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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

H.B.,

Petitioner,

v.

THE SUPERIOR COURT OF
SAN BERNARDINO COUNTY,

Respondent;

SAN BERNARDINO COUNTY
CHILDREN AND FAMILY SERVICES,

Real Party in Interest.

E064136

(Super.Ct.Nos. J260058 & J260059)

OPINION

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

Friedman, Gebbie, Cazares & Gilleece, and Monica Cazares for Petitioner.

No appearance for Respondent.

Jean-Rene Basle, County Counsel, and Kristina M. Robb, Deputy County
Counsel, for Real Party in Interest.

Petitioner H.B. (Father) seeks extraordinary writ review pursuant to California Rules of Court, rule 8.452 of the juvenile court's dispositional orders denying him reunification services and setting a Welfare and Institutions Code¹ section 366.26 permanency hearing as to his one-year-old daughter, A.B., and seven-year-old son, H.B.² Father argues that there was insufficient evidence to support the juvenile court's order denying him services pursuant to the bypass provisions of section 361.5, subdivisions (b)(5) and (b)(6). We reject Father's contentions and deny his petition.

I

FACTUAL AND PROCEDURAL BACKGROUND

Mother and Father began a relationship in high school when they were 14 or 15 years old. Mother became pregnant early in their relationship, and H.B. was born when the parents were 16 years old. A.B. was born about six years later. The family came to the attention of the San Bernardino County Children and Family Services (CFS) on April 3, 2015, after a referral was received alleging severe neglect of the children by the parents, and physical abuse by an unknown perpetrator to then six-month-old A.B. (the baby). The baby had suffered spiral fractures to the left tibia and fibula that were consistent with child abuse. Mother reported she did not know how the baby suffered the injury but only noticed her leg was swollen. Mother also stated that she was concerned

¹ All future statutory references are to the Welfare and Institutions Code unless otherwise stated.

² The children's mother, J.B. (Mother), is not a party to this appeal.

the baby had leukemia because of unexplained bruising on the baby's neck, upper back, and chest.

The social worker and two police officers responded to where the baby was being treated. Medical staff informed the social worker that Mother initially had no explanation for the fracture injury. She had stated that the baby had been in pain for two days prior to being brought into the urgent care clinic and that she had been concerned about unexplained bruising on the baby. Mother later explained that a week prior she was taking the baby out of her car seat when the baby's leg got twisted causing the baby to cry. The attending physician reported that it was apparent the baby was greatly distressed when the broken part of her leg was touched, so it would have been noticeable to Mother that the baby's legs were bothering her.

Mother explained to law enforcement that the baby's leg could have been injured when her leg was caught in Mother's hip as Mother was sitting down. Mother also noted that the baby's leg caught her hip on Tuesday, April 21; that she noticed swelling to the baby's leg on Wednesday, April 22; and that she brought the baby to the clinic on Thursday, April 23. The officer who interviewed Mother did not believe the story was plausible due to the complete bone fracture the baby sustained. The officer was also concerned about the bruising located on the baby's neck, which was consistent with her being grabbed. Law enforcement recommended that the children not stay with the parents based on the injury the baby sustained.

After a detention warrant was obtained for the children, then six-year-old H.B. was placed with his maternal great-aunt. H.B. looked well and appeared very bonded to his parents. He did not disclose any incidents of abuse or neglect and “only had positive things to say about his parents.” The baby was transported to Loma Linda Children’s Hospital (Loma Linda) for a forensic examination. The baby’s platelet count was low and a possible cause of the bruising and spots, but that did not explain the baby’s fracture. Further examination revealed that both the right and left legs had “ ‘buckle fracture[s].’ ” Dr. Massi was concerned that the baby could have suffered a minor degree of Shaken Baby Syndrome because of the bruising on her jaw line. Mother informed the social worker that on Tuesday, April 21 while at the maternal grandmother’s home, she was placing the baby in her car seat when the baby’s foot caught Mother’s pelvic area causing the baby to cry; and that Mother soothed the baby and the baby did not appear distressed again until Thursday, April 23.

