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

MARIAH A.,

Petitioner,

v.

THE SUPERIOR COURT OF KERN COUNTY,

Respondent;

KERN COUNTY DEPARTMENT OF HUMAN
SERVICES,

Real Party in Interest.

F071081

(Super. Ct. Nos. JD127367 &
JD127368)

OPINION

ORIGINAL PROCEEDINGS; petition for extraordinary writ review. Louie L. Vega, Judge.

J. Anthony Bryan for Petitioner.

No appearance for Respondent.

Theresa A. Goldner, County Counsel, and Elizabeth M. Giesick, Deputy County Counsel, for Real Party in Interest.

INTRODUCTION

Mariah A., petitioner (mother), filed an extraordinary writ petition (Cal. Rules of Court, rule 8.452) regarding her minor children, Gabriella A. (five years old) and Jeremiah O. (eight years old). Mother has filed a separate appeal in case No. F071132 that is not ripe for review as to three older siblings. Mother seeks relief from the juvenile court's order issued at the status review hearing terminating petitioner's reunification services and setting a Welfare and Institutions Code section 366.26 hearing for Gabriella and Jeremiah.¹

We reject an argument raised by mother's counsel for the first time in her reply brief that the juvenile court failed to establish jurisdiction. Mother contends the department failed to provide her with significant reunification services and provided no mental health services. Mother argues she has been fully compliant with her reunification plan and has participated in programs and services. Mother argues there is no risk of detriment in returning the children to her custody. Mother challenges evidence adduced in the hearings before the juvenile court that her visits with her children were chaotic. Mother argues she is not in a current romantic relationship. Mother further challenges the juvenile court's reliance on pending criminal allegations that she was in possession of, and used, child pornography. Mother contends the juvenile court erred in not permitting her to challenge placement of her daughter and two of her sons based on the children's cultural heritage. We deny mother's petition.

FACTS AND PROCEEDINGS

INITIAL PROCEEDINGS

The Kern County Department of Human Services (department) filed petitions and amended petitions pursuant to section 300 on behalf of Gabriella A., Richard O.,

¹ Unless otherwise indicated, all further statutory references are to the Welfare and Institutions Code.

David O., William O., and Jeremiah O. after the children were taken into protective custody on September 15, 2011.² The petitions alleged that Gabriella's father, Michael A. (father), was diagnosed with bipolar disorder and was physically and emotionally abusive to mother and William. The petitions further alleged that mother failed to protect William and the other children were at risk due to mother's inability to adequately supervise and protect them from father. Also, mother suffered her own mental health issues, including posttraumatic stress disorder (PTSD). William was taken to the emergency room after he injured himself as a result of father's emotional abuse.

Prior to the disposition hearing, the parents were both evaluated by two psychologists. Dr. Thomas Middleton's testing of mother indicated dependent personality traits with borderline and schizoid features. Dr. Middleton further diagnosed mother as having a depressive disorder not otherwise specified, and noted it was necessary to rule out a psychotic disorder not otherwise specified. Dr. Middleton concluded that neither parent would benefit from reunification services due to their underlying mental illness issues. Dr. Middleton noted that if services were to be provided, mother should receive counseling and should be seen by a psychiatrist for medication management of her symptoms. (*Mariah A. v. Superior Court* (June 18, 2013, F066889) [nonpub. opn.])

Dr. Eugene Couture agreed that father would not benefit from reunification services due to his mental health issues, but concluded that mother would benefit from such services. (*Mariah A. v. Superior Court, supra*, F066889.) Dr. Couture diagnosed mother with attention deficit hyperactivity disorder (ADHD). Dr. Couture recommended close supervision of mother by her social worker. (*Mariah A. v. Superior Court, supra*, F066889.)

² After notice to the parties, we have taken judicial notice on our own motion of our prior opinions in case Nos. F066889 and F066890, as well as the fact that there is a pending, related, and unripe appeal in case No. F071132. Some of the facts are derived from our earlier opinions.

The juvenile court found the allegation in the petitions true at the jurisdiction hearing on February 24, 2012, and at the disposition hearing on July 5, 2012, the children were found to come within the provisions of section 300, subdivision (b). The children were adjudged dependent children and placed within the care of the department for suitable home placement. Family reunification services were ordered for mother, but not for father. Mother was ordered to participate in counseling for domestic violence as a victim, parenting classes, classes to learn how to protect, mental health services, and individual counseling to address the issues of self-esteem and codependency.

At the end of 2012, mother was completing the services offered to her. Social workers remained concerned because visits with the children were chaotic and mother did not have the ability to redirect their behaviors. Mother was referred to a directed visitation program. At the end of 2012, mother reported to social workers that she was no longer living with father. In late 2012 and early 2013, however, father told social workers that he and mother were living together.

A review hearing was set for mid-March 2013. A social worker's report noted that mother had made minimal progress toward alleviating the causes for Gabriella's commitment and recommended termination of family reunification services.

CHILD PORNOGRAPHY INVESTIGATION

The months of January and February 2013 were tumultuous. In early January 2013, father was questioned by Homeland Security concerning alleged child pornography sent from his computer to mother. Mother was also questioned and told the investigator, Michael Allan, that father was interested in the material and she admitted looking at it herself and using it with her husband for their sexual arousal. Mother was the tipster whose information led to the discovery of the distribution of child pornography from Michael's e-mail account. Although mother initially blamed father for transmitting the material to her, she later admitted to Allan that this activity had been going on for a couple of years about once a week.

The new information concerning the allegations of child pornography was included in a supplemental report three days prior to the review hearing on March 14, 2013. In the supplemental report, investigative reports by Allan were attached for the first time.

FATHER'S DEATH

Between January 18 and 20, 2013, Kern County Sheriff's deputies received reports that mother was missing and that mother reported she had been kidnapped by father. Father's adult daughter contacted investigators and told them father and mother were at a campsite in Quartzsite, Arizona.

Arizona authorities found mother and father at the campsite, but mother told them she was fine and changed her mind about the kidnapping. Although father was arrested, he was released for lack of evidence. An Arizona deputy drove father to a bus stop in Blythe, California. Mother said she packed up the campsite the next morning and drove to Blythe to find father. Mother failed to find father, stayed overnight in Blythe, and returned to the campsite to find father's body lying in a wash near a creek. An empty bottle of tequila and a glass smoking pipe were on the ground beside father's body.

MARCH 2013 REVIEW HEARING

At the review hearing, the department described mother's compliance with her reunification plan as minimal and sought to terminate her reunification services. The juvenile court denied a motion by mother's counsel to continue the hearing so counsel could prepare for the new allegations raised, especially those concerning child pornography. The court proceeded to rely on the new allegations.

