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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

KIMBERLY A.,

Petitioner,

v.

THE SUPERIOR COURT OF SAN  
DIEGO COUNTY,

Respondent;

SAN DIEGO COUNTY HEALTH AND  
HUMAN SERVICES AGENCY,

Real Party in Interest.

D062003

(San Diego County  
Super. Ct. No. NJ013438B-C)

PROCEEDINGS for extraordinary relief after reference to a Welfare and Institutions Code section 366.26 hearing. Blaine K. Bowman, Judge. Petition denied; request for stay denied.

Kimberly A. seeks writ review of a juvenile court order denying reunification services for her with respect to her minor children, Jessica C. and Raul C. (together, the

minors), under Welfare and Institutions Code section 361.5, subdivision (b)(10) and (11),<sup>1</sup> and setting a hearing under section 366.26. Kimberly contends: (1) she was entitled to services because the evidence supported a finding she made reasonable efforts to treat the problems that led to the removal of the minors' half siblings; and (2) the court abused its discretion by denying her reunification services. We deny the petition and Kimberly's request for a stay.

### FACTUAL AND PROCEDURAL BACKGROUND

In June 2006, the San Diego County Health and Human Services Agency (Agency) filed a petition in the juvenile court on behalf of the minors' newborn half sibling, Jimmy L., and detained him in out-of-home care because Jimmy tested positive for methamphetamine. At the same time, Agency offered Kimberly voluntary services for her six other children, including the minors. When these efforts failed because Kimberly continued to use methamphetamine, Agency filed petitions under section 300, subdivision (b) on behalf of the minors and their half siblings.

Agency had received referrals for Kimberly, mostly for drug abuse and neglect, dating from 1998. Kimberly had a criminal history and had failed to comply with the requirements of a drug diversion program in 2004.

In February 2007, the court sustained the allegations of the petitions, declared the minors dependents and placed them in foster care. The court ordered reunification services for Kimberly. By the 12-month review hearing, Kimberly successfully

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

completed the Substance Abuse Recovery Management System (SARMS) program and the minors were returned to her custody. However, the court terminated Kimberly's parental rights to two of her other children and ordered adoption as their permanent plans. The minors and three of their half siblings remained placed with Kimberly and, in August 2008, the court terminated its jurisdiction.

In February 2012, Kimberly and her live-in boyfriend, Abraham R., were arrested after police found methamphetamine and other drugs in their home. Abraham admitted he and Kimberly had been using methamphetamine "as [recently] as six months ago." Kimberly told the social worker she had been clean for a year before recently relapsing.

Two days after Kimberly posted bail and was released from custody, she was with Abraham's brother when police found methamphetamine in her purse and inside her hotel room. Kimberly had purchased the drugs and said she planned to use and sell them. She admitted she was addicted to methamphetamine and had previously sold drugs to facilitate future purchases and use. Kimberly was charged with possessing a controlled substance for sale, committing a felony while on bail and possessing a controlled substance.

In February 2012, Agency filed petitions under section 300, subdivision (b), alleging the minors, who were 11 and 12 years old, were at substantial risk of harm because Kimberly had a history of methamphetamine use, was currently using methamphetamine, admitted possessing it with the intent to sell and had recently been arrested twice on drug-related charges. The petitions also alleged the minors tested

presumptively positive for drugs, and Jessica had witnessed Kimberly and Abraham engage in domestic violence.

At the detention hearing, the court referred Kimberly to drug rehabilitation services and she attended an intake appointment. The day before she was scheduled to begin drug treatment, Kimberly was arrested for the third time that month on drug-related charges. She admitted having used methamphetamine for nearly 20 years.<sup>2</sup>

At the contested jurisdiction and disposition hearing, the court received in evidence Agency's various reports. The parties stipulated to the minors' testimony that they did not want to be separated from each other, they loved Kimberly and had regular contact with her and they wanted to reunify and live with her when she was released from custody. Kimberly's counsel informed the court Kimberly had no known release date. The parties also stipulated to Kimberly's testimony that she had been engaged in services while incarcerated and planned to enroll in an inpatient substance abuse program when released from custody.

The court sustained the allegations of the petitions, declared the minors dependents and removed them from Kimberly's custody. The court denied Kimberly services under section 361.5, subdivision (b)(10) and (11), finding she had not made reasonable efforts to treat the problems that led to the removal of the minors' half siblings. The court further found it was not in the minors' best interests to order reunification services for Kimberly.

