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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

In re L.C.B., a Person Coming Under the
Juvenile Court Law.

CARMEN C. et al.,
Petitioners,

v.

THE SUPERIOR COURT OF CONTRA
COSTA COUNTY,

Respondent;

CONTRA COSTA COUNTY CHILDREN
AND FAMILY SERVICES BUREAU,

Real Party in Interest.

A145815

(Contra Costa County
Super. Ct. No. J14-00945)

I.

INTRODUCTION

Carmen C. and Andrew B. seek review by extraordinary writ of a juvenile court order setting a hearing pursuant to Welfare and Institutions Code section 366.26,¹ to consider termination of parental rights, and to select a permanent plan for their two-year-old daughter L.C.B. We grant the petition because the record does not contain substantial

¹ Statutory references are to the Welfare and Institutions Code unless otherwise stated.

evidence to support a finding that these parents were afforded six months of reasonable reunification services.

II.

STATEMENT OF FACTS

A. The Dependency Petition

On September 2, 2014, Carmen took her daughter, L.C.B., to the hospital complaining that L.C.B. had a fever. Hospital staff became concerned that Carmen was under the influence of substances and made a referral to the Contra Costa County Bureau of Child and Family Services (the Bureau). The hospital social worker reported that Carmen presented with slurred speech, heavy eyes, and erratic behavior, and that she expressed paranoid thoughts. Hospital records reflected that Carmen had brought L.C.B. to the hospital a few months earlier, identified Andrew as the baby's father, and disclosed that she suspected him of sexual molestation. But, during this later visit Carmen reported that L.C.B.'s father was deceased, and that Andrew was her boyfriend who took care of L.C.B. Carmen told the hospital social worker that her earlier report about Andrew stemmed from a concern that he had masturbated in front of the baby.

When the Bureau social worker arrived at the hospital, Carmen was upset and confused about why people were trying to take her baby away when she was being a good mother by seeking treatment for her. She told the social worker that she and Andrew had sexual contact in front of the baby only a couple of times and claimed that Andrew no longer was living with them in any case. She said she was in pain because she had knee problems and her brain was bleeding. When asked about her diagnosis, Carmen stated: "I have Osteoarthritis, Fibromyalgia, and a fractured skull. . . . I got hit by a car in July 2010." Carmen had trouble staying awake and appeared disoriented. When asked about Andrew's relationship to L.C.B., Carmen explained that she had recently figured out that L.C.B.'s father was actually John Gotti and that he had passed away, which was painful for her to talk about but involved a "gun to his head." Carmen said she had broken up with Andrew because he had "sexual problems."

Carmen was also interviewed by two Antioch police officers. She admitted to them that she had taken prescription medication the night before, and that she was also withdrawing from opiates. She confirmed again that Andrew was not L.C.B.'s biological father but stated that his name was on the birth certificate. L.C.B. was put under a temporary custody hold and placed in emergency foster care.

On September 3, 2014, the Bureau filed a juvenile dependency petition under section 300, subdivision (b), alleging that L.C.B. was at risk of serious physical harm because of Carmen's willful or negligent failure to protect her, or to provide for her needs as a result of her use of prescription drugs and mental health condition.

The Bureau's detention report documented four prior referrals. The first referral was made shortly after L.C.B. was born and alleged general neglect due to Carmen's withdrawal symptoms from opiates. The Bureau created a "safety plan" for the family, and referred them to Path II services. After two subsequent referrals, the family was referred to "Voluntary Family Maintenance." The most recent referral in July 2014 raised similar concerns to those alleged in the pending petition, but was closed because the safety plan was in place.

The social worker reported that she had met with Carmen and Andrew at their home, which was clean and raised no safety concerns. Andrew said he was not L.C.B.'s biological father, but he willingly signed her birth certificate and had been serving in the role of her father since her birth. He also stated that he had never engaged in sexual behavior in front of the baby. Carmen was more coherent and forthcoming. She described her lengthy medical history, listed her prescription medications, and denied taking anything else. Carmen explained that her behavior the previous day was because she had not slept and felt judged and attacked. She said that she would do whatever necessary to get L.C.B. back.

