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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

In re JOSHUA C., a Person Coming Under the
Juvenile Court Law.

FRESNO COUNTY DEPARTMENT OF
SOCIAL SERVICES,

Plaintiff and Respondent,

v.

CHRISTINA D.,

Defendant and Appellant.

F063540

(Super. Ct. No. 10CEJ300150-2)

OPINION

THE COURT*

APPEAL from orders of the Superior Court of Fresno County. Jane Cardoza,
Judge.

Gregory Chappel, under appointment by the Court of Appeal, for Defendant and
Appellant.

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

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* Before Wiseman, Acting P.J., Levy, J. and Cornell, J.

Christina D. appeals from the juvenile court's dispositional order denying her reunification services pursuant to Welfare and Institutions Code section 361.5, subdivision (b)(10)¹ as to her two-year-old son Joshua. Asserting that the court misapplied section 361.5, subdivision (b)(10), Christina contends that she made reasonable efforts during the relevant timeframe to treat the problems that led to the removal of Joshua's brother, Triston. Finding substantial evidence to support the juvenile court's decision, we affirm.

PROCEDURAL AND FACTUAL SUMMARY

Dependency proceedings were initiated in Sacramento County in March 2009 when Christina was involuntarily admitted to a psychiatric facility because she threatened to commit suicide. Then 23-month-old Triston was taken into protective custody and placed in foster care and the Sacramento County Department of Social Services filed a dependency petition alleging that Christina's mental health problems impaired her judgment and rendered her unable to provide adequate care, supervision and protection for Triston. The petition alleged that on more than one occasion Christina attempted and/or made threats to harm herself or Triston. Prior to Triston's removal in March 2009, Christina had been receiving family maintenance services since May 2008 for inappropriately disciplining Triston.

The Sacramento County Juvenile Court ordered Christina to participate in mental health counseling, parenting classes and submit to random drug testing. She complied by participating in mental health therapy, completing a parenting program and testing negative for drugs. As a result, in November 2009, Triston was placed in her custody on a family maintenance plan. Approximately a week before, Christina gave birth to Joshua.

In December 2009, Christina moved to Fresno to live with her boyfriend, Joshua C., Joshua's father. Christina and Joshua C. engaged in domestic violence. In June 2010,

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

her case was transferred to the Fresno County Juvenile Court (hereafter “the juvenile court”).

In July 2010, the juvenile court accepted Christina’s case and ordered her to participate in parenting classes, counseling and anger management. In August, Christina was scheduled to participate in anger management but missed her appointment because she did not have a babysitter. That same month, she was referred to Jane Amling-Heiken for individual therapy.

By September 2010, Christina was living in emergency housing with the children. In late September, the emergency housing security guard contacted social worker Lisa Reyna of the Fresno County Department of Social Services (department) to report that Christina left then 11-month-old Joshua alone while she took Triston for a walk. Christina told Ms. Reyna that Joshua was asleep so she left the front door open and asked a neighbor to listen for him in case he woke up. Christina said she was only gone for 10 to 15 minutes.

Ms. Reyna was contacted again in early October 2010 and informed that two days before Christina and Joshua C. were engaged in a physical altercation at his residence in the presence of the children. According to the police, it was mutual combat during which Christina’s finger was caught in Joshua C.’s shirt and broken. Ms. Reyna offered to relocate Christina and the children to a woman’s shelter so she could complete her reunification services. Christina declined.

In October 2010, the department took Joshua and Triston into protective custody. The department filed an original dependency petition on Joshua’s behalf, alleging that Christina exposed him to domestic violence and left him alone and unsupervised. (§ 300, subd. (b).) The petition further alleged that Triston was removed from Christina because of her mental instability and that Christina failed to follow through with her mental health counseling, thus placing Joshua at a similar risk of abuse or neglect. (§ 300, subd. (j).) The department filed a subsequent petition (§ 342) on Triston’s behalf, alleging that

Christina placed Triston at risk of harm by her ongoing domestic violence. Triston and Joshua were placed in separate foster care homes.

The juvenile court ordered the children detained and ordered Christina and Joshua C. to participate in parenting classes, substance abuse, mental health and domestic violence assessments and any recommended treatment, and submit to random drug testing.

In February 2011, following a contested jurisdictional hearing, the juvenile court adjudged the children dependents and set the dispositional hearing for March 2011. In its dispositional report filed for the March hearing, the department recommended that the juvenile court order reunification services for Christina and Joshua C. as to Joshua but terminate Christina's reunification services as to Triston for failure to make sufficient progress. The department reported that Christina began a parenting class in February 2011 but was dropped from the class after missing three sessions. She was scheduled to start the class again in March. In November 2010, Christina began attending anger management classes and participating in individual therapy with Ms. Amling-Heiken. In January 2011, Ms. Amling-Heiken reported that Christina had made "a small amount of progress ... regarding personal insight, judgment, responsibility, reduced disorganization, chaos, drama and depression." In December 2010, Christina was scheduled for a domestic violence assessment but failed to attend the appointment. That same month, she completed a substance abuse evaluation and it was recommended that she participate in residential treatment. She was scheduled for two intake appointments in January 2011 but did not attend either one. In October 2010, Christina enrolled in random drug testing. In December 2010, she tested positive for marijuana and opiates but had a prescription on file. She was told to provide the department verification of attendance at Alcoholics/Narcotics Anonymous (AA/NA) meetings but had not done so.

