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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

J.H., Petitioner, v. THE SUPERIOR COURT OF RIVERSIDE COUNTY, Respondent; RIVERSIDE COUNTY DEPARTMENT OF PUBLIC SOCIAL SERVICES, Real Party in Interest.	E079949 (Super.Ct.No. SWJ1500122) OPINION

ORIGINAL PROCEEDINGS; petition for extraordinary writ. Kelly L. Hansen, Judge. Petition denied.

Vincent W. Davis for Petitioner.

No appearance for Respondent.

Minh C. Tran, County Counsel, Teresa K.B. Beecham and Prabhath Shettigar, Deputy County Counsel for Real Party in Interest.

Petitioner J.H. (Mother) and A.L. (Father[1]; collectively parents) are the parents of Je.H. (male, born January 2020; Minor). Mother has filed a petition for extraordinary writ (writ petition) pursuant to California Rules of Court, rule 8.452. Mother has also requested a temporary stay pending the determination on her writ petition. We do not need to address Mother's request for temporary stay because, for the reasons set forth *post*, we deny Mother's writ petition.

FACTUAL AND PROCEDURAL HISTORY

On January 18, 2022, the Riverside Department of Public Social Services (DPSS or Department) filed a section 300 petition on behalf of Minor, who had just turned two years old, due to the substance abuse of his parents, and Minor's positive drug test for fentanyl. Minor was placed in foster care.

Five days prior to the filing of the section 300 petition, Minor came to the attention of DPSS when it received an immediate response referral with allegations of severe neglect of Minor by his parents. Law enforcement received a call from an unidentified male who reported Minor was unresponsive. When law enforcement arrived minutes later, only Minor was home; he "was unresponsive and found in soaking wet clothing on the couch. He was not breathing."

[1] Father is not a party to this petition for extraordinary writ.

Minor was transported to a hospital. When hospital staff administered Narcan, Minor became more responsive, which led the staff to believe Minor may have overdosed. Law enforcement observed loose small blue pills throughout the house.

On the same day, the Department received a secondary referral stating that when law enforcement responded to Minor's residence, they found him alone, unresponsive, and soaking wet on a couch. His "rectal temperature was 89.4F; however a normal temperature is 98.6F." Minor "had agonal breathing (gasping for air), so paramedics performed rescue breathing. An oxycodone pill was found on the floor next to the child."

While law enforcement was at the house, Mother "pulled up to the home, then she sped off immediately. Police chased mother and pulled her over." Police took Mother to the police station for questioning.

During the interview, Mother denied knowing what the blue pills were. She also stated that Father used methamphetamine, and was the child's primary caregiver because of her work schedule. Mother admitted using methamphetamine occasionally. Mother told law enforcement that she received a text from Father stating that he was "doing CPR on the child, had called 911 and was leaving the home." Mother also informed the detective that she has two other children; an eight-year-old child (A.H.[2]) adopted by the maternal grandmother (MGM), and a four-year-old child (B.L.) adopted by a maternal cousin and his wife.

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[2] A.H., who was born female, later identified as male; he changed his name to E.H. For consistency, we will refer to the child as A.H. (they/them).

The detective clarified with the social worker that "mother was not chased by law enforcement for fleeing the home; however, officers did have to flag her down to stop and come back to the home. The mother was not being charged with a crime at this time and had been released from custody already." Detectives did not give Mother a drug test even though she appeared to be under the influence. Mother told the detective that she "only uses methamphetamine when she had been 'working a lot of hours.' " She obtains her drugs from Father but denied using them in the home.

Law enforcement arrested Father for felony child endangerment. Law enforcement sent the blue pills to the lab for testing. The detective suspected the pills to be Oxycodone or Fentanyl pills.

On January 12, 2022, the social worker completed an unannounced visit to the home; the social worker spoke with Mother. Mother told the social worker that she, Father, and Minor moved into MGM's home six months ago. Mother stated that she worked "crazy hours" and Father did not work. She also confirmed using methamphetamine when she had to work long hours, and that she obtained the drugs from Father. Mother stated that she had not seen Father use drugs recently. She also denied that they used drugs together.

When the social worker asked Mother to complete a saliva drug test, Mother "declined stating she would come up positive for methamphetamines." She also refused the social worker's offer of a hair follicle drug test. She stated that she had not used drugs since the weekend. She requested a urine test instead. Mother claimed that she began to use drugs in her thirties, and she only used recreationally. She felt that she

would not benefit from substance abuse treatment. Mother told the social worker that she had attempted enrolling in substance abuse treatment programs before, and she was always turned away after she completed the intake process.

The social worker spoke with MGM, with whom the parents and Minor resided. MGM denied having concerns with either Mother or Father caring for Minor, or witnessing any drug use in the home. She also stated that she would "honestly not know what to look for." Moreover, MGM denied seeing blue pills in the home. "As to her adoptive child, she report[ed] the parents never care[d] for this child, who was at school at the time of the incident." MGM told the social worker that the parents lived on a separate side of the home so she did not know "much of what goes on in their lives."

On January 13, 2022, a nurse reported that Minor's toxicology results "showed 'a presumptive positive for fentanyl.' " The final results were pending when the social worker prepared her report.

On the same day, the social worker attempted to call Father but the message stated that the "wireless customer you are calling is not available, please try again later." When the social worker tried calling Father again in the evening, she heard the same message. The social worker also called Dr. Nienow at the children's hospital. The doctor told the social worker that Mother was there all day by Minor's bedside but she kept falling asleep while holding him. Although medical staff warned Mother about the dangers of falling asleep while holding the baby, she continued falling asleep while holding him.

On January 15, 2022, law enforcement arrested Father and placed him in custody. Father was charged with numerous felony charges including child endangerment and

possession of a narcotic. The social worker noted that both parents have criminal histories.

Although the Department offered Mother referrals for substance abuse treatment services and drug test, Mother declined.

The Department reported that MGM could not be assessed for placement at this time because parents resided in her home.

