

NOT TO BE PUBLISHED IN OFFICIAL REPORTS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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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

In re J.B., a Person Coming Under the
Juvenile Court Law.

SAN BERNARDINO COUNTY
CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

A.B.,

Defendant and Appellant.

E057755

(Super.Ct.No. J237144)

OPINION

APPEAL from the Superior Court of San Bernardino County. Cheryl C. Kersey,
Judge. Affirmed.

Hassan Gorguinpour, under appointment by the Court of Appeal, for Defendant
and Appellant.

Jean-Rene Basle, County Counsel, and Jeffrey L. Bryson, Deputy County
Counsel, for Plaintiff and Respondent.

A.B. (Mother) has made no less than six appeals/writs¹ in the dependency case involving her son, J.B. In the present one, she appeals the November 26, 2012, order terminating parental rights under Welfare and Institutions Code section 366.26.² She contends there was insufficient evidence to support the finding that J.B. was adoptable and she challenges the holding in *Cynthia D. v. Superior Court* (1993) 5 Cal.4th 242 (*Cynthia D.*) that California's dependency system comports with federal due process standards.

I. STATEMENT OF FACTS

As Mother acknowledges, “this court considered the validity of the jurisdictional orders in the case and the denial of [M]other’s request for a *Marsden*³ hearing. . . . Because these appeals were decided recently, this statement will only briefly cover facts related to prior proceedings.”

On January 24, 2011, seven-year-old J.B. came to the attention of San Bernardino County Children and Family Services (CFS) when the child reported that Mother had told him she would “laugh if he were killed at school,” that he did not feel safe when Mother was yelling and mad, and that he is sent to his room with no food. (*In re J.B.* (June 7, 2012, E054134 [nonpub. opin.].) An investigation of the family home revealed it to be in

¹ We take judicial notice of the records contained in those prior appeals and writs.

² All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

³ *People v. Marsden* (1970) 2 Cal.3d 118.

a deplorable condition, littered with trash and scattered clothes, rotting food all around the kitchen, and filthy and grimy. (*Ibid.*)

On January 26, 2011, a section 300 petition was filed on behalf of J.B. alleging he was within subdivisions (b) (failure to protect and provide), (c) (serious emotional damage), and (g) (child left without provision for support). (*In re J.B., supra*, E054134.) Specifically, it was alleged that Mother suffered from an undiagnosed mental health issue, which compromised her ability to properly care for and parent J.B. and led her to verbally abuse him. It further alleged that Mother failed to provide a safe, sanitary and healthy living environment, and that J.B. had expressed depression and hopelessness that Mother did not love him. J.B. was detained and placed with CFS. (*Ibid.*)

At the jurisdictional hearing, the court sustained jurisdiction under section 300, subdivisions (b), (c), and (g), and declared the child a dependent of the court. The court approved a case plan and ordered Mother to participate in reunification services. The case plan included the requirements that she participate in an anger management class, general counseling, and a parenting education program, as well as undergo a psychological evaluation. (*In re J.B.* (March 13, 2013, E056212 [nonpub. opin.]; *A.B. v. Superior Court* (August 28, 2012, E056231 [nonpub. opin.].)

According to the jurisdictional/dispositional report, Mother provided information on her niece, C.B., to be assessed for placement of J.B. Placement with C.B. was contingent upon CFS's approval of an exemption under section 361.4, subdivision

(d)(2).⁴ The exemption was approved on February 17, 2011, and J.B. was placed with C.B. on March 30.

On July 22, 2011, CFS filed a packet requesting the court to suspend Mother's visitation. At the hearing on the request, the juvenile court noted its concern for J.B.'s emotional well-being. It observed that during the hearing Mother was repeatedly disrespectful to the court and court personnel and tried to usurp the court rules. The court suspended visitation, including telephonic visits, and authorized CFS to revisit the issue once Mother received psychological evaluation per the court's prior order, which Mother was failing to comply with. (*In re J.B.*, *supra*, E056212, at p. 6.)

Mother moved to Northern California, and on November 8, 2011, the court held a hearing pursuant to Mother's section 388 petition to address her request to transfer the matter to Siskiyou County and place J.B. with the maternal great grandmother. (*In re J.B.*, *supra*, E056212, at p. 6.) The court noted that Mother had recently moved to Siskiyou County and was apparently being offered all of the services there. Mother was informed of an order that she undergo a psychological evaluation, and CFS provided a referral for a psychologist in Northern California. Because the psychologist was located

⁴ "If the criminal records check indicates that the person has been convicted of a crime that the Director of Social Services may grant an exemption for under Section 1522 of the Health and Safety Code, the child shall not be placed in the home unless a criminal records exemption has been granted by the county, based on substantial and convincing evidence to support a reasonable belief that the person with the criminal conviction is of such good character as to justify the placement and not present a risk of harm to the child pursuant to paragraph (3)." (§ 361.4, subd. (d)(2).)

