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

In re DYLAN C., a Person Coming Under the
Juvenile Court Law.

STANISLAUS COUNTY COMMUNITY
SERVICES AGENCY,

Plaintiff and Respondent,

v.

ANGELA N.,

Defendant and Appellant.

In re DYLAN C., a Person Coming Under the
Juvenile Court Law.

STANISLAUS COUNTY COMMUNITY
SERVICES AGENCY,

Plaintiff and Appellant,

v.

KELLY H.,

Defendant and Respondent.

Consolidated
Case Nos. F071901 & F071721

(Super. Ct. No. 517185)

OPINION

(Super. Ct. No. 517185)

APPEAL from judgments of the Superior Court of Stanislaus County. Ann Q. Ameal, Judge.

John P. Doering, County Counsel, Robin Gozzo and Carrie M. Stephens, Deputies County Counsel for Plaintiff and Appellant Stanislaus County Community Services Agency.

Rebekah A. Sass, under appointment by the Court of Appeal, for Defendant and Appellant Angela N.

Caitlin Urie Christian, under appointment by the Court of Appeal, for Defendant and Respondent Kelly H.

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INTRODUCTION

Appellant Angela N. is the legal guardian of 10-year-old Dylan C. under a Probate Code guardianship established in June 2008. Dylan was placed in protective custody and a dependency petition was filed on his behalf after Angela made a serious attempt to commit suicide in December 2014. In May 2015, the juvenile court took jurisdiction over Dylan, ordered him removed from Angela's custody, and granted reunification services both to Angela and to Dylan's biological mother, respondent Kelly H., who lives in Oregon and has lived there since Angela was first appointed as Dylan's temporary guardian in September 2007.

In case No. F071901, Angela appeals from the jurisdictional findings and dispositional order removing Dylan from her custody under Welfare and Institutions Code section 361.¹ Angela contends the juvenile court erred in finding jurisdiction under section 300, subdivision (b). She also contends the court erred in finding that returning Dylan to her custody would expose him to a substantial risk of harm under section 361,

¹Further statutory references are to the Welfare and Institutions Code unless otherwise specified.

subdivision (c). We disagree and affirm the juvenile court's findings and orders as to Angela.

Angela has also filed a motion to consolidate her appeal with a related appeal (case No. F071721) filed by the Stanislaus County Community Services Agency (agency), challenging the juvenile court's order granting reunification services to Kelly under section 361.5. We grant the motion to consolidate the appeals. We agree with the agency's contention on appeal that the juvenile court misconstrued section 361.5, subdivision (a), as requiring the court to grant reunification services to Kelly. We agree with the position advanced by the agency at the jurisdiction/disposition hearing that Angela, as Dylan's legal guardian, was the only person entitled to reunification services under the plain language of the statute because Dylan was ordered removed from Angela's custody, not from Kelly's custody or from the custody of a parent. We therefore reverse the juvenile court's dispositional order granting reunification services to Kelly.

FACTS AND PROCEDURAL HISTORY²

On January 2, 2015, the agency filed a section 300 petition on behalf of Dylan. The petition alleged that Dylan had suffered, or there was a substantial risk he would suffer, serious physical harm or illness as a result of Angela's failure or inability to supervise or protect him adequately and by her inability to provide regular care for him due to mental illness. (§ 300, subd. (b).) The petition stated the following facts in support of these allegations:

“On December 1, 2014, [the agency] received a referral reporting that Dylan [C.] had not been picked up by [Angela]. Neighbors attempted to call [Angela] and went to her house. When they opened the garage door,

²Kelly has not filed an appeal or otherwise challenged the juvenile court's jurisdictional findings or dispositional order as to her. Therefore, our facts and procedural history focus primarily on facts concerning Angela and those relevant to the issues on appeal.

[Angela] was found unconscious in the garage. She had sealed up the garage, started the car, and laid down by the exhaust.

“[Angela] has mental health concerns as she has attempted suicide. [¶] ... [Angela] stated that she is aware she tried to kill herself and that it is her goal to end her life. [¶] ... [Angela] reported she is severely depressed and has been depressed for a long time. She reported her depression and anxiety has increased in the past six months. [¶] ... [Angela] also shared that killing herself was the goal of her attempt and she wasn't happy she wasn't successful. [¶] ... [Angela] stated upon release from the hospital, her plan was to successfully end her life.

“ ... [Angela] stated she does not know why people keep trying to save her and stated she does not want people to intervene when she tries to kill herself. [¶] ... On December 8, 2014, the ‘Psych Progress Note’ from Doctor’s Medical Center reported that she continues to be extremely depressed with little insight into the events leading up to her hospital admissions and that she states to want to hurt herself again and wants people to not intervene. During the mental status examination, [Angela] reported being depressed and that she had a suicidal plan to use carbon monoxide again to hurt herself. [¶] ... On December 15, 2014, [Angela] herself reported that Dylan is not well-off in her own care.”

The petition also contained allegations under section 300, subdivision (g) (no provision for support), which were later struck by the juvenile court at the jurisdiction/disposition hearing.

On January 5, 2015, the juvenile court ordered Dylan detained in suitable placement pending further hearing. The court ordered supervised visitation for Angela. The court then set a combined jurisdiction/disposition hearing for February 3, 2015.

