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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

In re TRINITY S., a Person Coming Under the Juvenile Court Law.	
KERN COUNTY DEPARTMENT OF HUMAN SERVICES, Plaintiff and Respondent, v. DANA S., Defendant and Appellant.	F065737 (Super. Ct. No. JD125233) **OPINION**

APPEAL from orders of the Superior Court of Kern County. Louie L. Vega, Judge.

Laloni A. Montgomery, under appointment by the Court of Appeal, for Defendant and Appellant.

Theresa A. Goldner, County Counsel, and Elizabeth A. Giesick, Deputy County Counsel, for Plaintiff and Respondent.

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Dana S., the paternal grandmother and former legal guardian of Trinity S., appeals from the juvenile court's orders made at the 18-month review hearing terminating Dana's reunification services and the guardianship, and setting a review hearing under section

366.3. (Welf. & Inst. Code, §§ 366.22, 728.)[1] Dana challenges the juvenile court's findings of detriment if Trinity were returned to her care and that she was provided reasonable services, arguing there is insufficient evidence of both and the juvenile court failed to state a factual basis for its detriment finding. Dana further contends the juvenile court erred when, after terminating her reunification services and guardianship, it set a section 366.3 hearing instead of a section 366.26 hearing, and her trial attorney rendered ineffective assistance of counsel. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Jurisdiction and Disposition

Dana and her husband, Ralph S., obtained legal guardianship of Trinity through the probate court in May 2003, when Trinity was two years old. Trinity's mother is K.B. (mother); her father, Ralph S. II (father), is Dana and Ralph's son.[2]
According to mother, she allowed Trinity and her half-sister, K.C., to live with Dana and Ralph because she and father, to whom she was married at the time, were too unstable to care for the girls due to drug use. Mother divorced father in 2005. By 2010, Ralph had been convicted and sentenced to three years in prison for molesting K.C.[3] K.C. moved in with mother, mother's husband, and mother's three-year-old son, while Trinity remained with Dana. Father was living with his girlfriend in a hotel room.

In October 2010, police officers were dispatched to Dana's home to check on the welfare of a juvenile. Ten-year-old Trinity, who the officers found in a bedroom, was taken into protective custody after they found a methamphetamine smoking pipe

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[1] Subsequent statutory references are to the Welfare and Institutions Code unless otherwise noted.

[2] To avoid confusion, we will refer to Dana's husband as Ralph and to Dana's son as father.

[3] Ralph was removed as Trinity's guardian during the course of the dependency proceedings.

containing methamphetamine in another bedroom and arrested Dana for possession of methamphetamine and drug paraphernalia. Dana admitted the pipe was hers and that she occasionally used methamphetamine. A man and another woman were also at the home visiting Dana. The man was arrested on an outstanding warrant. Dana told the officers she did not want these two, who she described as "drug users," staying at her house.

A social worker interviewed Trinity. Trinity said she sometimes did not feel safe at Dana's house, and especially did not feel safe when Dana got mad and threw things. The month before, Dana got mad and threw a "glass of ice tea," which hit Trinity's bedroom door; Trinity was inside her bedroom with the door closed. While Dana had never thrown an object directly at Trinity, she would get mad and throw things "a few times a week." Trinity said she would go into her bedroom and shut the door when Dana started throwing things. Trinity felt Dana had an anger issue.

When the social worker interviewed Dana, she was very distraught, panicky, emotional, and mentioned "dying" several times. Dana admitted the man at the house was a methamphetamine user who she met through her son. Since Ralph's incarceration, Dana had been unable to pay the mortgage, the house was being foreclosed, and her friends would not have anything to do with her. Dana claimed that "druggy's" were the only people who would help her, but they "act like they care and then they turn around and steal" from her. Father and his girlfriend stayed with her and tried to help out, but they were methamphetamine users and the girlfriend stole things from Dana. Dana said she argued with father all the time; during one argument he put his forehead through her door.

