

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

LETICIA O.,

Petitioner,

v.

THE SUPERIOR COURT OF SAN
DIEGO COUNTY,

Respondent;

SAN DIEGO COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

Real Party in Interest.

D062475

(San Diego County
Super. Ct. No. SJ12767A-C)

PROCEEDINGS in mandate after referral to a Welfare and Institutions Code section

366.26¹ hearing. Garry H. Haehnle, Judge. Petition denied. Request for stay denied.

Leticia O. seeks review of juvenile court findings and orders denying family reunification services to her under section 361.5, subdivision (b)(5), (6) and (7), and setting a

¹ Unless otherwise specified, all statutory references are to the Welfare and Institutions Code.

hearing under section 366.26 to select and implement a permanency plan for her children. We deny the petition.

FACTUAL AND PROCEDURAL BACKGROUND

Leticia O. and Jason C., Sr., are the parents of three sons, three-year-old Jason C., Jr., two-year-old J.C. and seven-month-old Jayden C. (collectively, the children). Leticia and the children lived in San Diego. Jason, Sr., was deported to Mexico after serving prison sentences for robbery and participating in a street gang, and first degree burglary. He was not permitted to reenter the United States. On occasion, Leticia and the children would visit Jason, Sr., in Tijuana, Mexico.

On Thursday, May 3, 2012, Leticia brought four-week-old Jayden to the emergency room for treatment of a red and swollen right knee. Medical personnel interpreted Jayden's X-rays as normal and diagnosed his condition as cellulitis, an inflammation of subcutaneous, loose connective tissue. (Stedman's Med. Dict. (28th ed. 2006) p. 343, col. 1.) Jayden was treated and released. By the next morning, his right knee had turned green and his calf was yellowish. Leticia returned to the emergency room with Jayden where he was examined and transported by ambulance to Rady Children's Hospital. A comprehensive medical evaluation revealed five classic metaphyseal fractures of his legs. No infection or cellulitis was confirmed. Later testing revealed five more fractures, two on the right forearm, one on the left arm slightly above the elbow and two additional fractures on each leg. In addition, one of the leg fractures had been refractured. This severe fracture had resulted in the displacement of the entire cartilage end of the bone off the tibia below Jayden's knee and was the cause of the redness and swelling to the right knee and calf.

Dr. Kathleen Dully, a pediatrician and child abuse expert at Rady Children's Hospital, concluded that Jayden's injuries were nonaccidental injuries caused by yanking, twisting or pulling on the legs. The acute pain and swelling of the right knee indicated that the refracture had occurred from 12 to 24 hours before symptoms were reportedly noted.

On May 9, 2012, the San Diego County Health and Human Services Agency (Agency) detained the children in protective custody. The Agency filed a section 300 petition on behalf of Jayden alleging that he had suffered severe physical abuse by a parent, or by any person known by the parent, and the parent knew or reasonably should have known that the person was physically abusing the child. (§ 300, subd. (e).) The Agency also filed petitions on behalf of two-year-old Jason, Jr., and one-year-old J.C., alleging that there was a substantial risk they would be abused because their sibling had been physically abused. (§ 300, subd. (j).)

When interviewed, Leticia provided the following accounts of Jayden's care and condition:

(1) On May 5, Leticia told Dr. Dully that Jayden was completely healthy on the morning of Wednesday, May 2. At approximately 11:00 a.m., Leticia noticed some swelling around Jayden's right knee. The swelling spread and involved the right calf as well. She took Jayden to the emergency room on May 3.

(2) Shortly after Leticia spoke with Dr. Dully, Leticia was interviewed by Detective Mary Davison of the San Diego Police Department. Leticia told Detective Davison that Jayden was a calm baby and that he cried only when he was wet, hungry or needed to burp. Leticia said that she and the children had gone to Tijuana to visit Jason, Sr., on the afternoon of Tuesday, May 1. Jayden was fine. During their visit, Jason, Sr., was alone with Jayden while

she was outside in the yard with Jason, Jr., and J.C. Jason, Sr., asked her to come in to take care of Jayden who was crying. When she placed Jayden in his car seat, he cried more loudly than usual. The maternal grandmother met Leticia and the children at the United States/Mexico border at approximately 6:00 p.m. On Wednesday, May 2, Leticia noticed that Jayden's right leg was red.

