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

MICHELLE B.,

Petitioner,

v.

THE SUPERIOR COURT OF FRESNO  
COUNTY,

Respondent;

FRESNO COUNTY DEPARTMENT OF  
SOCIAL SERVICES,

Real Party in Interest.

F069756

(Super. Ct. No. 03CEJ300246)

**OPINION**

**THE COURT\***

ORIGINAL PROCEEDINGS; petition for extraordinary writ review. Brian M. Arax, Judge.

Michelle B., in pro. per., for Petitioner.

No appearance for Respondent.

Daniel Cederborg, County Counsel, and Amy K. Cobb, Deputy County Counsel, for Real Party in Interest.

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

Petitioner, Michelle B. (mother), 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 her reunification services pursuant to Welfare and Institutions Code section 361.5, subdivision (b)(13)<sup>1</sup> and setting the case for a section 366.26 hearing to terminate mother's parental rights to her newborn daughter, Carly B. We deny the petition.

## **PROCEDURAL AND FACTUAL BACKGROUND**

### ***Petition and Detention***

On April 9, 2014, a petition was filed alleging pursuant to section 300, subdivision (b) that as a result of mother's failure or inability to supervise or protect the child adequately, and mother's inability to provide regular care due to a mental illness or disability, Carly B. was at substantial risk of suffering serious physical harm or illness. The petition alleged that mother suffered from mental health issues, Bi-Polar Disorder, and had a history of mental health hospitalizations. Mother had recently given birth to Carly prematurely in a hotel room and disclosed that she had been using methamphetamine on and off throughout her pregnancy. Mother tested positive for the presence of methamphetamine upon her arrival at Central Regional Medical Center. The petition alleged that mother had minimal baby supplies, a history of unstable housing, and was unable to provide a plan of care for Carly's well-being, food, clothing, and shelter.

The petition further alleged pursuant to section 300, subdivision (j) that in October 2003, Carly's brother, C.H., was removed from mother's care due to general neglect related to mother's mental health problems, substance abuse of methamphetamine, and unstable lifestyle that included being homeless. Mother received

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

reunification services after C.H. was removed from her care and she successfully reunified with C.H. in June 2005. Mother continued to have mental health problems and abused methamphetamine. A grandmother obtained guardianship of C.H. in May 2006. The petition alleged Carly was at similar risk of neglect by mother.

The detention report by the Fresno County Department of Social Services (department) stated that Carly was hospitalized in the New Born Intensive Care Unit due to premature birth and perinatal drug exposure. When mother was receiving reunification services for C.H., she received services, inter alia, for substance abuse treatment, counseling, and parenting. One reason the grandmother obtained a guardianship for C.H. was because mother had relapsed in her use of drugs.

In April 2014, the juvenile court detained Carly and set the matter for a jurisdiction hearing. Mother was not present at the detention hearing. The juvenile court ordered visitation for mother and further ordered that mother not be under the influence of any controlled substances during visits. The court found that services were not going to be offered to mother, although the department would be assessing the family prior to disposition.

### ***Jurisdiction Hearing***

The social worker's report for the jurisdiction hearing stated that Carly was placed in the care of a relative. Mother failed to attend a concurrent planning orientation on April 25, 2014. As of April 25, 2014, mother had not made contact with the department to request visitation with Carly.

The social worker reported that in early April 2014, mother had given birth at a motel and was brought to the hospital. Carly was born premature at 35 weeks. Mother tested positive for amphetamines and disclosed her use of methamphetamine for the prior three weeks. Mother was in Turning Point treatment program, but left three weeks earlier. Mother obtained limited prenatal care, had no baby supplies, and a grandmother

had a legal guardianship for mother's son C.H. who was 11 years old. The grandmother had the guardianship since C.H. was three years old.

Mother was found to be in the manic stage of Bi-Polar Disorder. Mother also reported that she was diagnosed with ADHD. Mother stopped taking her psychotropic medication and stopped seeing her doctor prior to her pregnancy. Mother also started taking illegal drugs again. Mother tested positive for methamphetamine and Carly was perinatally exposed. Mother obtained limited prenatal care.

