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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

In re AMANDA D., a Person Coming Under the Juvenile Court Law.	
LEE ANN C., Petitioner, v. SUPERIOR COURT FOR THE COUNTY OF NAPA, Respondent, NAPA COUNTY DEPARTMENT OF HEALTH AND HUMAN SERVICES, Real Party in Interest.	A111069 (Napa County Super. Ct. No. JV 13787)

I. INTRODUCTION

Petitioner Lee Ann C. (Mother) filed this writ petition pursuant to rule 38.1 of the California Rules of Court challenging an order of the Napa County Superior Court, Juvenile Division, which terminated her reunification services and set a hearing under Welfare and Institutions Code section 366.26[1] to select a permanent plan for her

[1] All further statutory references are to the Welfare and Institutions Code. References to rules are to the California Rules of Court.

daughter Amanda D. Mother contends she was not provided with reasonable reunification services and that those services should have been extended. We deny Mother's petition on the merits.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. *Background*

Amanda D. was born in August 1999 to Mother and N. D. (Father).[2] Amanda is Mother's third child. Amanda's two half-brothers are dependents of the Napa County juvenile court, having been removed from Mother's home in the mid-1990's for neglect, returned to Mother under a plan of family maintenance, then removed again in January 1999 for general neglect. Before services were terminated for those two children, Mother had received almost 30 months of reunification services in total for two formal dependency cases plus one "informal supervision" case that was open for six months. The siblings are now in a permanent plan of long-term foster care. Mother and Amanda have visitation with these children.

On May 28, 2002, Amanda was severely injured by a car on a local street when Mother was pushing her in a stroller in a crosswalk. Amanda was hospitalized for over a month at Children's Hospital Oakland (CHO) for critical injuries including traumatic brain injury, splenic laceration, and urinary tract infection. She was discharged on July 2, 2002. This accident was not the fault of either parent.

Six months after Amanda was released from CHO, Napa Infant Program assessed Amanda and referred her to Los Niños preschool, but she failed to show up regularly during the nine months from December 2002 to October 2003. Speech therapy was to begin at Los Niños but never commenced because Amanda stopped attending. Over one year later, Amanda was finally evaluated for occupational and physical therapy as had been recommended by her doctors at CHO. However, despite recommendations for continued therapy, Amanda's parents did not bring her back to finish the evaluations.

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[2] Father has not filed an appeal in this matter.

After the family moved to a new home, Ms. Murray, the COPE worker assigned to the family, facilitated a move for Amanda to Tierra Linda Head-Start, which was one block away. Amanda did not attend and eventually was dropped. Speech therapy for Amanda was again arranged, but would require transportation by Tierra Linda. Her parents again did not make her available.

Murray was interviewed by the court social worker for the Disposition Report in this case that was prepared on April 13, 2004. She reported to the court social worker that she worked with the parents for over three years. She said she helped the parents on issues of parenting, safety, modeling and the importance of school and therapies for Amanda. She said she had on many occasions observed Amanda wandering alone in the parking lot of the apartment complex. She said both parents stated their belief to her that Amanda would come to them on her own if she needed help. Murray purchased two plastic chairs so that Amanda's parents could sit outside to watch Amanda. She also helped them install a latch on the door so Amanda could not leave the house unassisted. She stated she had really worked with the parents on improving their ability to parent Amanda, but felt they do not have the ability to utilize the concepts. COPE closed its file on Amanda in November 2003 because the parents did not follow through with appointments or respond to letters.

The Child Protective Services Division of Real Party in Interest Napa County Department of Health and Human Services (CPS) received referrals on Amanda which were noted in the Disposition Report submitted for April 13, 2004. On July 24, 2000, CPS received a report that 11-month-old Amanda was left lying on the bed without supervision by a parent, observed by a service provider in the home. On June 20, 2002, CPS received a report of general neglect, which was inconclusive. On June 19, 2003, a neighbor of the family called to report that three-year-old Amanda was left to wander outside the parents' small apartment complex. Other neighbors reported that they had heard the parents screaming at the child. When CPS went out to investigate, the parents denied any neglect. Father stated they watch their daughter through the living room window and a neighbor watches out for her, too. With the parents' consent, CPS

interviewed the neighbor. The neighbor stated there were times that Amanda was outside until 10:00 p.m. The neighbor also reported that Amanda always appeared unkempt and her hair was uncombed.