(3) On May 7, Leticia told a social worker that she had left Jayden overnight with Jason, Sr., in Tijuana on April 8 and 15, 2012. She said that she hesitated to leave the baby in Jason, Sr.'s, care because he was easily frustrated and did not like to be interrupted while playing his video games. Leticia and the children visited Jason, Sr., again on Tuesday, May 1. Jason, Sr., watched Jayden while she did housework and ran errands.

(4) On May 10, in a follow-up interview with Detective Davison, Leticia amended her earlier statement. Leticia said that she and the children had gone to Tijuana to visit Jason, Sr., on Friday, April 27. Leticia returned to San Diego on the afternoon of Monday, April 30. Jason, Sr., sent a message to his brother, Michael G., and asked him to tell Leticia that Jayden was running a fever. Michael did not give her the message. Leticia returned to Tijuana on Tuesday, May 1 to get Jayden. Leticia maintained that the rest of her earlier statement to the detective was accurate.

(5) On May 16, Leticia told a social worker that she took Jayden to Tijuana on April 5 to see his father. According to Leticia, the only other time that Jayden had been to Tijuana was the last weekend in April. She and the children arrived on April 27. Leticia returned to San Diego on Tuesday, May 1, to turn in her high school homework. She brought Jason, Jr., with her and left J.C. and Jayden with their father. On Wednesday, May 2, Jason, Sr., asked her to

return to Tijuana because Jayden had a fever. When she arrived, Jason, Sr., told her that there was something wrong with Jayden's leg. Jason, Sr., said that when he woke up, he noticed that Jayden's leg was swollen and red. Leticia returned to San Diego with the children at approximately 6:00 p.m. The maternal grandmother met her at the border. Leticia told her mother, "I think Jason[, Sr.,] hurt the baby."

On May 5, the maternal grandmother told Detective Davison that she had picked up Leticia and the children at the border on Tuesday, May 1. On Wednesday, the maternal grandmother and Leticia noticed that Jayden's leg was "a little bit swollen." On May 22, the maternal grandmother told a social worker that Leticia had contacted her on "Tuesday 5/2/2012"² and asked her to pick her up at the border, which she did. Leticia told the maternal grandmother that she suspected that Jason, Sr., "did something" to Jayden. When they arrived home, the maternal grandmother noticed that Jayden's right leg was slightly swollen and red at the knee. The maternal grandmother advised Leticia not to take Jayden to the hospital because she was afraid that child protective services would become involved.³

In a police interview, the paternal grandmother said that she had seen Jayden on Tuesday, May 1, at the maternal grandmother's home at approximately 7:00 p.m. Jayden was crying. Leticia told her that Jayden's leg was swollen. The paternal grandmother told Leticia to take Jayden to the hospital, but the maternal grandmother refused to allow Leticia to leave the home with the children. On Thursday, May 3, Leticia brought Jayden to the paternal

² Tuesday was May 1, 2012.

³ The maternal grandmother had lost custody of Leticia through dependency proceedings after Leticia's stepfather molested her.

grandmother's house. Jayden's leg was still swollen. The paternal grandmother told her to take Jayden to the hospital. At approximately 1:00 p.m., the maternal grandfather arrived and transported Leticia and Jayden to the hospital.

On May 7, Jason, Sr., told a social worker that Leticia and the children had visited him in Tijuana on Tuesday, May 1. He cared for Jayden for approximately 30 minutes while Leticia went to the store. On May 23, Jason, Sr., told another social worker that Leticia and the children had visited him on April 27 or 28 for four hours. Leticia returned to the United States after they noticed that Jayden's leg was red and slightly swollen. They thought that Jayden had been bitten by a spider. Jason, Sr., denied that he had ever cared for Jayden overnight. He said that Jayden had spent only one or two nights in Tijuana since the time he was born, and that Leticia had always been present. Jason, Sr., said that he did not know how Jayden could have sustained such severe injuries. He denied that he or Leticia could have hurt Jayden.

Based on the first set of X-rays that showed five fractures, Detective Davison concluded that a series of child abuse incidents had occurred on the weekend of April 27, in Tijuana, while Jayden was in the care of both his parents. Only Leticia and Jason, Sr., had cared for him during the time that the injuries were inflicted. It was unclear how much Leticia knew or whether she was concealing information to protect Jason, Sr. The detective referred the matter to Mexican law enforcement authorities to investigate possible criminal charges against Jason, Sr.