On April 28, 2015, petitions on behalf of the children were filed pursuant to section 300, subdivisions (a) (serious physical harm), (b) (failure to protect), (e) (severe physical abuse), and (j) (abuse of sibling). As to the baby, the petition alleged that she had suffered severe injuries not limited to two buckle fractures in both her legs and bruising on her jaw line while in the care and custody of the parents. The petition further alleged that Father knew or should have known how the baby sustained the injuries. As to H.B., the petition alleged that H.B. was at a substantial risk of serious physical harm as a result of the physical abuse inflicted on A.B.

The children were formally detained at the April 29, 2015 detention hearing, and maintained with the maternal great-aunt. The parents were provided with supervised visitation one time per week for two hours.

The social worker recommended that the allegations in the petition be found true and that the parents be denied reunification services pursuant to section 361.5. When the social worker interviewed Mother again on May 5, 2015, Mother provided the same explanation as before regarding the baby's injuries. Mother also explained how hard the baby cried at the time she believed the injury occurred; how the baby calmed down as soon as she breastfed her; and how she had a habit of taking the children to the doctor " "for every little thing so [she] thought that [she] would wait this time.' " Mother also stated that the maternal grandmother watched the children while she and Father worked and that the maternal grandmother noticed the baby's leg was swollen and she was fussy. Mother further stated that she took the baby to urgent care after Father picked the baby up from the maternal grandmother's home and Father was unable to put the baby's pants on because she was in pain when her leg was touched.

Father reported that on April 21, Mother had informed him about the baby's leg injury and they decided to take a wait and see approach because the baby seemed fine. The following day, the maternal grandmother did not say anything about the baby, but on April 23, the maternal grandmother told Mother that the baby was very fussy and recommended taking her to the hospital. When Father was unable to dress the baby on April 23, he told Mother to take the baby to urgent care while he took H.B. to his baseball

game. Father stated that he had no idea what caused the baby's bruises and noted that she bruised easily after they would tickle her. When Father was informed that the doctors did not believe Mother's account of how the baby's leg was injured, Father asked whether the people at the maternal grandmother's home had been checked out and stated that he wanted to find out who hurt his child.

H.B. was interviewed and when asked if he knew how the baby was hurt, he stated: " 'My mom broke her leg. I think it twisted. It was an accident.' " H.B. also reported that his parents were always nice to him and that he had things taken away as a form of discipline. He also stated that his parents take good care of his baby sister, but she " 'screams in the middle of the night a lot.' " The maternal grandmother stated that she had never seen either parent appear frustrated with the baby and denied knowing how the baby was injured.

Medical records from Loma Linda showed that the baby suffered buckle fractures on the left tibia and fibula bones. A full skeletal survey found additional breaks in the baby's right tibia and fibula bones that were at different stages of healing. In total, the baby had sustained four buckle fractures in her legs. The baby also had a bruise on her jaw line. Dr. Massi opined that the baby's injuries were consistent with physical abuse and that the assertion the baby bruised easily was suspicious for prior injuries.

The social worker reported that it was clear the parents loved their children and that they presented as calm and patient parents. The social worker noted that throughout the interview Father was tearful and genuinely concerned about the welfare of the

children. However, because the baby had multiple broken bones with no plausible explanations for how the injuries occurred; the baby had not been observed with new bruising since being released from the hospital; and Dr. Massi had definitively stated the baby's injuries were the result of physical abuse, the social worker recommended no reunification services.

The parents visited with the children weekly. They were described as attentive to the children and appropriate during visits.

The jurisdictional and dispositional hearing was set contested by the parents and bifurcated.

The contested jurisdictional hearing began on July 14, 2015. During the four-day trial, the juvenile court heard testimony from several witnesses, including the maternal grandmother, Mother, the maternal grandfather, H.B., the social worker, Dr. Massi, and Detective Ronald Vogelsang. In relevant part, H.B. testified that he wanted to go home and noted that he spoke with his parents every day. Regarding his relationship with Father, H.B. stated that it made him happy when Father went to his baseball games and school events; that Father showed him he loved him; that he showed Father he loved him; and that they hugged, kissed, and spoke on the phone. H.B. maintained that he called Father a lot and that he felt happy when he spoke with Father. At the conclusion of the contested jurisdictional hearing, the juvenile court found the allegations in the petition true and declared the children dependents of the court.

