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

L.M. et al.,

Petitioners,

v.

THE SUPERIOR COURT OF
TUOLUMNE COUNTY,

Respondent;

TUOLUMNE COUNTY DEPARTMENT
OF SOCIAL SERVICES,

Real Party in Interest.

F066369

(Super. Ct. No. JV7214)

OPINION

THE COURT*

ORIGINAL PROCEEDINGS; petition for extraordinary writ review. Eric L. DuTemple, Judge.

Vasquez, Estrada & Conway, LLP, Thomas Weathers for Petitioner, L.M.

Donald Martell for Petitioner, S.B.

No appearance for Respondent.

Gregory J. Oliver, County Counsel, and Sarah Carrillo, Deputy County Counsel, for Real Party in Interest.

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*Before Cornell, Acting P.J., Detjen, J., and Peña, J.

Petitioners S.B.¹ (father) and L.M. (mother) seek extraordinary writ review (Cal. Rules of Court, rule 8.452) of the juvenile court's December 12, 2012, dispositional orders denying them reunification services and setting a Welfare and Institutions Code section 366.26² permanency hearing as to their eight-month-old daughter, Taylor. Mother contends that the juvenile court erred in finding that respondent Tuolumne County Department of Social Services (department) made "active efforts" as required by the Indian Child Welfare Act, title 25 of the United States Code section 1912(d) (ICWA), to help them reunify with Taylor. Father contends the juvenile court erred in denying them reunification services. Mother joined in father's argument. We deny the petitions.

PROCEDURAL AND FACTUAL SUMMARY

I. Overview

Mother is a member of the Chicken Ranch Rancheria of Me-Wuk Indians (hereafter "the tribe"), a federally recognized Indian tribe under ICWA. She and father, her fiancé, are 22 and 27 years of age, respectively. They have four children, twin daughters, L.B. and M.B., a son, Steven, and daughter, Taylor, the subject of this writ petition.

Mother suffers from bipolar disorder, which was untreated during these proceedings. She also has an eating disorder for which she has used marijuana. However, according to the record, neither she nor father has a substance abuse problem. They do, however, have a significant history of domestic violence and both were victims of abuse and neglect as children.

¹ In order to protect the identity of the minor children, we refer to individuals with unique names by their first and last initials. (Cal. Rules of Court, rule 8.401(a)(2).)

² All statutory references are to the Welfare and Institutions Code unless otherwise indicated.

All of the children except Steven have been removed from mother and father's custody. The twins were removed in July 2009 after then two-month-old L.B. was admitted to the hospital with severe injuries indicative of child abuse. The juvenile court denied mother and father reunification services and the twins were adopted. Mother and father relocated to Idaho where in June 2010, mother gave birth to Steven. Steven has been in Idaho and in the care of his maternal grandmother, Donna, since he was approximately a month old under a voluntary and informal arrangement. In July 2012, mother gave birth to Taylor in Montana. Approximately two weeks later, Taylor was admitted to a hospital in Modesto with failure to thrive and placed in protective custody by the department.

Because the facts and circumstances in the twins' case are germane to the issue raised in Taylor's, we begin our factual and procedural summary there.

II. The Twins

In May 2009, L.B. and M.B. were born prematurely with serious medical complications. They were transported to Modesto where they were hospitalized for a month. During that time, the medical staff voiced concerns about the amount of time mother and father spent with the newborns and their lack of bonding with them. The department facilitated a meeting with the hospital staff and mother and father in an effort to provide support. The parents were informed that they needed to bond with their babies and practice their parenting skills. They agreed to visit more frequently and enrolled in the Wings Program, which provided transportation assistance and vouchers to stay in hotels near the hospital. They also agreed to Public Health services, completed a Cardiopulmonary Resuscitation class, and were given discounted coupons for car seats.

A social worker from the department contacted the tribe to inquire about assistance for mother and was told that the tribe did not assist with transportation and that mother needed to provide a high school diploma or high school equivalency certificate in

order to access her trust fund. In late June 2009, the children were discharged from the hospital. Within days of returning home with the twins, mother and father had a serious physical altercation. Father had visible injuries including lacerations and dried blood and mother was arrested.