In March 2011, Joshua C. was issued a temporary restraining order against Christina because she attempted to contact and harass him by telephone and internet.

In May 2011, the juvenile court conducted the dispositional hearing as to Triston, ordered him removed from Christina's custody, terminated her reunification services, and set a section 366.26 hearing for September 2011. The court set the dispositional hearing as to Joshua and continued it until July 2011.

Meanwhile, on June 6, 2011, the juvenile court received the department's report for the dispositional hearing. Rather than recommend reunification services for Christina, as it had previously done, the department recommended that the juvenile court deny Christina reunification services pursuant to section 361.5, subdivision (b)(10), because the juvenile court terminated her reunification services as to Triston and she failed to make subsequent reasonable efforts to treat the problems that required his removal. As supporting evidence, the department cited the facts that in October 2010, Christina and Joshua C. engaged in domestic violence in the presence of the children, in December 2010, she tested positive for marijuana, and in March 2011, Joshua C. was granted a protective order against her.

The department also reported that Christina began her third parenting class in March 2011, and had missed three classes by April 2011. Christina was still in therapy with Ms. Amling-Heiken. However, Christina was dropped from the anger management program she started in November 2010. Consequently, departmental staff conducted several meetings in April 2011 to determine whether she would be accepted back into the program. At those meetings, the staff recommended that Christina enter residential drug treatment but she refused stating that she was employed and that she disagreed with the recommendation. The department also reported that Christina failed to drug test 18 out of 32 times and stopped drug testing altogether in April 2011.

On June 10, 2011, Christina entered the Spirit of Woman of California residential drug treatment program (Spirit of Woman) and was expected to complete the residential phase of her treatment in December 2011. In a letter to the juvenile court dated July 12,

2011, Christina’s case manager informed the court that Christina was attending all of her classes, meeting weekly for individual therapy, and appeared to be doing well.

In July 2011, the juvenile court conducted a contested dispositional hearing and took judicial notice of Triston’s case file. Lisa Reyna testified that Christina completed the parenting program and was still in treatment at the Spirit of Woman. Ms. Reyna did not believe that Christina had made significant progress in addressing her domestic violence or anger issues.

Christina testified that she was participating in substance abuse, domestic violence, group counseling and group therapy at the Spirit of Woman. She also testified that she applied for a restraining order against Joshua C., and that the hearing was set for later in the month. She said she applied for the restraining order because the abuse had become too much to handle. She also testified that she had learned about herself, her addiction, domestic violence, and how she handled situations.

At the conclusion of the hearing, the juvenile court ordered Joshua removed from Christina and Joshua C.’s custody, denied Christina reunification services as recommended and ordered reunification services for Joshua C. This appeal ensued.

DISCUSSION

I. Overview

Reunification of parent and child is the paramount objective of the dependency cases until permanency planning. (*Judith P. v. Superior Court* (2002) 102 Cal.App.4th 535, 546.) To that end, parents of dependent children are generally entitled to reunification services “aimed at assisting the parent in overcoming the problems that led to the child's removal.” (*Id.*)

The statute governing reunification services is section 361.5. Subdivision (a) of section 361.5 embodies the general statutory mandate for the provision of reunification services whenever a dependent child is removed from parental custody. Subdivision (b) of section 361.5 sets forth a number of circumstances in which reunification services can

be bypassed. These bypass provisions reflect the Legislature's recognition that “it may be fruitless to provide reunification services under certain circumstances. [Citation.] Once it is determined one of the situations outlined in subdivision (b) applies, the general rule favoring reunification is replaced by a legislative assumption that offering services would be an unwise use of governmental resources. [Citation.]” (*Renee J. v. Superior Court* (2001) 26 Cal.4th 735, 744.)

At issue here is section 361.5, subdivision (b)(10), which applies when reunification services previously provided with respect to the dependent child’s sibling have been terminated. It provides in relevant part:

“(b) Reunification services need not be provided to a parent ... described in this subdivision when the court finds, by clear and convincing evidence ... [¶] ... [¶] (10) [t]hat the court ordered termination of reunification services for any siblings or half siblings of the child because the parent ... failed to reunify with the sibling or half sibling after the sibling or half sibling had been removed from that parent ... and that, according to the findings of the court, this parent ... has not subsequently made a reasonable effort to treat the problems that led to removal of the sibling or half-sibling of that child from that parent” (§ 361.5, subd. (b)(10).)