The detention hearing was held on September 4, 2014. Carmen and Andrew both appeared and the court appointed counsel for each of them, and for L.C.B. L.C.B. was detained, and the court ordered that Carmen receive substance abuse treatment pending

further proceedings. Andrew was declared an alleged father, a paternity inquiry was ordered, and he was denied visitation pending further order.

B. Jurisdiction and Disposition

The September 17, 2014, jurisdiction hearing was continued to appoint a guardian ad litem for Carmen. On September 22, Carmen appeared with a guardian ad litem and contested jurisdiction over L.C.B. On October 9, the court exercised jurisdiction over L.C.B. under section 300, subdivision (b), and authorized her placement with a maternal uncle. The matter was continued for disposition and a paternity status report.

A November 2014 disposition report recommended that the court declare L.C.B. a court dependent, and order reunification services for Carmen and for Andrew once he was granted presumed father status. The Bureau reported that Andrew had been living with Carmen when she was pregnant, attended L.C.B.'s birth, put his name on her birth certificate, and held the child out as his own.

The disposition report provided additional information about Carmen's medical problems and her relationship with Andrew. Approximately seven years prior, Carmen was hit by a truck and suffered a fractured skull and brain injury which affected her speech, movement and short term memory. As an adult, she had also been diagnosed with "Patellofemoral Syndrome Bilateral, Osteoarthritis in both knees, Pelvic Inflammatory Disease, Fibromyalgia, chronic headaches, depression with anxiety, Irritable Bowel Syndrome, Gastroesophageal Reflux Disease, and Poly-Substance Abuse, in remission." Carmen reported that she receives disability benefits because of her chronic pain syndrome and anxiety disorder.

Carmen and Andrew had been in a relationship for approximately six years, but they were temporarily separated when Carmen became pregnant with L.C.B. They reunited shortly thereafter, and Andrew claimed the child as his own. Andrew told the social worker that Carmen received a year of rehabilitation services after her accident, that she "sees things differently," and that she has mobility problems. Andrew cared for Carmen by transporting her to appointments, preparing her meals and assisting with

bathing and dressing. He also described himself as L.C.B.'s primary caretaker prior to her removal from the home.

At the time the disposition report was prepared, Andrew was living in his car, Carmen was staying with various family members, and the two were looking for housing together. The social worker provided them with housing assistance information. The Bureau had also made referrals for Carmen to a parenting class and drug testing. Carmen reported that she had attended a few classes before the session ended, and would finish the course when a new session began. She had yet to complete intake for drug testing, telling the social worker that the service provider failed to return her calls. She declined a referral for mental health services, stating she already had a mental health doctor. Weekly supervised visits between Carmen and L.C.B. had gone well, although one visit had to be cut short because Carmen appeared too heavily medicated to participate.

At a December 4, 2014 disposition hearing, L.C.B. was adjudged a dependent child. The paternity matter was continued because the results of Andrew's DNA test were unknown. Nevertheless, the court adopted the case plan proposed by the Bureau and ordered reunification services for both parents. The Bureau was ordered to continue supervised visits for Carmen and to provide Andrew with weekly visits, which could be unsupervised.

On December 22, 2014, the Bureau notified the court that DNA testing excluded Andrew from paternity and that he admitted he was not L.C.B.'s biological father, but he continued to hold her out as his own. Andrew was the only father L.C.B. had ever known and he was her primary caretaker when Carmen was not physically able to care for the child. On January 28, 2015, Andrew filed a "De Facto Parent Request." At a February 5, 2015 hearing on the matter, the Bureau advised the court that Andrew had also completed a voluntary declaration of parentage following L.C.B.'s birth and requested that the court elevate him to presumed father status. The court granted that request.

C. The Six-Month Review

The six-month review hearing was originally scheduled for May 14, 2015. The Bureau recommended terminating reunification services to both parents and setting a

section 366.26 hearing to establish a permanent plan for L.C.B. Carmen disagreed with this recommendation and the matter was continued for a contested hearing, which was held on July 1, 2015. At that hearing, the Bureau submitted its status review report and elicited testimony from two witnesses, Ms. Crespo who was the Bureau social worker, and Andrew.

1. The Status Review Report

The status report for the six-month review covered the period from November 11, 2014, through May 8, 2015. During several weeks of this reporting period, from March 10 until April 18, Carmen was in the hospital or a convalescent center recovering from double knee replacement surgery.