Before the department could contact mother and father about the domestic violence incident, L.B. was admitted to Children's Hospital in Madera with apnea, respiratory failure, multiple fractures, and intracranial bleeding. Her fractures included a skull fracture, multiple fractures to almost all posterior and anterior ribs, leg fractures, and an arm fracture. She was comatose and placed on life support for approximately a month.

During L.B.'s hospital stay, it was discovered that she suffers from a metabolic bone disorder, making her prone to injury. However, Dr. Kinnison, a forensic physician, concluded that her injuries were not the result of normal handling and were likely caused by abuse. Neither mother nor father could explain L.B.'s injuries.

The department took the twins into protective custody and filed a dependency petition on their behalf, alleging that L.B. suffered severe injury and neglect while in mother and father's care and that M.B. was at risk of similar abuse or neglect. The juvenile court found the allegations true, found that ICWA applied through mother, and denied both parents reunification services. At the same time, mother and father were being criminally investigated as a result of L.B.'s injuries. During the investigation, they fled to Idaho.

In May 2010, the juvenile court conducted a contested section 366.26 hearing and found that the department made active efforts to prevent the breakup of the family and that those efforts were unsuccessful. The juvenile court also terminated mother and father's parental rights and the twins were adopted.

In July 2010, after giving birth to Steven in Idaho, mother returned to Tuolumne County and turned herself in on a warrant for felony child abuse stemming from the criminal case involving L.B. Following a jury trial, she and father were convicted of misdemeanor child cruelty and sentenced to four years of probation. They were also ordered to complete 400 hours of community service within a year and complete a parenting class.

III. Taylor

In early July 2012, mother gave birth to Taylor at a hospital in Montana. According to her admission history and physical, her pregnancy was notable for her transfer of care at 30 weeks and her minimal weight gain. She gained only three pounds in the seven weeks before delivery. Taylor weighed 6 pounds 3 ounces at birth. Taylor and mother remained in the hospital for two days. According to the staff, mother was able to breastfeed Taylor with no assistance. On July 10, she and Taylor were discharged and returned to Idaho. According to the nurse's progress note, Taylor was "breastfeeding well, [and was] pink with a lusty cry."

On July 20, 2012, mother and father left Idaho and drove 16 hours to Jamestown, California, with Taylor, a dog, and four puppies. On July 23, they took Taylor to the Sonora Regional Medical Center because she was coughing and spitting up formula and breast milk. She was then transferred to Doctor's Medical Center in Modesto where she weighed in at 5 pounds 5 ounces. She also had a laceration on her lower lip area that father stated was caused by her pacifier rubbing against her mouth. She also had lacerations on the back of her throat that father stated were most likely caused when he and mother used a bulb syringe to suction fluids out of her mouth.

Taylor was admitted to Doctor's Medical Center for failure to thrive. She remained in the hospital for 10 days during which she was fed through a nasogastric tube

and given high caloric formula. Mother and father reportedly had no reaction to seeing her fed that way.

The medical staff noted that Taylor did not make eye contact or root for food when held as is typical for an infant of her age. However, while in the hospital, she began to make eye contact and more pronounced facial expressions and ate three ounces of formula every two and a half hours.

Dr. Johnson, Taylor's attending physician, concluded that Taylor had been mistreated given her failure to thrive, low weight gain, and significant abrasions of the pharynx. He believed the pharyngeal abrasions were caused by forceful suctioning and the lesion on her lip by aggressive use of a pacifier either by forceful insertion or by allowing Taylor to have it in her mouth for an extraordinary amount of time.

At discharge, Taylor was eating appropriately. It was noted that she had a "strong suck pattern" and could coordinate "suck swallow breathing very well." At her one-month well baby exam, she weighed 7 pounds 4 ounces. She was placed with the twins.

