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

In re SARA S., et al., Persons Coming Under the
Juvenile Court Law.

FRESNO COUNTY DEPARTMENT OF
SOCIAL SERVICES,

Plaintiff and Respondent,

v.

HEIDI H.,

Defendant and Respondent;

SARA S., et al.,

Appellants.

F072831

(Super. Ct. No. 05CEJ300188-1,
05CEJ300188-2, 05CEJ300188-3)

OPINION

THE COURT*

APPEAL from orders of the Superior Court of Fresno County. Mary D. Dolas,
Judge.

Mary Elizabeth Handy, under appointment by the Court of Appeal, for Appellants.

Daniel C. Cederborg, County Counsel, and Brent C. Woodward, Deputy County
Counsel, for Plaintiff and Respondent.

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

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The children of Heidi H. (mother) – 11-year-old twins Jason and Sara S., and nine-year-old Logan W. (collectively the children) – appeal from dispositional orders that made them dependents, removed them from their parents' custody, and granted father reunification services, but denied reunification services to mother under Welfare and Institutions Code section 361.5, subdivision (b)(13).¹ Their sole contention on appeal is that the juvenile court abused its discretion in declining to find that it would not be in their best interest to order reunification services for mother.² We affirm the order.

FACTUAL AND PROCEDURAL BACKGROUND

These dependency proceedings mark the third time the Fresno County Department of Social Services (Department) had to intervene to protect the children. The first intervention occurred in October 2005, when mother left the twins, who were then 14-months old, sleeping in a hotel room while she went to a neighbor's room to snort methamphetamine. Mother admitted to smoking, snorting and injecting methamphetamine. The twins' father, Jason S., Sr. (father),³ had been sent to prison on a parole violation due to a domestic violence incident with mother. Mother reported that she used methamphetamine because if she did not use drugs, she would drink and she did not want to pass out in front of the children. The juvenile court exercised dependency jurisdiction over the twins. Mother completed reunification services, including residential substance abuse treatment, and successfully reunified with the twins in June 2007. Father was not offered services due to his incarceration.

¹ Undesignated statutory references are to the Welfare and Institutions Code.

² Mother also appealed from the dispositional order in case number F072679.

³ During the course of these proceedings, Jason S. Sr. was found to be the presumed father of all three children. He has not appealed.

The second intervention occurred in May 2010, when a protective hold was placed on the children after mother left Sara in motels with different people, including a registered sex offender. Mother had a history of making inappropriate plans for the care of her children and continued to use drugs. Father was paroled in March 2010, and had not been available to parent the children for an extended period of time. Dependency jurisdiction was taken over the children. Mother again completed a residential treatment program as part of her reunification services. Mother and father were able to reunify with the children in January 2012.

Over the next two years, the Department received nine referrals regarding the family; four were evaluated out, three were inconclusive, one was unfounded and one was substantiated. On March 17, 2015,⁴ the Department received a tenth referral, which it substantiated, that mother had left the children home alone while she went to buy an Xbox, and while she was gone, Jason lit a chair on fire with a lighter and pushed Logan into the scorched chair, burning the top of Logan's hand. Although mother was aware of the burn, she did not take Logan to the doctor. A team decision meeting was held with Department staff regarding mother's drug use, unstable housing, and leaving the children unsupervised. Father agreed to have the children placed in his care.

Three months later, on the evening of June 17, police officers placed a protective hold on the children after investigating a report that they were running around an apartment complex unsupervised and asking residents for food. The children told the officers that they had been living with mother for the past three months, and she was homeless and moved from hotel to hotel. The children said they had not seen mother for days and they had no food to eat. They tried to call their father, but he would not answer his telephone. The officers contacted father, who reported he had dropped the children off with mother three weeks before, and said the children had not called although they

⁴ Subsequent references to dates are to dates in 2015.

had his telephone number and knew how to reach him. The children's clothing was dirty and it appeared they had not bathed for several days.

The parent of a friend of Jason's told police she had fed Jason on a regular basis and allowed him to spend the night at her residence. A manager of a youth center, where Logan was found, told police she had never seen any of the children with their mother, the children were sleeping in nearby parks, and they had been getting food from their friend's parents. The children told the manager that mother made them leave her because mother's boyfriend would not let her stay with him if she had the children.

