (1987) 209 Cal.App.3d 1303, 1312-1313.

The disposition report related that at the time the social worker interviewed petitioner, she had just been released from a psychiatric hospital, but she was readmitted the following day. During the initial evaluation by the Department social worker, petitioner “continued to deny and minimize her mental health issues and present[s] as though she does not believe that she needs to take medication [for her mental health issues].” Petitioner has had several different diagnoses, such as schizophrenia, schizoaffective disorder, Bipolar disorder and marijuana abuse. She was also previously diagnosed with ADHD (attention deficit hyperactivity disorder), PTSD (post traumatic stress disorder) and a history of methamphetamine abuse.

Two psychologists, Gloria Speicher and Carolyn Crimmins, each independently evaluated petitioner for purposes of determining whether reunification services should be provided. Among other things, they each conducted a clinical interview with petitioner, administered various psychological tests, and reviewed relevant history and medical records. Each prepared a report for the court, detailing the procedures and testing used, the test results, and conclusions based upon the evaluation. Each explained those conclusions thoroughly. Each specifically addressed written questions relating to the applicability of the bypass statute, section 361.5, subdivision (b)(2). Each concluded petitioner suffered from a mental disorder. Speicher identified it primarily as Psychotic Disorder, NOS, and Crimmins diagnosed Schizoaffective Disorder.

Speicher’s report explained that the diagnoses from petitioner’s previous involuntary psychiatric hospitalizations varied because “there are several different possible etiologies for psychotic symptoms and history is typically difficult to obtain reliably and to verify on short notice.” “Given her history of drug abuse that includes methamphetamines and reluctance to provide historically pertinent data, it is hard to make a differential diagnosis between the various elements of manic behavior found in Bipolar Disorder with psychotic symptoms, Schizoaffective Disorder or Substance-Induced Psychotic Disorder. [Petitioner] continues to assert that her behaviors are due to Attention Deficit Disorder and fails to acknowledge the seriousness of her behaviors or her mental illness. She fails to understand or acknowledge that [ADD] does not exhibit

with psychotic symptoms of delusion and paranoia or the extremes of pressured speech, tangentiality, flights of ideas and incoherence that she manifests.” Petitioner was unable to recognize the impact of her mental illness on her ability to respond to her child’s needs. She was not able to manage her mental illness in a way that provided consistency for the child. The prognosis was “poor.” Speicher’s report concluded: “Results of the evaluation suggest that [petitioner] cannot benefit from services within the time frame allowed by the courts for reunification. It is not likely that [she] would be able to demonstrate appropriate and consistent management of her mental illness over a lengthy period of time and change her behaviors in the amount of time allowed for reunification with her child.”

Crimmins’s report diagnosed petitioner as suffering from “Schizoaffective Disorder, which greatly impacts her ability to function in all areas and renders her incapable of adequately caring for and coping with a young child.”⁴ Crimmins also opined petitioner suffered from “anosagnosia,” which she described as “a neuro-psychiatric symptom or syndrome where the person is really unable to recognize that they’re ill” Crimmins came to this conclusion because of the way petitioner described her hospitalizations, denying any kind of psychotic type symptoms, no matter how well documented. “She felt that the diagnosis was incorrect, the medications were incorrect, and that ADHD was the more appropriate diagnosis for her.” Crimmins related the difficulties that such belief posed for treatment, most critically an unwillingness to take required medications, making it “very unlikely that you’ll be able to remain stable for any period of time.” She also testified that, “[i]n psychotic disorders it’s exceptionally rare to have one psychotic episode unless it’s say substance induced; it’s usually a chronic process. There’s a history of several hospitalizations with similar

⁴ Crimmins also explained that she and Speicher could have reached somewhat differing diagnoses of petitioner’s mental disability because, “at that stage, the psychotic symptoms were more prominent, when I saw [petitioner], there was a fair amount of depressive symptomology, and so I felt that both the psychosis and the mood disorder were important parts of the treatment and that they really were affecting her equally, and I think perhaps Dr. Speicher wasn’t seeing those at the time that she had assessed her.”

symptoms and they seem to be related to not taking the medication. By the time you've had about two or three psychotic breaks, there's about an 80-percent chance that you'll have another one." As to the question whether the mental disability would render petitioner incapable of using reunification services, Crimmins concluded that "[g]iven her history, lack of insight, level of emotional and behavioral instability and ambivalence regarding medication, it is unlikely that [petitioner] would be able to adequately use and benefit from the services currently available to her in the time period available.

