

NOT TO BE PUBLISHED

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Shasta)

----

In re I.S. et al., Persons Coming Under  
the Juvenile Court Law.

SHASTA COUNTY HEALTH AND HUMAN SERVICES  
AGENCY,

Plaintiff and Respondent,

v.

C.W.,

Defendant and Appellant.

C067818

(Super. Ct. Nos.  
10JVSQ2733402,  
10JVSQ2733502,  
10JVSQ2785202,  
11JVSQ2876801)

C.W., mother of the minors, appeals from the judgment of the juvenile court. (Welf. & Inst. Code, §§ 358, 360, 395 [undesigned statutory references that follow are to the Welfare and Institutions Code].) Appellant contends there was insufficient evidence to support the juvenile court's order to bypass her services and that the juvenile court abused its discretion in failing to find that providing services would be

in the best interests of the minors. She also argues that the exit orders for C.H. and J.H., granting custody to the minors' father, Jose H. was not in the minors' best interests. We affirm the judgment.

## FACTS AND PROCEEDINGS

In March 2008, the Shasta County Health and Human Services Agency (the Agency) filed a petition to remove A.W., age 7, D.S., age 3, and I.S., age 13 months, from parental custody due to appellant's drug issues. A.W. is not a subject of this appeal.

Appellant was involved in sales and use of methamphetamine and I.S. tested positive for methamphetamine. The Agency recommended services for appellant.

An addendum report in July 2008 stated appellant was pregnant with a fourth child and had recently tested positive for methamphetamine. The court adopted a reunification plan which included substance abuse treatment, parenting classes, testing and visiting the minors.

In a review report in October 2008, the Agency recommended extending services to appellant, who was participating in her plan. Appellant had tested positive for methamphetamine in September 2008. An addendum in November 2008 stated appellant was not doing well in parenting, having been dropped from her class. Her recent methamphetamine use meant that her unborn child was exposed to drugs. In December 2008, the court ordered further services for appellant.

In January 2009, the Agency filed a petition to detain week-old C.H., based on appellant's positive drug tests in September and December 2008. The court denied detention and ordered that C.H. remain in appellant's custody under the supervision of the Agency. The jurisdiction report for C.H. did not recommend voluntary services noting that appellant denied her history of substance abuse. The jurisdiction/disposition report of March 2009 recommended an in-home dependency, noting that appellant had completed outpatient treatment but that there had been a recent domestic violence incident. C.H.'s father was participating in services.

The 12-month review report for A.W., D.S. and I.S. recommended extending appellant's services to the 18-month limit based on her participation and the family maintenance case for C.H. The court adopted the recommendation for family maintenance for C.H., extended services for the three older children and gave the Agency discretion to facilitate overnight visits with appellant for them.

The 18-month report in August 2009 stated the minors A.W., D.S. and I.S. were placed with appellant and the Agency recommended continued supervision. By October 2009, the court ordered the dependency terminated.

Eleven months later, in September 2010, the Agency filed a petition to remove the four minors from appellant's custody after D.S., now five years old, took a bag of methamphetamine to school. Appellant did not drug test when requested to do so and blamed the presence of methamphetamine in her home on a drug

dealer who planted it there. Appellant admitted her past drug use but denied she had used drugs since September 2008. Appellant insisted she was set up by a drug dealer but also accused C.H.'s father of planting drugs. At the initial hearing, the court released C.H. to his father, who had completed his services.

The jurisdiction/disposition report of October 2010 recommended foster care for A.W., D.S. and I.S. with services to appellant. Appellant admitted using methamphetamine from March to June 2010. Appellant also had a positive test for amphetamines in September 2010 but the test results were questionable. Appellant was pregnant with her fifth child. A psychological evaluation of appellant from 2008 predicted that she would be a difficult client due to her maladaptive defenses and impulsivity and would need a minimum of a year of treatment.

