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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION TWO

K.M. et al.,
Petitioners,

v.

THE SUPERIOR COURT OF CONTRA
COSTA COUNTY,

Respondent;

CONTRA COSTA COUNTY CHILDREN
AND FAMILY SERVICES BUREAU et
al.,

Real Parties in Interest.

A145872

(Contra Costa County
Super. Ct. Nos. J14-00972,
J14-00973,
J14-00974,
J15-00425)

K.M. (mother) and Larry B. (father) each petition for an extraordinary writ after the juvenile court terminated reunification services regarding three children, bypassed reunification services regarding a fourth, and scheduled a permanency planning hearing for each child pursuant to Welfare and Institutions Code section 366.26.¹ Mother and father both argue primarily that there is no substantial evidence that respondent Contra Costa County Children and Family Services Bureau (Bureau) provided them with reasonable services and, therefore, that the juvenile court erred in terminating their reunification services. They also argue there was no substantial evidence to support the

¹ All further statutory citations herein are to the Welfare and Institutions Code unless otherwise stated.

juvenile court's decision to bypass reunification services. We conclude the juvenile court made no error and deny the petitions.

BACKGROUND

Mother's and father's petitions relate to the juvenile court's rulings in dependency proceedings regarding four children, Elijah J., Royce B., O.B. and Maurice B. Mother is the mother of all four; father has been found to be the presumed father of the youngest three, but has no status in the proceedings regarding the oldest, Elijah.²

In September 2014, Elijah, then six years old, mother, who was pregnant at the time, and father were living together with Royce and O.B., who were two years and one year old respectively, the sons of mother and father and the half-brothers of Elijah. The Bureau filed dependency petitions regarding Elijah, Royce and O.B. pursuant to section 300 after father reportedly punched Elijah in the face and mother and father had been involved in multiple incidents during the previous year and a half. In April 2015, after mother gave birth to Maurice, the Bureau filed a dependency petition regarding Maurice based on allegations like those it made in its first three petitions.

I.

Events Prior to September 2014

In the year and a half before September 2014, the Bureau and the police investigated multiple incidents involving mother and father. In March 2013, Elijah told a social worker that he had a mark on his neck from his father whipping him with a belt, that his mother did nothing about it, and that both father and mother whipped him. Father denied hitting Elijah and said Elijah had fallen. Father and mother were referred to "Path Two services."

In June 2013, mother tested positive for methamphetamine after giving birth to O.B. The Bureau offered mother and father voluntary family maintenance services, including for domestic violence and substance abuse. Mother participated briefly in an

² Elijah's biological father resided in Texas and did not appear in the proceedings below.

outpatient substance abuse treatment program, but missed several classes and was dropped from the program. Father said he was receiving Veteran Services Administration services, but refused to verify this. Neither parent agreed to drug testing. The Bureau closed the case in early 2014.

In July 2013, police, responding to 911 calls from mother and father, reported the two had a “heated . . . argument” with children present. Mother told police that father had threatened to hit her over the head with a small stereo speaker. The police smelled alcohol on father, whose speech was slurred. Father submitted to a breathalyzer test, which indicated he had a 0.09 percent blood alcohol concentration. Mother admitted that she had smoked methamphetamine a week earlier.

In March 2014, father called the police because, he told the investigating social worker, mother was verbally abusing him after drinking a bottle of liquor. The police reported mother “was under influence.” Father said she had been discharged from a hospital a couple of days earlier after being diagnosed with paranoia and schizophrenia. The Bureau again referred the two to substance abuse services and treatment, and to an early intervention outreach specialist to help them find an inpatient facility.

In May 2014, the police responded to two calls from father, who said mother had struck him and, he believed, was using drugs. A court issued an emergency protective order that barred mother from contact with father and the children, and gave father temporary custody of the children. Mother violated that order in June 2014 by entering the family residence. The police were called and, when mother refused to leave the residence, they arrested her.

As of September 2014, father and mother each had a history of trouble with the law. Father had a series of criminal convictions between 1981 to 2014, including two for infliction of corporal injury on a spouse/cohabitant (Pen. Code, § 273.5, subd. (a)), one occurring in June 2014. Mother had a history of arrests from 2010 to 2014, including for battery of a spouse, assault with a deadly weapon and violation of a court order to prevent domestic violence.

II.

The Dependency Proceedings Regarding Elijah, Royce and O.B.

In its petitions regarding Elijah, Royce and O.B., the Bureau alleged pursuant to section 300, subdivision (b) that mother and father engaged in a violent relationship in the presence of their children, had substance abuse problems, and/or that mother failed to protect Elijah from father. In its petitions for Royce and O.B., the Bureau also alleged pursuant to section 300, subdivision (j) that their half-sibling, Elijah, had sustained injuries when father hit him.

