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

ISAAC J.,

Petitioner,

v.

THE SUPERIOR COURT OF STANISLAUS
COUNTY,

Respondent;

STANISLAUS COUNTY COMMUNITY
SERVICES AGENCY,

Real Party in Interest.

F069123

(Super. Ct. Nos. 509861, 515966,
516222)

OPINION

THE COURT*

ORIGINAL PROCEEDINGS; petition for extraordinary writ review. Ann Q.
Ameral, Judge.

Tim Bazar, Public Defender, and Sophia Ahmad, Deputy Public Defender, for
Petitioner.

No appearance for Respondent.

John P. Doering, County Counsel, and Robin Gozzo, Deputy County Counsel, for
Real Party in Interest.

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* Before Levy, Acting P.J., Gomes, J., and Kane, J.

Petitioner (father) seeks an extraordinary writ (Cal. Rules of Court, rule 8.452) to vacate the orders of the juvenile court issued at a contested dispositional hearing denying him reunification services pursuant to Welfare and Institutions Code section 361.5, subdivision (b)(13)¹ and setting the case for a section 366.26 hearing to terminate father's parental rights to his daughter, M.H. (age 7) and his sons E.H. (age 4) and I.J. (age 2).² We will deny the petition.

PROCEDURAL AND FACTUAL BACKGROUND

Earlier Proceedings

In March 2007, a detention hearing was held for mother's oldest son, not a party to these proceedings, and M.H. who had just been born.³ A supplemental petition was filed in September 2008. Allegations focused on mother's positive drug tests and her failure to complete an inpatient drug treatment program. The supplemental petition was sustained and home placement was considered inappropriate for the oldest son. Mother's parental rights to the oldest son were terminated with a plan of guardianship.

The court ordered reunification services for mother and M.H. and in October 2009, M.H. was released back into mother's custody. Father was permitted visitation with M.H. following a declaration of paternity. The dependency for M.H. was dismissed in May 2010.

A new dependency action was filed for M.H. and her one-year-old brother, E.H. in November 2010. The new petition was based on allegations of domestic violence

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

² The juvenile court also denied services for the children's mother, Sarah H. (mother), who is not a party to this proceeding. Father is the presumptive father of all three children.

³ The oldest son is the child of C.L. who is also not a party to these proceedings. C.L.'s parental rights to the oldest son were also terminated.

between father and mother, an injury caused during domestic violence to M.H., father testing positive twice for methamphetamine and marijuana, and mother's chronic drug abuse.

Father grew up in a home where his mother abused methamphetamine. Father began using drugs and alcohol when he was a teenager. Father reported using marijuana when he was 16 years old, and then began using alcohol and methamphetamine. Father was arrested two or three times for possession of a controlled substance. Father admitted felony possession of a controlled substance in 2007 and was placed in drug court and deferred entry of judgment. In 2009, father was convicted of felony possession of a controlled substance and placed on probation. Father was arrested twice in 2011 for domestic violence.

At the conclusion of a joint jurisdiction/disposition hearing in January 2011, the children were adjudged dependents. Services were denied to mother. Father was granted services. Father was to receive substance abuse treatment, as well as programming for parenting, domestic violence, and anger management. A three-month progress review hearing was held in May 2011. It was determined that father was not doing well with his case plan.

In May 2011, father entered the Nirvana inpatient treatment program and in June 2011 father started therapy for anger management and began domestic violence classes. Father's visits with the children were increased in July 2011. Father entered outpatient treatment in October 2011 and engaged in other referral services. Father successfully completed residential inpatient and outpatient services and was discharged from Nirvana on February 17, 2012. It was recommended that he continue attending A/A and/or N/A.

Mother gave birth to I.J. in December 2011. Mother admitted using methamphetamine during her pregnancy but stopped in October 2011. A section 300 petition was filed on behalf of I.J. on January 11, 2012. The petition was found true on

February 16, 2012 and the family was continued on family maintenance services. On January 31, 2013, the petition for I.J. was dismissed.

In May 2012, there was a section 366.22 hearing for M.H. and E.H. The children were continued as dependents. The parents were ordered to engage in couples counseling if they intended to live together. Reunification services were continued. In October 2012, the dependency for M.H. and E.H. was dismissed. The parents were awarded joint legal and physical custody and no exit orders were issued.

Current Proceedings

On June 3, 2013, father was arrested for possession of narcotics paraphernalia. Father was arrested again on July 5, 2013, for a probation violation. On August 17, 2013, a referral was received by a reporter requesting that a social worker immediately investigate mother's home. The reporter stated the children were unkempt and the home was filthy with feces. Mother was recently using methamphetamine and was caught by the reporter. The reporter stated that while I.J. was taking a nap, mother intended to leave him unattended in the residence and drive to Turlock. The reporter threatened to call law enforcement so mother took the child with her. Father had an outstanding warrant for his arrest and the children were afraid of him because he hits them.