The Bureau reported that Carmen had not completed her parenting class, and she had tested positive or missed all but one of her drug tests. The social worker had been unable to contact Carmen's therapist to confirm her participation in mental health counseling. After she was released from a convalescent center, Carmen stayed with a family friend until she moved into a motel with Andrew. Andrew completed a 10-week parenting workshop, was working as a security guard, and was looking for housing for the family.

Both parents had regularly participated in weekly supervised visits with L.C.B. Andrew was a more interactive parent, while Carmen tended to sit back and watch. While Carmen was in the convalescent center, Andrew had unsupervised visits with L.C.B. at a park, which went well. Andrew also supervised a few visits between L.C.B. and Carmen at the convalescent center. The relative caregivers reported that when they picked L.C.B. up from the first visit, her diaper had not been changed and the parents had given her a lot of sugary food, which caused her to vomit. Also, at the end of the first visit Carmen was slurring her words and could not keep her eyes opened, and at the end of the second visit she was arguing with Andrew in front of L.C.B.

The Bureau opined that the likelihood L.C.B. could be returned home was not high. Carmen had failed to engage in services. She left messages for the social worker in slurred speech and she did not have stable housing. The Bureau was concerned that

Carmen was not capable of caring for L.C.B. because she could not get off her painkillers, and her physical limitations would prevent her from keeping up with a growing child. The Bureau was also concerned that Andrew was unable to determine when Carmen was so overmedicated that she would be a danger to L.C.B. Andrew appeared very committed to Carmen and it seemed unlikely that he would be able to separate from her to be a single parent for L.C.B.

2. The Social Worker's Testimony

Barbara Crespo testified she was assigned to this case in September 2014, drafted the May 2015 status review report, and continued to monitor the case thereafter. Crespo testified that in the month of May, three out of four of Carmen's drug tests were positive. In June, she failed to appear for two tests, tested negative once and positive once. She completed her parenting class at the end of May and she told Crespo that she was participating in therapy, although the Bureau had still not confirmed that report. On June 13, Carmen left a voice mail message for Crespo which sounded as though she was under the influence or intoxicated. During at least one supervised visit in June, she was slurring her speech and falling asleep. Carmen was currently living with an elderly relative with health issues, which raised additional concerns because family had reported that Carmen would take another person's medication if it was available to her.

Crespo testified that she last spoke with the parents two weeks before the hearing and, as far as she knew, Andrew was living in his car and was still together with Carmen. They presented themselves as a couple at visits and the social worker had seen them together in the community. Crespo recalled having two discussions with Andrew about the possibility of him separating from Carmen so that he could successfully reunify with L.C.B. as a single parent. On both occasions, Andrew responded that was not an option because he was dedicated to Carmen.

Crespo acknowledged that Carmen notified the Bureau at the very beginning of this case that she had knee problems, and she kept Crespo informed of her treatment plan, including the March 2015 surgery. During the time she was convalescing, Andrew made arrangements with the relative caregivers for Carmen's visits without any involvement

from the Bureau. After Carmen was released from the convalescent center, she still required assistance to get around. However, the Bureau did not consider providing her with transportation assistance to visits and other services because Andrew “has a car,” and, as far as Crespo was aware, he was able to take Carmen to appointments and visits.

Crespo recalled that Carmen had been very upset during the last week of April because she was not permitted to have visits with L.C.B. at the park. Crespo testified that she denied that request because she had not yet had the opportunity to see Carmen post-surgery to make sure she was physically capable of an outside visit. When Carmen came into the office for visits in May and June, she used a walker and cane and, although she grew stronger with time, she did not make another request for an outside visit. When Crespo checked in during some visits, Carmen was engaged with L.C.B.; she read her books, sang and talked with her and fed her snacks. She also changed L.C.B.’s diaper, which was something she had been unable to do earlier in her recovery period.

Crespo acknowledged receipt of a January 2015 letter from one of Carmen’s doctors that confirmed she had been receiving mental health services since October 27, 2014. Crespo left a few messages for the therapist, which were not returned. Carmen had reported that she did not have face-to-face contact with her therapist for about six weeks after her surgery, but there had been a few phone calls, and that she resumed her sessions in May. Crespo asked Carmen to provide a progress report from her doctor, but Carmen reported back that her therapist was on vacation.