[¶] . . . [¶] Continuation of services is not recommended."

Social worker Dara Chanin testified that she spoke with petitioner a few weeks before the hearing to determine whether petitioner's beliefs about her diagnosis has changed and petitioner "said that she believed that it was still ADHD and that she did not believe that she had schizoaffective disorder." Petitioner also told Chanin that she felt that the Risperidone "doesn't really make much of a difference," but that she took it even though it made her sick some of the time as she believed it was a fine treatment for PTSD. Petitioner also added that she believed Risperidone was "poison to her."

The trial court found pursuant to section 361.5, subdivision (b), that reunification services shall not be provided to petitioner based upon clear and convincing evidence that she "is suffering from a mental disability that renders [her] incapable of utilizing reunification services and . . . that qualified mental health professionals have established, by clear and convincing evidence, that the parent is unlikely to be able to care for the child within the maximum reunification period." The court also denied reunification services to the father on the ground that he was not interested in receiving them and had knowingly and intelligently executed a written waiver of reunification services. (§ 361.5, subd. (b)(14).)

DISCUSSION

Petitioner argues the juvenile court erred in finding by clear and convincing evidence, pursuant to section 361.5, subdivision (b)(2), that reunification services should be bypassed.

“There 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.] Section 361.5, subdivision (b) is a legislative acknowledgement ‘that it may be fruitless to provide reunification services under certain circumstances.’ [Citation.]” (*Cheryl P. v. Superior Court* (2006) 139 Cal.App.4th 87, 95-96 (*Cheryl P.*)) “If a court makes the requisite findings to deny reunification, it then ‘fast-tracks’ the minor to permanency planning under section 366.25 or permanency planning and implementation under section 366.26. (§ 361.5, subd. (f).)” (*In re Rebecca H.* (1991) 227 Cal.App.3d 825, 838.)

Section 361.5, subdivision (b), states in relevant part: “Reunification services need not be provided to a parent or guardian described in this subdivision when the court finds, by clear and convincing evidence, any of the following: [¶] . . . [¶] (2) That the parent or guardian is suffering from a mental disability that is described in Chapter 2 (commencing with Section 7820) of Part 4 of Division 12 of the Family Code and that renders him or her incapable of utilizing those services.”

Section 361.5, subdivision (c), provides in part: “When it is alleged, pursuant to paragraph (2) of subdivision (b), that the parent is incapable of utilizing services due to mental disability, the court shall order reunification services unless competent evidence from mental health professionals establishes that, even with the provision of services, the parent is unlikely to be capable of adequately caring for the child within the time limits specified in subdivision (a).”

“Family Code section 7827 is part of the chapter of the Family Code referred to in Welfare and Institutions Code section 361.5(b)(2). Section 7827 provides that a proceeding may be brought, outside of the dependency context, to free a child from parental custody and control where the parent or parents ‘are mentally disabled and are likely to remain so in the foreseeable future.’ (§ 7827, subd. (b).) Section 7827 defines ‘mentally disabled’ to mean ‘that a parent or parents suffer a mental incapacity or

disorder that renders the parent or parents unable to care for and control the child adequately.’ (*Id.*, subd. (a).)” (*In re C.C.* (2003) 111 Cal.App.4th 76, 83.)

Under Family Code section 7827, subdivision (c), a finding of mental disability must be supported by “the evidence of any two experts,” each of whom must be a psychiatrist or psychologist meeting educational and experience requirements. Section 361.5, subdivision (b)(2) does not expressly state that it incorporates the requirement of two expert opinions. “However, courts have found that it does. [Citations.]” (*In re C.C.*, *supra*, 111 Cal.App.4th at pp. 83-84; see *In re Rebecca H.*, *supra*, 227 Cal.App.3d at p. 838.)

