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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.

A149154

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

I.

INTRODUCTION

Carmen C. and Andrew B. filed separate petitions seeking 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 young daughter L.C.B. Both parents contend that (1) L.C.B. should have been

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

returned to their care at a contested 18-month review hearing; and (2) they were not provided with reasonable reunification services.

In September 2015, this court granted a prior petition filed by these parents because the record did not contain substantial evidence that they were afforded six months of reasonable reunification services. (*In re L.C.B.* (A145815, Sept. 21, 2015) (hereafter, *L.C.B. I*.) This time, however, substantial evidence supports the juvenile court findings that L.C.B. could not be safely returned to the parents and that they both received reasonable reunification services. Therefore, we deny these petitions on their merits.

II.

STATEMENT OF FACTS

A. Background²

On September 2, 2014, Carmen took one-year-old L.C.B. to the hospital complaining she had a fever. Carmen appeared to be under the influence of something, behaved erratically and expressed paranoid delusions. She also gave inconsistent and bizarre information about her relationship with Andrew. The following day, the Contra Costa County Bureau of Child and Family Services (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. (*L.C.B. I*, at p. 3.)

On October 9, 2014, the court exercised jurisdiction over L.C.B. after a contested jurisdiction hearing. By that time, the court had appointed a guardian ad litem for Carmen; Andrew had been declared an alleged father; and L.C.B. had been placed with a maternal uncle. (*L.C.B. I*, at p. 4.)

Prior to disposition, the Bureau filed a report providing additional background about the family. Several years before L.C.B. was born, Carmen was hit by a truck and

² *L.C.B. I* contains a detailed account of the first nine months of this dependency case. Here, we provide an abbreviated summary of the salient facts.

suffered a 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.” (*L.C.B. I*, at p. 4.)

When L.C.B. was removed from the home, 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. From Andrew’s perspective, the accident caused Carmen to “see[s] things differently,” and to experience 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. (*L.C.B. I*, at p. 4.)

On December 4, 2014, L.C.B. was adjudged a dependent child. At the time, Andrew was living in his car, Carmen was staying with various family members, and the two were looking for housing together. The court adopted a case plan proposed by the Bureau and ordered reunification services for both parents. (*L.C.B. I*, at p. 5.)

On February 5, 2015, Andrew was declared L.C.B.’s presumed father. (*L.C.B. I*, at p. 5.) From March 10 until April 18, Carmen was in the hospital or in a convalescent center recovering from double knee replacement surgery. (*Id.* at p. 6.) After she was released from the convalescent center, Carmen stayed with a family friend until she moved into a motel with Andrew. Andrew was working as a security guard, and was looking for housing for the family.

In a May 2015 six-month status report, 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. (*L.C.B. I*, at pp. 5-6.) At the conclusion of the contested review hearing, the juvenile court followed the Bureau recommendation to terminate services, and to schedule a section 366.26

hearing. (*Id.* at pp. 11-12.) As support for this decision, the court found that: (1) the Bureau was not required to make accommodations for Carmen because of her knee surgery; (2) even putting aside time for recovery, Carmen failed to make sufficient progress with respect to the drug dependency and mental health problems that led to dependency; and (3) although Andrew participated in some services, he lacked sufficient insight about Carmen's problems and the need for this dependency proceeding.

In a July 1, 2015 minute order, the juvenile court terminated reunification services to both parents and scheduled a section 366.26 hearing. (*L.C.B. I*, at p. 12.) Carmen and Andrew filed separate petitions seeking extraordinary review of the July 2015 order. Andrew claimed that the juvenile court erred by refusing to give him custody of L.C.B., and both parents claimed they were denied reasonable reunification services.

In *L.C.B. I*, this court found that Andrew had not made an actual request in the lower court to have L.C.B. placed in his sole custody. However, we also found that the record did not contain substantial evidence that reasonable services had been provided to these parents. Accordingly, we directed the juvenile court to vacate the July 2015 order, and to enter a new order providing the parents with six months of appropriate reunification services. (*L.C.B. I*, at pp. 19-20.)

B. The October 2015 Status Review and Case Plans

On October 29, 2015, the court conducted a hearing to review the status of this case. The Bureau provided updated information in a "Court Memo." L.C.B. was doing well in her placement with the maternal uncle. Carmen had entered a residential substance abuse program in August 2015 where she was complying with the program requirements. Andrew was homeless and living in his car, although he had recently resumed employment. The Bureau had submitted a request for Andrew to receive mental health services and the social worker also mailed him written information about Al-Anon services.

The Bureau submitted new proposed case plans for both parents. The objectives of Carmen's plan included demonstrating her ability to have custody of L.C.B., maintaining a stable residence, cooperating with the Bureau, complying with medical and

psychological treatment; staying sober; and demonstrating an ability to live free of drug dependency. Most of these goals were also the objectives of Andrew's plan, although he was not required to demonstrate his ability to stay sober or live free of drug dependency.

Carmen's case plan charged her with responsibility for participating in counseling, mental health services, and substance abuse services, the latter of which required random drug testing, completion of a 12-step program, and an inpatient treatment program. Andrew was responsible for completing an individual counseling program approved by the Bureau as well as an Al-Anon substance abuse program.

On November 4, 2015, the court filed an order after hearing memorializing its findings. Among other things, the court continued L.C.B.'s dependency; adopted the new case plans proposed by the Bureau; ordered weekly visitation for both parents which "may be supervised"; and authorized the Bureau to provide the parents with overnight visits. The court also found that both Carmen and Andrew had made "partial" progress toward alleviating or mitigating the problems necessitating the placement of L.C.B. in foster care. A status review hearing was set for January 13, 2016, and the 18-month review hearing was set for April 28, 2016.

