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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

**M.L.,**

**Petitioner,**

**v.**

**THE SUPERIOR COURT OF  
ALAMEDA COUNTY,**

**Respondent;**

**ALAMEDA COUNTY SOCIAL  
SERVICES AGENCY,**

**Real Party in Interest.**

**A144000**

**(Alameda County  
Super. Ct. Nos.  
OJ12019693, OJ12019695)**

M.L. (Mother) seeks writ review of an order terminating reunification services to her and setting a permanency planning hearing for her children, E.L. and N.M. (Minors). (Welf. & Inst. Code, § 366.26.)<sup>1</sup> Mother challenges as unsupported by substantial evidence the juvenile court’s finding that return of the children to her custody would create a substantial risk of detriment to Minors. (See § 366.21, subd. (f).) She also contends the Alameda County Social Services Agency (the Agency) failed to offer her reasonable reunification services because it did not permit her to have unsupervised visitation with Minors.

We find no error. Accordingly, we affirm the order under review.

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

## FACTUAL AND PROCEDURAL BACKGROUND

We set out the facts of the underlying dependency proceeding in our prior opinion in *In re E.L.* (July 19, 2013, A136428) [nonpub. opn.]. We will not repeat those facts here, but will instead confine ourselves to the facts leading up to the hearing which resulted in the order under review. Additional facts relevant to the issues raised in the petition are set forth in the discussion section of this opinion.

This matter was transferred to the Alameda County Juvenile Court in October 2012. The Agency report prepared for the six-month review hearing recommended continuing family reunification services to Mother for an additional six months. The report indicated Mother had been partially compliant with her case plan and had participated in individual therapy weekly. Mother had negative drug tests on January 9, 22, and 28, 2013, but tested positive for cocaine on January 24. She attended six classes at her out-patient drug treatment program but missed eight, although four of the absences were excused. Visits between Minors and Mother had been twice weekly for two hours until the mother tested positive for cocaine on January 24, 2013.

At the February 8, 2013 six-month review hearing, the juvenile court found the Agency had provided reasonable services to Mother and continued her reunification services for an additional six months. The court then scheduled the 12-month review hearing.

The July 9, 2013 status review report prepared for the 12-month review hearing recommended continuing family reunification services to the mother for an additional six months. The report stated Mother had been partially compliant with her case plan. Although the child welfare worker gave two referrals to Mother for further individual therapy, Mother had not attended individual therapy since approximately May 2013. Mother was discharged from her out-patient drug treatment program for “non-compliance with her attendance and testing.” She was a “no show” for drug testing six times in spring 2013. On June 20, 2013, Mother completed her intake into a different out-patient drug treatment program. Visits between Minors and Mother occurred at the home of the caregiver on a daily basis.

An addendum report prepared for the continued 12-month review hearing recommended terminating family reunification services to Mother. The report stated Mother was “[n]ot in [c]ompliance” with regard to individual counseling, despite having been provided with three referrals. Mother’s June 20, 2013 hair follicle test was positive for “Cocaine/Metabolites.” Mother also tested positive for marijuana on four dates.<sup>2</sup> She missed two drug tests that were considered “positive/ dirty tests,” as well as numerous relapse prevention classes and group and individual counseling sessions related to substance abuse. Visitation between Mother and Minors occurred once a week at a minimum, although she typically visited Minors “most days.”

The Agency’s reports for the contested 12-month review hearing indicated Mother’s participation in individual therapy was inconsistent. According to the status review report prepared for the April 9, 2014 hearing, Mother had ceased attending individual therapy altogether and did not resume attending individual therapy until the writing of the addendum report for the September 23, 2014 hearing. The reports also noted Mother had been terminated from her second out-patient drug treatment program for lack of compliance. Mother tested positive for marijuana, opiates, and alcohol on a number of occasions, although “[s]he [was] excused [for] the positives for THC and opiates based on her medical marijuana card and prescription medications, respectively.” While Mother said in October 2013 she would enter an in-patient drug treatment program, she later indicated that she was “unable/ unwilling to attend[.]”

Mother’s third out-patient drug treatment program expected her to attend the program approximately 16 days per month. Mother did not meet this expectation in any of the months in the reporting period. Mother also tested positive for cocaine and alcohol on a number of occasions. Visitation between Mother and Minors during this period was described as “liberal.”