Dana started using methamphetamine in April or May 2010; she said used "maybe every couple of weeks" when Trinity was either in bed or at school. Dana had a medical marijuana card; she smoked "a bowl" of marijuana every couple of days to help her with nausea from "Celiac's disease" and gastric bypass surgery. Dana admitted being abused as a kid and that she takes "whatever is handy." She was diagnosed with depression

"years ago," for which she had been prescribed medication, but she was not taking it. Dana also admitted often getting angry and throwing objects, which she attributed to "mood swings." The social worker believed Dana was extremely emotionally unstable.

The Kern County Department of Human Services (Department) filed a dependency petition alleging Trinity came within the provisions of section 300, subdivisions (b) and (g), and Trinity was detained. A social worker interviewed father, who said that he knew Dana was using drugs due to the "company she was keeping," and stated he got into a fight with Dana because he confronted her about her drug use, which she denied. He felt Dana had developed mental health issues since she started using drugs and Ralph went to jail; she was always saying she was going to "kill herself" and seemed to be "breaking down." His aunt had visited Dana recently and had her "5150'd." Father confirmed Dana threw things when she got mad. Father denied that either he or his girlfriend used drugs.

Following the detention hearing, the social worker reviewed with Dana the initial case plan, which consisted of substance abuse counseling, random drug testing and a mental health assessment/treatment. Dana subsequently enrolled in substance abuse counseling. Dana submitted to two drug tests, one positive for methamphetamine and one pending. Following her arrest, Dana was court-ordered to complete a drug diversion program. Trinity was placed with mother, who agreed to take her until Dana could reunify with her.

An uncontested jurisdictional hearing was held on November 17, 2010. Dana, who was not present because she was attending a class, waived her rights and submitted on the social worker's reports. The juvenile court dismissed the section 300, subdivision (g) allegation at the Department's request and found true the allegations under section 300, subdivision (b) that there was a substantial risk Trinity would suffer serious physical harm or illness by Dana's inability to provide regular care for Trinity due to Dana's substance abuse and mental health issues.

On November 30, 2010, Dana appeared at the group meeting at the outpatient substance abuse program and seemed to be under the influence; Dana admitted she attempted to commit suicide the night before by overdosing on Klonopin. Dana refused an ambulance, but the male who was at her house when Trinity was detained picked her up and took her to the hospital, where doctors confirmed the suicide attempt. Dana was dropped from the substance abuse program due to noncompliance with program requirements. Dana, however, enrolled in another substance abuse treatment program. Dana was drug testing; since October 26, 2010, she had four negative drug tests, one presumptive positive due to failure to test, and the last a suspicious test. Dana was visiting Trinity once a week for one hour; she had missed two visits, but otherwise the visits were going well. Dana had been in therapy since August 2006, when she sought help for anxiety at work and presented as having severe childhood trauma, generalized anxiety and depression. She was diagnosed with post-traumatic stress disorder and was taking five medications for anxiety, sleep and depression. Dana's treatment was ongoing and her mental health issues were stabilizing with a guarded, but favorable, prognosis. Dana failed to drug test twice in January 2011, resulting in presumptive positive tests, and submitted a third negative test in January.

At the dispositional hearing, the juvenile court removed Trinity from Dana's custody and gave her reunification services consisting of counseling for substance abuse, mental illness and failure to protect, and random drug testing. The court advised Dana that failure to submit to a test when requested would be considered a positive test result and ordered her to take her psychotropic medication as required by her treating physician.

The Six-Month Review Hearing

By the August 8, 2011 six-month review hearing, Dana was participating in mental health and failure to protect counseling, but was dropped from substance abuse counseling as she continued to test positive for drugs and needed a higher level of care. Dana, however, said she did not want to go into a residential program where she would

have to associate with drug users. She said she had been in these programs for nine months and did not think there was anything else she could learn. Dana thought her problem was her environment, as well as her "having a life." Over the six month review period, Dana had been called 18 times to drug test; of those, she missed five tests, five were positive for methamphetamine, two were suspicious, one was positive for marijuana, four were negative, and the results of the last test were pending. Although Dana was participating in some of her case plan components, she was making minimal progress, especially in refraining from substance abuse. She was visiting Trinity, but was late almost every week and at times had to be redirected because she became too emotional. At one of the visits, Trinity remarked that Dana was always like that and she was used to dealing with it. Dana continued to deny her substance abuse problem and blame others for her situation.