On January 30, 2015, the agency filed a jurisdiction/disposition report setting forth its evidence in support of the section 300, subdivision (b), allegations and its recommendation to order Dylan removed from Angela’s custody under section 361, subdivision (c). The report established the following relevant facts:

On December 1, 2014, after Angela failed to pick Dylan up from school, neighbors went to Angela’s house and found her lying unconscious on some pillows inside her garage. The garage was closed and cracks around the garage door were taped

up. The car was running and it was very hot. Angela's face was right next to the exhaust pipe. After she was dragged to the driveway and given medical attention, Angela was transported to Memorial Medical Center.

On December 3, 2014, Angela was admitted to Doctors Medical Center (DMC) on a section 5150 hold and a subsequent section 5250 hold based on her serious suicide attempt. An emergency social worker went to DMC to speak with Angela. Angela told the social worker she had been depressed for a long time, but her depression and anxiety had become "severely bad" in the past six months. Angela reported her suicide attempt was triggered by her father's girlfriend increasing the rent at the home where she lived.

Angela also reported to the emergency social worker that she was seeing psychiatrist Dr. Steven Baskin and that she spoke with him by phone every other week because he was based in Berkeley. Angela claimed that Dr. Baskin was aware her depression had reached a low point, he was in the process of changing her medications for anxiety and depression, and the last time she spoke with him had been the previous week.

Angela expressed a desire for Dylan to be cared for by her neighbor Lacy and signed a safety plan, agreeing that Dylan would stay with Lacy until the agency could complete a risk and safety assessment of Angela and her home.

The "Psych History and Physical notes from DMC" from December 3, 2014, reported that Angela was not cooperative during the interview when she was admitted. She denied everything, including previous attempts to commit suicide, despite records showing otherwise. Angela appeared to have a thought disorder based on her inability to maintain coherent sentences and thoughts for very long.

According to the DMC "Psych Progress Note" for December 5, 2014, Angela had been out of counseling for at least a year and had been seeing Dr. Baskin "infrequently." Angela's future safety could not be assured as she had poor insight into her recent serious suicide attempt, and she felt she might try it again.

The psych progress note for December 6, 2014, reported that Angela had a longstanding history of depression and suicidal ideations; she continued to minimize events and would not discuss significant plans to maintain her safety beyond hospitalization. Similarly, the psych progress note for December 7, 2014, reported that Angela continued to minimize events and to state the suicide attempt was an “impulsive act.” She continued to express feeling overwhelmed by her current life circumstances and was unable to describe any “effective means of de-escalation or crisis management” that would prevent the situation from occurring again.

In the psych progress note from December 8, 2014, Dr. Amir Ahuja observed that Angela had been admitted with “major depressive disorder, severe, recurrent, without psychotic features” and that she continued to be “extremely depressed.” Dr. Ahuja noted that Angela was “on her home medication regimen per psychiatrist, which stabilized her in the past, although she had been weaning herself off it, so it will take [awhile] to get her stabilized back on these medications.” Dr. Ahuja further reported:

“She is currently on Ativan 3 times a day as needed for anxiety, as well as Prozac 120 mg, this is her home dose, Provigil 100 mg a day, which is slightly lower than her home dose and Inderal 20 mg twice a day, Wellbutrin XL 300 mg a day and Ambien as needed for sleep, ... so we are going to put her on these medications for now and see how she does over the next couple of days.... We are going to work with her over the next several days and hopefully stabilize her and be able to send her home.”

According to the psych progress notes from December 9 and 10, 2014, Angela remained “very depressed” and had expressed the desire to hurt herself and attempt suicide again. At the same time, she expressed regret for her previous suicide attempt and swore she would not do it again in the future.

Angela was discharged from DMC on December 10, 2014, pursuant to a discharge plan to stay at the home of her friend Jim. Jim reportedly agreed Angela could stay with him for awhile so that he could watch her and make sure she was safe while she was “getting better on her medications.”

On December 15, 2014, the emergency and family maintenance social workers conducted a family maintenance assessment of Angela and her home. Although the home appeared clean and appropriate, Angela's behavior during the assessment was "erratic and constantly changing." She kept making contradictory and indecisive statements about whether or not she wanted services and whether she wanted Dylan to come home or stay with Lacy. Angela appeared forgetful and constantly repeated herself. She continued to state that Dylan was not good under her care and that she felt he was doing better without her. The emergency social worker concluded that Angela was not a "capable caregiver" at that time and reported having "major concerns that if Dylan were to return to Angela, she could hurt him, both emotionally and physically."

On December 30, 2014, Angela violated the safety plan she previously signed by picking Dylan up from Lacy. This was the same day Angela had agreed with agency staff over the phone that she would wait until the next day (i.e., Dec. 31, 2014) to meet with them and Dylan at their office to discuss "the next steps before removing Dylan from the safe arrangement." Due to Angela's "clear violation of the safety plan," the agency determined that "voluntary services were not a viable option and Dylan was in need of the protection of the court." Additional factors influencing the agency's decision to place Dylan in protective custody were Angela's "fragile mental state" and "lack of ability of focus when questioned."

