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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re J.H. et al., Persons Coming Under the  
Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND  
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

C.C.,

Defendant and Appellant.

D061882

(Super. Ct. No. EJ3054A-B)

APPEAL from judgments of the Superior Court of San Diego County, Carol  
Isackson, Judge. Affirmed.

C.C. appeals judgments declaring her minor sons, J.H. and C.T. (together, the  
minors), dependents of the juvenile court, removing them from her custody, placing them  
in out-of-home care and denying her reunification services under Welfare and Institutions

Code section 361.5, subdivision (b)(3).<sup>1</sup> C.C. contends it was in the minors' best interests to provide her with reunification services. We affirm the judgments.

#### FACTUAL AND PROCEDURAL BACKGROUND

In February 2009, the San Diego County Health and Human Services Agency (Agency) filed a petition in the juvenile court under section 300, subdivision (a) alleging C.C. had subjected 12-year-old J.H. to serious physical harm by beating him with a large stick, resulting in more than 50 abrasions, bruises and contusions, and swelling to his scalp and other body parts. J.H. was taken to the hospital where treating physicians determined the injuries were consistent with defensive wounds. Agency also filed a petition under section 300, subdivision (j), alleging six-year-old C.T. was at substantial risk of similar harm. The court sustained the allegations of the petitions, declared the minors dependents, removed them from C.C.'s custody and placed them with relatives. The court ordered C.C. to comply with her case plan.

C.C. participated in individual therapy, and classes for anger management, parenting and child abuse prevention. She progressed to unsupervised and overnight visits. At the six-month review hearing, the court ordered the minors returned to C.C.'s custody with six months of family maintenance services. C.C. completed individual therapy and conjoint therapy with the minors, met all their needs and created a home environment in which the minors felt safe and did not fear corporal punishment. In

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<sup>1</sup> Statutory references are to the Welfare and Institutions Code.

March 2010, the court found there were no longer any protective issues and terminated jurisdiction.

In January 2012, Agency received a referral that C.C. had been physically abusing the minors. C.T. told the social worker and his teacher that C.C. had punched him in the nose as punishment for not cleaning up after he vomited. C.T. was concerned that C.C. would hurt J.H. because he often got in trouble. C.C. had been disciplining C.T. by hitting him with a belt, but she was now punching him in the face. On one occasion, C.T.'s nose bled, and C.C. made J.H. clean up the blood. C.T. also reported C.C. hit him with a broom and beat him with a computer cable, causing marks on his upper body, because he ate the last piece of pizza. J.H. similarly reported C.C. beat him with a belt and punched him in the face. He was afraid the beatings would eventually be as severe as they had been in 2009. Both minors said C.C. became much calmer after she smoked marijuana.

During an interview with the social worker, C.C. denied physically abusing the minors. She claimed she accidentally bumped C.T. in the nose with her arm, and he tended to bleed easily. She admitted having J.H. clean the blood off the floor. C.C. also acknowledged she used a belt on the minors' bottoms but denied it qualified as corporal punishment. She attributed the minors' injuries to their wrestling and playing rough, and participating in sports and outdoor activities. The social worker noted that despite C.C.'s participation in services designed to ameliorate the physically abusive practices she used on the minors, C.C. failed to learn or implement any safe, alternative methods of discipline.

Agency filed petitions under section 300, subdivision (a), alleging C.C. physically abused the minors, and she had previously inflicted physical abuse on J.H., which resulted in the minors' dependencies in 2009. At the jurisdiction hearing, the court sustained the allegations of the petitions but continued disposition because the minors' fathers appeared and raised paternity issues.

C.C. had pleaded guilty to inflicting corporal punishment or injury on a minor. A criminal protective order prevented her from having any contact with the minors. C.C. was enrolled in a parenting program, individual therapy, anger management classes and a parenting class. J.H. told the social worker he did not like his mother and did not believe she had changed. The minors said they preferred to live with the maternal great-aunt, Barbara E.

At a contested disposition hearing, social worker Angela Thomas testified C.C. had been consistent in contacting Agency, asked for advice on appropriate services and engaged in some services on her own. Thomas was aware that C.C. would be receiving services through the probation department as a result of her criminal conviction. In the prior dependency case, C.C. had participated in 52 weeks of child abuse counseling, parenting education, individual therapy and anger management. Although C.C. claimed to know the difference between physical discipline and physical abuse, Thomas believed C.C. had not learned anything because she continued to use physical discipline instead of alternative methods. In Thomas's opinion, C.C. was unable to apply what she had learned and thus, she would not benefit from more services. Further, C.C. had not been

consistent in her version of what happened to cause C.T.'s injuries. Her dishonesty factored into Agency's recommendation for no services.

The parties stipulated that J.H., if called as a witness, would testify he did not want to return home to live with C.C. Supervised visits with her were fine, and he would like to see her more. J.H. was not sure if C.T. would be safe if returned to C.C.'s care.

According to C.T.'s stipulated testimony, he did want to live with C.C. C.T. enjoyed visits and wanted more. He was not really afraid of C.C. any more, probably because she took classes to learn not to be so angry. C.T. could not identify anything that could be put into C.C.'s home to make him feel safer. If given a choice, C.T. did not want to live apart from J.H.

After considering the evidence and arguments of counsel, the court found by clear and convincing evidence there would be a substantial danger to the minors' physical health if they were returned to C.C.'s custody. The court removed the minors from C.C.'s custody and placed them with a relative. The court ordered no additional reunification services for C.C. under section 361.5, subdivision (b)(3).