Trinity had been moved to a foster home in March 2011, after the social worker confirmed with Trinity that mother and her husband were making her feel unwanted in their home.

The juvenile court found return of Trinity to Dana's physical custody would create a substantial risk of detriment to her safety, protection or physical or emotional well-being, and that Dana had made minimal progress in her case plan. The court continued Dana's reunification services.

The 12-Month Review Hearing

The 12-month review hearing was held on November 17, 2011. Dana had re-enrolled in substance abuse counseling on August 8, completed failure to protect counseling on October 4, and continued to have therapy sessions every other week. Although she appeared to have made substantial progress by participating in counseling, she still had not made any progress in staying sober and continued to be in denial regarding her substance abuse problem. She was called to drug test ten times; of those, three were positive for methamphetamine, six were negative, and one was presumed

positive because she failed to provide a sample. Dana continued to visit Trinity regularly; the social worker opined that visits were beneficial to both of them. The Department recommended continuing reunification services to Dana "in the hopes that [she] will acknowledge her drug abuse, be honest about her condition and truly benefit from substance abuse counseling." The juvenile court continued services for a full 18 months.

The 18-Month Review Hearing

The 18-month review hearing was originally calendared for April 13, 2012, but was continued several times; it ultimately was held on August 29, 2012. On July 30, 2012, the Department filed a petition to terminate Dana's guardianship of Trinity. The Department alleged that termination was in Trinity's best interest because Dana had failed to reunify with her. The petition was to be heard on the same date as the review hearing.

In an April 2012 social study, the social worker reported she met with Dana to discuss her case plan on December 7, 2011, January 4, 2012 and February 22, 2012, mailed letters to her on December 5, 2011 and March 16, 2012, and spoke with her on the telephone on December 20, 2011. Dana still had not made progress in resolving her substance abuse issues. Although she had been enrolled in substance abuse counseling since August 8, 2011, and attended 38 of 46 sessions, she was dropped from the program on January 17, 2012. Dana continued to submit positive or presumptive positive tests throughout the entire review period. The substance abuse counselor felt that Dana "was pulling the wool over his eyes." Dana had been coming to group very emotional and reported that "her boyfriend had just died." Due to her behavior, the substance abuse counselor felt Dana needed a higher level of care.

Despite the social worker's encouragement, Dana continued to deny her substance abuse addiction, and was very emotional and unstable. During a December 20, 2011

conversation with the social worker, Dana denied using drugs despite positive drug tests and thought things would get better once Trinity was in her custody.

On January 4, 2012, Dana assured the social worker that she only used drugs because she "gets lonely and seeks friendship in the wrong people." Dana, a medically retired registered nurse, explained that she would begin probation for the nursing board in the next 60 days, and would have to go through a substance abuse program, which would include regular testing. Dana said she would have to pay all the expenses for the program and would be actively seeking employment. The social worker told Dana the juvenile court might not accept the program she needed to take for her nursing probation and discussed with her the need to be reassessed for another substance abuse program. Dana said she needed to get a job so to "survive" and to change her environment.

Dana told the social worker her home was broken into over the holidays. She received a call from "a girl" requesting a ride; when she returned home after giving the girl the ride, she realized her home had been burglarized. The social worker asked Dana if she thought she needed to enroll in a residential treatment program so she could change her environment and get extra support. Dana said she thought about it, but she did not feel she needed it; she was concerned that she would not be able to protect her home if she went into a residential program and felt she had learned everything she needed to learn from the programs she had attended. Dana said she would look for a job over the next few weeks and then return to be assessed for a treatment program. She believed that if she got a job she could change her environment and her use of drugs, as she only used drugs because she was involved with people who know where and how to get them. Dana did not feel there was a substance abuse program that would not interfere with her job search.

On February 22, 2012, Dana told the social worker she was continuing to seek employment so she could get her nursing license back. She had not returned for an assessment. Dana explained she would be required to take a substance abuse program for

the nursing board and to drug test regularly. The social worker warned Dana that if she did not complete her case plan requirements by the next court hearing her services would be terminated. Dana said she was not a drug addict; she only made bad choices by allowing others to influence her. The social worker told Dana she needed to get into a substance abuse program that would benefit her. Dana, however, did not believe a substance abuse program would help her and she thought the social worker was the cause of her not receiving her substance abuse certificate of completion.

