

NOT TO BE PUBLISHED IN OFFICIAL REPORTS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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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

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

Z.S.,

Petitioner,

v.

THE SUPERIOR COURT OF ALAMEDA
COUNTY,

Respondent;

ALAMEDA COUNTY SOCIAL
SERVICES AGENCY,

Real Party in Interest.

A138031

(Alameda County
Super. Ct. No. OJ12018181)

I. INTRODUCTION

Z.S. (mother) seeks review by extraordinary writ of a juvenile court order setting a hearing, pursuant to Welfare and Institutions Code section 366.26,¹ to make a permanent plan for mother’s son, I.S., who is now a three-year-old. Mother contends the juvenile court erred by (1) making a jurisdictional finding that mother committed a deliberate act of cruelty toward I.S.; (2) denying mother reunification services; and (3)

¹ Undesignated statutory references are to the Welfare and Institutions Code.

denying a relative placement for I.S. with his maternal grandmother. We reject these contentions and deny the writ on the merits.

II. STATEMENT OF FACTS

A. *Petition and Detention*

On January 4, 2012, the Alameda County Social Services Agency (the Agency) filed a juvenile dependency petition alleging that I.S. came within the juvenile court's jurisdiction pursuant to the provisions of section 300, subdivisions (b) (failure to protect), (g) (no provision for support), and (i) (act or acts of cruelty). The petition was supported by allegations that mother suffers from mental illness, that she had not been consistent in obtaining treatment or taking medication to control her illness, and that her mental health issues directly impair her ability to care for I.S. The Agency also alleged that I.S. had been subjected to an act of cruelty by mother.

The cruelty allegation pertained to an injury discovered by the maternal aunt (aunt) on December 31, 2011. While caring for I.S. in her home, aunt discovered that the 21-month-old toddler had crisscross-patterned burn marks and blisters on the bottom of both of his feet. When aunt asked mother what happened, mother said that she had been holding the child up in the air by a wall heater when flames from the heater burned his feet. After aunt discovered the burns, she contacted the police, who took I.S. into protective custody. I.S. was treated at Children's Hospital and then placed in foster care.

An Agency social worker who spoke with mother on December 31 reported that mother stated that she noticed the burns on Christmas day but claimed she did not know how they happened. In response to questions about how she disciplined her child, mother reported that she spansks him or stops him from doing things by holding his shoulders. The Agency had received prior referrals about mother all relating to her non-compliance in addressing her mental health. When the social worker raised that subject, mother acknowledged she had not seen her psychiatrist for "a long time," and that she was not taking her medication. The social worker reported that talking with mother was like talking to a child; she was unemotional, detached from I.S., and it was not clear that she understood her situation.

The identity of I.S.'s father was unknown. Mother was pregnant with a second child by a different known father and was due in February. Aunt and other family members who talked with the social worker were afraid of mother's violent temper and were unwilling to take I.S. into their homes. They believed the burns could have been the result of mother disciplining I.S. They reported that mother was not bonded with I.S., and that she disciplined him in a harsh manner. She frequently hit the child and once hit him so hard that he fell across the floor. Aunt also reported that mother has a history of drug abuse which exacerbated her mental health issues.

According to the family, the maternal grandmother, R.S., was I.S.'s primary caretaker, and mother had been violent with her as well. At the time the incident occurred, R.S. was in Fiji and was not expected back until January 12, 2012. R.S., who was recovering from cancer, had tried to take I.S. with her on the trip, but mother took the child's passport and would not let him go. Therefore, various family members had agreed to check in on mother and I.S. during the two-month period while R.S. was away and to give them money if necessary.

The juvenile court issued a detention order on January 5 and scheduled a jurisdiction hearing for January 19, 2012.

B. *The January 2012 jurisdiction hearing*

When the jurisdiction report was filed, mother, whose family is from Fiji, was 20 years old and 35 weeks pregnant with a second child. R.S., the maternal grandmother, was the primary caretaker of both mother and I.S., although she had been away in Fiji when the December 2011 incident occurred. R.S. had been diagnosed with cancer, received chemotherapy and was in remission. Aunt was married, had a young daughter, was four months pregnant and did not have a good relationship with mother and was not willing to take I.S. into her home.

The Agency's child welfare history with this family dated back to when mother was a minor and the subject of both family reunification and family maintenance plans. As for I.S., the Agency had received prior reports of emotional abuse and general neglect by mother which reflect that mother's mental health issues had raised ongoing concerns

about the child's well being. Mother had been hospitalized more than once for those problems, she had been placed under a temporary conservatorship during the time she was pregnant with I.S., and there were indications that she was not following through with her treatments. These prior referrals were closed based in part on representations that R.S., the maternal grandmother, was assisting mother in caring for I.S.

