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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

In re L.P., et al., Persons Coming Under the
Juvenile Court Law.

H042920
(Santa Clara County
Super. Ct. Nos. 1-15-JD-23346;
1-15-JD-23347)

SANTA CLARA COUNTY
DEPARTMENT OF FAMILY AND
CHILDREN'S SERVICES,

Plaintiff and Respondent,

v.

A.P.,

Defendant and Appellant.

When they were about 18 months old, L.P. and D.P. (the children), the twin daughters of A.P. (mother),¹ were taken into temporary protective custody after mother was involved in a physical altercation with the children's maternal great grandmother with whom the family then lived. The Department of Family and Children Services (Department) filed juvenile dependency petitions on behalf of the children under Welfare and Institutions Code 300.² The children were declared dependent children of the court following a combined jurisdiction and disposition hearing.

¹ In most of the record below, mother was referred to as A.M.

² All further statutory references are to Welfare and Institutions Code unless otherwise specified.

Mother appeals from the disposition on two alleged grounds: (1) the juvenile court violated California Rules of Court, rule 5.682³ by failing to advise her of the rights enumerated by the rule before she submitted the matter for decision on the social worker's reports and (2) the case plan is deficient because it offers her no help with housing.

We find no reversible error.

I.

Procedural History

A. Background

On July 8, 2015, juvenile dependency petitions were filed on behalf of L.P. and D.P.

At the initial hearing on July 9, 2015, R.P. was determined to be the presumed father.

On July 22, 2015, the first amended dependency petitions were filed on the children's behalf under section 300, subdivisions (b) (failure to protect) and (g) (no provision for support). The first amended dependency petitions alleged the following facts. On July 6, 2015, the children, who were then about 18 months old, "were placed into protective custody by the Campbell Police after . . . mother was arrested and placed on a 5150 psychiatric hold for assaulting the children's maternal great grandmother." On that date, mother had become angry and her behavior had escalated. When the children's great grandmother had attempted to telephone police, mother had "grabbed the great-grandmother by the arm, and then yanked the phone cord out of the wall." Mother and the children reside with the children's great grandmother. "[T]he responding officer determined that the mother posed a danger to others due to her assaultive behavior and her delusions." Mother had the delusional belief that "she birthed two additional sets of

³ All further references to rules are to the California Rules of Court.

twins but that the hospital took those children” Mother had participated in no treatment to address her assaultive behavior and mental health issues, which placed the children at risk of harm in her care.

The first amended petitions additionally alleged the following facts regarding domestic violence. Father had perpetrated domestic violence against mother, and they had engaged in mutual domestic violence. In 2012, father was arrested twice for perpetrating domestic violence against mother, and mother was arrested once for perpetrating domestic violence against father. The July 6, 2015 incident involved mother perpetrating domestic violence against the children’s great grandmother. Neither parent had “addressed their issues with domestic violence or participated in any domestic violence services, which increases the risk that they will be involved in further violence.” “Exposure to domestic violence places the children at risk of harm.”

Those petitions also alleged that father’s whereabouts were unknown. Father had “never made provisions or arrangements for the children’s care,” and he had “taken no steps to ensure the children’s safety in . . . mother’s care.”

On August 19, 2015, mother was ordered to participate in a court-ordered psychological evaluation.

B. Jurisdiction/Disposition Hearing

On October 6, 2015, the juvenile court held a jurisdiction and disposition hearing. At the beginning of the October 6, 2015 hearing, the juvenile court announced that the parties were “here for a contested jurisdictional hearing.” The Department offered three reports prepared by the social worker: (1) a jurisdiction/disposition report dated July 30, 2015, (2) an addendum report dated September 10, 2015, and (3) a second addendum report dated October 6, 2015. The court asked, “Do any counsel wish to ask questions of the social worker?” Mother’s counsel and the children’s counsel indicated they had no questions. The court admitted the three reports into evidence, and the Department rested.

The court asked mother's counsel whether she had any evidence to present. Mother's counsel indicated that she had no evidence to present, but she wished to present argument that the court should not sustain the petitions. The children's counsel also indicated that she had no evidence to present.