The contested dispositional hearing was held on July 28 and July 29, 2015. The court heard testimony from the visitation coach, Dr. John Kinsman, Dr. Robert Suiter, the maternal great-aunt, Father's therapist, Father, and the social worker.³

The visitation coach testified that she had observed seven visits with the family and that normally the family would share a meal, laugh, joke around, and play with toys. During the first visit, the family talked about baseball and Father held the baby, kissed her, and bounced her around. The baby appeared comfortable with the parents and smiled. Father's interaction with H.B. was also positive and appropriate. Neither child had an emotional reaction at the end of the visit. Father hugged and kissed H.B. at the end of the visit. During the second visit, the baby appeared comfortable around her parents and was not fearful. The family participated in activities and they worked well together. The remaining visits also went well. The family participated in playing catch. They also played with the twister and the ring toss. Father took direction given by the visitation coach and did not become frustrated with either child. He also showed affection to the children through hugging and kissing and H.B. reciprocated the affection. Father would read to the baby, change her diapers, and feed her. The visitation coach had no concerns regarding the parent-child relationship between the parents and the children.

Dr. John Kinsman testified that he had conducted a psychological evaluation of Father on June 12, 2015; that there was no indication Father presented a danger to the

³ The details of the witnesses' testimonies will be limited to as they pertain to Father.

children; and that testing results showed Father had a strong bond with the children and enjoyed being a parent. Father did not show extreme impulsivity, anger management issues, or extreme traits of aggressiveness. In addition, Father showed no indication of hallucinations, delusions, psychosis, delirium, dementia, or any symptoms of thought disorder or schizophrenia spectrum disorder. This indicated Father was more available for reunification services and could benefit from receiving services than he would be if he had impairment in one of these areas. The testing did reveal that Father met the criteria for a depressive disorder with anxious distress; however, it was not clear whether the condition preceded the juvenile dependency proceedings or whether Father had a long-standing disorder. Father also displayed minor narcissistic personality traits.

Dr. Kinsman did not believe the diagnosis of the depressive disorder or minor narcissistic traits would prevent Father from participating in services. Rather, Dr. Kinsman concluded that Father would benefit “from services designed to improve his functional level, interpersonal effectiveness, and parenting ability” and that “services provided over a period of six months are likely to prevent neglect or reabuse of his children.”

Dr. Kinsman stated that neither he nor others could predict with absolute accuracy how Father would do in services.

In regard to why Father was still together with Mother, Dr. Kinsman noted the main reason for Father was “pragmatic reasons,” explaining that neither parent alone could afford to pay the mortgage on the home they owned together. Dr. Kinsman also noted that the parents had a long history together and hoped from the beginning they

would get their children back. He further pointed out that Father believed in the beginning it might be helpful in getting his children back if they separated. However, after learning he would not be provided with services, Father believed the parents should stay together and try to work through the dependency process as a team. Father, however, informed Dr. Kinsman that “ ‘Ultimately my kids come before my wife.’ ”

The maternal great-aunt and caretaker for the children testified that she had supervised one visit between the parents and H.B. H.B. was excited to see Father and sat on his lap during the visit. The caretaker had also supervised visits between the parents and H.B. via Facetime everyday between the time of placement of the children in her home and the jurisdictional hearing. After the jurisdictional hearing per the social worker’s instructions, Facetime was reduced to twice a week. After Facetime communications were reduced, H.B. cried more frequently, and would cry every couple of days because he missed his parents. While crying, H.B. would ask his caretaker why he could not call his parents as often as he used to and that he wanted to say “ ‘goodnight’ ” to them or that he wanted to go home. H.B. also started exhibiting some behavioral issues, such as failing to listen and follow rules. When H.B. was upset, telephonically Father would console him and try to calm him down so he would not go to bed upset. After baseball games, H.B. would ask the caretaker to call Father and tell him about the games. The caretaker believed H.B. was very bonded to Father; that they had a good relationship; and that H.B. was not fearful of Father.