On January 28, 2015, Angela reportedly called the placement specialist to report concerns she had about Dylan's behavior at home. The placement specialist summarized those concerns as follows:

"Angela reported that Dylan is a very good child but at times he becomes very angry and breaks things such as a [TV] set, [electronics,] and [anything] he can get his hands on. Angela further reported that Dylan hurts animals, he kicks, punches and hits the dog with a stick. He has killed frog[s] and a bird they tried to rescue. Angela reported that she is afraid of Dylan when he becomes angry and does not leave any sharp objects such as knives or [scissors] at his reach [because] he has threatened to kill her [on]

several occasions. He has told her that he wants to kill her with a knife and see her blood run out of her so [on] several occasions she has had to restrain him to calm him down. Angela further reported that Dylan goes into [a] mental state as if he is another person and he is unable to control those flashes.

“Angela further reported that Dylan is very strong and when angry he is out of control and she foresees ... his behaviors getting worse with age and added ‘I can see him growing up to be one of those people in the news that goes to school and kills a bunch of people.’ Angela reported that Dylan is a good and smart boy, he knows right from wrong and he has all the materialistic things she can think of so she does not understand why he behaves in such [an] angry way. Angela also reported that she notice[d] Dylan’s behaviors escalating when he goes off [his] medication. [The placement specialist] informed Angela that Dylan has been taking his meds. and continues to receive therapy.”

In the concluding assessment/evaluation of the jurisdiction/disposition report, the agency stated:

“There is concern and risk of detriment to the child to keep him [in] the guardian’s care, who has [made] contradictory statements regarding her suicidal ideations, and further has stated to [the placement specialist] that she fears for her own safety around Dylan as, according to [Angela], he has threatened to kill her on several occasions.... With [Angela’s] fear she has expressed and her worry that Dylan is of harm to her and others, along with concern of [Angela’s] own history of suicidal ideations, it does not seem appropriate for the child to remain with [Angela]. [She has] stated she wished to kill herself and did not know why people [tried] to save her after an attempt to end her life A neighbor had to pick up Dylan from school as this incident occurred. She stated she could not care for Dylan and wanted the neighbor to care for him. However, she then stated that the neighbor was trying to sabotage her. She has stated she would like the mother to have a chance with Dylan[, and for] Dylan to bond with his mother, but on other occasions stated ... she does not want the child with the mother. [Angela’s] statements seem inconsistent”

The January 30, 2015, jurisdiction/disposition report reflects that the agency’s initial recommendation was for the juvenile court to grant reunification services to Dylan’s mother Kelly and to grant the agency’s planned petition to terminate Angela’s guardianship under section 728, which the agency filed on February 10, 2015. The

agency subsequently changed its initial recommendation, however, and recommended that reunification services be provided under section 361.5, subdivision (a), only to Angela, as Dylan's legal guardian, and not to Kelly pursuant to the Court of Appeal's decision in *In re B.L.* (2012) 204 Cal.App.4th 1111 (discussed *infra* in part III of the Discussion). The agency also withdrew its petition to terminate Angela's guardianship.

In an addendum report filed on April 2, 2015, the agency expressed concern regarding Kelly's "lack of efforts" to connect with Dylan beyond their regular 15-minute phone visits, the minimal contact she had made with the agency, and her persistent failure to provide requested information required for the agency to set up services for her. Angela, on the other hand, had made frequent and appropriate contact with the agency to check on Dylan's care, health, and progress. She had also been cooperative with the agency's requests and had attended her first appointment for a clinical assessment and set up future appointments. The agency observed that Angela's "commitment and willingness to participate in services to make changes are apparent," and "her interest in having Dylan in her care appears to be her top priority."

In the addendum report, the agency further noted that, on March 30, 2015, the social worker received a phone call from Thomas Warner, Dylan's therapist from the Center for Human Services. Warner reported that when he first saw Dylan in late October 2014, "Dylan had significant symptoms of physical aggression, verbal aggression, and cruelty to people and animals." In addition, "Dylan refused to go to school, was kicked out from an after school program, was defiant toward adults, blamed others for his behavior, and had frequent enuresis and encopresis in school and at home to the point of needing to have extra clothes in school."

Despite a four-week lapse in therapy after Dylan entered foster care, Warner noted that Dylan's symptoms had "significantly decreased" when he resumed therapy in February 2015. Dylan's foster mother reported only "two incidents of mild aggression, one enuresis and one encopresis episode." These occurred within a two-week period

after placement. Warner noted it was “out of his scope of practice” to make a recommendation as to whether Dylan should be reunified with Angela. However, he could say the significant decrease in Dylan’s symptoms might be attributable to “the foster parent parenting style and home environment.”

The agency also attached two letters from Angela’s psychiatrist, Dr. Baskin, to the April 2, 2015, addendum report. In its entirety, Dr. Baskin’s first letter, which was dated January 2, 2015, stated:

“[Angela] is back in treatment in my Psychiatric practice after her discharge from the hospital in early December 2014. She is stable, in my opinion, with no suicidal ideation plans or intent. I have treated her for approximately 20 years, and this is the only time recently that she was suicidal. She is stable on these current medications: Prozac [120 mg] per day, Inderal 20 mg twice a day, [Wellbutrin] XL 300 mg per day, [P]rovigil 100 mg per day, and Ambien 10 mg at bedtime. I see no reason why she cannot retain legal guardianship of Dylan [C.]”

In his second letter dated March 25, 2015, Dr. Baskin reported that Angela had been a patient in his psychiatric practice for approximately 20 years and that he currently saw her once a month for psychotherapy and medication monitoring. Dr. Baskin identified Angela’s diagnoses as posttraumatic stress disorder (PTSD), panic disorder without agoraphobia, and occasional low-grade depression, secondary to her other two diagnoses. Dr. Baskin explained that Angela had originally had a successful career in the Bay Area. However, after an incident in which an employee who had been fired invaded and ransacked her home, Angela developed PTSD and panic attacks and went on worker’s compensation insurance.