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<sup>2</sup> Kimberly was 36 years old at the time and said she began using methamphetamine when she was 17 years old.

Kimberly filed a petition for review of the court's orders. (§ 366.26, subd. (I); Cal. Rules of Court, rule 8.452.) This court issued an order to show cause, Agency responded and the parties waived oral argument.

## DISCUSSION

### I

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 offered if certain circumstances specified by statute apply. (*Renee J. v. Superior Court* (2001) 26 Cal.4th 735, 739.) Under section 361.5, subdivision (b)(10) and (11), the court may deny reunification services to a parent who has failed to reunify with the minor's sibling or half sibling or whose parental rights to the minor's sibling or half sibling were terminated. Denial of services under these provisions requires the court to find the parent "has not subsequently made a reasonable effort to treat the problems that led to removal of the sibling or half sibling . . . ." (§ 361.5, subd. (b)(10) & (11).) Kimberly contends there was no substantial evidence to support the court's order denying her reunification services under section 361.5, subdivision (b)(10) or (11) because she had made reasonable efforts to treat the problem—her substance abuse—that led to the removal of the minors' half siblings.

### A

By enacting section 361.5, subdivision (b)(10) and (11), the Legislature intended to provide services only if they would facilitate the return of children to parental custody.

(*In re Allison J.* (2010) 190 Cal.App.4th 1106, 1112.) When the court determines one of these provisions apply, the general rule favoring reunification is replaced with a legislative presumption that offering services would be " 'an unwise use of governmental resources.' " (*Renee J. v. Superior Court, supra*, 26 Cal.4th at p. 744.) In other words, " 'the likelihood of reunification is so slim that scarce resources should not be expended on such cases.' " (*Cheryl P. v. Superior Court* (2006) 139 Cal.App.4th at 87, 96.) Inherent in this subdivision is " 'a very real concern for the risk of recidivism by the parent despite reunification efforts.' " (*Ibid.*)

In evaluating whether a parent has made " 'a reasonable effort' " to treat the problems that led to removal of the sibling or half sibling (*Cheryl P. v. Superior Court, supra*, 139 Cal.App.4th at p. 98), the court focuses on the extent of the parent's efforts, not whether he or she has attained "a certain level of progress." (*Id.* at p. 99; *K.C. v. Superior Court* (2010) 182 Cal.App.4th 1388, 1393 [" 'reasonable effort to treat' " standard is not synonymous with " 'cure' "].) The court may, however, consider "the *duration, extent and context* of the parent's efforts," both before and after the social services agency has intervened, "as well as any other factors relating to the *quality and quantity* of those efforts . . . ." (*R.T. v. Superior Court* (2012) 202 Cal.App.4th 908, 914.) Thus, although success alone or even the degree of progress "is not the sole measure of reasonableness, the *measure* of success achieved is properly considered a factor in the juvenile court's determination of whether an effort qualifies as reasonable." (*Id.* at p. 915.)

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 Gabriel K.* (2012) 203 Cal.App.4th 188, 196.) 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.) In appealing the denial of services, 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

Here, the evidence is undisputed that Kimberly failed to reunify with two of the minors' half siblings and her parental rights to those children were terminated, thus satisfying the first element of section 361.5, subdivision (b)(10) and (11). As to whether Kimberly made reasonable efforts to treat the problems that led to the half siblings' removal, the evidence showed Kimberly had a 20-year history of methamphetamine use. After losing custody of several children, she participated in services between December 2006 and August 2008, remained drug-free during that time and successfully completed the SARMS program. However, once Kimberly's other children were returned to her custody and the court terminated its jurisdiction in 2008, Kimberly resumed her drug-related activities. By May 2010, she was on probation for a drug offense. She was

arrested on drug charges in November 2010 and June 2011. Undeterred, she continued using drugs. In February 2012, Kimberly told the police she had been selling methamphetamine and intended to continue doing so. Thus, the court could reasonably find Kimberly achieved no measure of success whatsoever in addressing her drug addiction. (*R.T. v. Superior Court, supra*, 202 Cal.App.4th at p. 915.)