Dana missed two visits with Trinity in March 2012, and another in April. When Dana did visit, she acted appropriately as long as she was emotionally stable; when Dana was upset and crying, however, she needed to be redirected to be more appropriate. Trinity was upset about the missed visits.

Trinity was moved to the home of a non-relative extended family member (NREFM) in February 2012, after her previous placement ended when the caretakers gave notice due to concerns about her behavior. The Kern County Adoptions Agency conducted an adoptions review on March 26, 2012, and recommended Trinity be referred to long term foster care since she was not likely to be adopted and legal guardianship was not appropriate at the time as she had only been in her current home a short time.

In an August 2012 social study, the social worker reported that she had attempted to continue offering Dana reunification services, but was having difficulty maintaining contact with Dana to determine her progress. The social worker documented the multiple attempts she made to contact Dana both in person, and through monthly case plan reminders and appointment letters, as follows: (1) she went to Dana's home on April 27, but the front gates were locked and no one came out of the house when she shook the gate; (2) she mailed a case plan reminder and appointment letter to Dana on May 15, but she did not keep the appointment; (3) she mailed an appointment letter to Dana on June 18, for a June 22 appointment; (4) she went to Dana's home on June 21, but no one answered the front door when she knocked on it; (5) she telephoned Dana on July 23, but

the telephone rang several times and then gave a busy signal; (6) she went to Dana's home on August 23, but she could not get to the front door because the front gates to the home were locked with chains, and no one came out of the house when the social worker shook the gate; and (7) she sent a case plan reminder letter to Dana on August 24. Dana had not made herself available for continued drug testing, nor had she visited Trinity in person since June 2012.

It appeared that Dana's mental state had deteriorated even further. On June 18, the NREFM reported to the social worker that she spoke with Dana, who told the NREFM that she was not coming to her scheduled visits; the NREFM said that Dana was crying and really emotional, and said she was thinking of killing herself. Dana said she had some people living in her home who refused to leave and were stealing her belongings. Dana rambled from one subject to the next and continued to speak without giving her a chance to respond. The social worker told the NREFM to call 911 and report the conversation, and said she would be suspending Dana's visits until the social worker returned from vacation and could meet with Dana.

While Dana was not visiting Trinity in person, she was talking to her on the telephone. The NREFM reported that she saw Trinity become upset and cry because Dana was making her feel guilty when they spoke on the telephone. Trinity told the social worker she wanted to continue to have telephone contact with Dana, but confirmed Dana often made her feel guilty because she was not able to live with her. The social worker was unable to confirm if Dana was still attending mental health counseling. The social worker reported that Trinity was doing well in the NREFM's home, and she wanted to remain there and be under legal guardianship if she was unable to live with Dana.

The Department recommended termination of reunification services, termination of the guardianship, and that Trinity be placed in long term foster care.

At the review hearing, the Department submitted on the social worker's reports and asked the court to terminate services and the guardianship. Counsel for Dana objected without further evidence as to both issues. After the other parties submitted, the juvenile court stated it had read and considered the social worker's reports and, based on that information, made the following findings, as pertinent here: (1) Dana had made minimal progress and efforts in her case plan; (2) returning Trinity to Dana's physical custody would create a substantial risk of detriment to Trinity's safety, protection, or physical or emotional well-being; and (3) the Department had complied with the case plan by making reasonable efforts in providing reasonable services. The court terminated Dana's reunification services. With respect to the guardianship, the juvenile court granted the petition to terminate the guardianship based on the evidence presented, finding it was in Trinity's best interest to do so. At the Department's request, the court scheduled a section 366.3 hearing for September 27, 2012, to determine a permanent plan for Trinity.

DISCUSSION

As Trinity's guardian under the Probate Code, Dana was entitled to receive reunification services. (*In re Merrick V.* (2004) 122 Cal.App.4th 235, 249-250 (*Merrick V.*); § 361.5, subd. (a).) Dana received over 18 months of reunification services before the juvenile court terminated those services as well as the guardianship. On appeal, Dana challenges the juvenile court's findings that it would be detrimental to return Trinity to her custody and the Department made reasonable efforts in providing her services. She further contends the juvenile court erred by failing to set a section 366.26 hearing, and her trial counsel was ineffective. We address each contention in turn.

