

NOT TO BE PUBLISHED IN OFFICIAL REPORTS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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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 M.S. et al., Persons Coming Under the
Juvenile Court Law.

INYO COUNTY HEALTH AND
HUMAN SERVICES,

Plaintiff and Appellant,

v.

G.S. et al.,

Defendants and Respondents.

E063521

(Super.Ct.Nos. SIJVSQ14507 &
SIJVSQ14508)

OPINION

APPEAL from the Superior Court of Inyo County. Dean Stout, Judge. Affirmed.

Margaret Kemp-Williams, County Counsel, and David Nam, Deputy County
Counsel, for Plaintiff and Appellant.

Rich Pfeiffer, under appointment by the Court of Appeal, for Defendant and
Respondent, G.S.

Megan Turkat Schirn, under appointment by the Court of Appeal, for Defendant and Respondent, R.S.

The court took jurisdiction over three-year-old M.S. and one-year-old S.S. because their parents had exposed them to domestic violence and their mother had left them at home, unsupervised and alone, on multiple occasions. At the disposition hearing, the court granted reunification services to defendants and respondents, Ralph S. (R.S.) and Georgette S. (mother).

Plaintiff and appellant, Inyo County Health and Human Services (the Department), appeals the order granting reunification services to mother.¹ The Department argues that the court should have bypassed reunification services under Welfare and Institutions Code section 361.5, subdivision (b)(10)² because it presented clear and convincing evidence that mother had failed to reunify with the minors' half siblings in prior dependency proceedings and failed to make a reasonable effort to treat the problems that led to removal in those proceedings.

As a matter of statutory interpretation, the Department urges that we read the bypass provision in section 361.5, subdivision (b)(10) to contain a time limit on a parent's effort to treat the problems that led to a prior removal. It argues that the court

¹ The Department does not challenge the order granting services to R.S.

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

may only consider the effort a parent makes prior to removal in the current case, or at the very least, prior to commencement of the disposition hearing.

By the time of the disposition hearing, mother had taken a number of domestic violence and parenting courses, some of which she had completed during the pendency of the hearing. The court found that mother's effort, though late and arguably minimal, nevertheless satisfied the reasonable effort standard. As explained *post*, we conclude that there is no cutoff date in section 361.5, subdivision (b)(10) and that a court may consider efforts made after the start of the disposition hearing.

Considering the entirety of mother's effort, including steps she took during the pendency of the disposition hearing, and viewing the record in the light most favorable to the court's ruling, we cannot say the court erred in finding that the bypass provision did not apply. While we agree with the Department that mother's track record as a parent and a recipient of family reunification services does not inspire confidence in her ability to reunify with M.S. and S.S., we will not overturn the trial court's determination that she has at least "earned [the] right to try under the law."

I

FACTUAL AND PROCEDURAL BACKGROUND

Mother has six biological children and a history with child protective services that spans over 20 years. Over the course of three dependency proceedings, mother failed to reunify with four of her children, M.S and S.S.'s older half siblings.

A. *Mother's Background*

Mother was born in Guatemala and moved to the United States with her mother (maternal grandmother) when she was an infant. Maternal grandmother married a police officer and had three children. In 1994, when mother was 14 years old, her parents allowed her to move from Utah to Los Angeles to attend school at the Church of Scientology. Shortly after moving to Los Angeles, mother dropped out of school (she was in the 8th grade) and alternated between being homeless and living with friends. Mother became pregnant with her first child, A.R., at age 15. In January 1996, soon after A.R. was born, the Los Angeles County Department of Children and Family Services (LADCFS) removed her from mother's care due to "medical neglect and homelessness of her parents, which rendered them unable to provide adequate care."

Mother failed to reunify with A.R. and the child was adopted. At the time, mother herself was the subject of a LADCFS dependency petition which alleged extreme "family dysfunctions" and "mutual combat" between mother and maternal grandmother. As a Scientologist, maternal grandmother did not believe in psychology or psychotropic medication, and therefore did not believe mental health treatment was appropriate for mother.

Mother had her second child, E.O., at age 18. In February 1998, the Ventura County Department of Children and Family Services removed E.O. from mother's care

based on lack of medical treatment and exposure to domestic violence. Mother failed to reunify with E.O., and the court placed the child with her biological father.