100 miles away from Mother, the social worker offered to provide gas script or transportation, but Mother had not yet been informed of this offer. The court agreed to continue the hearing, noting that Mother's change in circumstances was "somewhat suspect," in that the move appeared to be "orchestrated by [Mother] . . . simply to circumvent this court and the court's authority." (*In re J.B., supra*, E056212, at p. 7.)

On January 12, 2012, Mother participated in a psychological evaluation with Dr. J. Reid McKellar. Upon interviewing Mother, the doctor noted she "presented as an intense, intelligent person," and although she did not demonstrate any signs of psychosis, she had some signs of "institutional mistrust that bordered on paranoid thinking." Dr. McKellar noted that Mother claimed she did not have issues "meriting intervention," and thus, she did not feel reunification services were needed. He believed Mother's "distrust of systems and paranoid thinking [was] inhibiting her from effectively engaging in services." He opined she would not benefit from services, but noted "that may be beside[] the point given that [she did] not want services, nor [did] she think she need[ed] them." He concluded as follows: "Based on [Mother's] clear stance and verbalizations regarding her lack of a need for services, and her belief that services would only be recommended to ensure a reunification failure, no services are recommended." (*In re J.B., supra*, E056212, at pp. 8-9.)

On March 27, 2012, Mother requested new counsel and that she be allowed to appear telephonically because she lives in Northern California. (*In re J.B., supra*, E056212, at p. 9.) The juvenile court replied, "Well, we need [Mother] to be here to do a

Marsden. And, to be quite candid with you . . . [Mother] requests a *Marsden* every single hearing, or has requested that some of her attorney's [*sic*] be relieved as attorney of record. And the Court is not inclined to conduct a *Marsden* when [Mother] is not present. And, I'm not inclined to grant her telephonic hearing." The court further added, "[Mother] chose to, I believe, move to another county of her own accord. She could have stayed here. She chose not to. The court has information, quite candidly, that is in contradiction to your representation that [she] was forced to move to Siskiyou County for financial reasons." (*In re J.B., supra*, E056212, at pp. 9-10.)

On May 9, 2012, at the time of the contested hearing, Mother submitted, *inter alia*, a written motion for telephonic appearance. The court denied the motion on the grounds that, because it was very hard to control her behavior when she was in the courtroom, "the court would have no way to control [her] behaviors [telephonically], with the exception of discontinuing or cutting off the telephone contact." (*In re J.B., supra*, E056212, at pp. 11-12.) At the conclusion of the contested hearing, the court commented on Mother's "less than cooperative" demeanor with the court, as well as other individuals. It noted that everyone was at a loss as to how to help her with "understanding what she needs . . . and what benefit she should have derived from these services." The court stated that to some degree, Mother delayed CFS assisting her by postponing the psychological evaluation for approximately one year. The court found that reasonable services had been offered, but Mother had not benefitted, and there was not a substantial likelihood she could benefit from any additional services. Concluding

there was not a substantial likelihood J.B. could be returned to Mother within the statutory timeframe, the court terminated services and set a section 366.26 hearing. (*Id.* at p. 12.)

On July 9, 2012, CFS informed the juvenile court that J.B. would be referred for an assessment by Inland Regional Services for “WRAP” services and would be evaluated for psychotropic medication. According to an assessment by a child and adolescent psychiatrist for the County of San Bernardino, J.B. had “Anxiety or Depressive Disorder NOS. He could have an additional problem with Attention-Deficit/Hyperactivity Disorder. He [wa]s currently taking Adderall but still having significant symptoms, possibly related to anxiety and depression.” Despite previous efforts to medicate him, J.B. still had problems with poor focus, urinating in containers, temper tantrums, anxiety, depression, and socially inappropriate behaviors. J.B. “expressed strongly ambivalent feelings towards his mother and tended to blame other people for his being taken away from her.” The psychiatrist recommended medication, individual, family and group therapy, “wraparound services,” and continuation in his current placement.

