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

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

E.R.,

Petitioner,

v.

THE SUPERIOR COURT OF  
RIVERSIDE COUNTY,

Respondent;

RIVERSIDE COUNTY DEPARTMENT  
OF PUBLIC SOCIAL SERVICES,

Real Party in Interest.

E058964

(Super.Ct.No. RIJ1300094)

OPINION

ORIGINAL PROCEEDINGS; petition for extraordinary writ. Tamara Wagner,  
Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Petition denied.

Anastasia Georggin for Petitioner.

No appearance for Respondent.

Pamela J. Walls, County Counsel, and Julie Koons Jarvi, Deputy County Counsel,  
for Real Party in Interest.

Petitioner E.R. (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 child, E.R. (the child), and setting a Welfare and Institutions Code<sup>1</sup> section 366.26 hearing. Father argues that the juvenile court erred in denying him reunification services under section 361.5, subdivision (b)(6), and abused its discretion in not finding reunification to be in the best interest of the child. Father has requested a temporary stay of the section 366.26 hearing, pending the granting or denial of this writ. We deny his writ petition, as well as the request for a stay of the section 366.26 hearing.

#### FACTUAL AND PROCEDURAL BACKGROUND

On January 31, 2013, the Riverside County Department of Public Social Services (DPSS) filed a section 300 petition on behalf of the child and his half sibling, M.B.<sup>2</sup> M.B. was eight years old, and the child was four years old. The petition alleged that the child came within the provisions of section 300, subdivisions (b) (failure to protect), and (j) (abuse of sibling). The petition alleged that father physically abused M.B. by violently striking her with a belt and causing extensive bruising and/or welts. The petition further alleged that the child was at risk of similar harm.

The social worker filed a detention report stating that the Riverside County Central Intake received a referral alleging general neglect and physical abuse. It was reported that M.B. was seen with welt marks on her back, legs, thigh, and knee, and she

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<sup>1</sup> All further statutory references will be to the Welfare and Institutions Code, unless otherwise noted.

<sup>2</sup> M.B. is not a subject of this writ petition.

complained of pain. The social worker interviewed M.B., and she said that her mother (mother)<sup>3</sup> “whooped” her hand with a shoe five to six times after she had acted up one day, and that father, who was her stepfather, later “whooped” her with a black belt. M.B. showed the social worker a mark on her wrist, which she said was caused by the loop of the belt. She also showed the social worker bruises on her right and left thighs. M.B. said that she did not feel safe with father, and that she was scared of him. When asked how the child was punished, she said that he was spanked.

The social worker interviewed mother, who admitted that she “whooped” M.B.’s hand with a shoe. However, mother said she was unaware that M.B. had marks and bruises on her body. Mother asserted that father “whooped” M.B. on her buttocks with an open hand, and said that he had used a belt in the past. Mother said she protected M.B. by telling father to “relax” and telling M.B. to “go to bed.” Mother informed the social worker that father agreed to move out of their home.

The social worker spoke with father on the telephone. He reported that he was employed as a truck driver, but he refused to provide any personal information (e.g., his other child’s whereabouts or father’s social security number). When asked about the allegations, father stated that he spanked M.B. due to her behavior of fighting and stealing. He reported that he used a belt. When asked how many times he spanked her, he stated that he “didn’t hit too often, too busy chasing her.” He said he was not aware

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

that she had marks or bruises on her body. He said that all children her age had marks and bruises from playing.

A Child Abuse and Neglect (CAN) exam was performed on M.B. She again reported that she was punished with a belt and shoe. Bruises were seen on her face, head, arms, legs, feet, and back. The patterns seen on her were consistent with a belt and belt buckle. There were nail marks on her right arm and old injuries and scars consistent with loop marks. The injuries indicated physical abuse.

The social worker opined that father had used physical force “in a way that [bore] no resemblance to reasonable discipline.” The social worker further stated that he “punished [M.B.] beyond the duration of her endurance.”

Additionally, the social worker reported that the child was diagnosed with autism and was nonverbal. He was also diagnosed with mild mental retardation. He had a history of seizures and asthma and was prescribed medication for both conditions. The social worker observed the child, and noted that he had no visible marks or bruises. However, the child was at risk and was unable to communicate any concerns since he was nonverbal.