C. The January 2016 Status Review

Prior to the status review, the Bureau filed another "Memo" updating the court about this case. L.C.B. was doing well in her uncle's home. She attended play therapy and speech therapy and appeared to be engaged in services that were designed to help her thrive. Carmen had completed her residential treatment program on December 11, 2015, and the plan was for her to participate in outpatient treatment at "REACH Project, Inc.," and also to attend 12-step meetings at Alcoholics Anonymous/Narcotics Anonymous (AA/NA).

The week before Carmen completed residential treatment, she told the social worker she planned to stay with a friend in Antioch, but refused to provide the friend's address. The week after Carmen left her residential program, she told the social worker that she and Andrew were renting a room in the home of Andrew's boss. Again, Carmen refused to provide the Bureau with her address, stating it was only a temporary residence.

Carmen had been drug testing, and produced positive tests on December 7 and December 18.

The Bureau social worker had made several unsuccessful attempts to meet with the parents, and to review their case plans before the review hearing. On December 23, 2015, Carmen cancelled a meeting that had been scheduled for that day. The social worker proposed multiple alternative times, but Carmen either said she could not commit until she consulted Andrew, or agreed but then subsequently cancelled.

Between November 2015 and January 2016, Carmen and Andrew attended five of seven scheduled visits with L.C.B. The visits were unsupervised and took place on Sundays in Sacramento near the home of L.C.B.'s uncle. During one visit, Carmen called the caregivers to come and pick up L.C.B. early because the child was having a tantrum. During this period, the parents expressed minimal interest in increasing visits, or in having overnight visits with L.C.B.

The record does not contain a transcript of the January 13, 2016 review hearing, but the court's minute order reflects that all prior orders were continued and the 18-month hearing date of April 28, 2016 was confirmed.

D. The 18-Month Review

1. The April 2016 Report and Recommendation

In an 18-month status report, the Bureau recommended that the court continue L.C.B.'s dependency, terminate services to both parents, and schedule a section 366.26 hearing to adopt a permanent plan for L.C.B.

The Bureau reported that after Carmen completed residential treatment in December 2015, she was instructed to begin outpatient services at REACH, but she did not begin those services for an entire month because she said that she was sick and there was a death in her family. During this time, Andrew was living in his car and Carmen was living with a friend named Greg. Subsequently, the couple rented a room together but refused to disclose the address to the Bureau because it was not suitable for a visit. In early March 2016, they rented a room in a seven-bedroom house. After a home visit, the social worker reported the house was not big enough to accommodate the residents and

the landlord had complained that the room was rented to Carmen, but Andrew stayed there on a regular basis. In April, Carmen was asked to move out.

Meanwhile, in January 2016 Carmen began attending her REACH and 12-step programs. However, she missed several drug tests in February. In late February, she and Andrew were in a serious car accident. At the time, Andrew was prescribed hydrocodone and Carmen subsequently received a hydrocodone prescription from her own doctor, which led to a positive drug test. Later in March, Carmen began testing positive for Benzodiazepines, but could not provide any prescription or explanation for that result. During an April 7, 2016 phone conversation with the social worker, Carmen slurred her speech and took long pauses before speaking. She was requested to take an on-demand drug test, which was positive again.

During this period, Andrew had a sporadic record of attendance at Al-Anon meetings. He did not provide documentation of attending a parenting class notwithstanding that referrals were provided to him. He had completed job training and was working part-time as a security guard. Andrew declined to pursue the Bureau's referrals to individual therapy, reporting that he preferred to continue with his previous therapist. The social worker contacted that therapist who reported that he had seen Andrew once in October 2015, once in January 2016, and once in February 2016. Andrew's therapist described his sessions with Andrew as informal and told the social worker he tried to convince Andrew to find a new therapist who could provide the level of support necessary to achieve his case plan objectives.

From November 2015 until April 2016, the parents attended 15 out of 22 possible weekly visits with L.C.B. The visits were unsupervised two-hour visits on the weekend, at various locations near the relative caregivers' home in Sacramento. After Carmen's unexplained positive drug tests, her visits were suspended, but Andrew's were not. Thereafter, Andrew attended one visit by himself.

The Bureau reported that both parents expressed a desire to reunify with L.C.B. and they understood that they needed to secure housing in order to accomplish that goal. Carmen also stated that she understood the need to complete her case plan. However,

Andrew did not understand the Bureau's concerns about Carmen's health and medication usage. According to the report, Andrew had advised the Bureau that "if he is successful in the reunification with [L.C.B.] and [Carmen] is not, he will continue living with [Carmen] because they are a family and he will always support [Carmen]." The Bureau opined that the likelihood of reunification was not good because the parents continued to struggle with the problems which led to the dependency, and had tried but failed to secure stable housing.

2. The April 28 Hearing

At the beginning of the review hearing, the court clarified it was conducting a combined 12-18 month review. Parents requested a contest, which was set for May 23, 2016. The court instructed the social worker, Ms. Parra, to attend the contested hearing and, in the interim, to: (1) prepare a more detailed memorandum outlining her efforts to provide reunification services to the parents; and (2) attempt to conduct a home visit of parents' new apartment.

3. Parra's May 2016 Memorandum

In a May 19, 2016 memorandum, Parra provided annotated chronologies of the services that were offered to parents. Here, we highlight the main points:

November 2015: After the court adopted new case plans for the parents, Parra was assigned to the case and sent the parents a letter introducing herself.

December 2015: On December 7, Carmen gave a positive drug test. On December 16, parents cancelled a visit with L.C.B. because Carmen was sick. Parra scheduled an office visit for both parents for December 23. On December 18, Carmen had another positive drug test. Parents did not show up for the December 23 office visit with Parra.