B. *Facts of this Case*

On February 19, 2004, when she was four years old, Amanda broke her upper arm when she fell four or five feet to the ground when someone pushed her off a playground structure. Mother and Father apparently took her to Queen of the Valley Hospital (QVH) where she was treated in the emergency department and fitted with a sling and an ortho glass splint, also known as an immobilizer. Her parents were instructed to make an appointment with the orthopedic doctor for casting. The emergency department personnel also instructed the parents that Amanda was to wear the sling and immobilizer at all times.

On February 25, 2004, a registered nurse in the QVH emergency department called CPS because the parents had not brought Amanda back to the hospital for casting and had not made an appointment with the orthopedic doctor. The nurse was concerned because, if not properly treated, Amanda's arm could heal in the wrong position.

When CPS emergency response worker Sandra Maline came to the family's home with local police on February 25 to investigate the reports, Amanda herself opened the door. Mother invited the worker into the home. Maline noted that Amanda was not wearing the immobilizer or the sling. Amanda complained that her arm hurt. She also said she thought her mother removed the immobilizer and the sling to give her a bath, but had not put them back on afterward. When Mother changed Amanda's diaper, Amanda said, "ouch," and that her arm hurt.

Maline determined to place Amanda into protective custody. When notified of this, Father became angry and aggressive. He repeatedly stated, "This is bullshit," and that CPS was "fucked up," and he began knocking things off a table. He had to be handcuffed by attending law enforcement officers, refusing their command to be seated. While restrained, he kicked a pile of toys and other items, injuring another CPS worker

who was present. Father stated that he was "getting ready to lose it" and was "getting ready to snap."

The CPS worker continued to ask questions, but reported in the detention report that "'any questions that I asked that [sic] parents about their child were taken as offensive.'" Mother refused to sign the Notice of Protective Custody, claiming every time she had signed one before, it had been used in court against her. Mother did sign the Consent for Medical Treatment. Both parents were informed of the date of the detention hearing, March 1, 2004.

On February 27, 2004, a petition under section 300, subdivision (b), was filed, alleging that Amanda had suffered, or there was a substantial risk that she would suffer, serious physical harm "by the willful or negligent failure of the parent or legal guardian to provide the child with adequate food, clothing, shelter, or medical treatment."

On March 1, the detention hearing was continued to March 9. On March 9, defense counsel acquiesced in detention status and a jurisdiction hearing date of March 25 was selected. Mother signed a Waiver of Rights on March 25. The parents submitted to jurisdiction on March 25, and a dispositional hearing took place on April 13.

At the dispositional hearing, Amanda was declared a dependent of the court, and reunification services were ordered for both parents, despite serious concerns expressed by CPS in the disposition report that both Mother and Father had previously demonstrated a lack of follow through with therapies ordered for Amanda, and Mother had received 30 months of services for her two sons in previous cases. In addition, the court worker was concerned because Mother had stated to the worker that she felt she knew how to parent, but that Amanda was not receptive. The court worker stated that Mother would need to fully engage in services, and not fail to follow through as in past dependencies. A six-month review was set for October 12, 2004.

A status review report was prepared by the current social worker, Ms. Beckwith, for the court hearing on October 12, 2004. Soon after Amanda was placed with them, the foster parents became concerned because Amanda continued having falls and experienced general clumsiness. Believing these could be symptoms of seizure activity,

the foster parents made appointments with Amanda's pediatrician, Dr. Nelson. He ordered EEGs and referred Amanda to CHO. CHO diagnosed Amanda with seizure activity, which resulted in a major re-evaluation of her condition and required medical and support services.

On July 6, 2004, during a therapy session, Amanda told her therapist, Loretta Silvagni, "my daddy [N.] made me suck his dinky-dink." When the therapist asked her what that was, she reported that Amanda pointed to her crotch area. Amanda stated her father had taken her to the bathroom while her mother was in the front room and that her mother did not know about this. When asked when this had happened, Amanda replied, "awhile ago."