A. Detention and Jurisdiction

In its September 2014 detention/jurisdiction report, the Bureau reported that on August 29, 2014, mother, father, Elijah, Royce and O.B. were watching television in the living room when mother went upstairs. She reported that she heard Elijah scream, ran to him and saw he had a swollen eye. Elijah looked at father and said, “[H]e punched me.” Mother called 911 and father left the home.

A doctor later reported that Elijah had facial bruising, a left orbital skull fracture and a chipped tooth. Elijah told the social worker that father hit him because Elijah wanted to go upstairs to mother. Elijah also said he had seen father “whoop” Royce with a belt and, when mother tried to stop him, had seen father slap her, which was not the first time Elijah had seen him do so. Elijah also said that he had seen father drink “ ‘lots of beers.’ ”

Mother said she and father had been in a violent relationship for four years, but he previously had not abused the children. Her affect was withdrawn. She said she was diagnosed with depression and anxiety more than 10 years before, took depression medication and had not taken illegal substances for about a year. She was living with friends and was “done with [father] period.”

Father denied hitting Elijah, mother or Royce, and said Elijah “ ‘fell on the floor.’ ” His speech was slurred. He said he was a disabled veteran and had chronic

pain, for which he took oxycodone, methadone and morphine. He also said mother had “a diagnosis of ‘paranoia, schizophrenia and long term meth use.’ ”

Father was arrested for assaulting Elijah. He told police that Elijah fell on the stairs, and mother said, “ ‘we gotcha now,’ ” and called the police. The accusations were “a conspiracy” to send him to jail for Labor Day weekend so mother could smoke methamphetamine and drive his vehicles. Mother obtained a protective order requiring him to stay 100 yards from her and the children.

The Bureau recommended the children be detained in an out-of-home placement. The court ordered this at a detention hearing, as well as that mother and father be referred for alcohol and drug testing, substance abuse treatment, parenting education and domestic violence counseling pending further proceedings. The court asserted jurisdiction over the three children as dependents of the court.

B. The Bureau’s Disposition Report

In its disposition report, filed in January 2015, the Bureau reported that the children were living in a certified family foster agency home in Stanislaus County. Father was incarcerated in county jail on charges of violating probation, child abuse and inflicting injury on a child.

The Bureau further reported that mother said she began using methamphetamine when she was about 18 years old, subsequently stopped using, but started using again during her relationship with father. She said she had “a problem” with alcohol, father became violent when drinking, and she sometimes was the aggressor in altercations with him, which sometimes occurred in the children’s presence. Mother was visiting regularly with the children, and said she desired to change her behaviors and had joined a domestic violence support group.

The Bureau stated that it was “very concerned as to the physical abuse that Elijah endured and the domestic violence between [mother and father]. Additionally, it is of grave concern that a new referral was made after the children had been detained in regard to Elijah disclosing that [father] came to the residence and slapped the child in the face when the child asked him to leave. The child disclosed that [father] went to his truck,

and returned with a canister of gasoline, poured gasoline on the porch and lit it on fire.” The Bureau continued, “It appears that [father] poses as a severe safety risk to the children and mother. All precautions should and will be taken to protect the children from [father] in the future.”

The Bureau had provided referrals for mother to services that addressed domestic violence and substance abuse. Although its social worker stressed to mother that she should enter a residential substance abuse treatment program as soon as possible and advised her to call local programs daily to gain admission, mother did not do so and said she had her own plan. She said she was participating in a domestic violence support group program and had obtained a restraining order against father.

The Bureau recommended that mother and father be offered reunification services. It proposed that each of their case plans require completion of a domestic violence counseling program, individual mental health counseling, a parenting education class and an inpatient substance abuse treatment program, and that each participate in random drug/alcohol testing and a 12-step program.

The Bureau recommended each parent be allowed visitations with their children. However, it only proposed a schedule for mother.

C. The January 2015 Disposition Hearing

Prior to the disposition hearing, father objected to his proposed case plan because it required him to participate in services that were unavailable to him in county jail. He also pointed out that the Bureau had denied him visitations and objected that it had not recommended any for him in its disposition report.

At the start of the January 2015 disposition hearing, the juvenile court stated that the Bureau was now proposing mother have a minimum of one one-hour visit per week, which could be supervised, and up to four consecutive overnight visits so long as they did not interfere with Elijah’s school. The Bureau also recommended father be allowed one supervised visit with Royce and O.B. to start. The court was inclined to order that father have visitations at a minimum of one hour two times a month, supervised, while he was in custody, subject to reconsideration if he was released from custody.

The court stated that it could not reach the official in charge of inmate services to determine what services were available to father in county jail. It reserved ruling on father's visitations and case plan until that official appeared to explain the services available, and it adopted the Bureau's other recommendations, which included that the Bureau had made reasonable efforts to return the children to a safe home.