The jurisdiction/disposition report, which was admitted into evidence, indicated that the family reported to the officer responding to the scene on July 6, 2015 that mother has mental health issues and believes that she gave birth to three sets of twins (six children) but that the hospital staff took two sets of twins away from her. The officer was told that mother had a history of drug use and her drug of choice was methamphetamine. Mother had denied that she had an alcohol problem, that she used illegal drugs, or that she had any mental health conditions. Mother indicated that a verbal altercation arose on July 6, 2015 because a dog, which had bitten D.P., had gotten into the house.⁴ Mother was arrested for assaulting the children's maternal great grandmother, who was then 88 years old and had been attempting to call 911. After mother's arrest, she was involuntarily placed on a 72 hour hold in jail, and the Department took temporary custody of the children. At the time of the report, mother was homeless.

According to the jurisdiction/disposition report, mother did not know the whereabouts of father, and his whereabouts were not ascertained. Mother and father had gone their separate ways when mother was one month pregnant with the children.

Criminal charges against mother arising from the July 6, 2015 incident were pending before the court, and she was scheduled to appear on August 25, 2015. She had two prior misdemeanor convictions, including an April 2015 violation of Penal Code section 415, subdivision (1) (unlawfully fighting in a public place or challenging another person in a public place to fight).

⁴ The jurisdiction/disposition report indicates that D.P. was bitten by the family dog in May 2015.

The jurisdiction/disposition report indicated that there had been four prior child protective services referrals. The referrals dated back to 2014, and they were either “[e]valuated out” or found “[i]nconclusive.” The referrals indicated that mother had been delusional regarding the number of children to which she had given birth, and that she initially thought she had triplets but she later believed that she had six children. Mother told the emergency response social worker who responded to the fourth referral that she had six babies and that someone had stolen her children. Mother failed to provide that social worker with any paperwork or documents to support her claim.

Police reports attached to the jurisdiction/disposition report showed the following facts. On July 6, 2015, an officer spoke to mother, whom was found walking near the residence of the children’s great grandmother⁵ with a stroller containing the children who were dressed in only diapers. Mother made several nonsensical statements about missing babies who had been born with the children. Mother also stated that she was having difficulty getting up in the morning and caring for the children. Another officer sought and obtained an emergency protective order protecting the children’s great grandmother and an immediate move out order against mother. Mother was arrested for physical elder abuse and disabling a telephone line. Mother refused to provide a voluntary urine drug test. She was placed on a 72 hour hold for being a danger to others and gravely disabled.

Also attached to the jurisdiction/disposition report was the EPS (Emergency Psychiatric Services) physician assessment, dated July 9, 2015, which indicated that mother had a previous contact with EPS in 2007. On the morning of July 9, 2015, mother was “logical [and] coherent, and there [was] no evidence of psychosis,” but she had been “somewhat confused” earlier in the hold. The primary diagnosis was adjustment disorder with mixed disturbance of emotions and conduct.

⁵ According to the police reports, mother’s brother was also living with the children’s great grandmother.

The addendum report dated September 10, 2015, which was admitted into evidence, indicated that, among other developments, an appointment for mother's psychological evaluation was being scheduled.

The second addendum report dated October 6, 2015, which was admitted into evidence, stated that, on September 28, 2015, the social worker informed mother that her psychological evaluation would take place on October 1, 2015 after a scheduled visit with the children. On October 1, 2015, during mother's supervised visit with the children, the social worker, who was supervising the visit, reminded mother of her psychological evaluation immediately following the visit. Mother left the office before the social worker could introduce mother to the evaluator, Dr. Young, and mother failed to attend the scheduled psychological evaluation. The social worker had unsuccessfully tried to locate mother outside the office after the visit.

The report further indicated that, also on October 1, 2015, the social worker learned that mother was "technically" in violation of her pretrial conditional release in the criminal case because she was not participating in mental health services as required by pretrial services. Mother had refused to sign a release of information for mental health services. A person from pretrial services had indicated that mother's pending criminal charges would not be dropped.