Social worker Rebekah Elizondo from the department met with mother and father who she reported were cooperative but displayed no emotion. Mother asked Elizondo to contact her Tribal Chief, Lloyd M., who is also her brother.

Father told Elizondo that, during the trip to California, he and mother stopped often to feed Taylor but he could not remember how frequently. Mother said they stopped whenever Taylor cried. Mother stated that one of the puppies died during the trip. She thought maybe the puppy was trapped under a box and suffocated. According to Elizondo, neither parent expressed any emotion or concern about the puppy's demise.

Elizondo asked mother about Taylor's feeding habits prior to her hospitalization. Mother said Taylor breast fed every few hours but she was not sure if she was getting enough because she was only giving her breast milk and when she tried to pump she only

got one to two ounces. She admitted she did not have a regular routine for how often she pumped milk.

Father stated that on the night of July 22, 2012, they thought Taylor had a cold and they heard her cry and cough often. They thought she was choking on her formula and coughing with phlegm. They used the bulb syringe to suction fluid from her mouth. Father stated he thought they may have used the syringe “too aggressively” or too often and estimated they used it approximately 60-80 times in one night and ultimately decided to take her to the emergency room the next morning. According to Elizondo, father expressed no emotion in recounting the situation or concern that the suctioning caused Taylor injury.

Following its investigation, the department filed a dependency petition on Taylor’s behalf alleging that mother and father seriously injured her by aggressive use of the bulb syringe and pacifier and that she was at risk of the kind of abuse and/or neglect suffered by her sister, L.B. The department also filed a detention report stating there were no services available that would allow Taylor to be immediately returned to mother and father’s custody. The department planned, however, to offer them reasonable supervised visitation.

On July 27, 2012, the juvenile court convened the detention hearing. Jan Costa, ICWA representative for the tribe, was present. The juvenile court ordered Taylor detained and set the matter for jurisdiction. Following the hearing and again later in the month, Elizondo asked Costa whether the tribe had any placement recommendations. Costa stated that the tribe planned to be involved for information only and did not plan to intervene or recommend placement.

In its jurisdictional report, the department recommended that the juvenile court adjudge Taylor a dependent of the court and detain her until the dispositional hearing. The department believed that Taylor’s weight loss was the result of mother and father’s

neglectful failure to adequately feed her, the abrasion on her lip the result of mother substituting the pacifier for food, and the pharyngeal abrasions the result of improper and forceful use of the bulb syringe. Further, the department did not believe that mother and father had any insight into how their neglectful behavior caused Taylor's injuries. That, in combination with their abuse of L.B., and refusal to take responsibility for it, in the department's opinion, placed Taylor at risk of harm if returned to their custody.

The department also advised the juvenile court that, in an effort to prevent the breakup of an Indian family, Elizondo contacted Costa to inquire about services and placement and was told that the tribe did not have any services beyond a trust fund and did not have any placement recommendations. In addition, Elizondo offered mother and father transportation to visit Taylor but they refused it. The department also informed the juvenile court that Taylor was diagnosed with asthma and mother and father were told not to smoke during visitation or expose her to the cigarette smoke on their clothing.

In September 2012, the juvenile court convened a contested jurisdictional hearing and took judicial notice of the twins' dependency proceedings.

Mother testified that she was no longer using marijuana but still had a "bit" of an eating disorder. She denied that she and father engaged in domestic violence after the June 2009 incident. She testified that she smoked cigarettes and was trying to quit but was having difficulty.

Mother further testified that when Taylor was two days old, Taylor stopped breathing and mother resuscitated her by using the bulb syringe to extract fluid from her throat. She and father used the bulb syringe the night before they took Taylor to the hospital because Taylor stopped breathing while breastfeeding. She said father did most of the suctioning. She estimated he used it over 20 times but not 60 to 80 times as was reported. The suctioning removed some of the phlegm and she did not believe that it was hurting Taylor. She also testified that she noticed the abrasion on Taylor's lip and she

replaced Taylor's pacifier with a rubber one to prevent further harm. She gave Taylor the pacifier because Taylor cried and wanted to be held. Mother had another child (presumably Steven) to take care of and father was not home, making it hard for her to manage both children. She did not think Taylor was hungry because she fed her before she gave her the pacifier.

