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

A.J.,  
Petitioner,  
v.  
THE SUPERIOR COURT OF CONTRA  
COSTA COUNTY,  
Respondent;  
CONTRA COSTA COUNTY CHILDREN  
& FAMILY SERVICES BUREAU et al.,  
Real Parties in Interest.

A146816  
(Contra Costa County  
Super. Ct. Nos. J15-00066)

Petitioner A.J., the mother of K.C. (the minor), challenges the Contra Costa County juvenile court’s November 2, 2015 order terminating her family reunification services and setting a hearing, pursuant to Welfare and Institutions Code section 366.26, for February 29, 2016.<sup>1</sup> For the reasons given below, we deny the petition.

**FACTUAL AND PROCEDURAL BACKGROUND**

The minor is now slightly more than one year old. On January 22, 2015, the Contra Costa County Social Services Agency (Agency) filed a juvenile dependency petition alleging that due to her parents’ substance abuse and domestic violence, she faced a substantial risk of harm. The juvenile court held a detention hearing, ordered that

<sup>1</sup> Unless otherwise noted all statutory references are to the Welfare and Institutions Code.

the minor be detained, and set a jurisdictional hearing for February 18, 2015. According to the Agency's January 23, 2015 Detention/Jurisdiction Report, mother and D.C., the minor's father, were involved in an argument at the hospital two days after minor's birth. A.J. had some problems breast feeding, prompting D.C. (father) to say some rude things, which led to an argument requiring the intervention of the hospital security staff. Father explained that he had been up all night and was trying to give A.J. some advice, which led to an argument. Father acknowledged that he was asked by hospital security to leave the room and he complied.

Parents further informed the Agency that during the course of their relationship they engaged in multiple incidents of domestic violence. A.J. stated that she and father typically fight, either physically or verbally, about twice per month. She acknowledged that some of these altercations led to parents' arrest and incarceration for domestic violence. Parents also reported that each had sustained injuries necessitating emergency room treatment as a result of incidents of domestic violence between them. According to father: "It started with her, she'd get drunk and hit me. It was like that for awhile, no one cared about any of that, and I didn't always report it or go to the hospital. It was when I started hitting her back is when everybody started to care." At least one domestic violence incident between parents occurred while A.J. was pregnant with the minor. A.J. asserted, however, that since the minor's birth things have changed and they would never endanger the child.

A.J. also admitted to a history of alcohol abuse, beginning when she was 23.<sup>2</sup> She binged, sometimes to the point of blacking out. She attended some Alcoholics Anonymous meetings during the last few months of her pregnancy. Both parents agreed that drinking exacerbates their domestic violence; A.J. indicated she drank for "emotional reasons," secondary to difficult life experiences. Both parents agreed to engage in services to address their domestic violence and alcohol abuse issues. Indeed, petitioner promptly made the initial connections to avail herself of some services through her

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<sup>2</sup> Petitioner was over 29 at the time of the report.

church. When on January 6, 2015, the social worker followed up with her, she had already attended an Alcoholics Anonymous meeting, was committed to finding a sponsor, and had taken the initial steps to arrange for marital counseling to address the domestic violence issues. According to a letter from Ujima Family Recovery Services, on January 22, 2015, A.J. entered “The Rectory” residential drug and alcohol recovery program, which, in addition to providing substance abuse services, also provided treatment for women with domestic violence and anger management issues.

On March 2, 2015, the juvenile court sustained the amended allegations contained in the petition, declared the minor to be a dependent of the court, and set a dispositional hearing. The juvenile court conducted a contested dispositional hearing on May 4, 2015. At the conclusion of the hearing, the court adopted the proposed case plan, ordered that the minor be placed out of the home and that A.J. receive reunification services,<sup>3</sup> and set a six-month status review hearing. The plan adopted by the juvenile court required A.J. to participate in domestic violence counseling, individual counseling, parenting education, and a 12-step program, obtain a psychological evaluation, participate in in-patient substance abuse treatment, and submit to substance abuse testing. She was also required to demonstrate that she accepted responsibility for her actions, demonstrate her willingness and ability to have custody of the minor, to remain sober, and to maintain a suitable residence for her and her child.

On November 2, 2015, the Agency filed its modified six-month status review report. The Agency recommended that the court terminate reunification services to both parents and set a hearing pursuant to section 366.26. Regarding the minor, the report stated that she was now eight months old and had been living with her paternal grandparents following her removal from parents. However, the minor was removed from grandparents’ care and placed in foster care after concerns for the minor’s safety surfaced as a result of father’s threats to harm A.J.

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<sup>3</sup> The case plan called for both parents to receive family reunification services. Because only A.J. filed a petition challenging the juvenile court’s order terminating services, we focus on those aspects of the case primarily involving her.