In argument to the court, mother's counsel contended that the Department had not met its burden of proof. Mother's counsel went through the allegations, and argued that there were significant holes in the evidence. She pointed out that the previous referrals had been "evaluated out" or found to be inconclusive. Mother's counsel asserted that, on about July 9, 2015, mother was released from custody, and mother had been willing and able to care for the children. Mother's counsel argued that the Department had not presented evidence that mother actually had a delusional belief that she had given birth to two additional sets of twins whom the hospital had taken them or that any such delusional belief had affected the children's health. She emphasized that the children appeared

healthy, and mother knew their allergies. Mother's counsel asserted that, when the Department and the police became involved, the children showed no signs of emotional distress, and they were reportedly "developmentally appropriate."

Mother's counsel also pointed out that the domestic violence between the parents occurred before the children were born or even conceived. According to the social worker's reports, father had not been involved with the children since they were one month old. There was no evidence that mother had "any other domestic violence relationships." There was only a brief 5150 hold on mother, and when she was released she was logical, coherent, and there was no evidence of psychosis. Mother was available to care for the children. Mother's counsel asked the court to dismiss the petitions in their entirety.

The court determined that the failure-to-protect allegations of the first amended petition filed July 22, 2015 were true.⁶ It believed that mother's fixed delusionary belief that she gave birth to three sets of twins instead of one set was "simply one aspect of her broader set of mental health problems." The court considered the facts that mother's violent altercation had precipitated a psychiatric hospitalization and that mother had not provided documentation to the social worker to support her claim that she gave birth to more than one set of twins. It noted that mother had agreed to participate in a psychological evaluation, but mother had failed to appear for it despite being reminded of the evaluation shortly beforehand. It observed that mother had admitted that father and mother had previously gone to jail for domestic violence, but mother nevertheless committed domestic violence against the children's maternal great grandmother in the family home, where the children reside, while they were present.

⁶ The juvenile court said that it did not find there was a basis to take jurisdiction under section 300, subdivision (g), as to mother.

The court adjudged each of the children to be a dependent child of the court. The court ordered them removed from mother's custody, and the court placed them in the Department's care, custody, and control for placement in a foster home. It ordered family reunification services for mother and the children. The court provided for supervised visitation between mother and the children a minimum of two times a week, two hours per visit.

Mother filed a notice of appeal on October 23, 2015.

II

Discussion

A. *Rule 5.682(b)*

Mother contends that a "submission on the social worker's reports" occurred when her counsel did not present any evidence, "triggering the advisement required under rule 5.682." She asserts that the juvenile court violated rule 5.682 when it failed to advise mother of her trial rights "before allowing counsel to submit on the reports."

Rule 5.682(b) requires the following advisements be given at a jurisdiction hearing: "After giving the advisement required by rule 5.534, the court must advise the parent or guardian of the following rights: [¶] (1) The right to a hearing by the court on the issues raised by the petition; [¶] (2) The right to assert any privilege against self-incrimination; [¶] (3) The right to confront and to cross-examine all witnesses called to testify; [¶] (4) The right to use the process of the court to compel attendance of witnesses on behalf of the parent or guardian; and [¶] (5) The right, if the child has been removed, to have the child returned to the parent or guardian within two working days after a finding by the court that the child does not come within the jurisdiction of the juvenile court under section 300, unless the parent or guardian and the child welfare agency agree that the child will be released on a later date." Rule 5.534(k)(1) mandates the following judicial advisements: "The court must advise the child, parent, and guardian in section 300 cases . . . of the following rights: [¶] (A) Any right to assert the

privilege against self-incrimination; [¶] (B) The right to confront and cross-examine the persons who prepared reports or documents submitted to the court by the petitioner and the witnesses called to testify at the hearing; [¶] (C) The right to use the process of the court to bring in witnesses; and [¶] (D) The right to present evidence to the court.”

Rule 5.682(e) specifies that a parent “may elect to admit the allegations of the petition, plead no contest, or submit the jurisdictional determination to the court based on the information provided to the court and waive further jurisdictional hearing.” The rule states: “*Waiver of Rights--Juvenile Dependency* (form JV-190) may be completed by the parent . . . and counsel and submitted to the court.” (*Ibid.*) Under the rule, “[a]fter admission, plea of no contest, or submission, the court must make [specific] findings noted in the order of the court” (rule 5.682 (f)), including a finding that “[t]he parent or guardian has knowingly and intelligently waived the right to a trial on the issues by the court” (rule 5.682(f)(3)) and a finding that “[t]he admission, plea of no contest, or submission by the parent or guardian is freely and voluntarily made” (rule 5.682(f)(5)).