On January 5, 2012, the Agency received an update about I.S. from Liz Thornton, a clinical social worker at Children's Hospital. Thornton told the social worker that I.S. must have been held down while on top of a floor furnace. Thornton also reported that a Dr. Crawford had performed a full medical exam which did not disclose any injuries other than the burns on the baby's feet. Dr. Crawford opined that the burns occurred two weeks prior.

On January 12, 2012, the Agency conducted a team decision making meeting. When the meeting was scheduled, mother had not returned phone messages from the Agency social worker or called to inquire about her son, and R.S. had not yet returned from her trip. Therefore, the social worker told aunt that it was imperative that mother attend this meeting. Aunt and R.S. went to the meeting but mother refused to attend. R.S. stated that she could not force her daughter to come and she also stated that she could not kick mother out of her home because she was pregnant, mentally ill and had no where else to go. During the meeting, R.S. acknowledged that mother was violent toward her and that she was reluctant to call the police when that happened. The Agency took the position that it could not place I.S. with R.S. because mother was living in her home.

In its jurisdiction report, the Agency recommended that I.S. be declared a dependent and that reunification services be denied. The Agency listed several factors supporting the decision not to recommend reunification services to mother: the severity of the injury to I.S.; mother's failure to bond with her child, including her failure to inquire about his status or attempt to visit him after he was detained; mother's life long serious mental illness, including her need for life long treatment and her pattern of failing to participate in treatment; and signs that mother also suffered a very significant developmental delay. The Agency opined that, in light of these serious issues, it was

unlikely that mother was capable of making the sustainable change needed to reunify with I.S.

At a January 19, 2012, hearing, mother contested jurisdiction and the denial of services. The matter was continued until March 20 because mother was expecting a baby soon and the court wanted to ensure a safe delivery. In the meantime, the court ordered supervised visits with mother and gave the Agency discretion to place I.S. with R.S.

C. Status Reports and Interim Hearings

In February 2012, mother delivered a baby boy, which prompted another Agency referral of general neglect because of mother's mental health status and her refusal to take her medication. She was confused about what was going on, did not bond with the baby, and appeared content to let the father take responsibility for the baby's care. When asked about I.S., mother reported that he was taken away from her because of "speech problems," that he was born with marks on his feet, and that she did not know why his feet hurt him or how he got burned. Mother had attended two supervised visits with I.S., one before and one after she delivered her baby. During both visits, mother was prompted to engage with I.S., but she spent most of the time sitting while I.S. played alone. R.S. accompanied mother to the visits and also visited with I.S. on the days mother failed to attend.

During a March 2012, home visit, R.S. appeared overwhelmed. Mother showed the social worker photos of her new baby but spent most of the visit lying down on a bed while R.S. spoke to the social worker. Mother did not appear to understand what was going on and, at one point, began sucking her thumb. R.S. shared that they planned to go visit the new baby for the first time since he was born. She also told the social worker that mother had not wanted to be with the father of that baby since an incident when he hit her. The father had apologized, but R.S. was unsure of the extent of the domestic violence in the relationship.

In March 2012, the Agency provided the court with copies of the police report and medical records relating to the December 2011 incident. Aunt told police that she noticed the burns on December 31, while she was caring for I.S. at her home. She called

mother and asked what happened. First, mother said I.S. burned his feet while walking on the carpet. When aunt said that was not possible, mother said she had held his feet close to the heater and a flame “shot out and burned his feet.” The police officer then contacted mother who appeared to have trouble understanding basic questions, but was eventually able to report that the “bumps” on the child’s feet had happened while they were staying at a neighbor’s home. The officer interviewed the neighbor, Patricia N., who reported that mother and I.S. stayed at her home on December 25 and 26. When asked about the burns, the neighbor replied that they “probably happened on my heater vent, all my kids have burned their feet on it.” The officer asked mother how the burns happened and mother suggested that I.S. had been drinking cranberry juice which could have caused his feet to be more sensitive to heat. Mother told police that she noticed the burns on December 26 and that she obtained medical treatment for I.S. at West Berkeley Clinic and Children’s Hospital in Oakland.

After reviewing the police report, the Agency social worker contacted the West Berkeley Clinic and Children’s Hospital and was advised that neither had a record of a visit to obtain treatment for I.S.’s burned feet. Medical records from Dr. Crawford’s January 5 examination reflected that I.S.’s burn marks were a grid pattern with a single clear imprint on the sole of each foot, that the burns were “contact” burns, and that the burn on the right foot was more severe than the left. There was no evidence of any “acute or healing fracture[s].”

On March 20, 2012, the juvenile court appointed a guardian ad litem to represent mother, and continued the matter until April so that mother could undergo a psychological evaluation.

In April, the Agency reported that it had obtained psychiatric records for mother which documented 17 hospitalization episodes from 2005 to 2009. Mother had attended only three visits since February 27. R.S. would prompt mother to interact with I.S., but she did not engage with the child. The Agency had assigned a social worker to work with the family to explore and evaluate possible placements with relatives and non-related extended family.

