

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

P.N.,

Petitioner,

v.

THE SUPERIOR COURT OF ORANGE  
COUNTY,

Respondent;

ORANGE COUNTY SOCIAL SERVICES  
AGENCY et al.,

Real Parties in Interest.

G046184

(Super. Ct. No. DP021425)

O P I N I O N

Original proceedings; petition for a writ of mandate to challenge an order of the Superior Court of Orange County, Cheryl L. Leininger, Judge. Petition denied.

Law Office of Susan A. Barry and Susan A. Barry for Petitioner.

No appearance for Respondent.

Nicholas S. Chrisos, County Counsel, Karen L. Christensen and Debbie Torrez, Deputy County Counsel, for Real Party in Interest Orange County Social Services Agency.

No appearance for Real Party in Interest L.N.

\* \* \*

#### INTRODUCTION

P.N., the mother of now two-year-old L.N., challenges the juvenile court's order (1) declaring L.N. to be a dependent child of the court, and (2) denying reunification services to P.N. As explained in detail *post*, we conclude substantial evidence supports the juvenile court's order, and we therefore deny P.N.'s petition for a writ of mandate.

#### STATEMENT OF FACTS AND PROCEDURAL HISTORY

Petitioner P.N. (mother) was arrested for selling drugs in January 2011. She was convicted, and is currently incarcerated. In June 2011, mother gave birth to her 10th child, A.N., while in prison. Mother asked a family friend, L.T., to care for A.N. and one-and-one-half-year-old L.N., while she was incarcerated.

On June 30, 2011, the Orange County Social Services Agency (SSA) filed a juvenile dependency petition, alleging that L.N. and A.N. were within the juvenile court's jurisdiction pursuant to Welfare and Institutions Code section 300, subdivisions (b), (g), and (j). (All further statutory references are to the Welfare and Institutions Code.) The petition alleged (1) mother had a long, unresolved history of substance abuse; (2) mother had left L.N. and A.N. without provision for support during her incarceration; (3) mother had given birth to 10 children, of whom two were being cared for by paternal relatives, one had been placed for private adoption, and five had been dependents of the juvenile

court; (4) five of L.N. and A.N.'s half siblings had tested positive for drugs at birth; (5) mother had received reunification services for two of those five children, but had not reunified with them and her parental rights had been terminated; and (6) mother was not offered reunification services for the other three children, and her parental rights were terminated as to them as well.

After a hearing, L.N. and A.N. were ordered detained. After an inspection, SSA determined that L.T.'s home was not an appropriate placement for L.N. and A.N., and removed them and placed them in foster care. The juvenile dependency petition was amended to allege that mother had failed to protect L.N. and A.N. by leaving them in L.T.'s care because several other adult residents of L.T.'s home had criminal histories, the home was in poor condition and disarray, and L.T. was unwilling or unable to care for L.N.'s and A.N.'s individual needs, including but not limited to the provision of food, diapers, baby formula, and medical care.

In a jurisdiction/disposition report, SSA recommended that the juvenile court sustain the allegations of the amended petition, declare L.N. and A.N. to be dependents of the juvenile court, deny reunification services to mother, and schedule a section 366.26 hearing as to L.N. SSA reported that the placement in the home of L.T. was inappropriate because the adult residents of the home had criminal histories, and/or gang affiliations, and/or histories with child protective services. The home was also determined not to meet minimal standards of cleanliness.

The police report from mother's January 2011 arrest showed she made two sales of rock cocaine to an undercover officer. Mother told the police at the time of her arrest that she had made 20 to 30 sales the previous week. Mother told the police she stored cocaine under the refrigerator in the home in which she was living with L.N.; upon executing a search warrant, the police found cocaine in the spot identified by mother.

When interviewed in jail, mother told a social worker that all of the allegations in the petition were true. Mother declared she had been a drug addict, but was now clean and “[w]hen I get out, I’ll be good.”

L.N. flourished in foster care, and was a generally happy child who loved to dance. L.N. told the monitor for his weekly visitation with mother that he did not want to visit her, and he would ask that the visits end early.