The Detriment Finding

Dana contends substantial evidence does not support the juvenile court's finding that she posed a substantial risk of harm to Trinity if she were placed in her custody. She asserts the primary reason the Department did not recommend that Trinity be returned to

her care was her ongoing use of drugs, and argues that drug use, without more, is insufficient to show a risk of harm to Trinity. While Dana recognizes "the time has long passed for her to assert error on appeal from the jurisdiction hearing," she argues this case presents a miscarriage of justice and urges us to consider that Trinity was removed from her care without substantial evidence of risk of harm and then was abused emotionally by mother and her foster parents. Finally, she contends the juvenile court erred in failing to set forth a factual basis for its conclusion Trinity's return would be detrimental to her. We find Dana's contentions meritless.

Section 366.22, which governs the proceedings at the 18-month review hearing, required the juvenile court to return Trinity to Dana's custody unless it found by a preponderance of the evidence that her return would create a substantial risk of detriment to her safety, protection, or physical or emotional well-being. (§ 366.22, subd. (a).) The Department bears the burden of establishing that detriment. (*Ibid.*) The juvenile court is guided in making its determination by the Department's assessment contained in its status report of parental efforts to utilize the services provided and the resulting progress. (*Ibid.*) Parental failure to regularly participate and make substantive progress in court-ordered services constitutes prima facie evidence of detriment. (*Ibid.*)

Substantial evidence is the standard by which we review the juvenile court's finding of detriment. (*Constance K. v. Superior Court* (1998) 61 Cal.App.4th 689, 705.) On the facts of this case, as summarized above, we conclude substantial evidence supports the juvenile court's detriment finding.

Dana's failure to participate in substance abuse treatment constitutes prima facie evidence that it would be detrimental to return Trinity to her custody. The fact that she completed other requirements of her case plan does not diminish the sufficiency of that evidence, which supports the juvenile court's finding. Dana contends the primary reason Trinity was not returned to her was her continued drug use, which "'*without more,*' does not bring a minor within the jurisdiction of the dependency court." (*In re Destiny S.*

(2012) 210 Cal.App.4th 999, 1003 (italics in original).) While Dana asserts her only problem was drug use, there is more than drug use here that supports a detriment finding, namely Dana's emotional instability, her continued denial that she even had a substance abuse problem, and her failure to remain in contact with the social worker or to visit Trinity in person. Dana's continued drug use impaired her emotional stability and ability to care for Trinity, as demonstrated by Dana's inability to interact appropriately with Trinity during visits, her emotionally harming Trinity by making her feel guilty about not living with her, and her continued association with people Dana described as the "wrong people," who she said would live with her and steal her things.

While Dana minimizes her conduct and claims that Trinity has never been at risk of detriment throughout these proceedings, the record shows that Dana used methamphetamine and marijuana, associated with drug users who Dana allowed to visit her house with Trinity present and who she admitted stole things from her, and she threw objects in anger. Although the objects were not thrown at Trinity, Trinity was still placed at risk of harm should an object inadvertently hit her or cause her indirect injury. During the following 18 months of reunification services, Dana could not remain drug free or become emotionally stable. She was discharged from four substance abuse programs and, despite continuing to test positive for drugs, denied she had a problem. Dana's level of denial is an appropriate factor to consider when determining the risk to Trinity if placed with Dana. (*In re Esmeralda B.* (1992) 11 Cal.App.4th 1036, 1044 [denial is a factor often relevant to determining whether persons are likely to modify their behavior in the future without court supervision].) Dana's denial created a risk of harm to Trinity if she were returned to Dana's custody, as Dana's continued substance abuse caused her, by her own admission, to associate with drug suppliers and users who lived in her home and stole things from her.

In sum, substantial evidence supports the juvenile court's finding that Trinity would be at substantial risk of detriment to her safety, protection, or physical or emotional well-being, if she were returned to Dana.