On April 17, 2012, the court ordered the Agency to make referrals so mother could have a psychological and medical evaluation. R.S. made a request for de facto parent status, which the court took under submission and subsequently denied. The contested hearing was continued until May 2012.

D. *The Contested Jurisdiction/Disposition Hearing*

The contested hearing finally commenced on May 18, 2012. The presentation of testimony consumed several court days spread out over a more than six-month period, which necessitated the filing of numerous Agency reports as events continued to unfold.

1. *The May 18, 2012, Hearing*

a. *Evidence*

In May 2012, the Agency reported that mother had been attending visits with I.S. and that there were some positive interactions. However, mother failed to attend her scheduled appointment for a psychological evaluation and the evaluator, Dr. Lebeck, reported that she had concerns about R.S.'s mental health. Apparently, R.S. had scheduled the appointment for mother and then attended the meeting without her. Lebeck got the impression that R.S. was trying to hide her daughter. The Agency reported that the psychological evaluation was rescheduled and that the social worker would transport mother to ensure compliance.

In the meantime, the social worker contacted several community organizations regarding services that were available to mother. Stars Community Services had provided services in the past and mother was still eligible for services because she was under 21, but her case had been closed due to lack of participation. The contact person at that agency reported that mother had received support from many service providers in the past, but that she lacked the ability to work with those providers. The Agency social worker reported that she would attempt to assist mother in accessing the services that were available to her.

On May 16, 2012, the Agency followed up with Dr. Crawford who felt he did not have enough information to determine what actually happened in December 2011. But

he did state that someone had to have known about the injury when it occurred. He also said that it was possible I.S. would have a permanent scar on the bottom of one foot.

On May 16, the Agency also submitted a “Family Finding & Engagement Memorandum” in anticipation of the contested hearing. In that memorandum, the Agency social worker documented extensive efforts to locate a relative placement for I.S. Although the social worker had contacted more than 15 family and non-family members, the only people who could potentially take the child lived outside the country. The social worker reported that mother did not understand why I.S. could not be returned to her and that R.S. became extremely distressed by discussions regarding placing I.S. with somebody other than her.

b. *Witness Testimony*

When the contested hearing finally commenced on May 18, the County’s first witness was aunt. Aunt testified that R.S. went to Fiji in November 2011, for vacation, to visit relatives and to have some time to relax because she had been recovering from cancer and had also been taking care of mother and I.S. Aunt agreed to check on mother on a weekly basis while R.S. was away. During that time period, aunt was concerned about mother, who was not taking her medication and did not appear to be capable of taking care of I.S. In late December, aunt also became concerned about I.S. who was not acting like himself; he was “very weary, droopy eyes, and he was just not himself.”

On December 30, 2011, aunt brought I.S. to her home, to spend the night with her. That evening, I.S. was “out of it,” could not play, and just did not seem to be himself. As he started to eat dinner, he began to shake and then proceeded to eat several helpings as if he was starving. After dinner, she gave him some toys, but I.S. was not able to play so she gave him a bottle and put him to bed. The next morning, aunt discovered the burns while she was changing I.S.’s diaper. She called mother, who told her that she lifted I.S. up to warm him and that the heater threw a flame and burned his feet. Mother also said that she did not take I.S. to the doctor to treat the burns. Aunt testified that, after she discovered the burns, she did not put socks on the baby because she believed that the

blisters should be exposed. However, I.S. found it too painful to walk without his socks on.

During her testimony, aunt acknowledged that mother was physically and verbally “rough” with I.S. She opined that mother loved her child but that she “just needs help” from her own mother to care for him, and that she also needs to be on her medication. Aunt admitted that mother cannot be left alone with I.S. She also testified that she was not willing to allow mother to live with her in her home because mother was not stable when she went off her medication and because aunt did not trust mother to be around aunt’s nine-year-old daughter.

Patricia N. also testified at the May 18 hearing. Patricia N. testified that she was a neighbor of R.S. and had agreed to look in on mother while R.S. was away in Fiji. Mother and I.S. stayed at her home for a few days over the Christmas holiday. Patricia N. testified that it did not appear to her that I.S. was having any problems during that visit other than the “regular stuff.” She recalled that he was very cranky, that he was “teething really bad,” and that he may have had a cold. While mother and I.S. stayed at her house, Patricia N. was not at home “24/7.” When she was at home, she generally stayed upstairs in her bedroom with the door closed where she could not hear what mother and I.S. were doing downstairs.

Patricia N. testified that there are two floor heaters in her home and one is located in the bedroom where mother and I.S. stayed. Patricia N. acknowledged that she told the police that all of her kids had burned their feet on the heaters. But she also testified that nobody in her family had ever burned themselves so seriously that they blistered, scared, or required any medical attention.

