

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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  
FIFTH APPELLATE DISTRICT**

In re SHELBY M., a Person Coming Under  
the Juvenile Court Law.

FRESNO COUNTY DEPARTMENT OF  
SOCIAL SERVICES,

Plaintiff and Respondent,

v.

CARRIE M.,

Defendant and Appellant;

SHELBY M.,

Appellant.

F062858 & F062885

(Super. Ct. No. 10CEJ300127-1)

**OPINION**

**THE COURT**\*

APPEAL from orders of the Superior Court of Fresno County. Mary Dolas,  
Commissioner.

Marissa Coffey, under appointment by the Court of Appeal, for Defendant and  
Appellant.

Donna Furth, under appointment by the Court of Appeal, for Appellant.

Kevin Briggs, County Counsel, and William G. Smith, Deputy County Counsel,  
for Plaintiff and Respondent.

-ooOoo-

\* Before Wiseman, Acting P.J., Levy, J., and Detjen, J.

This appeal poses the question: what is a juvenile court's obligation, if any, to reunite parent and dependent child when a legal guardianship, established as the child's permanent plan (Welf. & Inst. Code, § 366.26, subd. (c)(4)(A)), is no longer viable.<sup>1</sup> Appellants, dependent child Shelby M. and her mother Carrie M. (mother), contend such a parent should be treated as a noncustodial parent, entitled to placement, unless detriment can be established, or at least reunification services. (§ 361.2.)

On review, we disagree. Once the juvenile court terminates such a legal guardianship, a child's parent may be considered as custodian but the child shall not be returned to the parent unless the parent proves, by a preponderance of the evidence, that reunification is the best alternative for the child. The court may, if it is in the child's best interests, order reunification services be provided to the parent. (§ 366.3, subd. (b).)

### **PROCEDURAL AND FACTUAL HISTORY**

#### ***Sacramento County Dependency Proceeding 2004-2006***

In 2003 and 2004, Shelby and her birth family lived in Sacramento County. During this period, there were multiple substantiated referrals for neglect and abuse involving the family. Shelby's father was physically violent and emotionally abusive. Shelby's mother had mental health problems and could not protect the children or herself from the father. By the end of 2004, the children were living with their father, while mother was apparently incarcerated out of state.

These events led to juvenile dependency proceedings in Sacramento County for then seven-year-old Shelby and her siblings. Shelby was removed from her father's physical custody and, despite 12 months of reunification services, he failed to reunify with Shelby. Meanwhile, mother waived her right to reunification services.

---

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

In 2006, the juvenile court selected legal guardianship as a permanent plan for Shelby and named maternal relatives, Mr. and Mrs. S., as the child's legal guardians. Later still in 2006, the juvenile court terminated its dependency jurisdiction over Shelby. The juvenile court nevertheless retained jurisdiction of Shelby as a ward of the guardianship. (§ 366.3, subd. (a).)

***Fresno County Dependency Proceeding Commencing in 2010***

As of 2010, 12-year-old Shelby was exhibiting severe out-of-control behavioral and emotional problems, placing herself and others at risk of serious physical harm. Her legal guardians were no longer able to provide appropriate care for her. This led to Shelby's detention in Fresno County where she and her legal guardians lived. Mother's whereabouts were then unknown.

Initially, a decision was made to reinstate dependency proceedings for Shelby. However, respondent Fresno County Department of Social Services (department) instead filed a new section 300 petition and later a first amended petition. The department alleged, in its first amended petition, that Shelby had suffered or was at substantial risk of suffering serious emotional damage, as evidenced by her untoward aggressive behavior toward herself and others and she had no parent or guardian capable of providing appropriate care. (§ 300, subd. (c).) The guardians stated they were unwilling to continue providing her care as they could not provide the kind of mental help that Shelby needed. There was also concern for the safety of Shelby, the other children in the guardians' home, and one of the guardians due to Shelby's history of assaultive behavior.

At an uncontested July 2010 hearing, the juvenile court exercised its dependency jurisdiction over Shelby under section 300, subdivision (c) and found that mother's whereabouts were unknown after a due and diligent search had been made for her. Later, in August 2010, the juvenile court adjudged Shelby a juvenile dependent, placed her in foster care, and ordered reunification services for the legal guardians.

### ***Mother's Appearance in Fresno County Dependency Proceeding***

Four months later, mother petitioned the juvenile court under section 388 for formal visitation with Shelby and possible reunification. In her petition, mother offered to “do all necessary programs.” However, she made no claim that her circumstances had changed or that there was new evidence to support a finding that services for mother would serve Shelby’s best interest.