A social worker interviewed the children at the office of the Department. They repeated what they had told the officers: father, with whom they were supposed to be living, had left them with mother about three months ago; they had been staying with mother in various motels or the park; and father did not answer their calls and sent them a text message stating that he did not want to talk. Jason liked living with mother because she took them to the arcade and the mall; he did not like living with father because "he is bossy." Logan liked living with father rather than mother because when he was with mother, they walked a lot and had to get money so they could stay in a hotel. Sara did not like living with either parent. Mother told the social worker during a telephone conversation that she put a deposit down on an apartment just before the children were taken away, but she did not get the apartment. Mother said she would be staying with the children's maternal grandmother, but could not provide the maternal grandmother's contact information.

The Petition

The Department decided to file a dependency petition following a team decision meeting held on June 19. Father told the social workers that although he knew he was not to return the children to mother due to her continued drug use, he allowed them to be in her care because he was unable to transport the children to school due to a car accident.

Mother claimed that she had detoxed at an addiction program for the past three weeks and was now clean and sober.

The Department filed a petition that day which alleged the children came within the provisions of section 300, subdivision (b), based on: (1) mother's continued use of drugs despite having received court-ordered family reunification services in 2005 and 2010, which included substance abuse treatment; and (2) father's failure to protect the children from mother, as he allowed the children to have contact with her despite knowing her substance abuse history and that he was not to allow them to be in her care.

On June 23, the juvenile court detained the children and ordered the Department to offer mother a substance abuse evaluation, a domestic violence evaluation and random drug testing. The juvenile court set a combined jurisdiction and disposition hearing for July 28.

The Social Worker's Report

In the social worker's report prepared for the combined hearing, which the social worker signed on July 23, the Department requested that the petition's allegations be found true, mother be denied reunification services under section 361.5, subdivision (b)(13), and father be ordered to participate in reunification services.

As of the writing of the report, the children were in separate foster homes. When the children entered foster care on June 17, the boys were placed together in one home, with Sara in another, because the Department could not locate a home that would accept all three children. By the beginning of July, the boys were separated after they exhibited aggressive and inappropriate behaviors when placed together, including fighting with each other and engaging in extreme horseplay. Since their separation, the boys were doing well in their respective homes. Sara had to change homes twice. The first time, at the end of June, she refused to return to her foster home after a visit with parents; Sara admitted she was under the impression that the boys were having fun in their placement and she wanted to have fun as well. The second time, at the end of July, she refused to

return to her second foster home following a visit with father; police had to physically remove her from the visitation center. Sara was placed in respite care. The Department was seeking to have Sara placed in the same home as Jason.

The social worker obtained statements from the children. Jason wanted to reunify with mother because she lets him have fun and gets him food when he is hungry. Sara and Logan, however, wanted to reunify with father. Sara preferred living with father because he takes her camping and they enjoy their time together. Logan wanted a stable home; when he lived with mother, they were homeless, constantly moving, and strangers took his and mother's possessions.

Mother told the social worker that she used a half a gram of methamphetamine and two grams of marijuana, and consumed two 24-ounce alcoholic beverages, daily. Mother acknowledged her drug use and how it negatively affected her ability to parent her children, but she could not explain the causes of her current issues. While she understood the Department's recommendation not to offer her services, she did not agree with it and she wanted to reunify with her children. She was finally ready to lead a drug-free lifestyle.

Mother completed a substance abuse evaluation on July 7. Mother had been homeless for the past seven months. Mother, who was 39 years old, reported the use of the following substances on a regular basis during her lifetime: (1) 19 years of alcohol use, including five years of use to intoxication; (2) 15 years of amphetamine use; and (3) 26 years of cannabis use. She first consumed alcohol at 21, Vicodin without a prescription at 18, cocaine at 16, methamphetamine at 15, and marijuana at 13. She usually snorted methamphetamine because "it is cleaner to do it that way when her children are around." It was recommended that mother complete a minimum of 90 days of residential treatment including aftercare, as well as domestic violence and mental health assessments, and participate in random drug testing. On July 15, mother entered a residential substance abuse treatment program at Spirit of Women.

