

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

A.E.,

Petitioner,

v.

THE SUPERIOR COURT OF  
SAN BERNARDINO COUNTY,

Respondent;

SAN BERNARDINO COUNTY  
CHILDREN AND FAMILY SERVICES,

Real Party in Interest.

E057595

(Super.Ct.Nos. J245951 & J245952)

OPINION

ORIGINAL PROCEEDINGS; petition for extraordinary writ. Cheryl C. Kersey,  
Judge. Petition denied.

David M. Levy for Petitioner.

No appearance for Respondent.

Jean-Rene Basle, County Counsel, and Jeffrey L. Bryson, Deputy County  
Counsel, for Real Party in Interest.

Petitioner A.E. (father) filed a petition for extraordinary writ pursuant to California Rules of Court, rule 8.452, challenging the juvenile court's order denying reunification services as to his children, A.E.<sup>1</sup> and E.E. (the children), and setting a Welfare and Institutions Code<sup>2</sup> section 366.26 hearing. Father argues that the juvenile court erred in denying him reunification services under section 361.5, subdivisions (b)(10) and (e)(1). We deny his writ petition.

### FACTUAL AND PROCEDURAL BACKGROUND

On July 13, 2012, the San Bernardino County Children and Family Services (CFS) filed a section 300 petition on behalf of the children. A.E. was three years old, and E.E. was 15 months old. The petition alleged that the children came within the provisions of section 300, subdivisions (a) (serious physical harm), (b) (failure to protect), and (g) (no provision for support). The children's mother (mother)<sup>3</sup> was arrested and tested positive for methamphetamines while the children were in her care. Father did not live with mother and the children, and his whereabouts were unknown at that time. The court detained the children in foster care.

On July 27, 2012, CFS filed an amended petition, alleging that both father and mother were incarcerated. Father's anticipated release date is in February 2013.

---

<sup>1</sup> Since father and his child A.E. have the same initials, any further reference to "A.E." will concern only the child. We will refer to father simply as father.

<sup>2</sup> All further statutory references will be to the Welfare and Institutions Code, unless otherwise noted.

<sup>3</sup> Mother is not a party to this writ petition.

### *Jurisdiction*

The social worker filed a jurisdiction report on August 1, 2012, and recommended that the children be declared dependents of the court.

At the jurisdiction hearing on August 27, 2012, the court found father to be the presumed father of the children. The court also found that the children came within section 300, subdivisions (a), (b), and (g), and adjudged them dependents of the court. The court then ordered the matter transferred to mother's county of residence, San Bernardino, for disposition.

### *Disposition*

On September 27, 2012, the juvenile court in San Bernardino County accepted the children's cases.

The social worker filed a disposition report on October 15, 2012, and recommended that the court deny father reunification services, based on section 361.5, subdivision (b)(10). A disposition hearing was held on November 7, 2012, and father's counsel objected to the social worker's recommendation. The matter was continued, and a trial on the matter was held on November 28, 2012.

### *Previous Dependency Case Involving A.E.*

In an addendum report, the social worker explained that mother had a previous history with CFS, concerning children she had parented with other men. A.E. was her fourth child, born in 2009 to her and father. CFS filed a petition on A.E.'s behalf under Welfare and Institutions Code section 300, subdivision (j), due to mother's history. The court declared A.E. a dependent, but maintained him in the custody of father and mother

under a family maintenance plan. Father and mother subsequently engaged in domestic violence, and father was arrested and charged with willful infliction of corporal injury. (Pen. Code, § 273.5, subd. (a).) A Welfare and Institutions Code section 387 petition was filed on January 21, 2010, alleging that A.E. came within Welfare and Institutions Code section 300, subdivision (b). That petition alleged that A.E. had been exposed to domestic violence when father attacked mother, in his presence. A.E. was removed from father's care, but was maintained with mother, on the condition that she continue living in a transitional housing program. Father was sentenced to 365 days in county jail after being convicted on the domestic violence charge. He was credited with 100 days served. He was also offered reunification services, including a 52-week domestic violence program. As of January 10, 2012, it was reported that father had only attended 19 sessions of the domestic violence program and was terminated due to excessive absences.

The social worker further reported that on March 17, 2011, the court dismissed the dependency case and maintained A.E. with mother. The status review report from that case stated that father failed to complete any aspect of his case plan. The juvenile court terminated jurisdiction, finding that mother had completed her case plan. The court terminated father's reunification services. It ordered joint legal custody for father and mother, and granted physical custody to mother.

#### *Disposition Hearing in the Instant Case*

At the disposition trial on November 28, 2012, father's counsel requested reunification services for father, stating that father was the nonoffending party, since the children were removed from mother's care while he was in prison. Counsel addressed

the previous dependency case and argued that father's services were only terminated because CFS dismissed the case with a family law order that gave mother physical custody and father joint legal custody, with supervised visits. Father's counsel stated that father thought he did well with his previous services, and that they were not terminated because he failed in them, but simply because "[i]t was the end of the case." County counsel asserted that, after the case was dismissed, father was on probation for domestic violence, and he violated probation in March 2012 and was sent to state prison.

The social worker testified at the hearing and confirmed that the previous case was closed on March 17, 2011, and that reunification services for father were terminated. Moreover, father had failed to complete any part of his case plan.