Mother made her first appearance at a January 2011 hearing. The court continued the matter for investigation of mother’s requests.

At a February 2011 hearing, the juvenile court appointed counsel for mother and further continued any hearing on mother’s petition into March 2011 so her attorney could participate. Shelby’s attorney repeatedly asked the court to consider ordering the department to assess mother for reunification services. According to the child’s attorney, once the legal guardians lost custody of Shelby, mother was entitled to such an assessment without having to file a section 388 petition. The court ordered reasonable supervised visits between mother and Shelby at the request of Shelby’s attorney.

### ***Legal Guardians’ Relinquishment of Rights***

At the first of two hearings in March 2011, the legal guardians formally waived their right to services to reunify with Shelby. Shelby agreed with the legal guardians’ decision. The legal guardians were also willing to sign whatever documents necessary to terminate the legal guardianship. The court agreed to continue the matter so that the department could meet with the legal guardians to sign such documents.

The court also denied mother’s section 388 petition without prejudice for its insufficient showing. The court, however, added it appeared Shelby’s attorney was correct that the department should assess the mother for placement, unless it could show placement with mother would be detrimental to Shelby. The court continued the matter for further hearing in late March.

In the interim, the legal guardians executed documents resigning as Shelby's legal guardians. Those documents were attached to an addendum report prepared by the department and submitted to the court at the hearing conducted on March 29, 2011.

At the March 29 hearing, the department claimed it needed more time to assess mother, who was absent. The attorneys for Shelby and mother objected to any lengthy continuance and asked the court to order services for mother. Shelby's attorney also asked the court to terminate the legal guardianship.

The court observed that the department had recommended terminating reunification services for the legal guardians, who had also signed documents to terminate the legal guardianship. The court in turn terminated reunification services for the legal guardians and relieved counsel for the legal guardians. It also granted a brief continuance. According to the clerk's minute order for the March 29, 2011 hearing, which the juvenile court judge signed, the court also set aside the legal guardianship.<sup>2</sup>

From this point forward, the proceedings largely focused on the legal question of whether mother was entitled to reunification services, if not placement. The attorneys for Shelby and mother claimed there was such an entitlement pursuant to section 361.2.<sup>3</sup> The department meanwhile argued the proceedings were at a postpermanency phase and there was no such entitlement. The department's counsel cited to section 361.3, which

---

<sup>2</sup> To the extent appellants question whether the record establishes that the juvenile court terminated the legal guardianship, we are satisfied on this record that it did.

<sup>3</sup> Section 361.2, subdivision (a) provides:

“When a court orders removal of a child pursuant to Section 361, the court shall first determine whether there is a parent of the child, with whom the child was not residing at the time that the events or conditions arose that brought the child within the provisions of Section 300, who desires to assume custody of the child. If that parent requests custody, the court shall place the child with the parent unless it finds that placement with that parent would be detrimental to the safety, protection, or physical or emotional well-being of the child.”

deals with relative placement preference. However, from the context of counsel's remarks, it appears he meant to cite section 366.3, which addresses postpermanency planning hearings.

***Department's Assessment of Mother***

The department submitted a May 10, 2011, addendum report in which it recommended against reunification services for mother. The department had learned from mother in March that she intended to marry a man with whom she had a relationship for several years. Mother's fiancé had a criminal history, however, which included three felony convictions. His most recent offense occurred in 2006. Mother understood that her fiancé's criminal record would impede her ability to reunify. Although mother expressed a willingness to move into her own dwelling, she had made no effort to find her own housing independent from her fiancé.

The department also learned mother was diagnosed with a Bi-Polar I disorder for which she was receiving services. Those services consisted of three to five weekly contacts, therapy, medication services, and/or case management/monitoring. The treating agency, however, did not indicate whether mother was capable of meeting her own needs independently, let alone those of a young teenager, such as Shelby. The department questioned mother's ability to cope with her own mental health issues as well as meet Shelby's needs. It also appeared unlikely that mother could complete services in six months' time.

In addition, mother reportedly said she felt Shelby was doing well in her current foster care placement and she (mother) did not want to disrupt that. Mother did want to continue visiting with Shelby and eventually have overnight visits with her.

Mother's visits with Shelby, however, had been sporadic. Although mother claimed transportation was difficult, the department had issued mother monthly bus passes. She also missed at least two to three visits due to illness.

In addition, a department social worker spoke with Shelby's foster parent and therapist. Shelby was very disappointed and sad when mother would miss visits. Mother acknowledged it hurt and disappointed Shelby greatly when mother missed her visits. Thirteen-year-old Shelby also behaved very infant-like and clingy after visits.