The Department suggests that the jurisdiction/disposition hearing was contested and that rule 5.682(b), which requires the advisements, does not apply to a contested jurisdiction hearing. That argument is belied by the language of the rule.

We apply ordinary principles of statutory construction to the California Rules of Court. (*Silverbrand v. County of Los Angeles* (2009) 46 Cal.4th 106, 125; *Alan v. American Honda Motor Co., Inc.* (2007) 40 Cal.4th 894, 902 (*Alan*).) We begin with the plain language, giving the words their ordinary and usual meaning and viewing them in their statutory context. (See *People v. Cornett* (2012) 53 Cal.4th 1261, 1265.) “If the rule’s language is clear and unambiguous, it governs. [Citation.]” (*Alan, supra*, at p. 902.)

Rule 5.682(a) states: “At the beginning of the jurisdiction hearing, the petition must be read to those present.” Rule 5.682(b) mandates that the juvenile court advise the parent or guardian of the enumerated rights. Rule 5.682(c) then requires the juvenile

court to “inquire whether the parent or guardian intends to admit or deny the allegations of the petition.” “If the parent or guardian neither admits nor denies the allegations, the court must state on the record that the parent or guardian does not admit the allegations.” (Rule 5.682(c).) Rule 5.682(b) clearly does not apply to only uncontested jurisdiction hearings.

The Department argues that, because mother’s counsel advanced a legal argument, there was no submission requiring advisements, citing *In re Richard K.* (1994) 25 Cal.App.4th 580, 590 (*Richard K.*). In that case, the appellate court discussed the various meanings of the word “submit” and observed in passing that it was “not uncommon in dependency proceedings for a parent to ‘submit’ on a social services report. (See, e.g., *In re Tommy E.* (1992) 7 Cal.App.4th 1234, 1236-1237; Cal. Rules of Court, rule 1449(e).)” (*Id.* at pp. 588-589, fn. omitted.) The mother in *Richard K.* was not claiming that, at the commencement of the jurisdiction hearing, the juvenile court failed to give her any advisement required by former rule 1449, the predecessor to rule 5.682.⁷ Instead, the mother was challenging the sufficiency of the evidence at the disposition hearing “to support the dispositional order removing the children from her custody.” (*Richard K.*, *supra*, at p. 587.) The appellate court concluded that the mother had acquiesced to the social worker’s dispositional recommendation and that mother had thereby “waived her right to contest the juvenile court’s disposition since it coincided with the social worker’s recommendation.” (*Id.* at pp. 589-590.) *Richard K.* did not clarify the meaning of the word “submission” as used in former rule 1449.

“Language used in any opinion is of course to be understood in the light of the facts and the issue then before the court” (*Ginns v. Savage* (1964) 61 Cal.2d 520,

⁷ In *Richard K.*, the jurisdiction hearing was clearly contested in that the mother cross-examined the author of the Department’s report, which the juvenile court had admitted into evidence, and the mother offered testimony from her estranged husband and a daughter. (*Richard K.*, *supra*, 25 Cal.App.4th at p. 583.)

524, fn. 2.) “ ‘It is axiomatic that cases are not authority for propositions not considered.’ [Citation.]” (*In re Marriage of Cornejo* (1996) 13 Cal.4th 381, 388.) *Richard K.* does not resolve the issues raised here.

Furthermore, as we have already concluded, rule 5.682(b)’s requirement that the court give the enumerated advisements does not depend on whether or not there was a submission. Rule 5.682(b) clearly requires juvenile courts to advise a parent of certain rights regardless whether or not the parent “elect[s] to admit the allegations of the petition, plead no contest, or submit the jurisdictional determination to the court based on the information provided to the court and waive further jurisdictional hearing.” (Rule 5.682(e).) The juvenile court did not do so. The parties’ disagreement as to whether or not mother submitted on the social worker’s reports has no impact on the issue whether the court erred. The only question is which standard of review applies to the court’s failure to give the rule’s enumerated advisements.