Father also testified at the hearing and stated that A.E. was previously removed from his care in January 2010 after he hit mother and was convicted of corporal injury to a spouse. Father said he was sentenced to one year in county jail and received 100 days' credit. He stated that he was in custody until March 29, 2010, and that he was given probation and put on work release. When the court tried to confirm that he was ordered not to be around mother, father said he was not aware there was a restraining order. The court reprimanded him for lying, stating that any release on probation was a "stay-away order on a domestic violence charge." Father then admitted that he lived with mother when he was on probation, and was later arrested for violating his probation. Father admitted to the probation violation in January 2011 and was sentenced to a suspended term of three years in state prison. He was later arrested in February 2012 on another probation violation and, at that time, the court imposed the three-year sentence that was

previously suspended. His anticipated release date is in February 2013. Father admitted that, as of the date of the disposition hearing, he still had not completed a domestic violence program.

County counsel argued that father should not be provided with reunification services pursuant to section 361.5, subdivisions (b)(10) and (e)(1).

The court denied reunification services to father, finding that father never meaningfully participated in his prior case plan for A.E. The court noted that father had spent most of the last three years in custody for repeatedly violating court orders, and that A.E. was now stable in his foster care placement. The court further found that father's previous reunification services were ordered terminated, that he had failed to reunify with A.E., and that he had not made a reasonable effort to treat the problems that led to the removal of the minor. (§ 361.5, subd. (b)(10).) The court set a section 366.26 hearing for March 28, 2013.

## ANALYSIS

### The Court Properly Denied Reunification Services

Father argues that the court erred in denying him reunification services as to the children under section 361.5, subdivisions (b)(10) and (e)(1). Specifically, as to section 361.5, subdivision (b)(10), he asserts that “[i]t is his belief that [section 361.5, subdivision (b)(1)] should apply only if he had failed services in the past for this child or a sibling.” He then contends that there was insufficient evidence that his prior reunification services were terminated because he failed to reunify with A.E., or that A.E. was removed from his custody. We conclude that the court properly denied him services.

A. *Standard of Review*

“We affirm an order denying reunification services if the order is supported by substantial evidence. [Citation.]” (*In re Harmony B.* (2005) 125 Cal.App.4th 831, 839.)

“On review of the sufficiency of the evidence, we presume in favor of the order, considering the evidence in the light most favorable to the prevailing party, giving the prevailing party the benefit of every reasonable inference and resolving all conflicts in support of the order. [Citations.]” (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 576.)

B. *There Was Sufficient Evidence to Deny Services*

The court denied reunification services under section 361.5, subdivision, (b)(10), which provides that reunification services need not be provided to a parent when the court finds that “the court ordered termination of reunification services for any siblings or half siblings of the child because the parent . . . failed to reunify with the sibling or half sibling after the sibling or half sibling had been removed from that parent . . . and that, according to the findings of the court, this parent . . . has not subsequently made a reasonable effort to treat the problems that led to removal of the sibling or half sibling . . . .”<sup>4</sup>

Father contends that section 361.5, subdivision (b)(10), only applies if he failed in his previous reunification services, not when he accepted the termination of services

---

<sup>4</sup> We note that there is an apparent split of authority as to whether section 300, subdivision (b)(10), applies when the parent’s previous failure to reunify was with the *same child* (as opposed to the child’s sibling). *In re Gabriel K.* (2012) 203 Cal.App.4th 188, 195-196 holds that it does. The juvenile court here relied on *Gabriel K.*, and father apparently concurs with *Gabriel K.*’s holding.

because the court was closing the case. While the record does show that the previous court terminated jurisdiction because mother completed her case plan, it also shows that father failed to complete *any* aspect of his case plan, and that the court terminated his reunification services. Thus, the court here properly applied section 361.5, subdivision (b)(10).

Moreover, the evidence here supports the juvenile court's conclusion that father failed to make reasonable efforts to treat the problems that led to the removal of A.E. (§ 361.5, subd. (b)(10).) In March 2010, A.E. was removed from father after father physically attacked mother and exposed A.E. to domestic violence. Father was offered reunification services, including a 52-week domestic violence program. However, as of January 10, 2012, it was reported that he had only attended 19 sessions of the program and was terminated due to excessive absences. At the November 28, 2012 disposition hearing in the instant case, father admitted that he had *still* not completed the 52-week domestic violence program that he was previously ordered to complete.

Father also contends that the court erred in denying services under section 361.5, subdivision (e)(1), which provides that if the parent is incarcerated, the court need not order reunification services if it determines that services would be detrimental to the child. In determining detriment, the court is to consider the children's ages, parent-child bonding, the length of the sentence, the nature of the crime, and "any other appropriate factors." (§ 361.5, subd. (e)(1).) Father merely asserts that he will be released from prison in less than 30 days, and that he is willing and able to participate in and complete services.

In denying services, the court noted that father failed to previously reunify with A.E. by failing to complete his case plan and by not following court orders to stay away from mother, thereby violating probation. Furthermore, there was no evidence of any particular bond between father and the children. Moreover, contrary to father's self-serving statement that he is willing and able to complete services, his efforts in his previous dependency case with A.E. show otherwise.

We conclude that the court properly denied father reunification services.

DISPOSITION

The writ petition is denied.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

HOLLENHORST  
Acting P. J.

We concur:

McKINSTER  
J.

CODRINGTON  
J.