The Agency recommended that the juvenile court deny reunification services to both parents and set the matter for a section 366.26 hearing to select and implement a permanent

plan for the children. The children were in the care of their maternal grandfather and his wife. Jayden's injuries were healing and he was doing well. Jason, Jr., and J.C. were healthy and happy.

The jurisdictional and dispositional hearing was held on July 30 and 31, 2012. The pertinent evidence is summarized below.⁴

Dr. Dully testified that one of Jayden's legs was broken in three places and the other was broken in four places. Jayden's arms and legs had both older and more recent fractures. Dr. Dully testified that the two sets of fractures had occurred at least a week apart, and that the first set of fractures could have been inflicted as early as April 20. An older fracture had been refractured, indicating an escalating pattern of assault. The person who inflicted the injuries would have known that Jayden had been injured. Jayden's cry would have changed. He would have screamed. Dr. Dully said there were two episodes of multi-fracture abuse but six separate incidents of abuse—two to each of Jayden's legs, and one to each of his arms.

Dr. Dully was surprised to learn that Leticia had told the detective that she and the children had been in Tijuana with Jason, Sr. Leticia did not tell her that Jayden had been in Jason, Sr.'s, care at any time. Dr. Dully believed that this information was critical in establishing a timeline for Jayden's injuries.

Social worker Loretta DeCunzo testified that in her opinion, providing reunification services to the parents would not likely prevent a recurrence of abuse. She based her opinion on the severity of Jayden's injuries, as well as the fact that the perpetrator was either his mother or father and the other parent had witnessed the abuse and had not come forward.

⁴ On appeal, we view the evidence in the light most favorable to the juvenile court's findings and orders. (*In re S.O.* (2002) 103 Cal.App.4th 453, 461.)

Jorge O., the maternal grandfather, testified that Leticia telephoned every day to check on the children. Jason, Jr., asked for her. Jason, Jr., would wake up in the middle of the night saying "Mommy." After visits, the children would cry. Jorge said that Leticia was a good mother and that she treated her children well.

Leticia testified that when she left Tijuana on the afternoon of Monday, April 30, Jayden was sleeping. There was no indication that anything was wrong with him. She also said that Jayden had been crying all day long on April 30. She thought that he was hungry. The first time that she realized that something was wrong with Jayden was on May 2. Leticia acknowledged that she had not told anyone at the emergency room that she suspected that Jason, Sr., had hurt Jayden because she was worried that they might take Jayden away from her. Leticia admitted that she had not told Dr. Dully the whole truth about Jayden's care, and that she had lied to the social worker when she said that Jason, Sr., had seen Jayden only once, at the border. Dr. Dully told Leticia that it was likely that Jayden's injuries were inflicted on the day before the swelling and redness were noticeable on his leg. Leticia had this information before she talked to the detective. Leticia acknowledged that she had lied to the detective when she said that she was in Tijuana with the children for a few hours on May 1 before returning to San Diego with them.

Leticia testified that she had left Jayden with Jason, Sr., on two occasions, once when she went to the store, and again on the afternoon of Monday, April 30. She could not recall the date of the first occasion when she left Jayden alone with Jason, Sr.

The juvenile court accepted the stipulated testimony of Jason, Sr.'s, brother, Michael. If called to testify, Michael would state that during the late hours of April 30 or the early morning

hours of May 1, Jason, Sr., contacted him and asked him to tell Leticia that Jayden was sick and that she needed to return to Tijuana. Michael forgot to relay the message to Leticia.

The juvenile court found that neither Jason, Sr.'s, nor Leticia's statements were credible. The court found that Jayden had never been alone in the care of anyone other than his mother and father, and concluded that both parents were involved in inflicting Jayden's injuries. Further, the court stated that even if the court were to determine that Jason, Sr., was the sole perpetrator, the evidence showed that Leticia knew about Jason, Sr.'s, inexperience with infants, his preoccupation with video games, and his low threshold for frustration, and that in leaving Jayden in Jason, Sr.'s, care, Leticia had exposed Jayden to repeated abuse. The court concluded that Leticia did not put her children first and that she was not able to protect them. After sustaining the section 300 petitions, the court removed the children from parental custody, denied reunification services to the parents and set a section 366.26 hearing.