In an addendum filed in January 2011, the Agency changed the recommendation to denial of services for appellant and A.W.'s father, services to D.S.'s and I.S.'s father, and full custody of C.H. to Jose H. The addendum detailed appellant's extensive drug involvement and services provided to her from 2000 to 2010. That period was characterized by several removals and returns of the minors, multiple services, periods of sobriety and eventual relapses. When evaluated in October 2010, appellant was unwilling to enter residential treatment, preferring instead to participate in an intensive day treatment program. Appellant eventually entered residential treatment in

December 2010. A hair strand test in October 2010 was positive for amphetamine and methamphetamine.

Appellant gave birth to her fifth child, J.H., in January 2011 and the Agency filed a petition to detain him. Appellant had claimed to be clean since June 2010, but the hair strand test in October 2010 demonstrated she had continued to use drugs. Both appellant and J.H. tested negative when he was born. The initial report recommended the minor be detained. The court ordered J.H. detained and gave the Agency discretion to place him with his father, Jose H.

Subsequent reports in February 2011 and March 2011 recommended placing J.H. with Jose H., denying services to appellant and dismissing the dependency. The February report observed that accommodating visits during the week placed a financial burden on the father but that he was able to take both C.H. and J.H. to appellant's treatment center for extended day visits on weekends. The March 2011 report stated appellant had exposed J.H. to methamphetamine. The report further stated that appellant admitted a history of drug use and sales over 17 years, had completed a plan for the half-sibling, C.H., in 2009, but relapsed in a few months, following a pattern predicted by the 2008 psychological evaluation. The father was a nonoffending parent who had completed a service plan for C.H. and was providing for J.H.

An addendum filed in March 2011 as to the four older minors recommended bypassing appellant's services pursuant to section 361.5, subdivision (b)(13) because appellant relapsed into

substantial drug use within five months of treatment in the prior dependency. The report stated appellant was in a residential treatment facility but there was concern about the professionalism of the staff and appellant's level of engagement in treatment. A recent psychological evaluation, which was similar to the prior evaluation, stated it was unlikely appellant would take responsibility for personal failures and would act on impulse. The evaluation concluded that appellant required extensive treatment over years, however, individuals with personality disorders, like appellant, often believed they did not need treatment and thus treatment was ineffective. Visit logs attached to the addendum indicated that C.H. was happy to see appellant at his visits in November and December 2010. The logs of J.H.'s visits showed that appellant was able to adequately care for him in the supervised setting.

Appellant submitted to jurisdiction on the petitions. As to C.H. and J.H., appellant argued the visit logs showed visits were positive for C.H. and opposed the recommendation that visits be set at once a week, asking instead for overnight visits. The court found that joint custody was not appropriate due to appellant's relapses and that it was not prepared to move to overnight visits yet. The court sustained the petitions, placed the minors in the sole legal and physical custody of the father, terminated the dependencies and set visits at once a week.

At the hearing for D.S. and I.S., appellant testified about the quality of her visits with them and the bond they shared.

Appellant now denied telling the social worker she first relapsed in March 2010 and explained she relapsed in June 2010 after using diet pills. Appellant discussed her current treatment program for substance abuse and parenting and how she was trying to apply what she learned. While she did consider herself an addict, she did not think she was a chronic drug user. An employee of appellant's treatment program testified that appellant was doing well there. The social worker testified about her concerns that appellant was minimizing her addiction and lacked the ability to remain sober. The social worker further testified that appellant was able to comply with treatment when monitored but not otherwise and was concerned she would relapse again.

The court reviewed the circumstances of the case, including appellant's success in the earlier dependency proceeding and subsequent relapse. The court explored the various statements appellant made about the timing of her relapse, observing that she lied to fit the facts she was confronted with and that the facts showed she was using drugs from March to September of 2010. The court also noted that appellant had resisted a referral to residential treatment but was now engaged in treatment to "play the game." The court found appellant had demonstrated no benefit from services and her credibility was questionable. The court further found appellant had chronic substance abuse issues and that section 361.5, subdivision (b)(13) did apply. The court stated it could not find that providing services would be in the minors' best interests. The

court sustained the petitions, denied services to appellant and ordered services for the father of D.S. and I.S.