Dana points out the juvenile court failed to articulate the factual basis for its detriment finding as required by statute, and argues that failure compels a reversal of the juvenile court's decision and remand to make such a finding. We disagree that the failure requires reversal. While the juvenile court was required to specify "the factual basis for its conclusion that the return would be detrimental" (§ 366.22, subd. (a)), its failure to do so does not require reversal "where 'it is not reasonably probable such finding, if made, would have been in favor of continued parental custody.'" (*In re Jason L.* (1990) 222 Cal.App.3d 1206, 1218; see also *In re Corienna G.* (1989) 213 Cal.App.3d 73, 83.) Because we find the juvenile court's decision is supported by substantial evidence, we conclude any error in failing to specify a factual basis is harmless. It is not reasonably probable that the proper findings, if made, would have been in favor of continued parental custody.

Reasonableness of Services

Dana contends the juvenile court erred in finding she was provided reasonable services, claiming the Department did not make reasonable efforts to assist her in accessing services. Specifically, she contends that, based on her conversations with the social worker, the social worker should have given her referrals for (1) in-patient drug rehabilitation, (2) assistance with employment obstacles, or (3) assistance in securing her home and possessions. Dana further asserts the social worker should have done more to check on her welfare when the social worker was unable to find her at home. She argues that it was not reasonable for the social worker to write a few letters after being informed she was suicidal.

At the 18-month review hearing, the juvenile court must determine if reasonable services have been offered or provided. (§ 366.22, subd. (a).) In making its

determination, the juvenile court considers not only the appropriateness of services offered but also the extent to which the department facilitated utilization of the services and the extent to which the offending parent availed him or herself of the services provided. To be reasonable, the services provided need not be perfect. The "standard is not whether [they] were the best that might have been provided, but whether they were reasonable under the circumstances." (*Elijah R. v. Superior Court* (1998) 66 Cal.App.4th 965, 969.) Services are reasonable when the supervising agency identifies the family's problems, offers services targeting those problems, maintains reasonable contact with the offending parent(s), and makes reasonable efforts to assist in areas where compliance is difficult. (*In re Riva M.* (1991) 235 Cal.App.3d 403, 414.) However, reunification services are voluntary and the Department cannot force an unwilling and/or indifferent parent to participate in the case plan. (*In re Ronell A.* (1996) 44 Cal.App.4th 1352, 1365.)

On a challenge to the juvenile court's reasonable services finding, we view the evidence in a light most favorable to the respondent, indulging all legitimate and reasonable inferences to uphold the verdict. (*In re Misako R.* (1991) 2 Cal.App.4th 538, 545.) If substantial evidence supports the juvenile court's finding, we will not disturb it. (*Ibid.*) As Dana bears the burden of demonstrating error on appeal (*Winograd v. American Broadcasting Co.* (1998) 68 Cal.App.4th 624, 632), she must show that the juvenile court's finding that the Department made reasonable efforts to facilitate reunification services is not supported by substantial evidence.

In this case, Dana received referrals for all her court-ordered services, but chose not to participate. While Dana contends the social worker should have referred her to inpatient drug rehabilitation, the record shows that Dana consistently refused to consider such a program. Moreover, it was not the social worker's responsibility to provide referrals to drug treatment programs; instead, Dana was to request referrals from a "GATE team." The social worker encouraged Dana to consider an inpatient program, but

she refused to do so, stating that she felt she "has learned everything there is to learn." Dana also asserts the social worker should have helped her with employment obstacles and securing her home and belongings, but these things did not actually prevent her from completing her services; instead, it was Dana's continued insistence that she did not have a drug problem and she knew everything she needed to learn that prevented her from completing the services she needed to reunify with Trinity.

The Department offered services that were designed to remedy the problems that led to dependency, namely substance abuse and mental health. Dana, however, refused to participate. Although she completed the failure to protect program, she was discharged from drug treatment three times, failed to enter another treatment program, continued to test positive, and then stopped testing completely. The social worker attempted to contact Dana by going to her home, mailing case plan reminders, setting up appointments, and telephoning her, but she had severed all contact with the Department.