The social worker also reported that the family has prior child welfare history. In May 2006, law enforcement found two methamphetamine pipes in the back seat of Mother's car where A.H. was sitting. Officers also found methamphetamine in a backpack in the front seat of the car. They arrested Mother. MGM picked up A.H.; MGM was advised to file for legal guardianship.

In January 2015, the Department removed A.H. from Mother's custody due to general neglect. In May 2015, the juvenile court found the allegations in the petition true and ordered family reunification services to Mother. Although the Department offered Mother substance abuse services, Mother failed to comply with any aspect of her case plan; she also refused to visit with A.H. On June 8, 2016, at the 12-month status review hearing, the juvenile court terminated Mother's reunification services. A.H. currently remains a dependent with a permanent plan of "Another Planned Permanent Living Arrangement," placed with MGM.

In the interim, in March of 2015, Minor's sibling, B.L., was removed from parents after Mother's arrest for being under the influence of a controlled substance and child endangerment. In May 2015, the juvenile court ordered family reunification services for

Mother. Just as in A.H.'s case, although the Department provided Mother with drug testament programs and drug testing, Mother made no progress in her services. The court terminated family reunification services, and on October 11, 2016, the court terminated parental rights.

In December 2017, Mother tested positive for amphetamines at the time she delivered another baby. This baby was transferred to the Neonatal Intensive Care Unit (NICU) for respiratory issues and low blood sugar; "the baby tested negative for controlled substances and the mother arranged for the newborn to be adopted by her uncle."

At the detention hearing on January 19, 2022, the juvenile court detained Minor from his parents. The court found Father to be presumed. The court ordered supervised visits for Mother, twice a week. The court also ordered that Mother provide a saliva drug test prior to visits. Mother's counsel requested relative placement of MGM. Father's counsel requested placement assessment of a paternal uncle, paternal aunt, and paternal grandmother. The court ordered that the relatives be assessed for placement.

In its jurisdiction/disposition report, the Department requested the court find the allegations in the petition to be true, and to deny family reunification services (1) to Mother under section 361.5, subdivisions (b)(10) and (b)(11); and (2) to Father under section 361.5, subdivisions (b)(6) and (e)(1). The Department requested an Interstate Compact Placement of Children (ICPC) to assess the placement of Minor with maternal cousin in Indiana.

On January 23, 2022, the Department obtained a police report from the January 12, 2022, incident; the report corroborated the Department's investigation. Law enforcement found multiple small, light blue pills scattered throughout the family residence: three small light blue pills were located on the floor of the master bedroom; five pills were found inside on the floor of the garage; and an unknown number of pills were in the bottom of a gray trash bin. Mother denied any knowledge of the blue pills. Mother reported that Father occasionally used "meth" and "pot." Mother also disclosed that when she was working two jobs, she used "methamphetamine" every morning to wake up.

A.H. told law enforcement that Mother and Father would "do drugs together." When A.H. found out that police were at Minor's home, they asked if Mother " 'was high on drugs again.' "

Minor's toxicology report confirmed that he tested positive for "Fentanyl 500 mg/ml. Based on the medical records it was revealed ingestion of Fentanyl in any form can result in death." Hospital staff expressed concerns about MGM's protective capacity because oxycodone pills were found strewn all over her home.

On January 27, 2022, MGM indicated that she wanted placement of Minor. MGM, however, stated Mother was still living in MGM's home. The Department expressed concerns regarding MGM's protective capacity. MGM did not have the contact information of the paternal grandmother, paternal uncle, or paternal aunt. She provided the contact information for the maternal cousin.

On the same day, the social worker asked Mother for the paternal relatives' contact information. Mother did not provide any information. On January 31, 2022, Father gave the social worker paternal grandmother's phone number but stated that she rarely answered her phone. The social worker called the paternal grandmother on January 31, 2022, and February 1, 2022; no one answered and the social worker was unable to leave a message.

On February 1, 2022, the social worker contacted the maternal cousin in Indiana; he stated that he wanted to be assessed for placement of Minor. The Department requested an ICPC on the cousin's behalf.

On February 7, 2022, the social worker visited Minor at his placement; he was a little over two years old. The caregiver reported that Minor is a good child, but rarely spoke. The caregiver did state that Minor had tantrums where he banged his head on the floor. The social worker informed the caregiver that she had referred Minor to the Inland Regional Center (IRC).

At the jurisdiction hearing on February 9, 2022, counsel for both Mother and Father set the matter for contest.

The next day, the social worker contacted the paternal aunt after Mother provided the contact information. The paternal aunt stated that she was unable to care for Minor at this time. Although the aunt did not have the paternal grandmother's contact information, she provided the social worker with the paternal grandfather's information.

Over the weekend of February 14, 2022, Mother requested a visit with Minor. She stated that she may be available on Friday. The social worker asked Mother to let the

social worker know as soon as possible regarding Mother's availability. Mother failed to contact the social worker regarding her availability.

On February 18, 2022, Mother left a message with the social worker stating that the maternal aunt was interested in placement.

On February 23, 2022, the social worker spoke with Mother and again asked for Mother's available dates for visitation. Mother gave the social worker some dates and a "visit was scheduled." Also on February 23, 2022, the social worker called the maternal aunt; the aunt confirmed that she would be willing to be considered for placement and permanency if needed. The social worker submitted a referral to the Resource Family Approval (RFA) unit that day.

On March 7, 2022, Mother cancelled her visit with Minor. She indicated that she would contact the Department to reschedule the visit.

On March 24, 2022, a family friend of the paternal grandfather contacted the Department. The friend requested placement of Minor with his daughter and stated that he would provide the daughter's contact information. Father later told the department that he did not want Minor placed with the daughter of the family friend.

On March 31, 2022, the social worker met with the paternal grandmother. The grandmother stated that because of her age and limited space, she was unable to provide Minor with a placement.

On the same day, the paternal uncle contacted the social worker and stated that he did not want anything to do with Father. However, the uncle was willing to be assessed

for placement if nobody else was willing to care for Minor. He asked to be "on the bottom of the list."

