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

In re WILLIAM O. et al., Persons Coming Under
the Juvenile Court Law.

KERN COUNTY DEPARTMENT OF HUMAN
SERVICES,

Plaintiff and Respondent,

v.

MARIAH A.,

Defendant and Appellant.

F071132

(Super. Ct. Nos. JD127364,
JD127365, JD127366)

OPINION

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

Elysa J. Perry, under appointment by the Court of Appeal, for Defendant and
Appellant.

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

INTRODUCTION

Mariah A. (mother) appeals from the orders of the juvenile court of February 24, 2015, terminating her reunification services and setting the matter for a permanency planning hearing pursuant to Welfare and Institutions Code section 366.26¹ as to her three oldest children: Richard O., age 12, David O., age 11, and William O., age 10. Prior to this appeal, mother filed a writ proceeding with this court in case No. F071081, challenging the juvenile court orders from the same hearing directed to her younger children, Jeremiah O., age 8, and Gabriella A., age 5.² On May 26, 2015, we affirmed the juvenile court's orders of February 24, 2015, as to the two younger children in case No. F071081.

Mother contends the juvenile court abused its discretion, violating mother's due process rights, when it denied her motion to strike reports from agents of the United States Department of Homeland Security (Homeland Security) that she knowingly possessed and used child pornography. Mother argues the hearsay in the reports was unreliable, she had no opportunity to cross-examine the Homeland Security agents, and the reports did not constitute substantial evidence to support the juvenile court's orders. Mother also contends she did not receive reasonable reunification services, there was insufficient evidence to support the juvenile court's finding that returning the children to mother would create a substantial risk of detriment, and the juvenile court erred in denying her petition pursuant to section 388 to modify its prior orders. Finally, mother

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

²We granted the Kern County Department of Human Services's (department) motion to take judicial notice of our opinion and the case file in *Mariah A. v. Superior Court* (May 26, 2015, F071081 [nonpub. opn.]). Although the clerk's transcripts in this appeal and case No. F071081 are not identical, they are largely identical with several documents in the current file filed as duplicates. We granted mother's motion to take judicial notice of our prior opinion in *In re Richard O.* (Dec. 10, 2013, F066890 [nonpub. opn.]). After notice to the parties, we have also taken judicial notice of our opinion in the related writ petition in *Mariah A. v. Superior Court* (June 18, 2013, F066889 [nonpub. opn.]). In addition to the current record on appeal, the facts are derived from our prior opinions.

contends the trial court erred in granting the motion of the department to take judicial notice of dependency proceedings filed over 30 years ago for mother's adult sister. We affirm the orders of the juvenile court.

FACTS AND PROCEEDINGS

Early Proceedings

The department filed petitions and amended petitions pursuant to section 300 on behalf of Gabriella A., Richard O., David O., William O., and Jeremiah O. after the children were taken into protective custody on September 15, 2011.³ The petitions alleged 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 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 neither parent would benefit from reunification services due to their underlying mental illness issues. Dr. Middleton further noted 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, supra*, F066889.)

³The biological father of the four boys died prior to the current proceedings.

Dr. Eugene Couture agreed father would not benefit from reunification services due to his mental health issues, but concluded 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.)

The juvenile court found the allegations 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 she was no longer living with father. In late 2012 and early 2013, however, father told social workers he and mother were living together.

A review hearing was set for mid-March 2013. A social worker's report noted 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 investigator

Michael Allan that father was interested in the material. 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 father'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 about once a week for a couple of years.

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 mother was missing and she 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 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 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 she was no longer in a relationship with father and this was not true. The court noted 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 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 the hearing was a six- and 12-month review hearing pursuant to section 366.21, subdivisions (e) and (f). The court noted mother had made minimally acceptable efforts to avail herself of services, and return of Gabriella to mother's custody would create a substantial risk of detriment to Gabriella's safety, protection, and her physical or emotional well-being. The court found the department had made reasonable efforts to assist mother and provide her with reasonable services. The juvenile court terminated further reunification services to mother with regard to Gabriella.

The court found 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 permanency planning 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 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 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 action 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*, 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 of 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, she was seeing Dr. Gary 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 her mental health services needed to focus on codependency, self-esteem, counseling, and medication. Mother questioned the self-esteem component, explaining her self-esteem had never been better. Aguilar explained 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 she would have to follow up on mother's progress; Aguilar needed a signed 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 he was a psychiatrist who practiced telemedicine. Aguilar subsequently learned Dr. Farber did not provide counseling services, but provided medication management. Mother reported she had been seeing Dr. Farber since either 2011 or November 2012. On October 24, 2013, Aguilar received a fax from College Community Services indicating mother failed to show up for her scheduled initial assessment on that date.