Crespo testified that housing had been an ongoing problem for this family. Before the petition was filed, the Bureau had received a referral that “their housing was kind of on the shaky side,” and by the time the case was assigned to Crespo, Andrew was sleeping in his car and Carmen was moving from family member to family member. To address this problem, Crespo gave the family a list of low-income apartments in the county and referred Carmen to “a few apartment complexes that are specifically for the disabled, both physically and mentally.” Carmen was put on a waiting list for one of the places, but approximately two weeks before the contested hearing she received a letter informing her that she did not qualify for housing there because it was “strictly for people

with HIV, which is something they don't have." Aside from inquiring regarding the status of their housing, the Bureau did not provide the family with any other housing-related services.

Crespo testified that Carmen provided her with a May 11, 2015 letter from her primary care physician which described a treatment plan for Carmen to transition from narcotic prescriptions to non-narcotics. The social worker did not talk with the doctor directly, but she discussed the matter with Carmen, who informed her that the transition had started some time in May, and that she had also started working with a physical therapist and an occupational therapist, "hoping that those therapies may teach her how to alleviate some of the pain without using medication." Carmen had also provided the Bureau with proof that she visited the emergency room on June 13 and was provided with prescriptions for Lyrica to treat fibromyalgia and Suboxone which is used to help people withdraw from opiates.

When asked whether Carmen was in compliance with her case plan, Crespo's first response was that she had been unable to confirm that Carmen's therapist was actually providing mental health treatment, but she then acknowledged that the January 2015 letter from that doctor confirmed she was a mental health therapist. Thus, Crespo testified that, aside from establishing and maintaining stable housing, Carmen was in compliance with her case plan. However, in response to followup questions from the court, Crespo testified that Carmen had failed to comply with her plan by producing positive drug tests and having no-shows. Crespo also confirmed the Carmen had failed to comply with her case plan requirement to participate in a substance abuse treatment program. Later in her testimony, however, Crespo acknowledged that the Bureau had not referred Carmen for any type of substance abuse treatment.

Crespo testified that Andrew completed his parenting classes before he was even declared a presumed father, that he was nurturing and supportive during visits with L.C.B., that he actively engaged with her, and that her face would light up when they were together. When Carmen was in the hospital, Andrew had received unsupervised visits, but the foster parents were not supportive of that plan. For that and other logistical

reasons, after Carmen was released from the convalescent center, the Bureau had both parents visit L.C.B. together in a supervised setting at the Bureau's office. When asked whether the Bureau had considered separating the visits, Crespo testified, "Not really. Bottom line, they come in as a couple; they leave as a couple."

Crespo's most recent conversation with Andrew about the possibility of separating from Carmen took place approximately two months before the status review report was filed. She acknowledged that Andrew was not provided with any services to address the Bureau's concerns that he was unable to determine when Carmen was overmedicated, and that he would not be able to separate from Carmen if that was required to reunify with L.C.B. No type of therapy or codependency program was included in his case plan.

3. Andrew's Testimony

Andrew testified that during the time he and Carmen have been together she has had a "little bit" of an issue with respect to prescription pain medication. Although she followed her prescriptions, one of her pills would cause her to get "hot," and then she would start slurring her words. To his knowledge, however, she was not "over using pain medications."

Andrew confirmed that the social worker had talked to him about the prospect of separating from Carmen in order to reunify with L.C.B. and that he did not want that to happen. Andrew explained that he and Carmen "work as a couple, as a team and parents." He also testified that "if I was married to her, I wouldn't divorce her. I wouldn't leave someone. Would you? I mean, she's my other half." However, Andrew denied telling the social worker that he would not separate from Carmen if that became necessary, explaining "[o]bviously, I'm here to get our child back, so if it's to split up, I would gladly do that to get our child back." When asked how he conveyed this sentiment to the social worker, Andrew gave this response: "Obviously, I would still be a couple with the person that I'm with. I wouldn't say, you know, you cannot be around me. Or, basically, we wouldn't really separate. But to get my daughter back, obviously, she'd have to go through whatever she had to do and I would get my daughter back. [¶] But I've talked to [the social worker] plainly that, yes, we're trying to do this as a couple

because we actually did have a conversation that, yes, you guys need housing and get through all this together. She said together. She never really said separated. That's why we've been trying to do this together as a family."

