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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

C.C.,

Petitioner,

v.

THE SUPERIOR COURT OF
SAN BERNARDINO COUNTY,

Respondent;

SAN BERNARDINO COUNTY
CHILDREN AND FAMILY SERVICES,

Real Party in Interest.

E066296

(Super.Ct.Nos. J259666 &
J263544)

OPINION

ORIGINAL PROCEEDINGS; petition for extraordinary writ. Annemarie Pace,
Judge. Petition denied.

Robert F. Smith for Petitioner.

No appearance for Respondent.

Jean-Rene Basle, County Counsel, and Jamila Bayati, Deputy County Counsel, for Real Party in Interest.

Petitioner C.C. (Mother) seeks extraordinary writ review pursuant to California Rules of Court, rule 8.452 of the juvenile court's June 21, 2016 orders denying her reunification services and setting a Welfare and Institutions Code¹ section 366.26 permanency hearing as to her nearly three-year-old son, L.C.-W. (L.), and 18-month-old son, E.C.-P. (E.).² On appeal, Mother argues: (1) there was insufficient evidence to support the juvenile court's order removing the children from the home without reunification services; (2) the juvenile court erred in failing to continue the jurisdictional/dispositional hearing; and (3) there was insufficient evidence to support the juvenile court's finding reasonable services had been offered. We reject these contentions, and deny the writ petition.

I

FACTUAL AND PROCEDURAL BACKGROUND

L. was born in September 2013 with DiGeorge syndrome (DGS), tetralogy of Fallot, and absent pulmonary artery. DGS is a condition associated with abnormal fetal development, an irregular 22nd chromosome, learning disabilities and delays, psychiatric

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

² Neither the father of L. nor the father of E. are parties to this appeal. The father of E. (A.P.) had filed a notice of intent to file a writ petition; however, A.P.'s petition was dismissed after his counsel found no legal or factual issues on which to base an extraordinary writ petition.

issues, hearing deficits, and heart defects. His conditions required multiple medical appointments and procedures, including open heart surgery. L.'s father, B.W., has schizophrenia, bipolar disorder, and attention deficit hyperactivity disorder (ADHD). Mother and B.W. severely medically neglected L., and repeatedly failed to follow through with his medical appointments, including his open heart surgery.³ E. was born in March 2015, and did not have any diagnosed health conditions. Mother resided with E.'s father A.P.

The San Bernardino County Children and Family Services (CFS) detained L. on April 2, 2015, and placed him in foster care. CFS also detained E. with the parents maintaining custody of E. On April 6, 2015, CFS filed a petition on behalf on the children pursuant to section 300, subdivisions (b) (failure to protect) and (j) (abuse of sibling). The children were formally detained at the April 7, 2015 detention hearing.

CFS recommended the allegations in L.'s petition be found true, the child be removed from parental custody, and the parents be offered reunification services. As to E., CFS recommended his petition be dismissed for lack of evidence.

On April 28, 2015, the juvenile court dismissed E.'s case, and set mediation in L.'s case.

At a settlement conference on May 14, 2015, the court relieved Mother's appointed counsel as Mother had retained an attorney, Robert Smith. The court set a

³ L.'s open heart surgery was performed on April 14, 2015, while he was in foster care.

further jurisdictional/dispositional hearing for June 9, 2015, to allow CFS to initiate noticing pursuant to the Indian Child Welfare Act.

At the June 9, 2015 hearing, Mother admitted the allegations as amended in mediation, and consented to the terms of her case plan, which required her to attend therapy, a parenting class, and L.'s medical appointments. The court sustained L.'s petition as amended, declared him a dependent of the court, and removed him from parental custody. The parents were provided with reunification services and supervised visits.

By October 2015, L. had improved considerably and did not require intensive supervision. His medically fragile care facility reported that the child was ready for discharge. The facility reported that Mother had attended all the child's medical appointments and Mother received instructions on caring for the child. Mother had also regularly visited the child and provided the child with appropriate care. Medical staff at the facility believed Mother was capable of providing needed care to the child. Mother also completed her parenting education classes and it appeared she benefited from services. Accordingly, on October 29, 2015, CFS requested L. be returned to Mother's care. L. was returned to Mother upon his discharge from the medical facility under family maintenance services.

By early December 2015, CFS recommended that the court terminate B.W.'s services, and dismiss the case, with Mother retaining custody of L. However, by late December 2015, CFS detained L. and E. based upon allegations of physical abuse and

severe neglect of L. L. was detained at Loma Linda University Medical Center (LLUMC) and E. was detained with his maternal grandmother.

On December 30, 2015, CFS received a report that the day prior, Mother brought L. to the hospital due to L. sustaining a head injury. Mother reported L. was playing with A.P.'s daughter when L. ran down the hallway of the family home and fell on his head. Mother also stated she found L. unconscious for about 15 seconds. Mother failed to call 911, and instead gave him a bath “ ‘to calm him down.’ ” When his condition did not improve, she took L. to the emergency room. L. was found to have a subdural hematoma. Forensic specialist Dr. Clare Sheridan⁴ was unable to determine if L.'s increased bleeding was due to L. receiving aspirin doses, or due to abuse/neglect. L. was admitted to the ICU.