On October 31, 2013, Aguilar contacted 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 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 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 the department did not believe it provided mother with reasonable services for mental health counseling. The court found 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 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.

After being continued, the remand hearing for the dependency appeal (case No. F066890) was heard on 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 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 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 showing when the 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 federal regulations were written in response to the requirements set forth by the United States Supreme Court in *Touhy v. Ragen* (1951) 340 U.S. 462 (*Touhy*). Outlining the process, Delaney stated that pursuant to the federal regulations, certain criteria have to be met before federal agents subject to sovereign immunity have to provide information to state authorities. A party had to first submit a request to Homeland Security, which mother's counsel had done. The process after that was pursuant to the federal Administrative Procedure Act (5 U.S.C. §§ 701–706) and the *Touhy* decision. Delaney told the court 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 procedure 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 mother and her counsel still had the *Touhy* regulations available and if they followed those procedures, there was a remedy available in federal court. Delaney reiterated 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 for medication management. Mother last saw Dr. Farber on July 24, 2013. She missed an appointment in August 2013. Dr. Farber's notes indicate 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 the medication and 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 the court wanted Dorais to assist mother in addressing the issues of codependency and low self-esteem. Dorais explained 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 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 she did not want to

continue taking it because Dorais did not believe she needed to continue the medication. Aguilar told mother Dorais was not a psychiatrist who manages medication and 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 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 for Dorais to 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 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 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 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-limit activities 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.

In early June 2014, Aguilar reported 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 the writ petition in case No. F071081 or this appeal. The maternal grandfather was present during visitation and mother appeared intimidated in his presence. With the grandfather present, mother was reluctant to talk. Aguilar was concerned 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 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 she was not hitting him. Richard told mother he hated her. Mother had to restrain David, who kept throwing himself. David then fought with mother. The 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 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 the grandfather's visits were, at times, counterproductive to maintaining and strengthening mother's bonds with the children. The grandfather encouraged discord and inflamed the children's negative behaviors, and mother took no steps to stop the 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 mother had transferred her past dependency on her husbands to her father, leading to a relationship that fostered 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 outlined the earlier diagnoses in 2012 of Dr. Middleton that mother had a depressive disorder with the possibility of a schizoid personality disorder and Dr. Couture that mother had ADHD with borderline intellectual functioning. Dr. Couture believed mother would benefit from reunification services, but Dr. Middleton expressed the opinion mother was unable to meaningfully participate in such services.

The department noted that as of June 2014, Dr. Farber's observations were based on two telemedicine appointments with mother, at which time she self-reported she had stabilized after stopping her medication but was not compliant with contact or Dr. Farber's treatment between July 2013 and March 2014. Though mother's therapist Dorais stated mother had made progress and her behaviors did not indicate ongoing dependency issues, the department did not know how mother demonstrated progress to Dorais and was unsure if mother had disclosed previously being diagnosed with schizophrenia and having had heard voices.

Richard, William, David, and Jeremiah had all been diagnosed with their own mental health issues. The department believed they posed challenging and potentially dangerous behaviors at times to themselves and others. Because of this, the department believed mother continued to present a risk to the children due to her inability to demonstrate she could consistently control their behaviors during visits. The four boys also had difficulty adjusting and had many unsuccessful placements.

During a visitation in June 2014, Jeremiah taunted his siblings to upset them and start a fight. While mother attended Richard, Jeremiah laid on the couch and repeatedly kicked her. During a later visitation in June 2014, David became confrontational with Richard. Jeremiah had several outbursts and began to physically fight Richard. The social worker had to get between the boys to separate and redirect them. After two uneventful visitations in July 2014, David initiated fights with Richard several times

during the visit on July 23, 2014. One fight led to a screaming match. The social worker had to intervene.

During the visitation on August 13, 2014, David immediately began to argue with Jeremiah. Richard, who began the visit in a happy mood, quickly became upset and started to yell and cry. The social worker corrected Richard's yelling. Mother tried to correct the yelling, but only because the social worker was on a phone call. During a visitation on August 27, 2014, the social worker had to take the children individually to the restroom. William and Jeremiah kept running around the room and had to be redirected. William became upset and began roaring. Richard talked about how much he loved his new family and he wanted to stay with them. During the visitation on September 10, 2014, the children were loud and screamed. They had to be directed to lower their voices. Later during the visit, David punched Richard, who responded by kicking David.

At the visitation on October 8, 2014, Jeremiah was upset. Richard kept talking to the social worker and wanted to go home. Later, Jeremiah started kicking a cousin who accompanied mother and the maternal grandparents during the visit. In October 2014, Richard told his caretaker he did not want to return to mother's home because she would not feed him. Richard was not interested in remaining with his brothers. William told the social worker he was returning home with his mother. David said he wanted to go home, but did not want to be in the same home as William.