D. The Trial Court's Ruling

At the conclusion of the hearing, the juvenile court followed the Bureau's recommendation to terminate services, and to schedule a section 366.26 hearing. Preliminarily, the court rejected the "notion" that the Bureau was somehow required to accommodate Carmen or give her more time because of the knee replacement surgery. The court reasoned that this case should not be evaluated in a "vacuum," and thus Carmen was accountable for the fact that before the dependency petition was filed, she failed to comply with a voluntary maintenance plan designed to address her substance abuse and mental health issues.

The court then found that, even putting aside time for recovery from surgery, Carmen repeatedly missed drug tests or tested positive for opiates after her treating physician changed her prescriptions to non-opiate medications. She also left voice mail messages for both the social worker and the foster parents that were completely incoherent. Also, aside from the January 2015 letter, there was "no evidence that [Carmen] continued to participate regularly in mental health treatment or made any progress in that treatment." In light of these circumstances, the court concluded that Carmen had made "absolutely no progress in addressing the issues that brought her and the child before this Court from the inception of this case."

As for Andrew, the court acknowledged that he participated in some services. However, the court found, "he has also made it clear that he is not intending to offer [L.C.B.] a safe home if that means it would just be he and [L.C.B.]" Andrew's testimony confirmed he is in a committed relationship with Carmen and, although he said he would leave her if necessary, he did not understand why that would be required or that Carmen actually has a substance abuse problem. Thus, the court found that, even though Andrew participated in some services, "he really shows a tremendous lack of any insight whatsoever as to why this case is even before the Court."

In a minute order generated on July 1, 2015 (the July 2015 order), the juvenile court found, among other things, that (1) reasonable services had been provided to both parents; (2) returning L.C.B. to the home of her parents would create a substantial risk to her well-being; (3) Carmen failed to participate regularly in her court ordered treatment plan; and (4) there was not a substantial probability that L.C.B. could be returned to the physical custody of her parents by October 9, 2015, even if services were extended to that date. Accordingly, the court terminated reunification services to both parents and scheduled a section 366.26 hearing.

E. The Petitions for Extraordinary Relief

Carmen and Andrew filed separate petitions in this writ proceeding. Andrew requests that the July 2015 order be set aside and that this court direct the juvenile court to return L.C.B. to his care or, alternatively, afford him with an additional period of reunification services. Carmen asks this court to set aside the July 2015 order and direct the juvenile court to extend the reunification period.

III.

DISCUSSION

A. Pertinent Statutory Provisions

With exceptions not relevant here, when a child is removed from parental custody, “the juvenile court shall order the social worker to provide child welfare services to the child and the child's mother and statutorily presumed father or guardians.” (§ 361.5, subd. (a).) In this case, when L.C.B. was removed from Carmen’s custody at the disposition hearing, Andrew was still only an alleged father and thus not legally entitled to reunification services. (*Ibid.*) However, since there was no dispute Andrew would qualify as a presumed father, the court adopted the Bureau’s recommendation to provide services to both parents even before Andrew formally acquired presumed father status.

When, as here, the court has ordered family reunification services to the parents of a child who was under the age of three on the date of the initial removal, those “court-ordered services shall be provided for a period of six months from the dispositional hearing as provided in subdivision (e) of Section 366.21, but no longer than 12 months

from the date the child entered foster care as provided in Section 361.49 unless the child is returned to the home of the parent or guardian.” (§ 361.5, subd. (a)(1)(B).)

At the six-month status review hearing, the juvenile court must “order the return of the child to the physical custody of his or her parent or legal guardian unless the court finds, by a preponderance of the evidence, 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.” (§ 366.21, subd. (e).)

If the dependent child cannot be safely returned to the home of removal at the six-month review hearing, the court has two potential options: schedule a section 366.26 hearing or extend additional services to the parents. In this regard, section 366.21, subdivision (e) states: “If the child was under three years of age on the date of the initial removal, . . . and the court finds by clear and convincing evidence that the parent failed to participate regularly and make substantive progress in a court-ordered treatment plan, the court may schedule a hearing pursuant to Section 366.26 within 120 days. If, however, the court finds there is a substantial probability that the child, who was under three years of age on the date of initial removal . . . may be returned to his or her parent or legal guardian within six months or that reasonable services have not been provided, the court shall continue the case to the 12-month permanency hearing.”