On July 8, CPS worker Maline interviewed Amanda. Amanda admitted she had seen her father's "dinky-dink" while she was in the bathroom with him. Initially, she denied the allegations of oral sex, but when asked whether she had told her therapist the truth, Amanda said she had told the truth but did not want to tell Maline. Social worker Beckwith came into the room, and Maline began to explain the allegations to her. Amanda put both hands up and asked Maline not to tell Beckwith. Maline again asked Amanda if she had told the truth. Amanda said she had, but was not ready to talk about it. Amanda continued to draw pictures. Later, Maline again asked Amanda if she had told her therapist the truth, and Amanda confirmed that she had. Maline asked Amanda if she was embarrassed to tell Maline what had happened, and Amanda said that she was. Maline asked Amanda if she had been alone in the bathroom with her father, which Amanda had initially denied, but later she admitted that she had been and that that was when she saw his "dinky-dink."

After the interview on July 8, Beckwith drove Amanda home. Once inside her foster home, Amanda disclosed to Beckwith (with one of her foster parents present) that she had sucked her father's "dinky dink" in the bathroom.

In a subsequent therapy session with Loretta Silvagni on July 20, 2004, Amanda made additional disclosures. Silvagni reported: "She stated that her biological father [N.] had also done other things to her. She said that he also 'licked and sucked my

whochi kuchi." When I asked what that was, she pointed to her crotch and her rear end. When I asked how many times this happened, she said it happened once on the date that she had reported before."

On July 27, another CPS worker, Lucy Bueno, attempted to interview Amanda in her foster home. Amanda wanted to play before she would answer any questions. This was permitted until the foster mother redirected Amanda after some play time, and encouraged her to "tell the truth." Amanda "very reluctantly" disclosed to Bueno, a stranger, that she had sucked her father's "dinky-dink" and that he had sucked her "'kootchi' (she pointed to her groin area while she said this)." Amanda said the two statements were "real" and that it happened one time.

Amanda made a further statement to her therapist on August 17. The therapist reported to social worker Beckwith that Amanda stated that "my dad [N.] did other things to me. He took his dinky dink and rubbed it all over my body and he stuck it in my whochi kuchi pointing to her crotch area. Stated this happened when she was three years old. It happened once in her room and another time in her parents' bedroom. Stated her mother came into the room once but then left. Stated this occurred after the original incident she had told me about on July 6, 2004."

On August 25, 2004, CPS filed a supplemental petition pursuant to section 388 that contained the sexual abuse allegations and sought to modify the parents' visitation rights.

Visitation with both parents was temporarily suspended based upon the allegations, pending an assessment of Father regarding the need for sexual abuse therapy and a referral for Mother to a non-offending parents group. CPS wanted Dr. Barrie Glenn to conduct Father's evaluation, but Father objected and proposed his own evaluator. CPS opposed Father's choice based on the individual's lack of qualifications. Ultimately, it was agreed that the sexual abuse assessment would be done by Dr. Blake Carmichael at UC Davis. Meanwhile, Mother's supervised visitation resumed on September 24. Father's supervised visitation was restored by court order on October 12.

A contested jurisdictional hearing on the supplemental petition was set for September 16, 2004. The hearing was continued a number of times while the parties were attempting to reach agreement on Father's evaluations and while CPS was working on finalizing the arrangements with Dr. Carmichael.

In addition, because of the upset caused by the sexual abuse disclosures, there had not yet been a hearing on the six-month status review for the parents. On February 17, 2005, the court set the six-month review for March 3, and the twelve-month review hearing for April 7.

The six-month review was held on March 3, 2005. CPS social worker Beckwith submitted a status review report, dated October 12, 2004, and an addendum report dated March 3, 2005. At the time the status review report was prepared, Mother's individual therapy with Nancy Waldeck "appear[ed] to be back on track," family therapy had not yet begun due to the changed circumstances of the case, and it was expected that Mother would soon begin attending non-offending parent therapy sessions so she could learn to keep Amanda safe from sexual abuse. Father and the individual therapist had yet to begin therapy sessions and a hand-written note dated December 21, 2004, indicated that Dr. Carmichael at UC Davis would perform the sexual abuse assessment. The status review report indicated that although both parents were making progress on the case plan, CPS had concerns about the lack of follow through on medical care and speech, occupational and physical therapy that had been recommended for Amanda. CPS also expressed "grave concerns about the sexual abuse of Amanda."