At the hearing, the child welfare worker testified that Mother was in full compliance with her case plan requirement of completing parenting classes and was also

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<sup>2</sup> Mother told the child welfare worker she had a medical card for the marijuana, but she had not yet provided a letter from her treating physician to substantiate this claim.

in compliance with completing an out-patient substance abuse program. The child welfare worker had no confirmation that Mother had attended individual therapy at her last out-patient drug treatment program. Mother was terminated from both her first and second out-patient drug treatment programs. Both recommended Mother attend an in-patient drug treatment program, but she refused. The child welfare worker did not refer Mother to the third out-patient drug treatment program; instead, Mother “chose to go there” on her own. The worker opined that if Minors were returned to Mother, they would not be safe because of her positive tests for cocaine and alcohol and her inconsistency in participating in her case plan.

On January 12, 2015, the juvenile court found by a preponderance of the evidence that returning Minors to Mother would create a substantial risk of detriment to their safety, protection, or physical or emotional well-being. The juvenile court found that the mother had not made substantive progress in her court-ordered treatment plan. The juvenile court also found the Agency had provided reasonable services to Mother. The court therefore terminated reunification services and set a section 366.26 permanency planning hearing.

Mother then sought writ review in this court. The matter was originally assigned to Division Three, which issued an order to show cause and a temporary stay of the juvenile court proceedings on March 18, 2015. Mother’s petition was transferred to this division on April 21.

## DISCUSSION

Mother raises two issues in her petition. First, she questions the sufficiency of the evidence supporting the juvenile court’s substantial risk of detriment finding. Second, she contends she was denied reasonable services because she was never permitted unsupervised visitation with Minors. We address these issues in turn.

### I. *Substantial Risk of Detriment*

Mother challenges the juvenile court’s finding that returning Minors to her custody would place them at substantial risk of detriment. We examine the merits of this contention after setting forth the applicable law and our standard of review.

A. *Governing Law and Standard of Review*

When children are removed from the home of their parents, “ ‘the court first attempts, for a specified period of time, to reunify the family.’ [Citation.] If, after the specified time period has expired, the efforts to reunify the family have failed, ‘ ‘the court must terminate reunification efforts and set the matter for a hearing pursuant to section 366.26 for the selection and implementation of a permanent plan. [Citation.]’ ’ [Citation.]” (*Sara M. v. Superior Court* (2005) 36 Cal.4th 998, 1008-1009.) In this case, because both Minors were more than three years of age at the time of initial removal, reunification services were provided for 12 months. (See § 361.5, subd. (a)(1)(A).) Where, as here, a parent has received 12 months of services, “the court shall order the return of the child to the physical custody of his or her parent . . . unless the court finds, by a preponderance of the evidence, that the return of the child to . . . his or her parent . . . would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child.” (§ 366.21, subd. (f).)

In considering this petition for extraordinary writ, “[o]ur review of the juvenile court’s finding that returning the children to . . . [M]other’s custody would be detrimental is limited to considering whether substantial evidence supports the finding.” (*Robert L. v. Superior Court* (1996) 45 Cal.App.4th 619, 625.) In this court, it is Mother’s burden to demonstrate the juvenile court’s finding is unsupported by substantial evidence. (*Christopher D. v. Superior Court* (2012) 210 Cal.App.4th 60, 70 (*Christopher D.*))

B. *Substantial Evidence Supports the Juvenile Court’s Finding that Returning Minors to Mother Would Create a Substantial Risk of Detriment.*

In finding that returning Minors to Mother’s custody would create a substantial risk of detriment to their safety, protection, or physical or emotional well-being, the juvenile court reasoned: “[M]other has not participated regularly and made substantive progress in court-ordered treatment programs. She’s not made substantial progress in complying with the central feature of the drug treatment component of the case plan and she’s not alleviated or mitigated the causes necessitating out-of-home placement.”

Mother disputes the juvenile court's finding and contends she "made substantial progress towards her goals." With admirable candor, the Agency acknowledges Mother did comply with some aspects of her case plan. The child welfare worker testified Mother had complied with the case plan requirement of completing parenting classes and had completed an out-patient substance abuse program.