At the joint jurisdiction and disposition hearing, the court admitted into evidence the jurisdiction/disposition report, and all addenda reports. The social worker testified mother’s arrangements for L.N. to live in the home of L.T. exposed L.N. to a substantial risk of neglect or harm. When the social worker arrived at the home, L.N. and A.N. were playing in a room that had clothing, papers, and used food containers on the floor, and cockroaches crawling on the wall. L.N. and A.N. were unclean and both had dirt under their fingernails; L.N. had a bad odor, and A.N. had what appeared to be blood on her hands. The home did not have adequate food, the dirty dishes in the sink appeared to have been there for some time, and flies were flying around the kitchen. A man was sleeping on a bed in the hallway as the social worker observed the home.

The social worker also testified mother had provided no proof that she had ever completed a drug program. The social worker did not know if mother was currently using drugs, because she was incarcerated. Mother had been arrested for being under the influence of a controlled substance when she was pregnant with L.N., but the social worker did not know whether L.N. was born drug addicted.

The juvenile court found the allegations of the amended petition to be true, after making further amendments to conform to proof. The court therefore declared L.N. and A.N. to be dependent children of the juvenile court. The court also found by clear and convincing evidence that vesting custody of L.N. and A.N. with mother would be detrimental to them, and therefore vested custody with SSA for suitable placement. Finally, the court found that reunification services need not be provided to mother,

pursuant to section 361.5, subdivision (b)(10) and (11). Mother filed a timely petition for writ of mandate.<sup>1</sup>

## DISCUSSION

### I.

#### *SUBSTANTIAL EVIDENCE SUPPORTS THE JUVENILE COURT'S JURISDICTIONAL FINDINGS.*

Mother argues the juvenile court erred in finding that L.N. was within its jurisdiction, pursuant to section 300, subdivisions (b), (g), and (j).<sup>2</sup> We review the jurisdiction order to determine whether the findings were supported by substantial evidence. (*In re A.J.* (2011) 197 Cal.App.4th 1095, 1103.) “In making this determination, we draw all reasonable inferences from the evidence to support the findings and orders of the dependency court; we review the record in the light most favorable to the court’s determinations; and we note that issues of fact and credibility are the province of the trial court.” (*Ibid.*) We conclude there was substantial evidence to support all of the juvenile court’s jurisdictional findings.

---

<sup>1</sup> The juvenile court ordered that reunification services be provided to A.N.’s father. Mother’s writ petition is only directed to the portion of the juvenile court’s order regarding L.N. A.N. will be mentioned throughout the remainder of this opinion only as necessary.

<sup>2</sup> Section 300 permits the juvenile court to exercise jurisdiction over any child if (1) “[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent . . . to adequately supervise or protect the child, or the willful or negligent failure of the child’s parent . . . to adequately supervise or protect the child from the conduct of the custodian with whom the child has been left, or by the willful or negligent failure of the parent . . . to provide the child with adequate food, clothing, shelter, or medical treatment, or by the inability of the parent . . . to provide regular care for the child due to the parent’s . . . substance abuse” (§ 300, subd. (b)); (2) “[t]he child has been left without any provision for support; . . . the child’s parent has been incarcerated . . . and cannot arrange for the care of the child” (§ 300, subd. (g)); or (3) “[t]he child’s sibling has been abused or neglected . . . and there is a substantial risk that the child will be abused or neglected” (§ 300, subd. (j)).

Mother began using drugs and alcohol at age 14, continued using drugs for more than 18 years through her pregnancies, and had never completed any type of drug treatment program, although she claimed to have “stopped using of her own volition.” Five of her children tested positive for drugs at birth; all five were removed from mother’s care. Mother was offered family reunification services for two of those children, but failed to reunify with them. Mother’s parental rights over all five children were terminated. Her parental rights to three other children were terminated before L.N. and A.N.’s dependency proceedings began. Mother was arrested for being under the influence of drugs when pregnant with L.N. and was convicted of several drug-related crimes between 2005 and 2011. After L.N.’s birth, mother sold cocaine, and stored her supply of cocaine under the refrigerator, where it could have been accessed by L.N.