The court detained the child (and M.B.) in foster care. The child was placed in a medically fragile foster home.

#### *Jurisdiction/Disposition*

The social worker filed a jurisdiction/disposition report on February 21, 2013, recommending that the child be declared a dependent and that reunification services be offered to father. The social worker subsequently changed the recommendation and

recommended that services be denied pursuant to section 361.5, subdivision (b)(6). The social worker reported that father willfully inflicted injuries on M.B., and that he had a history of using controlled substances and had a criminal history.

At a contested jurisdiction hearing on March 28, 2013, mother testified. She said she was there when father struck M.B. with a belt. Mother explained that she and M.B. were at a party, and M.B. was already “on punishment” for something she had done before. M.B. started screaming that she did not want to go home. Mother made her go home, and M.B. had a bad attitude. So, when father got home, he “whooped” M.B. Mother said that father had M.B. between his legs; M.B. was screaming at the top of her lungs, so mother put her hand over M.B.’s mouth. Mother felt that M.B. “needed a whooping,” but she agreed that it was excessive. Mother said that it was not the first time that father had used a belt on M.B., but added that he had not used a belt on her in several months. She said they used a belt because M.B. “got out of line” and “was very disrespectful.” Mother said she believed father was a good and supportive father to the child.

The court sustained the petition and found that the child came within section 300, subdivisions (b) and (j). The court then scheduled a disposition hearing.

At a contested disposition hearing on June 12, 2013, father’s counsel argued that there was no indication in the record that the child had ever had any problems with father, and she believed it was in the child’s best interest to grant services to father. She stated that father had completed a parenting course, that he had three more weeks to go to complete an anger management course, and that he was participating in individual

counseling, with nine more sessions to go. Counsel also asserted that the child was now living with the paternal grandmother, and father had recently had a visit during which he interacted well with the child.

The court adjudged the child a dependent of the court and denied reunification services to father under section 361.5, subdivision (b)(6), finding that reunification was not in the child's best interest. The court set a section 366.26 hearing for October 17, 2013.

## ANALYSIS

### The Court Properly Denied Reunification Services

Father argues that the court erred in denying him reunification services as to the child under section 361.5, subdivision (b)(6). He asserts that the circumstances surrounding the abuse did not constitute a pattern of continued abuse, and there was no evidence that father had abused other children. Father further contends that there was a likelihood that the child could be safely returned to him within the next 12 months, since he had completed a parenting course and was actively participating in an anger management course and counseling. We conclude that the court properly denied father 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)(6), which provides that services need not be provided to a parent when the court finds that “the child has been adjudicated a dependent pursuant to any subdivision of Section 300 as a result of severe sexual abuse or the infliction of severe physical harm to the child, a sibling, or a half sibling by a parent or guardian, as defined in this subdivision, and the court makes a factual finding that it would not benefit the child to pursue reunification services with the offending parent or guardian.” In other words, section 361.5, subdivision (b)(6), provides that “parents who . . . inflict severe physical harm on a child also do not necessarily deserve a second chance. In this situation, the right to reunification services, outlined in section 361.5, subdivision (a), does not accrue to such an offending parent unless the court finds it would benefit the dependent child to pursue reunification services with that parent. Inherent in this subdivision appears to be a very real concern for the risk of recidivism by the parent despite reunification efforts.”

(*Deborah S. v. Superior Court* (1996) 43 Cal.App.4th 741, 751 (*Deborah S.*)) We note that “an abusive parent’s risk of recidivism is not necessarily limited to a child who was the parent’s previous victim. The parent may very well pose a serious threat to his or her other children. The Legislature appears to have recognized this sad circumstance in its drafting of section 361.5, subdivision (b)(6).” (*Ibid.*) “The child who is not personally harmed but who is adjudicated a dependent under section 300 due to a parent’s infliction

of severe physical harm is at least at a substantial risk of suffering serious physical or emotional harm. [Citations.]” (*Ibid.*)