January 2016: On January 5, Carmen informed Parra she was no longer living with Andrew because "things got weird," so she was staying with a friend named Gary. Carmen asked to change visits with L.C.B. to Saturdays because it was hard to find things to do on Sundays and L.C.B. seemed bored. On January 14, Parra met with Carmen and Andrew and provided each of them with a packet of materials which included

information about resources in the community, referrals for services, and copies of their case plans. Carmen failed to attend a scheduled drug test on January 14. In late January, visits were changed to Saturdays as Carmen had requested.

February 2016: On February 2, Parra mailed Andrew “3 therapeutic referrals and a list of parenting classes in Sacramento County, per his request.” On February 19, Carmen failed to attend a scheduled drug test, stating she was sick and had been prescribed medication for pneumonia. On February 29, Parra met separately with each parent and provided them with transportation assistance, and additional referrals to Al-Anon, AA/NA, and parenting classes in the county. Carmen reported she was still living with Gary, but requested that mail be sent to a post office box she shared with Andrew. Andrew reported that he and Carmen were still in a relationship and doing well. On February 29, the parents provided the address of a residence they planned to move into in March.

March 2016: On March 18 and March 23, Carmen produced positive drug tests. On March 23, Parra had another meeting with the parents during which she provided additional referrals, copies of the case plans, and parenting resources.

April 2016: On April 2, parents’ visit with L.C.B. was cancelled because they failed to confirm attendance. On April 7, Parra called Carmen to discuss her recent positive drug tests. Carmen slurred her speech and “would not speak for long periods of time.” Parra submitted a request for an on-demand drug test and cancelled visits until Carmen could provide documentation of prescribed medication that would explain her presentation. Carmen’s April 7 drug test was positive. That day, Parra had a long phone conversation with Andrew who stated that he was out of town visiting family, but that he “will support [Carmen] because they are a family.” Andrew continued to visit L.C.B. on his own, but he cancelled a visit on April 23, after calling twice to say he would be late.

May 2016: On May 2, Carmen called Parra and asked for “a favor.” She said that she had been called to do an on-demand drug test that day, but wanted to test the next day instead because Andrew was out of town. Parra advised Carmen to use her bus passes and explained that on-demand tests were based “upon suspicion not to accommodate

[the] client's transportation issues." Carmen did not show up for the May 2 drug test. On May 9, Parra emailed a housing referral to the parents. In early May, Carmen's visits were reinstated, although they were supervised at the Bureau. Parra reported that L.C.B. often pulled away from Carmen, and that Carmen did not appear to have the skills to interact positively with her daughter. Andrew did not visit L.C.B. during the month of May.

In her memorandum, Parra included a summary of her May 18, 2016, home visit at the parents' new apartment. The couple shared a one-bathroom, two-bedroom apartment with two roommates and background checks were underway. During the visit, Carmen told Parra she was looking forward to completing her outpatient program and she was happy to learn that she was a "survivor" and excited about being a parent again. Andrew reported that he had "learned from [Carmen] and all the classes she has been taking," and he felt more bonded with L.C.B. now that she was older. Andrew felt like things were coming together for the family. He told Parra he did not have any worries and that he was confident in his ability to be a good parent. Carmen admitted that she did worry about being a parent again and having L.C.B. with her full-time. Carmen expressed a desire that L.C.B.'s current caregivers remain in her life.

At the conclusion of her memorandum, Parra summarized concerns which led the Bureau to conclude that these parents failed to fully engage in their case plans or address the problems that led to the dependency. Andrew did not participate in individual therapy as planned, but continued to rely on Carmen, stating that he learned from the classes she took. Carmen continued to struggle with anxiety and improper usage of her medication. The family did not have a good support system, and it appeared that the parents had not really bonded with L.C.B. Because many visits were unsupervised, the Bureau had limited opportunity to observe family interactions, but once Carmen started having supervised visits, the social workers noticed that she did not have good instincts or skills when it came to providing structure and discipline, and that L.C.B. spent most of the time playing by herself while Carmen talked on the phone.

4. The May 23 Hearing

At the beginning of the contested hearing, the court admitted reports and documentary evidence submitted by the parties. The Bureau confirmed its position that L.C.B. could not be safely returned to the parents at the 18-month review and none of the exceptions for extended “services to the 24-month mark apply in this case.” L.C.B.’s counsel agreed and supported the Bureau recommendations.

During the course of the multi-session hearing, Ms. Parra testified several times. At the first hearing, she discussed the meetings, phone calls, and letters pursuant to which she provided referrals to these parents. Neither parent ever objected to a referral, expressed confusion or asked any questions about these referrals. They signed forms indicating that they understood the information.

When asked why she believed the parents had not adequately addressed the problems that led to L.C.B.’s dependency, Parra described a recent conversation she had with them. Carmen continued to maintain that she did not do anything wrong the day L.C.B. was detained; she simply took L.C.B. to the doctor, and her medication was not a concern. Andrew told Parra that “he blamed the doctors for not getting the medication right,” and he also “confirm[ed] that [Carmen] takes the medication as needed not as prescribed.” Thus, Parra concluded that the parents were still “justifying” Carmen’s use of medication. Also, they had no safety network, support system or childcare plan to help them if L.C.B. was returned to their home.

Before continuing the matter, the court requested that the Bureau gather additional information about the parents’ new roommates; the amount of medication mother was taking; and whether mother’s behavior during the April 7 phone call with Ms. Parra and her positive drug tests were attributable to prescription medications.

5. The June 2016 Update Report

On June 8, 2016, the Bureau prepared another report for the court. Background checks for parents’ roommates disclosed that one had a misdemeanor conviction for DUI in 2009, and several subsequent DUI arrests, and the other had several theft-related arrests with one misdemeanor conviction.