In re Monique T. (1992) 2 Cal.App.4th 1372 (*Monique T.*), which is cited by mother, the mother’s counsel told the court, “[A]t this time we’re prepared to submit the matter on the petition with the knowledge that the Court will almost undoubtedly find jurisdiction in this case.” (*Id.* at p. 1376.) The appellate court stated: “[A] parent’s fundamental right to care for and have custody of her child is implicated [in a dependency proceeding] and may not be interfered with without due process of law. [Citations.] Among the essential ingredients of due process are the right to a trial on the issues raised by the petition, the right to confront and cross-examine witnesses, and to compel the attendance of witnesses. (*In re Malinda S.* [(1990) 51 Cal.3d 368,] 383-384.) By adopting rule 1449 [now rule 5.682], the Judicial Council recognized these rights are essential to a fair jurisdictional proceeding. Rule 1449 also states the juvenile court ‘shall’ advise the parent of these rights and make a finding that she knowingly and intelligently waived them. (Rule 1449(b) & (f).)” (*Id.* at p. 1377.)

The appellate court in *Monique T.* concluded that, “[b]ecause the juvenile court did not explain the rights to the mother as required nor did it obtain her personal waiver of these due process rights, . . . it was error to accept a waiver of these rights based only on counsel’s representations.” (*Monique T., supra*, 2 Cal.App.4th 1377.) The court held that the failure to advise on the record was subject to harmless error analysis, but the court did not decide whether the correct standard of review was the “harmless beyond a reasonable doubt” standard under *Chapman v. California* (1967) 386 U.S. 18, 24 (*Chapman*) or the reasonable probability test under *People v. Watson* (1956) 46 Cal.2d 818, 836 (*Watson*) because the court found that the error was harmless beyond a reasonable doubt in any case. (*Monique T., supra*, at pp. 1377-1378.) The court explained that “[t]he mother was represented, at all stages of the proceeding, by an attorney, who explained her rights to her and who indicated that she desired to waive them,” that “[mother did] not deny this, nor [did] she claim she was under any kind of pressure to waive the rights,” and that “the evidence of the mother’s inability to care for the child [was] uncontradicted and the mother [did] not indicate that she could have offered different or more favorable evidence or witnesses.” (*Id.* at p. 1378.)

Under the United States Supreme Court’s decision in *Chapman*, on direct review of a criminal conviction, a federal constitutional error requires reversal unless it is harmless beyond a reasonable doubt. (*Chapman, supra*, 386 U.S. at p. 24; cf. *Fry v. Pliler* (2007) 551 U.S. 112, 121-122 [*Brecht* standard, rather than the *Chapman* standard, applies to federal habeas review where state appellate court failed to recognize federal constitutional error and did not review it under *Chapman*’s standard]; *Brecht v. Abrahamson* (1993) 507 U.S. 619, 623, 637-638 (*Brecht*) [on habeas review of federal constitutional trial error, the standard is “whether the error ‘had substantial and injurious effect or influence in determining the jury’s verdict,’ ” not the *Chapman* standard of review].) The California Supreme Court has found that the analogy of dependency cases to criminal cases is inapt. (*In re Celine R.* (2003) 31 Cal.4th 45, 58, (*Celine R.*))

In *Celine R.*, the Supreme Court stated: “The California Constitution prohibits a court from setting aside a judgment unless the error has resulted in a ‘miscarriage of justice.’ (Cal. Const., art. VI, § 13.) We have interpreted that language as permitting reversal only if the reviewing court finds it reasonably probable the result would have been more favorable to the appealing party but for the error. (*People v. Watson* (1956) 46 Cal.2d 818, 836.) We believe it appropriate to apply the same test in dependency matters. A court should set aside a judgment due to error in not appointing separate counsel for a child or relieving conflicted counsel only if it finds a reasonable probability the outcome would have been different but for the error.” (*Celine R.*, *supra*, 31 Cal.4th at pp. 59-60.)