The County’s final witness was R.S., who began her testimony at the May 18 hearing. Much of her testimony that day was confusing if not contradictory and, during the course of her testimony, a concern arose about whether she needed an interpreter. Although the court considered striking that entire day of testimony, it did not actually do so. In any event, on that first day of testimony, R.S. did clearly convey that she wanted I.S. to be placed in her home. But she also acknowledged that the Agency had made it

clear that could not happen while mother was living there. R.S. testified that she was having problems finding somewhere else for mother to go.

2. *The June 13, 2012, Hearing*

On June 13, R.S. resumed her testimony with the assistance of an interpreter. R.S. testified that she was in Fiji from November 22, 2011, until January 10, 2012, and that she made the trip so that she could receive “healing prayer,” baptism, and treatment for her cancer. R.S. did not worry about leaving I.S. with mother because her neighbor Patricia agreed that they could stay with her for the entire two months that R.S. planned to be away and aunt had also agreed to visit with them while she was gone.

R.S. denied that she had been I.S.’s primary caretaker prior to his removal, claiming that she and mother always shared that responsibility. R.S. also testified that she did not have concerns about mother’s ability to parent I.S. and claimed that she had no knowledge about the status of mother’s mental health. R.S. admitted that mother had been to the hospital many times, but she testified that nobody informed her about her daughter’s mental illness.

R.S. admitted that mother had been violent with her on one or two occasions but she could not provide any clear testimony about the incidents. She testified that mother never hit I.S. in her presence, but then stated that mother spanked the child for misbehavior. Later in her testimony, R.S. admitted that she had called the police the previous week. Mother had been in an angry mood, and threw a metal can at R.S., yelled at her and told her to get out of the house. R.S. called the police because she was very afraid.

3. *The August 21, 2012, Hearing*

R.S. continued her testimony on August 21. She testified that the reason she had wanted to take I.S. to Fiji with her was because he is her grandson and she is attached to him. R.S. explained that she thought it was fine that mother wanted I.S. to stay with her, but she warned mother it would be hard to take care of him when she was pregnant and feeling sick. R.S. testified that, when she left I.S. with mother, she “had no idea” that

mother was mentally ill and she believed mother was capable of taking care of I.S. by herself.

R.S. testified that she did not discover that mother was mentally ill until she returned from Fiji, at which point I.S. had already been removed from the home. R.S. also testified that mother had now been on medication for a few months and that R.S. made sure she took it on time. According to R.S., mother was more calm, was going to her appointments and was thinking about going to school. Finally, R.S. testified that mother was now actively looking for an apartment so that she could move out of R.S.'s home.

4. *The December 14, 2012, Hearing*

a. *Evidence*

Between late June and late October 2012, mother attended approximately half of the scheduled weekly visits with I.S., and she only attended one visit without being accompanied by her own mother. The social workers who supervised the visits reported that, although mother had become more animated and engaged since she resumed her medications, "it is apparent that she does not have the necessary skills to care for her son without constant prompting and redirecting." During this period, mother completed her psychological evaluation. On October 1, the Agency submitted the report under separate confidential cover to the court and the attorneys in this case.

On October 11, 2012, the Agency conducted a team decision meeting where it decided to pursue a concurrent home placement for I.S. because efforts to find a relative placement had been exhausted. Mother and R.S. had been invited to this meeting and were offered transportation. But R.S. was adamant that neither would attend because they did not agree with the Agency's decision to consider a concurrent home placement plan.

On October 12, 2012, mother left a message for the Agency social worker that she had moved out of R.S.'s home and was living with her "baby daddy." When the social worker called mother back a few days later, she said she was living with a "friend," but she was not able or willing to provide an address. A few days later, on October 16, the

Agency received a placement referral on behalf of R.S., who requested that I.S. be placed in her home now that mother was no longer living there. However, the Agency did not make that placement because of ongoing concerns about R.S.'s ability to protect I.S. from mother and because of R.S.'s own health problems.

At an October 22 supervised visit that mother failed to attend, R.S. told the social worker that mother was sick, but that she could not provide any details about mother's health because she had moved out and was now living with her boyfriend. On October 25, the social worker made an unscheduled visit to the home of the father of mother's second child. The baby's paternal grandfather said that mother did not live there and was not allowed to be alone with that child.

On November 19, mother accepted a ride home from the Agency social worker. The social worker was able to confirm that mother was renting a room in Alameda for \$500 a month from a woman who lived in the home with her three children. However, the woman retreated to her room and the social worker was unable to obtain pertinent information about the terms of the rental arrangement.