On August 26, 2013, Emergency Response Social Worker Juan Zamora attempted to contact the parents at their home. Zamora's attempts to call or visit the parents ended without any contact on September 10, 2013 and October 4, 2013. Zamora contacted M.H. at school on October 4, 2013, and found her clothing was dirty. M.H. did not know whether her parents were using drugs but said they yelled at each other during arguments. Zamora had two more unsuccessful attempts to contact the parents in October and early November 2013.

On November 13, 2013, Emergency Response Social Worker Christopher Lopez attempted to contact the family after business hours. There was no response and Lopez left his business card at the front door. Lopez returned later and found the business card

gone. Lopez rang the doorbell and knocked on the door several times. No one answered but an adult male was looking at Lopez through a window.

On December 19, 2013, Social Workers Zamora and Lyzette Navarro, and Probation Officers Velasquez and Ranau, went to the parents' home. Father was coming from the back yard to the front yard. Mother and M.H. were waiting in a car parked in the driveway. Officer Velasquez searched father, and found a glass pipe with residue on it that tested positive for methamphetamine. Father claimed he was unaware that Child Protective Services (CPS) was looking for him. Father told investigators that he no longer lived with mother because she had asked him to leave a few weeks earlier.

Although father denied currently using drugs, he explained that he had been in relapse mode for a couple of weeks and admitted smoking methamphetamine earlier that day. Father denied using methamphetamine in front of his children. Father was arrested for felony possession of narcotics and misdemeanor possession of drug paraphernalia. Mother also denied knowledge that CPS was looking for her, was hostile toward social workers, denied she lived at the residence, and admitted to smoking methamphetamine every couple of days. The children were taken into protective custody.

A new section 300 petition was filed on behalf of all three children on December 23, 2013. The petition alleged the inability of the parents to protect, supervise, and provide regular care for the children due to substance abuse based on the facts as outlined above, including the filth of the residence. The petition further alleged that mother had her parental rights terminated for an older child and that both parents had extensive services from CPS. The children were detained on December 24, 2013. The jurisdiction/disposition report recommended that both parents not receive additional

reunification services based on ongoing drug dependency pursuant to section 361.5, subdivision (b)(13).⁴

Jurisdiction/Disposition Hearing

A contested jurisdiction/disposition hearing was conducted on March 18, 2014, and March 20, 2014. Mother testified that she was not living in the residence when she and father were contacted by social workers and probation officers. Mother said she was staying between her mother's and sister's houses and was no longer in a relationship with father. Mother explained that M.H. was in the car with her but father had picked mother up from her sister's house.

Mother saw probation officers retrieve a methamphetamine pipe and a marijuana pipe from father. Mother stated she was unaware father was in possession of these pipes. Mother said she had last used methamphetamine in 2013 but could not remember the specific date. Mother admitted that she did not test for drugs because she would test positive for methamphetamine and alcohol. Mother last used methamphetamine four or five days before the hearing and drank alcohol the evening before the hearing. Mother admitted she had a problem with drug use.

Mother said she ended her relationship with father at the end of November 2013. Mother drove to the courthouse the day of the hearing with father because she has no license. When the court asked mother if it did not follow the agency's recommendation and granted her services, what would be different this time compared to the times mother received services in the past. Mother replied that she did not know how to answer the question and asked to pass on that question.

Between March 18, 2014, and March 20, 2014, father was arrested. The juvenile court denied father's request to have additional time to consult with his counsel because

⁴ The report further recommended that mother also not receive additional reunification services based on section 361.5, subdivision (b)(10) and (11).

counsel was able to meet with father prior to the hearing. Father denied the allegation that his house was dirty.

Father admitted he was aware CPS was trying to reach him and that he purposely avoided them. When father was arrested for possession of the glass pipe on December 19, 2013, he described himself as secretively using drugs. Father said he had been “[j]ust barely” using drugs the morning prior to his arrest. Father said he had been in relapse mode for two weeks. Father denied using drugs in front of his children.

Father explained that he was living in his house off and on. Things in the home belonged to him. A pit bull that social workers saw inside the house when father was trying to evade them belonged to father. Father did not begin a drug treatment program yet because he was homeless and it was difficult to get to the treatment program. Father conceded that he was not meeting the children consistently during scheduled visitations. Father conceded he missed appointments, but said this was due to transportation difficulties. When father did visit the children, he would stay for an hour and leave even if the visit was scheduled for two hours.