During a visitation on November 12, 2014, Jeremiah and Richard argued with each other largely over gifts brought by the grandfather. Mother tried to apply consequences according to the children's behavior modification plan, but had difficulty managing the children. The grandfather contributed to the children's behavior. At one point, all the boys began to argue. Jeremiah and Richard were arguing loudly in mother's face and the social worker had to intervene with an appropriate correction. The grandfather insisted on talking alone to David and William, but the social worker told

him he could not do so because the children had to be released to their caretakers. The grandfather did not care and did not understand the behavior modification plan they were on for poor behavior.

After the visit, the grandfather was visibly upset and told the social worker she was keeping the “boys in a box and they should be allowed to play.” Mother had asked the social worker to talk to the grandfather about his whispering to the boys during visits. When the social worker asked him if he could see how whispering to two of the boys about gifts hurt the visit, he replied, “no.” When the social worker explained the grandfather’s conduct caused a disruption, the grandfather stood up, raised his voice, and denied causing a problem.

At the conclusion of the supplemental report, the department noted nothing had changed since the June 2014 report. The department noted Dorais reported 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 children because of her inability to control them. Mother also had failed to take responsibility for the pending felony child pornography allegations. The department concluded mother had not demonstrated an ability to consistently control her children’s behaviors. The department recommended termination of further reunification services and noted that despite receiving and participating in services, mother had not made progress and continued to present a risk to the safety of her children.

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 she had finished receiving services and learned to spot red flags in her relationships. Among the services mother completed were a 12-week parenting class,

as well as classes in anger management and domestic violence as a victim. Mother also had one-on-one counseling. Mother had learned how to redirect her children, including how to redirect her boys when they are fighting. Mother believed she was successful most of the time at redirecting the children.

Mother was asked about whether her children were fighting with each other during a visit the day before the hearing. Mother responded 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 nicely asked Richard not to say hurtful things to her and then let Richard rant and rave.

Mother denied 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 had been directed by social workers to work on better ways to redirect her children. Mother had been seeing her therapist, Dorais, once a week for nearly a year.

Mother did not know if she was diagnosed with PTSD. She denied being diagnosed with schizophrenia. Mother believed her therapist had helped her, but 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 admitted 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 she was not serious and she was only joking when she mentioned to her social worker she was living with friends.

Mother disagreed with the department's evaluation that visits with the children were chaotic. Mother believed change had occurred in her life not only because father was now deceased, but because she had grown up and learned from her counselor. In over three years of receiving reunification services, mother had no unsupervised visits with her children and no overnight visits.

For about six months, Mother had visits with the children at the CVC, an outdoor park the department used for visitations. When mother was asked if she was told not to come back because the children were running away, she replied there were a couple of times William "had a few issues."

Therapist's Testimony

Dorais testified she began individual therapy with mother in November 2013. Dorais met with social worker 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 the document outlined the court-ordered case plan. Dorais said she learned a few weeks later the document included treatment for sexually deviant behavior, which 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 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 participants to continue it. Dorais believed mother's relationships with both of her husbands were abusive. Dorais was aware of an allegation mother had made of having been sexually molested by her father, but mother later

recanted the allegation. Dorais believed the recantation because the allegation is not uncommon when someone has been in an abusive relationship and seeks separation from his or her nuclear family once in such a relationship.

Dorais felt 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 said about her. Dorais had also addressed the issue of codependency in mother's domestic violence therapy. Dorais was aware 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 father, including a time he strangled mother. Mother was also physically abused by her first husband. At the beginning of therapy, Dorais thought mother was too dependent on her father, but over the course of the year she had come to see it 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

Social worker Aguilar testified she had recently obtained her master's degree in marriage and family counseling and had been assigned to mother's case for two years. Aguilar said mother had certificates of completion for the domestic violence and parenting components of her case plan. 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 she was going to see Dorais. Aguilar did not refer mother to Dorais. Aguilar talked to Dorais twice in person and twice over the telephone. Aguilar informed Dorais mother's case plan required her to address codependency and low self-esteem issues.

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 Dorais's reports addressed mother's progress with counseling for self-esteem or codependency.

Aguilar explained 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 arrangement 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 mother has tried to redirect her children during visits, but is not consistent. Mother gets sidetracked and distracted very easily.

During visits, Aguilar and other social workers have to intervene all 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 with her. Mother tells them to stop but does no more. Aguilar has had to physically stand between the children. Aguilar does not always direct mother during visits in order to see what mother will do. If mother does nothing, Aguilar will instruct her and help with redirection.

Aguilar explained 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. For example, mother will put Jeremiah in a timeout, fail to keep track of time, and let him out of the timeout early.