Mother testified that the hospital staff in Montana instructed her on breastfeeding because she had not breastfed the twins and only breastfed Steven for less than a month. She said Taylor had no problem latching on but sometimes fell asleep while breastfeeding. She said she did not use formula and the doctor told her at Taylor's one-week check up that it was normal for newborns to lose weight so she did not think anything of Taylor's weight loss. She said during the trip from Idaho to California, she pumped her milk and fed it to Taylor in a bottle.

Mother testified that she completed the parenting class required by her probation before Taylor was born. She said she was taking another parenting class as well. She denied abusing L.B. and took no responsibility for it. She said Taylor's failure to thrive might be her fault because she was not producing enough breast milk.

Father testified that he completed a parenting class in November 2011 and learned about child development and behavior. They also discussed feeding in the class. He denied abusing L.B. and believed her injuries were the result of her metabolic bone disorder. He disagreed that Taylor's weight loss was the result of neglect.

At the conclusion of the hearing, the juvenile court found the allegations true and set the matter for disposition.

In its dispositional report, the department recommended that the juvenile court deny mother and father reunification services under section 361.5, subdivision (b)(6) because they severely abused L.B. and under subdivision (b)(11) because their parental rights to the twins were terminated and they did not subsequently make reasonable efforts

to improve their parenting skills.³ The department reported that, although mother and father were enrolled in a parenting class, they only attended sporadically. In addition, though they previously completed a parenting class prior to Taylor's birth, they could not articulate what they learned. The department believed that mother and father lacked insight into how to parent Taylor without harming her and neglecting her needs.

The department reported that it made active efforts to prevent Taylor's removal from mother and father's home but that the services provided were not effective in preventing her removal. In addition to listing the services provided in the twins' case, the department identified the services mother received in Montana: prenatal care delivered by her physicians and infant care instruction, video of breastfeeding techniques, lactation consultation, and breastfeeding education by the hospital staff. The department listed the nursing staff education provided at Doctor's Medical Center in August 2012, random drug testing in August 2012, and a parenting class in September 2012, which mother and father refused.

In preparing the department's dispositional report, social worker Danielle McDaniel informed Costa that the department was not recommending services for mother and father. Costa stated that the tribe did not have an opinion regarding the recommendation for denial of services.

³ Section 361.5, subdivision (b)(6) and (11) provide in relevant part:

“(b) Reunification services need not be provided to a parent ... when the court finds, by clear and convincing evidence [¶] ... [¶] (6) [t]hat the child has been adjudicated a dependent pursuant to any subdivision of Section 300 as a result of ... the infliction of severe physical harm to ... a sibling ... by a parent ... and the court makes a factual finding that it would not benefit the child to pursue reunification services with the offending parent [¶] ... [¶] (11) [t]hat the parental rights of a parent over any sibling ... of the child had been permanently severed, ... and [the] parent has not subsequently made a reasonable effort to treat the problems that led to removal of the sibling ... of that child from the parent.”

In an addendum report filed for the contested dispositional hearing, the department provided the juvenile court with a declaration from ICWA expert, Sean Osborn, who agreed with its recommendation to bypass reunification services.

In November 2012, the juvenile court convened a contested dispositional hearing. Mother's attorney filed a letter brief arguing that the department failed to make active efforts to prevent the breakup of her family. Her attorney argued that the department could not rely on the services offered in the twins' case to constitute active efforts. In addition, he argued that the department did not take into account the prevailing social and cultural values, conditions, and way of life of the Indian child's tribe or utilize the available resources of the Indian child's extended family, tribe, tribal and other Indian social service agencies, and individual Indian caregiver service providers. Further, he argued that the department could not rely on services provided by others to show it made active efforts and it had not shown that no services exist which might be offered to prevent the breakup of the family. In her response, county counsel took the opposite position with respect to each argument.