By the next hearing, on February 2, 2015, father was out of custody and objected to the Bureau's proposed case plan only because it required that he participate in an inpatient substance abuse treatment program, which he contended was not justified by the evidence. The court ordered that he participate in an outpatient program and be required to enter an inpatient program if he tested positive or missed a required test, that he have an hour of supervised visitation per week with Royce and O.B., and otherwise adopted the Bureau's recommendations. This included the court's finding that the Bureau had made reasonable efforts to return the children to a safe home.

II.

The Dependency Petition in Maurice's Case

In April 2015, the Bureau filed a section 300 petition regarding Maurice within days of his birth. It alleged pursuant to section 300, subdivision (j) that father had physically abused Elijah and that mother and father had engaged in domestic violence in the presence of Maurice's siblings, resulting in open dependency cases regarding these children.

A. The Bureau's Detention/Jurisdiction Report

In its April 2015 detention/jurisdiction report, the Bureau reported that in September 2014, its social worker gave mother referrals for various inpatient substance abuse programs and for a substance abuse liaison who could assist her in getting into treatment more quickly. In December 2014, its social worker gave mother referrals, drug testing instructions and reviewed her case plan with her. The social worker emphasized to mother the importance of following her case plan and found she frequently had to explain the reason for Maurice's referral because mother did not appear to comprehend "her contribution towards the present outcome."

In December 2014, mother said she was calling two inpatient substance abuse treatment programs. The social worker suggested mother also call Wollam House. In February 2015, mother said Ujima and Wollam House were full; in April 2015, she said she was waitlisted for two programs. The social worker told her Wollam House had a bed for her and that she could have had outpatient treatment until she entered an inpatient program.

Father told the Bureau that he had started domestic violence and parenting classes and was seeing a mental health provider. He said he was prescribed Valium and Hydrocodone for back pain and did not engage in any substance abuse.

The Bureau wrote that between December 2014 and March 2015, mother missed twelve drug tests, purportedly because of her phone and lack of transportation; she took seven with negative results. After release from custody, father missed three tests and took six, testing positive twice for benzodiazepines.

The Bureau also reported that in March 2015, mother told the social worker in a phone call that she and father were in the process of having the restraining order reversed. The social worker heard father in the background and expressed concern that mother and father were violating the order. Father and mother denied living together since his release from jail, but father said they had had the restraining order reversed so he could support her during the last month of her pregnancy.

B. Detention and Jurisdiction Hearings

At the detention hearing, the court ordered Maurice's detention and placement outside the home.

Mother entered the Rectory inpatient program on April 20, 2015, and was terminated from it on May 5, 2015, before the May 2015 jurisdiction hearing. At the hearing, the Bureau's counsel made an offer of proof that the Bureau's social worker, if called to testify, would say that mother had been released from the Rectory program due to a positive test for methamphetamine.

Father's counsel said father had completed a parenting class, was enrolled in a domestic violence class and had begun individual counseling. Counsel submitted proof of these matters.

The court amended the petition to also allege under section 300, subdivision (b) that mother had a substance abuse problem that placed Maurice at substantial risk of harm. It found both parents had missed court-ordered drug tests, which, therefore, were presumed to have positive results, and "applaud[ed]" father for participating in a domestic violence program, but found this was insufficient to address father's "very serious acts of violence." It sustained all the petition allegations.

III.

The Court's Denial of Reunification Services

A. The Bureau's June 2015 Disposition Report for Maurice

In its June 2015 disposition report for Maurice, the Bureau reported that father missed a May 26, 2015 meeting with a Bureau social worker to discuss his case plan goals and progress. Mother came for hers the next day accompanied by father, who was not allowed to sit in on the meeting. Mother had a flat affect and gave one- or two-word answers to most questions. She said she was unemployed, but was looking for work, that a job would enable her to stay clean and sober and that the Rectory program had not helped her much. The Bureau also reported that she had not sought regular prenatal care until her last month of pregnancy with Maurice.

The Bureau further reported that between November 29, 2014, and April 27, 2015, mother missed ten drug tests and took nine that had negative results. Father took four tests that were negative, tested positive for benzodiazepines and marijuana on one occasion, tested positive on separate occasions for benzodiazepines and marijuana and missed seven tests.

The Bureau asked the court to bypass reunification services for mother and father pursuant to section 361.5, subdivision (b)(13) and set a section 366.26 hearing. It opined that "offering reunification services to the parents at this time would not be in [Maurice's] best interest. Both parents have a significant and chronic substance abuse

problem. Despite many efforts to assist this family and to engage them in services, neither parent has demonstrated that they are willing and able to seek appropriate treatment and care to remedy their substance abuse problems.”

In June 2015, the court continued the disposition hearing because both mother and father sought to contest the Bureau’s recommended disposition.

B. Appointment of a Guardian Ad Litem for Mother

At the June 2015 disposition hearing, mother’s counsel requested a hearing on whether a guardian ad litem should be appointed for mother. The court held the hearing under seal and found by a preponderance of the evidence that a guardian ad litem should be appointed. At a subsequent hearing the court did so, and also ordered that it would hold any contested six-month review hearing for Elijah, Royce and O.B. and the contested disposition hearing for Maurice at the same time.