Aguilar did not think mother could handle all of her children returning home because it took two social workers at all times during every visit to control or try to set some kind of consistency in the children's behaviors so the children do not hurt each other or themselves. Aguilar did not see improvement in mother's self-esteem because she continually apologized every time she thought she made a mistake, whether it was a mistake or not. Mother continued to rely on her father for reassurance. Mother failed to improve her assertiveness. All visitations occurred indoors because the children were so disruptive they were interfering with other visiting families.

The last time Aguilar talked to mother about her living situation, mother told Aguilar she lived part-time with her parents and the rest of the time with friends in Bakersfield. Mother did not say this in a joking manner when she told this to Aguilar, and mother did not make the comment under her breath as she had testified.

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 the care providers and therapy were trying to alleviate. Aguilar was concerned for Gabriella's safety because of the pending child pornography charges against mother.

Mother rarely asked the children about school, perhaps doing so only once or twice, and never asked them about their hobbies. With an exception concerning Gabriella's teeth, mother did not ask social workers about the children's medical care. Mother did not inquire about how the children were doing in their placements. Aguilar has given mother the children's educational information, including their individual educational plans. Three of the four boys have individual educational plans.

Four of the five children take psychotropic medications. Aguilar believed mother's continued visitation with the children was detrimental to them because they

fight for her attention, argue with each other, engage in physical fights, and look to the social workers for direction more than to mother.

Aguilar testified she never gave Dorais a case plan that included counseling for sexual deviancy. An entry in the case plan stating 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 they wanted to be returned to mother, Aguilar replied she had read these statements in prior transcripts, but this was not what the boys told her when she has spoken to them. Aguilar described the boys as conflicted concerning whether they want to be returned to mother's care. Aguilar did not believe Richard, for instance, wanted to be returned to mother's care.

On redirect examination, Aguilar said she did not recommend increasing visits with mother because mother had not demonstrated during the visits she was able to handle the children during the time she had been allotted. Aguilar explained visitations are an important part of reunification and it is important to see the family as a unit and for everyone to be present and engaging with one another. Aguilar further explained 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 does not tell parents in advance they are being evaluated to determine if they can control their children. She does tell them, however, what social workers are looking for regarding visitations and parenting. Aguilar has worked with mother and told

her on more than one occasion what social workers expect and the importance of learning how to redirect her children's behaviors.

Motion for Judicial Notice

Toward the end of the evidentiary hearing, counsel for William sought to introduce information from an older dependency case from the 1980's involving allegations of molestation by the maternal grandfather of mother's older sister. Mother's counsel objected to calling a social worker to testify concerning the old case. County counsel noted the files of the older case were in storage and would take days to retrieve. Mother's counsel stated he had earlier sought this information in discovery. County counsel replied she had never received such a request and noted the old file information does not deal with mother or the current minors.

William's attorney stated the grandfather had on an earlier occasion admitted there was something that caused him to withdraw his application to seek custody of one or more of the children as part of the relative assessment unit. William's counsel cited to a reference in the June 2014 social worker's report in which the grandfather stated the children should not be in foster care and should have been placed with him.

William's counsel read the relevant entry into the record. The social worker's report indicated that when the social worker asked the grandfather if he had submitted an application for custody of the children, grandfather replied he had done so. Mother told the social worker the grandfather's application had been denied. The grandfather said he had withdrawn the application because of something that happened in 1982, which he had never been charged with.

Social worker Linda Parlier was called as a witness by Gabriella's attorney. Parlier testified the grandfather applied three times to have custody of Gabriella and once or twice to have custody of a minor who is no longer part of these proceedings. The juvenile court sustained the objection by mother's counsel that the parties should be able

to review the documents before Parlier could refer them. The court continued the matter for the parties to obtain access to the old court file and records.

Subsequently, the department filed a motion for the prior action to be judicially noticed. The maternal grandmother, in propria persona, responded with an objection and a request to destroy all files. On January 13, 2015, the juvenile court conducted a hearing to determine whether to take judicial notice of its old case file. County counsel noted the maternal grandparents were not parties to the instant action.

The juvenile court ruled it was taking judicial notice of its own records. Mother's counsel lodged an objection to the inflammatory, hearsay information in the old case. The juvenile court explained to mother's counsel the court was not interested in the detail in the old case file. The court noted there was an objection at the evidentiary hearing to Parlier's testimony for lack of corroboration. The court asked for the production of the old case file because there was a pending motion to strike Parlier's testimony for failure to corroborate her testimony. The juvenile court elaborated it "did not want to go into the details of an incident that was at least now 32 years ago, if not more." The juvenile court explained that based on mother's counsel's objection to Parlier's testimony, the court conditioned its ruling on the admissibility of her testimony on some substantiation.