Dr. Baskin listed seven medications Angela was currently prescribed, noting “[w]e have tried many over the years and these are the ones that helped her the most.” The list began with “Prozac 120 mg a day,” which the psychiatrist noted was Angela’s “[p]rimary treatment” for her two anxiety disorders.

Dr. Baskin reported that Angela talked a lot about Dylan in therapy and he believed she was “very committed to taking care of his well-being, taking him to regular health checkups, play times, kung fu lessons, etc., and keeping food in the house.” Dr. Baskin continued: “She has somewhat organized her life in terms of taking care of this young boy for the last seven to eight years and she is still out of the work force and on Worker’s [Compensation] insurance.”

Dr. Baskin’s March 25, 2015, letter concluded:

“[Angela] has never had ongoing suicidal ideation, plans, or intent the entire 20 years I have seen her and does not have any currently. The incident that happened late in 2014 requiring her hospitalization was an impulsive act that was not thought about at all. It occurred after an argument with her father, who was in the hospital in Modesto and after being put down and criticized by her father’s wife. I think she learned from this experience and I do not believe it will occur or it will happen again. I do not see her as a suicide risk in the future. Furthermore, I think she is very capable of taking care of the young boy, [Dylan’s] needs since she is committed to that. She raised a daughter who is in her 20s now and currently lives in San Diego. If you require further information, please feel free to contact me.”

The addendum report also contained a letter, dated March 26, 2015, from psychiatrist Dr. James Carlson. Dr. Carlson reported that Angela first came to his practice in June 2013 and was treated for migraine headaches by his partner. In reviewing her 10 entries in their charts, Dr. Carlson saw no reference to depression or the treatment of depression.

The first time Dr. Carlson became aware of Angela’s depression symptoms and attempted suicide was on December 22, 2014. Dr. Carlson learned Angela had been seeing a psychiatrist who was treating her with up to 120 mg of Fluoxetine per day and that Angela, “of her own free will, tapered herself off of the anti-depressant and then became so despondent that she apparently attempted suicide by lying down in front of the exhaust pipe of her running car in the garage.” Dr. Carlson restarted Angela’s Fluoxetine and Wellbutrin XL, counseled with her, and set up a follow-up time of two weeks, but

Angela failed to show up for her follow-up appointment. Dr. Carlson concluded: “It is my opinion from that one psychiatric visit of December 22, 2014, she was not in any condition to care for even herself and surely not to care for a child. But because of lack of follow-up and lack of contact, I don’t know what her current status is.”

After several continuances, the jurisdiction/disposition hearing commenced on May 4, 2015. On May 1, 2015, the agency filed additional information with the juvenile court, including agency contact logs dated between April 6 and April 29, 2015, and a report from Sierra Vista Child & Family Services (Sierra Vista) dated April 27, 2015, regarding Angela’s recent clinical assessment to determine whether additional services were needed for her to be able to provide a safe and secure environment as Dylan’s guardian.

In a contact log dated April 14, 2015, the social worker reported that Angela came early to her visit with Dylan and asked to speak with the social worker. Angela then asked if she should talk to Dylan about his destructive and aggressive behaviors while he was living with her and how, if she gets him back, he cannot behave the same way. The social worker advised Angela not to discuss the subject with Dylan. The social worker said she would talk to Dylan’s therapist to address his previous behaviors and, if Dylan was returned to Angela, she could set ground rules with him then.

In a contact log dated April 16, 2015, the social worker reported that she contacted Dylan at home with his foster parents. The foster mother reported that Dylan was doing well and had no anger issues or school reports concerning misbehavior. She also reported that Dylan had not had any more incidents of wetting or soiling his pants, he got along with everyone in the home, and he was starting to open up more.

In the Sierra Vista report regarding Angela’s clinical assessment, the clinician noted that the assessment took place over the course of three sessions on April 1, April 8, and April 15, 2015. The report contained the following summary of Angela’s medical history:

“[Angela] reported being under the care of a psychiatrist for her depression and PTSD ‘off and on for twenty years.’ She reported a suicide attempt in December 2014. She was admitted to Memorial Hospital in Modesto, California for two days; then admitted to Doctor’s Behavioral Center in Modesto, California for five days. [Angela] reported that she had weaned herself off of Prozac. She had also stopped taking her Hormone Replacement Therapy. Her history of depression began with traumatic events at age 35 years. She was then prescribed Prozac, [120 mg].”

The report concluded with the following clinical observations and recommendations:

“[Angela] presents as motivated to complete services and reunify with Dylan, the boy she had been guardian to since he was a toddler. She reports that she does see a therapist and psychiatrist in Berkeley, California. It is concerning that [Angela] attempted suicide in December 2014. She stated that ‘it was the last straw’ when Dylan told her he wished [their neighbor] Lacy was his mom. It is significant that she had stopped taking her psychotropic medication and Hormone Replacement Therapy. She stated that her physician feels the suicide attempt was more likely a result of stopping the HRT. For the above reasons given, this clinician would recommend a psychological evaluation to determine if [Angela] is able to provide a safe and secure home for Dylan.”