C. The Bureau’s Six-Month Status Review Report for Elijah, Royce and O.B.

In its six-month status review report for Elijah, Royce and O.B., the Bureau reported that father was awaiting sentencing on charges of being in violation of probation, child abuse and inflicting injury on a child. Mother was still seeing father despite the protective order against him.

Elijah told his foster parent that he had seen his mother “doing drugs, and she would get drunk and was really scary. She would hit people and, ‘she tried to cut [father], but [father] cut her.’ ” Elijah said he had seen his mother on one occasion “hitting his Godmother over and over again” and his father breaking lights and windows out of the family car when he became angry and violent.

The Bureau reported that in May 2015, mother said, “I haven’t done anything,” when asked about her participation in services. Mother also had missed four required drug tests that month.

The Bureau further reported that mother tested positive for marijuana when she entered the Rectory inpatient program in April 2015 and was discharged from it after testing positive for methamphetamine. She re-entered the program on June 12, 2015, and a Rectory counselor reported that she was doing well.

The Bureau also stated that father had successfully completed a parenting class and was enrolled in a 52-week domestic violence class, but was “on the edge of being exited out of the program” because he had missed four or five of nine classes. Father had not submitted verification of his attendance at a 12-step meeting or his participation in any counseling nor had he completed a substance abuse program. Father had missed two drug tests in May and tested negative at two others that month.

The agency recommended that reunification services be terminated because the parents had not made significant progress on the issues that placed Elijah, Royce and O.B. at risk. Father had violated the restraining order by reuniting with mother, had not been compliant with drug testing and had missed many of his domestic violence classes. He had “not demonstrated that he has taken responsibility for his actions” and still denied his violent acts. Despite mother repeatedly being told of the importance of following her case plan and being given numerous resources to do so, she had not done anything. While mother had recently re-entered the Rectory, she had not demonstrated a significant change in her behavior. Also, the Bureau wrote, “the children have extensive needs and have endured a significant amount of trauma as the result of the choices that the parents have made. The children need permanency, stability, and safety.”

D. Declarations Filed for Mother and Father

On June 25, 2015, separate declarations were filed with the court in the names of mother and father, purportedly filed by mother’s counsel. Mother’s declaration stated that she “may have been a little premature” in reporting to police in August 2014 that father had engaged in child abuse and that she had never witnessed such abuse. It also stated that mother had been “treated like a criminal” since the allegations against father had been made, the dependency proceedings were neither fair nor impartial, the Bureau had not provided mother with adequate resources or guidance to complete her case plan, her children were never in danger, she had been working on herself and she wanted her children placed with family immediately.

Father declared, among other things, that the Bureau’s reports had been “repetitious and redundant” of the same issues since September 2014, his homelessness,

unemployment and loss of disability checks had interfered with his ability to do what was required of him, the court had no jurisdiction over Maurice as a newborn, some of father's drug test appearances were wrongly listed as no-shows when an attendant was unavailable, the Bureau had made false allegations without asking him about them, there was no substantial evidence that the children were at risk, his case plan was unnecessary, the reunification services were negative and not geared towards his family's needs and his was "a case of false allegations and a babbling 6 year old who craves attention."

E. The Denial of Services and Scheduling of a Section 366.26 Hearing

On July 13, 2015, the court held a combined six-month review hearing for Elijah, Royce, and O.B. and a disposition hearing for Maurice. Mother's counsel said that she and mother previously had not seen the recently filed declarations and mother did not appear to have signed hers. Father's counsel said she also had not previously seen the declarations. Father said in response to questions that he prepared and signed his declaration, mother signed hers, and he filed them.

Bureau social worker Catherine Gates, who worked on Elijah's, Royce's and O.B.'s cases, testified that she encouraged mother to enroll in a residential substance abuse program, gave her referrals and contact information for a substance abuse liaison who could help her get admitted into one and referred mother for general mental health counseling. Asked if she referred mother for a mental health assessment, Gates said: "No, but typically those are done by the therapist or counselor." She said she had concerns about mother's cognitive ability because she had to repeat "with [mother] over and over again the same things," but she was not concerned that mother could not understand how to contact service providers or arrange for services.

Gates said that she learned on June 30, 2015, that mother was no longer in the Rectory program because she had broken rules and not met program requirements. Mother had missed six to eight visits with the children since October 2014. She was sometimes appropriate during visits, but sometimes discussed the case with them and did not adhere to visit rules. Mother had initially been allowed phone calls with the children,

but lost this privilege because she discussed the case with them and tried to learn the location of the foster home.