The social worker assigned to mother's case, Veronica Ruiz-Cox, testified that she supervised visits between mother and her children at the Child Visitation Center (CVC). After a visit on August 1, 2012, they were kicked out of the CVC due to the children's behavior and mother's inability to control the children during visitation. Thereafter, visits were held at the department's offices. Visits were attempted at a local park, but one

of the older children would not listen and tried to run away. In January 2013, visits were resumed at CVC as long as a social worker was present. There were few visits in January 2013 because mother was not in the county.

The juvenile court noted that mother had maintained a relationship with father even though she was not supposed to do so. The court also observed mother had in the past testified that she was no longer in a relationship with father and this was not true. The court noted that mother's credibility as a witness was low. The court found that although mother had completed the programs required under her reunification plan, she had not shown any improvement in her ability to parent the children during her visits with them. The court noted that recent reports indicated mother still could not control the children and visits were chaotic. The court denied a section 388 petition filed by mother for the return of her children.

The court found that the hearing was a six- and 12-month review hearing pursuant to section 366.21, subdivisions (e) and (f). The court noted that mother had made minimally acceptable efforts to avail herself of services and that return of Gabriella to petitioner's custody would create a substantial risk of detriment to Gabriella's safety, protection, and her physical or emotional well-being. The court found that the department had made reasonable efforts to assist mother and provided her with reasonable services. The juvenile court terminated further reunification services to mother with regard to Gabriella.

The court found that the four older boys, Richard, David, William and Jeremiah, were not adoptable. It ordered a permanent plan of long-term foster care and set the matter for a section 366.26 hearing.

WRIT PETITION (Case No. F066889) and APPEAL (Case No. F066890)

Mother filed a writ petition in case No. F066889, seeking to vacate the section 366.26 hearing to terminate her parental rights in Gabriella's case and to have reunification services restored. We granted mother's petition. Our opinion noted that

Drs. Middleton and Couture both diagnosed mother with mental health problems. Dr. Couture recommended close monitoring of how mother received psychological and psychiatric treatment. Dr. Middleton recommended psychological and psychiatric treatment if mother was to receive reunification services.

We noted our concern with the paucity of information in the record concerning the department's compliance with the mental health services component of mother's reunification plan. Mother's psychiatric treatment appeared from the available record to have occurred late in the proceedings. We found the record largely silent on how mother procured mental health services, whether she benefited from those services, and whether the department properly monitored that part of mother's reunification plan. Because there was not substantial evidence that the department complied with the mental health component of mother's reunification plan, we reversed the rulings of the juvenile court and remanded to the juvenile court to determine if adequate and timely reunification services had been provided to mother and, if not, to provide further services to her.

Mother filed an appeal, case No. F066890, to reverse the juvenile court's orders as to her sons, including Jeremiah. In this action, the department conceded error and we followed our ruling in the writ petition filed and reversed for lack of substantial evidence that the department complied with mother's case plan in providing mental health services. We further held, inter alia, that the juvenile court erred in denying mother's request for a continuance because of the new evidence presented on the eve of trial. We found that under the circumstances, mother had no time to prepare a defense and failure to grant her a continuance violated her right to due process. We reversed other orders of the juvenile court, including its denial of mother's section 388 petition alleging changed circumstances because father had died.

REMAND HEARING ON DEPENDENCY WRIT

After the dependency writ petition was remanded (case No. F066889), a social worker's report was prepared for the remand hearing before the juvenile court. On

September 19, 2013, mother told her social worker, Lena Aguilar, that she was seeing Dr. Farber every four weeks and he was treating her for ADHD with Klonopin. Mother signed a release of information.

On September 26, 2013, Aguilar again met with mother and explained to her that her mental health services needed to focus on codependency, self-esteem, counseling, and medication. Mother questioned the self-esteem component, explaining that her self-esteem had never been better. Aguilar explained that if this was so, mother needed confirmation in writing from a mental health professional. Aguilar provided mother with a resource guide with mental health service providers in her area highlighted. Aguilar explained to mother that she would have to follow up on mother's progress and she needed to sign a release for Dr. Farber. Mother was comfortable signing a release concerning alcohol and drug treatment information, but not for her compliance with her case plan or her participation in services, care, or diagnosis.

Aguilar contacted Dr. Farber's office and learned that he was a psychiatrist who practiced telekinetic medicine. Aguilar subsequently learned that Dr. Farber did not provide counseling services, but provided medication management. Mother reported to Aguilar that she had been seeing Dr. Farber either since 2011, or since November 2012. On October 24, 2013, Aguilar received a fax from College Community Services indicating that mother failed to show up for her scheduled initial assessment on that date.

On October 31, 2013, Aguilar contacted agent Michael Allan of Homeland Security to obtain information concerning the images of child pornography found in the possession of mother and the deceased father. Allan indicated that a forensic evaluation of the data was not complete and once it was, it would be forwarded to the Kern County District Attorney's Office. The downloaded images were confidential and Homeland Security could not release them to the department.

The social worker's report concluded that reasonable mental health services had not been provided to mother. The report noted there were several concerns regarding

mother's mental health status and she needed to address self-esteem, codependency, complete a mental health assessment, and comply with medication recommendations.

After continuances, the juvenile court conducted a hearing on this court's remand of the dependency writ petition on November 5, 2013. The department submitted the matter on the social worker's report, which reflected that the department did not believe it provided mother with reasonable services for mental health counseling. The court found that the department had not complied with the case plan and ordered additional reunification services for mother. The court ordered mother to participate in counseling for mental health, self-esteem and codependency, to obtain a mental health assessment, and to comply with any medication recommendations from a qualified health care professional.

REMAND HEARING OF DEPENDENCY APPEAL

On January 22, 2014, a felony complaint was filed alleging that mother possessed child pornography in violation of Penal Code section 311.11, subdivision (a). Mother was arrested on February 22, 2014, and released on bail on March 20, 2014.

The remand hearing for the dependency appeal (case No. F066890) commenced on May 5, 2014, and was continued to June 19, 2014. The hearing focused on the attempt of mother's counsel to subpoena and question the Homeland Security agents who investigated the parents' possession of child pornography. The department's counsel explained it had responded to mother's discovery request and provided her counsel with the reports of the Homeland Security investigation and further noted that the reports were admissible in a dependency proceeding.

The hearing was continued to July 24, 2014, and then to July 29, 2014. Mother's counsel explained that he had tried to comply with the Code of Federal Regulations to not only question the investigating agents, but to obtain the metadata from the federal government that would show when the deceased father had downloaded the material. Counsel attempted to subpoena two individuals. Brian Delaney, Assistant United States

Attorney with the Eastern District of California, appeared on behalf of the federal government.