Further, Kimberly associated with other drug users, including Abraham. She allowed Abraham to live with her, and they exposed Kimberly's children to drug abuse and domestic violence. Kimberly was arrested three times in February 2012 for drug-related offenses and remained incarcerated at the time of the jurisdiction and disposition hearing. From this, a rational inference could be drawn that Kimberly's efforts at rehabilitation were not reasonable.

Kimberly asserts she made reasonable efforts because she completed SARMS, graduated from dependency drug court and reunified with her children in 2008. This argument, however, ignores "the *duration, extent and context* of [Kimberly's] efforts" to address her substance abuse problem. (*R.T. v. Superior Court, supra*, 202 Cal.App.4th at p. 914.) Despite having the knowledge and ability to deal with her addiction, attaining a year of sobriety, and knowing she could lose custody of her other children, Kimberly failed to implement what she had learned in order to avoid relapsing. In light of Kimberly's chronic drug use, treatment and recidivism, the record supports a finding that her completion of SARMS, graduation from dependency drug court and participation in various programs and services is both qualitatively and quantitatively insufficient to show she made a reasonable effort to treat her drug problem. Under these circumstances, the

court was not required to expend the state's limited resources for reunification services on someone who would not benefit from them. (*In re Joshua M.* (1998) 66 Cal.App.4th 458, 474.) Substantial evidence supports the court's implied finding that Kimberly did not make "a reasonable effort to treat the problems that led to removal" of the minors' half siblings in the prior dependency proceedings. (§ 361.5, subd. (b)(10) & (11).)

## II

Even if a parent has not made reasonable efforts under one of the provisions of section 361.5, subdivision (b), the court retains discretion to order services if it finds, by clear and convincing evidence, reunification is in the child's best interests. (§ 361.5, subd. (c); *In re Baby Boy H.*, *supra*, 63 Cal.App.4th at p. 478.) Kimberly contends the court abused its discretion by denying her services because reunification is in the minors' best interests.<sup>3</sup> Specifically, she asserts she has the ability to treat her drug addiction and reunify with the minors, who are bonded with her and want to live with her.

## A

The parent has the burden of showing reunification services would serve the child's best interests. (*In re William B.* (2008) 163 Cal.App.4th 1220, 1227; *In re Gabriel K.*, *supra*, 203 Cal.App.4th at p. 197.) In making its determination, the court considers factors indicating that reunification services are unlikely to be successful, including the parent's failure to respond to previous services. (§ 361.5, subd. (c).) We review the

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<sup>3</sup> At the jurisdiction and disposition hearing, minors' counsel argued that ordering reunification services for Kimberly would be in the minors' best interests. Minors' counsel on appeal takes the same position.

court's findings and order under section 361.5, subdivision (c) for abuse of discretion. (*In re Angelique C.* (2003) 113 Cal.App.4th 509, 523-524.) In this regard, the juvenile court's order will not be disturbed on appeal unless the court has exceeded the limits of legal discretion by making an arbitrary, capricious or patently absurd determination. When two or more inferences reasonably can be deduced from the facts, we have no authority to reweigh the evidence or substitute our judgment for that of the juvenile court. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318-319.)

## B

Here, the evidence showed Kimberly was not likely to benefit from services. She had many opportunities to address her substance abuse problem and was repeatedly unsuccessful. For Kimberly, the ongoing risk of recidivism is a very real concern. (*Renee J. v. Superior Court, supra*, 26 Cal.4th at p. 745.) Beyond relapsing, Kimberly showed she had no interest in maintaining a drug-free lifestyle, having told the police she intended to continue selling methamphetamine. Thus, there was no reasonable basis to find reunification is possible. (*In re William B., supra*, 163 Cal.App.4th at pp. 1228-1229.)

Moreover, the minors have been in the dependency system their entire lives. Although they love Kimberly and want to live with her, she has continually placed them at risk by her drug use and domestic violence, and exposed them to "chronic trauma" while in her care. The minors have only an uncertain future with Kimberly. (*In re Stephanie M., supra*, 7 Cal.4th at p. 317; *In re Joshua M., supra*, 66 Cal.App.4th at p. 474 [purpose of juvenile court law is to ensure the well-being of children whose parents are

unable to care for them by affording them another stable and permanent home within a definite period].) The court could reasonably find it was not in the minors' best interests to offer Kimberly reunification services.

DISPOSITION

The petition is denied. The request for stay is denied.

McCONNELL, P. J.

WE CONCUR:

HUFFMAN, J.

IRION, J.