Gates testified that she did not visit father while he was in custody. In February 2015, after his release, she reviewed his case plan with him, provided him with referrals for parenting classes, individual mental health counseling, domestic violence education and support, anger management, random drug testing, transportation and substance abuse treatment. She did not meet with him again until May 2015, but spoke with him by phone twice in February 2015 and once in April 2015. He did not show for his scheduled meeting in May 2015; when he came with mother to her meeting, Gates tried to also meet with him, but could not find him.

The Bureau called father as a witness and asked him about the declarations he filed. Father said he authored mother's declaration and typed her name at the bottom of the page, but that she signed it. The court found that mother's counsel did not prepare the declarations and that father signed mother's declaration.

Father also testified that since April 2015 he was seeing a therapist once or twice a month through the Department of Veterans Affairs and submitted evidence of doing so. He said he discussed with his therapist anger management, domestic violence and self-control, but that they were not problems for him.

Nadine Hendricks, the social worker in Maurice's case, testified that Maurice's doctor reported that Maurice showed signs of fetal alcohol syndrome. Also, Hendricks had not noticed a problem with mother's cognitive ability. When she spoke to mother earlier that day, Hendricks thought mother was "very awake and alert, very oriented to time and space, and I believe she's probably not been using . . . because of how she looks. I think sometimes she didn't look quite that much. It looks like maybe she was coming down from something or had used. But as far as cognitive, I don't—I don't know about the cognitive." When asked if mother seemed to understand the services to which she was referred and why she needed them, Hendricks said, "What I observed a little bit is she kind of emotionally shuts down. Not that she's not cognitively hearing it, but that

she kind of emotionally shuts down so it's hard to engage her and explain it to her, so you have to explain it to her multiple times.”

Mother's counsel asked the court to order reunification services for mother in all the children's cases “in large part because . . . we think that mother has displayed some form of a disability, although we don't know exactly what type, but one where the social worker has had to repeatedly tell mother the same things over and over again. And we're not certain she's been able to understand the services that have been offered to her and the reason . . . that those services were offered to her.” Mother's lack of progress was due to “some sort of mental health issue.”

Father's counsel asked the court to order reunification services for father regarding Royce, O.B. and Maurice because father had made “substantial progress” on his case plan by completing a parenting class and being involved with therapy and a domestic violence class, and because he had consistently visited his children. Counsel argued the Bureau had not provided reasonable services while father was in custody from September to February, and thereafter provided inadequate services and had minimal contact with him, sometimes at his initiation.

The court rejected mother's and father's requests for more reunification services because neither had meaningfully participated in the case plan. It stated: “[T]he best evidence of [father's] complete and utter failure to address the issues that brought this family before the Court are his own words, both in his declaration and the one that he forged [¶] I'm not sure what father has been doing with his time, but it certainly hasn't been engaging in any services in a meaningful way to acknowledge that it is his violence which is one of the primary issues that brought this matter before the Court. [¶] He has four prior criminal convictions all relating to his acts of violence, and in this particular case, he punched a little child in the face so hard that he fractured a bone in that child's face. And for him to believe that he has somehow been denied reasonable services is just completely contrary to the record here.”

“I find that the department in this case bent over backwards to offer services to both parents, including father, even while incarcerated. But then you look and say, what

did dad do once he got released from custody? Absolutely nothing. He hasn't done anything meaningful whatsoever to address these issues, and apparently he believes he has no issues.”

“As it relates to mother, it quite frankly is rather tragic that Mom has delayed for so long getting into services. It's been clear from the beginning that she suffers from a rather significant substance abuse issue, and when you look into the underlying history as thoroughly set forth in the disposition report for Maurice, this family has been offered Path Two services, voluntary family maintenance services, and now full-on family reunification services. [¶] And unfortunately, neither parent, including Mom, who I believe loves her children but I also believe she's in a state of paralysis as it relates to dealing with her substance abuse issues and mental health concerns, neither has done anything.”

The court terminated reunification services regarding Elijah, Royce and O.B. It denied reunification services regarding Maurice pursuant to section 361.5, subdivisions (b)(10) and (13) and set a section 366.26 hearing for November 9, 2015, in all four cases.

Mother and father subsequently filed their writ petitions, each requesting a stay of the proceedings below. We issued an order to show cause, to which the Bureau filed an opposition which we deemed to be a return. We declined to stay the proceedings below.

DISCUSSION

I.

There is Substantial Evidence That the Bureau Provided Reasonable Services Regarding Elijah, Royce and O.B.

Mother and father each argue the juvenile court should not have terminated their reunification services because there was no substantial evidence the Bureau provided reasonable services. We disagree.

A. Legal Standards Regarding the Providing of Reasonable Services

Section 361.5, subdivision (a) provides that 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” when the court removes a child from a parent’s custody. At the six-month status review hearing for children such as Elijah, Royce and O.B.,³ the juvenile court may schedule a section 366.26 hearing if it finds by clear and convincing evidence “that the parent failed to participate regularly and make substantial progress in a court-ordered treatment plan.” (§§ 361.5, subd. (a)(1)(B) & (C), 366.21, subd. (e).) However, if the court finds “that reasonable services have not been provided,” it must continue the case to the 12-month permanency hearing. (§ 366.21, subd. (e); *In re J.P.* (2014) 229 Cal.App.4th 108, 121–122.)