Father's therapist Dr. Wilem Vanderpauwert, who was a licensed clinical social worker and had a contract with CFS, also testified. Dr. Vanderpauwert had seen Father for four therapy sessions and noted Father had made "a little" progress. Father was very angry when he first came in, being frustrated with the circumstances and focusing only on repeating that he wanted his children back. Dr. Vanderpauwert had difficulty getting Father to focus on how he was feeling. The doctor found it problematic for Father to focus solely on getting his children back because once he got his children back it would be questionable whether any change had been made. Father was open to the therapeutic process, but there was a disconnect when it came to his anger. Father would state that he was frustrated but did not feel angry. Father also remained protective of his wife, claiming she did not cause the injuries, believing instead that the maternal grandmother's fiancé did. Dr. Vanderpauwert believed there was a good chance Father could benefit from services and make progress within a period of six months. However, Dr. Vanderpauwert opined Father was not ready to admit Mother had injured the baby and that sometimes it appeared that Father had given up. Knowing that Mother and Father were back together was a concern for Dr. Vanderpauwert. The doctor believed that anyone could benefit from services; that therapy was a process; that more sessions were needed to address the issues; and that there was no way for him to guarantee whether Father would acknowledge the abuse in the future.

Father testified that if he knew Mother had caused the injuries, he would not hesitate to leave her. He described his relationship with H.B. as great, explaining that

they did everything together, such as playing baseball, riding dirt bikes, and flying kites. Father also stated that he had lived with H.B. since birth, changed his diapers when he was younger, fed him, cooked for him, washed his clothes, cleaned his room, bought him food, taught him baseball, and helped him with his homework. H.B. showed Father affection by hugging him, kissing him, and telling him that he loved him. After removal, Father and H.B. communicated daily through Facetime and he would call throughout the day for a couple minutes. Once or twice a week, H.B. would call Father before bed crying and Father would assure him that everything would be okay. Regarding the baby, Father would carry her and watch television with her sitting on his lap. Prior to removal, Father would change her diapers, feed her, give her baths, wash her clothes, and provide for her needs.

Father explained that he had enrolled in and attended three parenting classes. Father acknowledged that his therapist was correct in regard to his frustration with the dependency case; and that he was making progress in therapy by being more open with his therapist. Father stated that he was willing to participate in counseling, undergo a psychiatric evaluation, and take any recommended medication if necessary. He was also willing to terminate his relationship with Mother in an attempt to reunify with his children. On cross-examination, Father stated that he believed the baby's injuries occurred at the maternal grandmother's home because neither he nor Mother would hurt the children.

The social worker testified that she did not believe reunification services would likely prevent reabuse, because she was concerned with the seriousness of the injuries and they were potentially at various stages of healing. She was also concerned about the lack of progress thus far, including Father's decision to move back in with Mother and the parents' minimization of the injuries. She believed the parents would not really be able to benefit from services due to the level of the parents' denial and minimization.

As to detriment in failing to provide services, the social worker did not believe it would be detrimental to the baby, but believed it would be a "bit more concerning" with H.B. given the length of time he was with his parents. She explained that H.B. was clearly bonded to his parents, but due to the extent of the baby's injuries, she was concerned with any child being placed with the parents. She was concerned that Father did not know how the injuries occurred, and yet was fine living with Mother, who could have possibly caused the baby's injuries. She did not believe it was currently possible to train Father to recognize red flags of abuse because he was living with Mother. The social worker confirmed that "the lack of acknowledgement, 100 percent denial" would make reunification services unsuccessful; and that it was in the best interest of both children to deny the parents reunification services. The social worker explained that although it would be difficult for H.B. not to return to his father's care, it would be more detrimental to put H.B. in a situation of extreme risk. The social worker did not believe Father could make progress in therapy, even if Mother and Father were not living together, because Father had moved out at the advice of counsel and had been addressing

protective actions for his children but moved back in with Mother. She believed up until recently Father was just going through the motions and was just giving a semblance of trying to be protective.