In 2000, mother completed her general education degree and has since worked in food services, retail, reception, and photography. She was residing in Ventura when she met the father of her third and fourth children, D.F. and A.F. In 2002, they relocated to Lone Pine. In 2006, shortly after A.F.'s birth, the father ended his relationship with mother and moved back to Ventura. In 2009, the Department removed D.F. and A.F. from mother's care based on allegations of exposure to domestic violence and substance abuse. Mother ultimately failed to reunify with these children as well. The court placed D.F. and A.F. with their biological father and granted mother supervised visitation.

B. Events Leading to the Section 300 Petition

Mother and R.S. began dating in 2007 and were married in 2011. They have a volatile relationship and an extensive history of domestic violence. R.S.'s criminal history includes multiple arrests and convictions, from 2009 to 2014, for physically abusing mother. According to the Department's review of police records, when law enforcement responded to a domestic violence incident at their home in 2013, mother had bruising on her arm. She reported that R.S. had bit her nose while she was holding M.S. and that R.S. had been abusive for the past year. She also reported that, in 2012, R.S. had kicked her so hard that he broke her right forearm. Neighbors interviewed about the 2013 incident reported regularly seeing mother with cuts and bruises.

In July 2014, mother received hospital treatment for bruising on both sides of her neck, her temple, upper triceps, and thighs. She told law enforcement and medical staff that R.S. had thrown her against the refrigerator, slammed her head against the ground, and kicked her. She reported that R.S. had been physically violent with her for two days, and that M.S. was present for some of that abuse. R.S. denied that he caused mother's injuries and claimed that she had bitten his penis. Mother told law enforcement that she had done so in self-defense because R.S. had forced her to orally copulate him. R.S. was arrested for domestic violence and the court issued an emergency restraining order. As a result of this incident, mother entered into a voluntary services plan with the Department.

In October 2014, the Department received a report that mother had left S.S.—then 10 months old—home alone while she took M.S. to school. The social worker contacted the Inyo County Sheriff's Department and requested an immediate welfare check to ensure S.S.'s safety. Mother was not home when the deputy arrived at her house. The deputy later found her on another street in the neighborhood. S.S. was with her but M.S. was not. She told the deputy that M.S. was at home under the supervision of someone named Eric. After being uncooperative with the deputy, mother ultimately admitted that she had left M.S. home alone.

The deputy found M.S. asleep on the couch, alone and unsupervised, in mother's house. He also found numerous "life threatening" hazards inside the home, including a large pit bull, uncovered electrical outlets, access to electrical cords and the toilet, as well

as kitchen and bathroom supplies. Additionally, mother's doors did not have childproof covers to prevent M.S. from exiting the house, which was located less than half a block from an interstate highway. The deputy arrested mother for child endangerment and placed M.S. and S.S. in protective custody.

When the social worker interviewed mother the following day, mother admitted that she had left her children unattended on multiple occasions. The social worker interviewed R.S. over the telephone. He was living apart from mother and working in the construction industry. He expressed concern for his children and a desire to be more involved in their lives. R.S. told the social worker he wanted custody.

On November 3, 2014, the Department filed a petition under section 300, subdivision (b) alleging that mother had left the minors unsupervised on multiple occasions and that both parents had exposed the minors to domestic violence. At the detention hearing the following day, the court ordered the minors to remain in foster care and granted mother and R.S. supervised visitation. M.S. and S.S. were placed with their maternal uncle and his wife in Lancaster.

C. The Department's Recommendation to Bypass Services for Mother

The Department filed a disposition report which recommended providing reunification services to R.S. and bypassing services as to mother. The social worker observed that both R.S.'s and mother's Skype visits with the minors had been going well, and that both parents demonstrated a strong desire to care for their children. R.S. was

participating in the 52-week domestic violence course that had been ordered in his criminal case. The social worker believed that he was making progress and would “benefit from intensive services to ensure the minors are reunified with him in a timely manner.”

As to mother, the social worker discussed the three prior dependency proceedings and her failure to reunify with the minors’ four half siblings. He stated that mother had been given six months of reunification services in the 2009 proceeding involving A.F. and D.F., but had “struggled with participating in services and failed to enroll in services.” He stated that she was also unsuccessful in maintaining contact with the Department and with her children during that proceeding.