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.) In the present case, petitioner does not challenge the psychologists’ findings that she suffers from a mental disability. She does not contend the procedural requisites of the bypass statute were violated or unmet. Nor does petitioner contend the substantial evidence standard of review is not satisfied by the evidence provided by Drs. Speicher and Crimmins that she suffers from a mental disability that renders her unable to care for and control the child adequately and that the mental disability renders it unlikely that she would be able to use and benefit from services in the period of time available to her.

Rather, petitioner argues that she *countered* the foregoing evidence by evidence that she recognized she suffers from a mental illness, that she was currently compliant with her medication, and that so long as she remained compliant she could effectively and safely parent her child.

Petitioner appears to misapprehend our standard of review. Even if the evidence petitioner presented was as she describes, such evidence would not undermine the court’s findings, so long as those findings were supported by substantial evidence. As described in Eisenberg et al., California Practice Guide: Civil Appeals & Writs (The Rutter Group 2012) paragraph 8:39, at page 8-20: “The ‘substantial evidence rule’ is often misunderstood. It is *not* a question of whether there is ‘substantial conflict’ in the evidence but, rather, whether the record as a whole demonstrates substantial evidence in

support of the appealed judgment or order. [Citation.]” As articulated by our Supreme Court, “the existence of . . . substantial evidence will be determined as follows: When a trial court’s factual determination is attacked on the ground that there is no substantial evidence to sustain it, the power of an appellate court *begins and ends* with the determination as to whether, *on the entire record*, there is substantial evidence, contradicted or uncontradicted, which will support the determination, and when two or more inferences can reasonably be deduced from the facts, a reviewing court is without power to substitute its deductions for those of the trial court. *If such substantial evidence be found, it is of no consequence that the trial court believing other evidence, or drawing other reasonable inferences, might have reached a contrary conclusion.* [Citations.]” (*Bowers v. Bernards* (1984) 150 Cal.App.3d 870, 873-874.) As a corollary to the substantial evidence rule, appellate courts must “view the record in the light *most favorable to respondent* and [must] resolve all evidentiary conflicts and indulge all reasonable inferences *in support of the judgment.* [Citations.]” (Eisenberg et al, Cal. Prac. Guide: Civil Appeals & Writs, *supra*, ¶ 8:56, p. 8-27.)

As we have described above, the two psychologists conducted extensive examinations of petitioner and their comprehensive reports specifically responded to questions targeting the relevant issues under the bypass statute. The report of each psychologist thoroughly explained the bases for that mental health expert’s opinion. In addition, Crimmins testified at the hearing and her testimony was consistent with her report and with the findings recommended by the Department and made by the court. This evidence was substantial and supports the court’s finding that petitioner suffered from a mental incapacity or disorder that rendered her unable independently to care for and control the child, and that she was incapable of utilizing reunification services. (§ 361.5, subd. (b)(2).) These findings in turn support the court’s denial of reunification services.

Furthermore, petitioner’s argument that such evidence was “rebutted” by her evidence (were that the standard of review, which it is not) is inaccurate. Petitioner’s

evidence consisted of her own testimony and short letters from her doctors, Gruber, Gullion and Ly.

Gruber, an M.D., specialist in pain management and anesthesiology (not psychology or psychiatry) spoke primarily to pain management and medications in his one-page letter. However, he did state his “impression over the past several months that, as long as [petitioner] maintains strict adherence to her medication regimen, she does very well in controlling pain and mood as well.” “[S]o long as she maintains strict adherence to her medication regimen, both pain and psychiatric medications, she will be competent to perform all needed activities of daily living required to run a household and perform child care duties.” He opined that petitioner “now clearly understands the importance of strict adherence to her medication regimen for all those drugs she currently employs. She realizes what great benefit she has obtained as a result of following the plan reliably.”