Following arguments, the juvenile court indicated it had been waiting for testimony to persuade the court that at a minimum Father would benefit from services but was disappointed by Father's testimony. The court explained that it expected more remorse and empathy from Father, and an acknowledgment of abuse and that it did not hear that services could prevent reabuse or neglect. The court further stated that the parents did not present evidence showing reunification services were in the best interest of the baby. In determining whether services would benefit H.B., the court considered the factors outlined in section 361.5, and concluded it would not be in H.B.'s best interest to be returned to Father or Mother, even though H.B. desired to return home. The court rejected H.B.'s wishes, noting "the harm to [H.B.] potentially from Parents who do not participate in services or benefit from those services far outweigh any type of reunification services being offered to the parents." The court also noted that Father was not putting his children before his wife, explaining "the bottom line is, we're now three months post-removal of the children from their care, and neither Mother or Father have put the children in front of their own needs. They are both clinging to family and relationships instead of working on acknowledging physical abuse and reunification."

The court concluded its lengthy analysis by stating: "So, the Court concludes that since neither have separated themselves from the environment that caused the physical

abuse, both deny causing the injuries or acknowledging really that the injuries [*sic*] is cause for child abuse. It seems that both have some hostility towards the Department for the removal. Both are preoccupied, it appears, with other concerns in their life; the Court is not confident that family reunification services would prevent reabuse or neglect to the minors. [¶] A factor in the parents' favor is lack of CFS or criminal history or substance abuse and alcohol, but even without the history, the Court isn't confident that services would prevent reabuse as neither parent has acknowledged the abuse. They have demonstrated a lack of progress in their therapy and counseling.”

On August 4, 2015, Father filed a notice of intent to file a writ petition, challenging the juvenile court's denial of reunification services under section 361.5, subdivisions (b)(5) and (b)(6).

II

DISCUSSION

Father does not challenge the jurisdictional findings of the court in this writ petition, including the section 300, subdivision (e), finding by a preponderance of the evidence that baby “is under the age of five years and has suffered severe physical abuse by a parent, or by any person known by the parent, if the parent knew or reasonably should have known that the person was physically abusing the child.” (§ 300, subd. (e).) Father challenges only the juvenile court's order denying him reunification services. He contends there is not substantial evidence to support the application of either section 361.5, subdivision (b)(5) or section 361.5, subdivision (b)(6).

“Section 361.5, subdivision (b) symbolizes the Legislature’s recognition of the fact that it may be fruitless to provide reunification services under certain circumstances.” (*Deborah S. v. Superior Court* (1996) 43 Cal.App.4th 741, 750.) The juvenile court denied reunification services pursuant to section 361.5, subdivision (b)(5), as to the baby and pursuant to subdivision (b)(6) as to H.B. (See *Deborah S. v. Superior Court, supra*, at p. 748 [“pursuant to section 361.5, subdivision (b)(6), a parent who, by act or omission, deliberately inflicts severe physical harm on one child is not necessarily entitled to services to reunify with that child or any other child who has been adjudged a dependent under section 300 as a result of such abuse”].)

“We review the court’s decision to deny reunification services under the substantial evidence test to determine whether it is supported by evidence that is reasonable, credible, and of solid value. [Citation.] ‘We do not reweigh the evidence, nor do we consider matters of credibility.’ [Citation.]” (*L.Z. v. Superior Court* (2010) 188 Cal.App.4th 1285, 1292 (*L.Z.*)) “Under this standard of review we examine the whole record in a light most favorable to the findings and conclusions of the juvenile court [Citation.] We must resolve all conflicts in support of the determination and indulge all legitimate inferences to uphold the court’s order. Additionally, we may not substitute our deductions for those of the trier of fact. [Citations.]” (*In re Albert T.* (2006) 144 Cal.App.4th 207, 216.)

“Family reunification services play a critical role in dependency proceedings.” (*Tyrone W. v. Superior Court* (2007) 151 Cal.App.4th 839, 845.) Even when jurisdiction is amply justified, as it is here, at the early stages of dependency, family reunification is the desired goal. Toward that end, parents are offered reunification services. “As a general rule, reunification services are offered to parents whose children are removed from their custody in an effort to eliminate the conditions leading to loss of custody and facilitate reunification of parent and child. This furthers the goal of preservation of family, whenever possible. [Citation.]” (*In re Baby Boy H.* (1998) 63 Cal.App.4th 470, 478; see § 361.5, subd. (a); *In re William B.* (2008) 163 Cal.App.4th 1220, 1227.)