This was not the only evidence before the juvenile court, however. Mother's attendance in drug treatment programs was inconsistent. She was terminated from her first two out-patient drug treatment programs. Although both out-patient programs and the child welfare worker recommended that Mother enter an in-patient drug treatment program, Mother refused. Instead, on her own she sought out a third out-patient drug treatment program. And while she completed that program, she did not, as she claims in her petition, "consistently . . . test[] negative in the program." To the contrary, she tested positive for cocaine on January 24, 2013; June 20, 2013; May 28, 2014; June 2, 2014; and August 14, 2014. She also tested positive for alcohol on several occasions. Mother also had a history of missing drug tests, which were considered "positive/ dirty tests."

Mother was also inconsistent in adhering to the individual therapy component of her case plan. She had participated in individual therapy weekly as of the writing of the status review report prepared for the February 8, 2013 six-month review hearing. By May 2013, however, she stopped attending individual therapy despite three referrals provided to her by the child welfare worker. She resumed participating in individual therapy on September 5, 2013, but her attendance became inconsistent. As of the April 9, 2014 hearing, Mother had ceased attending individual therapy again and did not return until the writing of the addendum report the Agency prepared for the September 23, 2014 hearing. Mother testified she received individual therapy from the third out-patient drug treatment program that she completed, but the child welfare worker was unable to confirm that information.

On the record before us, we conclude substantial evidence supports the juvenile court's finding that returning Minors to Mother's care would create a substantial risk of detriment. (§ 366.21, subd. (f).) As Mother must and does concede, the evidence before

the juvenile court would permit it to find “she had been inconsistent” in compliance with her case plan. The juvenile court could properly consider this inconsistent compliance in assessing the risk of detriment. (See *Constance K. v. Superior Court* (1998) 61 Cal.App.4th 689, 704 [compliance with reunification plan is “certainly a pertinent consideration” in evaluating risk of detriment].) Her failure to participate regularly and make progress in drug treatment and individual therapy constituted prima facie evidence that return would be detrimental to Minors. (See § 366.21, subd. (f) [“The failure of the parent or legal guardian to participate regularly and make substantive progress in court-ordered treatment programs shall be prima facie evidence that return would be detrimental.”]; Cal. Rules of Court, rule 5.708(d)(2) [same].) It is commendable that Mother completed parenting classes and some out-patient drug treatment, but these facts do not preclude a finding of detriment. (See *In re Dustin R.* (1997) 54 Cal.App.4th 1131, 1143 [parent’s attendance at required therapy sessions and visitation must be considered by court but are not determinative].) Here, where one of the principal grounds for Minors’ removal was Mother’s substance abuse, the juvenile court did not err in focusing on whether Mother had complied with the drug treatment portion of her case plan.<sup>3</sup> (See *Dawnel D. v. Superior Court* (1999) 74 Cal.App.4th 393, 398 [where mother’s “real

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<sup>3</sup> The cases on which Mother relies are distinguishable. For example, in *Jennifer A. v. Superior Court* (2004) 117 Cal.App.4th 1322, the mother was ordered to submit twice weekly to random drug testing, even though substance use or abuse was not linked to the mother’s lack of judgment that led to the children’s detention. (*Id.* at p. 1327.) In one and one-half years, the mother missed tests but completed about 84 drug-free tests, which the court held was substantial compliance to avoid termination of parental rights. (*Id.* at pp. 1327, 1343.) The facts here are also unlike those in *In re Yvonne W.* (2008) 165 Cal.App.4th 1394, where “[t]he uncontroverted evidence” showed the mother had “completed her case plan[.]” (*Id.* at p. 1401, italics added.) In that case, the child had been removed due to the mother’s drug use, and the mother had engaged in extensive reunification services within the first six months after the removal. (*Id.* at p. 1397.) The mother was “committed to her sobriety,” appeared to have benefitted from the reunification services, and had made changes that were “in her children’s best interests.” (*Id.* at p. 1401.) She was safely parenting another child. She had done “everything Agency asked of her, including eliminating the conditions that led to [minor’s] out-of-home placement.” (*Ibid.*) Thus, substantial evidence did not support a finding of detriment under section 366.22. (*Id.* at pp. 1400-1402.)

problem” was substance abuse, relevant inquiry was whether she had participated regularly in substance abuse treatment component of case plan, as opposed to other components].)

## II. *Visitation and Reasonable Services*

Mother argues the Agency did not provide her with adequate visitation. She concedes she had “great access to the children during her case plan,” but complains that “she was never granted unsupervised visits.” Specifically, she contends that the Agency’s failure to grant unsupervised visitation despite its discretion to do so amounts to “a denial of reasonable services tailored to meet the needs of a specific family.”