## DISCUSSION

### I

#### *Sufficiency of the Evidence to Bypass Services*

Appellant contends there was insufficient evidence to support bypassing services to her, characterizing her resumption of drug use in 2010 as a brief relapse and arguing that she had not tested positive since beginning residential treatment.

When the sufficiency of the evidence to support a finding or order is challenged on appeal, even where the standard of proof in the trial court is clear and convincing, the reviewing court must determine if there is any substantial evidence--that is, evidence which is reasonable, credible and of solid value--to support the conclusion of the trier of fact. (*In re Angelia P.* (1981) 28 Cal.3d 908, 924; *In re Jason L.* (1990) 222 Cal.App.3d 1206, 1214.) In making this determination, we recognize that all conflicts are to be resolved in favor of the prevailing party and that issues of fact and credibility are questions for the trier of fact. (*Jason L.*, at p. 1214; *In re Steve W.* (1990) 217 Cal.App.3d 10, 16.) The reviewing court may not reweigh the evidence when assessing the sufficiency of the evidence. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318-319.)

When a child is removed from parental custody, the juvenile court must order reunification services to assist the parents in reuniting with the child. (§ 361.5, subd. (a).) However, if

any of the circumstances set forth in section 361.5, subdivision (b) are established, "the general rule favoring reunification is replaced by a legislative assumption that offering [reunification] services would be an unwise use of governmental resources." (*In re Baby Boy H.* (1998) 63 Cal.App.4th 470, 478; see also *Renee J. v. Superior Court* (2001) 26 Cal.4th 735, 744.)

Here, the Agency relied on section 361.5, subdivision (b)(13) as the basis for seeking bypass of services. That subdivision provides, in relevant part, that reunification services need not be provided when there is clear and convincing evidence: "That the parent . . . of the child has a history of extensive, abusive, and chronic use of drugs or alcohol and has resisted prior court-ordered treatment for this problem during a three-year period immediately prior to the filing of the petition that brought that child to the court's attention, or has failed or refused to comply with a program of drug or alcohol treatment described in the case plan . . . on at least two prior occasions . . . ." Completion of drug treatment but failure to maintain any kind of long-term sobriety constitutes resistance to treatment. (*Karen S. v. Superior Court* (1999) 69 Cal.App.4th 1006, 1010; *Randi R. v. Superior Court* (1998) 64 Cal.App.4th 67, 73.)

Here, appellant admitted, and the evidence showed, an extensive, abusive and chronic use of drugs. Appellant was involved in both use and sales of drugs over many years. In the first dependency, she had 18 months of services to address her substance abuse problem and did reunify with the minors in

October 2009. But, by March 2010, appellant had relapsed into her old pattern of substance abuse. The evidence showed she continued to use methamphetamine at least through September of 2010. Although appellant had entered a residential treatment facility and was currently testing negative for drugs, the evidence amply supported the juvenile court's finding that appellant had resisted prior court ordered treatment by resuming drug use within three years and that the bypass provisions of section 361.5, subdivision (b)(13) applied. (*In re Angelia P.*, *supra*, 28 Cal.3d at p. 924; *In re Jason L.*, *supra*, 222 Cal.App.3d at p. 1214.)

## II

### *The Minors' Best Interests*

Appellant asserts that, if the bypass provision was operative, the juvenile court abused its discretion in failing to apply section 361.5, subdivision (c) and order services in the minors' best interests.