Sean Osborn testified that he was employed by Merced County Human Services Agency and opined that the department made active efforts in the twins' case and Taylor's case to prevent the breakup of mother and father's family. In forming his opinion, he reviewed the department's reports and attempted unsuccessfully to speak with mother and father and the tribe. He testified that he was only vaguely familiar with the tribe's social and cultural standards regarding child rearing. He further testified that ICWA requires the county to provide active efforts but does not define active efforts. He said the efforts of the county, tribe or a service the parent seeks on their own can be an active effort if the purpose behind it is to preserve the family. He believed that mother and father's underlying issue was parenting and that the department was effective in trying to engage them in parenting services. He testified that there are circumstances

where the department cannot offer services or make efforts to prevent danger in the home and believed that Taylor's situation was life-threatening and warranted attention without offering services ahead of time. He opined that Taylor was at risk of serious emotional or physical harm if returned to mother and father.

On cross-examination by mother's attorney, Osborn testified that the active efforts the department made in the twins' case factored into the efforts they made in Taylor's case. He believed the department was prevented from considering the tribe's social and cultural values and norms because the tribe did not provide that information.

Elizondo and McDaniel testified about their efforts to elicit the tribe's assistance. Elizondo testified that the social worker handling the twins' case contacted the tribe who made it clear they had no specific services to offer, no financial support, and no specific names of community members or tribal members who would be able to come in and provide support. She said that after Taylor was removed, she immediately contacted Jan Costa, the tribe's affiliate, and was told that the tribe was unwilling or unable to make a statement about anything that was available for the family.

McDaniel testified that she spoke to Costa as well as to Lloyd M. Lloyd stated that the tribe had no plans to intervene and no opinion on placement. He believed that Taylor was safe where she was.

Mother offered the testimony of ICWA expert, Elizabeth DeRouen. DeRouen worked for the Indian Child and Family Prevention Program, which provides Indian counselors serving the needs of all their children in child custody cases throughout the nation in all areas including dependency. In her opinion, the department did not provide active efforts. In forming her opinion, she reviewed the department's reports and interviewed mother and father, one of the paternal uncles, and the tribal administrator.

DeRouen equated active efforts with active services that form an active plan. She said the active plan has to be tailored specifically to the parents and to each child.

Because the active plan has to be tailored to the child, she did not believe the services provided in the twins' case could be considered in determining whether the department made active efforts in Taylor's case. In addition, she saw no evidence that the department had an active plan that would include services by Indian health service providers, extended relatives, and Indian organizations. She did not believe the parenting class provided to mother and father was culturally tailored. Such a class would include instruction on swaddling the baby or a traditional program in Indian parenting. She testified that contacting the tribe was an active effort but also testified that the discussion was only one aspect of developing a culturally appropriate case plan. She was not aware that the department made efforts to get the tribe involved in services and placement.

DeRouen also testified that she did not believe providing mother and father services would be futile and believed there may be an Indian wellness program or services in the area. She did not believe that Taylor should be removed from mother and father but did not necessarily believe that she should be returned to their custody. She believed they could benefit if offered services or programs that could help educate them about Taylor.

Father testified that he completed one parenting program and enrolled in a second one but dropped it because it was duplicative. He said he started an on-line parenting class and had two more four-hour sessions to complete. He further testified that he did not know that Taylor was losing weight and that she nursed in the hospital every hour and a half to two hours and continued this feeding frequency after she was discharged from the hospital until she was taken into protective custody. He said he had no concern about her sucking so hard on her pacifier. He acknowledged that he was responsible for his child's safety but denied causing L.B. physical harm or neglecting Taylor.

Mother testified that she fed Taylor every two and a half to three hours. She denied ignoring Taylor's hunger or using the pacifier to quiet her when she was crying

and hungry. Asked what she thought her problem was, she stated that she was “young and naïve.” She said “[b]asically anything” would help her. She said the department did not offer her a parenting class. She did not know why the department reported that she refused a parenting class in September 2012. She said she was taking an on-line parenting class, which she found helpful and was looking into mental health and anger management counseling.