Dana asserts the social worker should have done more, especially after the NREFM reported, in June 2012, that Dana said she was thinking of killing herself. The record shows, however, that the social worker told the NREFM to call 911 and report the conversation, mailed Dana an appointment letter that day for an appointment four days later; and went to Dana's home the day before the appointment, but Dana was not at home, did not appear for the appointment and did not call. Despite these efforts, Dana chose not to contact the Department or engage in services. We cannot say that the Department unreasonably failed to assist Dana with her services. While the Department is required to assist in the reunification process, the assigned social worker is not expected to take the parent by the hand and escort her through the process. (*In re Michael S.* (1987) 188 Cal.App.3d 1448, 1463, fn. 5.)

The record supports the findings that the Department made reasonable efforts, including efforts with respect to drug treatment, and that reasonable services were provided to Dana. Dana was unwilling to participate in her services, lost interest in

visiting Trinity, and failed to maintain contact with the Department. She cannot now claim that the Department failed in its efforts to assist her when she made no effort to assist herself. We find no error on this record.

Ineffective Assistance of Counsel

Dana asserts her trial counsel was ineffective because he did not engage in "diligent advocacy" throughout the dependency proceedings. Citing to each court hearing from detention to the 18-month review hearing, Dana points out that her trial counsel said little or nothing, and submitted or objected to most of the Department's recommendations without submitting evidence or argument. She claims that "[a]s set forth in this brief, there were many legal issues and evidentiary issues which counsel failed to address or challenge," and, at a minimum, he "should have challenged the sufficiency of the evidence and the findings needed to support the juvenile court's orders, from the inception of the case through the section 366.22 hearing." She concludes that without effective assistance of counsel, she was unable to protect her legal interests in Trinity's custody.

We first note that Dana has forfeited her right to raise her claim of ineffective assistance of counsel from previous hearings, as such claims generally are forfeited in dependency proceedings if not timely raised. (*In re Meranda P.* (1997) 56 Cal.App.4th 1143, 1159-1160.) Since Dana did not challenge the juvenile court's prior rulings by appealing from them, she has forfeited appellate review on the issue of ineffective assistance arising from any hearing other than the one from which she appealed.

Dana generally asserts her trial counsel should have challenged the sufficiency of the evidence and the findings needed to support the juvenile court's orders. A party asserting ineffectiveness of counsel must prove trial counsel's performance was deficient, resulting in prejudicial error. (*In re Kristin H.* (1996) 46 Cal.App.4th 1635, 1667-1668.) We need not evaluate counsel's performance if Dana fails to prove prejudicial error, i.e., absent counsel's errors, there is a reasonable probability of a more favorable outcome.

(*In re Nada R.* (2001) 89 Cal.App.4th 1166, 1180.) Therefore, to prevail on a claim of ineffective assistance of counsel, Dana would have to show that but for her attorney's failure to challenge the sufficiency of the evidence and the findings needed to support the juvenile court's orders, there is a reasonable probability the juvenile court would have returned Trinity to her custody or found that she was not provided reasonable reunification services.

Dana was not prejudiced as a result of her trial attorney failing to raise the issues she now raises on appeal. Dana received 22 months of services specifically designed to address the issues that brought Trinity into dependency. Instead of participating in services, Dana was discharged from substance abuse treatment three times and then refused to reenter a treatment program despite continuing to test positive for drugs, all the while denying she had a substance abuse program and blaming everyone except herself for her addiction. The social worker repeatedly encouraged and redirected Dana, but she still was unable to control her substance abuse issues. The social worker encouraged Dana to stay away from people who used drugs, and tried to understand her rationale and empathized with her. On numerous occasions, the social worker encouraged Dana to get into residential treatment. Dana, however, denied that she needed residential treatment, felt she had learned all she needed, and refused to admit she had a substance abuse problem. Toward the end of reunification, Dana just quit; she refused to respond to the social worker's visits, calls or letters.

Given the juvenile court's provision of more than 18 months of reasonable services, and Dana's failure to regularly participate in them, Dana fails to show how more time or additional evidence or witnesses would have altered the outcome given the state of the evidence. Consequently, she fails to show prejudice and her claim of ineffective assistance of counsel must fail.