To be clear and convincing, “ ‘evidence must be so clear as to leave no substantial doubt.’ ” (*In re Monica C.* (1994) 31 Cal.App.4th 296, 306.) “Services will be found reasonable if the [Bureau] has ‘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 (such as helping to provide transportation . . .).’ ” (*In re Alvin R.* (2003) 108 Cal.App.4th 962, 972–973.) “The adequacy of reunification plans and the reasonableness of the [Bureau’s] efforts are judged according to the circumstances of each case.” (*Robin V. v. Superior Court* (1995) 33 Cal.App.4th 1158, 1164.) “In almost all cases it will be true that more services could have been provided more frequently and that the services provided were imperfect. 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.” (*In re Misako R.* (1991) 2 Cal.App.4th 538, 547 (*Misako R.*))

We review an order terminating reunification services to determine if it is supported by substantial evidence. (*Kevin R. v. Superior Court* (2010) 191 Cal.App.4th 676, 688 (*Kevin R.*)) “In making this determination, we review the record in the light most favorable to the court’s determinations and draw all reasonable inferences from the

³ That is, children under three years old as of the date of removal (Royce and O.B.) or a child who is a member of a removed-sibling group that includes a child under three years old (Elijah). (§ 366.21, subd. (e).)

evidence to support the findings and orders. [Citation.] ‘We do not reweigh the evidence or exercise independent judgment, but merely determine if there are sufficient facts to support the findings of the trial court.’” (*Id.* at pp. 688–689.)

B. There is Substantial Evidence the Bureau Provided Mother with Reasonable Services Regarding Elijah, Royce and O.B.

Mother argues that “[t]he record is clear that [she] was not mentally functioning in the manner of a standard parent would [*sic*] in a reunification case.” She contends the Bureau should have done more than it did to assess her mental capacities and, therefore, there is no substantial evidence that it provided her with reasonable services regarding Elijah, Royce and O.B.

Mother’s argument is unpersuasive. She refers only to evidence that she believes supports her position and ignores that which is substantial evidence in support of the juvenile court’s decision. However, we do not reweigh the evidence or exercise our own judgment about it, but simply determine if there are sufficient facts to support the juvenile court’s ruling. (*Kevin R.*, *supra*, 191 Cal.App.4th at pp. 688–689.)

Mother first contends she was hospitalized “for psychosis” in March 2014, five months before the children were removed from her custody. She bases this on a document *father* submitted in his July 2015 request for a change of the court’s order *after* the court terminated mother’s reunification services. Mother does not establish that the Bureau knew of this “psychosis” diagnosis when it provided services to mother (she told the Bureau that she had been treated for depression and anxiety more than 10 years before), nor does she challenge the court’s rejection of father’s request.

In any event, mother ignores that the medical recommendation in this same document focused on her *substance abuse*. The document indicates she was hospitalized because she also suffered from methamphetamine abuse. She was discharged a week later with the recommendation that she “begin another rehab program for her substance abuse immediately upon returning home and that she be observed over time to see if she does have any elements of depression. She did not show that here to the extent that

would warrant antidepressant medications. She should be followed by her county mental health services.”

The Bureau provided services that were consistent with this recommendation to mother after her children were removed from her custody in September 2014. As the Bureau’s social worker, Catherine Gates, testified at the disposition hearing, the Bureau repeatedly gave mother referrals, and urged her to receive treatment, for her substance abuse. Gates’s testimony also indicated that the Bureau referred mother to general mental health counseling, understanding that the therapist or counselor would determine if she needed a further mental health assessment.

Mother next refers to Gates’s testimony that she had “concerns” about mother’s “cognitive abilities,” and to the testimony of the Bureau social worker responsible for Maurice’s case, Nadine Hendricks, that mother appeared to emotionally shut down. Mother’s selective citing of the record again ignores substantial evidence in support of the court’s conclusion that the Bureau provided reasonable services. This includes Gates’s testimony that she did not know if her need to repeat things to mother was “the result of . . . substance abuse or what, cognitive, I don’t know,” that Gates did not have any concerns about mother’s ability to contact therapists, and that Hendricks did not think mother was not cognitively hearing her.⁴

Mother also asserts that her “case plan contained nothing about her receiving a psychological or mental health evaluation despite the concerns about her cognitive ability. It dealt only with standard domestic violence, substance abuse and parenting referrals.” This is false. Mother omits that, along with the services she mentions, she