Mother and father had separate once weekly, one hour, visits with the children. During the first visits, mother appeared frustrated with the children, as they would not listen to her, and she had difficulty dealing with their behaviors. During a July 7 visit, the boys were affectionate with mother and told her they loved and missed her. The children were excited to see mother at the July 14 visit.

The Department asserted there was a substantial danger to the children's physical health, safety, protection or well-being if they were returned to their parents, and there were no reasonable means to protect their physical health without removing them from their parents. The Department noted that mother reportedly was homeless, she continued to use methamphetamine until she entered the treatment program on July 15, she did not have stable housing, and she was not able to provide appropriate supervision for the children. The Department was concerned that mother would continue to abuse methamphetamine, and because she had not addressed her substance abuse problem, her inability to provide adequate care for the children would place them at risk of harm. The Department believed the prognosis for her successfully reunifying with the children and maintaining sobriety was poor.

A family reunification services review panel was held to review the appropriateness of providing reunification services to mother. The panel determined mother met the criteria of section 361.5, subdivision (b)(13), in that she (1) had a history of extensive, abusive and chronic use of drugs or alcohol, and (2) failed or refused to comply with a drug treatment program described in a case plan required by section 358.1 on at least two occasions, even though the programs were available and accessible. The panel also determined that it was not in the children's best interest to offer mother reunification services, as mother had a poor prognosis for successful reunification, mother had a history of significant drug use while in the children's presence and maintained her addiction despite being homeless, the strength of the bonds between the

children and mother was “fair at best,” and it was “extremely vital” for the children to have stability and continuity in their lives, which mother had not provided.

The Jurisdiction/Disposition Hearing

The combined jurisdiction/disposition hearing was continued several times for various reasons, including a request by the parents for a contested hearing. The hearing ultimately was held on October 6. With respect to jurisdiction, the Department and mother submitted on the reports. Father, however, contested jurisdiction and testified on his own behalf. Based on the evidence, including father’s testimony, the juvenile court found there was sufficient evidence to find the petition’s allegations true and that the children were described by section 300, subdivision (b).

The juvenile court proceeded to the disposition hearing. The Department submitted on its report, and asked that mother be denied services under section 361.5, subdivision (b)(13), and father be given services. Father submitted on the Department’s recommendation.

All three of the children testified. The twins were 11 and in the sixth grade, while Logan was nine and in the fourth grade. They were living in separate placements. About a month before the hearing, Jason was moved to a group home. They all wanted to live with each other. The children each testified they wanted more time with mother and wanted to live with her again. They would be comfortable and unafraid to live with her at her treatment program.

Jason had lived with mother the majority of his life; he felt safe with her and they loved each other. He would not feel good if he could not be with her again. Sara wanted to spend more time with mother because she thought it was important to grow up with her mother instead of a “random person.” Sara was happy when she got to see mother. If she was not going to live with mother, she would miss “[d]oing all the fun stuff[,]” and having mother around. Sara went online and created four awards for mother, which she and her brothers gave to mother at their last visit. Sara thought mother deserved the

awards because she was doing well in her program, spent a lot of time with her kids, and tried to have more time with them. Logan would be “[u]pset and stressful” if he did not get a chance to live with mother again. Logan was excited and happy for mother when they gave her the awards. Logan was not stressed out about not seeing his mother because he saw her once a week and knew she was okay. Logan wanted longer individual visits with his parents and siblings so he could get to know them better.

Mother testified on her own behalf. Since the children were removed from her in the middle of June, she had entered the Spirit of Woman residential drug treatment program, was working on herself in individual therapy, and attending different classes. She took a parenting class at the program, which she completed the day before the hearing; she learned things in the class that would assist her in reunifying with the children and had implemented some of what she learned during visits.