However, when it is shown “by clear and convincing evidence that a dependent minor falls under subdivision (e) of section 300, the general rule favoring reunification services no longer applies; it is replaced by a legislative assumption that offering services would be an unwise use of governmental resources.” (*Raymond C. v. Superior Court* (1997) 55 Cal.App.4th 159, 164.) Section 361.5, subdivision (b), “sets forth a number of circumstances in which reunification services may be bypassed altogether.” (*Francisco G. v. Superior Court* (2001) 91 Cal.App.4th 586, 597.)

A. *Section 361.5, subdivision (b)(5)*

A juvenile court may deny reunification services under section 361.5, subdivision (b)(5), when the court finds by clear and convincing evidence “[t]hat the child was brought within the jurisdiction of the court under subdivision (e) of Section 300 because of the conduct of that parent or guardian.” The parent need not have actual or

constructive knowledge that the child in fact suffered severe physical abuse in order to fall within the statutory definition. (*In re E.H.* (2003) 108 Cal.App.4th 659, 669-670.) “Section 300, subdivision (e), and subdivision (b)(5) of section 361.5, . . . do not require identification of the perpetrator. [Citation.] Read together, those provisions permit denial of reunification services to either parent on a showing that a parent or someone known by a parent physically abused a minor. [Citation.] Thus, ‘conduct’ as it is used in section 361.5, subdivision (b)(5) refers to the parent in the household who knew or should have known of the abuse, whether or not that parent was the actual abuser.” (*In re Kenneth M.* (2004) 123 Cal.App.4th 16, 21.)

Here, the juvenile court found that the baby was brought within the court’s jurisdiction under section 300, subdivision (e) (severe physical abuse), because of the conduct of the parents. Father does not dispute this finding. However, Father argues that the juvenile court erred in denying him services under section 361.5, subdivision (c), which provides: “The court shall not order reunification in any situation described in paragraph (5) of subdivision (b) unless it finds that, based on competent testimony, those services are likely to prevent reabuse or continued neglect of the child or that failure to try reunification will be detrimental to the child because the child is closely and positively attached to that parent.”⁴ In support of his claim, he contends there was

⁴ “The failure of the parent to respond to previous services, the fact that the child was abused while the parent was under the influence of drugs or alcohol, a past history of violent behavior, or testimony by a competent professional that the parent’s behavior is unlikely to be changed by services are among the factors indicating that reunification services are unlikely to be successful. The fact that a parent or guardian is no longer

[footnote continued on next page]

evidence presented at the hearing that he would benefit from the provision of services. However, the standard is not whether he would have benefitted from services, but whether services would likely prevent reabuse or that failure to try to reunify would be detrimental to the child. (§ 361.5, subd. (c).) There was no evidence affirmatively showing that services would likely prevent reabuse. Dr. Kinsman did testify that there was nothing in Father's diagnosis that would indicate that services would not be likely to prevent reabuse. However, he also testified that it would take over a six-month period of therapy to likely prevent neglect or reabuse of the children and that no one could guarantee how Father would do in services. Since the baby was only six months old when she was removed from the parents' custody, Father would only have been provided with services for six months. (§ 361.5, subd. (a)(1)(B).) Thus, pursuant to Dr. Kinsman's opinion, such services would not have been enough to prevent reabuse or continued neglect.

Moreover, Father's therapist Dr. Vanderpauwert testified that Father had made little progress during their sessions; that he was very angry; and that it was difficult to get Father to focus on how he was feeling. Father remained protective over his wife, denying she had caused the injuries and continuing to blame others. Dr. Vanderpauwert believed that there was a "good chance" Father would benefit from services, but he did not believe

[footnote continued from previous page]

living with an individual who severely abused the child may be considered in deciding that reunification services are likely to be successful, provided that the court shall consider any pattern of behavior on the part of the parent that has exposed the child to repeated abuse." (§ 361.5, subd. (c), 4th par.)