The report noted that A.J. had participated in both alcohol abuse and domestic violence services, but she misrepresented to the assigned social worker the extent of her ongoing relationship with father. Specifically, at the previous court hearing mother represented that her relationship with father was over, that she would obtain a temporary restraining order against him,<sup>4</sup> and that she would be filing for divorce. Furthermore, A.J. had twice told her social worker that if she saw father again she would relapse. Notwithstanding these representations, A.J. maintained daily contact with father (via instant messaging), attended a barbeque at his treatment program, met him at a hotel, and posed for pictures with him. In addition, A.J. informed her social worker that she and father agreed to deceive the Agency, the juvenile court, and her attorney by pretending she had ended her relationship with father and would raise her child as a single parent. Given A.J.'s misrepresentations and ongoing involvement with father, the Agency questioned A.J.'s sincerity, noting that she has been unable to change this pattern of behavior, despite recognizing the negative consequences it has caused her.

Concerning A.J., the report concluded: “[A.J.] has continued to be dishonest with the undersigned in regards to her husband, her family involvement, and her continued denial about the visits with her husband. The deception has been a recurring problem since the start of this case. There have been many instances that have occurred and [A.J.] has continued to deny, even when confronted with the actual truth of the situation in question. Even though [A.J.] has participated in services, she has not demonstrated the ability to protect [K.C.] from emotional or physical harm.”

The report documented an October 6, 2015 meeting between A.J. and the social worker. A.J. arrived visibly upset, saying that she received 65 calls since 10:30 p.m. the night before; during the meeting she received 12 more calls. The report does not state who all the messages were from, but strongly implies that they were threatening messages from father. It quoted one message, left for her on a friend's voicemail,

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<sup>4</sup> She did, in fact, obtain a restraining order against him, but it was not served, reportedly, because he was in a federally protected facility.

identified as father,<sup>5</sup> who threatened to kill A.J.<sup>6</sup> After summarizing the threats, the report records the social worker's recommendation that A.J. seek shelter at a Domestic Violence Shelter and change her phone number. Regarding visitation the Agency contacted A.J.'s father and stepmother to see if they would be willing to supervise visits between A.J. and the minor. A.J. had lived with her father and stepmother three times in the past, but she had difficulty adjusting to their rules, which led to various physical fights. On one occasion, A.J. broke her maternal step-grandmother's nose. A.J.'s father and stepmother declined to become involved with her again.

The juvenile court held a contested six-month review hearing. The social worker assigned to A.J.'s case testified that "the main issues in this case [are] domestic violence and alcoholism." The worker testified that A.J. received counseling that dealt with both domestic violence and anger management, participated in domestic violence classes, received individual counseling, completed a parenting course, attended 12-step meetings, and completed a 90-day residential drug treatment program (and even requested a 30-day extension of her drug treatment program). After completing the residential treatment program, A.J. moved into a Sober Living Environment facility. She participated in a five-day per week outpatient program through Ujima. Mother's drug tests were consistently negative throughout her case.

The social worker testified that while A.J. had a hard time getting transportation to be able to visit the minor, the Agency provided her with BART and bus tickets and she made most of her scheduled visits. At the visits, Mother was observed to be loving, appropriate, and sensitive to the minor's cues.

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<sup>5</sup> The recording on this friend's voicemail started with father identifying himself and telling this friend to tell A.J. that "lives are on the line" and that "there's no stopping him." Apparently unable to reach A.J. via telephone, father posted an instant message to Facebook, so that A.J. could contact him. This message on Facebook was a threatening message towards A.J.

<sup>6</sup> The Agency's opposition indicates, based on an exhibit admitted by the juvenile court but not included in our record, that father's anger was, at least in part, based on his understanding that A.J. took his money to purchase a car while she was involved with someone else.

Father testified that he and A.J. believed that because they were sober, they would be able to live their lives together and raise their daughter. Father also testified that A.J. told him that she had filed for divorce, but intended to cancel the filing as soon as the juvenile dependency case was resolved. A.J. corroborated father's testimony that she maintained contact with him in the hope that if they could remain sober, they could raise the minor together. To facilitate contact with one another, mother used one of three phone numbers to talk to him. They also communicated through a friend's Facebook account. Father used an alias when communicating with A.J.<sup>7</sup>

At the conclusion of the multi-day hearing, the juvenile court expressed shock at the parents' lack of candor. The court acknowledged that there was no evidence that either parent was currently consuming alcohol and they had both undergone substance abuse treatment and were sober; nonetheless, it concluded "they have failed to find the truth." They failed to appreciate the role of domestic violence in their lives and how harmful it was to minor. The court found that A.J. had been deceptive from the beginning of the case and found that it was difficult to find her credible. It determined that the parents had made no progress in addressing the domestic violence issue; not only could it not find that there was a substantial probability of returning minor to them if they were given additional services, it affirmatively found a substantial probability that there would be no such reunification.