The addendum report stated that Father had begun individual therapy sessions in November 2004 and had had approximately eight sessions as of March 3, 2005, and that Mother had begun attending non-offending parent therapy. There had been substantial delays in completing Father's sexual abuse assessment, but the CPS worker had received assurance from Dr. Carmichael that a written report would be completed by the end of March 2005. The assessment and evaluation presented in the October 12, 2004, report remained unchanged.

The court found that reasonable services had been provided in the first six months of the case, and that returning Amanda to her parents would create a substantial risk of detriment. The court ordered that services should be continued for the parents, and set a contest date of April 7, 2005, for the supplemental petition. No appeal was taken from the court's findings and orders, and they are now final.

On April 7, the court did not hold a hearing on the supplemental petition. Rather, the matter was continued to May 26, 2005, for a 12-month permanency review hearing.

Dr. Carmichael issued his report on April 11, 2005. It was submitted to the court attached to the interim review report prepared by CPS social worker Beckwith for the May 26 hearing.[3] At that hearing, both parents requested a contest on the recommendations to terminate services and refer the case for permanency planning. That hearing was set for July 19, 2005.

The May 26 interim review report indicated that although the parents had complied with a number of the requirements of their respective case plans, such as complying with court orders, meeting with the social worker, signing releases of information, maintaining appropriate housing, cooperating with the COPE Family Center home visiting program, and testing negative for drugs, neither parent had followed up with individual therapy on a consistent basis. Mother had attended only 10 of 33 scheduled individual therapy sessions with Nancy Waldeck since July 2004. Waldeck reported that most of the 23 missed sessions were cancelled because of transportation problems or Father's conflicting appointments, but approximately 30 percent were "no-shows." Mother testified that the reason she stopped attending therapy sessions with Waldeck was because the social worker told her CPS did not want Amanda returned to her, so she "figured there's no reason to keep going." Mother testified that she thought the social worker had told her that in May 2005, at around the time the review report was

[3] The May 26, 2005, interim review report stated that it was intended to replace a previous addendum report dated April 7, 2005. At the July 19 hearing, both reports were filed, but it appears that only the May 26 report was admitted into evidence.

written. The social worker testified that she spoke with Mother about her participation in therapy, and that Mother told her she had "lost trust with the therapist" after reading the report.

Mother also attended approximately four out of ten non-offending parent therapy sessions with Tracy Blunt of Therapy Associates. Blunt had contacted the social worker to report that Mother had missed a number of appointments and she was not sure if Mother was going to continue the work. Mother testified that she stopped seeing Blunt at around the same time and for the same reason she had stopped seeing Waldeck.

The interim review report also indicated that family therapy had not yet begun because the parents had made so little progress in individual therapy and because of the changed circumstances surrounding the sexual abuse allegations.

Mother testified in response to questions from her attorney regarding an allegation that she herself had committed a sexual act on Amanda. Mother identified the conduct as "[t]he tickling of [Amanda's] coochie." Mother stated that she often would tickle Amanda "in the groin area," touching her diaper and inner thigh, because Amanda would not want to be still for a diaper change, and that this would make Amanda laugh. She also testified that she had learned a lot from the parenting classes she had taken, and that she was willing to return to therapy with a different therapist.

Dr. Carmichael also testified at the hearing. He had had interviewed Nancy Waldeck, Mother's individual therapist. Waldeck described Mother as "emotionally flat," and said "she doesn't seem to react to things, even if she is talking about something dramatic." Even though Waldeck had provided individual therapy for about nine months, she did not feel that she had established a "collaborative relationship" with Mother, due in part to the infrequency of Mother's attendance. She believed that Mother would not make much progress on issues involved with identifying and responding appropriately to interpersonal situations, including those with Father and Amanda, because of poor attendance and because Mother "gives the impression that she thinks nothing is wrong, and she has done nothing wrong." Waldeck told Dr. Carmichael that she believed

Mother "would have a difficult time recognizing distress in herself and in others," which could lead her to "not respond[] very well to the needs of her daughter."