Subdivision (b)(10) contemplates a two-prong inquiry: (1) whether the parent previously failed to reunify with the dependent child’s sibling(s); and (2) whether the parent “subsequently made a reasonable effort to treat the problems that led to removal of the sibling” (§ 361.5, subd. (b)(10); see *Cheryl P. v. Superior Court* (2006) 139 Cal.App.4th 87, 96 (*Cheryl P.*)). Only the second prong is disputed here.

We review the juvenile court’s order denying reunification services under section 361.5, subdivision (b) for substantial evidence. (*Francisco G. v. Superior Court* (2001) 91 Cal.App.4th 586, 600.) In so doing, we bear in mind that the juvenile court was required to employ the heightened standard of clear and convincing evidence in applying the statute. (*In re Alvin R.* (2003) 108 Cal.App.4th 962, 971.) In addition, we draw all reasonable inferences from the evidence to support the juvenile court’s findings and

orders, and we review the record in the light most favorable to its determinations. (*In re Heather A.* (1996) 52 Cal.App.4th 183, 193.)

With those principles in mind, we turn to the specific issue presented here.

II. Contention

Under the applicable statutory exception, prior failure to reunify with the dependent child's sibling warrants bypass of reunification services, unless the parent "*subsequently* made a reasonable effort to treat the problems" underlying the sibling's removal. (§ 361.5, subd. (b)(10), italics added.)

Christina contends that the word "subsequently" refers to efforts made after the order terminating reunification services as to the sibling. In her case, she argues, the triggering event occurred in May 2011, when the juvenile court terminated her reunification services as to Triston. Her efforts subsequent to that, she claims, reasonably addressed the concerns requiring Triston's removal thus rendering section 361.5, subdivision (b)(10) inapplicable in her case.

The department contends that the triggering event under the statute is the date the sibling was initially removed from parental custody, which in Triston's case, it further contends, was May 2009. Thus, the department argues that the juvenile court could consider the reasonableness of Christina's efforts from that date forward in applying the statute.

In her reply brief, Christina clarified that she does not dispute that the juvenile court could consider her efforts prior to its order terminating reunification services. However, she contends that, correctly applied, section 361.5, subdivision (b)(10) requires the juvenile court to focus its determination on the efforts made by a parent after the termination of reunification of services for a sibling. To that end, she cites *In re Harmony B.* (2005) 125 Cal.App.4th 831 (*Harmony B.*) as authority establishing the order terminating reunification services as the proper reference point for the juvenile court's analysis.

As we explain in our analysis that follows, *Harmony B.* is unavailing because it is factually distinguishable and represents a conflicting view on the issue Christina raises. Further, we conclude on this record that the juvenile court properly denied Christina reunification services under section 361.5, subdivision (b)(10).

III. Analysis

A. Harmony B. is unavailing.

In *Harmony B.*, the juvenile court, at a combined hearing, terminated reunification services as to appellants' (mother and father) two older children and, based on that termination order, denied them reunification services as to the youngest child pursuant to section 361.5, subdivision (b)(10). (*Harmony B.*, *supra*, 125 Cal.App.4th at pp. 836, 839.) On appeal, the father challenged the denial order, arguing that in order to find that the parent failed to make reasonable efforts under the statute, there had to be a gap in time between its orders terminating and denying reunification services. (*Id.* at p. 840.) The Fourth District Court of Appeal, Division Two, affirmed the juvenile court's denial order, concluding that there did not have to be a gap in time between the two orders under section 361.5, subdivision (b)(10). (*Id.* at pp. 842-843.) If there was a gap, the court concluded, the juvenile court should consider any efforts the parent made in that interim period to correct his or her problems. If both orders were made in immediate proximity, however, the court concluded that the "no-reasonable effort" clause was a formality. (*Ibid.*) The court explained:

“[W]hen some time has elapsed after termination of reunification services with respect to one child, the court appropriately must take into account the parent's reasonable efforts to correct the underlying problems in the interim before the court denies reunification services with respect to a second child. When, however, as in the instant case, the two proceedings occur in immediate proximity, the trial court required finding under the 'no-reasonable effort' clause is a formality because the parent's circumstances necessarily will not have changed. In our view, the statute was amended to provide a parent who has worked toward correcting his or her problems an opportunity to have that fact taken into consideration in subsequent proceedings; it was not amended to create further delay so as to allow a

parent, who up to that point failed to address his or her problems, another opportunity to do so.” (*Harmony B.*, *supra*, 125 Cal.App.4th at pp. 842-843.)