Failure to set Section 366.26 Hearing

Dana contends the juvenile court committed reversible error when, after terminating reunification services and the guardianship, it set a section 366.3 hearing instead of a section 366.26 hearing. Dana asserts that because Trinity was not returned to her custody, section 366.22, subdivision (a) required the juvenile court to order that a hearing be held pursuant to section 366.26, to determine the most appropriate plan for Trinity, whether adoption, guardianship or long-term foster care. (§ 366.22, subd. (a).) Dana recognizes section 366.22, subdivision (a) permits the juvenile court to bypass a section 366.26 hearing under "limited circumstances," namely where it finds by clear and convincing evidence, including a recommendation by the State Department of Social Services when it is acting as an adoption agency, that there is a compelling reason for determining that a section 366.26 hearing is not in the best interest of the child because the child is not a proper subject for adoption and no one is willing to accept legal guardianship. (§ 366.22, subd. (a).) She asserts, however, there is not sufficient evidence to support such a finding here. The Department contends Dana lacks standing to challenge the order setting the section 366.3 hearing. We agree.

In juvenile proceedings, only a party aggrieved by an order has standing to appeal. (*In re Harmony B.* (2005) 125 Cal.App.4th 831, 837.) The appellant must establish he or she is an aggrieved party to obtain an on-the-merits review of a particular ruling. (*In re Carissa G.* (1999) 76 Cal.App.4th 731, 734.) To be aggrieved, a party must have a legally cognizable immediate and substantial interest which is injuriously affected by the court's decision. (*Ibid.*) "'Whether one has standing in a particular case generally revolves around the question whether that person has rights that may suffer some injury, actual or threatened.'" (*Cesar V. v. Superior Court* (2001) 91 Cal.App.4th 1023, 1034.)

Dana had custody of Trinity pursuant to a guardianship of the person established under the Probate Code. Pursuant to Probate Code section 1601, a guardianship of the person may be terminated upon petition of the guardian, a parent, or the ward, "if the

court determines that it is in the ward's best interest." Such a guardianship may be terminated by the juvenile court in a section 300 dependency proceeding pursuant to section 728. A motion to terminate the guardianship may be brought by the appropriate county department, district attorney, county counsel, the guardian or the minor's attorney. (§ 728, subd. (a).) The hearing on the motion may be held "simultaneously with any regularly scheduled hearing held in proceedings to declare the minor a dependent child or ward of the court, or at any subsequent hearing concerning the dependent child or ward." (*Ibid.*) As this court has recognized, section 728 gives the juvenile court authority to terminate a probate guardianship at any stage in the dependency proceedings. (*In re Xavier R.* (2011) 201 Cal.App.4th 1398, 1414.)

In this case, the juvenile court terminated Dana's probate guardianship at the 18-month review hearing. While in this appeal Dana challenges the juvenile court's findings that it would detrimental to place Trinity with her and that she was provided reasonable services, Dana does not otherwise argue the juvenile court erred in terminating the guardianship. Having found no merit to Dana's assertions of error on appeal, the guardianship remains terminated. Accordingly, Dana is no longer Trinity's guardian and has no legally cognizable interest in whether the juvenile court sets a section 366.26 hearing for Trinity.

Dana contends she has a legally cognizable interest because she has been Trinity's guardian for seven years, the issues to be analyzed at the section 366.26 hearing affect her future relationship with Trinity, and until the section 366.26 hearing, when the juvenile court "may terminate the guardianship," she retains an interest in the juvenile court's prospective orders. Pointing out that a probate guardianship differs from a dependency guardianship, she asserts as Trinity's legal guardian, she is equal to the parent both during the reunification period and for purposes of long term planning, and, as such, she should be treated as the legal custodian for purposes of permanency planning.

Dana's argument fails, however, for the simple reason that she is no longer Trinity's guardian. With the probate guardianship terminated, Dana has no standing as a legal guardian to challenge further juvenile court proceedings. Having found no error in the juvenile court's decision to terminate reunification services, and Dana asserting no other error with respect to the termination of the guardianship, she lacks any legal interest in the outcome of continuing proceedings involving Trinity, and therefore lacks standing to challenge the order setting the section 366.3 review hearing.

DISPOSITION

The juvenile court's orders are affirmed.

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Gomes, J.

WE CONCUR:

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Cornell, Acting P.J.

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Poochigian, J.