When the social worker interviewed Mother, Mother reported L. was playing with a toy car while she was in a bedroom and heard a noise. She went to the hallway, and saw L. lying on the floor not moving. A.P. was in the kitchen and came over after hearing the noise. Mother and A.P. tried to wake L. up by throwing water on him. L. opened his eyes and vomited several times. Mother did not call 911 because she felt emergency response would be delayed as they resided on the county line. She and A.P. drove L. to LLUMC. She believed the incident occurred on December 27, 2015. A.P. stated L. was playing with a toy in the living room and he was preparing dinner in the

⁴ Dr. Sheridan is also referred to as Dr. “Matney,” “Matney-Sheridan,” and “Sheridan-Matney.” For the sake of clarity, we will refer to the doctor as “Dr. Sheridan.”

kitchen. He heard a noise, went to investigate, and saw L. lying on the floor with Mother tending to L. He and Mother tried to wake L. by throwing water on him and L. began to vomit. The parents' roommate reported that she was in her room with her door closed when she heard a noise. She exited her room and saw L. on the floor with A.P. and Mother tending to him.

Doctors had not ruled out shaken baby syndrome. The cause of the continued bleeding was unknown, and L.'s injuries were highly suspicious for being non-accidental. L.'s injuries were inconsistent with the story provided by Mother and A.P. L. appeared to be a shaken baby, in view of his large subdural hemorrhage. He also had no bruises or lacerations, or other evidence of falling violently to the ground.

On January 5, 2016, a petition under sections 342 (subsequent) and 387 (supplemental) was filed on behalf of L. pursuant to section 300, subdivisions (a) (serious physical harm), (b) (failure to protect), and (e) (severe physical abuse (child under five)). On this same date, a petition on behalf of E. was also filed pursuant to section 300, subdivisions (b) (failure to protect) and (j) (abuse of sibling). The children were formally detained the following day at the January 6, 2015 detention hearing. Pending the development of a case plan, Mother and A.P. were provided with services and supervised visits.

CFS recommended that the court sustain the petitions, bypass reunification services to Mother and A.P., and set a section 366.26 hearing. Mother gave varying accounts of L.'s injuries. In one, she stated that L. was playing with another child when

he fell straight on his head and she found him unconscious for about 15 seconds. After he awoke, L. cried and vomited, and then she gave him a bath “ ‘to calm him down.’ ” In another version, she stated L. and another child were playing when L. chased a toy car down the hall. She then heard a loud thump and found L. on the floor. She called A.P. and “sprinkled” water on L., who began to regain consciousness, cried, and threw up. The time span between L.’s head injury and the visit to the emergency room was unknown. Mother also did not know what time of day the incident occurred but noted “ ‘it was dark outside.’ ” Mother and A.P. declined law enforcement’s requests to submit to polygraph tests. In addition, it was noted that L. had no bruising or contusion to support Mother’s explanation of how L. sustained his injury and that medical staff reported L.’s brain shifted slightly from the normal position. Hospital staff also reported that they had observed Mother to be “ ‘rough’ ” with L. Mother was also described as “ ‘loud’ ” and delayed L.’s breakfast feeding until 11:00 a.m. Medical staff was concerned L. had been abused, particularly given the family’s history with CFS.

The social worker believed that neither Mother nor A.P. was paying attention to the children who were playing alone out of parental sight and that the circumstances described by the parents did not support the injuries L. sustained. Medical tests showed L. suffered brain hematoma and retinal hemorrhage, pointing towards shaken baby syndrome. The LLUMC discharge summary indicated various medical specialists were assisting Dr. Sheridan in determining whether L.’s injuries were the result of non-accidental abuse. Dr. Sheridan’s medical report noted that a CT scan revealed L. had a

large subdural hematoma on his right side; that L. had a possible bleeding disorder due to his congenital heart disorder; and that at that time, L.'s injuries were the result of an "Indeterminate cause." Due to L.'s injuries, medical staff provided L. an orthotic helmet. L. began banging his head after he received his helmet. L. resided in a specialized placement due to his numerous medical needs, and E. was placed with the maternal grandmother.

At the scheduled January 27, 2016 jurisdictional/dispositional hearing, Mother's appointed counsel noted that the parties needed updated medical reports "before we can deal with any of the cases." Counsel for CFS asked the court to authorize Children's Assessment Center (CAC) evaluations of the children, and noted Dr. Sheridan was not available for several weeks. Finding good cause, the court continued the matter, authorized the CAC evaluations, and set a further contested jurisdictional/dispositional hearing for February 9, 2016.

The February 9, 2016 further jurisdictional/dispositional hearing was continued at CFS's request, after the court found good cause as the CAC evaluations were pending. No party objected to the continuance.

As of March 1, 2016, Dr. Sheridan remained concerned that L.'s injuries were "highly suspicious for abuse," in that they appeared to be non-accidental "as there has been no history that would provide [an] account for that type of injury and the child's medical condition and medical treatment do not account for those injuries."

At the March 1, 2016, further jurisdictional/dispositional hearing, after finding good cause, the court continued the hearing to March 22, 2016, at the request of CFS, as Dr. Sheridan conveyed she had a few things to resolve, and would have a report in two to three weeks. No party objected to the continuance. Meanwhile, Mother was provided with visitation and was referred to a parenting program and counseling services.