At the conclusion of the hearing, the juvenile court found that there were no active efforts that the department could have made in Taylor’s case. The juvenile court summarized the evidence beginning with the twins’ dependency, stating that it was familiar with the facts and findings and that L.B. suffered “extreme physical injuries.” The court further stated that mother and father were provided a number of services from which they should have gleaned some insight into how to safely parent a child. The juvenile court also observed that mother and father’s behavior in Taylor’s case was similar to that in the twins’ case in that they did not connect their injurious conduct with their children’s injuries or take responsibility for it.

The juvenile court further found that returning Taylor to mother and father’s custody would likely result in serious physical damage to her. The court denied mother and father reunification services as recommended and set a section 366.26 hearing.

DISCUSSION

Mother challenges the juvenile court’s finding required by ICWA that active efforts were made to prevent the breakup of her family and that these efforts proved unsuccessful. (25 U.S.C. § 1912(d); § 361.7, subd. (a).) Specifically, she criticizes the department for not seeking culturally appropriate services or otherwise offering her any formal services. Father contends he and mother made reasonable efforts to improve their parenting skills.

I. Active Efforts

The purpose of ICWA is twofold: “to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families” (25 U.S.C. § 1902.) To that end, it requires that any party initiating proceedings that would separate an Indian child from his or her family must establish that active efforts have been made to preserve the family unit but were unsuccessful. Specifically, ICWA provides:

“Any party seeking to effect a foster care placement of, or termination of parental rights to, an Indian child under State law shall satisfy the court that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful.” (25 U.S.C. § 1912(d).)

The dependency statutes were updated to conform with ICWA. (Stats. 2006, ch. 838, § 32.) As relevant here, section 361, which governs the disposition of a dependent child, was amended and section 361.7, which governs involuntary foster care placement of an Indian child, was added.

Section 361, subdivision (c) prohibits the juvenile court from removing a child from parental custody unless the court finds by clear and convincing evidence any of five circumstances listed in paragraphs (1) to (5). (§ 361, subd. (c).) The circumstance that pertains here is contained in paragraph (1) and provides in relevant part:

“There is or would be a substantial danger to the physical ... well-being of the minor if the minor were returned home, and there are no reasonable means by which the minor’s physical health can be protected without removing the minor from the minor’s parent’s ... physical custody.” (§ 361, subd. (c)(1).)

In the case of an Indian child, section 361, subdivision (c) further requires the juvenile court to find, based on the testimony of an expert witness, that “continued custody of the child by the parent ... is likely to result in serious ... physical damage to the child.” (§ 361, subd. (c)(6).)

In addition, section 361, subdivision (d) requires the juvenile court to determine in the case of an Indian child “whether active efforts as required in Section 361.7 were made and ... proved unsuccessful. The court shall state the facts on which the decision to remove the minor is based.”

Section 361.7 specifically incorporates the “active efforts” provision of ICWA, requiring the juvenile court to find that “active efforts [were] made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful.” (§ 361.7, subd. (a).) It also guides the juvenile court in determining whether active efforts were made:

“What constitutes active efforts shall be assessed on a case-by-case basis. The active efforts shall be made in a manner that takes into account the prevailing social and cultural values, conditions, and way of life of the Indian child’s tribe. Active efforts shall utilize the available resources of the Indian child’s extended family, tribe, tribal and other Indian social services agencies, and individual Indian caregiver service providers.” (§ 361.7, subd. (b).)

On a challenge to the juvenile court’s active-efforts finding, we review the appellate record to determine if substantial evidence supports it. (*In re A.A.* (2008) 167 Cal.App.4th 1292, 1319.) In so doing, we review the evidence in the light most favorable to the juvenile court’s determinations and draw all reasonable inferences from the evidence to support its findings and orders. (*In re Misako R.* (1991) 2 Cal.App.4th 538, 545.) On this record, we conclude substantial evidence supports the juvenile court’s active-efforts finding and removal order as we now explain.