Mother asked the court to consider offering her reunification services. She thought the outcome would be different this time because in the past, she was only thinking of herself and just did the programs so she could get the court out of her life and her children back. She did not think of what the children went through during those cases. As a consequence, she did not do extensive work or therapy within the programs; she just “surface leveled it.” This time she was doing individual therapy, and working on problems and her guilt for going back to her old lifestyle.

Mother felt very determined about her recovery and wished she had paid more attention the first time. Her children were neglected more than they deserved. She believed it was better for the children to have her in their life because they loved each other and she needed to “stand up and be the mom that they deserve.” Mother did not feel the children should be punished because of her “disvalue of them[,]” by being separated from each other and not being where they needed to be in life; instead of being in court, they should be focusing on school and enjoying each other. She intended to offer the children the ability to be children by doing the best she “absolutely” could.

Relapse was always in the back of her mind, but she had learned new tools to deal with it. Mother did not believe her children had a stable life.

Mother said she would remain in the Spirit of Woman program anywhere from 90 days to six months, including aftercare. Upon leaving the program, mother planned to go back to school and work, and hoped to be in the program's transitional housing for up to six months. Mother's plan for long-term sobriety was to stay connected with sober people and remain involved in the Spirit of Woman program. Mother had been clean and sober since the day she walked into the program, and thought it was in her children's best interest for her to be given another chance.

According to mother, if the children were placed with her in the program, they would have a range of different services available to them. They would attend school and could take extracurricular-type classes, such as cooking and sports. There also are on-site therapists who can help the children process their experiences with drug addiction. Mother thought the children would benefit from the programs because it would be a new experience and counseling would help them.

Visitation narratives of mother's visits with the children from July 21 to September 22, were entered into evidence, which documented loving visits. The social worker testified that mother had been compliant in her program and performing satisfactorily in her courses. Mother's program counselor told the social worker a week or two before the hearing that mother was making positive progress. The social worker had not assessed whether the children could be placed in the program with mother, but the Department was not recommending placement with mother based on her history and the recommendation to deny services. Based on the visitation narratives, the social worker believed the children had a positive bond and a strong relationship with mother. When the children were interviewed at the outset of the case, they did state that mother was not a reliable caretaker. The social worker thought their opinions may have changed after being in care and having structured visitation. The Department had tried placing the

children together, but it had not worked out because of their physical aggression toward each other that caused safety issues, not only for these children, but also for other foster children.

County counsel argued it was not in the children's best interest for reunification services to be ordered for mother, as it was unlikely mother would be able to successfully reunify with them and the children needed stability. The children's attorney believed, based on the children's testimony and the visitation logs, that it would be detrimental to deprive the children of a continued relationship with mother and it would be beneficial for them to have the opportunity to be returned to her. On that basis, the children's attorney asked the juvenile court to find it was in the children's best interest to offer mother reunification services.

Mother's attorney argued that the children did not need to be removed from mother's care, and that they could be placed with mother at Spirit of Woman based on her current progress and participation in the program as a reasonable alternative to removal. With respect to denial of services, her attorney conceded the Department had satisfied its burden of proving that section 361.5, subdivision (b)(13) applied, but argued that it was in the children's best interest for her to be offered services. In rebuttal, County counsel argued that placing the children with mother would be extremely detrimental to them, as it was not known whether mother could maintain sobriety outside the program.

The juvenile court found the children were described under section 300, subdivision (b) and declared them dependents. It further found the evidence supported removing the children from both parents. The juvenile court ordered reunification services for father. With respect to mother, the court found the Department had shown, by clear and convincing evidence, that section 361.5, subdivision (b)(13) was applicable.

The juvenile court then considered whether it could find, by clear and convincing evidence, that reunification would be in the children's best interest. The court considered

the four factors identified in *In re Ethan N.* (2004) 122 Cal.App.4th 55 (*Ethan N.*). It found that while there was evidence to support one of them, namely that there was a relationship between the children and parents, there was not clear and convincing evidence to support the other three. With respect to mother's current efforts and fitness, as well as the children's need for stability and continuity, the juvenile court found that while mother was doing very well in her treatment program, she failed to show that she was capable for providing the stability the children required in light of the history of her inability to maintain her sobriety after leaving treatment and being out of the juvenile court's supervision. The juvenile court also found that the gravity of the problem that led to dependency was extreme, as the children lacked parenting and stability. The court believed that mother meant it when she testified that she was committed to sobriety, but she had made similar statements in the past. The court's number one concern was the children's safety and welfare. Since the evidence supported only one factor, the juvenile court found it was not in the children's best interest "to put them back on that kind of roller coaster ride that mother is requesting[.]" and ordered that mother not be provided reunification services.

