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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

In re B.C., et al., Persons Coming Under  
the Juvenile Court Law.

CONTRA COSTA COUNTY CHILDREN  
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

J.C.,

Defendant and Appellant.

A142697

(Contra Costa County  
Super. Ct. Nos. J13-01318, J13-01319)

J.C. (Mother), mother of 17-year-old B.C. and 15-year-old C.C., appeals from the juvenile court’s six-month review order continuing B.C.’s placement outside her and the children’s father’s (Father) home. She contends there was no substantial evidence to support the finding that there was a continuing risk of harm to the children if they were returned to their parents’ care.<sup>1</sup> We reject the contention and affirm the order.

**FACTUAL AND PROCEDURAL BACKGROUND**

On December 17, 2013, the Contra Costa County Bureau of Children and Family Services (the Bureau) filed a dependency petition alleging that Mother and Father had

<sup>1</sup>Mother also makes various arguments as to why the jurisdictional and dispositional orders must be reversed, but she did not appeal from those orders and is precluded from challenging them in this appeal.

mental health issues that interfered with their ability to parent. B.C. had not received therapy to deal with “her school phobia” and had attended only 26 days out of 70 days of school. Father was not on psychotropic medication for his paranoid schizophrenia and had not been in therapy for six months.

According to a detention/jurisdiction report, the Bureau received a referral on November 1, 2013, alleging Mother and Father were neglecting their children. C.C. was not going to school because she had a painful cyst in her right knee, stomach pains, and anxiety. Father kept B.C. at home so she could help him take care of and cook for C.C.; B.C. had missed 28 out of 45 days of school. Father said he had been diagnosed with paranoia and that his father had schizophrenia. He had not been in therapy for six months. Mother was seeing a psychologist once every other month and was taking medication. The Bureau provided the parents with various resources and instructions and informed them of the upcoming detention hearing. When a social worker called Father to remind him of the hearing, he asked “what they are being charged with” and began yelling, stating the social worker “can’t do this because they are disabled and have rights.” After Father hung up, he called the social worker back to tell her that “he’d see the Social Worker in court and that the whole federal government is going to be in on this; it won’t be just him vs. Social Worker.”

Rather than contest the allegations, the parents agreed to mediate the petition. The mediated agreement was modified and the parents admitted to an amended petition that stated in part: “300(b): The child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness as a result of the failure or inability of his or her parent . . . to supervise or protect the child adequately and . . . provide regular care for the child due to the parent’s . . . mental illness . . . .” The parents submitted to the court taking jurisdiction and waived their appeal rights with regard to jurisdiction.

In a disposition report, the Bureau stated the children were living together in a foster home. Mother had been diagnosed with schizophrenia and appeared to have a

speech impairment “which could be due to . . . a neurological disorder related to long-term or high dose use of antipsychotics.” Father said he was diagnosed with obsessive compulsive personality disorder and denied he had been diagnosed with schizophrenia or other psychotic disorders. He admitted he had anger management issues and had been in numerous fights, but was not interested in anger management classes. At times, he “became tangential and incoherent in his speech” and there was some indication that he was experiencing “bizarre delusions.” Father reported that none of the antipsychotic or antidepressant medication he had taken in the past had helped him. The parents’ relationship was not going well and Mother reported that she needed to look for “at least two jobs to survive” because she and Father were getting divorced.

Both children were failing in school. B.C. had not bathed in several weeks and her hair “could not be untangled.” She ultimately shaved her head after developing a serious problem with head lice. B.C. was diagnosed with anxiety disorder not otherwise stated, and C.C. was diagnosed with social phobia, depression, not otherwise stated. Four supervised visits had taken place and there was anger, yelling, and crying at some of the visits.

The Bureau recommended that the juvenile court place the children outside the parents’ home. The parents had poor insight into their problems and were not able to explain why their daughters had stopped attending school, and why they were fearful of social situations. Mother’s case plan included obtaining a mental health assessment, following the recommendations resulting from the assessment, counseling, a positive evaluation from the counselor indicating she understands the factors leading to the dependency, addressing the issues that place her children at risk, parenting classes, and demonstrating the ability to meet the children’s emotional needs. The parents did not contest disposition and submitted on the recommendations. They did not appeal from the dispositional order.

In a six-month review report, the Bureau recommended that the children not be returned home. According to the report, both parents had been referred for therapy, parenting classes and medical evaluations. Father had been asked to leave the parenting education class for behaving inappropriately with another group member. He had not followed up with starting therapy. Mother reported that she completed a parenting education program, but failed to provide proof that she had. She had not started individual therapy, and had failed to provide a list of medication she had been taking.