Dr. Carmichael also interviewed Tracy Blunt, Mother's non-offending partner therapist. Blunt also wanted to help Mother respond appropriately to interpersonal situations involving possible boundary violations in the family or threats to Amanda's safety or well-being. She related to Dr. Carmichael that Mother's response to these concerns was that "there's no problem," and that Mother could provide no examples of things that have gone wrong in the family. Blunt said Mother completely denied the possibility that Amanda was molested, and that Mother's reason for coming to the treatment sessions was to jump through hoops to get a requirement fulfilled.

Dr. Carmichael's interpretation of the Personality Assessment Inventory for Mother tended to confirm the conclusion that Mother minimizes problems in her life or denies that any exist. He stated in his report that the elevated score on the Treatment Rejection scale indicates her "apparent lack of interest and motivation for seeking treatment." Dr. Carmichael also administered the Child Abuse Potential Inventory to Mother. However, her responses "resulted in an elevation on the 'Lie' validity scales," possibly because she "attempted to misrepresent herself in an overly positive light." This elevation invalidated the results of the test.

Dr. Carmichael interviewed Mother and Father on two occasions. The first time, they described their relationship as "'getting along alright [sic],'" with "'no real fights or arguments.'" During the second interview, however, "they revealed that there had been a significant amount of domestic violence, including many where Amanda directly observed them." The police had arrested both parents on domestic violence charges on at least two separate occasions, and one incident had involved Father threatening to kill Mother. Nonetheless, Mother "felt certain that Amanda 'didn't really see any of it.'"

Dr. Carmichael observed Amanda in a play session with her parents. She ran to both parents and hugged them, smiling and appearing happy. During the evaluation, her parents followed Amanda around the room, pointing out different toys and games and encouraging her to find something the family could do together. Amanda sought the

attention of both parents equally, was "very considerate" and polite, and appeared "very relaxed."

Dr. Carmichael interviewed Amanda alone and with her parents. During the solo interview, in response to Dr. Carmichael's question about what her parents did together, Amanda "volunteered that 'they fought. Daddy kicked Mommy, and Mommy punched Daddy.' Amanda recalled that she 'felt sad and cried with (her) blanket,' when she saw her parents fight on more than one occasion." When Dr. Carmichael asked about "more specific interactions" with her father, Amanda "started a discussion about 'the licking of the coochie by the licking tongue,'" including repeating the allegation that her father had her "'lick his dinky-dink.'"

Dr. Carmichael also interviewed Amanda's foster parents, B.L. and P.H. At the time of the interview, Amanda had been living with them for about one year. Their initial concerns had included frequent tantrums when they set limits on Amanda or she did not get what she wanted, poor toileting, and limited speech. The foster parents reported that the tantrums decreased considerably after several weeks of consistent limit-setting, and that the tantrums returned and defiant behavior escalated upon Amanda's return from visits with her parents. The foster parents related the behavior that led them to believe that Amanda was experiencing seizures and to consult with a neurologist. They reported that upon diagnosis and treatment, they saw "'an immediate improvement.'" The foster parents also related concerns about Amanda's inappropriate sexual behavior, such as her trying to open-mouth kiss one of the foster parents and asking to "'play that game,' subsequently placing her head in [B.L.]'s groin area." When B.L. expressed surprise and confusion because they had never played such a game, "Amanda suggested that the game 'was with Dad.'"

At the hearing, Dr. Carmichael testified that Amanda "perceived her relationship with her parents as nonsupportive and threatening." Although she loved her parents and loved being with them, she was fearful of returning to her parents' care and stated that she did not want to go back. Dr. Carmichael stated that during this time in Amanda's life when she is establishing trust and predictability in her caregivers, a situation involving a

lot of inconsistency and threatening situations would be disruptive to her sense of stability. Although he could not conclude that the sexual abuse did nor did not happen, because he was not present at the time, Dr. Carmichael stated that the allegations themselves reflected a significant strain on the relationship between Amanda and her father. In addition, Amanda perceived that her Mother could not or was unwilling to protect her or to acknowledge the abuse. Dr. Carmichael testified under cross-examination that Amanda enjoyed visits with her parents and looked forward to them. He also stated that allegations of sexual abuse against a parent are quite rare, on the order of one percent in some instances, and up to eight or nine percent in other instances.