Ly, petitioner’s physician, wrote a three paragraph letter dated May 24, 2012, in support of her attempt to acquire custody of the child. He stated therein that “[s]ince her most recent re-hospitalization . . . in March, [petitioner] has complied with recommended treatment for her schizoaffective disorder and chronic back pain due to degenerative disc disease. These include monthly office visits with either myself or our psychiatrist, continuing on her prescribed psychiatric medications, and complying with her pain medication contract. She is also scheduled to resume psychotherapy” Ly also reported that the child had been in his care since he was eight months old and that petitioner brought the child in for the well child exams. Ly concluded that he supported petitioner’s resuming custody and care of her child “as long as she continues to have regular follow up and [is] complying with recommended care.”

Gullion, petitioner’s psychiatrist for at least six months, supplied a six-sentence letter, stating in relevant part: “At this point she has remained on her psychiatric medications in a reliable way for well over a month, and is doing very well indeed. She is arriving to appointments on time, she is very well groomed and she is quite coherent.

¶¶] She will continue care with me. We also have a therapist at this clinic she can see weekly, and she states she intends to do so.”

Nothing in the letters of Gruber or Ly indicate they are mental health professionals qualified to render an opinion as to whether petitioner suffers from a mental illness that renders her incapable of utilizing reunification services. At best, their letters relate that petitioner is doing well *at the moment* and opine that *if* petitioner maintains her strict medication regimen, she can resume custody. The short letter of psychiatrist Gullion, the only mental health expert of the three, does not even discuss petitioner’s illness, her prognosis, or the likelihood of her continuing to adhere to her medication regime. Nor does this letter contain any discussion or opinion of whether petitioner would be able to utilize reunification services within the statutory time period.

In our view, these three letters fail to “rebut” the evidence introduced by the Department in any meaningful way.⁵

⁵ We note the three cases cited by petitioner, *In re Rebecca H.*, *supra*, 227 Cal.App.3d 825, *In re James R.* (2009) 176 Cal.App.4th 129, and *In re Elizabeth R.* (1995) 35 Cal.App.4th 1774 are all distinguishable.

In *In re James R.*, *supra*, 176 Cal.App.4th 129, the parties challenged the sufficiency of the evidence to support the court’s *jurisdictional* findings. The case does not involve the denial of reunification services under the bypass statute.

In *In re Rebecca H.*, *supra*, 227 Cal.App.3d 825, the appellate court held there was insufficient evidence to support the court’s finding under section 361.5, subdivision (b)(2), where one of the two experts testified that the father *did not* have any mental incapacity or disorder, which rendered him unable to adequately care for or control his children or that would render him incapable of utilizing a reunification plan. (*Id.* at p. 841.) Here, both mental health experts testified that petitioner did have such a mental disability and was unable to utilize reunification services within the time limits allowed by the reunification statutes.

In re Elizabeth R., *supra*, 35 Cal.App.4th 1774, involved an appeal from the termination of parental rights. The appellate court held that the trial court had discretion in special circumstances to extend reunification services beyond the 18-month period. (*Id.* at p. 1778.) The case did not involve the bypass of services under section 361.5. Indeed, the appellate court specifically acknowledged “that reunification services can be denied a parent pursuant to Welfare and Institutions Code section 361.5 provided the

Petitioner also contends she “accepts the fact that she has a mental health diagnosis” and had demonstrated a willingness to comply with the recommended medication regimen. However, the record contains substantial evidence supporting a contrary inference. Social worker Chanin’s testimony supplied such evidence, as did the evaluations of Speicher and Crimmins that discuss petitioner’s well-documented denial of her diagnosis (anosognosia) and her history of noncompliance with medication. At the hearing, petitioner continued to maintain that the medications she took were for ADHD and for post traumatic stress. She consistently denied suffering from either of the mental health diagnoses Speicher and Crimmins provided and minimized the role of mental health issues as the foundation for the psychiatric medications she was taking. Asked whether she was currently taking any medication for mental health issues, petitioner answered: “I’m taking Risperidone twice a day. I believe it’s helping me keep on an even keel. But I think it’s for another diagnosis—but anyway.” Asked at the hearing if she felt she needed to continue to take the medication, she stated she felt “it’s been helping my post traumatic stress syndrome because of this situation having my son taken from me, it’s also really made me emotionally, you know, distressed and I feel the medicine is keeping me on an even emotional level. . . . I don’t know if I necessarily agree with the diagnosis or not, but I don’t have a problem taking the medicine, as long as I’m taking it with anti-seizure medicine, because I’ve had bad experience with it in too high of doses before. But honestly, if it’s working, it’s working is how I was thinking.” As to the schizoaffective disorder diagnosis, she testified, “I’m not a doctor, but I do feel a lot of the time I’ve been diagnosed with this disorder has been under distress. Like my