Delaney explained that federal regulations were written in response to the requirements set forth by the United States Supreme Court in *Toughy v. Ragen* (1951) 340 U.S. 462 (*Toughy*). Under the federal regulations, certain criteria have to be met before federal agents subject to sovereign immunity have to provide information to state authorities. According to Delaney, mother had to obtain process from federal court and no state court had jurisdiction to issue a subpoena of federal agents. The only procedure available to mother and her counsel was to follow the federal Administrative Procedure Act (5 U.S.C. §§ 701–706) and to make the appropriate request in federal court.

The juvenile court denied mother’s motion to issue subpoenas to federal agents because it lacked authority, or jurisdiction, to do so. The court denied the motion without prejudice “to any other relief counsel may have to compel those witnesses to appear in this court.” Delaney further explained that mother and her counsel still had the *Toughy* regulations available and that if they followed those procedures, there was a remedy available in federal court. Delaney reiterated that the state court was not the proper forum to compel discovery of an investigation by a federal agency.

SOCIAL STUDIES AND REPORTS

Aguilar met with mother face-to-face six times between November 2013 and April 2014 to discuss her case plan progress. In June 2014, Aguilar discussed mother’s case plan with her by telephone. Mother had completed the parenting class. The department believed mother completed classes to address being the victim of domestic violence, and a 26-week class on overcoming the failure to protect. At the hearing on November 5, 2013, mother was ordered to have a mental health assessment, comply with medication recommendations, and participate in counseling for mental health, self-esteem and codependency.

Mother was seeing Dr. Farber by way of telemedicine for medication management. Mother last saw Dr. Farber on July 24, 2013. She missed an appointment in August 2013. Dr. Farber's notes indicate that he saw mother on March 24, 2014. Mother had been off psychotropic medication since September 2013 and reported to Dr. Farber she was doing well off medication and that her mood disturbance was due to her now deceased husband. Dr. Farber diagnosed mother with ADHD and an anxiety disorder. Mother was oriented, did not report suicidal or homicidal ideations, paranoia, or auditory or visual hallucinations. Dr. Farber concluded mother did not need medications at that time and reached the same conclusion after seeing mother on May 19, 2014.

Mother received psychological services from Darrelyn Dorais, MA, LMFT. Aguilar met with Dorais in November 2013 to inform her that the court wanted Dorais to assist mother in addressing the issues of codependency and low self-esteem. Dorais explained that she believed mother was suffering from battered woman's syndrome. Dorais said she would also address the other issues.

On January 8, 2014, Aguilar met with mother, who was bothered by the fact that Aguilar had recently stopped by Dorais's office. Aguilar told mother she did so because Aguilar had not received a progress report from Dorais. Aguilar also told mother she needed to continue taking her medication. Mother informed Aguilar that she did not want to continue taking it because Dorais did not believe she needed to continue the medication. Aguilar told mother that Dorais was not a psychiatrist who manages medication and that she could not tell mother what to do.

Aguilar talked to Dorais on January 16, 2014, and discussed mother's treatment compliance. Dorais was aware that mother planned to stop taking her medication, but she explained to Aguilar that mother misunderstood Dorais's advice because Dorais did not tell mother to stop her medication. Mother still had not signed a release so that Dorais could exchange information with Dr. Farber.

Dorais provided a report on January 15, 2014, diagnosing mother with PTSD and ADHD, combination type. Dorais reported mother had limited psychiatric resources due to her rural location. Mother presented as anxious, depressed, and having difficulty concentrating. Dorais reviewed reports from Dr. Farber as well as the evaluations of Drs. Middleton and Couture. Mother was withdrawn to the point of appearing uncooperative. Mother was actively engaged in therapy following the domestic violence assessment. Dorais noted that Drs. Middleton and Couture clearly laid out the steps necessary for mother to achieve reunification.

Dorais sent an update to the department on March 20, 2014, noting that mother was a pleasure to have as a client and entered individual sessions prepared to discuss particular problems. She was also a welcome participant in group therapy. Dorais requested that the department provide mother “with some recommendations of permissible activities she could provide for her children during visitations.” Dorais’s ideas—paints, sand, markers, and Play-Doh—were apparently off-limits during visits.

Mother reported to the department in April 2014 that she had met with Dr. Farber, and he removed her from all medications. In early June 2014, Dorais had not returned calls from social workers concerning mother’s progress in services and to obtain an updated progress report.

Aguilar reported in early June 2014 that mother had not shown an improvement in her demeanor and overall functioning. Mother was still unable to manage her children, with the exception of Gabriella and another young child not a subject of this writ petition. The maternal grandfather was present during visitation and mother appeared intimidated in his presence. With grandfather present, mother was reluctant to talk. Aguilar was concerned that this indicated continuing self-esteem issues. The department noted Dr. Middleton’s prior evaluation that mother was not able to meaningfully participate in services due to her underlying mental health issue.

On April 9, 2014, mother had a visit with the four older boys. Richard had difficulty with two of his brothers. Mother had difficulty interacting with the boys when they were argumentative with each other. When mother prevented Jeremiah from taking a laser pointer out of his brother's basket, Jeremiah told mother he was going to blind her. Mother held Jeremiah in her lap during a timeout. Jeremiah had a tantrum and asked Richard to come over and help him stab mother. Richard told mother to leave Jeremiah alone.

Mother had a similar visit with the boys on May 14, 2014. Richard began fighting with William. Mother told them to stop. Gabriella sat at the table watching her brothers and played with blocks. Richard told William, "I hate you." Jeremiah kept telling his brothers to shut up. Richard expressed hatred toward David. Mother told Richard that he needed to lose his attitude. Mother asked Gabriella if she was okay. Gabriella nodded affirmatively. Richard started swinging his arms at mother and told her she could not hit him. Mother replied that she was not hitting him. Richard told mother that he hated her. Mother had to restrain David, who kept throwing himself. David then fought with mother. Grandfather did not assist mother. Most of the visit was spent with mother attempting to manage Richard and David's out of control behavior. Mother mentioned that it was too much to handle all of them with their behavior at the same time.

A second hour of visitation continued on May 14, 2014. William was in a timeout, David and Richard were playing with blocks, and Gabriella was walking around. The grandparents were sitting in chairs watching the children. David became upset, Richard began yelling, and mother placed David in a timeout. Later, William was put in a timeout. Mother had an uneventful and appropriate visit with Gabriella on May 19, 2014. They played with toys together and talked. At the end of the visit, mother placed Gabriella into her car seat and they both said they loved each other.

Social workers believed that grandfather's visits were, at times, counterproductive to maintaining and strengthening mother's bonds with the children. Grandfather

encouraged discord and inflamed the children's negative behaviors and mother took no steps to stop grandfather's behavior.

As of June 2014, the department did not believe mother had successfully addressed and demonstrated improvement, growth, and progress in her mental health, self-esteem, and codependency issues. The department noted mother had a history of mental illness and abusive relationships with both of her now deceased husbands. Although mother had completed multiple programs and currently participated in counseling, she did not appear able to apply the information to her life.