A dependency proceeding is not a criminal prosecution. “ ‘Dependency proceedings are civil in nature, designed not to prosecute a parent, but to protect the child. . . .’ ” (*In re Malinda S.*, *supra*, 51 Cal.3d at pp. 368, 384-385.) As the California Supreme Court recognized in *In re James F.* (2008) 42 Cal.4th 901 (*James F.*), there are “significant differences between criminal proceedings and dependency proceedings.” (*Id.* at pp. 915-916.) “Plea bargaining and other negotiated dispositions play a significant role in criminal proceedings, but not in dependency proceedings. A defendant in a criminal proceeding has a constitutional right to trial by jury (U.S. Const., 6th Amend.), but in a dependency proceeding the juvenile court makes all factual and legal determinations. The prosecution in a criminal proceeding must prove the defendant’s guilt beyond a reasonable doubt; in dependency proceedings, the burden of proof [for termination of parental rights] is proof by clear and convincing evidence. (*Santosky v. Kramer* (1982) 455 U.S. 745, 769-770.) In a criminal prosecution, the contested issues normally involve *historical* facts (what precisely occurred, and where and when), whereas in a dependency proceeding the issues normally involve evaluations of the parents’ present willingness and ability to provide appropriate care for the child and the existence and suitability of alternative placements. Finally, the ultimate consideration in

a dependency proceeding is the welfare of the child [citations], a factor having no clear analogy in a criminal proceeding.” (*Id.* at p. 915; see *In re Sade C.* (1996) 13 Cal.4th 952, 991 [“Criminal defendants and parents are *not* similarly situated.”].)

Mother fails to cite any authority establishing that the advisements mandated by rule 5.682(b) are themselves procedural safeguards compelled by federal due process, the absence of which must be evaluated under *Chapman*.⁸ We conclude that the appropriate standard for reviewing the juvenile court’s failure to give the advisements specified by rule 5.682 is the *Watson* test.

The California Constitution provides that “[n]o judgment shall be set aside . . . for any error as to any matter of procedure, unless, after an examination of the entire cause, including the evidence, the court shall be of the opinion that the error complained of has resulted in a miscarriage of justice.” (Cal. Const., art. VI, § 13.) Under *Watson*, “a ‘miscarriage of justice’ should be declared only when the court, ‘after an examination of the entire cause, including the evidence,’ is of the ‘opinion’ that it is reasonably probable that a result more favorable to the appealing party would have been reached in the absence of the error.” (*Watson, supra*, 46 Cal.2d at p. 836.) This test is “based upon reasonable probabilities rather than upon mere possibilities.” (*Id.* at p. 837.)

Mother maintains that under either the *Chapman* or the *Watson* standard of review, the court’s jurisdiction orders must be reversed. She argues that the evidence was far from overwhelming and testimony from the social worker, psychiatrist, or her family members could have “enlightened the court” on the issue of jurisdiction, “[a] full hearing

⁸ “The fundamental requirement of due process is the opportunity to be heard ‘at a meaningful time and in a meaningful manner.’ [Citations.]” (*Mathews v. Eldridge* (1976) 424 U.S. 319, 333; see *Cleveland Bd. of Educ. v. Loudermill* (1985) 470 U.S. 532, 542 [“An essential principle of due process is that a deprivation of life, liberty, or property “be preceded by notice and opportunity for hearing appropriate to the nature of the case.’ [Citation.]”]) Mother makes no suggestion that she was denied that protection here.

could have provided needed context” on her history of domestic violence, and testimony regarding her altercation with the children’s great grandmother could have clarified what actually took place.

Mother’s argument sounds like an ineffective assistance of counsel argument based on her counsel’s failure to cross-examine the social worker and call witnesses, but mother is not raising an ineffective assistance of counsel claim on appeal. Mother was represented by counsel, who decided not to cross-examine the social worker and not to call mother or others as witnesses at the jurisdictional stage.⁹ She did, however, contest the sufficiency of the evidence to sustain the petition at the hearing held by the juvenile court. Mother’s assertion that she would have presented a stronger case if the court had given the requisite advisements is entirely speculative.