Here, the court adjudicated the child a dependent pursuant section 300, subdivisions (b) and (j), as a result of the infliction of severe physical harm to the child’s half sibling, M.B. (§ 361.5, subd. (b)(6).) The evidence clearly showed that M.B. had been abused. M.B. told the social worker that father “whooped” her with a black belt, and she showed the social worker the injuries that resulted. Father admitted that he used a belt in “spanking” M.B. Mother admitted that she was there when father “whooped” M.B., and she agreed that the “whooping” was excessive. The results of the CAN exam showed that M.B. had bruises on her face, head, arms, legs, feet, and back. The patterns seen on her were consistent with a belt and belt buckle. There were nail marks on her right arm and old injuries and scars consistent with loop marks. The injuries indicated physical abuse. There was no evidence that the child had been personally harmed, but there was a substantial risk that the child would be similarly abused. (*Deborah S., supra*, 43 Cal.App.4th at p. 751.)

*C. The Court Properly Determined That It Would Not Benefit the Child to Pursue Reunification Services*

Furthermore, the court properly determined that reunification services were not in the best interest of the child.

“In order to deny services under section 361.5, subdivision (b)(6), the court, in addition to finding the minor has been adjudicated a dependent, in relevant part, as a result of the infliction of severe physical harm by a parent, must determine that it would

not benefit the child to pursue reunification services with the offending parent.”  
(*Deborah S.*, *supra*, 43 Cal.App.4th at p. 751.) Section 361.5, subdivision (c) specifies, as pertinent, that the “court shall not order reunification for a parent or guardian described in paragraph . . . (6) . . . of subdivision (b) unless the court finds, by clear and convincing evidence, that reunification is in the best interest of the child.” It is the parent’s burden to “affirmatively show that reunification would be in the best interest” of the child. (*In re Ethan N.* (2004) 122 Cal.App.4th 55, 66; see also *Mardardo F. v. Superior Court* (2008) 164 Cal.App.4th 481, 492.)

Father did not meet this burden. He argued below that he had never had problems with the child in the past, his criminal history included convictions for possession of a controlled substance and an open container, but none for domestic violence or any type of battery or assault, and he had completed a parenting course and was in the process of completing an anger management course and individual counseling. He also presented evidence of a letter from MFI Recovery stating that he had demonstrated a commitment to positive change for himself and his children. He now adds that he had a supervised visit in which he interacted with the child, brought him toys, and fed him. Father also states that the child called him “father,” looked up to him, and showed him love and affection.

None of this evidence demonstrated how reunification was in the child’s best interest. Despite father’s reunification efforts, there was still a “very real concern for the risk of recidivism.” (*Deborah S.*, *supra*, 43 Cal.App.4th at p. 751.) The evidence showed that father excessively beat the child’s half sibling with a belt. The CAN exam

indicated that M.B. had injuries from the current incident, as well as old injuries and scars consistent with loop marks. The injuries thus indicated ongoing physical abuse, rather than a one-time incident. When asked about the allegations, father stated that he was the one who “spanked” M.B., but said he did so because of her behavior of fighting and stealing. He readily admitted that he used a belt. When asked if he was aware of M.B.’s marks and bruises, he said, “You make it seem like I was beating her.” Father apparently did not think the punishment was excessive, and he minimized M.B.’s injuries and stated that all children her age had bruises from playing. Although father had completed a parenting course, there was no evidence that his attitude or views had actually changed. He proffered a letter from MFI Recovery stating that he had demonstrated a commitment to positive change; however, this letter was written after he had attended only two counseling sessions.

Furthermore, there was cause for concern since the child was autistic, mildly retarded, and had seizures and asthma. The evidence indicated that the child was also spanked for punishment. The child was certainly at risk of being abused like M.B. Notably, he was nonverbal and would not be able to communicate any concerns like M.B. did.

In light of the evidence, we conclude the court properly found that reunification was not in the child’s best interest and denied father reunification services.

DISPOSITION

The writ petition is denied. The request for a temporary stay of the section 366.26 hearing is also denied.

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HOLLENHORST  
Acting P. J.

We concur:

KING  
J.

MILLER  
J.