Leticia petitions for review of the juvenile court's orders. (§ 366.26, subd. (d); Cal. Rules of Court, rule 8.452.) She asks this court to reverse the orders setting a section 366.26 hearing, and to remand the matter with directions to the juvenile court to enter orders for family reunification services. This court issued an order to show cause, the Agency responded and the parties waived oral argument.

DISCUSSION

Leticia contends that the juvenile court erred when it denied family reunification services to her under section 361.5, subdivision (b)(5), (6) and (7), and set a hearing to select and implement a permanency plan for the children. She argues that this case is similar to *L.Z. v. Superior Court* (2010) 188 Cal.App.4th 1285 (*L.Z.*), in which the reviewing court concluded

that there was not sufficient evidence to support the denial of reunification services to the mother of a two-month-old infant who had suffered severe physical abuse by an unknown perpetrator while in the care of both parents. (*Id.* at pp. 1287-1289.)

Leticia maintains that the evidence shows that Jason, Sr., was the likely perpetrator of Jayden's injuries. She asserts that despite her mistakes in delaying obtaining medical treatment for Jayden and initially withholding information from professionals, the court should have given her a reasonable opportunity to save her relationship with her children. (*Renee J. v. Superior Court* (2002) 96 Cal.App.4th 1450, 1464 [notwithstanding a parent's history of substantial misconduct with another child, if there is a reasonable basis to conclude that the parent/child relationship could be saved, courts should always attempt to preserve the parent/child relationship].)

A. Legal Standards for the Denial of Family Reunification Services Under Section 361.5, Subdivision (b)(5), (6) and (7), and the Standard of Review

Family reunification services play a critical role in dependency proceedings. (*In re Alanna A.* (2005) 135 Cal.App.4th 555, 563.) To deny family reunification services to a mother or a statutorily presumed father, the court must find by clear and convincing evidence that the parent is described by one or more of the provisions in section 361.5, subdivision (b). (§ 361.5, subd. (b)(1)-(15); see also 42 U.S.C. § 671(a)(15)(D).) The court denied reunification services to Leticia under section 361.5, subdivision (b)(5) and (6) in Jayden's case, and under section 361.5, subdivision (b)(6) and (7) in Jason, Jr.'s, and J.C.'s cases.

Section 361.5, subdivision (b)(5), directs the court to deny reunification services to a parent when the child was brought within the jurisdiction of the court under section 300, subdivision (e), because of the conduct of that parent. A child comes within section 300,

subdivision (e) if the child is under the age of five years and has suffered severe physical abuse by a parent, or by any person known to that parent, if the parent knew or reasonably should have known that the person was physically abusing the child.

If a parent is described by section 361.5, subdivision (b)(5), the court is *prohibited* from ordering reunification services unless it finds that, based on competent testimony, those services are likely to prevent reabuse or that failure to try reunification will be detrimental to the child because the child is closely and positively attached to that parent. (§ 361.5, subd. (c).) The social worker is required to investigate the circumstances that led to the removal of the child and to advise the court whether there are circumstances that indicate that reunification is likely to be successful or unsuccessful,⁵ and whether failure to order reunification services is likely to be detrimental to the child. (*Ibid.*)

Section 361.5, subdivision (b)(6), directs the court to deny reunification services to a parent when the child has been adjudicated a dependent as a result of the infliction of severe physical harm⁶ to the child or a sibling by a parent, and the court makes a factual finding that it would not benefit the child to pursue reunification services with the offending parent.

⁵ "The failure of the parent to respond to previous services, the fact that the child was abused while the parent was under the influence of drugs or alcohol, a past history of violent behavior, or testimony by a competent professional that the parent's behavior is unlikely to be changed by services are among the factors indicating that reunification services are unlikely to be successful. The fact that a parent or guardian is no longer living with an individual who severely abused the child may be considered in deciding that reunification services are likely to be successful, provided that the court shall consider any pattern of behavior on the part of the parent that has exposed the child to repeated abuse." (§ 361.5, subd. (c).)