parent is suffering a mental disability ‘that renders him or her incapable of utilizing those services.’ [Citation.] *The department did not seek to deny Rebecca reunification services under this provision nor did it offer the requisite opinions of two qualified mental health experts that she was incapable of utilizing the services. (In re Rebecca H., supra, 227 Cal.App.3d at p. 830.) (In re Elizabeth R., at p. 1790.)* Consequently, “[t]he effort must be made to provide suitable services, in spite of the difficulties of doing so or the prospects of success.’ [Citation.]” (*Id.* at p. 1790, italics added.)

pain is completely out of control, I haven't had a pain pill" She believed the Risperidone might help with PTSD.

Petitioner consistently and incorrectly maintained that she was "allergic" to psychotropic medications and in the past, when not hospitalized, she refused to take them. On March 8, 2012 (petitioner's third hospitalization since the Whole Foods incident), petitioner had to be given a *Riese*⁶ hearing to force her to take her medication. Due to her failure to take the recommended medication, she was again admitted on March 13, 2012, at which point she again began taking the medication. Crimmins testified that it was common that people afflicted with schizoaffective disorder will take their medication for periods of time, start feeling better, and then stop because they feel better. Speicher similarly stated that "[petitioner's] lack of willingness to be honest and candid about her mental health problems has interfered with her willingness to accept help and be consistent with the medications that are prescribed by her physicians. *She has only recently and reluctantly agreed to stay on her medications but it appears that this was influenced by the court. It is unlikely that she would comply if left to her own choice. Such lack of compliance is noted several times in the medical records by others.*" (Italics added.)

In the conclusion to her petition, petitioner asserts that the bypass provision of section 361.5, subdivision (b)(2) "feels very much like a 'strict liability' crime" and asks "How does a parent fight back?" To the extent such statements could possibly be viewed as challenging the constitutionality of the statute, we note the bypass provisions of section 361.5 have been upheld against due process and equal protection challenges. (See *In re Jennilee T.* (1992) 3 Cal.App.4th 212, 218; *In re Christina A.* (1989) 213 Cal.App.3d 1073, 1078-1080.)⁷

⁶ *Riese v. St. Mary's Hospital & Medical Center, supra*, 209 Cal.App.3d at pages 1312-1313.)

⁷ *In re Christina A., supra*, 213 Cal.App.3d 1073, 1079-1080, upheld the constitutionality of section 361.5, subdivision (b) in the face of an equal protection challenge. The court explained: "The stated purpose of section 361.5, subdivision (b) is to exempt from reunification services those parents who are unlikely to benefit. This

We conclude the juvenile court findings that petitioner suffers from a mental disability that renders her incapable of utilizing reunification services and that she is unlikely to be able to care for the child within the maximum reunification period were supported by substantial evidence. The court did not abuse its discretion in ordering, pursuant to section 361.5, subdivision (b)(2), that no reunification services be provided and in setting the section 366.26 hearing.

DISPOSITION

The petition for extraordinary writ is denied on the merits. (Rule 8.452(h)(1).) This decision is final as to this court immediately. (Rule 8.490(b)(1).)

Kline, P.J.

We concur:

Lambden, J.

Richman, J.

purpose is related to that of the juvenile law itself—to ensure the well-being of children whose parents are unable or incapable of caring for them by affording them another stable and permanent home within a definite time period. . . . [¶] . . . It is reasonable for the state, before expending its limited resources for reunification services, to distinguish between those who would benefit from such services and those who would not.” (Accord, *In re Joshua M.* (1998) 66 Cal.App.4th 458, 473-474.)