Mother also appeared to be homeless. Carly was being kept in the New Born Intensive Care Unit for observation. Carly was not yet able to feed and was on a course of antibiotics due to complications from her birth. Mother was open about her substance abuse problem and drug use. Mother believed her own use of methamphetamine induced her into labor and an early delivery. On the day of Carly's birth, mother had smoked methamphetamine at 10:30 a.m., began to have contractions by 7:00 p.m., and gave birth at 8:00 p.m.

Mother told the social worker that she used controlled substances "on and off" but had been clean for six or seven years. Mother said she was clean of drugs when C.H. was returned to her, but could not maintain employment and had C.H.'s grandmother take guardianship of him. Mother had gone back to school, obtained a bachelor degree, and worked at the school for a time before she relapsed again. Mother had checked herself into the outpatient component of the Turning Point program, but failed to attend group meetings and had relapse episodes.

Mother did not know the identity of Carly's father and wanted Carly to go home with her. Mother was not able to establish stable housing for herself and had not prepared any baby items. Mother received disability and had saved some money for baby supplies. Mother could not provide a suitable place to house Carly. When asked about her Bi-Polar Disorder, mother said she was taking three antidepressant medications, but she had stopped these when she learned she was pregnant.

The social worker noted in the report that the department was concerned mother would continue to use methamphetamine and have mental health problems that would go untreated because mother does not take her prescribed mental health medications. The department was further concerned mother would not be able to properly supervise Carly and that she would be at risk of serious harm or danger. The department recommended that the allegations in the petition be found true and the disposition hearing be set in 30 days for determination of whether mother should be denied services pursuant to section 361.5, subdivision (b).

The jurisdiction hearing was held on May 1, 2014. Mother was not present at the hearing. The court ordered the appointment of counsel for mother. The matter was submitted on the social workers' reports. The court found the allegations in the petition to be true and set the matter for a disposition hearing.

### ***Disposition Hearing***

The disposition hearing was continued on May 29, 2014, and again on June 5, 2014. On July 10, 2014, the juvenile court set the disposition hearing for July 17, 2014. Counsel for mother filed a case synopsis stating that the department sought to not offer reunification services pursuant to section 361.5, subdivision (b)(13). Mother's counsel stated that mother was in a drug treatment program and was seeking reunification services.

Prior to the beginning of the disposition hearing, the department filed an addendum report recommending that the juvenile court deny reunification services pursuant to section 361.5, subdivision (b)(13) due to mother's chronic substance abuse and to set the matter for the termination of parental rights pursuant to section 366.26. On July 3, 2014, mother met with her social worker and indicated that she had enrolled in the Spirit of Women to demonstrate her intention to remain sober. On June 30, 2014, however, mother "self-discharged" from that program. Mother returned to WestCare for

outpatient treatment and was continuing to receive mental health services from Turning Point.

Mother asked the social worker if the department would change its recommendation to deny reunification services based on mother's current involvement in services. Mother recounted her history of drug abuse, explaining that she began using marijuana and alcohol when she was 14 years old. Mother snorted crack and used cocaine when she was 15 years old and continued to use cocaine until she was 18 years old. Mother stated she was sober from the ages of 18 to 24 while she was in college. Between the ages of 24 and 30, Mother used cocaine approximately once a month, as well as using heroin and ecstasy. She started using methamphetamine at 29 years of age. Mother told the social worker that she was sober between the ages of 30 and 33.<sup>2</sup> Between the ages of 33 to 41, mother said she was sober on and off, but had pushed her support networks away and began to spend more time with people who were not positive. Mother graduated from the Fresno New Connections outpatient treatment program in 2009 when she was 37 years old. Mother later lived at the WestCare sober living program for several months.