### A. *Standard of Review*

In reviewing the reasonableness of the reunification services provided, including visitation, we view the evidence in the light most favorable to the Agency. (*Christopher D.*, *supra*, 210 Cal.App.4th at p. 70.) We will not disturb the challenged order unless it is unsupported by substantial evidence. (*Ibid.*) In a dependency proceeding, the juvenile court has the power and responsibility to regulate and define a parent’s right to visit his or her children who have been removed from parental custody. (*In re Moriah T.* (1994) 23 Cal.App.4th 1367, 1373.) The court may delegate to the Agency “the responsibility to manage the details of visitation, including time, place and manner thereof.” (*Id.* at p. 1374.)

### B. *Assuming Mother Has Preserved this Claim, Substantial Evidence Supports the Juvenile Court’s Reasonable Services Finding.*

Mother’s argument suffers from at least two procedural flaws. First, this portion of her petition contains no citations to the record.<sup>4</sup> Thus, while Mother claims she requested “increased visitation,” we have not been directed to anything in the record

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<sup>4</sup> Although we are under no obligation to do so, we have searched the factual statement in the petition for any citation to the record showing Mother requested unsupervised visitation in the juvenile court. (See *Nwoso v. Uba* (2004) 122 Cal.App.4th 1229, 1246 [reviewing court need not search record for error]; *City of Lincoln v. Barringer* (2002) 102 Cal.App.4th 1211, 1239, fn. 16 [record citations in “Factual Background” section of brief do not cure failure to include record citations in argument].) We have found no such citations.

showing she made such a request. We therefore do not know whether the juvenile court was given the opportunity to consider Mother's argument that the Agency's decision to permit only supervised visitation amounted to a denial of reasonable services. As is true in all cases, an appellate court in a dependency case "ordinarily will not consider a challenge to a ruling if an objection could have been but was not made in the trial court." (See *In re A.E.* (2008) 168 Cal.App.4th 1, 5; quoting *In re S.B.* (2004) 32 Cal.4th 1287, 1293.) Such an objection "would have served the very real purpose of putting on record the precise reasons for the order[.]" (*Ibid.*) The apparent lack of an objection forfeits the matter on appeal. (*Ibid.*)

Second, Mother cites no cases holding that a social services agency's decision—in the exercise of its court-granted discretion—to permit only supervised visitation with dependent minors amounts to a wholesale denial of reasonable services. In fact, Mother's substantive argument on this point consists of four short paragraphs devoid of citations to the record. In these circumstances, we would be fully justified in treating the issue as forfeited. (See *In re Daniel M.* (2003) 110 Cal.App.4th 703, 708 [issue forfeited where party "develops no argument and cites no supporting legal authority for this proposition"].)

Even if this argument were properly preserved and correctly presented, it would be meritless. On February 11, 2014, the juvenile court granted the Agency *discretion* to change the visits between Mother and Minors from supervised to unsupervised. Contrary to Mother's claim, however, she did not have a "a history of negative drug tests[.]" As noted above, Mother tested positive for cocaine five times between January 2013 and August 2014. She also tested positive for alcohol. To this one could add the missed drug tests, which were considered positive.

Given these facts, we cannot say the Agency abused the discretion the juvenile court gave it. (See *In re Moriah T.*, *supra*, 23 Cal.App.4th at p. 1376 [social services agency is allowed flexibility in determining appropriate visitation arrangements].) It could properly determine that supervised visitation was appropriate because of Mother's continuing substance abuse. Nor were reunification services necessarily inadequate

because Mother was permitted only such supervised visitation. (*Christopher D., supra*, 210 Cal.App.4th at p. 73 [rejecting claim that reasonable services had not been provided where reunification plan called for supervised visitation].) This is especially true since Mother admits in her petition that she “had great access to the children during her case plan[.]” We therefore reject Mother’s claim that she did not receive reasonable services.

#### DISPOSITION

The petition for an extraordinary writ is denied on the merits. (§ 366.26, subd. (1)(4)(B).) This decision shall be final immediately. (Cal. Rules of Court, rules 8.452(i), 8.490(b)(2)(A).) The previously issued stay, having served its purpose, is dissolved.

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Jones, P.J.

We concur:

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Needham, J.

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Bruiniers, J.