The department was further concerned that mother had transferred her past dependency on her husbands to her father, leading to a relationship that fosters her codependence and lack of self-esteem. The department concluded mother presented a clear risk of detriment to her children, especially the young and vulnerable female child, should they be returned to mother's care. The department noted mother was currently facing felony charges for possession and use of child pornography.

Although mother could manage Gabriella during individual visits, she was unable to lead a safe visit with the other children present, despite having participated in approximately five months of guided visitation and having completed a parenting class. Had staff members not been present during the supervised visits, they could have been unsafe. The department concluded mother had not made any progress in addressing her lifelong mental health issues and was unable to provide safe supervision for the children.

The department noted that Dr. Farber's observations were based on telemedicine appointments with mother, at which time she self-reported she had stabilized after stopping her medication and was not compliant with Dr. Farber's treatment between July 2013, and March 2014.

A supplemental report prepared in October 2014 noted that although visitations between mother and Gabriella usually occur without incident, in June 2014 Gabriella became angry and mother had difficulty changing the child's mood and could not recall

Gabriella's age. Toward the end of the visit, Gabriella asked for her caretaker, who she referred to as mom.

On a visit in early July 2014, Gabriella did not want to leave her caretaker to visit with mother and her brothers. After some coaxing, the social worker was able to get her to come out when mother could not do so. Later that month, Gabriella was happy to see her mother. During a visit with her siblings and mother in August 2014, and again in September 2014, Gabriella played by herself.

At the conclusion of the supplemental report, the department noted that nothing had changed since the June 2014 report. The department noted that Dorais reported that mother had made progress in her dependency issues, but the department was unsure how mother had demonstrated that progress. The department believed mother continued to demonstrate risk to her older children. Although Gabriella did not present behavioral challenges to mother, mother had not demonstrated progress in the self-esteem and independence issues in order to independently protect Gabriella from her actions as well as those of others.

Gabriella was bonded with her foster family and comfortable with them. The department was recommending reunification services be terminated to mother. A supplemental report prepared by the department in December 2014 reached the same conclusions. Gabriella's caregiver reported that Gabriella cried prior to a visitation with mother and told the caregiver she did not want to go to the visit.

REVIEW HEARING

Mother's Testimony

The juvenile court conducted a contested review hearing pursuant to section 366.25 on December 11 and 12, 2014. The department called mother as a witness. Mother believed she was capable of handling all of her children if they were returned to her. Mother explained that she had finished receiving services and learned to spot red flags in her relationships. Mother said she learned how to protect her children

from the dangers of the domestic violence cycle. Mother believed that most of the time she was successful at redirecting the children; for instance, when they argued with one another.

Mother was asked about whether her children were fighting with each other during a visit the day before the hearing. Mother replied that Richard upset Jeremiah and hurt Jeremiah's feelings, but the other children were having a good time. Richard was being disrespectful, gave his grandfather the finger, and told him to "F off." Richard yelled at mother, told her he did not want to come home, said he disrespected mother, and told mother he hated her. Mother told Richard to keep his comments to himself and join in the activities mother brought for the visit. Richard walked out of the door and threw the gifts mother brought into the trash. Mother asked Richard nicely not to say hurtful things to her and then let Richard rant and rave.

Mother denied that she had self-reported a history of mental health issues. Mother described her visits with the children as confusing because all of the children wanted attention. Mother explained it was difficult to apply the redirection techniques she had learned to manage the children's behavior when visitations were confined to such a small space. Mother had been seeing her therapist, Dorais, once a week for nearly a year. Mother did not know if she was diagnosed with PTSD. Mother thought her therapist had helped her.

Mother admitted that she had no income or job. Mother said she lived with her family. Mother denied that she lived part-time with her parents and the rest of the time with friends. Mother initially denied telling her social worker that she lived part-time with friends. Mother then said that she was not serious, she was only joking, when she mentioned to her social worker that she was living with friends. Gabriella was running around and mother made the comment under her breath.

Mother disagreed with the department's evaluation that visits with the children were chaotic. Mother believed that change has occurred in her life not only because

Michael A. was now deceased, but because she has grown up and learned from her counselor. Mother reviewed all the classes she had completed and certificates she received.

In over three years of receiving reunification services, mother had no unsupervised visits with her children and no overnight visits. Mother had early visits with the children at CVC. When she was asked not to come back because the children were running away, mother replied there were a couple of times that William “had a few issues.” Mother explained that she was living in a fifth wheel on her father’s property.

Therapist’s Testimony

Dorais testified that she began individual therapy with mother in November 2013. Dorais met with social worker, Lena Aguilar, in early January 2014. The meeting was unannounced. Because Dorais was with another client, she was not able to have a full meeting with Aguilar. Aguilar showed Dorais mother’s case plan, explained what mother needed to be working on, and left the document with Dorais. Dorais read the plan and set it aside.

Aguilar explained to Dorais that the document outlined the court-ordered case plan. Dorais said she learned a few weeks later the document included treatment for sexually deviant behavior that was not part of the court-ordered case plan. According to Dorais, Aguilar had highlighted a statement on the document that mother needed treatment for sexually deviant behavior.

Dorais explained that she had weekly psychotherapy sessions with mother where she addressed domestic violence and mother’s self-esteem. Dorais employed humanistic support work and cognitive behavioral therapy. Mother briefly attended group therapy, but Dorais did not have enough other participants to continue it.

Dorais believed that mother’s relationships with both of her husbands were abusive. Dorais was aware of an allegation mother had made that she was sexually molested by her father, but mother had recanted the allegation. Dorais believed the

recantation because the allegation is not uncommon when someone has been in an abusive relationship and they seek separation from their nuclear family once in such a relationship.

Dorais felt that mother's low self-esteem was in part due to being disempowered by not having custody of her children. Also, mother suffered from the negative things that have been said about her. Dorais had also addressed the issue of codependency in mother's domestic violence therapy. Dorais was aware that Dr. Farber approved of mother being off medication and saw nothing to cause her to disagree with Dr. Farber's recommendation.

Dorais did not believe mother was currently mentally ill. Dorais's diagnosis for mother was PTSD. Mother suffered nightmares and flashbacks from memories of abuse by Michael A., including a time he strangled mother. Mother was also physically abused by her first husband. Dorais thought that at the beginning of therapy mother was too dependent on her father, but had come to see over the course of the year that was not the case.

Dorais believed mother would be interdependent in her relationships and would ask for help when she needed it. Dorais believed mother was demonstrating assertiveness outside their therapeutic sessions. Dorais's opinion was based on mother's self-reporting.