On April 6, 2022, Mother called the social worker and asked that Minor not be removed from his current foster placement.

At the contested jurisdiction hearings on April 18, 2022, and May 20, 2022, the juvenile court continued the hearings due to discovery issues.

On April 27, 2022, the social worker visited the caregiver's home. The social worker observed Minor as happy and content. He wanted to be held by the caregiver during the visit. The caregiver reported no medical concerns for Minor. She also shared that Minor would be starting physical therapy and occupational therapy soon. Minor also "had an Applied Behavior Analysis (ABA) assessment pending but had an evaluation the previous day." Moreover, the caregiver reported that Minor's visits with his siblings were going well. Mother "had been attending some appointments." The caregiver shared that Mother had "made comments about the caregiver driving to the mother's home, so she can give her clothes for [Minor] in which the caregiver politely declined."

On April 29, 2022, the Department approved maternal aunt for placement. Mother, however, reiterated that she did not want Minor removed; she wanted him to remain in his current placement. The social worker scheduled a child and family team meeting to discuss his placement.

On May 9, 2022, at the child and family team meeting, Mother was adamant that she did not want Minor moved and placed with maternal aunt. Mother stated that Minor was receiving services and wanted to avoid the delays that would occur if he were moved

to Los Angeles, where the maternal aunt resided. Mother failed to state where she was residing. Mother reported that she tried to get into an inpatient program, but was told she did not qualify. Mother could not remember the name of the program. The Department submitted a Core Services referral on Mother's behalf. Mother was insistent that she did not need substance abuse treatment and that the case had nothing to do with her.

The following day, Mother texted the social worker and requested that MGM be assessed for placement. When the social worker texted Mother back stating that the social worker needed Mother's "new address in order to verify [Mother] was no longer residing with maternal grandmother," Mother responded that her attorney had already provided the social worker with this information.

On May 11, 2022, the social worker scheduled a visit for Mother with Minor; mother indicated she would "test at the office" and then the visit would be at a park. Mother did not appear for the visit.

On May 25, 2022, Mother appeared for a drug test but was unable to produce enough saliva despite two attempts. The Department referred her to take a urine drug test. The next day, Mother failed to appear for the urine drug test. The social worker expressed concern that Mother showed minimal interest in visiting Minor or engaging in services.

On May 26, 2026, the social worker met Minor in his placement. Minor was "smiling and giggling." Minor attended an IRC meeting in May.

Mother failed to attend her scheduled drug test prior to her visit with Minor on June 1, 2022. Therefore, the visit was cancelled. The social worker attempted to confirm

the visitation with Mother but Mother never responded. On June 6, 2022, Mother texted the social worker during nonbusiness hours indicating that she wanted Minor returned to her care. When the social worker reached out to Mother, Mother did not answer.

On June 15, 2022, Mother had a scheduled visit that she failed to attend. She also did not respond to attempts to reach her. On June 22, 2022, Mother again failed to attend a visit with Minor. Mother stated that she was out of town and unaware of the visit but she was advised about the visit days prior. On June 24, 2022, the social worker texted Mother regarding her upcoming visit. On July 5, 2022, Mother responded stating she would be unable to attend because she had to work. When the social worker attempted to contact Mother for visits on July 13, 2022, Mother did not respond to the social worker's text.

On July 14, 2022, the social worker contacted Mother to discuss visitations. Mother stated that she would provide the social worker with her schedule. When the social worker asked for an update on services, Mother indicated that she did not qualify for inpatient programs. Mother then "declined to provide [the social worker] with any other details as to her assessment, including where the assessment took place and/or the date of the assessment, nor the name of the intake specialist who conducted the assessment." Moreover, Mother "further denied any substance use and reiterated the whole involvement (referring to the incident) had nothing to do with her." When the social worker told Mother that the paternal aunt was being assessed for placement, Mother "indicated she had reservations for the child being placed with her, as she was not familiar with her and had minimal contact with her." The social worker submitted a Core

Service referral on behalf of Mother for substance abuse treatment, counseling, and parenting.

On July 25, 2022, Mother questioned again why she needed to attend services. The social worker offered a referral to the Family Preservation drug treatment program, but Mother stated she needed to speak with her attorney. She also told the social worker she was living with a friend.

At Minor's physical and occupational therapy appointment on August 9, 2022, Minor became upset with Mother when she tried to carry Minor. Minor yelled, "No, No, No."

On August 16, 2022, the social worker met with Minor; he came up to her and waved. However, when Mother arrived, Minor's mood immediately changed and he repeated, "No, No, No" and went to his caregiver to hold him. Mother attempted to engage with Minor but he ran away from her. After Mother left, Minor calmed down and resumed his therapy. The therapist noted "a pattern in which the child will have a good session each time the mother [was] not present."

On August 25, 2022, Mother was referred to MFI Recovery for substance abuse treatment. Although MFI attempted to contact Mother on three occasions in August and September, Mother failed to respond.

On September 6, 2022, the Department submitted a relative assessment for MGM, but continued to have concerns regarding MGM's capacity to protect Minor.

On September 12, 2022, at the contested jurisdiction/disposition hearing, the Department submitted on its reports and recommendations.

Father's counsel presented stipulated testimony that Father was the only responsible person for what happened to Minor. Father was charged with watching Minor while Mother worked. Father used drugs in secret and hid it from the family. Mother and MGM did not know that Father was using drugs in the home.

Mother's counsel cross-examined Father. Father testified that he did not advertise he was using drugs and that Mother and MGM did not make any comments regarding his drug usage. Father stated that he was unaware Mother had told law enforcement that she was aware of Father's drug use. Moreover, Father was not aware Mother was using drugs. In January of 2022, Father used "meth" and some pills. He also stated the pills Minor came in contact with "weren't what I had in my system." Father stated that he took Vicodin. Father later stated that the pills that Minor had come into contact with were his pills. He admitted, the pills "were in my pocket."

