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

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

In re C.R., et al., Persons Coming Under  
the Juvenile Court Law.

J.R.,

Petitioner,

v.

THE SUPERIOR COURT OF  
RIVERSIDE COUNTY,

Respondent;

RIVERSIDE COUNTY DEPARTMENT  
OF PUBLIC SOCIAL SERVICES,

Real Party in Interest.

E060536

(Super.Ct.No. SWJ006577)

OPINION

ORIGINAL PROCEEDINGS; petition for extraordinary writ. John M.  
Monterosso, Judge. Affirmed.

Daniel L. Vinson for Petitioner.

No appearance for Respondent.

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

Petitioner J.R. (father) is the father of three children whom the juvenile court declared dependants and placed in foster care. On the date of the challenged orders, C.R. was seven years old, her brother A.R. had just turned six, and their sister S.R. was two. In this petition, father challenges the juvenile court's orders of January 31, 2014 setting a section 366.26 selection and implementation hearing and denying him reunification services under section 361.5, subdivision (b)(13) on the basis that he uses drugs and has resisted treatment. Father argues the orders are not supported by substantial evidence. As discussed below, substantial evidence supports the court's conclusion that father's drug use in 2013 was more than a brief relapse, but rather a resumption of drug use indicating a resistance to treatment. For this reason, we affirm the court's orders.

#### **FACTS AND PROCEDURE**

##### *2013 Detention and Previous Child Welfare Contacts 2003-2012*

On December 2, 2013, the Riverside County Department of Public Social Services (DPSS) filed a juvenile dependency petition under Welfare and Institutions Code section 300 regarding the three children.<sup>1</sup> DPSS alleged "failure to protect" under section 300, subdivision (b). As to both father and the children's mother,<sup>2</sup> DPSS alleged that they engaged in domestic violence, had an extensive history of abusing controlled substances,

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<sup>1</sup> All section references are to the Welfare and Institutions Code unless otherwise indicated.

had a criminal history of drug-related charges, and had a prior history with DPSS in which allegations of general neglect were substantiated. In addition, DPSS alleged with regard to father that he had made “no provision for support” of the children under subdivision (g) because he was incarcerated on charges of domestic violence.

The parents had a previous DPSS case from when C.R. was born in September 2006. C.R. was transferred to the Neonatal Intensive Care Unit after birth for apnea and to rule out infection. The reporting party was concerned for C.R.’s safety. C.R.’s two older siblings had been killed in a house fire earlier that year while mother was home and father was incarcerated on domestic violence charges. After the fire mother was found to possess methamphetamine. Mother’s medical records show she and father had a verbal argument during a prenatal visit and that father had been drinking. On October 2, 2006, mother was under the influence while being interviewed by the social worker. Mother admitted to having drunk “a line in a cup of coffee” the previous day. The family reunification case was terminated on July 21, 2008.

In addition, the record contains details of DPSS referrals, mostly for general neglect involving the parents’ drug use, in 2003, 2004, 2006, 2008, 2009, 2011, and 2012.

The current dependency case began with a referral on November 19, 2013, alleging general neglect as to father. On October 30, 2013, as the family prepared to carve pumpkins in their garage, father became angry when mother picked up two-year-

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<sup>2</sup> Mother is not a party to this appeal and is mentioned only where necessary.

old S.R. by one arm, told her he was going to kill her, then choked mother until she became light headed, in the presence of the children. Mother called police. After hearing mother's description and speaking with seven-year-old C.R., they arrested father for domestic violence (Pen. Code, § 273.5), criminal threats (Pen. Code, § 422) and felony child endangerment (Pen. Code, § 273a, subd. (a)). Father was later convicted of domestic violence and misdemeanor child endangerment and placed on formal probation for three years. Mother applied for and received a restraining order against father.