Social Worker's Testimony

Aguilar testified that she initially referred mother to College Community Services for a mental health intake and assessment on November 5, 2013. When mother missed her appointment, Aguilar told mother she needed to reschedule it. On November 20, 2013, mother informed Aguilar that she was going to see Dorais. Aguilar talked to Dorais twice in person and twice on the telephone. Aguilar informed Dorais that mother's case plan required her to address codependency and low self-esteem.

Dorais told Aguilar she thought mother was suffering from battered woman's syndrome, but would address the other issues. Aguilar made an unannounced visit to

Dorais and called her twice to obtain updates on mother's progress. Aguilar did not believe that Dorais's reports addressed mother's progress with counseling for self-esteem or codependency.

Aguilar explained that mother still cannot follow through with redirection and correction of the children's behaviors. David and William have a behavioral modification program they follow during visits. This plan is used in their current living arraignment and entails a system of points, rewards, and consequences. Mother has been given the opportunity to place the children in timeout, but fails to follow through. Aguilar believes that mother has tried to redirect her children during visits, but she fails to follow through and is not consistent. Mother gets sidetracked and distracted very easily.

During visits, Aguilar and other social workers have to intervene all of the time to prevent the children from being aggressive toward and hurting each other. Aguilar has instructed mother to intervene. Mother tries to do so, but fails to follow through. Some of the children hit mother and are verbally aggressive to her. Mother tells them to stop and does no more. Aguilar has had to physically stand between the children.

Aguilar explained that mother needs a lot of assurance and looks to her father to make sure she is doing the right thing. Often, mother will be in the middle of correcting the children and her father will say something to distract her. Mother will lose focus and try to follow her father's suggestion for corrections. Aguilar has observed mother giving up. Aguilar did not think mother had made any improvements in her ability to parent her children during their visits.

Aguilar did not think mother could handle all of her children returning home because it takes two social workers at all times during every visit to control or try to set some kind of consistency in the children's behaviors. Aguilar did not see improvement in mother's self-esteem because she continually apologized every time she thought she made a mistake, whether or not it was a mistake. Mother continued to rely on her father

for reassurance. Mother failed to improve her assertiveness. All visitations occur indoors because mother was kicked out of the CVC outdoor visitation space because the children were so disruptive that they were interfering with other visiting families. Mother will put Jeremiah in a timeout, fail to keep track of time, and let him out of the timeout early.

According to Aguilar, the last time she talked to mother about her living situation, she told Aguilar that she lived part-time with her parents and the rest of the time with friends in Bakersfield. Mother was not kidding when she told this to Aguilar and mother did not make the comment under her breath.

Aguilar did not believe mother can protect her children from people who might present a risk because she was too dependent on her father. Aguilar saw the grandfather as a risk to the children because he manipulated them during visits by promising them gifts. This conduct did not alleviate the children's maladaptive behaviors that their care providers and therapy were trying to alleviate.

Jeremiah had recently moved into a new foster home. He had to leave his previous foster home because he began to act out when he was told he was going to go back to his home. Jeremiah was adjusting well in his new placement and his current care providers are willing to adopt him. Aguilar believed it would be detrimental for Jeremiah to be returned to mother because he wants to be adopted and to be part of a family. When Jeremiah's prior placement fell apart, Aguilar described the experience as heartbreaking because Jeremiah very much needs stability.

Gabriella has been in her current placement for three years. Aguilar described the placement as stable and there have been no issues at all with the placement. Gabriella refers to her caretaker as her mother and describes her biological mother as her "other mom." Aguilar believes Gabriella would suffer long term effects if she was returned to mother. Aguilar was concerned for Gabriella's safety because of the pending pornography allegations against mother. Also, Gabriella loves her current caretaker and

calls her foster siblings her sisters. Aguilar believes it would be traumatic for Gabriella to return home. Gabriella told Aguilar that she wants to stay with her current caretaker and continue visits with mother.

Mother also does not ask the children about school and does not ask social workers about the children's medical care. Mother once asked about Gabriella's teeth. Mother does not inquire about how the children are doing in their placements. During the last couple of visits, Gabriella has cried and does not want to go to the visits. This has not always been true. Aguilar described Gabriella's relationship with mother as friendly. When Gabriella refers to her mom, she is referring to her foster mother. When the other children are present during visits, Gabriella usually plays with her toys alone. At times there is interaction between mother and Gabriella, but mother is often preoccupied with the other children.

Aguilar testified that she never gave Dorais a case plan that included counseling for sexual deviancy. A line stating that mother needed such counseling was crossed out. Aguilar did not prepare mother's case plan prior to the remand hearing. Aguilar was not the only social worker assigned to mother's case and worked on portions of it over the previous two years.

Aguilar explained that in addition to referring mother to College Community Services, she circled and highlighted areas where mother could receive services. Aguilar did this on two occasions. When asked on cross-examination by mother's counsel whether the boys had indicated in the previous trial that they wanted to be returned to mother, Aguilar replied this was not what the boys told her and when she has spoken to the children, some of them are conflicted.

On redirect examination, Aguilar said she did not recommend increasing visitations with mother because mother has not demonstrated during the visits that she was able to handle the children during the time she has been allotted. Aguilar explained that visitations are an important part of reunification and it is important to see the family

as a unit. It is important not to separate the children during visits because having the entire family together shows whether the parent is able to parent the children once they are all together. Aguilar has worked with mother and told her the importance of learning how to redirect her children's behaviors.

Juvenile Court's Rulings

The December 2014 hearing was continued to February 24, 2015, for the closing arguments of counsel and the juvenile court's rulings. The juvenile court found by a preponderance of the evidence that return of the children to mother's care created a substantial risk of detriment to the safety, protection, or the physical or emotional well-being of the children. The juvenile court stated that the initial basis for this finding was the children were in an unsafe environment with mother. The court found that mother could not control the children during their visits together. The early visits were in a more expansive setting, but the children were uncontrollable or interfering with other families' visits, so the department had to confine visits to a more restricted area.

The court further found mother testified at the jurisdiction hearing that she had a history of mental health problems, including ADHD and PTSD. Mother admitted to Dr. Middleton that she had been checked into inpatient treatment in a hospital for a mental health issue. Mother had also admitted in earlier testimony that she suffered from schizophrenia and was taking medication. Mother had also earlier testified that she relied on father for the day-to-day care of the children when William was hurting himself.

The court noted that Dr. Couture thought mother would need help because of the rambunctiousness of the boys. Also, the department's reports dating back to 2005 showed that mother had been reporting mental health issues. The court observed that Dorais diagnosed mother with PTSD and battered wife syndrome. The juvenile court found that over the years, mother had taken psychotropic medications to cope with her mental health issues. The court found that mother continued her dependence on others, relying on her father for her day-to-day needs.