DISCUSSION

When the juvenile court orders a child removed from parental custody, it is required by statute to order services to reunify the family unless any one of the exceptions identified in section 361.5, subdivision (b) applies. (§ 361.5, subs. (a) & (b).) In this case, the juvenile court found that subdivision (b)(13) of section 361.5⁵ applied to mother. As pertinent here, subdivision (b)(13) pertains to a parent who has "a history of extensive, abusive, and chronic use of drugs" and "has failed or refused to comply with a program of drug or alcohol treatment described in the case plan required

⁵ All further references to this statutory provision will be denoted "subdivision (b)(13)."

by Section 358.1 on at least two prior occasions, even though the programs identified were available and accessible.”⁶

The Department presented evidence that mother had a longstanding methamphetamine addiction and that mother admitted as much to the social worker. The Department also presented evidence that mother completed two drug treatment programs as part of the prior dependency cases, yet relapsed and continued to use drugs once she completed the programs and she was no longer under court supervision.⁷ Thus, she fell squarely within the statute.

The children do not argue that subdivision (b)(13) does not apply to mother. Instead, they argue that the juvenile court abused its discretion in failing to order reunification services anyway under section 361.5, subdivision (c). It is true that a parent described in subdivision (b)(13) may still obtain reunification services if the parent proves that services would be in the child’s best interest. Section 361.5, subdivision (c) provides in relevant part: “The court shall not order reunification for a parent . . . described in paragraph . . . (13) . . . of subdivision (b) unless the court finds, by clear and convincing evidence, that reunification is in the best interest of the child.” It is the parent’s burden to affirmatively demonstrate that reunification would be in the child’s best interest. (*Ethan N.*, *supra*, 122 Cal.App.4th at p. 66.)

The juvenile court has broad discretion when determining whether further reunification services would be in the child’s best interest under section 361.5, subdivision (c). (*In re William B.* (2008) 163 Cal.App.4th 1220, 1229 (*William B.*)) In *Ethan N.*, this court listed various factors relevant to the determination of a child’s best

⁶ Section 358.1 specifies the contents for a social worker’s social study or evaluation.

⁷ Resumption of regular drug use following a period of sobriety is considered resistance to treatment under section 361.5, subdivision (b)(13). (*Laura B. v. Superior Court* (1998) 68 Cal.App.4th 776, 780.)

interest vis-à-vis reunification. Those factors include the parent’s current efforts and fitness as well as the parent’s history, the gravity of the problem requiring juvenile court intervention, the strength of the parent/child bond, and the child’s need for stability and continuity. (*Ethan N.*, *supra*, 122 Cal.App.4th at pp. 66-67.) “A best interest finding requires a likelihood reunification services will succeed; in other words, ‘some “reasonable basis to conclude” that reunification is possible....’ ” (*In re Allison J.* (2010) 190 Cal.App.4th 1106, 1116.) We will reverse the juvenile court’s determination only if it has abused its discretion. (*William B.*, *supra*, 163 Cal.App.4th at p. 1229; see also *In re Angelique C.* (2003) 113 Cal.App.4th 509, 523-524.) Because mother had the burden of proof, we must affirm unless there was “indisputable evidence [in her favor]—evidence no reasonable trier of fact could have rejected....” (*In re Sheila B.* (1993) 19 Cal.App.4th 187, 200.)

The children contend that there was only one conclusion which reasonably could be reached on the evidence before the court – that granting reunification services to mother was in the children’s best interest because all of the factors under *Ethan N.* support that finding. While the children recognize mother’s prior failures to rehabilitate herself from her chronic substance abuse, as well as their need for stability and permanency, they argue there was a reasonable basis to conclude that reunification was “far from futile” because of mother’s renewed efforts to commit to her rehabilitation, the close bond they shared with mother, their compelling long-term interest in staying together as a sibling set, and their older ages, which made it more difficult to find an alternative placement where they could remain together.