On appeal, mother does not claim or establish that her counsel did not explain her trial rights to her. Where a parent is represented by counsel in a dependency proceeding, we may assume, in absence of evidence to the contrary, that counsel is competent and advises the parent of his or her hearing rights. (See *People v. Barrett* (2012) 54 Cal.4th 1081, 1105 [“Counsel is presumed competent and informed as to applicable constitutional and statutory law”]; *Conservatorship of John L.* (2010) 48 Cal.4th 131, 156 [“in the absence of any contrary indication, the superior court may assume that an attorney is competent and fully communicates with the proposed conservatee about the entire proceeding”]; *Strickland v. Washington* (1984) 466 U.S. 668, 689 [“a court must indulge a strong presumption that counsel’s conduct falls within the wide range of reasonable professional assistance”].) “Like all lawyers, the court-appointed attorney is

⁹ “[N]ormally the decision to what extent and how to cross-examine witnesses comes within the wide range of tactical decisions competent counsel must make. [Citation.]” (*People v. Cleveland* (2004) 32 Cal.4th 704, 746.) “Whether to call certain witness[es] is generally a matter of trial tactics. [Citations.]” (*People v. Williams* (1970) 2 Cal.3d 894, 905.)

bligated to keep [his or] her client fully informed about the proceedings at hand, to advise the client of his [or her] rights, and to vigorously advocate on his [or her] behalf. [Citations.]” (*Conservatorship of John L.*, *supra*, at pp. 151-152.) “[A]ny competent counsel will advise his client of his rights. [Citation.]” (*People v. Griffin* (1988) 46 Cal.3d 1011, 1029.)

Based on the record before us, it is not reasonably probable that a result more favorable to mother would have been reached if she had been properly advised pursuant to rule 5.682(b). (*Watson*, *supra*, 46 Cal.2d at p. 836.)

Mother’s citation to *Bunnell v. Superior Court* (1975) 13 Cal.3d 592 (*Bunnell*), a criminal case, does not aid her. “In *Bunnell*, as a matter of judicial policy [the California Supreme Court] mandated *Boykin-Tahl* advisements and waivers in all [criminal] cases submitted for decision on the basis of the transcript of the preliminary hearing. (*Bunnell*, *supra*, 13 Cal.3d at p. 605.)”¹⁰ (*People v. Cunningham* (2015) 61 Cal.4th 609, 638, fn. 2 (*Cunningham*).) *Bunnell* held in part: “[I]n all cases in which the defendant seeks to submit his case for decision on the transcript or to plead guilty, the record shall reflect that he has been advised of his right to a jury trial, to confront and cross-examine witnesses, and against self-incrimination. . . . Express waivers of the enumerated constitutional rights shall appear. In cases in which there is to be a submission without a reservation by the defendant of the right to present evidence in his own defense he shall be advised of that right and an express waiver thereof taken. If a defendant does not reserve the right to present additional evidence and does not advise the court that he will contest his guilt in argument to the court, the defendant shall be advised of the probability that the submission will result in a conviction of the offense or offenses charged.” (*Bunnell*, *supra*, at p. 605.)

¹⁰ See *Boykin v. Alabama* (1969) 395 U.S. 238; *In re Tahl* (1969) 1 Cal.3d 122.

The California Supreme Court subsequently held: “*Bunnell*’s requirement of a self-incrimination advisement and waiver is not constitutionally compelled for submissions that are not tantamount to a plea of guilty. If the submission does not amount to a slow plea of guilty, there is no involuntary confession of guilt. *Boykin-Tahl* admonishments and waivers in such contested submissions are required only to effectuate the judicial policies of minimizing error, maximizing protection of defendants’ constitutional rights, and eliminating the necessity of requiring trial and appellate courts to determine whether a submission is a slow plea. A trial court’s failure to comply with this judicial rule of criminal procedure requires reversal only if it is reasonably probable a result more favorable to the defendant would have been reached if he had been properly advised. (Cal. Const., art. VI, § 13; *People v. Watson*, *supra*, 46 Cal.2d at p. 836.)”¹¹ (*Wright*, *supra*, 43 Cal.3d at p. 495.)