After studying L.'s complicated medical case extensively and investigating the possibility of whether the aspirin given to L. for his heart condition could have been a factor in causing L.'s large subdural bleeding from a short fall, Dr. Sheridan concluded L. was not injured due to an accidental fall and his medical history did not result in L.'s injuries. Rather, Dr. Sheridan found L.'s injuries were “ ‘suspicious for an inflicted injury,’ ” specifically shaken baby syndrome. Dr. Sheridan explained: “The main issues are twofold. Firstly, the history of a short fall is not compatible with the injury seen, and secondly, the presentation is not compatible with the history. Per the history from the mother, the child became immediately symptomatic. He was obtunded and vomited several times. Immediate symptomology is more typically associated with a rotational injury, not a simple fall. Of course, the fall was not witnessed but this is not the typical presentation of a short fall. To have such a large bleed implies either a different mechanism of injury or the child does have a platelet function disorder. However, even with a platelet function disorder, the symptoms would not occur immediately as it would take time for the blood to collect, leading to raised intracranial pressure and the altered level of consciousness and vomiting. There is also the issue of the retinal hemorrhages,

which also imply a rotational (shaking) type of mechanism of injury. [¶] In summary, the large subdural hemorrhage and the retinal hemorrhages are unlikely to be from a simple fall. Other forces appear to be at play. This of course, makes it suspicious for an inflicted injury, and further investigation by both CFS and Law Enforcement was warranted.”

By March 22, 2016, CFS recommended removal of E. from the maternal grandmother due to her failure to abide with CFS rules, inability to protect the children, and allowing the parents unfettered contact with the children.⁵ The social worker and two other workers witnessed the maternal grandmother being aggressive with the children. In addition, when the social worker went to check on the children, the maternal grandmother yelled at CFS staff, who observed E. was in a playpen with dirty hair and a dirty diaper. A nurse at L.’s placement was also concerned about the maternal grandmother and Mother, who was rude, cussed at staff, and was aggressive. The maternal grandmother lacked empathy for the children, screamed at normal childhood behavior, and did not seem to be bonded to the children. The children appeared “ ‘terrified’ ” of the maternal grandmother. She had a disdain for A.P., whom she felt spoiled his children.

On March 22, 2016, at the further hearing, the court set the matter contested on behalf of the parents for the afternoon of April 27, 2016, and set a pretrial settlement

⁵ E. and his half sisters (A.P.’s daughters from a previous relationship) resided with the maternal grandmother.

conference. At that time, the children were also removed from the maternal grandmother and placed in a foster home.

At the April 27, 2016 hearing, Mother was present with her appointed counsel and Mr. Smith. Mr. Smith sought to again represent Mother and substituted in as Mother's counsel. Mr. Smith requested the trial be continued to obtain some medical reports that were inadvertently not subpoenaed and have them reviewed by a medical expert. Counsel for CFS objected to a continuance, noting, among others, that the case was ongoing since January 2016, well beyond the 60-day deadline. Over objections by CFS and minors' counsel, the court set the contested hearing for June 13, and 14, 2016. No party indicated their unavailability for those dates.

A.P. completed eight sessions of therapy and Mother was seen four times before she dropped out. The therapist reported that A.P. insisted he did not injure L. and speculated the other children might have caused the injury, as Mother had shared that fear with him. Mother reported to the therapist that she had been "thinking about adopting [L.] out." She also stated that "Somehow she knew this child would not be coming home." After the therapist confronted Mother by stating "so you got upset with the children and you picked up the child and shook him," Mother started crying quietly. A.P. took psychotropic medication but he did not seem overtly angry. A.P. admitted "other doctors" told him L.'s injuries were consistent with shaken baby syndrome, but claimed neither he nor Mother shook L.

At a May 24, 2016, pretrial hearing, Mother was present with Mr. Smith, who requested another continuance. Mr. Smith stated: “. . . I’ve been on the case for about three weeks and this is a shaken-baby case. And I’m trying to get some medical work up done. [¶] I’m not sure if we’re going to have it by the time of the next hearing It’s very hard to get expert testimony on these cases. Part of it is cost, part of it is . . . novel medical theories floating around now.” The court denied the request, explaining: “These kids have been out of placement . . . removed from 2015 [to] January 2016. We are well beyond the statutory time periods and all of that could have been done in the last months. . . . [¶] . . . [¶] . . . [T]his is not a criminal case. The best interest of the children is what is paramount. We’ve given the parents ample opportunity to prepare to address these issues and it’s just not in the best interest of the children to keep continuing these cases. [¶] So I’m going to confirm the June 13th and June 14th trial.” Minors’ counsel asked the court to order Mr. Smith to provide discovery and witness exchange at least a week before the trial, and Mr. Smith responded, “If I had more time I’d guarantee that.”

Despite the court’s denial of Mother’s continuance request at the May 24, 2016 hearing, on June 7, 2016, Mother filed a request to continue the trial with supporting declarations. Mother claimed she needed more time to obtain medical records, have them analyzed by an expert, and have an expert testify at court. Mother declared that she believed her prior counsel had an expert lined up to testify; that “the balance” of the file was purportedly sent to the wrong address, as the court did not have Mr. Smith’s current address; that she did not receive some of the medical reports until June 6, 2016; that she

was still missing some medical reports; that her experts needed more time and could not appear at the scheduled June 13, 2016 trial date; that it was “only fair” to give her a continuance; and that the case had been continued twice because Dr. Sheridan had not submitted the needed reports. Mr. Smith’s declaration claimed he was “the new attorney” for Mother, retained in April 2016, and contained content similar to Mother’s declaration.