In its November 2, 2015 written order, the court found that there was not a substantial probability that minor would be returned to the parent's physical custody even if services were extended to March 3, 2016, terminated reunification services to both parents, and set a section 366.26 hearing for February 29, 2016. On November 4, 2015, A.J. filed a timely notice of intent to file writ petition. A.J. filed her petition in this court on December 14, 2015, we issued an order to show cause on December 16, 2015, and the Agency filed its opposition on December 31, 2015.

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<sup>7</sup> A.J.'s testimony confirmed that she actively concealed her on-going relationship with father.

## DISCUSSION

Petitioner seeks writ relief based on the sole contention that based on her full participation in her case plan, the juvenile court erred when it found by clear and convincing evidence that there “was no substantial probability of reunification with A.J.” We disagree.

Section 366.21, subdivision (e)(3) states, in part, that if the child was less than three years old when first removed from his parents 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 set a section 366.26 hearing. (§ 366.21, subd. (e)(3), italics added.) It also provides that if there is a substantial probability that the child may be returned to the parent within six months or that reasonable services were not provided, the matter shall be continued to the 12-month permanency hearing. (*Ibid.*)

Our review of an order denying reunification services is subject to the substantial evidence standard. (*In re Harmony B.* (2005) 125 Cal.App.4th 831, 839.) In other words, if the evidence relied on by the juvenile court is “reasonable, credible, and of solid value, such that a reasonable trier of fact could find the court’s order was proper based on clear and convincing evidence” (*id.* at pp. 839-840), we will affirm the juvenile court’s order. We examine the entire record “in a light most favorable to the findings and conclusions of the juvenile court and defer to the lower court on issues of credibility of the evidence and witnesses.” (*In re Albert T.* (2006) 144 Cal.App.4th 207, 216.) Substantial evidence may be based on inferences, but those inferences must be logical and be based on the evidence. (*Ibid.*) Finally, we need not affirm if the decision is “supported by a mere scintilla of evidence.” (*Id.* at pp. 216-217.)

We presume, in the absence of countervailing evidence, that returning a child to parental custody would create a substantial risk of detriment to the child if the parent failed to participate regularly in a court-mandated program. (*In re Heather B.* (1992) 9 Cal.App.4th 535, 561.) The program must be tailored to the individual family’s needs and designed to remedy the problem that led to the juvenile court’s original jurisdictional

finding. (*In re Taylor J.* (2014) 223 Cal.App.4th 1446.) But it does not necessarily follow that if the parent participated regularly in a court-mandated treatment program, that there may not still be a substantial risk of harm to the child if he is returned to the parent. (*Id.* at p. 1451.)

Here, the record clearly established that parents engaged in serious and on-going domestic violence which endangered the minor. Although A.J. participated in specific programs which targeted that issue (and other programs targeting her alcohol abuse, which exacerbated her domestic violence issue), A.J. falsely informed the Agency that she was severing her relationship with father. Instead of honestly addressing the extent of the domestic violence issues that led to the removal of the minor and terminating her abusive relationship with father, she participated in an elaborate scheme to conceal her continuing involvement with him.

As the juvenile court stated in entering its order:

“I have to say, I found the testimony of both parents to be somewhat shocking in the lack of insight and lack of candor. And although there’s no evidence, quite frankly, that either parent is consuming alcohol and that the parents have participated in substance abuse treatment, even in finding sobriety, they have failed to find the truth. [¶] They have failed to understand the role that domestic violence has played in their lives and their child’s life and failed to acknowledge how harmful it has been and, really at the heart of what brought this family before the court.”

Although compliance with a reunification plan is an “indicium of progress,” it is not the juvenile court’s sole concern in resolving a juvenile dependency matter. (*In re Dustin R.* (1997) 54 Cal.App.4th 1131, 1139-1140.) “[S]imply complying with the reunification plan . . . is not determinative. The court must also consider the parents’ progress and their capacity to meet the objectives of the plan; otherwise the reasons for removing the children out-of-home will not have been ameliorated.” (*Id.* at p. 1143.) Notwithstanding A.J.’s compliance with the mechanical requirements of her case plan, her deceit and the complex steps she took to maintain her ruse, constitute ample evidence for the juvenile court to conclude that A.J. has not made substantive progress in

addressing her domestic violence issue, that it would likely place the minor at risk to return her to A.J.'s care, and that there was not a substantial likelihood of being able to do so safely by the 12-month status review hearing.

**DISPOSITION**

For the reasons given above, the petition for an extraordinary writ is denied. Our decision is immediately final as to this court. (Cal. Rules of Court, rules 8.452(i), 8.490(b)(2)(A).)

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Jenkins, J.

We concur:

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McGuinness, P. J.

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Pollak, J.