He discussed two psychological evaluations that mother had participated in during the previous proceedings, one in 1998 and one in 2009. The doctor who conducted the 1998 evaluation opined that mother was “ ‘quite guarded,’ ” suffered from borderline personality disorder, and “should not have unsupervised visits with her children until she demonstrated . . . responsibility for her actions as well as manage her anger appropriately.” The evaluator stated that individuals with this disorder have a poor prognosis for change. The results of the 2009 evaluation were similar. That doctor found that mother “ ‘clearly’ ” met the criteria for borderline personality disorder and that her disorder “ ‘severely’ ” limited her ability to parent because she was not able to take responsibility for her actions or place her children’s needs above her own.

The social worker recommended that the court bypass reunification services under section 361.5, subdivision (b)(10) because her likelihood of reunifying with the minors was “not promising,” due to “her involvement in the previous cases accompanied with her psychological diagnosis.”

Both parents waived their right to a contested jurisdiction hearing. The court found the allegations in the petition true and declared M.S. and S.S. dependents of the court under section 300, subdivision (b). The court continued the disposition hearing so that mother could contest the Department’s recommendation to bypass reunification services.

D. *The Disposition Hearing and Mother’s “Effort to Treat”*

The contested disposition hearing on the issue of bypass began on January 9, 2015. Over three days of testimony (January 9, February 6, and March 4), the court heard evidence regarding mother’s effort to treat the problems that led to removal of her children in the prior dependency proceedings.

Mother testified to the following. In 2012, she completed a 52-week domestic violence program for women. She found the course “very productive” because there were only a few students and she was therefore able to receive individualized counseling from the instructor. Also in 2012, mother participated in an Addiction Severity Index (ASI) assessment in response to concerns from the 2009 dependency case that she abused

alcohol. She stopped drinking in 2010, and the results of the 2012 assessment were that she did not need any services.

In 2014, as part of her voluntary services plan stemming from the July 2014 domestic violence incident, mother sought and obtained a restraining order against R.S. She also attended a class at Wild Iris on the effects of domestic violence on children.

Mother completed two parenting courses after the disposition hearing had commenced, i.e., during the pendency of the hearing. One was a 12-week course that included counseling on the effects of domestic violence on children. The other was a four-hour “Baby University” class that educated parents about infant developmental milestones and the neurological effects of stress and substance abuse on infants.

On her last day of testimony (March 4, 2015), mother testified that she was enrolled in a Baby University class that covered the developmental milestones of children ages three to five. The class started the following evening. Mother had recently met with an Inyo County therapist and had filled out the intake forms to begin counseling. She had also looked into applying for transitional housing for victims of domestic violence, but she wanted to finish her parenting course first because the housing was located in Lancaster.

Mother explained that during the 2009 dependency proceeding, she had trouble participating in reunification services because she did not have her green card. She testified that she was comfortable with the termination of services and placement of D.F.

and A.F. because they were with their father and were “happy.” A large part of the reason for the 2009 proceeding was her volatile relationship with D.F. and A.F.’s biological father. She now recognized the impact of domestic violence on her children.

Mother explained that she had a strong bond with M.S. and S.S. and was much more capable of accepting responsibility now (at age 35) than when she was younger.

She believed she could take advantage of services offered by the Department.

Additionally, mother had recently learned that there was treatment for people with borderline personality disorder because her youngest daughter, A.R. (with whom she kept in touch), was receiving treatment for the disorder. Due in large part to the fact that her parents were Scientologists and did not believe in psychology, mother had been under the impression that there was no treatment for people with borderline personality disorder. She felt hopeful about the possibility of receiving treatment.

The social worker testified that mother told him she would do anything to get her children back. He was encouraged by her completion of the 12-week parenting class and was aware she was making attempts to treat the problems that led to the removal of the minors’ half siblings. He also noted that mother had a pattern of enrolling in services and failing to complete them. In his opinion, it was unlikely that mother would successfully reunify with the minors.

During closing argument, counsel for the Department argued that mother’s case presented an issue of first impression, which was whether it was acceptable for a parent

“to do nothing until after the disposition hearing begins.” Counsel pointed out that the case had been pending for four months and that mother was just starting to take steps to treat the problems that led to the prior removal of her children. She argued that if the hearing had begun several months before, as originally scheduled, mother would have had fewer efforts to present to the court.