The social worker pointed out to mother that the times mother was sober correlated to her level of support and accountability. The social worker explained to mother that it was clear mother could complete multiple substance abuse programs and other services when she reunified with C.H. The social worker further pointed out to mother, however, that it was also clear mother had difficulty maintaining sobriety and stability. Mother was very anxious during the meeting and had difficulty remaining focused. Mother became emotional when confronted with her substance abuse history

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<sup>2</sup> The disposition report was prepared in May 2014. Mother admitted during an earlier conversation with the social worker that even during her years of sobriety, mother would have relapses from time to time but did not consider herself a regular user.

and conceded it looked really bad. On July 9, 2014, mother provided a certificate of completion of a 14-session nurturing parenting program.

In her evaluation, the social worker stated that the department was not recommending reunification services for mother because of mother's history of substance abuse, unstable lifestyle, and mental health problems. The department was concerned that these issues negatively affected mother's ability to provide regular care, supervision, and protection for her child. Although mother had been participating in services on her own, the department did not believe that additional services for mother would be in Carly's best interests because mother had demonstrated over the course of several years that she failed to benefit from previous court-ordered services. Mother had continually resisted treatment ordered to her and has continued to use methamphetamine. The department recommended mother be denied services pursuant to section 361.5, subdivision (b)(13) and that the matter be set for a hearing to terminate mother's parental rights pursuant to section 366.26.

Mother testified at the disposition hearing on July 17, 2014. At the time of the hearing, mother was in drug treatment with WestCare Out-Patient Services since May 16, 2014, in an outpatient program, and again from July 2, 2014. According to mother, she "had a transitional period" between the two WestCare programs. Mother was drug testing while in the program and had clean tests. Prior to being in the WestCare program, mother was in the Spirit of Women program.

On cross-examination, mother explained that she was in the WestCare outpatient program on May 16, 2014, and left that program to enter the Spirit of Women program. Mother did not feel the Spirit of Women program was working for her psychologically. Mother wanted to go back to what was working for her. She also attended Turning Point for the services available. Mother then returned to the WestCare program. Mother was in the Spirit of Women program for about a week and a half. Mother wanted an outpatient program because she needed her space.

Mother was recently visiting with Carly and interacting well with her. Mother believed she could provide Carly with things no one else could, like a mother's love and instinct. Mother said that sobriety was the most important thing. Mother admitted she had a history of substance abuse that started when she was a teenager. Mother believed things were different this time because she believed that she would stay clean and sober for her baby because giving birth changed mother's life.

Mother explained that in the past she was used to her mother and father helping her when she abused drugs. In the hospital after giving birth, mother said there was no one there but her and the doctors and she had to face her addiction. Mother admitted she "really screwed up." Mother wanted to be clean and sober so she could raise Carly. Mother said she was developing a support group other than her family members. Mother believed this was very important.

Mother was taking medications for her mental health issues and planned to do so in the future. Mother said it helped her to avoid substance abuse when she took her medication. Mother explained that although she graduated from programs in the past, she did not understand the repercussions of using drugs. Now mother is regularly attending groups. Mother also attends a mental health group. If the court granted mother reunification services, mother said things would be different this time and she would get outside support in addition to finishing the program.

The juvenile court found that the bypass provision of section 361.5, subdivision (b)(13) applied to mother by clear and convincing evidence. The court noted that the burden shifted to mother to show that it was in the best interest of the child for mother to receive reunification services. The court noted that although mother dropped out of the Spirit of Women program, she immediately reentered the WestCare program and sought services from Turning Point. The court noted that mother was 41 and still had not kicked her drug habit.

Although mother had periods of sobriety, the court noted she used cocaine, alcohol, methamphetamine, and other drugs. Between the ages of 33 and 41, mother was on and off the wagon. The court noted that mother graduated from the Fresno New Connections outpatient program at the age of 37 in 2009 and later lived at the WestCare Sober Living program for seven months. The court found mother suffered from polysubstance abuse and could not remain consistently sober. Even mother's reunification with C.H. did not last. The court noted it was focusing on mother's drug use, not her mental health condition.