At the jurisdiction/disposition hearing, at which two social workers testified and Kelly testified telephonically, Angela’s counsel did not call any witnesses but submitted the issue of jurisdiction on the reports. After the witnesses testified, Angela’s counsel argued that nothing in the allegations or the evidence before the court demonstrated there was presently a substantial risk that Dylan would suffer harm within the meaning of section 300, subdivision (b), nor was there clear and convincing evidence of a substantial danger to Dylan if he were returned home within the meaning of section 361, subdivision (c). Counsel pointed out that Angela’s psychiatrist of 20 years opined that Angela was capable of caring for Dylan, she was unlikely to attempt suicide again, and the December 2014 suicide attempt was the only time she had attempted suicide in 20 years.

After listening to the arguments of counsel, the juvenile court addressed the jurisdictional issues first. The court struck the section 300, subdivision (g), allegations in

the petition and amended the petition according to proof to add allegations against Kelly under section 300, subdivision (b). The court then found the petition as amended to be true. In support of its true finding as to Angela, the court stated:

“This Court will find that [Angela], the legal guardian of Dylan, does suffer from mental health issues of a very serious nature in that this matter was brought to the attention of the Court because of a very serious suicide attempt in which it was very clearly planned out and considered that the Court feels that [Angela] continues to suffer from mental health issues that present a serious risk to Dylan’s mental health.

“It’s also very concerning to this Court that when Dylan was in the care of [Angela], he was displaying some very concerning behaviors, and that he is not allegedly—there’s no evidence that he’s currently displaying those behaviors to the Court. So the Court has concerns about what was going on in [Angela’s] home that caused these very disturbing behaviors, which included being cruel to animals, acting out in very aggressive behaviors.

“Also, recent log notes indicate that although the visits between [Angela] and Dylan go well, that [Angela] acts more like a friend than a mother. And so the court—and I understand that [Angela’s] psychologist says that in his opinion [Angela] is capable of taking care of Dylan, but I am not convinced, because he hasn’t seen [Angela] with Dylan. And even as recently as March, [Angela] had wanted to talk to Dylan about that he can’t come back and continue to display the type of behaviors that he was displaying.

“So I just have some real concerns about what has been going on with [Angela] and whether she’s really properly addressed her mental health issues. And given the severity of those issues, I do not feel that she is presently in a position where she could provide for the proper care of Dylan at this particular time.”

Next, the juvenile court denied Kelly’s request for placement under section 361.2, finding that placing Dylan in Kelly’s care would be detrimental to his safety, protection, or physical or emotional well-being.

The juvenile court went on to find, under section 361, subdivision (c), there was “a substantial risk of detriment to Dylan if he were ... returned to the care of either his legal

guardian or his biological mother at this particular time” and that there were “no reasonable means by which [Dylan] can’t be protected without removal from their physical custody, although he is not in the physical custody of his mother. He is in a legal guardianship.”

The juvenile court then ordered reunification services to be provided to both Angela and Kelly, at which time the agency’s counsel interjected, “just for the record, the [a]gency’s position was that the guardian is the one that’s entitled to services under the plain reading of the statute.” In response, the court stated it did not feel it had any “legal authority” to deny reunification services to Kelly or “any choice” but to grant reunification services to both Kelly and Angela. The court also granted the agency’s request, over the objection of Angela’s counsel, to order a psychological evaluation of Angela as recommended by the April 2015 clinical assessment.

DISCUSSION

I. Jurisdiction—sufficiency of the evidence

Angela contends there is insufficient evidence to support the juvenile court’s decision to establish jurisdiction over Dylan because there is no substantial evidence that, at the time of the combined jurisdiction/disposition hearing, Dylan was at substantial risk of suffering serious physical harm or illness as a result of her inability to care for him due to mental illness. We disagree.

“In juvenile cases, as in other areas of the law, the power of an appellate court asked to assess the sufficiency of the evidence begins and ends with a determination as to whether or not there is any substantial evidence, whether or not contradicted, which will support the conclusion of the trier of fact.” (*In re Katrina C.* (1988) 201 Cal.App.3d 540, 547.) In making this determination, “[w]e do not evaluate the credibility of witnesses, reweigh the evidence, or resolve evidentiary conflicts.” (*In re L.Y.L.* (2002) 101 Cal.App.4th 942, 947.) Rather, we give the respondent “the benefit of every reasonable

inference” and resolve all conflicts in favor of the juvenile court’s decision. (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 576.)

In this case, the juvenile court assumed jurisdiction over Dylan pursuant to section 300, subdivision (b). Subdivision (b) provides a basis for juvenile court jurisdiction if there is a substantial risk a child will suffer serious physical harm or illness “as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child, ... or by the inability of the parent or guardian to provide regular care for the child due to the parent’s or guardian’s mental illness, developmental disability, or substance abuse.”

Substantial evidence supports the juvenile court’s exercise of jurisdiction. Contrary to Angela’s assertion, the circumstances surrounding her suicide attempt on December 1, 2014, demonstrated her suicide attempt was not a “one time lapse of judgment” but the product of longstanding anxiety and depression, which, according to Angela’s own account to the emergency social worker on December 3, 2014, had become *severely bad* in the six months leading up to her suicide attempt. This six-month period included October 2014, when Dylan’s therapist noted that Dylan displayed disturbing symptoms when he was under Angela’s care but which decreased dramatically within weeks of his placement in foster care.