Father admitted that he last used methamphetamine a couple of days before the hearing. When asked how often he used methamphetamine since December 2013, father replied that he used it irregularly, but heavily when he does use it.⁵ Father recalled completing two substance abuse programs. Both were provided by Nirvana. When asked why he did not schedule weekly visits with the children, father replied that his

⁵ Father’s reply to the question of how often he used methamphetamine since December of 2013 was that he did so “[r]egularly, but heavily when I do.” Although the reporter’s transcript literally states that father used methamphetamine regularly, on the next page of the reporter’s transcript, father responds to a question during cross-examination and states that he does not use methamphetamine often, but consumes it heavily when he does use it. We conclude that father testified on page 52 of the reporter’s transcript that he used methamphetamine irregularly, not regularly, and the word regularly on page 52 of the reporters transcript is either scrivener’s error or father misspoke.

transportation was undependable. Father admitted using methamphetamine with mother several times since December 2013.

Father said that although he was staying at the house, he was not supposed to do so because bills had not been paid and services and utilities to the home were disconnected. Father admitted he had a substance abuse problem and explained that he was willing to enter a program to treat it. When the court asked father what would be different this time around, he replied that this time he would not fall short.

At the conclusion of the hearing, the juvenile court found the allegations of the petition true, with an amendment to one allegation. The court ordered the removal of the children from the parents' custody. The court found that both parents had resisted prior court-ordered treatment during the three-year period prior to the filing of the instant petition and denied further reunification services pursuant to subdivision (b)(13) of section 361.5. The court further found that it would not be in the children's best interests to offer the parents reunification services because they could not continue to suffer removal after removal from the parents' custody. The court scheduled a section 366.26 hearing for July 21, 2014.

DISCUSSION

Petitioner argues substantial evidence does not support the juvenile court's order denying him reunification services pursuant to section 361.5, subdivision (b)(13) (subdivision (b)(13)).⁶ Father describes his more recent drug use as a mere relapse.

⁶ Section 361.5, subdivision (b)(13) provides in relevant part: “(b) Reunification services need not be provided to a parent or a guardian described in this subdivision when the court finds by clear and convincing evidence, any of the following: [¶] ... [¶] (13) That the parent or guardian of the child has a history of extensive, abusive, and chronic use of drugs or alcohol and has resisted prior court-ordered treatment for this problem during a three-year period immediately prior to the filing of the petition that brought [the] child to the court's attention”

Father further argues that the court erred in finding that the children had been removed from his custody on more than one occasion because they had only been removed from his custody once before. We reject these arguments.

We initially note that although the children were only removed from father's custody once, when the first petition was filed detaining the children from mother's custody, father was not apparently residing with mother and failed to maintain regular contact with CPS. It took some time for father to acknowledge paternity for his two oldest children and he avoided taking a paternity test. The children, however, have been through more than one detention. We find no error in the juvenile court's finding that the children had been through other detentions.

Though provision of reunification services is the norm in juvenile dependency cases, the Legislature has determined that, in some circumstances, it would be a "fruitless" effort. (*In re Levi U.* (2000) 78 Cal.App.4th 191, 200 (*Levi U.*.) One example of a bypass to offering a parent reunification services was codified by the Legislature in section 361.5, subdivision (b)(13). An attempt to facilitate reunification in such a case may not only be fruitless, but does not serve and protect the child's best interest. (*In re Brooke C.* (2005) 127 Cal.App.4th 377, 382 (*Brooke C.*.)

We review an order denying reunification services for substantial evidence. (*Cheryl P. v. Superior Court* (2006) 139 Cal.App.4th 87, 96.) If, on the entire record, there is substantial evidence to support the findings of the juvenile court, we uphold those findings. We do not consider the credibility of witnesses, attempt to resolve conflicts in the evidence, or evaluate the weight of the evidence. Instead, we draw all reasonable inferences in support of the findings, view the record favorably to the juvenile court's order, and affirm the order even if there is substantial evidence supporting a contrary finding. The parent has the burden of showing there is no evidence of a sufficiently substantial nature to support the finding or order. (*In re L.Y.L.* (2002) 101 Cal.App.4th 942, 947.)

Father does not deny that he has a drug dependency but contends that he is amenable to treatment and characterizes his most recent drug use as a mere relapse. In analyzing father's argument, we find instructive a case that found the mother had resisted drug treatment. (*Laura B. v. Superior Court* (1998) 68 Cal.App.4th 776 (*Laura B.*))⁷

In *Laura B.*, a mother with an 18-year history of drug use gave birth to a child who tested positive for cocaine. (*Laura B.*, *supra*, 68 Cal.App.4th at p. 778.) The mother had participated in numerous rehabilitation programs. She attended Alcoholics/Narcotics Anonymous meetings until approximately a year before the child was born, but quit attending because she began using drugs again. She used cocaine at least twice a week during the first two months of her pregnancy. After she learned she was pregnant, she reduced her cocaine use to every other week. (*Ibid.*) The juvenile court determined that her drug use constituted resistance to treatment and denied her reunification services. (*Id.* at pp. 778-779.)