The juvenile court addressed the issue of child pornography by noting that mother had admitted to federal agents that she viewed and was sexually aroused by viewing those images. The court did not make a factual determination as to whether mother was passively involved with child pornography or how she obtained it. The court stated it was not making a final factual determination concerning mother's possession of child pornography, but was relying on what mother admitted. The court found this relevant to mother's care and custody of the children.

The court found that Gabriella had been in the custody of a loving and caring care provider and her placement was stable. The court noted visits for Gabriella were stressful and apparently painful for her, and Jeremiah was in a home where it appeared he may be adopted. The court observed that the other children were in settings where there were significant positive changes that occurred for them.

The court found clear and convincing evidence that the plan for Gabriella and Jeremiah was for adoption. The court found clear and convincing evidence that mother had failed to participate regularly and make substantive progress in court-ordered treatment programs and terminated her reunification services. The court further found that the department had complied with the case plan by making reasonable efforts and providing reasonable services to make it possible for the children to return to mother's custody. The court set the matter for a section 366.26 hearing to terminate mother's parental rights as to Gabriella and Jeremiah.³

JUVENILE COURT'S JURISDICTION

Mother's counsel argues for the first time in mother's reply brief that jurisdiction of this case has not been established because in case No. F066890 this court reversed the juvenile court's order denying mother's section 388 petition, which alleged that the

³ The court also terminated mother's reunification services for Richard, David, and William and set their case for a permanency planning hearing pursuant to section 366.3. Their case is currently on appeal in case No. F071132.

juvenile court's jurisdiction should end because father was deceased. Mother argues that the only basis for the juvenile court's jurisdiction was father's conduct. We reject mother's jurisdictional challenge.

When an appellant fails to raise an issue in the opening brief and raises it for the first time in a reply brief or at oral argument, we generally decline to address the issue or address it in a summary manner. To allow a party to belatedly raise an issue on appeal, is unfair to the respondent and increases the court's labors. (*People v. Alexander* (2010) 49 Cal.4th 846, 922; see *Webber v. Clarke* (1887) 74 Cal. 11, 13.)

Mother's argument fails on its merits as well. Although we reversed the juvenile court's denial of mother's section 388 petition in case No. F066890, there is no indication that mother renewed the motion to the juvenile court when the matter was remanded for further proceedings. Our reversal of the juvenile court's prior ruling left the motion pending before the juvenile court. Mother never renewed the motion and did not bring the matter before the juvenile court. The juvenile court's failure to rule on what, in effect, became a pending motion did not deprive the juvenile court of its original jurisdiction.

At the remand hearing in late July 2013, however, mother's counsel concentrated on the question of whether the juvenile court had jurisdiction to subpoena federal agents and did not raise the issue of the section 388 petition to the juvenile court. By not resubmitting this matter to the trial court, mother has forfeited the issue and cannot raise it for the first time in this writ proceeding. (*People v. Trujillo* (2015) 60 Cal.4th 850, 856–858; *In re Jason J.* (2009) 175 Cal.App.4th 922, 932.) We further find that the juvenile court's rulings on the issue of detriment superseded any motion pending before the court. The rulings of the juvenile court at the review hearing impliedly reject any of mother's contentions to the contrary in her section 388 petition.

Mother's jurisdictional argument also fails on its merits because the sustained petition from the jurisdiction and disposition hearings included allegations that *mother*

failed to protect her children, could not supervise her children, and suffered mental health issues. The juvenile court had jurisdiction over the minors based on those allegations without having to reference allegations related to father. Father's death did not ipso facto terminate the juvenile court's jurisdiction as mother apparently argues in her reply brief. We find this contention meritless.

REUNIFICATION AND MENTAL HEALTH SERVICES

Mother contends the department failed to provide her with significant reunification services and provided no mental health services. Mother argues she has been fully compliant with her reunification plan and has participated in programs and services. Mother argues she is not in a current romantic relationship.

Each reunification plan must be appropriate to the particular parent and the unique facts of that parent. In reviewing the reasonableness of the services provided, we view the evidence in the light most favorable to the respondent. We must indulge all legitimate and reasonable inferences to uphold the juvenile court's ruling if there is substantial evidence to support it. When two or more inferences can be reasonably deduced from the facts, and either deduction is supported by substantial evidence, the reviewing court is without power to substitute its deductions for those reached by the juvenile court. (*In re Misako R.* (1991) 2 Cal.App.4th 538, 545 (*Misako R.*))

In determining whether return of custody to a parent would create a substantial risk of detriment, the juvenile court must consider whether reasonable services have been provided to the parent and whether the parent has availed himself or herself of the services provided. (*Robin V. v. Superior Court* (1995) 33 Cal.App.4th 1158, 1164.) It is true in almost all cases that more services could have been provided more frequently and the services provided were imperfect. The standard is not whether the services provided were the best that could have been provided in an ideal world, but whether the services were reasonable under the circumstances. (*Misako R.*, *supra*, 2 Cal.App.4th at p. 547.)

Mother was provided with an exhaustive set of services as part of her reunification plan. The fact that mother completed those services has never been an issue in these proceedings. There is no merit to mother's contention that the department failed to provide mother with general reunification services. Mother had classes, among other things, in parenting and how to protect her children.

Mother further contends that the department failed to provide her with adequate mental health services. In our prior opinion in mother's dependency writ before this court involving Gabriella (case No. F066889), we noted our concern that the extent of the mental health services provided to mother had not been documented by the department. We remanded the matter to the juvenile court to make a determination concerning whether adequate mental health services had been provided to mother.

At the remand hearing, the department conceded it had not provided mother with adequate services. Consistent with our remand order, the juvenile court ordered further mental health services for mother and further ordered that mother concentrate on the issues of her low self-esteem and codependency.

Aguilar met twice with mother to go over the mental health services available in mother's community and highlighted the appropriate services in an informational booklet. Mother then missed an evaluation appointment with College Community Services. Subsequently, mother informed Aguilar that she was securing the services of her own therapist, Dorais. Mother also had an ongoing physician-patient relationship with Dr. Farber, who managed mother's medications.

With some difficulty, Aguilar obtained information from Dorais concerning mother's progress in psychotherapy. Dorais painted a positive picture of mother's improving insight into the causes of battered women's syndrome. By May 2014, Dr. Farber stopped prescribing medications to mother.

Mother had self-reported serious mental health problems dating back to 2005, as well as during the beginning stages of these proceedings. Dr. Middleton noted in an early

report that it was necessary to rule out a psychotic disorder not otherwise specified. This could only have been accomplished by an evaluation. Mother missed her appointment for an evaluation by College Community Services and sought her own treatment from Dorais and Dr. Farber.

Although mother was on psychotropic medication during most of these proceedings, Dr. Farber took her off all medication. The juvenile court's rulings indicate its skepticism concerning whether mother's mental health issues had truly resolved themselves. Given the mother's medical history, we find the court's skepticism justified.

