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

AMBER Y.,

Petitioner,

v.

THE SUPERIOR COURT OF KERN  
COUNTY,

Respondent;

KERN COUNTY DEPARTMENT OF  
HUMAN SERVICES,

Real Party in Interest.

F065096

(Super. Ct. No. JD127414)

**OPINION**

**THE COURT\***

ORIGINAL PROCEEDINGS; petition for extraordinary writ review. Louie L. Vega, Judge.

James V. Sorena, for Petitioner.

No appearance for Respondent.

Theresa A. Goldner, County Counsel, and Paul E. Blackhurst, Deputy County Counsel, for Real Party in Interest.

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\* Before Gomes, Acting P.J., Kane, J., and Detjen, J.

Amber Y. seeks an extraordinary writ (Cal. Rules of Court, rule 8.452) from the juvenile court's orders issued at a contested six-month review hearing (Welf. & Inst. Code, § 366.21, subd. (e))<sup>1</sup> terminating her reunification services and setting a section 366.26 hearing as to her one-year-old son, K.Y.<sup>2</sup> She contends the juvenile court erroneously terminated reunification services without considering the barriers to reunification she faced as an incarcerated parent as required by section 366.21, subdivision (e). We deny the petition.

### **PROCEDURAL AND FACTUAL SUMMARY**

These dependency proceedings were initiated in September 2011 when the Kern County Department of Human Services (department) took then three-month old K.Y. into protective custody because of Amber's drug use. At the time, Amber was on probation following an arrest for robbery. One of the conditions of her probation included drug treatment. Amber was in a drug treatment program when the department removed K.Y. from her.

In the several days following K.Y.'s removal, Amber smoked and injected methamphetamine. She was arrested by her probation officer after testing positive for the drug. Amber was released on bail and left the state. After she failed to appear in her criminal proceedings, she was arrested on a bench warrant and extradited to Kern County.

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

<sup>2</sup> We refer to petitioner's son by his first and last initials because of the uniqueness of his name. (Cal. Rules of Court, rule 8.401(a)(2).)

Meanwhile, the juvenile court ordered K.Y. detained and ordered the department to provide Amber reunification services. The department offered Amber counseling in parenting, substance abuse and child neglect and random drug testing.

In November 2011, Amber pled guilty to various charges and, in December 2011, she appeared in custody at the dispositional hearing. The juvenile court ordered K.Y. removed from the custody of his parents, Amber and Kurtis, and ordered them to participate in reunification services. Amber's services plan comprised of the services previously ordered. The juvenile court also advised Amber and Kurtis that their failure to regularly participate and make substantive progress in their court-ordered services could result in the termination of reunification services at the six-month review hearing which it set for June 2012.

In January 2012, Amber was committed to Valley State Prison for Women in Chowchilla for two years.

In March 2012, Amber contacted social worker Rolando Hernandez, stating that she wanted to participate in her services but did not know if they were available in prison. She said they offered parenting/neglect classes and substance abuse counseling at Chino State Prison and was willing to request a transfer there if the services were not available at Chowchilla.

Mr. Hernandez spoke with a prison counselor at Chowchilla who said that Amber had placed her name on the waiting list for substance abuse counseling in February 2012, but that the waiting list was long. The counselor said he did not have access to the parenting class, but said all the inmates had access to the class and it was their responsibility to provide verification of their attendance to the social worker. Mr. Hernandez told the counselor that Amber applied to have K.Y. placed with her through the community prisoner mother program but that the department did not approve her having him in her custody.

Amber and K.Y. visited in April and May 2012 and the visits went well.

In June 2012, the juvenile court conducted the six-month review hearing. Amber appeared in custody and through counsel argued the juvenile court should continue reunification services. Her attorney argued that Amber's failure to complete her court-ordered services was not a matter of choice but rather a lack of access to them by virtue of her incarceration. Under those circumstances, her attorney further argued, the juvenile court was required, under section 366.21, subdivision (e), to consider the extent to which Amber's incarceration prevented her from participating in services when deciding whether to terminate them.

At the conclusion of the hearing, the juvenile court followed the recommendation of the department, terminated reunification services for both parents and set a section 366.26 hearing. In doing so, the juvenile court found that Amber availed herself of the services provided and made minimally acceptable efforts. The juvenile court also found that Amber failed to participate regularly and make substantive progress in her court-ordered services and that there was not a substantial likelihood K.Y. could be returned to her custody within another six months. This petition ensued.

### **DISCUSSION**

Amber contends that the juvenile court misapplied section 366.21, subdivision (e) by not considering that the unavailability of services in prison prevented her from completing her reunification services. We find no support for her contention in the record.

Section 366.21, subdivision (e), the governing statute at the six-month review hearing, grants the juvenile court discretion to terminate reunification services and set a section 366.26 hearing where, as here, the child was under three years of age at the time of removal and the juvenile court finds by clear and convincing evidence that the parent failed to participate regularly and make substantive progress in a court-ordered treatment

plan. In determining whether an incarcerated parent regularly participated and made substantive progress, section 366.21, subdivision (e) requires the juvenile court to consider such a parent's ability to access the services ordered.

Amber contends that the juvenile court erred by not considering whether she had access to her court-ordered services. The record, however, does not support her claim. According to the reporter's transcript of the six-month review hearing, Amber's attorney argued that the services ordered for her were not available to her in prison and specifically cited the juvenile court to section 366.21, subdivision (e) and its mandate that the court consider how Amber's incarceration may have prevented her from accessing those services. While the juvenile court did not address Amber's access to services in issuing its ruling, we must presume that the juvenile court properly applied the law unless the appellant affirmatively establishes otherwise. (*Mejia v. City of Los Angeles* (2007) 156 Cal.App.4th 151, 158.) Here, other than asserting the claim, Amber does not show that the juvenile court failed to take her incarceration into proper consideration. Thus, we presume that it did and find no error.

#### **DISPOSITION**

The petition for extraordinary writ is denied. This opinion is final forthwith as to this court.