The assigned social worker testified. She stated that she provided family reunification services to the family. As to relative placement, she testified that the Department requested an ICPC for a maternal relative out of state, and was also looking into MGM. The Department, however, needed verification that Mother was not residing in MGM's home. Mother had failed to provide the social worker with Mother's current address. The social worker assessed a maternal aunt in Los Angeles, and also contacted other paternal relatives; they all declined to be assessed for placement. The social worker testified that Mother could benefit from services. The social worker offered parenting, counseling, substance abuse assessment, and drug testing. The social worker stated that

Mother needed parenting classes because, "based on the circumstances," Mother left "the child without an appropriate caregiver."

The social worker additionally testified that she did not try to prevent visits between Mother and Minor. Instead, she tried to schedule visits between the two of them. A condition for visitations, however, was that Mother had to take a drug test based on a detention minute order. Mother did see Minor at physical and occupational therapy sessions. The Department did not assess MGM for placement prior to September because MGM had an open investigation and Mother did not provide verification that she had moved out of MGM's home. The referral was closed and Minor's sibling remains in MGM's home.

During cross-examination, the social worker testified that she recommended substance abuse assessment based on Mother's prior dependency cases involving drug use. Mother had never completed a drug treatment program. Moreover, Mother had not drug tested in this case. Additionally, the social worker considered the pills, which were "spread around the home that [Mother] lived in," when asking Mother to drug test. It is the policy of the Department to ask for drug testing if a parent has a drug history.

Furthermore, the social worker expressed concerns whether Mother had the ability to bond with Minor. The social worker noted that Mother attended four IRC appointments for Minor. Also, Mother often left early from Minor's therapy appointment, did not interact with Minor, and never became emotional over Minor. The social worker notified Mother regarding her scheduled visits with Minor with the place, date, and time. Mother did not attend a single visit.

The social worker testified that the Department authorized twice a month visits for MGM, and the visits took place in a park. The Department had concerns that MGM allowed Mother to visit although she was not authorized to do so.

As to relative placement, an ICPC could not be done without court authorization. The Department intended to place Minor with a maternal aunt in Los Angeles, but Mother did not consent to the change in placement.

The Department recommended denying services to Mother because she failed to enroll in any services. With her refusal to drug test, the Department had been unable to verify that she had not used any substances. The social worker also noted that Mother's case plan issues from 2015 remained the same. During this current dependency, which had been open for nine months, the social worker provided referrals to Mother more than three times. Mother is able to access the referrals at any time.

The social worker went on to testify that when determining whether to provide reunification services, a social worker looks at (1) whether a parent could be successful in reunification services; (2) the parent's progress in their case place services to date; and (3) how visitations were going with the minor. In this case, the social worker testified that Mother was not in any services, not drug testing, and not visiting with Minor. There were questions regarding Mother's bond with Minor. The social worker had requested that Mother visit with Minor to establish a bond on more than five different occasions.

After a continuance, the contested hearing resumed on September 13, 2022. The social worker returned to testify. She stated that she considered Mother's wishes when she decided not to place Minor with the maternal aunt in Los Angeles, even though

maternal aunt was approved for replacement. On redirect, the social worker testified that although Mother had initially asked the social worker to assess the maternal aunt for placement, Mother requested Minor not be placed there after the aunt was approved.

Mother's counsel next called a Riverside County public health nurse to testify. The nurse received a referral to assess Minor for medically fragile status. At the time of the assessment in January 2022, Minor was not medically fragile. He was stable and eating well, and had no physical injuries.

After Mother waived her right to testify, the court continued the hearing because of ill witnesses.

In the interim, on September 14, 2022, the social worker met with Minor at his placement. During this visit, the caregiver reported that MGM "has commented to the caregiver she would be unable to care for the child as he is 'too much' and she is 'older.' " MGM visited Minor twice a month for an hour and stated that she had seen a positive change in Minor.

On September 20, 2022, the Department sent Mother a text message to drug test, and provided information about MFI. MGM told the social worker that she wanted temporary placement until Minor was placed in Indiana or returned to Mother. MGM did not want to be considered for long-term placement or permanency.

On October 3, 2022, the detention social worker testified at the continued hearing. The social worker stated that she detained Minor from Mother. Mother personally told the social worker that Mother was aware that Father used methamphetamine when they were at MGM's home on January 12, 2022. The social worker did not place Minor with

MGM because of an open investigation due to another minor in her home, Minor's half sibling, and Mother was still residing there.

On cross-examination, the social worker testified that Mother stated that she obtained drugs by "finding what the father had in his toolbox." Mother admitted to using methamphetamine at the time of the investigation. Mother declined the saliva drug test because Mother stated that the test would be positive. The social worker testified that Mother seemed to be in denial of how her own substance abuse was affecting her ability to parent. The social worker stated that Mother assumed Father had used drugs recently because she found methamphetamine in his toolbox the weekend prior to January 12, 2022. Mother denied talking to Father about his use of drugs although he was Minor's primary caregiver. The Department was also concerned with the amount of pills found in MGM's home. The Department assessed potential relatives for placement. Mother also admitted to the detective during her interview that Father used methamphetamines. The detective noted that Mother appeared under the influence when he was talking to her. The social worker offered a substance abuse treatment program to Mother; Mother declined.

During closing argument, Mother's counsel argued for family maintenance services for Mother or family reunification services. Counsel disputed the Department's efforts at relative placement, but acknowledged a court cannot order and the Department cannot conduct an ICPC until jurisdiction had been taken. County counsel asked the juvenile court to follow the Department's recommendations. Counsel requested that the court strike allegation j-1. Minor's counsel joined with county counsel and requested that

the court deny Mother reunification services. Father's counsel requested family maintenance with Mother or an ICPC with the maternal cousin.

The juvenile court found the allegations in the petition true, except allegation j-1, which it struck, and interlineated allegations b-2 and b-3. The court adjudged Minor a dependent and removed physical custody from parents. The court denied (1) Mother reunification services under section 361.5, subdivisions (b)(10) and (b)(11); and (2) Father reunification services under section 361.5, subdivision (e)(1).