⁶ "A finding of the infliction of severe physical harm, for the purposes of this subdivision, may be based on, but is not limited to, deliberate and serious injury inflicted to or on a child's body or the body of a sibling or half sibling of the child by an act or omission of the parent or

Section 361.5, subdivision (b)(7), directs the court to deny reunification services to a parent who is not receiving reunification services for the child's sibling under section 361.5, subdivision (b)(5) or (6).

If a parent is described by section 361.5, subdivision (b)(6) or (7), the court may order reunification services if it finds, by clear and convincing evidence, that reunification is in the child's best interest. (§ 361.5, subd. (c).)

We review the court's decision to deny reunification services under the substantial evidence standard. (*Amber K. v. Superior Court* (2006) 146 Cal.App.4th 553, 560.) We do not resolve conflicts in the evidence, pass on the credibility of witnesses or determine where the preponderance of the evidence lies. (*Elijah R. v. Superior Court* (1998) 66 Cal.App.4th 965, 969.) The petitioner has the burden to show that the evidence is insufficient to support the juvenile court's findings. (*In re L.Y.L.* (2002) 101 Cal.App.4th 942, 947.)

B. There Is Substantial Evidence to Support the Denial of Family Reunification Services Under Section 361.5, Subdivision (b)(5), (6) and (7)

1. The Court Properly Denied Reunification Services to Leticia in Jayden's Case Under Section 361.5, Subdivision (b)(5)

There is substantial evidence in the record to support the juvenile court's finding that Leticia was involved in inflicting Jayden's injuries. Leticia said that she had been Jayden's only caregiver, with the exception of two occasions when she left him with Jason, Sr.

According to Dr. Dully, Jayden had been repeatedly battered. Dr. Dully testified that the two

guardian, or of another individual or animal with the consent of the parent or guardian; deliberate and torturous confinement of the child, sibling, or half sibling in a closed space; or any other torturous act or omission that would be reasonably understood to cause serious emotional damage." (§ 361.5, subd. (b)(6).)

sets of fractures had occurred at least a week apart, and that the first set of fractures could have been inflicted as early as April 20. None of the fractures were more than two weeks old. Dr. Dully said that the refracture occurred from 12 to 24 hours before the right leg became noticeably red and swollen, which was on the morning of Tuesday, May 1. Leticia said that after putting Jayden to sleep, she left him and J.C. in Jason, Sr.'s, care on the afternoon of Monday, April 30, and arrived in the United States at approximately 6:00 p.m. She said that Jayden had been crying all day on April 30, which was atypical of his usually calm, unfussy behavior.

Leticia testified that Jason, Sr., told her that there was something wrong with Jayden's leg when she talked to him on the morning of Tuesday, May 1, and asked her to return to Tijuana. Jason, Sr., told the social worker that he had noticed that Jayden's leg was red and swollen when Jason, Sr., woke up in the morning. He thought that Jayden had a spider bite. The record thus permits the inference that Jayden was injured on the morning of April 30, before Leticia left to return to the United States.

Contrary to Leticia's contention, this case is not analogous to *L.Z.* In that case, the reviewing court noted that there was no evidence in the record to show that the child's mother had physically abused the child, that she knew or should have known that the child's father was abusing the child or that the mother was lying about the circumstances surrounding the child's injuries. (*L.Z.*, *supra*, 188 Cal.App.4th at pp. 1289, 1291.) Leticia admitted that when she spoke with Dr. Dully, Dr. Dully told her that it was likely that Jayden's refracture had occurred the day before the swelling and redness on his leg were noticeable. Once Leticia had this information, her accounts of what she knew about Jayden's injuries and when she knew it

changed accordingly. In contrast to *L.Z.*, the evidence in this case supports a finding that Leticia was the only person who cared for Jayden during the timeframe in which both the earlier and the later injuries were inflicted, and that she lied about the timeframe in which the later injuries occurred. The record does not exclude Leticia as a perpetrator of Jayden's injuries, as she maintains. Thus, there is substantial evidence to support the court's finding that Leticia was involved in inflicting his injuries.⁷