Section 361.5, subdivision (c) provides, in part: "The court shall not order reunification for a parent . . . described in paragraph . . . (13) . . . of subdivision (b) unless the court finds, by clear and convincing evidence, that reunification is in the best interest of the child." A juvenile court has broad discretion when determining whether further reunification services would be in the best interests of the child. (*In re Angelique C.* (2003) 113 Cal.App.4th 509, 523.) An appellate court will reverse that determination only if the juvenile court abuses its discretion. (*Id.* at pp. 523-524.) It

is the parent's burden to "affirmatively show that reunification would be in the best interest" of the child. (*In re Ethan N.* (2004) 122 Cal.App.4th 55, 66.)

Substance abuse problems are difficult to overcome. Appellant has struggled with substance abuse for many years with varying degrees of success. Her significant periods of sobriety occurred when she was under the Agency's supervision and, without that support, she soon relapsed. The minors need stability and consistency which cannot be achieved by pushing them through the revolving door of removal and return multiple times.

To overcome the bypass provision, the juvenile court must have some reason to believe that reunification is possible before ordering services. Appellant repeatedly lied about the circumstances of her relapse and blamed others for the presence of methamphetamine in her home. She minimized the seriousness of her problem and was initially resistant to the very service which would provide the best chance for success, i.e., residential treatment. While appellant was currently doing well in her program, she had shown no benefit from the prior intensive services she was offered and there was no reason to believe this time would be different. The juvenile court did not abuse its discretion in concluding the minors' best interests would not be served by offering services to appellant.

### III

#### *Custody and Visitation*

Appellant challenges the exit orders as to C.H. and J.H. She argues that giving sole custody to Jose H. and limiting her visitation was an abuse of discretion. Appellant points to evidence of Jose H.'s criminal history and anger management problems and relies on reports of her positive visits with the minors to assert that overnight visits were in the minors' best interests.

The juvenile court may place a child with a noncustodial parent unless it finds that such placement would be detrimental to the minor's well-being. (§ 361.2, subd. (a).) If such a placement is made, the court may order that the noncustodial parent become the legal and physical custodian of the child, enter reasonable visitation orders for the other parent and terminate jurisdiction over a dependent child. (§§ 361.2, subd. (b); 362.4; Cal. Rules of Court, rule 5.700(a); *In re Jennifer R.* (1993) 14 Cal.App.4th 704, 712.) The order is to be filed in any domestic relations or paternity proceeding between the parents or may form the basis for a new file in the superior court. (§§ 361.2, subd. (b); 361.4.) Subsequent modifications of custody or visitation will be made in the superior court case. (§ 362.4.) We review custody and visitation orders for abuse of discretion. (*In re Marriage of Burgess* (1996) 13 Cal.4th 25, 32; *In re Stephanie M.*, *supra*, 7 Cal.4th at p. 318; *Bridget A. v. Superior Court* (2007) 148 Cal.App.4th 285, 300-301.)

In the first dependency, both appellant and Jose H. had issues which needed to be addressed in services. Jose H. completed his service plan and there was no evidence that, at the time of the disposition hearing, he was anything other than a father who was successfully parenting and supporting two young children while working and maintaining their visitation with appellant. In contrast, appellant had not benefitted from her earlier services, relapsed into drug use, was not credible when testifying about her drug use and, although she was in treatment, continued to minimize and excuse her substance abuse problems. The visit records show that, in the structured setting of supervised visits, appellant did reasonably well in meeting the needs of both C.H. and J.H. and that C.H. was generally happy to see her. However, the court was not required to hold the minors' safety and stability hostage to appellant's inconsistent ability to remain clean and sober by permitting her to share custody or to have overnight visits. The current orders strike a balance between ensuring a safe and stable home for the minors and permitting ongoing contact between them and appellant. The juvenile court did not abuse its discretion in entering the exit orders.

DISPOSITION

The judgment is affirmed.

\_\_\_\_\_ HULL \_\_\_\_\_, Acting P. J.

We concur:

\_\_\_\_\_ BUTZ \_\_\_\_\_, J.

\_\_\_\_\_ MAURO \_\_\_\_\_, J.