The adoption assessment filed on October 30, 2012, stated that J.B. “is appropriate for adoption.” Acknowledging his developmental delays, the assessment described him as being physically on track. C.B. was in the process of completing the questionnaires for the Inland Regional Center’s intake packet. J.B. engaged in counseling to help him with his behavioral issues and socialization and he had been prescribed medication for his attention-deficit hyperactivity disorder. According to the social worker, J.B. wanted to

remain with C.B. and understood that adoption meant he could do so. J.B. looks to C.B. “for comfort and affection, with an expectation that his needs will be met.” As for C.B., she was eager to adopt J.B. She acknowledged her family’s history of mental health problems but viewed J.B. as one of her children. C.B. reported being in good physical health with no medical problems. She stated she had not been arrested or convicted of a crime. The adoption services recommended “by clear and convincing evidence that it is likely the child will be adopted”

Prior to the section 366.26 hearing, Mother mailed a series of motions to the juvenile court, including a request to appear telephonically, a *Marsden* motion, a *Faretta*⁵ motion, a request for a jury trial, a request to continue the hearing, a request for discovery, and a request for visitation. These documents were received on November 26, 2012. By order filed March 20, 2013, we augmented the record on appeal to include these documents. On November 26, the parties stipulated that J.B. had a bond with Mother. Defense counsel noted that Mother was “objecting to the hearing going forward based on the fact that she is unable to be here based on lack of funds for transportation, and that we are renewing the request to testify telephonically” Counsel further stated that Mother objected to the adoption because it was not in J.B.’s best interest to be adopted by his cousin. By clear and convincing evidence, the juvenile court found J.B.

⁵ *Faretta v. California* (1975) 422 U.S. 806.

was likely to be adopted, selected adoption as the permanent plan, and terminated parental rights.

II. EVIDENCE OF ADOPTABILITY

A juvenile court may terminate parental rights only if it determines, by clear and convincing evidence, that it is likely that the child will be adopted. (§ 366.26, subd. (c)(1).) Mother contends the juvenile court erred in selecting adoption as the permanent plan because there is “no assurance that the prospective adoptive parent’s conviction is outside of the list that strictly bars the adoption from proceeding.” We reject her contention.

A. Standard of Review

“When reviewing a court’s finding a minor is adoptable, we apply the substantial evidence test. [Citations.] If, on the entire record, there is substantial evidence to support the findings of the juvenile court, we must uphold those findings. We do not pass on the credibility of witnesses, attempt to resolve conflicts in the evidence or weigh the evidence. [Citations.] Rather, our task is to determine whether there is substantial evidence from which a reasonable trier of fact could find, by clear and convincing evidence, that the minor is adoptable. [Citation.] The appellant has the burden of showing there is no evidence of a sufficiently substantial nature to support the finding or order. [Citation.]” (*In re R.C.* (2008) 169 Cal.App.4th 486, 491.)

B. Analysis

Mother's primary concern is that CFS "sought only to prove that [J.B.] would be adopted by the specific family identified; she did not claim that there would be other homes available." Because CFS "failed to explain how [C.B.'s] criminal history might impact the adoption proceedings," Mother argues that it failed to meet its burden. We disagree. While Mother emphasizes the fact that C.B. has a criminal record that includes a "conviction [that] may have disqualified [her] or anyone in her home from adopting," she fails to identify the conviction. However, according to the record before this court, in June 2011 Mother "was adamant . . . that [J.B.] be placed with a 'blood relative.' When the [social worker] had explained to [Mother] that her cousin [C.B.] would need a criminal exemption for a crime committed long ago, [Mother] argued with the [social worker] saying 'I can't believe you are going to hold up the relative approval process for a stupid little shoplifting charge which was over ten years ago!'" Since then, an exemption letter was obtained. Mother never objected to the exemption letter at the trial level and she offers no evidence to challenge it on appeal. Because a conviction of shoplifting is neither "[a] felony conviction for child abuse or neglect, spousal abuse, crimes against a child, including child pornography, or . . . a crime involving violence," nor "[a] felony conviction that occurred within the last five years for physical assault, battery, or a drug- or alcohol-related offense" within the meaning of Family Code section 8712, subdivision (c)(1)(A) and (c)(1)(B), C.B. was not disqualified from adopting J.B., and Mother's challenge fails.

III. CYNTHIA D. AND DUE PROCESS

Mother challenges the holding in *Cynthia D.*, *supra*, 5 Cal.4th 242, contending that our Supreme Court was wrong in holding that California's dependency system comports with federal due process standards. Recognizing that we are bound by the Supreme Court's ruling, (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455) she presents the issue only to preserve it for further review. No further discussion of this claim is required.

IV. DISPOSITION

The order terminating parental rights to J.B. and placing him for adoption is affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

HOLLENHORST

Acting P. J.

We concur:

MCKINSTER

J.

MILLER

J.