## DISCUSSION

When a dependent child is removed from parental custody, the court generally orders services for the family to facilitate its reunification. (§ 361.5, subd. (a); *In re Baby Boy H.* (1998) 63 Cal.App.4th 470, 478.) Reunification services, however, need not be ordered if certain circumstances specified by statute apply. (§ 361.5, subd. (b); *In re Allison J.* (2010) 190 Cal.App.4th 1106, 1112; *Renee J. v. Superior Court* (2001) 26 Cal.4th 735, 739.) The so-called bypass provisions of section 361.5, subdivision (b)

reflect the Legislature's determination that reunification services should only be provided when they will facilitate the return of children to parental custody. (*In re Lana S.* (2012) 207 Cal.App.4th 94, 106.) When the court finds a bypass provision applies, the general rule favoring reunification is replaced with a legislative presumption that reunification would be an unwise use of governmental resources. (*Ibid.*) In this regard, "[i]t is reasonable for the state, before expending its limited resources for reunification services, to distinguish between those who would benefit from such services and those who would not." (*In re Joshua M.* (1998) 66 Cal.App.4th 458, 474.)

Under section 361.5, subdivision (b)(3), the court may deny reunification services to a parent if it finds, by clear and convincing evidence, that (1) the child has been previously adjudicated a dependent and was removed from the parent's custody as a result of physical abuse; (2) the child was returned to the parent's custody; and (3) the child is again being removed from parental custody as a result of additional physical abuse. Inherent in this subdivision is "a very real concern for the risk of recidivism by the parent despite reunification efforts." (*Cheryl P. v. Superior Court* (2006) 139 Cal.App.4th 87, 96.) Once the court finds section 361.5, subdivision (b)(3) applies, it may not order reunification services for a parent unless it finds, by clear and convincing evidence, reunification is in the child's best interests. (§ 361.5, subd. (c).) C.C. concedes the bypass provision of section 361.5, subdivision (b)(3) applies to her, but nevertheless contends that providing her with reunification services would serve the minors' best interests.

## A

We review an order denying reunification services for substantial evidence. (*Cheryl P. v. Superior Court, supra*, 139 Cal.App.4th at p. 96; *In re Ethan N.* (2004) 122 Cal.App.4th 55, 64-65.) In this regard, we do not consider the credibility of witnesses, attempt to resolve conflicts in the evidence or weigh 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 substantial evidence supporting a contrary finding. (*Francisco G. v. Superior Court* (2001) 91 Cal.App.4th 586, 599-600; *In re Baby Boy L.* (1994) 24 Cal.App.4th 596, 610.) The parent has the burden of showing there is no evidence of a sufficiently substantial nature to support the court's finding or order. (See *In re L.Y.L.* (2002) 101 Cal.App.4th 942, 947.)

## B

The purpose of imposing a "best interests" standard " 'is to maximize a child's opportunity to develop into a stable, well-adjusted adult.' " (*In re Ethan N., supra*, 122 Cal.App.4th at p. 66.) In determining whether a child's best interests will be served by offering the parent reunification services, the court considers factors such as: (1) the parent's current efforts and fitness, as well as the parent's history; (2) the gravity of the problem that led to the dependency; (3) the strength of the bond between the child and parent, as well as between the child and caregiver; and most importantly, (4) the child's need for stability and continuity. (*Id.* at pp. 66-67.)

Here, the evidence showed C.C.'s current efforts consisted of attending three psychotherapy sessions, attending the first of a 22-class parenting program, participating

in three sessions of anger management group therapy and expressing an interest in beginning visits with the minors. However, C.C. had a history of physically abusing J.H. for which she was criminally prosecuted, she had previously completed six months of reunification services and six months of family maintenance services, and yet she continued to use extreme methods of physical discipline on the minors. C.C. lacked insight as shown by her denial and implausible excuses for the minors' documented injuries. As C.C. acknowledges, her efforts and fitness as a parent "weigh heavily against her" with respect to receiving reunification services.

The problems that led to the minors' dependencies were grave. C.C. punched the minors in the face and struck them with cords, resulting in serious injuries. Nothing in the record shows C.C. has made any progress in alleviating or mitigating the causes of the minors' removal from her custody. Indeed, the risk of recidivism by C.C., despite her prior success with services, raises little or no hope for her successful reunification with the minors. (See *In re D.F.* (2009) 172 Cal.App.4th 538, 547.)

C.C. asserts she has a strong bond with the minors and has shown herself to be "a devoted and caring parent despite the inappropriate discipline" she used on them. However, C.C. is neither devoted nor caring. She inflicted severe physical abuse on the minors and engaged in other acts of cruelty, such as forcing them to clean up their own blood. She refused to admit wrongdoing or accept responsibility for their injuries. When attempting to apologize, C.C. told the minors she hit them "with a closed hand" to "protect" them. J.H. did not like his mother and did not want to live with her. C.T.

recognized he could not live with C.C. because of what she had done to him. Both minors preferred to live with their great-aunt.

As the juvenile court noted, C.C. could not meet the minors' needs. "The tradeoff for attempting reunification with [C.C.] would be continued instability and uncertainty for the minor[s]." (*In re D.F., supra*, 172 Cal.App.4th at p. 547.) Because there is no realistic chance the minors will find permanence and stability with C.C., the court could reasonably find it was not in their best interests to offer C.C. reunification services. Substantial evidence supports the court's findings under section 361.5, subdivisions (b)(3) and (c).

#### DISPOSITION

The judgments are affirmed.

BENKE, Acting P. J.

WE CONCUR:

HUFFMAN, J.

McDONALD, J.