B. Andrew’s Request For Custody of L.C.B.

Andrew first contends that the juvenile court violated section 366.21, subdivision (e) by failing to “return” L.C.B. to his custody at the end of the six-month reunification period, arguing that the “record does not support the court’s finding that the return of the minor to the father’s care poses a substantial risk of detriment to her well being.”

The first problem with this claim is that Andrew erroneously posits that L.C.B. was removed from his custody. As discussed above, Andrew was only an alleged father when L.C.B. was removed from Carmen’s custody. Furthermore, although Andrew subsequently acquired presumed father status, he did so as a member of Carmen’s household, not as a noncustodial parent. Thus, contrary to the premise of Andrew’s first

claim of error, the juvenile court did not find that returning L.C.B. to Andrew's care posed a substantial risk of detriment. Rather, it found that returning L.C.B. to the home of her "parents" would create a substantial risk to her well-being. That finding is supported by substantial evidence of this family's ongoing struggles to resolve Carmen's problems with prescription drug abuse and mental health and to secure stable housing.

A second, related problem with Andrew's claim is that it does not appear that he ever made a request for sole custody of L.C.B. "At the dispositional hearing, a noncustodial presumed father is entitled to request custody, pursuant to section 361.2." (*In re T.G.* (2013) 215 Cal.App.4th 1, 6.) However, section 361.2 applies only to noncustodial fathers who have achieved presumed father status at the time of removal. (*In re Zacharia D.* (1993) 6 Cal.4th 435, 454-455.) In this case, when L.C.B. was removed from Carmen, Andrew could not have requested custody under section 361.2 because he was neither a presumed father nor a noncustodial parent. If, after Andrew acquired presumed father status, he made the decision to seek sole custody of L.C.B., it was incumbent on him to make that request to the juvenile court by filing a motion under section 388 for a hearing to consider new information and changed circumstances. (*In re Zacharia D.*, *supra*, 6 Cal.4th at p. 455.)

C. The Reasonable Services Findings

Both parents contend they were entitled to an additional period of reunification services under section 366.21, subdivision (e). As discussed above, section 366.21, subdivision (e) provides the juvenile court with two possible options when, as here, the child cannot be safely returned to the home of removal at the six-month review hearing: schedule a section 366.26 hearing or extend additional services to the parents. In this case, the juvenile court selected the first of these options by scheduling a section 366.26 hearing. To support its decision not to extend services to the 12-month review date, the court found that (1) Carmen had failed to make substantive progress in her case plan, (2) it was not reasonably likely that L.C.B. could return home if the service period was extended to 12 months, and (3) both parents received reasonable reunification services. We limit our review to the reasonable services findings because section 366.21,

subdivision (e) expressly provides that if the parents were not afforded reasonable reunification services, the juvenile court must continue the case to the 12-month hearing.²

The juvenile court's finding that the Bureau afforded these parents reasonable reunification services is reviewed under the substantial evidence test. (*Amanda H. v. Superior Court* (2008) 166 Cal.App.4th 1340 (*Amanda H.*)) "The 'adequacy of reunification plans and the reasonableness of the [Bureau's] efforts are judged according to the circumstances of each case.' [Citation.] To support a finding reasonable services were offered or provided, 'the record should show that the supervising agency identified the problems leading to the loss of custody, offered services designed to remedy those problems, maintained reasonable contact with the parents during the course of the service plan, and made reasonable efforts to assist the parents in areas where compliance proved difficult' [Citation.] 'The standard is not whether the services provided were the best that might be provided in an ideal world, but whether the services were reasonable under the circumstances.' [Citation.]" (*Tracy J. v. Superior Court* (2012) 202 Cal.App.4th 1415, 1426, italics omitted; see also *Amanda H.*, *supra*, 166 Cal.App.4th at p. 1345.)