In November and the first half of December, mother and R.S. regularly attended visits although they were sometimes late. With the exception of one visit, when mother was visibly unwell, there were indications that mother had become more focused and would engage with I.S. for short periods of time. The supervising social worker reported that I.S. never displayed separation anxiety at the end of visits; he was always ready to leave when the social worker indicated it was time to clean up.

b. *Witness Testimony*

When the contested hearing continued on December 14, 2012, mother recalled R.S. to the witness stand in order to rebut the Agency's contention that R.S. could not adequately protect I.S.

R.S. testified that mother had moved out of her home two months earlier and that she would not allow mother to move back in if I.S. was placed with her. R.S. stated that she did not think that she would allow mother to have unsupervised contact with I.S. She testified that it would be better for the Agency to supervise visits between mother and I.S.

R.S. also acknowledged that she had made a mistake by leaving I.S. with mother when she went to Fiji.

While testifying under cross examination, R.S. was asked several times why it was a mistake to leave I.S. with mother. Despite assistance by an interpreter, R.S. failed to give a coherent answer to this question, although she repeatedly stated that mother refused to give permission for the child to go to Fiji. When asked why she thought it would be better for the Agency to supervise visits between I.S. and mother, R.S. responded “I don’t think any untoward things should happen,” and, if the social worker came to her house, then everything that happened would “be in the presence of the social worker.” R.S. proceeded to testify, however, that she would not have any concerns about mother visiting I.S. without supervision and that she believed that I.S. would be safe having unsupervised contact with mother.

On redirect, R.S. was asked to clarify whether she would allow unsupervised contact and gave this response: “She’s my daughter, and she’s always my daughter, so whatever the social worker tell us, I will do accordingly.” R.S. testified that she would abide by the court rules. When asked what she would do if mother violated a court order to stay away from I.S., R.S. testified that “if she beats [him] I will have to call the police.”

5. *The February 7, 2013, Hearing*

a. *Evidence*

The Agency reported that mother and R.S. both regularly attended supervised visits in December and January. R.S. typically brought food and fed both mother and I.S. Although R.S. and mother usually spoke in their native language, it appeared to the supervising social worker that R.S. used these sessions to check in with mother, and make sure she was eating. R.S. would then prompt mother to assist her by cleaning up after they ate. Although mother continued to play by herself during these sessions, she could also be prompted to try to engage with I.S.

In January 2013, mother’s psychiatrist, Dr. Kayman, provided the Agency with a status update. Kayman reported that he had three sessions with mother in the past six

months, that mother had failed to attend one scheduled appointment, and that he always ensured she had several refills on her medication because she tended to miss appointments. Kayman also reported that mother was not currently participating in counseling and that she had a long history of conflict with R.S. Kayman offered the opinion that mother's level of functioning improved considerably when she was on her medication, but that she would not ever be capable of living independently.

b. *Witness Testimony*

The final witness who testified at the contested hearing was the Agency social worker, Martha Suarez, who was called by mother to address the Agency's placement decision. Suarez began her testimony at the December 2012 hearing and completed it on February 7, 2013.

Suarez testified that, although mother was no longer living in R.S.'s home, the Agency remained concerned that R.S. would not be able to protect I.S. from mother. Over the course of her testimony, Suarez identified several reasons for this concern. For example, R.S. had made statements in the past to the effect that she could give I.S. back to mother after the Agency was no longer involved in their life. Further, it appeared to the social worker that R.S. herself had some cognitive problems; she had difficulty processing information and did not always understand the issue at hand. In addition, the Agency was concerned that mother's housing situation was not stable and that if she became homeless, R.S. would take her in. This concern was reinforced by the assessment of mother's psychiatrist that mother was not capable of living independently.

E. *The Juvenile Court Findings and Orders*

On March 1, 2013, the court found that the allegations in the petition were true, declared I.S. a dependant of the juvenile court, denied services to mother, and set the matter for a section 366.26 hearing. The court also affirmed the Agency decision not to place I.S. in the home of R.S.

In explaining these rulings, the court stated that this was a very sad case and that it was hard for the court to believe that this young mother who has severe mental health issues would "maliciously" harm her child. Nevertheless, the evidence established that

the serious injuries that I.S. suffered were caused by mother's deliberate act. In this regard, the court observed that mother had changed her story several times but that, at the time of the incident, she told her own sister that she was warming I.S.'s feet when he was burned by the heater. Ultimately, the court made express findings that mother deliberately burned the baby's feet and then failed to seek medical attention for him; that mother had made minimal progress toward alleviating or mitigating the causes of the dependency; and that I.S. would not benefit from services to mother because mother was not his primary caretaker and because she had not bonded with him.

In denying mother's request to place I.S. with R.S., the court candidly acknowledged that, throughout the lengthy proceeding, the court had hoped that a placement with the maternal grandmother would be possible. Ultimately, though, the court found that "[a]ll the various elements are here" to support the Agency's placement decision. The court observed, among other things, that R.S. was "in denial" about mother's mental illness, that if mother needed housing, R.S. would likely take her in, and that a placement with R.S. posed a safety risk to I.S.