Mother’s counsel responded that there is a strong preference for providing reunification services and that mother had satisfied the standard in section 361.5, subdivision (b)(10) by making a reasonable effort to treat her problems. Counsel for the minors also believed that mother had succeeded in making a reasonable effort to treat her problems and that she should receive reunification services. He also believed reunification services were in the minors’ best interests because there was a strong bond between mother and her children, and testimony of M.S. “lighting up at the beginning of the visits” when he sees her.

E. *The Court’s Ruling*

The court took the matter under submission, noting that the case was challenging and that it wanted to “take time . . . to really review the evidence and the cases . . . and give this my absolute best effort.” On March 11, 2015, the court issued its detailed findings and dispositional orders.

At the outset of its ruling, the court rejected the Department’s argument that the cutoff for considering a parent’s effort to treat is either the date of removal or the start of

the disposition hearing. It acknowledged that the disposition hearing is usually completed soon after removal, whereas in this case over four months had elapsed since removal of M.S. and S.S. However, it concluded that, regardless of the characteristics of the present case, nothing in the text of section 361.5, subdivision (b)(10) or the bypass cases supported the imposition of a cutoff date.

The court stated that the issue of whether bypass was appropriate in this case was a “very close call.” However, on balance, it found the Department had not proven by clear and convincing evidence that mother failed to make a reasonable effort to treat the problems that led to removal of the minors’ half siblings. The court found that these problems were general neglect, substance abuse, and domestic violence. It found that mother had completed a 52-week domestic violence program in 2012; sought a civil restraining order against R.S. after the July 2014 domestic violence incident; completed a 12-week responsible parenting program; completed a Baby University program; completed a Wild Iris course on the effects of exposing children to domestic violence; had reached out to Inyo County Behavioral Health Services for counseling; and was looking into transitional housing for victims of domestic violence.

The court acknowledged that these efforts came “very late” in the proceedings and were arguably “minimal.” It also acknowledged that “it may very well be that reunification services will ultimately be unsuccessful.” However, it concluded that “given the legal standard,” mother had “earned th[e] right to try under the law.”

The court also found that even if mother had not made a reasonable effort to treat the problems that led to the prior removal of her children, she had proven by clear and convincing evidence that reunification services were in the minors' best interests.³

II

ANALYSIS

A. *Interpretation of Section 361.5, Subdivision (b)(10)*

“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).”

(*Cheryl P. v. Superior Court* (2006) 139 Cal.App.4th 87, 95 (*Cheryl P.*))

Section 361.5, subdivision (b)(10), the exception the Department raised in this case, authorizes denial of reunification services if the court finds: “That the court ordered termination of reunification services for any siblings or half siblings of the child because the parent or guardian failed to reunify with the sibling or half sibling after the sibling or half sibling had been removed from that parent or guardian pursuant to Section 361 and

³ Even if a court finds section 361.5, subdivision (b)(10) applies, it has discretion to order reunification services if it determines such services are in the best interests of the child. (§ 361.5, subd. (c); *Renee J. v. Superior Court* (2002) 96 Cal.App.4th 1450, 1464.) Because we affirm the court's finding that the bypass provision did not apply, we do not discuss the aspects of the record supporting the court's finding that reunification services would be in the minors' best interests.

that parent or guardian is the same parent or guardian described in subdivision (a) and that, according to the findings of the court, this parent or guardian has not *subsequently made* a reasonable effort to treat the problems that led to removal of the sibling or half sibling of that child from that parent or guardian.” (Italics added.)

“To apply section 361.5, subdivision (b)(10), therefore, the juvenile court must find both that (1) the parent previously failed to reunify with a sibling and (2) the parent has not subsequently made a reasonable effort to treat the problems that led to removal of the sibling.” (*In re Albert T.*, *supra*, 144 Cal.App.4th at p. 217.) “The inclusion of the ‘no-reasonable effort’ clause in the statute provides a means of mitigating an otherwise harsh rule that would allow the court to deny services simply on a finding that services had been terminated as to an earlier child when the parent had in fact, in the meantime, worked toward correcting the underlying problems.” (*Id.* at p. 218, citing *In re Harmony B.* (2005) 125 Cal.App.4th 831, 842.)

The Department contends that, “under the plain language of the statute,” a court may not consider a parent’s “current efforts after . . . removal.” It argues that the statute must be read to contain a temporal restriction that limits a parent’s subsequent effort to steps taken either: (1) before removal in the current case or (2) before commencement of the disposition hearing. It asserts that this is a statutory interpretation issue of first impression “with future implications irrespective of [the instant case].”

