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

Q.H.,

Petitioner,

v.

THE SUPERIOR COURT OF FRESNO  
COUNTY,

Respondent;

FRESNO COUNTY DEPARTMENT OF  
SOCIAL SERVICES,

Real Party in Interest.

F065271

(Super. Ct. Nos. 05CEJ300175-1,  
05CEJ300175-2, 05CEJ300175-3)

**OPINION**

**THE COURT\***

ORIGINAL PROCEEDINGS; petition for extraordinary writ review. Mary Dolas,  
Commissioner.

Cheryl Kay Turner, for Petitioner.

No appearance for Respondent.

Kevin Briggs, County Counsel, and William G. Smith, Deputy County Counsel,  
for Real Party in Interest.

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

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Petitioner (mother) seeks an extraordinary writ (Cal. Rules of Court, rule 8.452) from the juvenile court's orders issued at a contested dispositional hearing denying her reunification services and setting a Welfare and Institutions Code section 366.26<sup>1</sup> hearing as to her 10-year-old son, Brice; seven-year-old son, Glenn; and four-year-old daughter, Jayda. We deny the petition.

### **PROCEDURAL AND FACTUAL SUMMARY**

In December 2011, the Fresno County Department of Social Services (department) removed then nine-year-old Brice, six-year-old Glenn and three-year-old Jayda from petitioner's custody because she struck Glenn in the face causing his nose to bleed. Glenn said that petitioner struck him because he gave her a pair of mismatched socks. Petitioner denied intentionally hitting Glenn but conceded she may have accidentally hit him.

The December 2011 incident was not the first time Glenn was injured while in petitioner's care. In September 2005, Glenn, then five months old, suffered a skull fracture and spiral fracture of his right femur. At the time, he and then three-year-old Brice were living with petitioner and their father (hereafter "the father"). The department took the children into protective custody and filed a dependency petition alleging in part that petitioner and the father severely abused Glenn. The juvenile court found the allegations true, exercised its dependency jurisdiction over the children, and ordered petitioner to participate in services, which included parenting and anger management classes. In April 2007, Brice and Glenn were placed with petitioner under a plan of family maintenance and she successfully reunified with them.

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

In December 2011, the juvenile court ordered Brice, Glenn and Jayda detained and ordered the department to offer petitioner parenting classes and a mental health evaluation and to arrange reasonable supervised visitation. In March 2012, the juvenile court adjudged the children dependents of the court and set the matter for disposition.

In July 2012, the juvenile court conducted the dispositional hearing. Going into the hearing, the department recommended that the juvenile court deny petitioner reunification services under section 361.5, subdivision (b)(3), because the children were removed from her twice because of physical abuse. In addition, Brice and Glenn stated that petitioner hit them on a regular basis and Brice said she once held a knife to this throat and threatened to kill him. Petitioner challenged the department's recommendation and the dispositional hearing was conducted as a contested hearing at her request.

Social worker Kimberly Truss testified that she interviewed petitioner in June 2012, and that petitioner denied any responsibility for Glenn's fractures in 2005 and refuted Brice and Glenn's claims that she hit them. Ms. Truss said that Brice and Glenn love petitioner and are bonded to her but did not want to be in her care. They said they wanted to visit her as long as the visit was supervised because they were afraid of being hit. They said they wanted to live with their foster parent.

Petitioner testified and acknowledged inappropriately disciplining the children. She admitted that she "popped" Glenn but denied regularly using corporal punishment on the children. She also denied holding a knife to her son's throat. She testified that she was disciplined using corporal punishment but testified that "No child deserves to be hit."

At the conclusion of the hearing, the juvenile court ordered the children removed from petitioner's custody, found that it would not be in the children's best interests to provide petitioner reunification services, denied petitioner reunification services under section 361.5, subdivision (b)(3) and set a section 366.26 hearing. This petition ensued.

## **DISCUSSION**

Petitioner contends the juvenile court abused its discretion in denying her reunification services. We disagree.

The juvenile court denied petitioner reunification services under section 361.5, subdivision (b)(3), which provides in relevant part:

“Reunification services need not be provided to a parent ... described in this subdivision when the court finds, by clear and convincing evidence ... [¶] ... [¶] [t]hat the child or a sibling of the child has been previously adjudicated a dependent pursuant to any subdivision of Section 300 as a result of physical ... abuse, that following that adjudication the child had been removed from the custody of his or her parent ..., that the child has been returned to the custody of the parent ... from whom the child had been taken originally, and that the child is being removed ..., due to additional physical ... abuse.”

When, as here, the juvenile court determines that subdivision (b)(3) of section 361.5 (subdivision (b)(3)) applies, the juvenile court is prohibited from ordering reunification services unless it finds, by clear and convincing evidence, that reunification is in the child’s best interest. (§ 361.5, subd. (c).) “Thus, “[o]nce 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.]” [Citation.] The burden is on the parent to change that assumption and show that reunification would serve the best interests of the child.” (*In re William B.* (2008) 163 Cal.App.4th 1220, 1227 (*William B.*))

Petitioner does not deny that subdivision (b)(3) applies to her circumstances. Rather, she contends that the juvenile court should have nevertheless found that reunification services would serve the children’s best interests. To that end she cites evidence that she completed the parenting class, accepted responsibility for her actions and that she and the children loved and were bonded to each other. She also faults the juvenile court for weighing the children’s need for permanency and stability more heavily than their close bond to her in deciding that reunification would not serve their best

interests. Finally, she contends the juvenile court failed to make specific findings with regard to its best interest determination under section 361.5, subdivision (c).

We begin by addressing petitioner's final contention. Subdivision (c) of section 361.5 (subdivision (c)) provides, as relevant here: "The court shall not order reunification for a parent ... described in paragraph (3) ... of subdivision (b) unless the court finds, by clear and convincing evidence, that reunification is in the best interest of the child." Thus by its terms, subdivision (c) becomes relevant only if subdivision (b)(3) applies *and* the juvenile court contemplates ordering services. Only then is the juvenile court required to make a finding; that finding being that reunification is in the best interest of the child. Here, though the juvenile court found that reunification would not serve the children's best interests, it was not required to do so given its decision not to order services. We therefore disregard petitioner's contention that the juvenile court did not make appropriate findings under subdivision (c).

Further, substantial evidence supports the juvenile court's finding that reunification would not serve the children's best interests. The children were removed from petitioner's custody twice because she physically abused Glenn. In addition, there was evidence that she physically abused Brice and Glenn on a regular basis. Given petitioner's repeated abuse, the juvenile court could reasonably conclude that another attempt at reunification was unlikely to be successful. (*William B.*, *supra*, 163 Cal.App.4th 1220, 1228-1229.) Further, when reunification is no longer possible, the parent/child bond, though important, must give way to the child's chance for stability and continuity. (*Id.* at p. 1229.)

A juvenile court has broad discretion in determining what course of action will serve the best interest of a child and an appellate court will not reverse that determination unless the juvenile court abused its discretion. (*William B.*, *supra*, 163 Cal.App.4th at p. 1229.) We conclude on this record and for the reasons set forth above that the juvenile

court did not abuse its discretion in denying petitioner reunification services under section 361.5, subdivision (b)(3). We find no error.

### **DISPOSITION**

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