On June 8, 2016, Mr. Smith filed an “Amended Motion to Continue Trial,” claiming he was ordered to appear in criminal cases in Los Angeles County, and those trials conflicted with the dependency trial dates.

On the morning of June 13, 2016, the court called a special hearing at the request of Mother’s counsel. Attorney John Vega made a special appearance for Mr. Smith, and asked for a continuance, indicating Mr. Smith was ordered to appear in court in Lancaster. The court responded that Mr. Smith was ordered to start the trial that day; that dependency cases take priority; and that the court had denied a continuance at the last appearance and set aside two afternoons to conduct the trial. The court further noted that Mr. Smith should have explained that dependency matters take priority to the criminal judge; that the case has been ongoing for almost six months now; and that it was not in the children’s best interest to continue the case. The court then denied the motion to continue and set the matter for 1:30 that afternoon. Mr. Vega responded that he would communicate the information to Mr. Smith.

On the afternoon of June 13, 2016, Mr. Smith did not appear for the dependency trial. Attorney Bruce Rorty appeared for him, and requested a continuance, stating Mr. Smith was in trial in Lancaster, and did not have an expert witness for the case at bar. The court responded it denied that continuance request twice, set an order to show cause hearing for the next morning regarding Mr. Smith's contempt, and ordered witnesses back for the trial the next day.

At the contempt proceeding on June 14, 2016, Mr. Smith stated he was ordered to appear for felony trials in Lancaster and in dependency court, and that he was trying to accommodate both courts. The court reminded Mr. Smith that in weeks prior, the court denied his continuance request; and that he knew the court set aside two afternoons for the trial weeks ago, yet he announced his readiness to proceed on criminal cases. Mr. Smith replied, "I did." The court admonished Mr. Smith, who agreed to appear at the dependency trial that afternoon, and ordered the parties back at 1:30 p.m.

The contested jurisdictional/dispositional hearing was held June 14, 16, and 21, 2016. The court admitted into evidence multiple CFS reports and attachments without objection by any party. On June 16, 2016, Mr. Smith filed a "Notice to Appear and Produce" the social workers for the "January 13, 2016" hearing or such dates as the hearing may be continued, and to produce Dr. Sheridan for the hearing, and any records

relied upon by Dr. Sheridan, “in coming to her conclusions,” and that CFS deliver the information to Mr. Smith by email or otherwise “well in advance of said hearing.”⁶

On June 21, 2016, following testimony from several witnesses and arguments from the parties, the court found some of the allegations in the petitions true as amended and declared the children dependents of the court. The court formally removed the children from parental custody, denied the parents reunification services pursuant to section 361.5, subdivisions (b)(5) and (6), and set a section 366.26 hearing. This appeal followed.

II

DISCUSSION

A. *Mother’s Failure to Abide by Briefing Rules*

Preliminarily, CFS argues most of Mother’s writ petition should be stricken or disregarded for failure to abide by briefing rules. We agree that Mother has not adequately provided a properly supported statement of facts in her writ petition. The California Rules of Court require that litigants provide a summary of significant facts supported by references to the appellate record. (Cal. Rules of Court, rule 8.204(a)(1)(C) & (2)(C); *Cassidy v. California Bd. of Accountancy* (2013) 220 Cal.App.4th 620, 628 (*Cassidy*) [appellate court disregards assertions and arguments that lack record references]; *Liberty National Enterprises, L.P. v. Chicago Title Ins. Co.* (2011) 194

⁶ Dr. Sheridan did not testify at trial and there is no indication in the record to show she was subpoenaed to testify at the contested jurisdictional/dispositional hearing.

Cal.App.4th 839, 846 [court may disregard factual assertions that lack record references]; *Arbaugh v. Procter & Gamble Mfg. Co.* (1978) 80 Cal.App.3d 500, 503, fn. 1 [failure to comply with the Rules of Court requiring summary of material facts supported by appropriate references to the record may constitute waiver of error].)

Mother's statement of facts is replete with assertions that lack citations to the record. In addition, she appears to violate the rule that an appellant must fairly set forth all the significant facts, not just those beneficial to him or her. (*Foreman & Clark Corp. v. Fallon* (1971) 3 Cal.3d 875, 881; *Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246.) Furthermore, she relies on legal treatises and medical journals to support her claims and assert that shaken baby allegations are difficult for the medical and legal community. However, these documents were neither presented at the time of trial nor attached to the petition. " 'It has long been the general rule and understanding that "an appeal reviews the correctness of a judgment as of the time of its rendition, upon a record of matters which were before the trial court for its consideration." ' ' " (*In re B.D.* (2008) 159 Cal.App.4th 1218, 1239.) " 'Statements of alleged fact in the briefs on appeal which are not contained in the record and were never called to the attention of the trial court will be disregarded by this court on appeal.' " (*Kendall v. Barker* (1988) 197 Cal.App.3d 619, 625.) Hence, we will not consider these documents. We confine our review to the proceedings which took place in the trial court. (*Cassidy, supra*, 220 Cal.App.4th at p. 628.) Although Mother's petition fails to comply with these rules, in the interest of

justice, we shall consider the merits of the writ petition to the extent possible based on the petition and response to the petition and the record before us.