We refuse to read such a temporal restriction into the statute and instead conclude that a court is authorized to consider any effort a parent has made up to the time of the dispositional ruling. To read the statute otherwise would demean the importance of family reunification services to dependency proceedings and contravene the Legislature's goal of preserving families where possible. (*In re Albert T.*, *supra*, 144 Cal.App.4th at p. 217.)

We disagree that the Department's interpretation of section 361.5, subdivision (b)(10) is mandated by the plain language of the statute. Because the statute itself contains no qualification to the word *subsequently*, we read the phrase "subsequently made a reasonable effort to treat the problems that led to [the prior] removal" to mean all steps a parent takes from the time he or she failed to reunify in the prior proceeding up to the time of the dispositional ruling in the current proceeding.

The practical effect of the Department's suggested interpretation is that the court would have erred in considering the two parenting classes mother completed during the pendency of the disposition hearing. We see no reason why these classes are not relevant to the issue of whether mother had made a reasonable effort to treat her problems. We are not aware of a single case where a court applied a cutoff date to its analysis or refused to consider a particular effort because it came too late. Rather, the cases indicate that all of a parent's efforts to treat the problems that led to the prior removal are relevant to a section 361.5, subdivision (b)(10) analysis. For example, in *R.T. v. Superior Court*

(2012) 202 Cal.App.4th 908 (*R.T.*), the court considered the efforts mother was in the process of making at the time of the disposition hearing as part of the reasonable effort analysis under section 361.5, subdivisions (b)(10) and (11). (*Id.* at pp. 912-913, 915.) An addendum report filed for the disposition hearing chronicled mother’s recent efforts to treat her substance abuse problem and counsel represented to the court at the hearing that mother was currently attending a parenting class, had attended a few 12-step meetings, and was waiting to be accepted into transitional housing. (*Id.* at pp. 912-913.) The juvenile court concluded mother had not made a reasonable effort and the appellate court affirmed, concluding that “the juvenile court properly could conclude this *recent effort . . .* was simply too little, too late.” (*Id.* at p. 915, italics added.)

The consideration of the mother’s recent efforts leading up to, and ongoing at the time of, the hearing in *R.T.* supports our conclusion that the juvenile court did not err in considering the efforts mother put forth during the pendency of the disposition hearing in the instant case. Rather than read an implicit cutoff date into section 361.5, subdivision (b)(10), we think the proper analysis is to treat the timing of a parent’s effort as a factor to be considered when assessing the *reasonableness* of that effort—not a reason to exclude evidence of the effort altogether. Such an approach appears to be in accord with the one taken in *R.T.*, where the appellate court stated that a juvenile court may “consider the *duration, extent and context* of the parent’s efforts, as well as any other factors

relating to the *quality and quantity* of those efforts, when evaluating the effort for reasonableness.” (*R.T.*, *supra*, 202 Cal.App.4th at p. 914.)

In its briefing and at oral argument, the Department argued that a parent’s current efforts to treat the problems that led to a prior removal should be considered under section 361.5, subdivision (c), which allows a court to provide reunification services to a parent who satisfies one of the bypass provisions on the ground that refusing services would not be in the best interests of the minor. (§ 361.5, subd. (c).) The Department asserts that to consider current efforts to treat under 361.5, subdivision (b)(10) is to conflate that provision with section 361.5, subdivision (c) and thereby contravene legislative intent. As support, the Department relies on *Renee J. v. Superior Court* (2001) 26 Cal.4th 735 (*Renee J.*) and *In re G.L.* (2014) 222 Cal.App.4th 1153. These cases do not support the Department’s conflation argument.