The juvenile court reiterated it was taking judicial notice of its own records and the files submitted by the department. The court explained it was "for the limited purpose of establishing the foundation for the questioning that had been entered on by counsel for the minor, Gabriella."

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 the initial basis for this finding was the children were in an unsafe environment with mother. The court found 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 noted the social worker's reports were replete with examples of the children attacking each other and mother as well.

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

The court noted Dr. Couture thought mother would need help because of the rambunctiousness of the boys. Also, the department's reports dating back to 2005 showed mother had been reporting mental health issues. The court observed Dorais diagnosed mother with PTSD and battered wife syndrome. The juvenile court found mother had taken psychotropic medications over the years to cope with her mental health issues. The court found 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 mother had admitted to federal agents she viewed and was sexually aroused by viewing those images. The court did not make a factual determination as to whether mother was passively or actively involved in obtaining 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 Richard, through his counsel, indicated he did not want to return to a home with mother.

The court noted significant, positive changes had happened with the children and it would be detrimental to their physical safety and emotional well-being to be returned to mother. The court found mother had made no progress toward alleviating or mitigating the causes for the children's placements out of home. Mother made minimally acceptable efforts to avail herself of services. The return of the children to mother's physical custody would create a substantial detriment to their safety, protection, physical, or emotional well-being. The court ruled, by clear and convincing evidence, mother failed to participate regularly and make substantial progress in court-ordered programs. The court terminated mother's reunification services. The court further found 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. At the end of the evidentiary hearing, the juvenile court formally denied the section 388 petition.

DISCUSSION

I. Alleged Denial of Due Process

Mother contends the juvenile court erred in denying her motion to strike the reports from Homeland Security agents when it became clear mother would not have an opportunity to cross-examine the agents. Mother argues this violated her right to due process. Mother further argues the department's report contained unreliable and uncorroborated hearsay not constituting substantial evidence for the juvenile court's findings. Mother describes the testimony of social workers, especially with regard to the reports of federal agents, as the inadmissible hearsay of noninvestigative readers. Mother concludes that without the reports of Homeland Security, the juvenile court would have returned the children to her. We reject these contentions.

The California Supreme Court has determined hearsay statements in social workers' reports are admissible. (*In re Malinda S.* (1990) 51 Cal.3d 368, 376–379.)

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 the hearsay declarant would be available for cross-examination, and 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.) Evidence Code section 1360 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; and (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. (*In re 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.) We reject, therefore, mother’s argument hearsay

statements in the social worker's reports were unreliable and inadmissible to the extent she asserts this as a matter of law.

We turn to a key component to mother's due process argument: she had no opportunity to cross-examine federal agents. In the prior dependency appeal (case No. F066890), we were concerned mother had no notice or 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 the juvenile court had no jurisdiction to subpoena federal agents under the United States Supreme Court's interpretation of sovereign immunity in *Touhy*. Mother's counsel would have to remove the matter to federal court and follow federal regulations for issuing a subpoena on the federal agents. The remand hearing was conducted at the end of July 2014.

Though he had already made a request to Homeland Security, mother's counsel apparently never sought a subpoena from federal court and failed to follow *Touhy* regulations. Mother now complains she was denied the opportunity to question or cross-examine the federal agents who initially investigated the parents' possession and use of child pornography. We note the juvenile court did not err in failing to issue a subpoena that could only have been ordered by a federal court. We agree with the department's assertion mother could have removed the matter to federal court to obtain subpoenas to question federal investigators and/or to call them as witnesses to the hearing. Mother failed to afford herself of the opportunity to question or cross-examine federal investigators.

Unlike the procedural posture of this case in March 2013, the child pornography allegations are not an 11th-hour change in the evidentiary profile of the case. As we noted in our opinion in case No. F066890, at the March 2013 hearing, mother had no notice or opportunity to call the federal agent as a witness. By mid-December 2014,

during the evidentiary phase of the hearing, mother had many months from the juvenile court's ruling denying mother's motion to subpoena federal agents in late July 2013, to comply with federal regulations and seek a federal subpoena of the agents. Despite this generous amount of time, mother failed to follow federal *Touhy* procedures.

Mother was 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 *In re Cindy L.*, *supra*, 17 Cal.4th 15 to evaluate the indicia of reliability of the hearsay reports here, we find 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 to him 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. The federal agent was available as a witness, albeit through an order of the federal court and not the juvenile court. We find all interested parties had adequate notice of this issue.