Section 361.5, subdivision (b)(5) does not require that the perpetrator be identified. (*In re E.H.* (2003) 108 Cal.App.4th 659, 670.) It allows the court to deny reunification services to a parent who knew or reasonably should have known that the other parent was physically mistreating the child, as well as to the parent who personally abused the child. (*In re Joshua H.* (1993) 13 Cal.App.4th 1718, 1732; *Tyrone W. v. Superior Court* (2007) 151 Cal.App.4th 839, 848-849 (*Tyrone W.*) The record leaves no doubt that Jayden was injured while he was in the care of one or both of his parents. Even if Leticia did not inflict Jayden's injuries, there is substantial evidence to support the juvenile court's alternative finding that Leticia knowingly exposed Jayden to physical abuse. Leticia said that she had concerns about leaving Jayden in Jason, Sr.'s, care. She acknowledged that Jason, Sr., "really didn't know how to take care of babies" because he was incarcerated when Jason, Jr., and J.C. were infants. Jason, Sr., was preoccupied with playing computer games and would become frustrated if Jason, Jr., or J.C. touched his computer game console or other belongings. On April 30, Leticia knew that

⁷ The evidence shows that Jason, Sr., saw Jayden on April 5 and again for all or part of the period from Friday, April 27 to Tuesday, May 1. There is nothing in the record that suggests that Jason, Sr., cared for Jayden on two occasions that were a week or more apart. If Dr. Dully's timeframe is credited, Jason, Sr., could not have inflicted both sets of injuries on Jayden.

Jayden had been crying all day, yet she left him and one-year-old J.C. in the care of Jason, Sr., an inexperienced, inattentive and easily frustrated caregiver. On May 1, when Leticia placed Jayden in his car seat, he cried more loudly than usual. She told her mother that she believed that Jason, Sr., might have "[done] something" to Jayden. Despite believing that Jayden may have been injured, Leticia delayed seeking medical treatment for him for two days, and did not advise medical personnel that she thought that Jason, Sr., might have hurt the baby. The record thus supports a finding that Leticia knew or reasonably should have known that Jason, Sr., had physically abused Jayden. (§ 300, subd. (e).)

To grant reunification services to a parent described by section 361.5, subdivision (b)(5), the court must find that reunification services are likely to prevent reabuse or that failure to attempt reunification would be detrimental to the child because the child has close and positive bonds to the parent. Leticia did not present any evidence at the hearing to establish that reunification services were likely to prevent reabuse or that Jayden was closely and positively attached to her. (§ 361.5, subd. (c).) To the contrary, the social worker testified that in view of the severity of the abuse and Leticia's unwillingness to disclose the truth, it was unlikely that reunification services would prevent further reabuse. The social worker said that during a visit, Leticia allowed the maternal grandmother to care for Jayden. In the social worker's experience, this was atypical parental behavior because a parent of a newborn would want to hold, feed and care for the newborn by himself or herself. The record permits the reasonable inference that Jayden and Leticia did not share a close and positive attachment, and that in view of his age, Jayden would easily attach to another caregiver.

2. The Court Properly Denied Reunification Services to Leticia in Jason, Jr.'s, J.C.'s and Jayden's Cases Under Section 361.5, Subdivision (b)(6)

Section 361.5, subdivision (b)(6) applies to a child who has been adjudicated a dependent as a result of severe physical harm to the child or to a sibling, and the court makes a factual finding that it would not benefit the child to pursue reunification services with the offending parent. As we have discussed, there is substantial evidence to support the finding that the children were adjudicated dependents as a result of the infliction of severe physical harm on Jayden. (§ 361.5, subd. (b)(6).) We now consider whether there is substantial evidence to support a factual finding that it would not benefit the children to pursue reunification services with the *offending* parent. (*Ibid.*; *Tyrone W.*, *supra*, 151 Cal.App.4th at p. 849 [unlike section 361.5, subdivision (b)(5), section 361.5, subdivision (b)(6) requires identification of the perpetrator of the act or omission that led to the child's injury].)

In making this finding, the court is required to consider any information that it deems relevant, including the following factors: the specific act or omission comprising the severe physical harm inflicted on the child or the child's sibling; the circumstances under which the abuse or harm was inflicted on the child or the child's sibling; the severity of the emotional trauma suffered by the child or the child's sibling; any history of abuse of other children by the offending parent; the likelihood that the child may be safely returned to the care of the offending parent within 12 months with no continuing supervision; and whether the child desires to be reunified with the offending parent. (§ 361.5, subd. (b)(i).)