The following year, the Fourth District Court of Appeal, Division One published a factually similar case, *Cheryl P.*, *supra*, 139 Cal.App.4th 87, taking a different position. As in *Harmony B.*, the juvenile court in *Cheryl P.* terminated reunification services as to one child and denied services as to the other pursuant to section 361.5, subdivision (b)(10), at a combined hearing. (*Cheryl P.*, *supra*, 139 Cal.App.4th at pp. 94-95.) In denying the parents reunification services, the juvenile court observed that the agency should not have to continue services since they proved unsuccessful. (*Id.* at p. 95.)

The *Cheryl P.* court reversed, concluding that the juvenile court did not make a finding that the parents failed to make a reasonable effort to treat the problems that led to the first child’s removal but instead focused on their lack of progress after 18 months of services. (*Id.* at p. 97.) Additionally, the *Cheryl P.* court concluded that the juvenile court wrongly applied a “fruitless” standard in concluding that additional services would be “pointless.” (*Ibid.*) Finally, the court interpreted “subsequently” to refer to efforts made after removal of the sibling. (*Id.* at p. 98.) The court stated: “Our conclusion unavoidably rests on the premise that when a case involves the almost simultaneous termination of services in the sibling’s case and the denial of services at the child’s dispositional hearing, the statutory language ‘has not *subsequently* made a reasonable effort to treat the problems’ [citation, italics added] refers to reasonable efforts made since the removal of the sibling. [Citation.]” (*Ibid.*)

Harmony B. and *Cheryl P.* are factually distinct from Christina’s case in that the termination and denial of services orders in those cases were issued at the same hearing. In this case, the juvenile court terminated Christina’s reunification services as to Triston in May 2011, and denied her reunification services as to Joshua in July 2011. Moreover, to the extent that the *Harmony B.* and *Cheryl P.* holdings apply, they present conflicting views on the interpretation of the modifier “subsequently.” However, we need not take a

position in this case because we conclude that substantial evidence supports a finding that Christina's efforts to resolve the problems necessitating Triston's removal were not reasonable from any relevant vantage point.

B. Substantial evidence supports the juvenile court's denial of reunification services pursuant to section 361.5, subdivision (b)(10).

Triston was initially removed from Christina's custody in March 2009 because she was mentally unstable and threatening him and herself harm. He was removed again along with Joshua in October 2010 because she exposed them to domestic violence. From March 2009 until May 2011, when the juvenile court terminated her services, Christina was provided parenting classes, mental health and domestic violence counseling, and substance abuse treatment. During that time, she did not participate in domestic violence counseling and, not only engaged in ongoing domestic violence with Joshua C. in the presence of the children, but aggressively pursued contact with him, necessitating a court order to restrain her. In addition, she was dropped from her parenting class, did not participate in drug treatment or attend AA/NA meetings, and stopped drug testing in April 2011, after failing to drug test numerous times. On this evidence, the juvenile court had more than substantial evidence before it to determine that Christina's efforts following Triston's removal were not reasonable in the context of section 361.5, subdivision (b)(10).

Substantial evidence also supports the juvenile court's finding that Christina's efforts to treat the problems requiring Triston's removal subsequent to its order terminating her reunification services in May 2011, were not reasonable. Though Christina participated in individual therapy, completed the parenting program and entered drug treatment during the post-termination period, she actively resisted residential drug treatment as late as April 2011, and did not enter the program until after the department published its recommendation to deny her reunification services. It was only upon

entering drug treatment that she began participating in domestic violence counseling, which was a key component of her services plan.

The “no-reasonable effort” clause provides a means of mitigating a harsh rule that would allow a juvenile court to reflexively deny services upon a parent’s failure to reunify with a child’s sibling when the parent in the meantime worked toward correcting the underlying problems. (*Cheryl P.*, *supra*, 139 Cal.App.4th at p. 97.) The reasonable effort requirement focuses on efforts, not progress, however, the efforts must be genuine. (*R.T. v. Superior Court* (2012) 202 Cal.App.4th 908, 914; See *K.C. v. Superior Court* (2010) 182 Cal.App.4th 1388, 1393.) Even assuming for the sake of crediting Christina’s best argument that the “no-reasonable clause” refers to the post-termination period, the evidence supports a reasonable inference that her efforts were more motivated by the loss of another child rather than by a desire to safely parent her children. Consequently, the evidence supports a finding that Christina did not make reasonable efforts to treat the problems that necessitated Triston’s removal.²

Under the circumstances, the juvenile court was warranted in denying Christina reunification services for Joshua based on section 361.5, subdivision (b)(10).

DISPOSITION

The juvenile court’s dispositional order denying Christina reunification services as to Joshua is affirmed.

² Christina contends that the juvenile court did not make an express finding that she failed to make reasonable efforts as required by section 361.5, subdivision (b)(10). We can infer a required finding if, as here, it is supported by substantial evidence. (*In re Corienna G.* (1989) 213 Cal.App.3d 73, 83.)