After her arrest for sale of a controlled substance, mother left L.N. in the care of a friend who had a history with child protective services, affiliated with a criminal street gang, and lived with adults who had criminal records involving assault and drug offenses.

Mother correctly notes that a parent’s incarceration, alone, is not enough to support a finding of jurisdiction. (*In re S. D.* (2002) 99 Cal.App.4th 1068, 1077.) However, the juvenile court had far more evidence before it than mother’s incarceration at the time of the jurisdiction hearing. (Even if the juvenile court erred in finding L.N. came within its jurisdiction pursuant to section 300, subdivision (g), the jurisdiction order was nevertheless proper under subdivisions (b) and (j). (*D.M. v. Superior Court* (2009) 173 Cal.App.4th 1117, 1127 [juvenile court jurisdiction may rest on a single ground].))

Mother also argues there was no evidence that she presented a current risk of harm to L.N., because she was incarcerated. Mother relies on the social worker’s inability to testify that mother was currently abusing drugs, due to her incarceration, and the lack of proof that either L.N. or A.N. was drug exposed at birth. While “previous acts of neglect, standing alone, do not establish a substantial risk of harm” (*In re Ricardo L.*

(2003) 109 Cal.App.4th 552, 565), “evidence of past events may have some probative value in considering current conditions . . . if circumstances existing *at the time of the hearing* make it likely the children will suffer the same type of ‘serious physical harm or illness’ in the future” (*In re Janet T.* (2001) 93 Cal.App.4th 377, 388, fn. omitted). In this case, the juvenile court could properly infer L.N. was at a present risk of serious physical harm due to mother’s use of drugs during at least six of her 10 pregnancies (including her pregnancy with L.N.), her lengthy and continuous (except for periods of incarceration) involvement in a drug lifestyle (including possession, sales, and use of drugs), and her possession of cocaine the last time L.N. was in her care and custody before she was arrested in January 2011.

We conclude substantial evidence supports the juvenile court’s jurisdictional findings.

## II.

### *SUBSTANTIAL EVIDENCE SUPPORTS THE JUVENILE COURT’S DENIAL OF REUNIFICATION SERVICES TO MOTHER.*

Whenever a child is removed from the custody of the child’s parents, reunification services must be offered to the parents unless one of several statutory exceptions applies. (§ 361.5, subd. (a).) If the juvenile court finds by clear and convincing evidence a parent comes within an exception described in subdivision (b) of section 361.5, the court need not provide reunification services. (§ 361.5, subd. (b).) In this case, mother was found to come within the provisions of section 361.5, subdivision (b)(10) and (11), because she had failed to reunify with L.N.’s half siblings and had her parental rights over those half siblings terminated, and had not subsequently made a reasonable effort to treat the problems leading to the half siblings’ removal from her care.<sup>3</sup> Therefore, the juvenile court could not offer mother reunification services

---

<sup>3</sup> “Reunification services need not be provided to a parent . . . described in this subdivision when the court finds, by clear and convincing evidence, any of the following:

unless it found by clear and convincing evidence “that reunification is in the best interest of the child.” (§ 361.5, subd. (c).) We affirm an order denying reunification services if it is supported by substantial evidence. (*In re Harmony B.* (2005) 125 Cal.App.4th 831, 839.)

Mother argues the juvenile court erred in determining (1) she had not made a reasonable effort to treat the problems that led to the removal of L.N.’s half siblings from her care, and (2) it was not in L.N.’s best interest to offer mother reunification services.