In making its determination, the court stated, "It is clear to the Court that father was a polysubstance drug user, not only methamphetamine, but of fentanyl, and that mother knew that he was under—that he was an active user of controlled substances; that she, in fact, close in time to the event which caused this case to begin, took controlled substances from father's possession, from his toolbox, and that she admitted to using those controlled substances in order to stay awake working late night shifts."

The court went on to find that Mother knew or should have known that leaving Minor with Father was extremely dangerous. "This was a child that was mobile, was ambulatory, wasn't a child who was unable to move, was stuck in a crib because he was unable to move or the child, because of physical disability, was unable to move about. This was a child who was ambulatory. And it's not shocking to the Court, not should it be to any reasonable person, that this child found controlled substances in father's home. And the fact that they were tiny blue pills found throughout the home consistent with fentanyl is shocking. It is by some miracle that this child did not die from fentanyl poisoning."

The court stated that it was disturbed by the actions of both Mother and Father in this case. The court then stated that it was denying Mother services because (1) she had prior services terminated for failure to comply with a case plan; (2) she was again refusing to cooperate and participate in any services prior to jurisdiction; (3) she failed to check on Minor's condition after being informed of Minor's condition from Father; and (4) law enforcement had to stop her from leaving the home on the night of the incident. The court noted, "There are instances recently in the news where parents were rushing to try to save their children from a shooter at school, and they were willing to be tazed by law enforcement and to be arrested and handcuffed because they were so concerned about the welfare of a child. And in this case, I have two parents who weren't willing to do even a drug test to get back their child."

The juvenile court (1) set a section 366.26 hearing; (2) reduced Mother's visitation to one time per month; (3) and ordered an ICPC with the State of Indiana.

On October 7, 2022, Mother filed a Notice of Intent to File Writ Petition.

DISCUSSION

A. THE JUVENILE COURT WAS NOT REQUIRED TO FIND THAT REASONABLE SERVICES WERE OFFERED TO MOTHER BECAUSE THE COURT DENIED REUNIFICATION SERVICES

Mother contends that "the juvenile court failed to find that reasonable reunification services were provided to [Mother], and in fact, they were not." In this case, however, the juvenile court never ordered reunification services be provided to

Mother. Hence, no reunification services for Mother were terminated. Instead, as provided in detail *ante*, the juvenile court *denied* Mother reunification services under section 361.5, subdivision (b)(10) and (11).

Under the law, "[t]here is a presumption in dependency cases that parents will receive reunification services. [Citation.] Section 361.5, subdivision (a) directs the juvenile court to order services *whenever* a child is removed from the custody of his or her parent *unless* the case is within the enumerated exceptions in section 361.5, subdivision (b)." (*Cheryl P. v. Superior Court* (2006) 139 Cal.App.4th 87, 95.) However, " '[A]s evidenced by section 361.5, subdivision (b), the Legislature recognizes that it may be fruitless to provide reunification services under certain circumstances. [Citation.] Once it is determined one of the situations outlined in subdivision (b) applies, the general rule favoring reunification is replaced by a legislative assumption that offering services would be an unwise use of governmental resources.' " (*Renee J. v. Superior Court* (2001) 26 Cal.4th 735, 744.) "The statutory sections authorizing denial of reunification services are sometimes referred to as 'bypass' provisions." (*Jennifer S. v. Superior Court* (2017) 15 Cal.App.5th 1113, 1121 (*Jennifer S.*).)

Under section 361.5, subdivision (b)(10) and (11), the juvenile court is not required to offer reunification services to a parent if the court has previously terminated reunification services or parental rights with respect to a sibling or half sibling of the child and the 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." (§ 361.5, subd. (b)(10) & (11).)

In this case, Mother argues that the court failed to find that reasonable services were rendered to Mother. However, because the court bypassed rendering reunification services to Mother under section 361.5, subdivision (b)(10) and (11), Mother never received reunification services. Hence, the court did not have to find that reasonable services were rendered, because no reunification services were ordered.

In support of Mother's argument, she cites to cases wherein a parent *had been provided* reunification services, then the court terminated services at a review hearing. These cases are inapplicable to Mother's case because, as provided *ante*, the juvenile court denied reunification services so did not have to make a finding that reasonable services were offered to Mother.

Under section 361, there is no requirement for a juvenile court to find that a parent was provided with reasonable services at the disposition hearing. In fact, it is during a disposition hearing wherein the juvenile court decides to order reunification services to a parent. Here, the juvenile court determined that reunification services were not in Minor's best interest. Because Mother has failed to present any legal analysis to support that the court should have made a finding as to whether reasonable services were rendered to Mother, we find her argument to be without merit.

B. THE JUVENILE COURT PROPERLY DENIED MOTHER REUNIFICATION SERVICES

Mother also contends that "there was insufficient evidence to deny [Mother] reunification services pursuant to section[] 361.5(b)(11)." We disagree.

As provided above, generally, the juvenile court is required to provide reunification services to a child and the child's parents when a child is removed from parental custody under the dependency laws. (§ 361.5, subd. (a).) The purpose of providing reunification services is to "eliminate the conditions leading to loss of custody and facilitate reunification of parent and child. This furthers the goal of preservation of family, whenever possible." (*In re Baby Boy H.* (1998) 63 Cal.App.4th 470, 478.) It is also the legislative intent, "that the dependency process proceed with deliberate speed and without undue delay." (*Marlene M. v. Superior Court* (2000) 80 Cal.App.4th 1139, 1151.) "Thus, the statutory scheme recognizes that there are cases in which the delay attributable to the provision of reunification services would be more detrimental to the minor than discounting the competing goal of family preservation. [Citation.] Specifically, section 361.5, subdivision (b), exempts from reunification services 'those parents who are unlikely to benefit' from such services or for whom reunification efforts are likely to be 'fruitless.' " (*Jennifer S.*, *supra*, 15 Cal.App.5th at p. 1120.)