B. *Juvenile Court's Findings*

Mother's headnote asserts that the juvenile court erred in removing the children from her custody and bypassing reunification services. However, she does not develop these arguments with factual or legal analysis. The failure to properly develop an argument is fatal on appeal. (See *People v. Ham* (1970) 7 Cal.App.3d 768, 783, disapproved on other grounds by *People v. Compton* (1971) 6 Cal.3d 55, 60, fn. 3 ["Where a point is merely asserted by counsel without any argument of or authority for its proposition, it is deemed to be without foundation and requires no discussion."]; see also *Jones v. Superior Court* (1994) 26 Cal.App.4th 92, 99 ["Issues do not have a life of their own: if they are not raised or supported by argument or citation to authority, we consider the issues waived."].)

Mother merely asserts in the most general way that "inadequate evidence existed to support order removing children from home without reunification services." She provides absolutely no specifics to this argument. Rather, it appears, although she does not specifically state so, that under this argument heading, she is challenging the jurisdictional findings. She spends a considerable amount of time attempting to discredit Dr. Sheridan's findings, arguing "her reports were not sufficient to support a finding the child [L.] was abused or in danger of abuse." Mother also argues likelihood of adoptability, asserting the court "cannot gloss over the issue of whether a child is

adoptable or not” and that the court “must find evidence of adoptability by clear and convincing evidence.”⁷

We will not address Mother’s purported assertions relating to removal, bypass of reunification services, and adoptability. (See *Nelson v. Avondale Homeowners Assn.* (2009) 172 Cal.App.4th 857, 862.) Her assertion relating to removal and denial of services is devoid of reasoned argument and citations to authority. (*Cahill v. San Diego Gas & Electric Co.* (2011) 194 Cal.App.4th 939, 956 [court may treat points not supported with cogent argument and authority as waived].) And, the issue of adoptability was not before the juvenile court. However, we will address Mother’s claim relating to the jurisdictional findings.

In dependency proceedings, the standard of proof at the jurisdictional stage is a preponderance of the evidence. (§ 355, subd. (a).) On appeal, we review the juvenile court’s findings for substantial evidence, according all reasonable inferences in support of the findings and viewing the record in a light most favorable to the order of the juvenile court. (*In re Mariah T.* (2008) 159 Cal.App.4th 428, 438; *In re Joshua H.* (1993) 13 Cal.App.4th 1718, 1728.) Under this test, we determine whether there is evidence which is reasonable, credible and of solid value such that the juvenile court could reasonably make the challenged findings. (*In re Angelia P.* (1981) 28 Cal.3d 908, 924.) All

⁷ The issue of adoptability was not before the trial court, and we will not consider it here. It is well settled that an appellate court will not consider evidence that was not before the trial court nor will it address issues not raised below. (*In re B.D.*, *supra*, 159 Cal.App.4th at p. 1239; *Kendall v. Barker*, *supra*, 197 Cal.App.3d at p. 625.)

conflicts are to be resolved in favor of the prevailing party, and issues of fact and credibility are questions for the trier of fact. (*In re P.A.* (2006) 144 Cal.App.4th 1339, 1344-1345.) In other words, we do not pass on the credibility of witnesses, attempt to resolve conflicts in the evidence, or determine where the weight of the evidence lies. (*In re A.M.* (2010) 187 Cal.App.4th 1380, 1387-1388.)

“ ‘When a dependency petition alleges multiple grounds for its assertion that a minor comes within the dependency court’s jurisdiction, a reviewing court can affirm the juvenile court’s finding of jurisdiction over the minor if any one of the statutory bases for jurisdiction that are enumerated in the petition is supported by substantial evidence. In such a case, the reviewing court need not consider whether any or all of the other alleged statutory grounds for jurisdiction are supported by the evidence.’ [Citation.]” (*In re I.J.* (2013) 56 Cal.4th 766, 774.)

Here, as to L., the juvenile court found allegation Nos. 1, 2, and 4 true as alleged in the subsequent petition. Pursuant to section 300, subdivisions (a) (serious physical harm), (b) (failure to protect), and (e) (severe physical abuse), allegation Nos. 1, 2, and 4 in the subsequent petition alleged: “On or about December 27, 2015, the child, while in the care and custody of the mother, [C.C.], sustained injuries including but not limited to a subdural hematoma that would not ordinarily occur except as a result of unreasonable and/or neglectful acts of mother and her boyfriend, [A.P.], that resulted in hospitalization of [L.]”

As to E., the juvenile court found true, pursuant to section 300, subdivisions (b) and (j) (abuse of sibling), that E. was living in the home of Mother and his father A.P. in which his half sibling, L., was critically injured and hospitalized, thereby placing E. at substantial risk of abuse and/or neglect.

Section 300, subdivision (b), provides that a minor comes within the jurisdiction of the juvenile court when the “child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child, or the willful or negligent failure of the child’s parent or guardian to adequately supervise or protect the child from the conduct of the custodian with whom the child has been left” (§ 300, subd. (b).) This requires a showing of neglectful conduct by the parent, causation, and serious physical harm or illness to the child, or a substantial risk of such harm or illness. (*In re Rocco M.* (1991) 1 Cal.App.4th 814, 820.) The statute does not require that the child actually suffer substantial harm before the state can intervene. (§ 300, subd. (b).)