As we stated in *Ethan N.*, “The concept of a child’s best interest ‘is an elusive guideline that belies rigid definition. Its purpose is to maximize a child’s opportunity to develop into a stable, well-adjusted adult.’ ” (*Ethan N.*, *supra*, 122 Cal.App.4th at p. 66.) As this case demonstrates, a child’s best interest cannot be rightly determined without full consideration of all relevant information. If such were not the case, the children’s

argument would appear to have merit since the evidence they cite positively supports the selected *Ethan N.* factors.

In this case, the juvenile court found it would not be in the children's best interests to order reunification services for mother because of her longstanding drug abuse, her history of relapse and the extreme neglect the children suffered as a result. When mother was abusing drugs, she could not care for the children. She not only exposed them to her drug use but immersed them in the lifestyle. They were at times homeless and in the end were essentially raising themselves. While mother was doing well in her treatment program and stated she was willing to change, she had not demonstrated the ability to remain sober without court supervision. Although the children were bonded to her, it was not in their best interest to, as the court stated, "put them back on that kind of roller coaster ride that mother is requesting." Based on the evidence, the juvenile court reasonably could find that, given mother's prior relapses following treatment, it was not likely that she would be able to rehabilitate herself and make a safe home for her children, and therefore it was not in the children's best interest to order reunification services for her.

The children contend the juvenile court exceeded the bounds of reason when it interpreted stability so narrowly as to exclude consideration of the stability that comes from family preservation and being in a home with figures the children identified strongly as their family, including their mother, father, and siblings. The question before the juvenile court, however, was which would give the children the better chance of stability: an uncertain future with mother who, when she relapses, places the children in danger by severely neglecting them; or a foster care placement that could provide them with the structure and stability they needed. The juvenile court did not abuse its discretion in deciding that the children had a better chance of achieving stability in foster care, even if they were separated from each other. The children also contend the juvenile court erroneously failed to consider the significant steps mother had taken to succeed in

her rehabilitation and argue that failed efforts should not be an automatic negative in the best interest assessment. The juvenile court, however, did consider mother's efforts, but nevertheless determined that her failure to maintain sobriety absent court supervision placed the children in jeopardy.

The children argue there is evidence in the record to support a finding that it was in their best interests to offer mother reunification services, and assert their case is analogous to *In re G.L.* (2014) 22 Cal.App.4th 1153, in which the Court of Appeal affirmed the juvenile court's decision to grant a mother reunification services despite meeting the provisions of subdivision (b)(13), because doing so was in the minor's best interest. Even if there is such evidence, it does not establish the juvenile court abused its discretion in finding it was not in their best interests to offer services to mother. (*In re G.L.*, *supra*, at p. 1166.) An appellate court "will not disturb the [juvenile] court's determination unless the court has exceeded the limits of legal discretion by making an arbitrary, capricious or patently absurd determination." (*In re Katelynn Y.* (2012) 209 Cal.App.4th 871, 881; see also *In re G.L.*, *supra*, at p. 1166.) " 'When two or more inferences reasonably can be deduced from the facts, [an appellate court has] no authority to reweigh the evidence or substitute [its] judgment for that of the juvenile court.' " (*In re G.L.*, *supra*, at p. 1166.) We decline the children's invitation to reweigh the evidence in this case.

The children also argue that, because father will be engaged in reunification services, granting reunification services to mother would not unduly delay the stability and permanence to which they are entitled, and reunification services would increase the chance that the children would reunify with mother and remain a family. But reunification services were not denied mother because they would cause a delay; they were denied because of mother's past failures to alleviate her substance abuse problem, the danger the children were placed in when she abused drugs, and the unlikelihood that she would be able to successfully reunify with them.

In sum, the juvenile court did not err in finding that it would not be in the children's best interest to grant mother reunification services.

DISPOSITION

The dispositional orders entered on October 6, 2015 are affirmed.