The juvenile court is only required to order that reasonable services be provided. Reunification services are voluntary and cannot be forced on an unwilling or indifferent parent. The legislative purpose of providing safe and stable environments for children is not served by forcing the juvenile court to go on hold while a parent makes another stab at compliance. (*In re Christina L.* (1992) 3 Cal.App.4th 404, 414–415.) The court cannot make parents receive those services. Where a parent voluntarily waives reunification services, he or she gives up the right to complain about their inadequacy. (*In re Joanna Y.* (1992) 8 Cal.App.4th 433, 442.)

Assuming that mother still has mental health issues, she has failed to demonstrate how the department failed to provide her with adequate services. The record in this case unequivocally shows that mother did not want to obtain services from mental health care providers that worked with the department, including College Community Services. Mother chose her own mental health treatment. The department could not force mother to see its recommended providers or to obtain a mental health evaluation. The juvenile court did not have to indefinitely wait for mother's mental health issues to stabilize to the point where she could independently care for her children.

The primary basis for reversing the juvenile court's prior termination of reunification services in the first dependency writ was for the court to determine whether mother obtained adequate mental health services as part of her case plan. Despite the

department's efforts to provide mental health services, mother elected to see her own care provider. Any alleged inadequacy in the mental health services obtained by mother are attributable to her, not to the department.

We alternatively note that if mother's mental health issues have resolved themselves, mother cannot complain now that the department failed to provide her with adequate mental health services. We reject mother's contentions that the department failed to provide her with adequate reunification services or mental health treatment.

RISK OF DETRIMENT TO CHILDREN

Mother argues there is no risk of detriment in returning the children to her custody. Mother challenges evidence adduced in the hearings before the juvenile court that her visits with her children were chaotic. Mother also challenges the sufficiency of the evidence to support the juvenile court's rulings on the risk of detriment.

The issue of sufficiency of the evidence in dependency cases is governed by the same standards that apply to other appeals. If there is substantial evidence to support the findings of the juvenile court, we uphold those findings. We do not reweigh evidence or resolve evidentiary conflicts. We draw all reasonable inferences in support of the juvenile court's findings and consider the record in the light most favorable to the juvenile court's order. The appellant bears the burden of showing the juvenile court's findings and orders are not supported by substantial evidence. (*In re L.Y.L.* (2002) 101 Cal.App.4th 942, 947.)

In determining that there is a risk of detriment of returning a minor to a parent, the juvenile court must find by a preponderance of the evidence that it would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the minor. (§ 366.22, subd. (a); *In re Dustin R.* (1997) 54 Cal.App.4th 1131, 1139 (*Dustin R.*); see *In re Heather B.* (1992) 9 Cal.App.4th 535, 560–561.) The juvenile court must consider the efforts, progress, or both, the parent has made in availing himself or herself to services. (*Dustin R.*, *supra*, at p. 1139.)

Completion of the reunification plan is not the sole concern of the juvenile court. There must be an indicium of progress toward family preservation. (*Dustin R., supra*, 54 Cal.App.4th at pp. 1139–1140.) Mere completion of the technical requirements of the reunification plan is one consideration under section 366.22, subdivision (a), but the juvenile court must consider the parent’s progress toward eliminating the conditions leading to the children’s placement out of the home. (*Dustin R., supra*, at pp. 1141–1142.)

One striking aspect of this case is that throughout the proceedings, mother’s visits with her children were chaotic. Mother could not handle the children earlier in the proceedings when she visited the children at the more expansive CVC facility. The children tried to leave the facility and interrupted visitations of other families. Mother was not allowed to return to CVC for visits. Mother complained about the more confined space provided for visits. Even in this more restrictive environment, two social workers were always on hand to help control the children, who were in constant danger of fighting with each other or hurting themselves.

Mother would attempt to employ a timeout or to redirect a child, but failed to successfully follow through and end the misbehavior. Also, the children were observed hitting mother and disrespecting her. Mother would turn to her own father to seek guidance. The grandfather, however, would undermine the work of social workers and care providers, who were using behavioral techniques to redirect the children. Grandfather would offer the children gifts to stop their misbehavior. Grandfather would also try to tell mother how to discipline her children.

Despite all of the classes completed, therapy received, and coaching from social workers assigned to her case, mother could still not control her children on her own without the assistance of two social workers. Mother was dependent on her own father and social workers to assist her during visits with the children. Mother could not rely on her own resources or recent training from the services that were provided to her. This is

demonstrative of mother's inability to parent the children as well as of her continuing lack of self-esteem.

Although mother's therapist believed mother had made progress in understanding herself, mother could not apply what she had been learning to the practical needs of her children even in the setting of supervised visitation. Although the therapist was an expert who believed mother had improved her self-esteem, the social worker's observations that mother still lacked self-esteem was evident during visits with the children. We further note that at this very late stage in dependency proceedings, mother still requires supervised visitation with her children.

The unrefuted evidence adduced during these proceedings demonstrated that mother had two prior marriages and both spouses were abusive. Michael A. was not only abusive to mother and at least one of the children, mother left him as the primary caretaker of the children. Given mother's inability to apply all of the services she had received to the basic task of managing her children, we find the juvenile court's findings further support the reasonable inference that mother does not have the current capacity to apply the services she has received to adequately protect her children from future, potentially abusive relationships.

Mother's assertion that she is not currently in a relationship is irrelevant to whether she can avoid future abusive relationships. The court ordered that mother work on self-esteem and codependency in therapy because of her past history of being in abusive marriages. Although mother's therapist thought mother had made progress in learning about battered women's syndrome, social workers observed that mother still struggled with her self-esteem during visitations with the children.

Mother's completion of services does not mean that she was able to implement those services. There was substantial, unrefuted evidence before the juvenile court that mother had not acquired the necessary skills to adequately care for and to protect her children. The failure of the parent to make substantive progress in court-ordered

treatment is prima facie evidence that return of a minor to the parent would be detrimental. (§§ 366.21, subd. (e) & 366.22, subd. (a).) Even without the alleged evidence of mother's involvement with child pornography, there was substantial evidence that mother's custody of the children posed a continuing risk of harm to them.

CHILD PORNOGRAPHY ALLEGATIONS

Mother challenges the juvenile court's reliance on what she terms as nebulous allegations that she was in possession of, and used, child pornography.