A child comes within section 300, subdivision (a), when he or she “has suffered, or there is a substantial risk that the child will suffer, serious physical harm inflicted nonaccidentally upon the child by the child’s parent or guardian.” Section 300, subdivision (a), further provides: “For the purposes of this subdivision, a court may find there is a substantial risk of serious future injury based on the manner in which a less serious injury was inflicted, a history of repeated inflictions of injuries on the child or the

child's siblings, or a combination of these and other actions by the parent or guardian that indicate the child is at risk of serious physical harm. . . .”

Section 300, subdivision (e), provides that the court has jurisdiction over a child who “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.” There is no dispute that L. was under the age of five when he sustained his injuries. As relevant here, “ ‘severe physical abuse’ ” is defined as “any single act of abuse which causes physical trauma of sufficient severity that, if left untreated, would cause permanent physical disfigurement, permanent physical disability, or death,” or “more than one act of physical abuse, each of which causes bleeding, deep bruising, significant external or internal swelling, bone fracture, or unconsciousness” (§ 300, subd. (e).)

The social worker's reports, which included Dr. Sheridan's findings and were admitted into evidence without objection, established that L.'s injuries were not consistent with a short fall and that L.'s large subdural and retinal hemorrhages indicated he was a shaken baby. The evidence also indicated that L.'s injuries were inconsistent with the history provided by Mother, and were not related to L.'s preexisting medical conditions. Dr. Sheridan's conclusions were made after exhaustive medical testing on L., and after she consulted with at least six medical specialists to ensure L.'s DGS, and any of L.'s other medical issues or treatment, i.e., L. consuming low doses of aspirin after his heart surgery, could not have caused L.'s large subdural and retinal hemorrhages.

Indeed, Mother acknowledged that Dr. Sheridan consulted with a genetics expert concerning his DGS, a cardiac surgeon, an ophthalmologist for L.'s retinal hemorrhages, a hematologist, and a radiologist. Aside from Dr. Sheridan's conclusions, the evidence also showed that the parents had a history of neglecting the children; that Mother was aggressive with the children; that the parents made contradictory statements concerning the date L. was injured; and that L. did not have any visible injuries to his head, such as bruising, as a result of his fall on the date of the incident. Moreover, contrary to Mother's claim, substantial evidence established that L.'s head banging and need for a protective helmet occurred *after* he was injured on or about December 27, 2015, to protect him from further injury. In addition, there was no evidence to show that L. had lost consciousness or had bruising as a result of his head banging.⁸ Mother's statements during therapy are also telling. She stated that she "knew" L. would not return to her care and pondered relinquishing her rights for him; she cried when her therapist suggested Mother shook L. and she did not deny that occurred. Furthermore, A.P. admitted that he and Mother each had alone time with L. and that on the date L. was injured he would not have seen Mother shake L. as he was in the kitchen and could not see Mother.

Giving due deference to the limitations of appellate review, we find there is substantial evidence to support the jurisdictional findings. Here, the medical evidence

⁸ L.'s health care licensed vocational nurse, a witness called by Mother, testified that L. had a history of banging his head; that he wore a protective helmet; that he never lost consciousness when he banged his head during the time she was with L.; and that if L. did not have his helmet on she would expect to see bruising, swelling or some type of mark on L.

showed that L. suffered from shaken baby syndrome while he was in the custody of Mother and A.P.; that the parents had no reasonable explanation for his large subdural and retinal hemorrhages, which qualifies as “serious physical harm”; and that L.’s medical conditions were not a factor in his injuries. Furthermore, we note that the juvenile court need not wait for the minor to suffer serious injury in order to sustain the sections 342 (supplemental petition) and 300 petitions. (§ 300, subd. (b).) As previously noted, under subsection (b) “a substantial risk that the child will suffer[] serious physical harm” is sufficient. The determination of whether there is a “substantial risk” of “serious physical harm” in the future is largely a factual question. (*In re Rocco M., supra*, 1 Cal.App.4th at p. 825.)

Mother makes numerous allegations concerning Dr. Sheridan’s reports and conclusions. She asserts: (1) the report was undated; (2) it was a tentative report because it stated further investigation was warranted; (3) speculation and conjecture cannot support a removal finding; (4) the “expert did not allow her opinions to be tested or fleshed out in cross-examination because there was no compliance with Mother’s formal request that the expert appear and produce at trial”; and (5) “conclusions of the forensic expert have varied dramatically and are inconsistent.”