Specifically, section 361.5, subdivision (b)(10), provides that a court may deny services if there is clear and convincing evidence: "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 . . . 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."

Subdivision (b)(11) of section 361.5, provides that a court may deny services if there is clear and convincing evidence: "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 . . . 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."

When the juvenile court concludes reunification efforts should not be provided, it " ' "fast-tracks" ' " the dependent minor to permanency planning so that permanent out-of-home placement can be arranged. (*Jennifer S.*, *supra*, 15 Cal.App.5th at p. 1121.) The statutory sections authorizing denial of reunification services are commonly referred to as " 'bypass' " provisions. (*Ibid.*)

Once it has been determined one of the situations enumerated in section 361.5, subdivision (b), applies, " ' "the general rule favoring reunification is replaced by a legislative assumption that offering services would be an unwise use of governmental resources." ' " (*In re William B.* (2008) 163 Cal.App.4th 1220, 1227; accord, *In re A.G.* (2012) 207 Cal.App.4th 276, 281.) Thus, if the juvenile court finds a provision of section 361.5, subdivision (b), applies, the court "shall not order reunification for a parent . . . unless the court finds, by clear and convincing evidence, that reunification is in the best interest of the child." (§ 361.5, subd. (c)(2).) "The burden is on the parent to . . . show that reunification would serve the best interests of the child." (*William B.*, at p. 1227; accord, *A.G.*, at p. 281.)

"We affirm an order denying reunification services if the order is supported by substantial evidence." (*In re Harmony B.* (2005) 125 Cal.App.4th 831, 839 (*Harmony B.*); see also *Elijah R. v. Superior Court* (1998) 66 Cal.App.4th 965, 971.) In applying the substantial evidence test, we presume the court made the proper order and consider the evidence in the light most favorable to the ruling. (*Sheila S. v. Superior Court* (2000) 84 Cal.App.4th 872, 880.) We do not "resolve conflicts in the evidence, pass on the credibility of the witnesses, or determine where the preponderance of the evidence lies. [We merely determine whether] there is any substantial evidence, whether or not contradicted, which will support the conclusion of the trier of fact." (*In re Walter E.* (1992) 13 Cal.App.4th 125, 139-140.)

Although every effort should be made to save a parent's relationship with a child despite the parent's history of substantial misconduct (*Renee J. v. Superior Court*, *supra*, 96 Cal.App.4th at p. 1464), the "no-reasonable effort" clause was not intended to provide a parent such as Mother another opportunity to address an underlying problem when she had many opportunities and failed to do so. (*Harmony B.*, *supra*, 125 Cal.App.4th at p. 843.) Instead, it was intended to mitigate an otherwise harsh result in the case of a parent who, having failed to reunify, subsequently worked toward correcting the underlying problem. (*Id.* at p. 842.)

R.T. v. Superior Court (2012) 202 Cal.App.4th 908 (*R.T.*) is instructive. In *R.T.*, the child was removed from his parents' care after his father was arrested for domestic violence and the mother admitted to drug and alcohol use. The parents had previously failed to reunify with the child's sibling, P.T., who was removed based on the parents'

substance abuse and chronic homelessness. (*Id.* at p. 911.) The parents had made only minimal efforts to engage in reunification services in P.T.'s case. But, two months after the child's removal, the mother moved to a safe residence, separated from the father, was following mental health recommendations, and had started attending a drug treatment program and 12-Step meetings. Notwithstanding these efforts, the juvenile court ordered bypass of reunification services, citing the termination of parental rights in P.T.'s case and finding the parents had not made reasonable efforts to treat the underlying problems. (*Id.* at pp. 911-913.)

The Court of Appeal explained: "We do not read the 'reasonable effort' language in the bypass provisions to mean that any effort by a parent, even if clearly genuine, to address the problems leading to removal will constitute a reasonable effort and as such render these provisions inapplicable. It is certainly appropriate for the juvenile court to consider the duration, extent and context of the parent's efforts, as well as any other factors relating to the quality and quantity of those efforts, when evaluating the effort for reasonableness. And while the degree of progress is not the focus of the inquiry, a parent's progress, or lack of progress, both in the short and long term, may be considered to the extent it bears on the reasonableness of the effort made. [¶] Simply stated, although success alone is not the sole measure of reasonableness, the measure of success achieved is properly considered a factor in the juvenile court's determination of whether an effort qualifies as reasonable." (*R.T.*, *supra*, 202 Cal.App.4th at pp. 914-915, italics omitted.)

In concluding that substantial evidence supported the juvenile court's finding, the *R.T.* court observed: "There is no evidence that mother made any effort to address her substance abuse issues after minor was returned to her, until minor was once again removed and bypass was recommended. By then, mother had been using drugs again for nearly a year, if not longer, and minor was once again languishing without proper care as a result. There is no evidence in the record that mother, in the month or two of services following minor's second removal, had engaged in these services in any meaningful way. [Citation.] In any event, the juvenile court properly could conclude this recent effort, even assuming the effort were substantiated, was simply too little, too late." (*R.T.*, *supra*, 202 Cal.App.4th at p. 915, italics omitted.)

In this case, the juvenile court bypassed reunification services for Mother under section 361.5, subdivision (b)(10) and (11). On appeal, Mother makes no argument that the juvenile court improperly denied reunification services under section 361.5, subdivision (b)(10). Mother, however, contends that the court erred in bypassing reunification services under section 361.5, subdivision (b)(11), because she made reasonable efforts to treat the problems that led to the removal of Minor's siblings—because there were no prior referrals or concerns related to Minor. Moreover, Mother argues that because the juvenile court ordered services to be provided to Mother at the detention hearing, subdivision (b)(11) does not apply. We disagree.