The *Laura B.* court distinguished the mother's drug use from a relapse, finding that a parent who regularly attends a program could experience a brief relapse but immediately resume treatment. Such behavior would not necessarily show resistance to treatment. The mother in *Laura B.*, however, did not suffer a mere setback or fall off the wagon once or twice; she stopped attending Narcotics Anonymous meetings. She also returned to habitual, semiweekly and then biweekly substance abuse. The mother demonstrated a clear determination to maintain her drug habit. The juvenile court

⁷ *Laura B.* examined the meaning of "resistance to treatment" under section 361.5, subdivision (b)(12), the antecedent version of subdivision (b)(13) of section 361.5. (*Laura B.*, *supra*, 68 Cal.App.4th at pp. 780-781.) Section 361.5 was amended, effective October 10, 2001, without substantive change, renumbering subdivision (b)(12) as (b)(13). (Stats. 2001, ch. 653, § 11.3, p. 4123.) In 2002, section 361.5, subdivision (b)(13), was amended to replace "prior treatment" with "court-ordered treatment." (Stats. 2002, ch. 918, § 7, p. 4512.)

reasonably interpreted this behavior as resistance to treatment. (*Laura B.*, *supra*, 68 Cal.App.4th at p. 780.)

The *Laura B.* court further found that the department or social services agency is required to show that a parent has previously undergone or enrolled in substance abuse rehabilitation and during the three years prior to the petition being filed, the parent evidenced behavior that demonstrated resistance to that rehabilitation. Proof of such conduct may come in the form of dropping out of programs, but it may also come in the form of resumption of regular drug use after a period of sobriety. (*Laura B.*, *supra*, 68 Cal.App.4th at p. 780.)

Father had a long history of drug abuse going back to when he was 16 years old. Father was 26 years old when the instant petition was filed. Father had multiple arrests for possession of drugs and drug paraphernalia. Although father successfully completed the Nirvana program in February 2012, by June 2013 father was arrested for possession of narcotics paraphernalia. The juvenile court could reasonably infer from this fact that father began using drugs again at least from the summer of 2013.

Father admitted he was using methamphetamine again by December 2013. Although father described his most recent use of methamphetamine as a relapse and said he used methamphetamine irregularly since December 2013, father admitted that when he used methamphetamine he used it heavily. Father has serious drug dependency if he heavily uses methamphetamine, even if it is infrequent. Father's evasion of CPS for several months since August 2013, when he was aware the agency was trying to contact him, is evidence from which the juvenile court could reasonably infer that father was trying to hide his use of drugs from CPS. The evidence supports a conclusion that father's methamphetamine use was chronic and extensive beyond what he was willing to admit.

We find that father had a lengthy history of abusing drugs. Although he had a period of sobriety in 2012 and perhaps early 2013, by mid-2013 father was following his

old pattern of regular drug use. Father's situation is little different from the parents in numerous published cases who were denied reunification services due to long histories of drug use and addiction.⁸ We conclude that father has resisted prior court-ordered treatment within the meaning of section 361.5, subdivision (b)(13).

Finally, we find no abuse of discretion in the juvenile court's determination that reunification would not be in the children's best interest. (§ 361.5, subd. (c).) Father's continuing inability to maintain sobriety and the children's extreme need for stability strongly support the juvenile court's decision not to attempt reunification. We do not find any error by the juvenile court on this record.

DISPOSITION

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

⁸ *Brooke C.*, *supra*, 127 Cal.App.4th 377, 381 [15 years of drug use]; *In re Brian M.* (2000) 82 Cal.App.4th 1398, 1400 [15 years of drug abuse]; *Randi R. v. Superior Court* (1998) 64 Cal.App.4th 67, 73 [29 years of alcohol abuse and 26 years of drug abuse]; *Laura B.*, *supra*, 68 Cal.App.4th 776, 778 [18 years of drug abuse]; *Karen H. v. Superior Court* (2001) 91 Cal.App.4th 501, 503 [10 years of substance abuse]; *Levi U.*, *supra*, 78 Cal.App.4th 191, 194 [10 years of substance abuse]; and *Letitia V. v. Superior Court* (2000) 81 Cal.App.4th 1009, 1018 [at least 8 years of substance abuse].