Since the last session of the review hearing, the social worker had discussed Carmen's positive drug tests with one of her doctors. The doctor reported that he began working with Carmen because she needed more than one doctor and more attention than any other patient due to her chronic pain and anxiety. The doctor stated that Carmen's prescription medications should not have caused the type of presentation that the social worker observed during her April 7 phone conversation with Carmen. He also pointed out that Carmen tended to mix medications that she obtained by visiting emergency rooms. After obtaining information about Carmen's prescriptions, the social worker checked with the lab technician at the drug-testing facility, who reported that Carmen's prescription medications did not cause her positive drug tests.

6. The June 9 Hearing

During this session of the hearing, the court heard testimony from the foster mom, M.S., about the 20-month period that she and her husband (the maternal uncle) had been caring for L.C.B. As we discuss below, there was a point during M.S.'s testimony when Carmen became very agitated.

M.S. testified that she and L.C.B. participate in speech therapy every other week and weekly mental health therapy to address various "behaviors" such as parent-child interactions and how to handle "tantrums." Initially, speech therapy was also weekly because L.C.B. had a significant speech delay, but she had improved greatly and the sessions were reduced to every other week.

M.S. testified that neither parent had ever asked M.S. about L.C.B.'s mental health needs. M.S. had made herself available to talk with Carmen about L.C.B., and they had a few good conversations early on, but in the last six months they had only had one brief phone conversation. M.S. expressed ongoing concern regarding the fact that parents either did not feed L.C.B. during visits or gave her inappropriate food.

The court asked M.S. about her relationship with parents. Before L.C.B. was born, M.S. had met Carmen only a couple of times and did not know her well. After L.C.B. was placed with M.S., her relationship with Carmen became "uncomfortable." As M.S. explained, "She's a very unpredictable person. I never know what to expect out of

Carmen from one week to the next. Sometimes she looks great. Sometimes she's slurring her words. Sometimes she looks like she's going to drool everywhere. [¶] She's abrupt. She's aggressive. She makes me uncomfortable.”

M.S. testified that she kept voicemail messages that Carmen had left for her which demonstrated behavior that M.S. found concerning. The court then advised the Bureau that the court wanted additional information from the caregivers about these voicemails and other notes they kept about the visits. Arrangements were made for M.S. and her husband R.C. to attend the next session of the hearing.

The court then stated that it was important to give these parents the opportunity to participate in L.C.B.'s therapy if that could be arranged. There was discussion about changing Carmen's visits to unsupervised, but there was opposition to that proposal because of Carmen's positive drug tests. The court stated that it was important for Carmen to have separate visits from Andrew because she needed to demonstrate that she could care for the child independently. The court suggested unsupervised visits might occur at Carmen's apartment. Counsel for the Bureau and L.C.B. both expressed concern about that suggestion, at which point the court asked Carmen if she was okay. After Carmen responded that she was okay, the court had the following exchange with Carmen's counsel:

“THE COURT: She seems very agitated. What's going on, [counsel]?”

“[COUNSEL]: She was just writing a note. She does have the—

“THE COURT: Well, it's a little more than that.

“[COUNSEL]: I know. She just put some exclamation marks.

“THE COURT: Big time. And she's staring at me right now. So what's the problem?

“[COUNSEL]: I don't think there's a problem. [¶] But she does have the baby proofing items on layaway. She says she can go pick them up for the apartment. She does want to be able to spend more time with [L.C.B.]. . . .”

The court asked the Bureau to arrange supervised visits for Carmen at a location outside the Bureau's office, explaining that it was important to give her more time to

interact with the child in a more natural setting. The court also increased Andrew's visits to four hours a week, but made it clear those visits needed to be separate from Carmen's. In addition, the court stated that if Carmen childproofed her apartment, the court would give the Bureau authority to give her unsupervised visits, but that "it's just authority. If the Department continues to have concerns based on positive drug tests and how mom presents, then I understand."

Counsel for the Bureau expressed concern that the court was attempting to facilitate "hands-on parenting," which was not a court-ordered service. The court admonished counsel that this was not a new issue: "There's going to be a very strong argument made by counsel for parents as to whether or not reasonable services have been offered in this case. [¶] And the Department needs to be able to respond as to whether or not the services that have been offered have been reasonable and designed to promote reunification. [¶] I think the Department has been well aware—Mom has a guardian ad litem; Father had some mental health issues—as to whether or not the services that have been put in place are designed and tailored to facilitate that reunification."

7. The July 5 Hearing

During this session of the hearing, M.S. completed her testimony and the court also heard testimony from M.S.'s husband R.C., as well as an update from Ms. Parra. Again, there was an issue regarding Carmen's behavior during the hearing.

M.S. testified that Carmen sounded strange when she left phone messages on March 6 and March 7, 2016. Recordings of those messages were played for the court. M.S. also testified about the parents' participation in L.C.B.'s services since the prior session of the contested hearing.

There had been a school assessment which parents planned to attend, but they were late because M.S. accidentally gave them the wrong meeting time. So, instead the group had a 45-minute visit on the ground floor of the school building. Three things happened during the visit which concerned M.S. First, when Carmen tried to reach out to L.C.B., the child "jerked away," yelled "no," and behaved in a rude manner that M.S. had not seen before. The parents did not react to this behavior in any way. Second, while

M.S. and Carmen were talking, Andrew played with L.C.B. on the stairs in a way that M.S. thought was not safe. Carmen did not say anything about this, although M.S. went over and asked Andrew to take L.C.B. off the stairs. Finally, there was a floor-to-ceiling chalkboard on one of the walls and, at one point, L.C.B. climbed on a chair to reach a higher part of the board. M.S. told L.C.B. not to stand on the chair, but a few minutes later, Andrew encouraged her to stand on the chair again. M.S. had to intervene and it appeared to her that neither parent comprehended the danger to L.C.B. of standing on the chair.