⁴ Mother also refers to “the social worker” stating that after a prior hearing mother was “confused and anxious,” causing the social worker to email the guardian ad litem. Mother does not cite to the record for these contentions. Therefore, we do not address them. (*Grant-Burton v. Covenant Care, Inc.* (2002) 99 Cal.App.4th 1361, 1379 [“an appellate court *may* disregard any factual contention not supported by a proper citation to the record”]; Cal. Rules of Court, rule 8.204(a)(1)(C) [each brief “must” support “any reference to a matter in the record by a citation . . . where the matter appears”].) In any event, her contentions would not change our analysis.

was specifically referred to “general counseling.” This, the Bureau indicated, meant that she was required to “enter and successfully complete individual counseling, approved by social worker, and receive a positive evaluation from therapist that parent understands the factors contributing to this dependency, has successfully addressed those issues, and the children is/are not at risk at this time.” And, again, Gates’s testimony indicated that the Bureau understood that the therapist or counselor to which mother was referred would determine if she needed a further mental health assessment.

Also, there was ample evidence that mother had a pernicious substance abuse problem that required attention and contributed to how she presented herself. By her own admission, her problem included methamphetamine and alcohol and was confirmed by Elijah’s recounting of her drinking, her repeated failure to appear for drug tests and her ejection from the Rectory program for positive test results. The Bureau tried repeatedly to refer mother to outpatient and inpatient treatment programs, supported her entry into the Rectory program twice, and took reasonable steps to help mother stabilize herself. Hendricks testified that since she had been on the case, “the focus has been primarily . . . for [mother] to get into a treatment facility. That’s been the primary goal, to get her stabilized and get her clean and sober so then we can work on the rest of it.” Hendricks also indicated in her testimony that she was *not* concerned about mother’s cognitive ability, regardless of mother’s emotional affect, and referred to her encounter with mother earlier that day, when mother appeared “very awake and alert, very oriented to time and space, and I believe she’s probably not been using . . . because of how she looks.”

Mother also refers to the court’s appointment of a guardian ad litem for her in June 2015 as an indication that the Bureau should have provided additional services for her purported mental deficiencies. In any proceeding in which an incompetent person is a party, that person shall appear by a guardian ad litem appointed by the court in which the action is pending. (Code Civ. Proc., § 372.) In the context of dependency proceedings, the test for incompetence is whether the party has the capacity to understand the nature or consequences of the proceeding and is able to assist counsel in the preparation of the

case. (*In re Christina B.* (1993) 19 Cal.App.4th 1441, 1449-1451, citing Pen. Code, § 1367.)

Mother’s “guardian ad litem” argument is unpersuasive in light of the circumstances of her case. The court appointed this guardian in June 2015, long after the Bureau began providing mother with services, and mother does not establish that the difficulties she was having in June 2015 understanding the nature and consequences of the dependency proceedings existed prior to that time. Furthermore, the record does not indicate the court appointed the guardian because it found mother suffered from any cognitive issues that required further services. Indeed, it reasonably can be inferred from the record—specifically mother’s ejection twice from the Rectory inpatient program and positive drug test results in the weeks and months just prior to the hearing in question—that whatever difficulties she was having were the result of her pernicious substance abuse.

Finally, mother cites cases that are inapposite to her circumstances. (See *In re Victoria M.* (1989) 207 Cal.App.3d 1317 [mother’s special needs because of her mental limitations were known and unaddressed]; *Misako R.*, *supra*, 2 Cal.App.4th 538 [appellant evaluated and found to be mildly retarded, appellant resisted services, and appellate court affirmed termination of reunification services].)

In short, mother fails to establish that the services the Bureau provided for her mental health and its focus on her substance abuse were unreasonable under the circumstances of this case. We conclude there is substantial evidence to support the juvenile court’s determination that mother was provided with reasonable services regarding Elijah, Royce and O.B.

C. There is Substantial Evidence the Bureau Provided Father with Reasonable Services Regarding Royce and O.B.

Father argues there is no substantial evidence that the Bureau provided him with reasonable services regarding Royce and O.B. because the Bureau did not provide him with any services prior to January 26, 2015, when he was incarcerated in county jail, and did not take into account his “serious physical injuries,” which limited his mobility to a

wheelchair and his “medical issues arising from anxiety, depression, and pain management,” for which he received treatment at the Veteran’s Hospital.

Father’s arguments are unpersuasive. He does not indicate what services were unreasonable in light of his physical injuries or medical issues, nor could he. The Bureau referred father to services to address his history of domestic violence, substance abuse, parenting, anger management and mental health. Other than his completion of a parenting class, there was substantial evidence that father at most engaged in services only fitfully and insufficiently, missed numerous drug tests without explanation and tested positive in others for marijuana, which was not one of his stated medications. And father did very little to alleviate the reasons for the dependency proceedings because he did not participate meaningfully in his case plan: from the beginning to the end of the dependency proceedings, father denied punching Elijah or having any problems with domestic violence, anger management or substance abuse, although the record indicates he was repeatedly violent in the household, including when he drank excessively.⁵ Rather than do so, the record indicates he attempted to deceive the court by filing fraudulent declarations on the eve of the disposition hearing and blamed Elijah as a “babbling” child who “craves attention.”