The evidence shows an escalating pattern of abuse of an infant under four weeks of age and a calculated delay before seeking medical treatment for him. Even if Leticia did not physically abuse Jayden, her failure to seek prompt medical treatment for Jayden knowing or believing that he was injured constitutes the infliction of serious physical injury by omission.

(Pablo S. v. Superior Court (2002) 98 Cal.App.4th 292, 301; Deborah S. v. Superior Court (1996) 43 Cal.App.4th 741, 744-745.) In addition to her disregard for Jayden's health and well-being, Leticia's credibility was seriously undermined by the false and misleading statements that she made to professionals who were trying to protect her child. That history would make it very difficult to assess her progress with services and the children's safety while in her care. Leticia's denials and her unwillingness to provide a complete account of the circumstances that led to Jayden's severe injuries also permit the reasonable inference that treatment would not be effective in mitigating the serious problems that led to the children's removal from her care. The court did not err when it concluded that there was little likelihood that the children would be safely returned to Leticia's care within 12 months without continuing supervision.

3. The Court Properly Denied Reunification Services to Jason, Jr., and J.C. Under Section 361.5, Subdivision (b)(7)

Because Leticia was denied reunification services in Jayden's case under section 361.5, subdivision (b)(5), and in all three children's cases under section 361.5, subdivision (b)(6), the court did not err when it denied reunification services to her in Jason, Jr.'s, and J.C.'s cases under section 361.5, subdivision (b)(7), which applies when the parent is not receiving reunification services under subdivision (b)(5) or (6).

C. The Court Did Not Abuse Its Discretion When It Found that Reunification Was Not in Jason, Jr.'s, and J.C.'s Best Interests⁸

⁸ Because we have concluded that the court did not err when it denied reunification services in Jayden's case under section 361.5, subdivision (b)(5), which does not permit the court to order reunification services on a finding of the child's best interests, we do not include Jayden in the best interests analysis that is permitted under section 361.5, subdivisions (b)(6) and (b)(7). (§ 361.5, subd. (c).)

Section 361.5, subdivision (c) provides that the court shall not order reunification services for a parent described in section 361.5, subdivision (b)(6) and (7) unless the court finds, by clear and convincing evidence, that reunification is in the child's best interests. A juvenile court has broad discretion when determining whether further reunification services would be in the best interests of the child under section 361.5, subdivision (c). An appellate court will reverse that determination only if the juvenile court abuses its discretion. (*In re William B.* (2008) 163 Cal.App.4th 1220, 1229; *In re Angelique C.* (2003) 113 Cal.App.4th 509, 523.)

For purposes of appellate review, a finding that reunification services will not benefit the child under section 361.5, subdivision (b)(6), supports a finding that reunification is not in the child's best interests under section 361.5, subdivision (c). The record shows that while Jayden was in Leticia's care, he suffered an escalating pattern of severe physical abuse. In addition, Leticia delayed obtaining medical treatment for Jayden for two days because she was afraid that child protective services would intervene. The paternal grandmother said that Jayden's leg was red and swollen when she saw him on the evening of May 1, and that she told Leticia to take him to the hospital. Although Jayden was in obvious distress and his condition was worsening, Leticia did not take Jayden to the hospital until Thursday afternoon. Leticia's two-day delay in seeking medical treatment for a distressed child with an obvious injury, and her subsequent withholding of pertinent information from emergency room personnel, support a reasonable inference that she would not put her children's needs before her own interests.

At the time of the dispositional hearing, Jason, Jr., was not quite three years old. J.C. was only 19 months old. They were not able to protect themselves from abuse or give a

credible account of atypical parental behavior. Evaluations of Jason, Jr., and J.C. noted concerns about possible developmental deficiencies in the areas of communication, gross motor skills, problem solving and personal/social relations. Although the maternal grandfather's testimony indicated that Jason, Jr., was attached to Leticia, a social worker observed that Jason, Jr., and J.C. did not demonstrate a preference for their mother and instead went equally to other family members for care and comfort. The paternal grandmother reported that Leticia was easily frustrated by her children and that she had once slammed Jason, Jr., onto a chair. The court did not abuse its discretion when it found that reunification was not in Jason, Jr.'s, and J.C.'s best interests. (§ 361.5, subd. (c).)

DISPOSITION

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

AARON, J.

WE CONCUR:

MCINTYRE, Acting P. J.

IRION, J.