The court found that the strength of mother's bond with her child did not weigh in favor of mother or the child's current caregiver because Carly was only three months old. The court noted mother expressed a willingness to change. The court found mother's history and failures at treatment, coupled with little bond with the child and the child's tender age, demonstrated that mother had not met her burden of proof by clear and convincing evidence that it was in Carly's best interest to provide mother with reunification services. The court set the matter for a permanent planning hearing to take place within 120 days.

## **DISCUSSION**

Mother argues there was a failure by the department to prove that it was not in her child's best interest to not be with mother. Phrased without a double negative, mother contends it is in Carly's best interest that mother receive reunification services notwithstanding the applicability of section 361.5, subdivision (b)(13).<sup>3</sup> We disagree and affirm the orders of the juvenile court.

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<sup>3</sup> The department filed a response to mother's petition arguing that mother abandoned her writ by failing to assert an arguable claim of trial court error and failing to cite to case or statutory authorities. Elaborating on the absence of legal authorities, the department further argues mother's petition merits summary dismissal. We reject these arguments in the instant action because mother has raised an arguable issue of juvenile court error, even if she does not prevail on the merits.

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).<sup>4</sup> 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.)

Mother does not deny that she has a drug dependency but contends that she is amenable to treatment and is currently in a drug treatment program. In analyzing

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<sup>4</sup> Section 361.5, subdivision (b)(13) provides in relevant part: “(b) Reunification services need not be provided to a parent or 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 ....”

mother's argument, we find *Laura B. v. Superior Court* (1998) 68 Cal.App.4th 776 (*Laura B.*) instructive.<sup>5</sup>

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

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<sup>5</sup> *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.)

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 even though there is no proof the parent attended any formal rehabilitation program during the three years prior to the child's birth. (*Laura B.*, *supra*, 68 Cal.App.4th at p. 780.)

In the instant action, mother was 41 years old and had been using illegal narcotics and alcohol since she was 14 years old. Even during brief periods of sobriety, mother admitted that she relapsed and used drugs, especially methamphetamine. Mother had successfully reunified with her son, C.H., in 2005. By 2006, however, C.H. was in a guardianship with a grandparent due to mother's continuing drug dependency. Mother completed a treatment program again in 2009 and had several months of outpatient treatment thereafter. In the spring of 2014, mother found herself using methamphetamine during her pregnancy with Carly.

Mother was again in the Turning Point drug treatment program during her pregnancy, but dropped out of the program three weeks prior to Carly's birth and began using methamphetamine. Carly was born prematurely several hours after mother took methamphetamine. Mother tested positive for methamphetamine and/or amphetamine and Carly was perinatally exposed. Mother enrolled in the WestCare program, switched to the Spirit of Women inpatient program, and then reenrolled in the WestCare outpatient program because she apparently had difficulty dealing with other patients in an inpatient treatment program. In addition to mother's difficulty in finding a suitable and stable treatment program, mother admitted to her social worker on May 21, 2014, that she used methamphetamine a week earlier. This was less than six weeks after the initiation of dependency proceedings.

We find that mother had a lengthy history of abusing drugs. Mother'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.<sup>6</sup> Even during this brief dependency process, mother relapsed to methamphetamine use as she sought treatment for her addiction. Mother's pattern of receiving treatment for drug abuse, reverting to illegal drug use, and again seeking treatment, is a long repeating pattern that has not changed since mother was a teenager. We conclude that mother 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 child's best interest. (§ 361.5, subd. (c).) Mother made virtually no showing at the disposition hearing that it would be in Carly's best interest for mother to receive reunification services. Mother, for instance, failed to have stable housing during much, if not all, of the dependency proceedings. Mother had no supplies and was unprepared for Carly's birth.

At the onset of dependency proceedings, mother did not contact the department and failed to appear at the detention and jurisdiction hearings. Under these facts, mother has failed to meet her burden of proof that court-ordered reunification services would be in Carly's best interest. Mother's continuing inability to maintain sobriety and her infant child's unquestioned 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.

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<sup>6</sup> *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].

## **DISPOSITION**

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