Parents attended one of L.C.B.'s speech therapy sessions which was conducted at a park. M.S. removed herself from the group and while she observed from afar, it appeared to her that the speech therapist spent most of her time chasing after L.C.B. Later, the therapist told M.S. that the parents never told L.C.B. "no" or attempted to redirect her, but simply "followed her like the blind leading the blind." The therapist also reported that L.C.B. was rude to Carmen in a way that the therapist had never seen her treat anyone else. The therapist also said that parents did not really attempt to talk with L.C.B., who reverted to an old pattern of shutting down and using one word to attempt to communicate.

R.C., who is Carmen's brother, testified that he was responsible for bringing L.C.B. to and from her visits with the parents. R.C. described an incident that occurred at a Chuck E. Cheese, when he came to pick up L.C.B. after a visit. The parents had split up and used their cell phones to try to locate R.C. in the crowded parking lot. Andrew, who was carrying L.C.B., found R.C. and he began to put the child in the car. Meanwhile, Carmen was standing near the entrance and began to yell at Andrew to wait because she wanted to say goodbye. Carmen was "screaming and saying that she was having a panic attack." R.C. testified he did not know why Carmen was so upset, but she may have been mad about where he parked. L.C.B. did not have a verbal reaction to Carmen's behavior, but after she was buckled in to her car seat and Carmen leaned in to say goodbye, L.C.B. slapped her face.

R.C. testified that L.C.B.'s behavior toward Carmen was out of character; she had never hit him or his wife in the face, but she had hit Carmen in the face three different times. R.C. also testified about other visits when the parents either failed to feed L.C.B. and/or to change her diaper. On these occasions, parents knew that it was their responsibility to feed L.C.B. because that issue had been addressed with them. R.C. also testified about parents being late, and one occasion when Andrew called to say he was running late, but then called again and said he was going to be more than an hour late because he had errands. R.C. had to tell Andrew it was his responsibility to call the Bureau and cancel, which he did.

Ms. Parra testified about times during supervised visits when L.C.B. pulled away from Carmen or was otherwise rude or disrespectful toward her. There was also a visit when Carmen arrived late, licked her lips repeatedly and was perspiring a lot. She also used her phone to call Andrew even though she had been asked not to talk on the phone during visits.

As Parra began to describe a conflict that occurred when the Bureau attempted to schedule a June 14 visit, Carmen left the courtroom. The bailiff looked for her in the restroom and walked around the building but could not find her, so the court elected to continue with Parra's testimony.

Parra testified that one of Carmen's visits that had been scheduled for June 10 had to be rescheduled for June 14. On June 13, Parra called Carmen's cell phone to confirm the June 14 time. Andrew answered the phone, said Carmen was napping, and he would relay the message. On the morning of June 14, another social worker called Carmen to confirm the visit for that day. Carmen sounded lethargic and slurred her words. She said she had taken Motrin and cough medicine and that she was sick. Parra testified that Carmen told the social worker that she "didn't understand what was happening and why we were calling her that morning," and then she began yelling and screaming and hung up on the social worker. Parra testified that she called Carmen back to discuss the situation, but Carmen began screaming at her. Andrew intervened on Carmen's side of the conversation, but while Parra tried to talk with him, the line went dead again. Around

30 minutes later, Andrew called back. He told Parra that he was outside the apartment and was now free to talk with her. He apologized for what had happened and cancelled the visit because Carmen was not feeling well.

Parra testified about a June 22 visit at a park that was supervised by another social worker. Carmen tried to hug L.C.B., but she said no, walked away, and then ran toward the street. Carmen tried to redirect L.C.B., who refused to comply. When L.C.B. got to the street the social worker intervened because Carmen was about 40 or 50 feet behind her. Later during the visit, Carmen opened a prescription bottle and poured several pills of different colors and sizes into her hand. She took at least one, maybe more, put the rest back in the bottle, and then into her purse, which she put in the diaper bag where it was accessible to L.C.B. At the end of the visit, Carmen struggled to get up from the grass where she and L.C.B. had been playing. After about five minutes, she asked the social worker for help up. The social worker did not think Carmen would have been able to get up without somebody there to assist her.

Parra testified that during the month of June, Carmen produced two negative drug tests, but then missed tests on June 23 and June 27. Since the last hearing, Parra had contacted the speech therapist who confirmed that she was concerned about parents' interactions with L.C.B. Parra had visited the parents' apartment before the hearing that day and confirmed it was childproofed. She explained that she did not have an earlier opportunity to conduct the visit because it had only been a week since the parents reported that the apartment was ready.

Parra began to answer questions about the assistance that Andrew provides to Carmen when the court interrupted to ask Andrew if he was on his cell phone. Andrew's counsel then responded that Carmen was calling him. The court began to say that Andrew needed to stay off his phone, but then asked if there was a concern about Carmen's well-being—she had left the courtroom almost 25 minutes earlier and had not returned. While the parties discussed this issue, Carmen reentered the courtroom. The court asked for an explanation several times, but the most Carmen could say was that she was on the phone with her doctor and she thought she had more time.

Parra testified that she spoke with Andrew before the court session that day about whether the family had “thought about a safety plan as to how they were going to care for [L.C.B.] if she were to have visits [at parents’ apartment].” Andrew, who worked the graveyard shift as a security guard, told Parra that he does not require much sleep and would always be present during Carmen’s visits.