Father was ready to admit Mother caused the injuries to the baby. Dr. Vanderpauwert also found it concerning that Mother and Father had gone back to living together. In addition, Dr. Vanderpauwert found it problematic for Father to focus solely on getting his children back because once he got his children back, Dr. Vanderpauwert believed, it would be questionable whether any change had been made. Thus, it appears Dr. Vanderpauwert did not believe services would likely to prevent neglect or reabuse of the children. The social worker was also concerned about the lack of progress on Father's part, including his decision to move back in with Mother. The social worker was concerned that the parents continued to deny and minimize the baby's injuries. These concerns were sufficient to show services were not likely to prevent reabuse or continued neglect of the child.

There was also insufficient evidence before the court that the baby was closely and positively attached to Father, as Father claims. Father points to evidence that he had been visiting with the children, playing with them, and was very attentive during the visits. He also cites to the visitation coach's testimony that there was appropriate and positive interaction between Father and the children, especially H.B.⁵ He further notes Dr. Kinsman's opinion that Father had a strong bond with and was emotionally attached to his children. However, because the baby was detained at an early age, "there could be no legitimate claim she was closely and positively attached to her father." (*In re Rebekah*

⁵ We note denial of services under section 361.5, subdivision (b)(5), only pertains to the baby.

R. (1994) 27 Cal.App.4th 1638, 1653.) The failure to order reunification could therefore not have been detrimental to him under the second test of section 361.5, subdivision (c). (*Ibid.*)

Once a juvenile court finds that section 361.5, subdivision (b)(5), applies, it shall not order reunification services *unless* the court finds that, “based on competent testimony, those services are likely to prevent reabuse or continued neglect of the child or that failure to try reunification will be detrimental to the child because the child is closely and positively attached to that parent.” (§ 361.5, subd. (c).) To assist the court with this determination, the social worker “shall investigate the circumstances leading to the removal of the child and advise the court whether there are circumstances that indicate that reunification is likely to be successful or unsuccessful and whether failure to order reunification is likely to be detrimental to the child.” (*Ibid.*)

In sum, there was no competent evidence that reunification services were likely to prevent reabuse or that failure to try reunification would be detrimental to the baby. The juvenile court properly considered the evidence before the court and reasonably concluded that the evidence was unsatisfactory to support services for Father given the multiplicity of incidents of abuse to the baby as reflected by the number of fractures in different stages of healing and the parents’ denials. As such, there was substantial evidence to support the court’s denial of reunification services.

B. *Section 361.5, subdivision (b)(6)*

Reunification services as to H.B. were apparently denied under section 361.5, subdivision (b)(6), because H.B. is the sibling of a child adjudged dependent due to severe physical abuse. Section 361.5, subdivision (b)(6), permits the juvenile court to deny reunification services where it finds by clear and convincing evidence “[t]hat the child has been adjudicated a dependent pursuant to any subdivision of Section 300 as a result of . . . 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. [¶] . . . [¶] A finding of the infliction of severe physical harm, for the purposes of this subdivision, may be based on, but is not limited to, deliberate and serious injury inflicted to or on a child’s body or the body of a sibling or half sibling of the child by an act or omission of the parent or guardian, or of another individual or animal with the consent of the parent or guardian”

“A court called upon to determine whether reunification would be in the child’s best interest may consider a parent’s current efforts and fitness as well as the parent’s history. [Citation.] Additional factors for the juvenile court to consider when determining whether a child’s best interest will be served by pursuing reunification include the gravity of the problem that led to the dependency; the strength of the relative bonds between the child and both the parent and caretakers; and the child’s need for stability and continuity, which is of paramount concern. [Citations.] The burden is on

the parent to show that reunification would serve the best interests of the child. [Citations.]” (*In re S.B.* (2013) 222 Cal.App.4th 612, 622-623 [Fourth Dist., Div. Two]; see *In re Ethan N.* (2004) 122 Cal.App.4th 55, 66-68; § 361.5, subd. (i).) “A juvenile court has broad discretion when determining whether . . . reunification services would be in the best interests of the child under section 361.5, subdivision (c). [Citation.]” (*In re William B., supra*, 163 Cal.App.4th at p. 1229.)