Applying these principles, we conclude that the services afforded to these parents were deficient in several respects. First, L.C.B. was removed from Carmen's custody because of substance abuse and mental health concerns. Thus, substance abuse treatment and mental health counseling were requirements of Carmen's case plan. However, the record does not contain substantial evidence that the Bureau afforded Carmen with services designed to help her meet these plan objectives. Crucially, the Bureau did not

² The Bureau contends that both parents forfeited the right to challenge the reasonableness of their services because neither of them testified what services they should have received and neither of their attorneys expressly requested a finding that the services were unreasonable.

The record below demonstrates that both parents adequately preserved this issue for review. The contested six-month review hearing was held precisely because Carmen objected to the Bureau's recommendation to terminate reunification services. Furthermore, at the beginning and end of the contested hearing, counsel for each parent separately challenged the Bureau's recommendation to terminate services.

refer Carmen for substance abuse treatment. Nor did the Bureau make a reasonable effort to communicate with the mental health provider that Carmen had already secured when her plan was adopted. Indeed, the social worker's testimony demonstrates that the Bureau took an extremely passive role with respect to the substance abuse treatment and mental health components of Carmen's plan notwithstanding that services addressing these problems were vital for reunification to occur.

In its opposition to Carmen's writ petition, the Bureau appears to suggest that once Carmen declined a referral to a mental health counselor, the Bureau was excused from addressing this problem. We disagree; undisputed evidence establishes that Carmen promptly provided the Bureau with contact information for her mental health counselor, and there is no explanation in this record why the social worker failed to communicate with that doctor. The Bureau also takes the erroneous position that it provided reasonable substance abuse services by referring Carmen for drug testing. That service was not designed to facilitate reunification when unaccompanied by any actual treatment for Carmen's substance abuse problem. Furthermore, the Bureau penalized Carmen for multiple "no shows" without ever even considering providing her with transportation assistance notwithstanding her significant physical limitations.

Nor did the Bureau provide Andrew with services designed to address the problems which led to this dependency. Undisputed evidence establishes that Andrew fully complied with the requirements of his case plan. He quickly completed his parenting class, and he had consistently positive visits with L.C.B., both in a supervised and unsupervised setting. Unfortunately though, the Bureau did not provide Andrew with any services to assist him in addressing Carmen's substance abuse and mental health issues. Despite this fact, the Bureau convinced the juvenile court that Andrew should be denied additional services or a meaningful opportunity to reunify because he failed to demonstrate an understanding of Carmen's problems.

The Bureau contends that Andrew waived the right to challenge the adequacy of his case plan—as distinguished from the adequacy of the services afforded pursuant to that plan—because he did not appeal the disposition order. We are not persuaded by this

formulaic distinction; regardless what the case plan said, the services provided to Andrew were woefully inadequate to afford him a reasonable opportunity to reunify with L.C.B. Furthermore, when the disposition order was issued in this case, Andrew was an alleged father with very limited rights, who likely felt fortunate to receive any services at all. Indeed he promptly engaged in every service that was made available to him, and there is no evidence that the social worker gave him any warning that something more was expected of him. Nevertheless, he was penalized for failing to comprehend Carmen's problems notwithstanding the fact that he was never provided any services addressing those issues.

The services provided to these parents were unreasonable for a second independent reason: there is insufficient evidence that the Bureau made an effort to assist this family in areas where case plan compliance would be difficult. (See *Tracy J.*, *supra*, 202 Cal.App.4th at p. 1426.) For example, the Bureau was always aware of Carmen's chronic pain and physical impairments, including her specific need to have double knee replacement surgery during the six-month reunification period. Unquestionably, that surgery hindered Carmen's ability to make progress on her case plan. Instead of acknowledging this fact, the Bureau appears to have used Carmen's surgery as an excuse to limit services, not just temporally, but substantively. For example, the social worker testified that the Bureau simply left it to Andrew to arrange visitation for Carmen while she was in the convalescent center. The Bureau also placed the burden on Andrew to provide Carmen with transportation to visits, drug testing, and other appointments.