A parent’s submission at the jurisdiction stage of a dependency proceeding is not a “slow plea” tantamount to a plea of guilty to a criminal charge, which waives the constitutional privilege against self-incrimination. Moreover, in this case, mother’s counsel did not concede jurisdiction, but rather made the nonfrivolous argument, based

¹¹ “[A] ‘submission’ within the meaning of the slow plea doctrine ‘is defined by the rights a [criminal] defendant surrenders.’ [Citation.] ‘Although the parties may reserve the right to present additional evidence, the essential components of a submission are waiver of a jury trial and, with respect to the witnesses who testified in the prior proceedings, waiver of the right to confrontation in the present proceeding. [Citations.] When the submission is a “slow plea” or “tantamount to a plea of guilty,” the defendant also gives up his privilege against self-incrimination.’ [Citations.]” (*Cunningham*, *supra*, 61 Cal.4th at p. 638.) A submission in a criminal case is not considered a slow plea if “the facts revealed at the preliminary examination are essentially undisputed but counsel makes an argument to the court as to the legal significance to be accorded them. (*In re Mosley* [(1970) 1 Cal.3d [913,] 924-925, fn. 9.)” (*People v. Wright* (1987) 43 Cal.3d 487, 496 (*Wright*)). Mother does not claim or show that she gave up her constitutional privilege against self-incrimination.

on the evidence, that dependency jurisdiction was unwarranted.¹² Even if we accepted an analogy to *Bunnell*, the *Watson* standard of review would apply.

B. Adequacy of Case Plan

Mother argues that her case plan was inadequate because it offers her no help with housing. She contends that her lack of housing was among the reasons that the children were removed from her custody and that her housing problem could potentially affect her ability to reunify with her children. She points out that the jurisdiction/disposition report states that she was “currently homeless and she is looking for a place to live.” That report indicates that the social worker had provided mother with a list of counseling services and homeless shelters on July 22, 2015.

The court-ordered treatment plan does not require mother to participate in any services specifically and expressly aimed at securing stable housing. Mother’s mental health issues, however, appear to have contributed to mother’s lack of housing, and those issues are squarely addressed in her case plan. Mother is required to participate and successfully complete a program of counseling or psychotherapy addressing her mental health. Moreover, as acknowledged by mother, she was given a list of counseling

¹² Evidence of a parent’s mental illness is not sufficient to establish dependency jurisdiction under section 300, subdivision (b), unless it results in a parent’s inability to provide regular care for a child and it causes a child to suffer, or creates “a substantial risk that the child will suffer, serious physical harm or illness.” (§ 300, subd. (b)(1); see *In re James R.* (2009) 176 Cal.App.4th 129, 131 [evidence insufficient to support jurisdiction finding], 136 [“Any causal link between [mother’s] mental state and future harm to the minors was speculative.”]; *In re David M.* (2005) 134 Cal.App.4th 822, 825 [evidence insufficient to support jurisdiction finding], 829 [parents’ mental problems were never tied to any actual harm to children or to a substantial risk of serious harm]; see also *In re Matthew S.* (1996) 41 Cal.App.4th 1311, 1318 [Harm to children “may not be presumed from the mere fact of mental illness of a parent. [Citations].”]) Here, there was no evidence that the children had already suffered serious physical harm or illness due to mother’s delusion or mental illness.

services and homeless shelters in July 2015. The record does not reflect that the list was inadequate to meet mother's immediate housing needs.

Following the Department's recommendations, the juvenile court ordered family reunification services and intensive home-based family services known as wraparound services, as arranged by the Department, for mother and the children. It is not apparent from the record that wraparound services do not include individualized services to help mother obtain and maintain suitable stable housing so that she may reunify with the children. Moreover, as the Department acknowledges, it is responsible for providing or offering reasonable services to mother while the children are out of her custody, and the court will have an opportunity to determine whether reasonable services were provided or offered at the six-month review hearing. (See e.g. § 366.21, subds. (e)(4), (e)(8), (g)(1), (g)(4),; rules 5.502(33), 5.708(e) & (m), 5.710(c)(1)(D).)

On the record before us, we cannot say that the juvenile court abused its discretion by not specifically ordering that mother be offered assistance with housing.

DISPOSITION

The October 6, 2015 disposition orders are affirmed.

ELIA, ACTING P.J.

WE CONCUR:

BAMATTRE-MANOUKIAN, J.

MIHARA, J.