First, we note that Mother blanketly states that "it is clear that [Mother] had made reasonable efforts to treat the problems that led to removal of the siblings because there were no prior referrals or concerns related to this minor. Therefore, *Welfare and*

Institutions Code Section 361.(B)(11) did not apply to [Mother] and the Juvenile Court's finding should be reversed." Mother provides no details of how she made reasonable efforts to treat the problems that lead to Minor's siblings' removal from her custody.

Here, Mother does not dispute that parental rights were terminated as to Minor's sibling. On October 11, 2016, the juvenile court terminated Mother's rights and freed Minor's half sibling, B.L., for adoption. B.L. was removed and adjudicated a dependent due to Mother's substance abuse and child endangerment. During the dependency of B.L., the Department provided Mother drug treatment and testing. Mother made no progress in the services, and the court ultimately terminated her parental rights as to B.L. Moreover, during an earlier dependency involving the oldest sibling, A.H., the Department had also offered Mother substance abuse services, including programs and testing. Mother failed to comply with any aspect of her case plan, and also refused to visit with A.H.

In this case, we agree with Mother that the court ordered the Department to provide services for Mother; these services, however, were not formal reunification services. At the detention hearing on January 19, 2022, the juvenile court ordered as follows: "Services, including Alcohol & Testing are to be provided to the family." Hence, early in these proceedings, Mother was given the opportunity to drug test and receive services. Mother, however, made no effort to work on her substance abuse issues. Although she stated that she completed three intake assessments at different programs provided by the Department, she was turned away at the programs. Mother was unable to provide the names of the programs. Mother adamantly stated that she did not need

substance abuse treatment although she admitted that she used drugs at the time of the incident and continued to do so. She also admitted that she was aware of Father's drug abuse, yet still allowed him to be the sole caretaker of Minor while she worked. Furthermore, during the course of this dependency, Mother refused to take any drug tests.

At the disposition hearing, the juvenile court stated that it bypassed reunification services for Mother "based on the evidence received over the last two court days. It is clear to the Court that father was a polysubstance drug user, not only methamphetamine, but of fentanyl, and that mother knew that he was under—that he was an active user of controlled substances; that she, in fact, close in time to the event which caused this case to begin, took controlled substances from father's possession, from his toolbox, and that she admitted to using those controlled substances in order to stay awake working late night shifts. [¶] It is clear to the Court that mother knew or should have known that leaving a child in that situation was extremely dangerous to the child. This was a child that was mobile, was ambulatory, wasn't a child who was unable to move. . . . This was a child who was ambulatory. And it's not shocking to the Court, nor should it be to any reasonable person, that this child found controlled substances in father's home. And the fact that they were tiny blue pills found throughout the home consistent with fentanyl is not shocking. It is by some miracle that this child did not die from fentanyl poisoning."

Thereafter, the court went on to state that it was "disturbed by mother's actions in this case. And [Mother's counsel] brings up the fact that I can't deny her services because she refused to cooperate in services or has been in services in prior jurisdiction, but I'm not doing it for that reason. But I can look at mother's history, and the law says I

need to look at her history. And her history is that she had prior services terminated for other children for failure to comply with her case plan. And she's had parental rights terminated on top of that because she's not complied with her case plan and complied with services. And so when I have a new child here and mother is refusing to cooperate and participate in any services, even in drug testing, prior to jurisdiction, it tells me where her mind's at. [¶] I additionally don't believe for a moment that mother didn't know what was going on when she drove by her house on the day this whole horrific incident—and drove by the house—I believe the argument was because she didn't know if it had to do with her. That makes no sense. The cops were at her house. The house where she had her infant child in the care of her drug-abusing—the drug-abusing father of that child. At the very least, someone that was concerned about that child would stop to see if maybe father had to leave and the child was there all by itself. She didn't do that. She drove right on by. And the police had to follow her and stop her. It wasn't like she came back and said, 'I better check and see what's going on.' She didn't do that. The police had to follow her and contact her away from the residence. It's disappointing and unfortunate that mother took the stance in this case where she refused to cooperate with the Department until jurisdiction was taken."

The purpose of the reasonable effort prong of section 361.5, subdivision (b)(10), and (b)(11), is not to create further delay for a child by allowing a parent, who up to that point has not reasonably addressed his or her problems, another opportunity to do so. (*Harmony B.*, *supra*, 125 Cal.App.4th at p. 843.) Viewing Mother's history in its totality, we conclude there is substantial evidence to support the juvenile court's finding that

Mother did not make a reasonable effort to treat the problems that led to the removal of Minor's siblings from her care. Accordingly, the juvenile court did not err when it denied reunification services under section 361.5, subdivision (b)(10 and (b)(11).

C. THE DEPARTMENT AND THE COURT OFFERED MOTHER VISITATION WITH MINOR

Mother argues that the Department and the court "failed to ensure [Mother] received visitation with minor." In support of her claim, Mother states that it "is likely that the visitations were denied, cancelled, or made nearly impossible" because of the Department's goal to deny family reunification services to Mother. We disagree with Mother's claim because it is not supported by the record.

In this case, at the detention hearing on January 19, 2022, the juvenile court ordered supervised visitation for Mother twice per week. As provided in detail *ante*, the Department scheduled numerous visitations for Mother. Mother, however, failed to attend any of them.

For example, on February 14, 2022, Mother texted the social worker during nonbusiness hours and asked if she could visit Minor. Mother indicated that she may be available the following Friday. When the social worker requested that Mother contact the social worker as soon as possible with Mother's availability so a visit could be scheduled, Mother did not contact the social worker.

On February 23, 2022, the social worker contacted Mother again and asked for her availability. Mother finally provided the social worker with dates Mother was available for visits.

However, on March 7, 2022, Mother cancelled her visits for the week and stated she could contact the social worker to schedule a visit. Mother did not. On May 11, 2022, the Department scheduled a visit between Mother and Minor, and contacted Mother. Although Mother stated she would attend the visit, she failed to appear. When the social worker attempted to confirm another visit on June 1, 2022, Mother never responded. Again, on June 15, 2022, Mother failed to attend a scheduled visit, and did not respond to attempts to reach her. Then on June 22, 2022, although the social worker advised Mother of the scheduled visit, Mother stated she was out of town and unaware of the visit. On June 24, 2022, the social worker sent Mother a text message regarding her upcoming visit. On July 5, 2022, Mother stated she could not attend because of work. On July 13, 2022, the social worker attempted to contact Mother and Mother did not respond. On July 14, 2022, Mother stated she would provide her work schedule for visits.