Despite suffering anxiety disorders and depression that were so debilitating she had been unable to work for 20 years, the record shows Angela *unilaterally* decided to stop taking the medications her psychiatrist, Dr. Baskin, had prescribed for her, including Prozac, which he described as her *primary treatment* for her anxiety disorders. On December 8, 2014, Dr. Ahuja opined that it would “take [awhile] to get her stabilized back on these medications,” and the DMC notes reflected Angela remained very depressed when she was discharged on December 10, 2014. During her family maintenance assessment on December 15, 2014, Angela’s forgetfulness, repetition, inconsistent statements, and lack of focus caused the emergency social worker to

conclude Angela was unable to care for Dylan and could harm him physically or emotionally. The inability to focus observed by the social worker was similar to the lack of coherence noted when Angela was first admitted to DMC on December 3, 2014, shortly after her suicide attempt, and suggested she was suffering a thought disorder. Finally, as late as December 22, 2014, Dr. Carlson opined Angela was in no condition to care for herself, let alone a child.

The record thus demonstrates that Angela's longstanding mental health conditions, which resulted in her suicide attempt on December 1, 2014, and which still impaired her ability to care for herself in the weeks following her discharge from the hospital, rendered her unable to provide regular care for Dylan and posed a substantial risk of harm to him if he were returned to her custody. In light of evidence that Angela's anxiety and depression had worsened significantly in the six months prior to her suicide attempt, Dr. Ahuja's opinion that it would take *awhile* for Angela to become stabilized after resuming the medications she had stopped taking, and her continuing to exhibit concerning symptoms following her discharge from the hospital, it was not unreasonable for the juvenile court to conclude that Angela continued to pose a substantial risk of harm to Dylan at the time of the jurisdiction/disposition hearing.

This conclusion is supported by the clinical assessment Angela completed just weeks before the jurisdiction/disposition hearing commenced on May 4, 2015. Angela's statements to the clinician raised concerns similar to those noted by Angela's doctors near the time of her suicide attempt. The DMC notes from early December 2014 reported concerns that Angela would try to commit suicide again and that her safety outside the hospital could not be guaranteed based in part on Angela's lack of insight into her serious suicide attempt and her persistence in minimizing events. At the time of her clinical assessment in April 2015, Angela continued to make statements minimizing events and demonstrating a lack of insight into her suicide attempt.

While admitting she had weaned herself off Prozac, which the doctors who treated Angela in December 2014 clearly viewed as the primary cause of her increased mental instability and resulting suicide attempt, during her clinical assessment in April 2015, Angela claimed that her “physician” felt her suicide attempt was “more likely” caused by her stopping hormone replacement therapy. This claim finds no support anywhere else in the record and, in our view, evinces a continuing lack of insight into her suicide attempt and the necessity of taking psychotropic medications to prevent her from becoming suicidal in the future. It was also one of the circumstances the clinician cited in support of her recommendation that Angela undergo a psychological evaluation.

Notably, the purpose of the April 2015 clinical assessment was to determine whether additional services were needed for Angela, as Dylan’s guardian, to provide a safe and secure environment for the child. The clinician essentially concluded that, in light of Angela’s concerning statements, the clinician was unable to make such assessment and a more formal psychological evaluation was required to determine whether Angela was generally capable of caring safely for Dylan. The results of the clinical assessment, combined with the other circumstances discussed above, provided ample evidentiary support for the juvenile court’s exercise of jurisdiction over Dylan under section 300, subdivision (b).

In challenging the sufficiency of the evidence supporting the juvenile court’s jurisdictional findings, Angela relies heavily on Dr. Baskin’s letters, in which he expressed the opinion that Angela was stable on her current medications, that her suicide attempt was an “impulsive act” resulting from an argument with her father, and that she was capable of caring for Dylan. As Angela recognizes, however, the juvenile court’s ruling indicates it did not find Dr. Baskin’s opinions in this regard to be credible. We find it was reasonable for the juvenile court to question the reliability of Dr. Baskin’s opinions for several reasons.

In addition to the absence of evidence that Dr. Baskin had ever observed Dylan with Angela, as noted by the juvenile court, there was no evidence Dr. Baskin was ever aware that Angela had stopped taking her medications in the first place or how such awareness might have affected his opinions regarding her stability and ability to care for Dylan. There is no mention of Angela stopping any of her medications, including hormone replacement therapy, in Dr. Baskin's letters. Nor do they reflect any awareness that Angela's depression and anxiety had worsened in the six months prior to her suicide attempt or that he was in the process of changing her medications as Angela claimed to the emergency social worker at the time of her admission to DMC on December 3, 2014.

Finally, Dr. Baskin's letters do not, as Angela claims, establish that her suicide attempt on December 1, 2014, was her *only* suicide attempt in the 20-year period Dr. Baskin had been treating her. What Dr. Baskin actually wrote was that it was "the only time *recently* that she was suicidal" and she had "never had *ongoing* suicidal ideation, plans, or intent" (Italics added.) Further indication that Angela had past suicidal ideations was provided by the DMC notes from December 3, 2014, which reported that Angela denied previous suicide attempts, despite records showing otherwise.