In *Renee J.*, our high court explained that even if a court determines the bypass provision in section 361.5, subdivision (b)(10) applies to a parent, “evidence of [that] parent’s current fitness” can be considered when determining if ordering reunification services is in the minor’s best interest under section 361.5, subdivision (c). (*Renee J.*, *supra*, 26 Cal.4th at p. 750.) From this statement, the Department draws the conclusion that a parent’s current efforts to treat the problems that led to a prior removal *must* be considered under section 361.5, subdivision (c) and therefore cannot be considered under section 361.5, subdivision (b)(10). We do not draw the same conclusion from *Renee J.*

for two main reasons. First, *Renee J.* involved an earlier version of section 361.5, subdivision (b)(10), which the court held lacked a “no-reasonable-effort clause.” (*Renee J.*, *supra*, at pp. 748-749.) Soon after *Renee J.* was published, the Legislature amended section 361.5, subdivision (b)(10) to clarify that the provision did include a no-reasonable-effort clause, and therefore courts could consider a parent’s subsequent effort to treat the problems that led to a prior removal when determining whether to bypass services. Second, even if the court had been interpreting the current version of section 361.5, subdivision (b)(10), evidence of “current fitness” to parent is a different, broader topic than evidence of an effort to treat specific problems that led to a prior removal. We see no conflation of provisions in considering the effort to treat specific problems under section 361.5, subdivision (b)(10) and a parent’s current fitness under section 361.5, subdivision (c).

The Department also relies on the portion of *In re G.L.*, *supra*, 222 Cal.App.4th 1153, where the court stated the well-established proposition that a best interests analysis under section 361.5, subdivision (c) should include consideration of “ ‘a parent’s current efforts and fitness as well as the parent’s history’; ‘[t]he gravity of the problem that led to the dependency’; the strength of the bonds between the child and the parent and between the child and the caretaker; and ‘the child's need for stability and continuity.’ ” (*In re G.L.*, *supra*, at p. 1164.) Again, these considerations are different from the question of whether a parent has made a reasonable effort to treat specific problems identified in a

previous dependency matter. Furthermore, the portion of *In re G.L.* not cited by the Department demonstrates that the juvenile court *considered* the evidence mother presented in testimony at the disposition hearing regarding her recent and current efforts to treat her chemical dependency issues. The court concluded: “mother’s recent efforts have been reasonable under the circumstances. She’s in the Fair Program, has been there for a substantial period of time. She’s done well. She’s going to stay with the Fair Program. She’s connected with the church that seems to be very supportive of her to which she is also connected, and she’s in the Kiva program, which is a very good program.” (*Id.* at pp. 1160, 1162.) *In re G.L.* therefore supports the conclusion that section 361.5, subdivision (b)(10) does not contain an implicit cutoff date.

Lastly, the Department argues that if the Legislature had intended for courts to consider a parent’s current, post-removal efforts, it would have explicitly stated so in the statute. We disagree with this interpretation of legislative intent.

Reunification services are the “ ‘first priority when child dependency proceedings are commenced’ ” (*Cheryl P., supra*, 139 Cal.App.4th at p. 98) because they “implement ‘the law’s strong preference for maintaining the family relationships’ ” (*In re Elizabeth R.* (1995) 35 Cal.App.4th 1774, 1787). “ ‘It is difficult, if not impossible, to exaggerate the importance of reunification in the dependency system.’ ” (*In re Albert T., supra*, 144 Cal.App.4th at p. 217.) “ ‘[T]he primary focus of the trial court must be to *save* troubled families.’ ” (*Id.* at p. 218.)

Given the importance of reunification services to dependency proceedings, our assumption must instead be that if the Legislature intended to include a temporal restriction in a bypass provision that would make it *more difficult* to obtain services, the Legislature would have inserted explicit language to that effect. The only interpretation of the statute that gives full meaning to the plain text and legislative intent is that a juvenile court may consider *all subsequent efforts* contained in the record at the time of the dispositional ruling. We will not insert an obstacle to reunification services where the Legislature did not intend one.

B. *Substantial Evidence Supports the Court's Finding that the Bypass Provision Did Not Apply to Mother*

Given our conclusion that the court appropriately considered all the steps mother took to treat her problems from failure to reunify up to the time of its ruling, the issue is whether the Department showed by clear and convincing evidence that those steps did not constitute a reasonable effort.

“When the sufficiency of the evidence to support a juvenile court’s finding or order is challenged on appeal, the reviewing court must determine if there is substantial evidence, contradicted or uncontradicted, that supports it. [Citations.] Under this standard of review we examine the whole record in a light most favorable to the findings and conclusions of the juvenile court and defer to the lower court on issues of credibility of the evidence and witnesses. [Citation.] We must resolve all conflicts in support of the determination and indulge all legitimate inferences to uphold the court’s order. . . . [W]e

may not substitute our deductions for those of the trier of fact.” (*In re Albert T., supra*, 144 Cal.App.4th at p. 216.) However, “[a] decision supported by a mere scintilla of evidence need not be affirmed on appeal. . . . The ultimate test is whether it is reasonable for a trier of fact to make the ruling in question in light of the whole record.’ ” (*Id.* at pp. 216-217.)