It was apparent mother loved Shelby and wished to work on reestablishing a relationship with Shelby. Shelby likewise wished to strengthen her bond with mother. Mother nevertheless had to establish consistent visitation with Shelby and show that she (mother) wanted to be a significant part of Shelby's life. The department believed this would take much time and diligence on mother's part.

It also did not appear to be in Shelby's best interests to set a section 366.26 hearing on her behalf. Due to her age and her wish not to be adopted, Shelby was "not generally adoptable." Further, there was no one willing or able to become her legal guardian. In a permanent planned living arrangement or plan of long term foster care, Shelby and mother could continue to build their relationship and reunification services could be reevaluated at a later date.

At a June trial confirmation hearing, mother's attorney claimed mother had three witnesses to present while another attorney claimed that Shelby's counsel intended to call four witnesses. The court ordered the parties to be present for a July 5th hearing.

### ***New Permanent Plan Hearing***

Mother did not attend the July 5th hearing and her attorney had no good cause to offer for mother's nonappearance. Her attorney wished to go forward nonetheless. However, neither Shelby's nor mother's attorney presented any witnesses. The matter once again came down to a legal argument among the parties over whether mother was statutorily entitled to reunification services, if not placement, under section 361.2.

Once the parties submitted the matter, the juvenile court announced it was not persuaded that mother was entitled to reunification services or placement. Further, the

court determined, based on the department's assessment, that return of Shelby to mother would be detrimental, because mother had been away and not acted as the parent of Shelby for a number of years.

The court also found clear and convincing evidence that a section 366.26 hearing was not in Shelby's best interests. The court ordered that Shelby remain placed in her current foster home with a goal of a less restrictive foster care placement and/or return to mother's home.

Because mother had come forward and asked to be assessed for possible placement, the court ordered the department to offer mother a parenting course and also assess with Shelby's therapist whether to pursue conjoint therapy between Shelby and mother. The court also continued supervised visits between Shelby and mother. With these services, as the court explained on the record, it could be determined whether Shelby could be safely returned to mother in the future. In its written order, the court struck the department's recommendation to deny mother services and interlineated its order for the department to offer mother a parenting course and assess conjoint therapy between Shelby and mother.

## **DISCUSSION**

Shelby contends the juvenile court erroneously denied her request for services to reunify her with mother. Mother joins but takes this argument a step further and claims the court should have placed Shelby in her custody. According to both appellants, because the department filed an original dependency petition under section 300, when it detained Shelby from the legal guardians' care, mother as Shelby's noncustodial parent was entitled to be assessed by the department for placement pursuant to section 361.2 and services pursuant to section 361.5. Appellants further argue that the department never properly assessed mother for placement and services and unreasonably delayed the dependency proceeding in Fresno. Alternatively, they argue that the juvenile court did

not give mother “the consideration to which she was entitled under [section 366.3].” We disagree.

Despite appellants’ arguments to the contrary, the juvenile court did order services for mother at the July hearing, for the specific purpose of determining whether Shelby could be safely returned to mother in the future. This is the essence of reunification services. (See §§ 361.5, subd. (a), 366.21, subds. (e) & (f), & 366.22 (a).) In its written order, the juvenile court struck the order, proposed by the department, to deny mother services. It instead directed the department to offer mother a parenting course and to assess with Shelby’s therapist whether to pursue conjoint therapy between Shelby and mother. The court further continued supervised visits between the two. The court did not order mother to participate in these services (see § 361.5, subd. (a)), but we are hard pressed to conclude from that omission that the court’s order otherwise did not equate with an order for reunification services. Thus, the premise of Shelby and mother’s argument is flawed.

Clearly, the juvenile court did deny mother’s request for placement, but it was not for want of a department assessment or the court’s consideration. The court expressly found that to return Shelby to mother’s custody would be detrimental to the child. We observe that Shelby concedes on appeal that placement with mother would have been detrimental. To the extent mother disagrees, she overlooks the evidence that she felt Shelby was doing well in her current foster care placement and she (mother) did not want to disrupt that. Mother also neglects the department’s evidence supporting the court’s determination.

Mother lived with her fiancé who had a criminal history, including felony convictions, which would preclude placement in their home absent a criminal exemption. Although mother expressed a willingness to move into her own dwelling to secure placement, she had made no effort to find her own housing independent from her fiancé.

In addition, mother was diagnosed with a Bi-Polar I disorder for which she was receiving a number of services. There was no indication that she was capable of meeting her own needs, not to mention Shelby's special needs. Further, mother's visits with Shelby had been sporadic. Mother's inability to regularly attend visits raised doubt regarding whether she would be able to adequately care for Shelby. These circumstances, coupled with the fact that mother had not parented Shelby for years, reasonably supported the court's decision against placement.