In other words, Dr. Baskin's opinion that Angela was not a future suicide risk was not terribly compelling in the absence of evidence that he was aware she had deliberately stopped taking the very medications he credited with stabilizing her and in the absence of an explanation as to how such awareness factored into his opinion. Thus, the juvenile court reasonably rejected Dr. Baskin's opinions in concluding that the agency had sufficiently proved Dylan was at substantial risk of suffering serious physical harm or illness as a result of Angela's inability to protect or care for him adequately due to her mental health conditions.

II. Disposition—sufficiency of the evidence

Angela also contends there is insufficient evidence to support the juvenile court's decision to remove Dylan from her care. Again, we disagree.

Pursuant to section 361, subdivision (c)(1), the juvenile court may remove a dependent child from his or her parent's or guardian's custody upon clear and convincing evidence of a substantial danger to the child's physical health or well-being if there are no other reasonable means to protect the child. Such an order "is proper if it is based on proof of parental inability to provide proper care for the minor and proof of a potential detriment to the minor if he or she remains with the parent. [Citation.] The parent [or guardian] need not be dangerous and the minor need not have been actually harmed before removal is appropriate. The focus of the statute is on averting harm to the child. [Citations.]" (*In re Diamond H.* (2000) 82 Cal.App.4th 1127, 1136, overruled on other grounds in *Renee J. v. Superior Court* (2001) 26 Cal.4th 735.)

Angela's challenge to the juvenile court's removal order is based on similar arguments to those raised in her challenge to the court's jurisdictional findings. According to Angela, her suicide attempt was an isolated occurrence resulting from being improperly medicated, and by the time of the jurisdiction/disposition hearing, she was properly medicated, stable, and capable of caring for Dylan, and therefore her mental illness currently posed no risk to his health or well-being. For the reasons discussed above, we find Angela's interpretation of the record to be unpersuasive.

Angela also misplaces her reliance on *In re Jamie M.* (1982) 134 Cal.App.3d 530 (*Jamie M.*). That case teaches as follows:

"Harm to the child cannot be presumed from the mere fact of mental illness of the parent and it is fallacious to assume the children will somehow be 'infected' by the parent. The proper basis for a ruling is expert testimony giving specific examples of the manner in which the mother's behavior has and will adversely affect the child or jeopardize the child's safety." (*Jamie M.*, *supra*, 134 Cal.App.3d at p. 540, fn. omitted.)

In reversing the juvenile court's dispositional order, the *Jamie M.* court found "no evidence" of how the mother's mental illness would adversely affect her children. (*Jamie M.*, *supra*, 134 Cal.App.3d at p. 542.)

Here, in contrast, there were statements from multiple mental health professionals showing that Angela's mental illness and resulting suicide attempt had not only rendered her incapable of caring for herself and Dylan during the weeks following her suicide attempt in December 2014, but, combined with evidence that Angela continued to make statements evincing concerns noted by such professionals in December 2014 when she was clinically assessed in April 2015, provided sufficient proof of a potential detriment to Dylan's safety were he to be returned to Angela's custody.

III. Reunification services under section 361.5, subdivision (a)

The agency contends the juvenile court erroneously interpreted section 361.5, subdivision (a), as requiring it to grant reunification services to Dylan's mother, Kelly. We agree the court erred. Under the plain language of the statute, Kelly was not entitled to reunification services because Dylan was not "removed from a parent's ... custody" (§ 361.5, subd. (a).) As Dylan's legal guardian, Angela was the only person entitled to reunification services under section 361.5, subdivision (a). Therefore, the court's order granting reunification services to Kelly must be reversed.

"The primary argument on appeal involves an issue of statutory interpretation, which we review de novo. [Citation.] [¶] In ascertaining legislative intent, we look first to the words of the statute, giving effect to their plain meaning. [Citation.] If the statutory language is clear and unambiguous, we presume the Legislature meant what it said and the plain meaning of the statute governs. [Citation.] We construe the language in the context of the statute as a whole and the overall statutory scheme, and give significance to every word, phrase, sentence and part of an act in pursuing the legislative purpose." (*In re Joshua A.* (2015) 239 Cal.App.4th 208, 214-215.)

Section 361.5, subdivision (a), provides that, unless certain exceptions apply, "whenever a child is removed from a parent's or guardian's custody, the juvenile court shall order the social worker to provide child welfare services to the child and the child's mother and statutorily presumed father or guardians." "The remaining provisions of

section 361.5 set out ‘who is *entitled to receive* mandatory reunification services, who *may receive* reunification services, the circumstances under which the court *may deny* reunification services to someone otherwise entitled to receive them, and those circumstances under which the court *must deny* reunification services.’” (*In re Pedro Z.* (2010) 190 Cal.App.4th 12, 19.)

Focusing on the second clause in section 361.5, subdivision (a), the agency and Kelly disagree on whether the juvenile court was required to grant reunification services to both Angela *and* Kelly based on their differing interpretations of whether the Legislature’s use of the disjunctive “or” in the phrase “the child’s mother and statutorily presumed father *or* guardians” was meant to be inclusive or exclusive. (§ 361.5, subd. (a), italics added.) However:

“Courts do not rely too heavily upon characterizations such as ‘disjunctive’ or ‘conjunctive’ forms to resolve difficult issues, but look to all parts of a statute. Courts construe all parts of a statute together, without according undue importance to a single or isolated portion.” (2A Sutherland on Statutory Construction (2014) § 46:5, pp. 226-228, fns. omitted; see *Carrisales v. Department of Corrections* (1999) 21 Cal.4th 1132, 1135 [“We must not view isolated language out of context, but instead interpret the statute as a whole, so as to make sense of the entire statutory scheme.”]), superseded by statute on other grounds as stated in *McClung v. Employment Development Dept.* (2004) 34 Cal.4th 467, 470.)