The parties were still in the process of questioning Parra when the court day drew to a close. Before continuing the matter, the court again provided the Bureau with several directives. First, if there was another interaction with Carmen when she appeared lethargic or slurred her words, the Bureau was to order an on-demand drug test. Second, although the court had been pushing the Bureau to get the parents’ apartment approved for a visit, there were still many concerns about Carmen, and the Bureau was instructed not to exercise its authority to permit a visit unless they believed it would be safe for L.C.B. Third, the court instructed the Bureau to reschedule Andrew’s visits in a way that would allow L.C.B. to have a regular naptime. Carmen’s counsel requested unsupervised visits for Carmen if Andrew were present. The court denied that request, expressing “grave concerns,” including court’s own observations of Carmen during the courtroom proceedings.

8. The July 14 Hearing

The first part of this session was spent questioning Ms. Parra about various incidents described in her reports or prior testimony. When that testimony was finally completed, Carmen elected to testify herself.

Carmen testified that she did not recall the details of a visit she had with L.C.B. on May 19th, but she did recall Ms. Parra’s testimony that Carmen had used her phone during a recent visit. Other than once answering a call from her aunt, Carmen used her phone to play Pandora, toddler radio, because she and L.C.B. liked to sing and dance when they played with toys. Regarding the supervised visit at the park, Carmen recalled that the plan was to play on the play structure and then sit at the bench, but it was a hot day, and the bench was too hot, so they found some shade under a tree. Carmen’s knee problems are such that sometimes she can get up and move around and sometimes she

cannot, and she had discussed those problems with the social worker before the visit took place.

Carmen testified that when she and Andrew had an unsupervised visit at the library, she tried to take L.C.B. into the restroom to change her diaper, but L.C.B. had a huge tantrum. She also attempted to change her on the couch, but somebody told her she could not do that. When they tried to feed L.C.B., the librarian told them they were not allowed to have food in the library.

Carmen also testified that one of her prescribed medications causes her to perspire. Other side effects of her medication are “waking and nausea.” Carmen testified that her brain injury has caused her to suffer short-term and long-term memory loss, to stutter, and to have nightmares and panic attacks. The social worker never discussed these issues with Carmen or talked to her about how to make the apartment safe for L.C.B.

9. The August 4 Hearing

Carmen testified about positive interactions she has had with L.C.B. during visits. She also testified that she has received positive feedback from L.C.B.’s speech therapist who told her she was doing better during her interactions with L.C.B. She believed that her medication helped with her ailments. She also expressed her belief that she is capable of caring for L.C.B. full-time notwithstanding her physical limitations and testified that she would accept help if she needed it.

Carmen described her relationship with Andrew as “good,” and testified that she did not recall telling the social worker that they were having problems. She admitted they sometimes argue about finances and she testified that she has a “problem” with his gambling, as a result of which they sometimes were “pretty close” to not having enough money to pay rent. Carmen opined that she and Andrew were good parents and a good team, but that when it came to their personal life, they were not as close as they used to be. Carmen denied that she had been homeless but confirmed that Andrew was homeless for a long time.

Carmen testified that things were going “great” at their apartment; everybody paid their share of the rent and it all worked out. But she acknowledged that Andrew’s

gambling caused stress because they did not have a “cushion.” Also, after Andrew got his paycheck, she would wonder where he was “for hours,” and suspected he was gambling. Carmen and Andrew discussed this problem many times and he always said that he was just trying to make more money for them so they can live better. Carmen testified that she became very angry during fights over this issue, and admitted she had physically pushed Andrew, but she did not think she had “put hands on him” in the last six months. The two had broken up in the past because of Andrew’s gambling, but they got back together when he stopped gambling for a while.

Carmen acknowledged it was important to drug test to demonstrate she was drug free, but she also admitted missing several tests. When asked why L.C.B. was originally detained, Carmen testified that she took prescription medication and went to sleep, but when she heard the baby wheezing she called 911, and an ambulance came. Carmen understood that there had been concerns about her abusing her medications, her paranoid thoughts and her slurred speech, and acknowledged that she had been treated for opiate dependency. However, Carmen testified that she does not believe that she has a drug problem.

Carmen was asked if she has a safety plan for a time when she was taking care of L.C.B. and began to feel drowsy. She responded that she would call or wake up Andrew or a roommate and ask for help. She also said that she would call her brother and sister-in-law, although she admitted that she had not discussed this plan with them. In response to follow-up questions from Andrew’s attorney, Carmen testified that the social worker never offered to help her create a safety plan.

Carmen’s brother R.C. testified as a rebuttal witness that Carmen had complained to him about Andrew’s problems with gambling and drinking. R.C. admitted that he had never seen Andrew drink while he was with L.C.B. R.C. also testified about a recent incident when Carmen had left burned macaroni and cheese in the refrigerator for Andrew because she was mad at him and Andrew later fed the burned meal to L.C.B.

10. The Juvenile Court's Ruling

The court began by noting that 23 months had passed since L.C.B. was first detained. L.C.B. was an infant when the case was filed and she had spent most of her life out of the care of her parents. The court then acknowledged that there was a period of time when these parents had not been provided with reasonable services. However, that was no longer the case.

The court identified Carmen's substance abuse issues as the "crux" of this case, and the issues that led to the dependency. The court found, after completing residential and outpatient treatment, Carmen "misses tests and tests positive for substances with no explanation, and . . . presents in an altered state on many occasions." These behaviors have persisted throughout the history of this case and were well documented in the evidence. They were also evident in Carmen's testimony that very day. In this regard, the court stated: "Mom appears altered to the Court. She had pregnant pauses in her response[s]. She was hard to understand. She was groggy."