The California Supreme Court has held that hearsay statements in social workers' reports are admissible even though they contain hearsay statements. (*In re Malinda S.* (1990) 51 Cal.3d 368, 376–379 (*Malinda S.*)). Section 355 was amended by the Legislature to adopt this holding, but it rejected the holding in *Malinda S.* that hearsay alone is sufficient to support a jurisdictional finding. (*In re M.B.* (2011) 201 Cal.App.4th 1057, 1070.) Hearsay in a social worker's report is admissible to support an injunction in a dependency action. (*Id.* at pp. 1070–1072.) Hearsay evidence in a social worker's report is also admissible to support a juvenile court's findings at a 12-month review hearing. The language of section 281 broadly authorizes the juvenile court to receive social workers' reports in determining "any matter involving the custody, status, or welfare of a minor" (*In re Keyonie R.* (1996) 42 Cal.App.4th 1569, 1572.)

The California Supreme Court has acknowledged that one underlying assumption in *Malinda S.* was that the hearsay declarant would be available for cross-examination and that an exception to the hearsay rule is not valid unless the class of evidence proposed is inherently reliable. (*In re Cindy L.* (1997) 17 Cal.4th 15, 22, 27–28 (*Cindy L.*)). Section 355 sets forth three requirements for admission of out-of-court statements: (1) the court must find the time, content, and circumstances of the statement provide sufficient indicia of credibility; (2) the witness must either be available for cross-examination or there must be evidence that corroborates the statement; (3) other

interested parties must have notice of the public agency's intention to introduce the hearsay statement so as to contest it. (*Cindy L.*, *supra*, at pp. 29–30.)

Applying the child dependency exception, we will not overturn the juvenile court's conclusion that hearsay evidence was admissible unless the juvenile court abused its discretion. (*Cindy L.*, *supra*, 17 Cal.4th at p. 35.) A juvenile court can rely on the hearsay statements of a minor who is otherwise incompetent to testify. (*Id.* at pp. 35–36.) Furthermore, the child dependency exception to the hearsay rule does not violate due process under the United States and California Constitutions. (*In re Lucero L.* (2000) 22 Cal.4th 1227, 1241–1249.)

In the prior dependency appeal (case No. F066890), we were concerned that mother had no opportunity to challenge late allegations brought by the department that mother possessed child pornography and the juvenile court denied mother's request for a continuance. On remand, the juvenile court conducted a hearing on mother's attempt to subpoena federal agents. During the hearing, Assistant United States Attorney Delaney explained to the court it had no jurisdiction to subpoena federal agents under the United States Supreme Court's interpretation of sovereign immunity in *Toughy* and that mother's counsel would have to remove the matter to federal court and follow federal regulations for issuing a subpoena on the federal agents. This hearing was conducted at the end of July 2014.

Mother's counsel apparently never sought a subpoena from federal court and now complains that the trial court erred in failing to issue subpoenas of the federal agents who initially investigated the parents' possession and use of child pornography. We do not find the trial court erred in failing to issue a subpoena that it had no jurisdiction or authority to issue. We agree with respondent's assertion that mother could remove the matter to federal court to obtain subpoenas to question federal investigators.

We further find that unlike the procedural posture of this case in March 2013, the child pornography allegations are not an eleventh hour change in the evidentiary profile

of this case. At the March 2013 hearing, mother had no opportunity to call the federal agent as a witness. Here, mother had over four months from the juvenile court's ruling on the motion to subpoena federal agents in late July 2013, until the evidentiary phase of the review hearing in mid-December 2014, to follow federal regulations and seek a federal subpoena of the federal agents.

Mother is currently charged with felony possession of child pornography. As of the hearing date on February 24, 2015, the criminal allegations against mother were still pending. Under sections 366.21, subdivision (e) and 366.22, subdivision (a), in determining detriment to the minor upon the return to a parent or guardian the juvenile court "shall consider the criminal history" of the parent or guardian "subsequent to the child's removal, to the extent that the criminal record is substantially related to the welfare of the child or the parent's or legal guardian's ability to exercise custody and control regarding his or her child"

Applying the factors set forth in *Cindy L.* to determine the indicia of reliability of the hearsay reports here, we find that the time, content, and circumstances of the federal agent's report generally have the indicia of reliability. The principal federal investigator is identified in the reports. The statements mother made were contrary to her own interests in the instant proceeding and the Kern County District Attorney has filed felony charges against mother related to her possession of child pornography. We further find that the federal agent was available as a witness, albeit through an order of the federal court and not the juvenile court. Finally, we find that all interested parties had adequate notice of this issue.

We note that the juvenile court did not determine mother's penal liability for the allegations. It relied instead on her hearsay admissions to federal agents. In the limited context of protecting the minors' welfare, the juvenile court did not abuse its discretion in relying on mother's admissions that she possessed and used child pornography.

Finally, we note that even without this evidence, there was other substantial evidence before the juvenile court to support its findings that mother had not benefited from reunification services and the children remained at risk of detriment should they be returned to her custody.

CULTURAL HERITAGE ARGUMENT

Mother contends the juvenile court erred in not permitting her to challenge placement of her daughter and two of her sons based on the children's cultural heritage. We initially observe that mother fails to identify which of her two sons have been placed in the custody of caregivers of another culture. In this petition, we review the orders pertaining only to Gabriella and Jeremiah.

During the evidentiary phase of the review hearing in December 2014, mother's counsel attempted to question the social worker concerning Gabriella's placement with a family that did not share the cultural background of Gabriella's family. The juvenile court sustained objections by the department and one of Gabriella's counsel that the questions were irrelevant to the issue of whether or not mother's services should be terminated. We agree with the juvenile court's ruling that this line of questioning by mother's counsel had nothing to do with the primary issue before the juvenile court in these proceedings, whether to return Gabriella and Jeremiah to mother or to terminate reunification services to mother and set the matter for the termination of parental rights.

Mother's counsel also never brought a formal motion to the juvenile court challenging the placement of the two children subject to this writ petition, Jeremiah and Gabriella. As we noted above, mother cannot bring an issue for the first time on appeal, or in this writ petition, that the trial court has not had an opportunity to rule on. (*People v. Trujillo, supra*, 60 Cal.4th at pp. 856–858; *In re Jason J., supra*, 175 Cal.App.4th at p. 932.)

We also note that the placement of the children was a matter for the jurisdiction and disposition hearings. This is especially true of Gabriella who has been in a single

placement throughout these proceedings. Mother had the opportunity to appeal the juvenile court's custody orders for Gabriella and mother cannot challenge the prior orders of the juvenile court that have long since become final and cannot now be belatedly reviewed. (*In re Daniel D.* (1994) 24 Cal.App.4th 1823, 1831–1832; *In re Elizabeth G.* (1988) 205 Cal.App.3d 1327, 1331; accord, *In re Elizabeth M.* (1991) 232 Cal.App.3d 553, 563 [abrogated on another ground in *In re Tabitha W.* (2006) 143 Cal.App.4th 811, 816–817.]

DISPOSITION

Mother's writ petition is denied. This opinion is final forthwith as to this court.

KANE, J.

WE CONCUR:

LEVY, Acting P.J.

CORNELL, J.