We reject Mother’s contentions for several reasons. First, Mother did not object to the admission of Dr. Sheridan’s reports. The failure to object to evidence in the trial court generally results in the forfeiture of any appellate claim that the evidence was erroneously admitted. (Evid. Code, § 353.) Mother therefore forfeited her claim to the

improper admission of evidence by failing to object below. In the absence of a timely objection, the evidence was admissible at the jurisdictional hearing as part of the social study reports by CFS, the petitioning agency. (Welf. & Inst. Code, § 355, subd. (a).) Second, Mother was free to subpoena Dr. Sheridan to appear at trial but chose not to do so and instead filed a “Notice to Appear and Produce” with an incorrect hearing date.⁹ She neither filed a subpoena for Dr. Sheridan’s presence nor orally requested Dr. Sheridan’s presence at trial or claimed CFS failed to produce any relevant documents. Even if Mother’s “Notice to Appear and Produce” is akin to a subpoena, Mother waived Dr. Sheridan’s presence when she failed to bring it to the attention of the juvenile court. After the last witness testified, the court asked whether “[a]ny counsel [had] anymore witnesses.” All counsels replied in the negative. Dr. Sheridan is not a CFS employee, she is an LLUMC employee, so CFS could not simply require her to attend the trial. It was incumbent on Mother to secure Dr. Sheridan’s attendance for testimony or documents she relied upon. Finally, Mother’s arguments relate to credibility issues, which we do not reweigh when assessing the sufficiency of the evidence. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318-319.) We remind Mother that conflicts in the

⁹ California Rules of Court, rule 5.682(b)(4), provides for the “right to use the process of the court to compel attendance of witnesses on behalf of the parent or guardian.” Welfare and Institutions Code section 341 provides: “Upon request of the social worker, district attorney, the child, or the child’s parent, guardian, or custodian, or on the court’s own motion, the court or the clerk of the court, or an attorney, pursuant to Section 1985 of the Code of Civil Procedure, shall issue subpoenas requiring attendance and testimony of witnesses and production of papers at any hearing regarding a child who is alleged or determined by the court to be a person described by Section 300.” There is no indication Mother followed these procedures.

evidence are to be resolved in favor of the prevailing party and issues of fact and credibility are questions for the trier of fact. (*In re Jason L.* (1990) 222 Cal.App.3d 1206, 1214.)

Contrary to Mother's conclusory statements, Dr. Sheridan's reports were not based on mere suspicion and Mother's efforts to challenge the medical reports were not "stymied by the court" or CFS. Substantial evidence supports the juvenile court's jurisdictional findings.

C. *Denial of Continuance*

Mother contends the juvenile court erred in denying her motions to continue trial to obtain more medical records, have the records analyzed by a medical expert, and have the expert testify at trial. We disagree.

The record shows that the juvenile court granted several continuances that pushed the contested adjudication hearing past the deadline mandated by statute. We conclude it did not abuse its discretion in denying yet another continuance.

Section 352, subdivision (a), provides that in general, "Upon request of counsel for the parent . . . the court may continue any hearing under this chapter beyond the time limit within which the hearing is otherwise required to be held, provided that no continuance shall be granted that is contrary to the interest of the minor. In considering the minor's interests, the court shall give substantial weight to a minor's need for prompt resolution of his or her custody status, the need to provide children with stable environments, and the damage to a minor of prolonged temporary placements. [¶]

Continuances shall be granted only upon a showing of good cause and only for that period of time shown to be necessary by the evidence presented at the hearing on the motion for the continuance.”

Section 352, subdivision (b), also expressly states, “Notwithstanding any other provision of law, if a minor has been removed from the parents’ or guardians’ custody, no continuance shall be granted that would result in the dispositional hearing, held pursuant to Section 361, being completed longer than 60 days after the hearing at which the minor was ordered removed or detained, unless the court finds that there are exceptional circumstances requiring such a continuance.” In no event “shall” the court grant a continuance that would cause a section 361 hearing to be completed more than six months after the initial petition hearing.

The juvenile court’s order denying a continuance will be reversed “only upon a showing of an abuse of discretion.” (*In re Gerald J.* (1991) 1 Cal.App.4th 1180, 1187.)

Here, the detention hearing on L.’s supplemental petition and E.’s original petition was held on January 6, 2016; therefore, the section 361 hearing should have been held 60 days after that, by March 6, 2016. The juvenile court granted Mother’s first continuance request on April 27, 2016. On May 24, 2016, Mother orally requested another continuance, which the court denied. Then, on June 7 and 8, 2016, Mother filed a written motion for a continuance and an amended written notice for a continuance, respectively. Thereafter, on the day of the scheduled adjudication hearing on June 13, 2016, Mother’s retained counsel failed to appear but instead sent other attorneys

to request a continuance on his behalf. The court denied the requests for continuances and ordered Mother's counsel to appear for a contempt hearing later that afternoon. Because the children were removed from Mother's custody, the court was required not to grant a continuance that would result in the dispositional hearing being held 60 days after the detention hearing unless there was a showing of exceptional circumstances. The dispositional hearing was already held long after the required 60-day time period. The children were detained on January 6, 2016, and Dr. Sheridan concluded her investigation in March 2016. Mother had more than ample time to obtain the necessary medical records, have those records analyzed by a medical expert, and have an expert testify at the contested adjudication hearing, which was concluded on June 21, 2016. We conclude Mother failed to show exceptional circumstances that would provide good cause for another continuance.

Mother's statement regarding CFS changing its theory of the case from one of neglect to one of intentional abuse and the fact that the court had granted CFS's continuance requests before the 60-day limit does not change our view of the propriety of the juvenile court's denial of a continuance. Moreover, there is no indication to support Mother's claim CFS changed its "theory" of the case, since the petitions clearly reflected CFS's belief L. was a shaken baby. Dr. Sheridan's opinion of L.'s injuries changed from an "Indeterminate cause" earlier in the case, to a more definitive cause, after consulting with medical experts and specialists, suggestive of shaken baby syndrome in March 2016, about three months before the jurisdictional/dispositional adjudication hearing.