A search of Mother's mental health records indicated that she had consistently denied having any problems to one psychiatrist and had "adamantly declined" recommendations that had been made regarding medication. Another psychiatrist reported in February 2014 that Mother had experienced auditory and visual hallucinations for many years. She was diagnosed with schizophrenia and also had problems with alcohol. She had been prescribed various psychotropic medications and was dependent on opiates, benzodiazepines and marijuana.

B.C. and C.C. had adjusted to their new home and were in individual therapy on a weekly basis. They were attending school and their grades had greatly improved. The Bureau reported that B.C. and C.C. would not be safe living with either parent. Father had not taken the initiative to address his issues and blamed Mother's behavior and psychotic symptoms for the problems his children were facing. It was not clear whether Mother was taking her medication and whether she had the ability to follow through with her case plan. Both parents minimized the impact of the neglect of their children.

Mother did not request that the six-month review be set as a contested hearing, and the hearing took place on July 31, 2014. Minors' counsel stated that the children's mental health and hygiene had improved, and that they were feeling much better about themselves. They were reported to be "blossoming" after having been "locked away" by the parents. She believed the children would not be safe if returned to their parents. Father submitted on the recommendations, and the juvenile court admonished him for

telling C.C. that he had a girlfriend with whom he had another child. Mother's counsel stated that Mother wanted her children returned home. Counsel reported that Mother had completed a parenting class and was taking her medication. The juvenile court continued B.C. and C.C. in their out of home placement and continued reunification services for the parents.

Father did not appeal the order. Mother filed an appeal and also filed a motion asking this court to allow her to also appeal the jurisdictional and dispositional findings. We denied the motion on November 26, 2014.

### **DISCUSSION**

Mother contends there was no substantial evidence to support the finding that there was a continuing risk of harm to the children if they were returned to their parents' care. We reject the contention.

As a preliminary matter, Mother asserts the juvenile court failed to make the requisite finding under Welfare and Institutions Code section 366.21, subdivision (e), that “the return of the child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well being of the child,” and also failed to “specify the factual basis for its conclusion that the return would be detrimental or not detrimental.” She forfeited this argument by failing to raise it below. In any event, the record shows that the juvenile court made the requisite findings when it “incorporate[d]” the recommendations the Bureau made in its six-month review report, which included a finding that the children continued to be persons “described by Welfare and Institutions Code section 300, subdivision[] (b)” and that “the return of the chil[ren] to the custody of [their] parents would create a substantial risk of detriment to the safety, protection or physical or emotional well-being of the child[ren].” The court also explained the basis on which it made that finding, stating it had

“underlined everything in that paragraph” of the Bureau’s report that described the parents’ failure to make progress in their case plans.<sup>2</sup>

As to the evidence, Mother asserts the children were not at risk because she had completed a parenting education class and “the only indication of concern as to [her] was that . . . it was ‘unclear’ if [she] took her medication on a regular basis” A parent’s failure to regularly participate in any court-ordered treatment programs, however, constitutes prima facie evidence that the child’s return would be detrimental. (Welf. & Inst. Code, §§ 366.21, subds. (e) & (f), 366.22, subd. (e); *Robert L. v. Superior Court* (1996) 45 Cal.App.4th 619, 625; *In re Heather B.* (1992) 9 Cal.App.4th 535, 561 [“Since court-ordered treatment programs are tailored by the court to remedy the circumstances that required removal of the child from parental custody, it is reasonable to conclude that in the absence of contrary evidence the failure to participate in such programs is sufficient to establish that the circumstances still exist”].)

Here, as noted, Mother’s case plan included obtaining a mental health assessment, following the recommendations resulting from the assessment, attending counseling, obtaining a positive evaluation from the counselor, addressing the issues that place her children at risk, attending parenting classes, and demonstrating the ability to meet the children’s emotional needs. Thus, although there was some indication that she had completed a parenting education class, there was no evidence she had complied with the other parts of her case plan, including going to therapy and showing she understood the factors that led to the dependency.

Mother also asserts the children were no longer at risk because they were doing well. She points out that the children’s mental health and emotional well being had

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<sup>2</sup>Specifically, the Bureau stated the parents had not started therapy, that Father had just begun parenting classes shortly before the hearing, and that Mother had failed to provide the Bureau with a certification that she had completed a parenting education class.

greatly improved, and that they were both developmentally on target. The fact the children are now thriving in their out of home placement, however, does not support Mother's position that the children would not be at risk if returned to their parents' home. If anything, it shows that remaining in their current placement will help the children continue to improve and progress in a way that would not be possible in their parents' home.

**DISPOSITION**

The order is affirmed.

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McGuiness, P.J.

We concur:

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Pollak, J.

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Siggins, J.