Under these circumstances, we could stop our analysis here. However, we add the following.

Shelby and mother repeatedly make the point that mother was the child's noncustodial parent in 2010 when Shelby's emotional and behavioral problems became more than her legal guardians could manage. Yet, appellants lose sight of why that was.

Shelby had been a juvenile dependent removed from parental custody. When her father failed to reunify and mother waived reunification services, the juvenile court in 2006 selected legal guardianship as Shelby's permanent plan and named her maternal relatives as her legal guardians. The juvenile court dismissed the juvenile dependency proceeding after the legal guardianship was established. Nevertheless, the juvenile court had continuing jurisdiction over the child as a ward. (§ 366.4.)

Furthermore, the law did not require the department to begin anew with an original juvenile dependency proceeding in 2010. Section 366.3, subdivision (b) provides in relevant part:

“If the court has dismissed dependency jurisdiction following the establishment of a legal guardianship ... and the legal guardianship is subsequently revoked or otherwise terminated, the county department of social services or welfare department shall notify the juvenile court of this fact. The court may vacate its previous order dismissing dependency jurisdiction over the child.

“[T]he proceedings to terminate a legal guardianship that has been granted pursuant to Section 360 or 366.26 shall be held either in the juvenile court that retains jurisdiction over the guardianship as authorized by Section 366.4 or the juvenile court in the county where the guardian and child currently reside, based on the best interests of the child.... Prior to the hearing on a petition to terminate legal guardianship pursuant to this subdivision, the court shall order the county department of social services or welfare department having jurisdiction or jointly with the county department where the guardian and child currently reside to prepare a report, for the court’s consideration, that shall include an evaluation of whether the child could safely remain in, or be returned to, the legal guardian’s home, without terminating the legal guardianship, if services were provided to the child or legal guardian. If applicable, the report shall also identify recommended family maintenance or reunification services to maintain the legal guardianship and set forth a plan for providing those services.”

This statutory language clearly sets forth the procedure to be followed when a ward of a legal guardianship, granted under juvenile dependency law, is at risk of harm. It clarifies that the juvenile court’s focus is on the legal guardianship and whether the child could safely remain in, or be returned to, the legal guardian’s home, without terminating the legal guardianship, if services were provided to the child or legal guardian. Notably, there is no mention of the parents or any rights they might have through this stage of the legal guardianship proceedings.

Once the legal guardianship is terminated, as was the case here in late March 2011, section 366.3, subdivision (b) further provides: either juvenile court “may *resume* dependency jurisdiction over the child,” and may order the county department of social services to develop a new permanent plan, which shall be presented to the court within another 60 days. (§ 366.3, subd. (b); italics added.) The statutory phrase “may resume dependency jurisdiction over the child” reinforces our conclusion that the department did not have to begin anew with an original juvenile dependency petition (§ 300), as it did in 2010.

Once the legal guardianship is terminated and the juvenile court resumes its dependency jurisdiction, the parents' rights come into play. They are entitled to notice of the termination of the legal guardianship and to participate in the new permanency planning hearing at which the juvenile court shall try to place the child in another permanent placement. (§ 366.3, subd. (b).)

Mother had the benefit of these rights in the new permanency planning hearing. Indeed, she received court-appointed counsel. The fact that mother did not attend the hearing and her counsel did not call any witnesses did not result in a violation of those due process rights.

At the new permanency planning hearing,

*“the parents may be considered as custodians but the child shall not be returned to the parent or parents unless they prove, by a preponderance of the evidence, that reunification is the best alternative for the child. The court may, if it is in the best interests of the child, order that reunification services again be provided to the parent or parents.”* (§ 366.3, subd. (b).)

Thus, while parents are *entitled* to notice and the opportunity to participate in the child's new permanency planning hearing, they are not *entitled* either to placement or services. (§ 366.3, subd. (b).) Indeed, it is up to the parents to prove that reunification is the best alternative for the child. (*Ibid.*) In this case, although the juvenile court was not persuaded to place Shelby with mother as of July 2011, it did set reunification as an alternative goal for Shelby and mother.

Finally, appellants assume the procedural path the department mistakenly took in this case entitled mother to rights, which she did not possess under section 366.3, subdivision (b). We are not persuaded. Appellants cite no authority to support their assumption and this court knows of no such authority. Given that the legal issue of what statutory procedure to follow was debated for months in the juvenile court, neither

appellant is in any position to argue some form of detrimental reliance on the approach the department initially took by filing a new dependency petition.

**DISPOSITION**

The July 5, 2011, juvenile court orders are affirmed.