The “reasonable effort to treat” standard “is not synonymous with ‘cure.’ ” (*Cheryl P., supra*, 139 Cal.App.4th at p. 97, citing *Renee J. v. Superior Court, supra*, 96 Cal.App.4th at p. 1464.) Nor does the reasonableness standard require that a court be “ ‘able to see progress.’ ” (*Cheryl P.*, at p. 99.) Instead, “it is more likely the Legislature used the adjective ‘reasonable’ to ensure that lackadaisical or half-hearted efforts would not be deemed adequate.” (*Ibid.*) “If the Legislature intended to require a showing of progress in section 361.5, subdivision (b)(10), it could have inserted explicit language to do so.” (*Ibid.*)

Moreover, “[i]f the evidence suggests that despite a parent’s substantial history of misconduct with prior children, there is a reasonable basis to conclude that the relationship with the current child could be saved, *the courts should always attempt to do so*. Courts must keep in mind that ‘[f]amily preservation, with the attendant reunification plan and reunification services, is the first priority when child dependency proceedings are commenced.’ ” (*Cheryl P., supra*, 139 Cal.App.4th at pp. 97-98, quoting *Renee J. v. Superior Court, supra*, 96 Cal.App.4th at p. 1464.)

Here, the record supports a finding that mother was attempting to treat the problems of domestic violence, substance abuse, and general neglect that led to the removal of her other children. She completed two domestic violence courses, one of which required 52 weeks of participation. She obtained a restraining order against R.S. and was living apart from him when the instant case commenced. She testified that she stopped drinking in 2010, and this claim is supported by the fact that the result of her 2012 ASI assessment was that she did not need any addiction services. As to her ability to parent and protect her infant children, she had completed two parenting courses and was enrolled in a third. The juvenile court's ruling was detailed, thorough, and supported by extensive legal research. The court saw the issue as a "very close" one, but ultimately found that mother's effort was reasonable. Having heard three days of evidence, and reviewed a substantial amount of reporting on the nature and extent of the steps mother was taking to treat her problems, the juvenile court is in a better position than we are to judge the reasonableness of that effort. Based on our review of the record, we cannot say that the trial court's finding was unreasonable or supported by insufficient evidence.

The Department contends that mother's effort was "lackadaisical." It argues that mother "did not attend the full day at Wild Iris in order to complete [the] domestic violence 101 course." However, during her testimony, mother explained that she did not leave the class early but had only stepped out of class for a portion of a video that she found too emotional. She testified that she stayed until the end of class and "talked to

[the instructor] for an hour and a half afterwards.” The juvenile court, the sole finder of fact, saw and heard mother’s testimony and found that she had completed the Wild Iris course. We defer to the juvenile court on all issues of credibility. (*In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1393.)

The Department also asserts that mother did not “functionally complete[.]” the 52-week domestic violence course. This claim seems to be based on the instructor’s comment to the social worker that mother “did not appear to be focusing on the curriculum, but was instead using the sessions to voice blame against CPS.” We find this argument unpersuasive. The bypass provision requires a reasonable effort, not exemplary performance. Moreover, the instructor made the comment early on in the course and mother testified at the disposition hearing that she had found the course very productive. Again, we defer to the juvenile court’s assessment of credibility.

Finally, the Department contends that mother’s effort was not reasonable because she did not seek out the programs “on her own,” but rather used the Department’s help. The Department would have us create a rule where the parent’s effort must be completely independent of the judicial system or a social services agency, but there is no authority for such a rule. Any effort on the parent’s part, whether taken as a result of, e.g., a probation condition or a voluntary services plan, is relevant to an analysis under section 361.5, subdivision (b)(10). (See, e.g., *In re Albert T.*, *supra*, 144 Cal.App.4th at p. 221 [in reversing the court’s finding that the bypass provision applied to the mother, appellate

court noted that she had “participated in and completed *court-ordered* and voluntary programs” addressing the problem that led to the prior removal], italics added.)

III

DISPOSITION

The juvenile court’s dispositional order is affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

CODRINGTON
J.

We concur:

RAMIREZ
P. J.

MILLER
J.