We note the juvenile court did not determine mother's penal liability for the allegations. It relied instead on her hearsay admissions to federal agents that she possessed and used child pornography within the limited context of protecting the minors' welfare. In so doing, the juvenile court did not abuse its discretion. We further reject mother's argument the social workers were mere readers of the Homeland Security reports and noninvestigators cannot generally rely on the police reports of investigators.

(See *Whitman v. Superior Court* (1991) 54 Cal.3d 1063, 1071-1975 [error to allow noninvestigator to be mere reader of another investigator's report as basis for probable cause in preliminary hearing].) As noted above, under our Supreme Court's decision in *Cindy L.*, the information relied upon had the necessary indicia of reliability and *Whitman*, a criminal case, is therefore distinguishable from the instant action.

Finally, we reject mother's argument the juvenile court would have returned the children to mother in the absence of this evidence. Even without evidence of the federal agents, there was other substantial evidence before the juvenile court to support its findings mother had not benefited from reunification services and the children remained at risk of detriment should they be returned to her custody. We review this evidence in greater detail *post*.

II. Objection to Reunification Services

Mother contends there was no substantial evidence to support the juvenile court's finding the department provided reasonable reunification services tailored to meet the family's needs. Mother argues the department failed to refer her to a provider who could assist her with visits. According to mother, social workers only helped mother with positive reinforcement techniques and should have provided mother with further resources. Mother argues fundamental flaws developed in mother's case plan, and social workers failed to take adequate steps to address these alleged inadequacies. We reject these contentions.

We review the juvenile court's finding reasonable services were provided or offered under the substantial evidence standard. (*Katie V. v. Superior Court* (2005) 130 Cal.App.4th 586, 598.) 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. (*In re Mary B.* (2013) 218 Cal.App.4th 1474,

1483.) 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.)

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.) The social services agency must make a good faith effort to provide reasonable services responsive to the circumstances of each family. The agency's efforts to provide adequate services is judged according to the circumstances of the case. The record should show the supervising agency identified the problems leading to the loss of custody, offered services designed to remedy those problems, and maintained reasonable contact with the parents during the course of the reunification plan. Reasonable efforts should also be made to assist parents in areas where compliance proved difficult. (*Earl L. v. Superior Court* (2011) 199 Cal.App.4th 1490, 1501.)

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. (*In re Misako R., supra*, 2 Cal.App.4th at p. 547.) If a parent believes he or she is not receiving reasonable services, the parent should call upon counsel to seek assistance from the juvenile court in formulating a better reunification plan. (*In re Christina L.* (1992) 3 Cal.App.4th 404, 416.) A parent's emotional issues are not an excuse for failing to participate in services. Some capacity by the parent to achieve reunification goals is presumed. (*Angela S. v. Superior Court* (1995) 36 Cal.App.4th 758, 762; *In re Christina L., supra*, at p. 415.)

Mother's argument rests on the premise that because her children were so difficult for her to control, the department failed to modify her plan sufficiently to give her adequate reunification services. Mother, however, ignores all of the services she completed, including parenting classes and domestic violence classes. Mother's argument also ignores the testimony of social worker Aguilar that mother was counseled concerning how to redirect her children and these techniques were demonstrated by social workers during visits, but mother failed to implement them.

Mother admitted during her testimony that when William was hurting himself—the incident leading to these dependency proceedings—mother deferred to her husband to discipline the children. After years of therapy and services, mother was observed by social workers continually deferring to her own father to assist with the children's misbehaviors. When mother did intervene to control her children as they verbally and physically fought with each other, she often failed to follow through with the redirection techniques she had been shown. Mother was generally passive toward the children during visitations, not only in redirecting their misbehavior, but in her personal interactions with them as well.

Mother was provided with an exhaustive set of services as part of her reunification plan. Mother also received years of individual therapy. The fact mother completed those services has never been an issue in these proceedings. There is no merit to mother's contention the department failed to provide mother with reunification services that would have met the family's needs had mother implemented the classes, training, and therapy she received. Furthermore, during critical junctures in the proceedings, mother did not seek further services from the department for additional parenting classes.

The record reveals the parent has been offered a plethora of services, including parent education services, family preservation services related to domestic violence, individual counseling, mental health treatment, supervised visitations, discussions by social workers with mother as to how to implement behavior corrections during

visitations, and communication with mother's therapist to keep mother on track with her reunification plan. The services provided to mother were extensive in nature, tailored to mother's problems, including those related to self-esteem and domestic violence, and they took into account mother's special needs. Under the circumstances, there was substantial evidence supporting the juvenile court's findings sufficient services were provided. Mother's problem was not insufficient services, "but a lack of initiative to consistently take advantage of the services that were offered." (*Angela S. v. Superior Court, supra*, 36 Cal.App.4th at p. 763.)