The court then identified Andrew's unqualified devotion to Carmen as another major concern. From the very beginning, Andrew had been clear that he would stay with Carmen, regardless of what were to happen with L.C.B. However, because Carmen had not meaningfully addressed her substance abuse problems, she was "wholly unsafe to parent her child."

In analyzing the progress of these parents, the court did not rely on testimony about Andrew's alleged drinking and gambling. Indeed, it doubted there was sufficient evidence that Andrew had a drinking problem. It also characterized evidence about Carmen's mobility issues as "unhelpful." Based on its own observations, the court found that Carmen's physical limitations were not profound and were not a barrier to parenting her child. As the court explained, "I don't think this is a case where the Department has failed to make accommodations to a disabled individual so that they can learn to parent within their limitations; but rather it's right back to the basics of what this case was all about and where it started, with issues of substance abuse."

The court found that the parents both love L.C.B. very much. However, they failed to “show any insight into what led to this dependency proceeding in the first place.” Thus, although they made efforts, they failed to meaningfully address their problems. Furthermore, in some instances they did not make a real effort. For example, Andrew decided not to engage in individual therapy and both parents failed to follow through with their responsibilities to communicate with the Bureau, and to work with the social worker.

Ultimately, the court adopted the Bureau’s recommendations to terminate reunification services to both parents, and to schedule a hearing pursuant to section 366.26 to select a permanent plan for L.C.B. The court concluded that these recommendations were not only supported by the considerations the court had discussed, but also by the “wealth of evidence presented in these proceedings.”

III.

DISCUSSION

A. Issues Presented and Standard of Review

As our factual summary reflects, the orders at issue in this matter were made following an 18-month review hearing. “Absent extraordinary circumstances, the 18-month review hearing constitutes a critical juncture at which ‘the court must return children to their parents and thereby achieve the goal of family preservation or terminate services and proceed to devising a permanent plan for the children.’ [Citations.]” (*Katie V. v. Superior Court* (2005) 130 Cal.App.4th 586, 596, fn. omitted (*Katie V.*))

Although they filed separate petitions, Andrew and Carmen raise the same issues. Both contend there is insufficient evidence to support the juvenile court’s findings that: (1) returning L.C.B. to their custody would create a substantial risk to the child’s well-being; and (2) reasonable reunification services were provided.

We review the challenged findings under the substantial evidence standard of review. (*In re A.L.* (2015) 243 Cal.App.4th 628, 645 [finding that returning child would be detrimental]; *Kevin R. v. Superior Court* (2010) 191 Cal.App.4th 676, 688-689 [reasonable services finding].) “Under this standard, we do not pass on the credibility of

witnesses, attempt to resolve conflicts in the evidence, or reweigh the evidence. Instead, we draw all reasonable inferences in support of the findings, view the record favorably to the juvenile court's order and affirm the order even if there is other evidence to the contrary. [Citation.] The appellant has the burden of showing there is no evidence of a sufficiently substantial nature to support the court's finding. [Citation.]” (*In re A.L.*, *supra*, 243 Cal.App.4th at p. 645; see also *In re Kevin R. v. Superior Court*, *supra*, 191 Cal.App.4th at pp. 688-689.)

B. There Is Substantial Evidence L.C.B. Cannot Be Returned to Parents

Section 366.22, subdivision (a) provides that, at the 18-month review hearing a dependent child shall be returned 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 . . . would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child.” (§ 366.22, subd. (a)(1); see also *Constance K. v. Superior Court* (1998) 61 Cal.App.4th 689, 704.)

The risk of detriment must be substantial, such that returning a child to parental custody “represents some danger to [the child’s] physical or emotional well-being.” (*David B. v. Superior Court* (2004) 123 Cal.App.4th 768, 788.) Pertinent factors include the extent to which the parent participated in reunification services (§ 366.22, subd. (a); *Blanca P. v. Superior Court* (1996) 45 Cal.App.4th 1738, 1748), and the efforts or progress the parent made toward eliminating the conditions that led to the out-of-home placement. (§ 366.22, subd. (a); *In re Dustin R.* (1997) 54 Cal.App.4th 1131, 1141-1142.)

In the present case, the juvenile court’s detriment finding is supported by substantial evidence. L.C.B. was removed from the home because Carmen’s substance abuse posed a substantial danger to L.C.B.’s physical safety and emotional well-being. Almost two years later, Carmen continued to abuse her prescription medications and Andrew continued to enable that dangerous behavior. In their writ petitions, neither parent squarely addresses these pertinent facts which amply support the detriment finding in this case.

Instead, Carmen contends that L.C.B. should have been returned to her because she substantially complied with her drug rehabilitation programs and her 12-step program. Unfortunately, though, substantial evidence shows that any benefit Carmen received from that participation did not result in significant progress toward eliminating the conditions that led to this dependency. Carmen also suggests that her positive tests should not be held against her because they were caused by prescription medications. The problem with this argument is that even if Carmen had produced prescriptions to explain all of her positive tests (which she did not), that would not alter the conclusion that mother's continued abuse of prescription medications poses a danger to L.C.B. The court had ample evidence, including its own observations of Carmen, that no significant progress was made toward alleviating this problem.

Andrew contends that, as a matter of law, there is no basis for sustaining a detriment finding against him because the dependency petition did not allege that he was a dangerous parent. Andrew defeats his own argument, however, by expressly acknowledging that he did not request that the juvenile court place L.C.B. in his sole custody. Thus, the issue is whether L.C.B. can be safely returned to the home of both parents. Substantial evidence—indeed undisputed evidence—establishes that Andrew will support Carmen no matter what her behavior. Unfortunately, that environment is not a safe home for L.C.B.