The juvenile court concluded that Father had not shown by clear and convincing evidence that reunification was in H.B.’s best interest. We defer to the juvenile court’s determination under section 361.5, subdivision (c), reviewing it for an abuse of discretion. (*In re Jasmine D.* (2000) [“ ‘[E]valuating the factual basis for an exercise of discretion is similar to analyzing the sufficiency of the evidence for the ruling. . . . Broad deference must be shown to the trial judge’ ”].) In finding that Father had not met his burden under section 361.5, subdivision (c), the juvenile court indicated that it had reviewed CFS’s reports and considered the testimonies of all the witnesses, including Father’s testimony, as well as the factors outlined in section 361.5, subdivision (i). There is substantial evidence to support the court’s conclusion that section 361.5, subdivision (b)(6), mandated denial of reunification services as to H.B. (*In re S.G.* (2003) 112 Cal.App.4th 1254, 1260-1261.)

First, the baby had received four fractures to both her tibias and fibulas. Medical examinations revealed that some of the fractures were healing, thus indicating the abuse was inflicted over a period of time. Second, adding to the severity of the injuries was the

baby's extremely young age at the time the severe injuries occurred, being only six months old at the time of detention. The baby also had unexplained bruising to her body and jaw line. Mother had made multiple inconsistent statements, despite the medical findings; and Father had denied the abuse or failed to acknowledge perhaps Mother was capable of such abuse. Third, as the juvenile court noted, H.B. was upset that his sister was hurt, and found it troubling Mother had discussed with H.B. the cause of the baby's injuries. Furthermore, although the parents had no prior history with child protective services or a criminal history or history of substance abuse, it was unlikely the children could be returned within 12 months with no continuing supervision. Despite engaging in services, both parents had continued to deny any type of abuse occurred and denied any responsibility for the abuse; thus indicating it was unlikely there was a substantial probability of return of the children at a later period. Additionally, even after engaging in therapy and undergoing a psychological assessment and findings of severe abuse, Father had chosen to return to living with Mother. It appears Father remained protective over Mother, believed the maternal grandmother's fiancé caused the injuries, and was not ready to admit Mother might have or had caused the injuries.

Although the evidence clearly shows H.B. wanted to return home and that Father and H.B. were positively attached, substantial evidence shows that it was not in H.B.'s best interest to offer Father services. Father offered no evidence to show that he would protect H.B. from physical abuse or that he would place H.B.'s needs before Mother's. Father consistently denied his role in the baby's injuries and defended Mother against

allegations concerning her role in the baby's injuries. Despite engaging in therapy and findings of the severe abuse allegations, Father had chosen to move back in with Mother. Father offered no testimony to suggest that reunification services would be effective to modify his behavior in the future. (See *Raymond C. v. Superior Court*, *supra*, 55 Cal.App.4th 159 at p. 164 [under § 361.5, subd. (c), parent bears the burden of showing why juvenile court should order reunification; it is not the department's burden to prove services would be unsuccessful].) A best interest finding requires a likelihood reunification services will succeed—"[i]n other words, there must be some 'reasonable basis to conclude' that reunification is possible before services are offered to a parent who need not be provided them. [Citation.]" (*In re William B.*, *supra*, 163 Cal.App.4th at p. 1228.) Here, Father had exhibited no effort to acknowledge the abuse, and he failed to demonstrate any insight into how his behavior had contributed to the dependency proceedings. While he had frequently visited the children, the children were adjusting well in the home of the maternal great-aunt. In view of the evidence in the record, the juvenile court properly exercised its discretion to find Father had not met his burden under section 361.5, subdivision (c). In sum, substantial evidence support the court's order under section 361.5, subdivision (b)(6).

III

DISPOSITION

The petition for extraordinary writ filed by Father is denied.

The previously ordered stay of the Welfare and Institutions Code section 366.26 hearing, issued on November 17, 2015, is lifted.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

RAMIREZ

P. J.

We concur:

MILLER

J.

CODRINGTON

J.