The social worker detained the children after an unannounced visit to the family home on November 26, 2013. Mother initially pretended not to be home, but eventually opened the door to the social worker. The children were dirty and the home in disarray. Mother tested positive for methamphetamine use after taking a saliva swab test. Mother was arrested for drug use (Health & Saf. Code, § 11550) and misdemeanor child endangerment (Pen. Code, § 273a, subd. (b)).

Father's extensive criminal history of arrests and/or convictions included driving under the influence in 1996 and twice again in 1999, inflicting corporal injury on a spouse in 2003, failure of a passenger to use a seat belt in 2004, being under the influence in 2004, possession of a controlled substance in 2005 and again in 2009, and gun possession in 2013.

In the detention report detailing all of the above and more, DPSS expressed an overall concern for the children because of "the parent's continual and ongoing drug related activities which have subsequently left the children without an appropriate caregiver. Further, the parents have failed to benefit from numerous preventative

services including multiple substance abuse programs, counseling, parental education, and domestic violence classes. The parents continue to place their children at risk of abuse/neglect by engaging in domestic violence and using drugs.” In addition, DPSS believed the parents were a flight risk because of their history of avoiding DPSS and law enforcement investigations.

At the detention hearing held on December 3, 2013, the juvenile court ordered the children detained in foster care, with supervised visitation. The jurisdiction and disposition hearing was set for December 30, 2013.

*Jurisdiction and Disposition – January 2014*

In the jurisdiction and disposition report filed December 24, 2013, DPSS asked that reunification services be denied to both parents under section 361.5, subdivision (b)(13), because of their extensive history of drug or alcohol abuse and resistance to court-ordered treatment.

The social worker tried to interview seven-year-old C.R. in the children’s foster home, but she refused to talk to the social worker, ran out of the room and hid under her bed. A.R., who was then still five years old, told the social worker that “My dad did not treat us good. He yell every day, but not all of the day. My mom did not call the cops everyday but sometimes she would call the cops.” He said that his mom and dad often fought in front of the kids with their words and hand more times than he could count. One day father “slammed my mommy into the fridge and she got hurt really bad,” so that she could not take A.R. to school, but she did not call the police. A.R. also stated father would often break glass by throwing it on the ground or at the wall, and that sometimes

mother would try to call the police but father would stop her. A.R. stated he was afraid of his father, but not afraid of his mother. A.R. said his parents slept a lot during the day and that he and his siblings would take care of themselves and each other. His parents would not wake up when the children would try to wake them up, and a lot of times he would not go to school. A.R. said father smokes “weed,” and keeps it in his pocket or on top of a dresser “where I can’t reach it.” Father would smoke weed in A.R.’s presence. A.R. knew the difference between how weed smells and how cigarettes smell, because his father smokes weed and his mother smokes cigarettes. A.R. stated that both his parents spank him and that it hurts him a lot, and that, in addition, father would “scratch me on my face and sometimes I cry.” A.R. repeated that when he lived with his parents he was afraid. A.R. wanted to go back to living with father but only if he “is not going to yell and do all the bad stuff that I told you about.”

Father was not visiting with the children. He told the social worker that he did not want to visit with the children while he was in jail, and preferred to begin visits once he was released.

On December 30, 2013, a contested jurisdictional hearing was set for January 23, 2014. That hearing was then rescheduled for January 31, 2014.

On January 17, 2014, DPSS filed an addendum to the jurisdiction and disposition report. Father was released from custody on January 5, 2014 and began having supervised visits with the children. This resulted in C.R., who previously had not had any issues with bedwetting, wetting the bed after each supervised visit with father. A.R. also wet himself after visiting with his father for the first time. In an interview with the

social worker after his release from custody, father stated that he had enrolled at MFI treatment center in Hemet within days after his release, which would require group sessions three times per week for three months, and 12 weeks of aftercare sessions. Father stated his first drug test for MFI was negative, and his saliva drug test administered by the social worker was negative for drugs. Father had previously enrolled in and finished drug treatment programs, the last one in 2011, and a parenting class through Family Preservation Court in 2012. Father stated he had twice previously enrolled in anger management classes and would again be enrolling by court order. Father admitted to having used methamphetamines off and on in 2013 after he relapsed at the beginning of the year. Father stated he did not understand why A.R. would have related having seen father smoke marijuana or described that mother and father slept all day and could not be woken up.