The record clearly shows that the social worker tried to schedule visits between Minor and Mother. The social worker notified Mother of the visits with the locations, dates, and times. Notwithstanding, Mother failed to attend a single scheduled visit.

In sum, the juvenile court ordered supervised visitation between Mother and Minor. Thereafter, the Department made numerous efforts to provide Mother with court-ordered visitations. Mother failed to attend a single supervised visit. Therefore, we find Mother's argument to be without merit.

D. THE JUVENILE COURT PROPERLY DENIED MOTHER'S REQUEST FOR RELATIVE PLACEMENT

Mother contends that the juvenile "court erred in denying relative placement." We disagree.

"In any case in which a child is removed from the physical custody of his or her parents pursuant to Section 361, preferential consideration shall be given to a request by a relative of the child for placement of the child with the relative." (§ 361.3, subd. (a).) " 'Preferential consideration' means that the relative seeking placement shall be the first placement to be considered and investigated." (§ 361.3, subd. (c).) "If the court does not place the child with a relative who has been considered for placement pursuant to this section, the court shall state for the record the reasons placement with that relative was denied." (§361.3, subd. (e).)

"When considering whether to place the child with a relative, the juvenile court must apply the placement factors, and any other relevant factors, and exercise its independent judgment concerning the relative's request for placement." (*In re Isabella G. (*2016) 246 Cal.App.4th 708, 719.) Factors to consider in evaluating a placement include, but are not limited to, (1) the best interests of the children, (2) the wishes of the parents, (3) proximity of the placement for visitation and reunification with the parents, (4) placement of any siblings and half siblings in the same home, (5) the good moral character of the relative, (6) the nature and duration of the relationship between the child and relative, (7) the relative's ability to provide appropriate and safe care of the child and facilitate visitation with the child's other relative, and (8) the safety of the home.

(§ 361.3, subd. (a)(1)-(8).) "The linchpin of a section 361.3 analysis is whether placement with a relative is in the best interests of the minor." (*Alicia B. v. Superior Court* (2004) 116 Cal.App.4th 856, 862-8633.) We review a juvenile court's determination regarding a child's placement under section 361.3 for abuse of discretion. (*In re Robert L. (*1993) 21 Cal.App.4th 1057, 1067, superseded by statute on other grounds as stated in *Cesar V. v. Superior Court* (2001) 91 Cal.App.4th 1023, 1032.)

In this case, Mother contends that the Department failed to properly assess or place Minor with MGM, the maternal aunt, or the maternal cousin in Indiana. Mother's argument has no merit.

We first address the maternal cousin in Indiana. In the jurisdiction/disposition report, the Department requested an ICPC for the maternal cousin. Only two weeks after the filing of the dependency petition, on February 1, 2022, the social worker contacted the maternal cousin in Indiana; he stated he wanted to be assessed for placement. The Department immediately requested an ICPC on his behalf. However, as provided above, an ICPC cannot be ordered or completed until a court takes jurisdiction over a minor. Therefore, prior to the court taking jurisdiction of this case on October 3, 2022, an ICPC could not be ordered. Therefore, Mother's argument lacks merit with regard to her cousin.

Next, we address the maternal aunt. On February 18, 2022, Mother left a message with the social worker indicating that the aunt would be interested in placement. Five days later, the social worker called the maternal aunt; the aunt stated she would be willing to be considered for placement. The social worker submitted a referral to the RFA unit

that same day to assess the maternal aunt for placement. On April 29, 2022, the maternal aunt was approved for placement. Notwithstanding Mother's initial request to have Minor placed with the maternal aunt, Mother told the social worker that she did not want Minor moved from his foster placement. Moreover, at the child and family team meeting on May 9, 2022, Mother again adamantly stated that she did not want Minor moved and placed with the maternal aunt. Mother's attempt to argue that the court erred in failing to place Minor with the maternal aunt is disingenuous and without merit.

We address Mother's argument that the court and the Department erred in failing to place Minor with MGM. Initially, MGM could not be assessed for placement because the parents resided in MGM's home. The Department and hospital staff also expressed concerns about MGM's capacity to protect Minor; fentanyl and oxycodone pills were found strewn all over MGM's home. Moreover, Mother failed to provide the social worker with verification that Mother had moved out of MGM's residence until September 2022. Upon receiving this information, on September 6, 2022, the Department submitted a relative assessment for MGM. The Department continued to express concerns regarding MGM's capacity for protecting Minor. Additionally, there is no evidence that MGM's home had been approved for placement of Minor. In September, MGM told the caregiver that MGM "would be unable to care for the child as he is 'too much' and she is older." MGM also told the social worker that she wanted Minor placed with the maternal cousin in Indiana or returned to Mother's care. MGM did note that she had seen a positive change in Minor with his current caregivers.

Because the assessment of placement with MGM had not been completed at the time of the hearing, the issue is not ripe for appeal.

Furthermore, in addition to the relative mentioned by Mother in her writ petition, the social worker identified, located, and considered other relatives for placement, as provided in detail *ante*. The paternal aunt and paternal grandfather both stated that they were unable to care for Minor. Moreover, although a family friend had expressed interest in caring for Minor, Father expressed that he did not want Minor placed with the friend.

In sum, the Department investigated placement of Minor with more than six relatives and family friends. Mother's argument to the contrary is not supported by evidence. Therefore, we find that the juvenile court did not abuse its discretion in the placement of Minor under section 361.3.

DISPOSITION

The writ petition is denied.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

MILLER
J.

We concur:

RAMIREZ
P. J.

McKINSTER
J.