We conclude mother could not apply all the services she was provided for over three years, and those services were reasonably designed to meet mother's specific needs. Mother was unable to demonstrate she was ready to parent her children independently.

III. Risk of Detriment

Mother contends there was insufficient evidence adduced at the evidentiary hearing the children were at a substantial risk of detriment if mother regained their custody. Mother's argument rests substantially on her assertion her therapist Dorais presented stronger evidence than social worker Aguilar regarding the strides mother made in addressing PTSD, self-esteem issues, and mother's progress in her reunification plan. We reject these arguments.

The issue of sufficiency of the evidence in dependency cases is governed by the same standards applied 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 whether 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; 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. (*In re 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. (*Id.* at pp. 1139–1140.) 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.*, at pp. 1141–1142.)

Mother’s visits with her children were chaotic throughout the proceedings. Mother could not handle the children earlier in the proceedings when she visited the children at the more expansive CVC outdoor 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 enclosed 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 the social workers and care providers who were using behavioral techniques to redirect the children. The grandfather would offer the children gifts to stop their misbehavior. The grandfather’s

advice to mother concerning the discipline of her children was inconsistent with how social workers were instructing and demonstrating to her.

Despite all of the classes completed, therapy received, and coaching from social workers assigned to her case, mother still could not control her children on her own without the assistance of two social workers. Mother struggled to rely on her own resources or to employ the redirection techniques she had been shown. Even when mother attempted to redirect her children, she failed to complete timeouts and acted passively when the children were hitting her and each other.

While 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 in a limited space and with other adults assisting her. Although the therapist was an expert who believed mother had improved her self-esteem, social worker Aguilar explained mother's lack of self-esteem was evident during visits with the children. In addition to her experience as a social worker, Aguilar had completed a master's degree in marriage and family therapy. At this late stage in dependency proceedings, mother still required supervised visitation with her children.

The unrefuted evidence adduced during these proceedings demonstrated mother had two prior marriages and both spouses were abusive. Father was not only abusive to mother and at least one of the children, mother deferred to 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 conclude the juvenile court's findings further support the reasonable inference mother does not have the current capacity to apply the services she has received to adequately protect her children from future, potentially abusive relationships.

The court ordered 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 mother still struggled with her self-esteem during visitations with the children. Mother's completion of services is not equivalent to her ability to implement those services. Substantial evidence established mother had either learned but could not implement or had not acquired the necessary skills to adequately care for and to protect her children. There must be an indicium of progress toward family preservation. (*In re Dustin R.*, *supra*, 54 Cal.App.4th at pp. 1139–1140.)

While mere completion of the technical requirements of the reunification plan is one consideration under section 366.22, subdivision (a), a juvenile court must also consider the parent's progress toward eliminating the conditions leading to the children's placement out of the home. (*In re Dustin R.*, *supra*, 54 Cal.App.4th at pp. 1141–1142.) The failure of the parent to make substantive progress in court-ordered treatment is prima facie evidence returning 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 mother's custody of the children posed a continuing risk of detriment or harm to them.

IV. Mother's Section 388 Petition

Mother contends the trial court abused its discretion in failing to consider her section 388 petition because the court summarily denied it without further findings. In essence, mother argues she had completed her reunification plan, engaged in individual counseling on remand from our earlier opinions, and had a medical opinion that she no longer needed medication. Mother also argues David and William wanted to go home to her. According to mother, the juvenile court's cursory consideration of mother's section 388 petition failed to consider the mother's change of circumstances or the children's best interests.

Prior to the evidentiary hearing in December 2014, mother filed separate petitions for Richard, David, and William pursuant to section 388 seeking modification of the

juvenile court's prior orders. Mother alleged her children were "snatched" by the department and the court should terminate jurisdiction because the only basis for jurisdiction was father's treatment of the children and he was now deceased. Mother argued her mental health providers indicated she was not in need of medications and the department failed to properly care for the children. The trial court granted mother's request for a section 388 hearing.

The parent in a section 388 petition bears the burden of proof to show there was new evidence or there were changed circumstances, making a change of the children's placement in their best interest. The parent must show by a preponderance of the evidence there was new evidence or changed circumstances calling for a modification of the previous order denying reunification and that reunification services would be in the children's best interest. (§ 388; *In re Stephanie M.* (1994) 7 Cal.4th 295, 317.)

Thus, the parent bears the burden of showing in a section 388 petition both a change of circumstance exists *and* the proposed change is in the best interests of the child. A petition only alleging changed circumstances, which would lead to a delay in the selection of a permanent home to see if a parent could eventually reunify with a child at some future point, does not promote stability for the child or the child's best interests. (*In re Casey D.* (1999) 70 Cal.App.4th 38, 47.) As the moving party, it was mother's burden of proof by a preponderance of the evidence to show there was new evidence or there were changed circumstances calling for a change of the previous order denying reunification and that reunification services would be in the children's best interest. (§ 388; *In re Stephanie M., supra*, 7 Cal.4th at p. 317.) A showing of changing, rather than changed circumstances, is insufficient to warrant a hearing on a section 388 petition. (*In re Carl R.* (2005) 128 Cal.App.4th 1051, 1072.)