DPSS filed a first amended section 300 petition on January 29, 2014 to add the following to the allegation regarding father's history of substance abuse: "Further, despite participation in several drug and alcohol rehabilitative programs, the father continues to use marijuana and other substances in the presence of his children."

DPSS filed a second addendum report on January 30, 2014. C.R. finally agreed to be interviewed by the social worker in the presence of her school teacher. C.R. described the choking incident from October 30, 2013, and stated that she was scared until the police arrived. C.R. said father fights with mother and uses bad word and his hands on mother. C.R. stated that her mother drinks alcohol, but did not think father does. C.R. related that father smokes weed and mother smokes cigarettes, and that the two smell

different. Father smokes weed at the house in his bedroom. “It’s his medicine and he do it every day.” C.R. stated that father keeps the weed locked up in his dresser drawer and that she does not have access to it. C.R. stated that she is not afraid of mother, but is afraid of father, and that sometimes she gets in trouble and gets hit by father for no reason.

The jurisdiction and disposition hearing was held on January 31, 2014. Through his counsel, father offered the following stipulated testimony: That he is requesting family reunification services. He wants to reunify with his children. He would testify that he is currently in MFI and testing clean. He would testify that he’s not abusing any controlled substances and that he is benefiting from his program. Father would testify that he has used marijuana in the past, but he is not using marijuana at this time. He has let his marijuana card expire and is not planning to renew it or use marijuana again in the future. Father would testify that he visits with his children and engages in activities, such as reading, playing board games, and doing homework with his kids. Finally, father would testify he loves his children and is working hard to reunify with them.

After hearing argument from the parties, the trial court found true the allegations of failure to protect, but found not true the allegation as to father that he had made no provision for support because he was no longer in custody. The court took jurisdiction over the children, denied reunification services to both parents under section 361.5, subd. (b)(13), and set a section 366.26 selection and implementation hearing for May 29, 2014. This petition for extraordinary writ followed.

## DISCUSSION

Father argues the juvenile court's decision to deny him reunification services under section 361.5, subdivision (b)(13), is not supported by substantial evidence. Specifically, father argues that his drug use in 2013 was a mere brief relapse, rather than a full resumption of drug use that would indicate a resistance to treatment under subdivision (b)(13).

“There is a presumption in dependency cases that parents will receive reunification services. [Citation.] Section 361.5, subdivision (a) directs the juvenile court to order services *whenever* a child is removed from the custody of his or her parent *unless* the case is within the enumerated exceptions in section 361.5, subdivision (b). [Citation.] Section 361.5, subdivision (b) is a legislative acknowledgement ‘that it may be fruitless to provide reunification services under certain circumstances.’ [Citation.]” (*Cheryl P. v. Superior Court* (2006) 139 Cal.App.4th 87, 95-96 (*Cheryl P.*); see also *Renee J. v. Superior Court* (2001) 26 Cal.4th 735, 744 (*Renee J.*), superseded by statute on other grounds as stated in *In re Angelique C.* (2003) 113 Cal.App.4th 509, 518, & *In re Allison J.* (2010) 190 Cal.App.4th 1106, 1113; *In re Baby Boy H.* (1998) 63 Cal.App.4th 470, 478.) “Once it is determined one of the situations outlined in subdivision (b) applies, the general rule favoring reunification is replaced by a legislative assumption that offering services would be an unwise use of governmental resources. [Citation.]” (*In re Baby Boy H.*, at p. 478.)

Section 361.5, subdivision (b), lists the circumstances where reunification services need not be provided. As relevant here, the circumstances include where a parent has a chronic drug problem (§ 361.5, subd. (b)(13)).