The juvenile court’s finding that mother did not make reasonable efforts to treat the problems that led to the removal of L.N.’s half siblings is supported by substantial evidence. The court found: “Mother has a long history of drug use and has not completed a substance abuse program. She had many of her children . . . removed from her care. She has lost them because of her drug use and danger to the children; yet, mother continues her drug activities, mother’s arrest and current incarceration case, mother’s continuing and ongoing drug lifestyle. [¶] . . . [¶] Further, although there is no direct evidence of recent drug use, the court believes that mother continued to abuse drugs at the time of her arrest and would still be abusing drugs had she not been arrested in light of her on-going drug involvement, lengthy drug history, her repeated loss of

---

[¶] . . . [¶] (10) That the court ordered termination of reunification services for any siblings or half siblings of the child because the parent . . . failed to reunify with the sibling or half sibling after the sibling or half sibling had been removed from that parent . . . pursuant to Section 361 and that parent . . . is the same parent . . . described in subdivision (a) and that, according to the findings of the court, this parent . . . has not subsequently made a reasonable effort to treat the problems that led to removal of the sibling or half sibling of that child from that parent . . . . [¶] (11) That the parental rights of a parent over any sibling or half sibling of the child had been permanently severed, and this parent is the same parent described in subdivision (a), and that, according to the findings of the court, this parent has not subsequently made a reasonable effort to treat the problems that led to removal of the sibling or half sibling of that child from the parent.” (§ 361.5, subd. (b)(10), (11).)

numerous children because of her drug use, and no successful completion of drug treatment. [¶] Also, the fact that L[.N.] and A[.N.] were born drug free is not persuasive. Although, it is not certain, presumably L[.N.] was born drug free because he remained with mother after his birth; however, according to case 09WM08081, mother was arrested for being under the influence of drugs, [Health and Safety Code section] 11550 . . . while pregnant with L[.N.]. [¶] Subsequently, she was incarcerated for several months and released three weeks before L[.N.] was born . . . . Whether she used after release is unknown, but, fortunately, it appears that L[.N.] was drug free at the time of birth and was allowed to stay with mom. [¶] Mother has a long history and pattern of drug use before, during, and after the birth of her numerous children. Had mother not been arrested, I have no doubt that, based on her history and other factors, that she would have continued to use drugs. [¶] According to the court records, mother has been given the opportunity to do numerous drug programs but has not completed them. The court does not believe mother has made reasonable efforts to treat her drug problem. A[.N.] was born drug free because mother was in custody for most of her pregnancy and born while mother was in custody for a drug-related conviction where she remains.”

Mother cites *Renee J. v. Superior Court* (2002) 96 Cal.App.4th 1450, 1464, for the proposition that “the ‘reasonable effort to treat’ standard . . . is not synonymous with ‘cure.’” In that case, however, the mother had spent time in an in-patient drug treatment program, lived in a sober living home, regularly drug tested, attended 12-step meetings, went to drug court, and maintained a part-time job. (*Id.* at p. 1456.) The mother’s probation officer and the director of her sober living home provided their assessments that she was successfully completing her case plan and was resolving her drug problem in an effort to recover custody of her child. (*Id.* at pp. 1456-1457.)

That case is a far cry from the present one, in which no evidence was presented that mother had completed any type of program to combat her substance abuse problem. Mother was arrested for being under the influence of drugs while pregnant with

L.N. Although neither L.N. nor A.N. was born with drugs in their systems, the juvenile court could properly infer that the absence of such evidence was due to mother's incarceration during extended periods in each of those pregnancies. The evidence of mother's reoffending establishes a failure to make a reasonable effort to treat the problems that led to the removal of L.N. and A.N.'s half siblings from her care and custody. (*In re Jasmine C.* (1999) 70 Cal.App.4th 71, 76.)

There was also substantial evidence supporting the juvenile court's finding that it was not in L.N.'s best interest to offer mother reunification services. In addition to the evidence cited, *ante*, regarding the unsafe conditions in which L.N. was living before mother's arrest, there was evidence that L.N. was flourishing in his foster care placement, and that he did not want to visit mother.

#### DISPOSITION

The petition for a writ of mandate is denied.

FYBEL, J.

WE CONCUR:

BEDSWORTH, ACTING P. J.

IKOLA, J.