III. DISCUSSION

A. *The Section 300, subdivision (i) Jurisdictional Finding*

Mother contends the juvenile court erred by finding that I.S. comes within the court's jurisdiction under section 300, subdivision (i) (section 300(i)), which applies when a child has been subjected to an act or acts of cruelty. "We review the juvenile court's jurisdictional findings for sufficiency of the evidence. [Citations.] We review the record to determine whether there is any substantial evidence to support the juvenile court's conclusions, and we resolve all conflicts and make all reasonable inferences from the evidence to uphold the court's orders, if possible. [Citation.]" (*In re David M.* (2005) 134 Cal.App.4th 822, 828.)

Section 300(i) states that a child comes within the jurisdiction of the juvenile court and can be adjudged a dependent child if: "The child has been subjected to an act or acts of cruelty by the parent or guardian or a member of his or her household, or the parent or guardian has failed to adequately protect the child from an act or acts of cruelty when the

parent or guardian knew or reasonably should have known that the child was in danger of being subjected to an act or acts of cruelty.”

Section 300(i) applies in two distinct situations. “The first is where the parent, guardian, or member of the household has directly subjected the child to an act or acts of cruelty. The second is where the parent or guardian has failed to protect the child from acts of cruelty by others.” (*In re D.C.* (2011) 195 Cal.App.4th 1010, 1015.) In the present case, we address the direct-infliction prong of section 300(i); the juvenile court found that mother committed an act of cruelty by burning I.S.’s feet on the heater and then failing to secure medical treatment for those burns. On appeal, mother contends this finding cannot be sustained because there is no competent evidence that the burns were the result of mother’s intentional act.

To properly exercise jurisdiction under the direct infliction prong of section 300(i), the juvenile court was not required to find that mother intended to injure I.S., but it was required to find that she intended to commit the act which constitutes cruelty within the meaning of the statute. (*In re D.C., supra*, 195 Cal.App.4th at p. 1017.) In this context, courts have defined acts of cruelty as “intentional acts that directly and needlessly inflict extreme pain or distress.” (*Ibid.*) Thus, the juvenile court must find that the parent intended to commit the act. However, “[w]hether the act is an ‘act of cruelty’ is a factual question that does not require a finding that the parent specifically intended to cause harm.” (*Id.* at p. 1018.) As the court explained in *In re D.C., supra*, “[t]he overarching goal of dependency proceedings is to safeguard the welfare of the children involved” and “it would be illogical to require proof that a parent who directly subjected the child to a cruel act did so with the specific intent to harm. Rather, it is enough that the parent intended to perform the act.” (*Id.* at pp. 1015-1016.)

Here, the juvenile court found that mother deliberately held I.S.’s feet against the heater vent. This finding is supported by substantial evidence. First, when aunt confronted mother about the burns, mother said that she had held the child’s feet to the heater vent. Second, when the police questioned mother, she reported that the injury occurred while they were staying at Patricia N.’s house, where police found a heater grate

that matched the marks on the child's feet. Third, mother falsely reported that she had sought medical attention for the injury. In addition to these circumstances, there is substantial evidence that mother has a history of violent behavior which she had directed at I.S. and that she used harsh measures to discipline him. Finally, nobody disputes that mother suffers from a very serious mental illness. Taken together, this evidence substantially supports the finding that mother deliberately held her son's feet to the heater vent.

B. *The Section 361.5, subdivision (b)(6) By-Pass Finding*

Mother challenges the sufficiency of the evidence to support the order denying her reunification services. “We review an order denying reunification services by determining if substantial evidence supports it. [Citations.] In so doing, we resolve all conflicts in the evidence in favor of the juvenile court's finding. [Citation.]” (*In re Gabriel K.* (2012) 203 Cal.App.4th 188, 196.)

In the present case, mother was denied reunification services pursuant to section 361.5, subdivision (b)(6) (section 361.5(b)(6)), which states in relevant part: “(b) 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: . . . (6) That the child has been adjudicated a dependent pursuant to any subdivision of Section 300 as a result of . . . the infliction of severe physical harm to the child . . . by a parent or guardian, as defined in this subdivision, and the court makes a factual finding that it would not benefit the child to pursue reunification services with the offending parent or guardian.”

On appeal, mother contends this by-pass provision does not apply to her because (1) she did not inflict serious physical harm on I.S., and (2) I.S. would benefit from the provision of reunification services to mother. We will separately address these two contentions.