Mother's reliance on *In re Julian L.* (1998) 67 Cal.App.4th 204 (*Julian L.*) for a different conclusion is not persuasive. In *Julian L.*, the mother faced termination of parental rights. The dependency court relieved the mother's attorney and appointed new counsel one week before the termination hearing. The mother's new counsel requested a continuance to allow him to review the file and talk to the mother. The dependency court denied the request for a continuance. (*Id.* at pp. 207-208.) The facts in the case before us today are not like the facts in *Julian L.* First, the present case involves the jurisdictional/dispositional adjudication hearing, not a termination of parental rights case. Second, Mother had substituted counsel (the same counsel she retained after L. was first removed) about three months prior to the adjudication hearing; and, therefore had sufficient time to review the file and obtain necessary records. Finally, there is no evidence in the record tending to show that the ability of Mother's counsel to represent her at the adjudication hearing was compromised by the denial of a continuance.

Accordingly, we find the juvenile court did not abuse its discretion in denying Mother's repeated requests for continuances.

D. *Reasonable Services Finding*

Mother also argues there was insufficient evidence to support the juvenile court's finding she received reasonable reunification services. We disagree.

As a general rule, when a child is removed from parental custody under the dependency laws, the juvenile court is required to provide reunification services to "the child and the child's mother and statutorily presumed father." (§ 361.5, subd. (a).)

A family reunification plan must be designed to eliminate the conditions which led to juvenile court jurisdiction, specifically tailored to fit the unique circumstances of the offending parent and put the family on notice as to what must be accomplished to reunite the family. (*In re Dino E.* (1992) 6 Cal.App.4th 1768, 1777.)

The reasonableness of reunification services is judged according to the circumstances of the particular case and assessed by its two components—content and implementation. (*In re Ronell A.* (1996) 44 Cal.App.4th 1352, 1362.) “[T]he record should show that the supervising agency identified the problems leading to the loss of custody, offered services designed to remedy those problems, maintained *reasonable* contact with the parents during the course of the service plan, and made *reasonable* efforts to assist the parents in areas where compliance proved difficult” (*In re Riva M.* (1991) 235 Cal.App.3d 403, 414.) To be reasonable, the services provided need not be perfect. “The standard is not whether the services provided were the best that might be provided in an ideal world, but whether the services were reasonable under the circumstances.” (*In re Misako R.* (1991) 2 Cal.App.4th 538, 547.) The mere fact more services could have been provided does not render the department’s efforts unreasonable. (*In re Alvin R.* (2003) 108 Cal.App.4th 962, 973.) A parent who consents to the terms of a reunification plan waives any right to complain on appeal about the reasonableness of the plan. (*In re Precious J.* (1996) 42 Cal.App.4th 1463, 1476; *In re Cody W.* (1994) 31 Cal.App.4th 221, 231.)

“In reviewing the reasonableness of the services provided, this court must view the evidence in a light most favorable to the respondent. We must indulge in all reasonable and legitimate inferences to uphold the judgment. [Citation.] ‘If there is any substantial evidence to support the findings of a juvenile court, a reviewing court is without power to weigh or evaluate the findings.’ [Citation.]” (*In re Ronell A.*, *supra*, 44 Cal.App.4th at pp. 1361-1362.)

Preliminarily, as argued by CFS, Mother waived her right to argue the adequacy of the reunification plan by failing to raise the issue in the trial court. A parent must object in the trial court that he or she believes the services offered were inadequate or waive his or her right to raise the issue on appeal. (*In re Christina L.* (1992) 3 Cal.App.4th 404, 416.) Because Mother never informed the trial court she believed the services she was offered were inadequate to resolve the problems that resulted in the children’s removal and she expressly agreed with the terms of her case plan, she has waived her right to make that argument on appeal.

Even had she not waived the issue, the record demonstrates Mother received reasonable services. After the children were detained for the first time, Mother consented to the terms of her case plan, which required her to attend therapy, a parenting class, and L.’s medical appointments. Mother was provided with referrals and participated in her services. She regularly visited L. and quickly learned how to address L.’s medical issues. In fact, she made such significant progress that L. was returned to her care under family maintenance services. After the children were formally detained a second time in

January 2016, CFS facilitated more services. Mother was referred to and attended a parenting course with an instructor who focused on nonphysical parenting techniques. In fact, Mother completed the parenting program. Mother attended therapy with a therapist who posed healthy challenges to Mother’s denials of the abuse of L. to try to help her gain insight. Mother was also provided with, and attended visits with the children.

Contrary to Mother’s argument, CFS made more than a “trifling effort” to offer Mother reasonable reunification services. We also reject Mother’s claim that CFS essentially provided no services to her because it felt L.’s injuries were “so damning that its previous efforts at reunification services were no longer necessary.”

Substantial evidence supports the juvenile court’s finding that reasonable services were offered to Mother.

III

DISPOSITION

The petition for extraordinary writ is denied.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

RAMIREZ

P. J.

We concur:

McKINSTER

J.

MILLER

J.