When the second clause of section 361.5, subdivision (a), is read in context with the relevant language in the first clause, it seems clear to us, based on the plain language of the statute and its grammatical structure, that the question of which party is entitled to reunification services depends on which of the two scenarios described in the first clause is applicable. Thus, if the child is removed from a parent, the statute requires reunification services to be provided to the child and the child’s mother and presumed father, but if the child is removed from a guardian, the statute requires reunification services to be provided to the child and the child’s guardians.

Our construction of the language of section 361.5, subdivision (a), is supported by *In re B.L.*, *supra*, 204 Cal.App.4th 1111 (*B.L.*), relied on by the agency. In *B.L.*, the Court of Appeal concluded that, despite its erroneous reliance on a subdivision of section 361.5 not at issue here, the juvenile court nonetheless correctly concluded that the parents were not eligible for reunification services under section 361.5 because the child was not removed from his parents' custody but from the custody of his guardian grandparents and, therefore, only the grandparents were entitled to reunification services under the plain language of section 361.5, subdivision (a). Thus, the *B.L.* court stated:

“Section 361.5 authorizes reunification services for parents or guardians *when a child is removed from their custody* pursuant to section 361. (§ 361.5, subd. (a).) As explained below, [the child] was not removed from the parents' custody because the paternal grandparents, not the parents, had custody of [the child], pursuant to the guardianship ordered at the conclusion of the first dependency proceeding. Thus, only the paternal grandparents, as [the child's] legal guardians, and not the parents, were entitled to receive reunification services pursuant to section 361.5.

“Section 361 addresses a child's removal ‘from the physical custody of his or her parents or guardian or guardians with whom the child resides at the time the petition was initiated.’ (§ 361, subd. (c).) ‘For all practical purposes, when a dependent child is ordered removed from parental custody under section 361,’ the Agency gains both legal and physical custody of the child. [Citations.] Thus, although the statute speaks in terms of a child removed ‘from the physical custody of his or her parents or guardian or guardians,’ [§ 361, subd. (c)] ‘[t]here can be no removal of custody from a parent who does not have custody in the first place.’ [Citations.] As stated, the paternal grandparents, not the parents, had legal custody of [the child].” (*B.L.*, *supra*, 204 Cal.App.4th at pp. 1116-1117.)

The same reasoning applies here. Dylan was not removed from the custody of a parent but was ordered removed from Angela's custody under section 361, subdivision (c)(1). Thus, the second scenario set forth in the first clause of section 361.5, subdivision (a), was present in this case (i.e., removal from the custody of a guardian) and therefore only Angela, who had custody of Dylan as his legal guardian, was entitled to the reunification services prescribed in the second clause of the statute.

The fact that Angela was Dylan’s guardian under a Probate Code guardianship, not a Welfare and Institutions Code guardianship, does not render the reasoning of *B.L.*, *supra*, 204 Cal.App.4th 1111, inapplicable to this case as Kelly asserts. The language of section 361.5, subdivision (a), does not specify that it only applies to Welfare and Institutions Code guardianships. Indeed, we are aware of case law holding the opposite. (See *In re Carlos E.* (2005) 129 Cal.App.4th 1408, 1420 [references to “guardians” in § 361.5, subd. (a), and elsewhere in dependency statutes refer to guardianships created through Probate Code rather than by juvenile court]; see also *In re Carrie W.* (2003) 110 Cal.App.4th 746, 758 [same].)

Kelly is correct that the provisions of section 361.5 have been held to apply to both custodial and noncustodial parents, but this has been in the context of a child’s removal from the custody of a parent, not a guardian. (See e.g., *In re Adrianna P.* (2008) 166 Cal.App.4th 44, 50, 57.) When a child is removed from the custody of a parent, unless one of the exceptions set forth in section 361.5 applies, the plain language of section 361.5, subdivision (a), appears to require the juvenile court to order reunification services for both the child’s mother and presumed father. But that was not the scenario here; Dylan was removed from the custody of Angela, his guardian, not the custody of a parent. We are aware of no decisions holding that noncustodial parents are entitled to reunification services under section 361.5 in cases where a child is removed from the custody of a guardian.³

³We have considered and reject as without merit Kelly’s other arguments against interpreting section 361.5, subdivision (a), as precluding her from receiving reunification services under the statute. For example, we reject her due process argument because it is well established that parents do not have a due process right to reunification services. (See *In re A.S.* (2009) 180 Cal.App.4th 351, 360, fn. 6; see also *In re Alanna A.* (2005) 135 Cal.App.4th 555, 564 [“Reunification services are a benefit; a parent is not constitutionally entitled to services.”].)

DISPOSITION

Grant the motion of the guardian, Angela N., to consolidate her appeal (case No. F071901) with the agency's appeal (case No. F071721).

Affirm the juvenile court's jurisdictional findings and dispositional orders as to Angela N.

Grant the juvenile court's jurisdictional findings as to the mother, Kelly H., but reverse the dispositional order granting her reunification services under Welfare and Institutions Code section 361.5, subdivision (a).

Smith, J.

WE CONCUR:

Levy, Acting P.J.

Poochigian, J.