In the present case, the juvenile court found that mother inflicted serious physical harm on I.S. by deliberately holding his feet to the heater and then failing to seek medical attention for the injuries. Section 361.5(b)(6) expressly states that a “finding of the

infliction of severe physical harm . . . may be based on . . . deliberate and serious injury inflicted to or on a child's body . . . by an act or omission of the parent . . .” In challenging the court's finding under this provision, mother does not dispute that the burns were a serious injury, but she does maintain that there is no evidence she deliberately held the child's feet to the heater. We have already rejected that contention. Mother also contends that her failure to seek medical attention for I.S. is irrelevant because there is no evidence that her inaction caused I.S. any harm. To support this argument, mother relies on *Pablo S. v. Superior Court* (2002) 98 Cal.App.4th 292 (*Pablo S.*).

In *Pablo S.*, *supra*, 98 Cal.App.4th 292, a six-year-old boy broke his leg when he fell off a scooter. For almost two months, the parents did not seek medical treatment for the injury notwithstanding that the boy could not walk and he had to use his arms to pull himself across the floor. The “leg healed in a rotated position, shorter than the other leg, and would not support the child's weight.” (*Id.* at p. 294.) Eventually, a neighbor who had heard the child cry and scream “ ‘on and off every other day for about two months,’ ” took the boy and his grandmother to the hospital so they could obtain medical treatment for the boy's injury. (*Ibid.*) The *Pablo S.* court affirmed a juvenile court order denying the parents reunification services, finding that “the parents' failure to provide medical attention constituted the infliction of serious injury by omission.” (*Id.* at p. 301.) In reaching this conclusion, the court rejected the parents' various excuses for their failure to act and found that their neglect caused the child to suffer unreasonably and unnecessarily.

Mother contends that *Pablo S.* establishes that a parent's failure to seek medical attention for his or her child will support a finding of “severe physical harm” under section 361.5(b)(6) “only where the failure to seek medical treatment in and of itself causes serious injury.” If, by this argument, mother is suggesting that evidence of a parent's failure to seek medication treatment for a child's injury is *irrelevant* unless that inaction is an independent cause of harm, we disagree with her interpretation of *Pablo S.* The parents in that case did not cause the child's broken leg and, therefore, the question

before the court was whether the parents' subsequent inaction could—by itself—support a finding of severe physical harm. By answering that question in the affirmative, the court did not hold or in any way intimate that a parent's inaction following a child's injury is only relevant if that conduct constitutes an independent source of serious physical harm.

In the present case, we have already affirmed the lower court's finding that mother deliberately held her child's feet to the heater vent. That finding was further supported by undisputed evidence that mother failed to seek medical treatment for her son's burned feet and that she subsequently lied to the police by telling them she had secured that treatment. Furthermore, there is substantial evidence that I.S. suffered unnecessarily for several days before his injury was discovered. For example, Patricia N. testified that I.S. was cranky and irritable when he stayed at her house. Aunt testified that before she discovered the burns she noticed that I.S. was not acting like himself, that he was not walking, that he appeared weary and that he ate like he was starving. Furthermore, after aunt discovered the burns, she observed that it was too painful for I.S. to walk without his socks on. All of this evidence, taken together, supports the juvenile court's finding that mother inflicted "severe physical harm" within the meaning of section 361.5(b)(6).

Mother contends that, even if the finding of severe physical harm is supported by substantial evidence, the finding that I.S. would not benefit from reunification services is not. Again, we disagree. The record contains substantial evidence that mother's severe mental health problems and cognitive issues precluded her from bonding with either of her children. These same problems have also rendered mother incapable of living independently and meeting her own needs, not to mention the needs of I.S. This evidence supports the trial court's finding that I.S. would not benefit from services to mother because he had never bonded with mother and she had never been his primary caretaker.

On appeal, mother contends that the finding I.S. would not benefit from services must be reversed because the trial court failed to consider the factors set forth in section 361.5, subdivision (i) (section 361.5(i)), which states:

“In determining whether reunification services will benefit the child pursuant to paragraph (6) or (7) of subdivision (b), the court shall consider any information it deems relevant, including the following factors: [¶] (1) The specific act or omission comprising the severe sexual abuse or the severe physical harm inflicted on the child or the child’s sibling or half sibling. [¶] (2) The circumstances under which the abuse or harm was inflicted on the child or the child’s sibling or half sibling. [¶] (3) The severity of the emotional trauma suffered by the child or the child’s sibling or half sibling. [¶] (4) Any history of abuse of other children by the offending parent or guardian. [¶] (5) The likelihood that the child may be safely returned to the care of the offending parent or guardian within 12 months with no continuing supervision. [¶] (6) Whether or not the child desires to be reunified with the offending parent or guardian.”

Mother misconstrues section 361.5(i) to the extent she believes it limits the information that the court may consider when assessing whether services will benefit a dependent child in this context. As reflected above, the statutory language expressly directs the court to consider “any information it deems relevant.” And, contrary to mother’s contentions on appeal, nothing in this statute requires the court to make express findings on each of the enumerated factors.