C. The Reasonable Services Finding Is Supported by Substantial Evidence

Andrew contends that the juvenile court's finding that he was afforded reasonable reunification services is not supported by substantial evidence, and the "remedy" for this error is to "extend the reunification period and order continued services." With some factual adjustments, Carmen adopts Andrew's legal analysis as her own.

When pursuing this second claim of error, both parents ignore the fact that the challenged order was made at an 18-month review hearing governed by section 366.22. Following a 2009 amendment to this statute, at least one court has found that "setting a section 366.26 hearing is [not] 'conditioned on a reasonable services finding' at the section 366.22 hearing covering the most recent reporting period." (*Earl L. v. Superior*

Court (2011) 199 Cal.App.4th 1490, 1504.) According to the court, “Subdivision (b) provides a limited right to a continuance where additional reunification services would serve the child’s best interests, and the parent is making ‘significant and consistent progress’ in treatment programs or in establishing a safe home after release from custody. In these cases, the juvenile court may not set a section 366.26 hearing if the court finds reasonable reunification services have not been offered or provided.” (*Ibid.*)

Here, neither parent would qualify for the limited right to a continuance afforded by section 366.22, subdivision (b). However, the circumstances in this case are unusual in that: (1) it has already been established that parents did not receive reasonable services during the first six months of the reunification period, and (2) for reasons that are not clear, the 12-month review was postponed until it became a 18-month review due to the passage of time. Perhaps for these reasons, the juvenile court made an express finding that reasonable services were afforded to these parents. Under the circumstances, the reasonable services finding may well be required to justify the challenged order.

“ ‘[T]he focus of reunification services is to remedy those problems which led to the removal of the children.’ [Citation.] A reunification plan must be tailored to the particular individual and family, addressing the unique facts of that family. [Citation.] A social services agency is required to make a good faith effort to address the parent's problems through services, to maintain reasonable contact with the parent during the course of the plan, and to make reasonable efforts to assist the parent in areas where compliance proves difficult. [Citation.] However, in most cases more services might have been provided and the services provided are often imperfect. [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.]” (*Katie V.*, *supra*, 130 Cal.App.4th at pp. 598-599.)

In the present case, substantial evidence supports the finding that these parents were afforded reasonable services. The issues that led to this dependency case were Carmen’s substance abuse and mental health problems and Andrew’s failure to acknowledge or address those problems. The new case plans that were adopted after our

decision in *L.C.B. I* were tailored to address these specific problems. Furthermore, the Bureau reports and memoranda and Ms. Parra's testimony constitute substantial evidence of the Bureau's reasonable efforts to assist these parents with their plan objectives.

Andrew contends he was not afforded reasonable services because all the Bureau did was give him a long list of referrals. The evidence shows that the Bureau did more than that; the social worker made numerous attempts to encourage Andrew to obtain a more realistic perspective regarding Carmen's problems and their impact on the child's well-being. Equally important, there is substantial evidence that Andrew made a conscious decision to resist individual counseling, and that he consistently limited his role in these dependency proceedings to that of an advocate for Carmen rather than an independent parent for L.C.B.

Carmen's primary contention is that the Bureau failed to address her mental health problems adequately because it never acknowledged that she had a "developmental limitation that required more assistance in order for [her] to access services." The problem with this argument is that, in contrast to the situation we addressed in *L.C.B. I*, this record demonstrates that Carmen did access services during the relevant time period. Carmen had recovered from her knee surgery and there is no evidence that transportation issues prevented her from accessing services. In addition to residential treatment, Carmen participated in outpatient treatment, a 12-step program, drug testing and visitation. Despite that participation, she failed to make substantive progress toward alleviating the problems that led to this dependency.

Parents mistakenly rely on *In re Patricia W.* (2016) 244 Cal.App.4th 397. In that case, the mother began hearing voices for the first time in her life following the birth of her son. Initially she was diagnosed with postpartum depression, but later she received a diagnosis of schizophrenia. (*Id.* at p. 402.) The mother's mental illness was the sole basis for removing her toddler from the home; mother had trouble managing her medications, and father appeared to be in denial about the seriousness of mother's condition. (*Id.* at pp. 402-403.) Under those circumstances, a reunification plan that was not tailored to address mother's mental illness was deemed inadequate. (*Id.* at pp.

420-424.) In this case, by contrast, Carmen’s mental health issues were inextricably intertwined with her chronic abuse of prescription medications; the underlying drug abuse was the direct cause of her dangerous behavior; and the case plan was tailored to address Carmen’s unique problems.

Furthermore, the record shows that throughout the relevant time period, Carmen received individual therapy from a mental health provider of her choosing. Although that therapist was reportedly unavailable to speak with the social worker, she did provide a letter dated April 26, 2016, which confirmed that Carmen participated in individual therapy sessions on a biweekly and sometimes monthly basis. Again though, despite this treatment, Carmen was not able to resolve the substance abuse problems that led to this dependency case.

Finally, Carmen contends that she was denied reasonable services because the Bureau “made no efforts to encourage [her] to visit for longer periods of time with less restriction,” but instead imposed more “restrictive visitation due to positive drug tests.” With the careful guidance of the juvenile court, the Bureau afforded Carmen ample opportunity to use visitation as a method of demonstrating her ability to be a safe parent. The record contains substantial evidence that, despite that opportunity, Carmen was not able to overcome her overarching substance abuse problems.

IV.

DISPOSITION

The petitions for extraordinary relief are denied on the merits. Our decision is final as to this court immediately. (Cal. Rules of Court, rule 8.490(b)(2)(A).)

RUVOLO, P. J.

We concur:

REARDON, J.

RIVERA, J.

A149154, *In re L.C.B.*