As for father’s argument that the Bureau did not provide him with reasonable services (including visitations) prior to January 26, 2015, when he was incarcerated in county jail, the Bureau correctly points out that father has waived these arguments. Father does not indicate that he objected to the Bureau’s efforts during his incarceration, he did not object to the court’s adoption of the Bureau’s recommended finding that it

⁵ For these reasons, we also reject father’s argument that there was no substantial evidence that a return of the children to his custody would create a substantial risk of detriment. Father ignores this compelling evidence altogether in making this meritless argument, which we need not further address in light of the evidence that he punched Elijah in August 2014 causing him serious injuries, Elijah’s account of father striking Royce, the evidence of father’s violence against Elijah and others before the dependency proceedings began, father’s denial that he committed any domestic violence, his insistence that there was a “conspiracy” against him and his denial that he engaged in any substance abuse.

made reasonable efforts to return the children to a safe home—the equivalent of a “reasonable services” finding—and he did not appeal from that finding. Therefore, he has waived these arguments. (*In re Jesse W.* (2001) 93 Cal.App.4th 349, 355 [“[A]n unappealed disposition . . . order is final and binding and may not be attacked on an appeal from a later appealable order”].)

II.

There is Substantial Evidence to Support the Court’s Denial of Reunification Services Regarding Maurice.

Mother and father each also argue that there is no substantial evidence to support the juvenile court’s order bypassing reunification services for each regarding Maurice. The court so ordered pursuant to sections 361.5, subdivision (b)(10) and 361.5, subdivision (b)(13), electing instead to schedule a section 366.26 hearing. Again, we disagree with mother’s and father’s arguments. The court appropriately applied section 361.5, subdivision (b)(10). In view of this ruling, we need not address their contentions regarding section 361.5, subdivision (b)(13).

Pursuant to section 361.5, subdivision (b)(10), the juvenile court may deny reunification services to a parent when the court finds by clear and convincing evidence “[t]hat the court ordered termination of reunification services for any siblings or half siblings of the child because the parent or guardian failed to reunify with the sibling or half sibling . . . and . . . according to the findings of the court, this parent or guardian has not subsequently made a reasonable effort to treat the problems that led to removal of the sibling or half sibling of that child from that parent or guardian.”

Here, as we have discussed, on July 13, 2015, the juvenile court held a combined six-month review hearing for Maurice’s half-sibling, Elijah, and Maurice’s two siblings, Royce and O.B., and a disposition hearing for Maurice. As we have also discussed, and contrary to mother’s and father’s arguments, the juvenile court appropriately ordered the termination of reunification services for mother regarding Elijah, Royce and O.B., and the termination of reunification services for father regarding Royce and O.B., in each case because the parent did not make any meaningful effort to address the problems that

led to the removal of Elijah, Royce and O.B. Pursuant to section 361.5, subdivision (b)(10), the court could rely on this termination of reunification services to bypass reunification services for mother and father regarding Maurice.

Mother and father also argue that the juvenile court could not bypass ordering reunification services for Maurice pursuant to section 361.5, subdivision (b)(10) based on the court's simultaneous termination of reunification services regarding the other children because it was required to give mother and father some time after this termination to show they had made a reasonable effort to treat the identified problems. However, this interpretation of section 361.5, subdivision (b)(10) has been rejected. As stated in the case father relies on for his incorrect interpretation of section 361.5, subdivision (b)(10) (mother cites no legal authority for her argument): "When . . . the two proceedings occur in immediate proximity, the trial court required finding under the 'no-reasonable effort' clause [of section 361.5, subdivision (b)(10)] is a formality because the parent's circumstances necessarily will not have changed. In our view, the statute was amended [in 2001] to provide a parent who has worked toward correcting his or her problems an opportunity to have that fact taken into consideration in subsequent proceedings; *it was not amended to create further delay so as to allow a parent, who up to that point has failed to address his or her problems, another opportunity to do so.*" (*In re Harmony B.* (2005) 125 Cal.App.4th 831, 842-843, fn. omitted, italics added.)

We agree that the court could bypass reunification services regarding Maurice when it terminated reunification services regarding the other children under the circumstances of this case. There was more than substantial evidence that mother and father did not do anything meaningful to address the problems that led to the initiation of dependency proceedings in September 2014 although they had months to do so. Mother's and father's arguments about the court's bypass of reunification services regarding Maurice lack merit.

DISPOSITION

The petitions are denied. This decision is final in this court within seven days of the filing of this opinion. (See Cal. Rules of Court, rule 8.490(b)(2)(A).)

STEWART, J.

We concur.

KLINE, P.J.

RICHMAN, J.

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