Furthermore, several of the factors listed above provide additional support for the trial court’s finding. For example, the circumstances under which the harm was inflicted on I.S. (§ 361.5(i)(2)) are indicative of mother’s mental health problems and other limitations which preclude her from bonding with and appropriately caring for her child. Furthermore, in light of mother’s impairment and other issues, it is virtually inconceivable that I.S. can be safely returned to her within 12 months with no continuing supervision. (§ 361.5(i)(5).)

The record before us substantially supports the juvenile court’s findings that mother inflicted severe physical harm on I.S. and that I.S. would not benefit from the provision of reunification services to mother. Therefore, the court did not err by denying mother reunification services in this case.

C. *The Placement Decision*

Mother contends that the juvenile court erred by refusing to order the Agency to place I.S. in R.S.'s home. We review a custody placement order under the abuse of discretion standard of review. (*Alicia B. v. Superior Court* (2004) 116 Cal.App.4th 856, 863 (*Alicia B.*)) “ ‘Broad deference must be shown to the trial judge. The reviewing court should interfere only “ ‘if we find that under all the evidence, viewed most favorably in support of the trial court’s action, no judge could reasonably have made the order that he did.’ [Citations.]” [Citation.]’ [Citation.]” (*Ibid*; See also *In re Robert L.* (1993) 21 Cal.App.4th 1057, 1067.)

“When a child is removed from his or her parents’ custody under section 361, the juvenile court places the care, custody, control, and conduct of the child under the social worker’s supervision. (§ 361.2, subd. (e).) The social worker may place the child in several locations, including the approved home of a relative. (§ 361.2, subd. (e)(1)–(8).) Relatives who request placement of a dependent child are given preferential consideration. (§ 361.3, subd. (a).)” (*Alicia B., supra*, 116 Cal.App.4th at p. 862.)

When a relative steps forward to request placement, the court and the Agency should consider the factors set forth in section 361.3, subdivision (a). “The linchpin of a section 361.3 analysis is whether placement with a relative is in the best interests of the minor. [Citation.]” (*Alicia B., supra*, 116 Cal.App.4th at p. 862; see also § 361.3, subd. (a).) Additional relevant factors include the wishes of the parent; the moral character of the relative and any other adult living in the home; the nature of the relative’s relationship with the child; and the ability of the relative to provide a safe home and proper care for the child. (§ 361.3, subd. (a).)

In the present case, some of these factors were consistent with a relative placement in R.S.’s home; R.S. had been the child’s primary caretaker before her trip to Fiji and mother wanted I.S. to live with R.S. However, the juvenile court ultimately concluded that R.S. could not provide a safe home for the child because she could not protect him from mother. On appeal, mother contends that the juvenile court abused its discretion

because the finding that R.S. could not protect I.S. from mother is not supported by substantial evidence. We disagree.

The evidence before us regarding R.S.'s conduct throughout these proceedings, including her testimony over the several months it took to complete the contested jurisdiction/disposition hearing, substantially supports the finding that her home was not a safe placement for I.S. At the beginning of this case, when I.S. was detained, R.S. admitted that mother was too mentally ill to live on her own notwithstanding her violent behavior toward R.S. and I.S. However, when R.S. testified at the contested hearing, she claimed that she did not previously know that mother was mentally ill and that she had no concerns about mother's ability to care for I.S. while living in her home. When R.S. testified again in December, after mother elected to move out, R.S. finally admitted that she should not have left I.S. with mother when she went to Fiji. But even then, she failed to acknowledge the extent of her daughter's mental health problems or the risk of harm to I.S. that those problems created.

Like the juvenile court, we have no doubt that R.S. loves her grandson and would like to care for him in her home. However, the evidence before us also clearly demonstrates that R.S. has a conflicting commitment to care for mother and that conflict precludes her from providing a stable and safe home for I.S. The numerous and, frankly, unexplained continuances in this proceeding afforded mother the opportunity to secure an alternative residence. However, the Agency reasonably concluded that situation was not stable, particularly in light of the contemporaneous report from mother's psychologist that she is not capable of independent living. And, there is strong evidence that when mother finds herself without a home, R.S. will take her back. There is also substantial evidence that, even if mother retains a separate residence, R.S. will give her unsupervised access to I.S. once the Agency is no longer involved in their lives.

We share the view of the juvenile court that this is indeed a very sad case. However, the record before us establishes that the court's placement decision hinged, as it must, on the best interests of the minor. Therefore, we conclude that mother has failed

to establish that the court abused its discretion by denying the request to place I.S. in the home of R.S.

IV. DISPOSITION

Mother's petition for extraordinary relief is denied on the merits. Our decision is final as to this court immediately. (Cal. Rules of Court, rule 8.264(b)(3).) The temporary stay of the section 366.26 hearing is lifted and this case is remanded to the juvenile court so that a section 366.26 hearing can be held forthwith.

Haerle, J.

We concur:

Kline, P.J.

Richman, J.