The department accurately points out the evidentiary hearing in December 2014 was a combined hearing for sections 366.25 and 388, and there was no objection to the juvenile court hearing both matters together. The juvenile court heard all the evidence

and argument presented by all the parties and ruled on the pending matters before it, including the section 388 petition. Because both parties were given the opportunity to present evidence, we initially find mother did have a full hearing on the factual and legal issues raised in her section 388 petition, and the juvenile court did not summarily deny mother's petition.

Mother's petition failed to establish new evidence or that it would be in the best interests of the children for them to be returned to her custody. Although David and William expressed some interest in returning home with mother, social worker Aguilar testified the children were conflicted on this point. As discussed in detail *ante*, mother failed to show substantial progress from the services she was offered.

To understand the element of best interests in the context of a section 388 petition, we look to the Supreme Court's decision in *Stephanie M.* After the termination of reunification services, a parent's interest in the care, custody, and companionship of his or her child is no longer paramount. Rather, the focus shifts to the child's needs for permanency and stability; there is, in fact, a rebuttable presumption that continued out-of-home care is in the best interests of the child. (*In re Stephanie M.*, *supra*, 7 Cal.4th at p. 317.) A court conducting a modification hearing at this stage of the proceedings must recognize this shift of focus in determining the ultimate question before it, that is, the best interests of the child. (*Ibid.*) Notably, both here and in the juvenile court, mother ignores her children's need for permanence and stability in advocating her position. Neither the juvenile court nor this court, however, may do so.

V. Judicial Notice of Prior Case Involving Mother's Sibling

Mother contends the juvenile court erred in taking judicial notice of its court file concerning mother's older sibling. Mother argues the information was not reasonably in dispute, there was only one minute order in the file dismissing the petition, and the rest of the information was hearsay. Mother also argues the only reason the department wanted

the information before the court was to inflame its sensibilities, and the information it contained was unduly prejudicial.

Judicial notice is the recognition and the acceptance by the court of the existence of a matter of law or fact relevant to an issue in the action without requiring formal proof of the matter. The matter so noticed is for use by the trier of fact or the court. In its discretion, the court may take judicial notice of any court record in the United States. (Evid. Code, § 451; *Lockley v. Law Office of Cantrell, Green, Pekich, Cruz & McCort* (2001) 91 Cal.App.4th 875, 882.) This includes any orders, findings of facts, conclusions of law, and judgments within court records. Although courts are free to take judicial notice of the existence of each document in a court file, including the truth of results reached, they cannot take judicial notice of the truth of hearsay statements in decisions and court files. (*Lockley, supra*, at p. 882; *People v. Pantoja* (2004) 122 Cal.App.4th 1, 12.)

The juvenile court carefully explained to mother's counsel during the judicial notice hearing the court file involving mother's sibling was admitted for the very limited purpose to corroborate social worker Parlier's testimony that the maternal grandfather on three occasions filed and then withdrew applications to have custody of Gabriella. The grandfather mentioned an incident in 1982 to Parlier and the juvenile court ruled the file was admitted for the limited purpose of showing such an incident occurred. The parties were all well aware the 1982 action was dismissed and the grandfather was not prosecuted for any offense. The court did not consider the information in the prior court record for any other purpose.

Indeed, the juvenile court was prepared to permit social worker Parlier to testify without reviewing the contents of the 1982 court file. Mother's counsel insisted the file be produced for all parties to review rather than merely having Parlier testify it involved a dependency case from 1982 in which the grandfather was a party. In any event, the juvenile court considered the file for a very limited purpose and there is no indication

from the court's rulings that it considered any hearsay information in the 1982 court file in its findings and orders concerning mother.

Furthermore, the admission of the file was only relevant to issues concerning Gabriella's placement, not to the placement of the minors currently before this court on appeal. Although this issue was first raised by William's counsel during the December 2014 evidentiary hearing, by the end of that hearing the question had been distilled to whether the maternal grandfather was an appropriate caregiver to Gabriella, who is not a party to this appeal. The issue of whether the trial court should have taken judicial notice of a court record from 1982 had little or nothing to do with the issues involving mother and the current dependency action. We reject this contention.

DISPOSITION

The orders of the juvenile court are affirmed.

PEÑA, J.

WE CONCUR:

FRANSON, Acting P.J.

SMITH, J.