The Bureau maintains that we should not consider the period of this case during which Carmen was recovering from knee surgery because the juvenile court "excused" Carmen for her noncompliance during that time frame. But the question here is whether the Bureau complied with its statutory obligation, not whether Carmen complied with her case plan. Carmen was statutorily entitled to six months of reasonable services and the knee surgery did not excuse the Bureau from providing those services. Furthermore, it appears that what the juvenile court actually found was that the Bureau was not required to "accommodate[]" Carmen's knee surgery. We disagree. This surgery exacerbated the

pain management and prescription drug problems, which led to the dependency. Those problems in turn were inextricably intertwined with Carmen's traumatic brain injury. The reunification services afforded to Carmen should have been tailored to accommodate the limitations of this parent with special needs. (See, e.g., *In re Elizabeth R.* (1995) 35 Cal.App.4th 1774, 1792.)

Another prominent example of the Bureau's failure to provide reasonable assistance to this family pertains to their lack of stable housing. As Barbara Crespo testified, the Bureau had been aware that stable housing was a significant issue for this family before the dependency petition was filed. Thus, a case plan objective for both parents was to maintain six months of stable housing. Yet, at the contested hearing, Crespo acknowledged that the only housing assistance the Bureau provided was a list of low-income apartments. Carmen chose an apartment from that list which the Bureau had erroneously identified as appropriate to accommodate Carmen's disabilities. However, near the end of the reunification period, the family was removed from the waiting list for that apartment because it was exclusively for people suffering from HIV. To make matters worse, because the Bureau made an erroneous referral, the family was penalized for failing to secure stable housing.

Ignoring the case-specific circumstances which frame our review, the Bureau argues that it provided reasonable services because it gave Carmen and Andrew "the path to travel and a map of how to get there but [they] failed to take all but a few steps down the road to get where they needed." Carmen may have been told what to do, but she was not provided with the services necessary to accomplish those objectives. Andrew followed the map that the Bureau provided to him, but that path led him to a dead end.

The Legislature has charged the Bureau, not the parent, with providing reasonable reunification services. (*In re Taylor J.* (2014) 223 Cal.App.4th 1446, 1452 (*Taylor J.*); § 361.5, subd. (a).) In *Taylor J.*, the court found that an agency failed to provide reasonable family reunification services by giving the parent a partial list of resources and leaving it to her to secure the services required by her court ordered reunification plan. (223 Cal.App.4th at p. 1452.) Comparable deficiencies appear in the present case.

The family pursued the Bureau's referral for housing, but it turned out to be available only to families impacted by HIV. Carmen obtained her own mental health provider, but the Bureau never contacted that doctor, notwithstanding that it had more than six months to do so. Carmen was ordered to participate in substantive abuse treatment, but the Bureau did not even refer her to a treatment program. Furthermore, despite Carmen's extremely serious physical limitations, the Bureau did not offer her transportation or indeed any type of logistical assistance which someone in her position would likely need in order to follow up on referrals and meaningfully participate in the services to which she was entitled. As for Andrew, not only did the Bureau fail to provide him with services that addressed the problems of this family, but it improperly relied on Andrew to do the Bureau's job by facilitating Carmen's access to services which the Bureau should have provided.

The juvenile court may not refer a case for a section 366.26 hearing unless it finds by clear and convincing evidence that reasonable services have been provided. (*In re Mark L.* (2001) 94 Cal.App.4th 573, 585; § 366.21, subds. (e), (g)(4).) "The courts have defined clear and convincing evidence as evidence which is so clear as to leave no substantial doubt and as sufficiently strong to command the unhesitating assent of every reasonable mind. [Citations.] It has been said that a preponderance calls for probability, while clear and convincing proof demands a high probability. [Citations.]" (*In re Terry D.* (1978) 83 Cal.App.3d 890, 899, italics omitted.) Here, there is no substantial evidence supporting the juvenile court's finding, required to be made by clear and convincing evidence, that reasonable services had been provided to enable these parents to reunify with L.C.B.

IV.

DISPOSITION

Let a writ issue directing the juvenile court to (1) vacate the July 1, 2015 order terminating reunification services to the parents and setting a section 366.26 hearing; and (2) enter a new order providing both parents with six months of appropriate reunification

services. This decision is final immediately as to this court. (Cal. Rules of Court, rules 8.452(i), 8.490(b)(2).)

RUVOLO, P. J.

We concur:

REARDON, J.

RIVERA, J.

A145815, *In re L.C.B.*