At the dispositional hearing, the juvenile court must decide whether the Indian child can be safely returned to parental custody and if not, whether active efforts were made to prevent the child’s removal.

In this case, mother does not contend that Taylor should be returned to her custody. Rather, at oral argument, her attorney on more than one occasion stated that

mother was not seeking placement. In so stating, mother in essence concedes that the juvenile court's removal order was not error.

Beyond mother's concession, however, there is more than substantial evidence that returning Taylor to mother's custody would place Taylor at a substantial risk of physical harm. Taylor was the second newborn who suffered a life-threatening condition directly attributable to mother's neglect. Further, according to the evidence, mother had the benefit of parenting classes prior to Taylor's birth yet did not benefit from them. Instead, she was, as the juvenile court observed, so "disconnect[ed]" that she did not perceive how her neglect caused her children serious injury. Moreover, ICWA expert, Sean Osborn, opined that Taylor would be at serious risk of physical harm if returned to mother's custody and the tribal chief, mother's brother, believed that Taylor was safer where she was. Thus, compelling evidence supports the juvenile court's decision not to return Taylor to mother's custody at the dispositional hearing.

The real issue in this case is whether active efforts were made to prevent Taylor's removal from mother's physical custody. Again, we conclude substantial evidence supports the juvenile court's finding that they were.

As soon as the juvenile court ordered Taylor detained, Elizondo contacted the ICWA representative for assistance in identifying services for mother and was told that the tribe had nothing to offer. Elizondo, however, continued to inquire and the tribe reiterated it had no services to offer mother and stated there were no community or tribal members who would provide support. According to the evidence, the tribe was not only unable to assist mother but, for whatever reason, was apparently not interested in helping her retain custody of Taylor. Without the tribe's assistance, the department was in effect precluded from providing services or programs that took into account the "prevailing social and cultural values, conditions, and way of life of the Indian child's tribe," as required under section 361.7.

Mother nevertheless contends services such as intensive parenting and therapy were available locally from the Tuolumne Band of Me-Wuk Indians. There is, however, no such evidence in the record and the only mention of it is contained in a letter brief filed by mother's attorney. Further, mother's attorney did not ask DeRouen, mother's ICWA expert, about the Tuolumne Band of Me-Wuk Indians or elicit from her any specific tribal resources available to mother.

Mother also contends the department failed to make active efforts under ICWA because it did not directly provide mother even non-tribal parenting instruction but rather relied on third party providers. Mother fails, however, to cite any authority that requires the department to directly provide services under ICWA.

We conclude active efforts were made to prevent Taylor's removal. The department diligently sought out tribal resources to no avail and parenting instruction had proven fruitless. We concur with the juvenile court there was nothing more the department could have done to prevent Taylor's removal at the dispositional hearing.

II. Denial of Reunification Services

Mother and father contend the juvenile court erred in denying them reunification services because they made efforts to improve their parenting. They cite facts that mother no longer smokes marijuana, does not smoke around Taylor, and they have not engaged in domestic violence. They do not, however, specify how the juvenile court erred in denying them services or cite to specific statutory or case authority.

In this case, the juvenile court denied mother and father reunification services under section 361.5, subdivision (b)(6) and (11). Given the thrust of mother and father's argument, we could construe it as challenging the juvenile court's order denying them reunification services under section 361.5, subdivision (b)(11).⁴ However, we need not

⁴ Father's writ petition does not technically comply with the content requirements of California Rules of Court, rule 8.452(b), in that it does not contain a summary of the facts

review their argument because even if we found error in the juvenile court's denial order under section 361.5, subdivision (b)(11), we would not grant relief. That is so because the juvenile court need only find one basis for denying a parent reunification services. Since the juvenile court also denied mother and father reunification services under section 361.5, subdivision (b)(6), which they do not challenge, we would affirm the denial of services order. We find no error on this record.

DISPOSITION

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

and legal argument, including citation to authority. Nevertheless, we may liberally construe a petition and do so in this case. (Cal. Rules of Court, rule 8.452(a)(1).)