We review the juvenile court's order denying reunification services under section 361.5, subdivision (b), for substantial evidence. (*Cheryl P.*, *supra*, 139 Cal.App.4th at p. 96.) When determining whether substantial evidence is present, 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.) We merely determine if there is any substantial evidence, contradicted or not, which will support the conclusion of the trier of fact. (*Ibid.*) Substantial evidence is reasonable, credible evidence of solid value such that a reasonable trier of fact could make the findings challenged. (*In re Brian M.* (2000) 82 Cal.App.4th 1398, 1401.) The burden is on the petitioner to show the evidence is insufficient to support the juvenile court's findings. (*In re Geoffrey G.* (1979) 98 Cal.App.3d 412, 420.)

Section 361.5, subdivision (b)(13), provides that reunification services may be denied to a parent when the juvenile court finds by clear and convincing evidence that “the parent or guardian of the child has a history of extensive, abusive, and chronic use of drugs or alcohol and has resisted prior court-ordered treatment for this problem during a three-year period immediately prior to the filing of the petition that brought that child to the court's attention . . . .”

Under section 361.5, subdivision (b)(13), two prongs must be found by clear and convincing evidence to deny a parent reunification services. First, the parent must have

“a history of extensive, abusive, and chronic use of drugs or alcohol.” Second, the parent either (1) “has resisted prior court-ordered treatment for this problem during a three-year period immediately prior to the filing of the petition that brought that child to the court’s attention,” or (2) “has failed or refused to comply with a program of drug or alcohol treatment described in the case plan required by Section 358.1 on at least two prior occasions, even though the programs identified were available and accessible.”

Here, father obviously fulfills the first prong, in that he has “a history of extensive, abusive and chronic use of drugs or alcohol,” including arrests and convictions for drug use or possession in 1996, 1999, 2004, 2005 and 2009. Father does not dispute this in his petition. Father does argue that substantial evidence does not support the second prong, that he “has resisted prior court-ordered treatment for this problem” in the three years prior to the December 2, 2013 petition. As father concedes, a resumption of substance abuse, even after successfully completing a treatment program, may be considered resistance to treatment under section 361.5, subdivision (b)(13). (*In re William B.* (2008) 163 Cal.App.4th 1220, 1230 (*William B.*)). However, father argues that his drug use beginning in 2013, admitted by him to the social worker and described in consistent detail by his two oldest children, was a mere relapse that does not amount to a resistance to treatment under the statute. In *William B.*, the court found that, after successful completion of a drug abuse program, a father’s renewed use of drugs at least every other week for three months prior to his arrest “cannot be considered a simple relapse; rather, it was a resumption of drug use demonstrating resistance to treatment.” (*William B.*, *supra*,

173 Cal.App.4th at p. 1230.) The evidence in this record shows that father's renewed drug use was more regular and long-lasting than that of the father in *William B.*

In this case, father was ordered by the court to complete a substance abuse program after his 2009 conviction for felony possession of a controlled substance. Father told the social worker that he completed his "Prop. 36" treatment at Sun Ray Addiction in 2011 and the Hemet Center for Change program in 2011. This was within three years of the December 2, 2013 juvenile dependency petition. Regarding whether father thereafter resumed regular drug use or merely suffered a brief relapse followed by renewed treatment, the following evidence is available. First, in January 2014, father told the social worker that he started using methamphetamine again in early 2013, and used it "off and on" during that year. Second, both C.R. and A.R. told the social worker that father smoked marijuana at their home on a regular basis, and that he kept the "weed" locked in his dresser drawer. Both children stated their parents slept during the day and that they were left to fend for themselves because they would be unable to wake their parents. This points to more than a simple relapse by father. It constitutes substantial evidence to support the juvenile court's conclusion that father had resumed regular drug use after completing court-ordered drug treatment, and thus was resistant to treatment under section 361.5, subdivision (b)(13).

**DISPOSITION**

The juvenile court's orders denying reunification services to father and setting a section 366.26 hearing are affirmed.

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RAMIREZ  
P. J.

We concur:

McKINSTER  
J.

MILLER  
J.