At the hearing, Dr. Carmichael recommended against returning Amanda to her parents. His report included the recommendation that Amanda remain in her current placement which supports her efforts to express her fears and insecurities, and provides her with the stability and structure she needs. By contrast, Amanda's parents had not been able to "implement adequate parenting strategies," such as setting limits and providing consistent consequences for inappropriate behavior, to meet Amanda's needs.

At the conclusion of the contested hearing, at which both Mother and Father testified, the court found that CPS had provided reasonable services, and that the parents had failed to participate regularly in those services and to make substantial progress in their respective plans. The court determined not to extend services out to 18 months because it found "no substantial probability" that Amanda could be returned to her parents in the time remaining.[4] Accordingly, the court terminated services as to both parents and set the section 366.26 hearing for November 22, 2005.

On July 25, 2005, Mother filed a timely notice of intent to file a writ petition pursuant to rule 38.

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[4] Amanda was removed from parental custody on February 25, 2004. The 18 months would have expired on August 25, 2005. (§ 361.5, subd. (a).)

III. DISCUSSION

A. *Reasonable Reunification Services*

At a 12-month status review hearing, the juvenile court must determine "whether reasonable services that were designed to aid the parent or legal guardian to overcome the problems that led to the initial removal and continued custody of the child have been provided or offered to the parent or legal guardian." (§ 366.21, subd. (f).) Before the court may set a hearing pursuant to section 366.26, it must find "clear and convincing evidence that reasonable services [were] provided or offered to the parents or legal guardians." (§ 366.21, subd. (g)(2).)

The juvenile court made the required finding in its order of July 19, 2005. Mother contends the finding is not supported by the evidence. Specifically, Mother argues CPS hindered her efforts to fully comply with her case plan, citing evidence that CPS (1) discouraged her from attending therapy by telling her that she would not get her child back, (2) failed to contact her when she discontinued therapy, (3) discontinued COPE sessions, (4) did not provide family therapy, (5) did nothing to assist with Mother's problems with transportation to attend therapy, (6) failed to stay in communication with Mother, and (7) did not hold meetings twice per month with Mother to assess or discuss her progress with her.

Initially, we find that, except for the specific complaint regarding the social worker's statement that she did not want to return Amanda to her parents, Mother waived this issue on appeal by failing to object below. "Many dependency cases have held that a parent's failure to object or raise certain issues in the juvenile court prevents the parent from presenting the issue to the appellate court. [Citations.] As some of these courts have noted, any other rule would permit a party to trifle with the courts. The party could deliberately stand by in silence and thereby permit the proceedings to reach a conclusion in which the party could acquiesce if favorable and avoid if unfavorable. [Citations.]" (*In re Lorenzo C.* (1997) 54 Cal.App.4th 1330, 1338-1339, and cases cited therein; see also *In re Jesse W.* (2001) 93 Cal.App.4th 349, 355.) This policy applies here because neither the court nor CPS was put on notice that reunification services were inadequate in

any way except with regard to Mother's motivation to continue therapy. We find no indication in the record that these contentions were raised in the juvenile court and, thus, we need not consider them further. (*In re Aaron B.* (1996) 46 Cal.App.4th 843, 846.)

With respect to the objection that CPS led Mother to believe there was no point in continuing with therapy, we find that the reunification services provided to Mother were reasonable.

We review the juvenile court's finding that reasonable services were provided to determine if it is supported by substantial evidence. (*Katie V. v. Superior Court* (2005) 130 Cal.App.4th 586, 598; *In re Shaundra L.* (1995) 33 Cal.App.4th 303, 316.) When the sufficiency of the evidence to support a finding or order is challenged on appeal, even where the standard of proof in the trial court is clear and convincing, the reviewing court must determine if there is any substantial evidence--that is, evidence which is reasonable, credible and of solid value--to support the conclusion of the trier of fact. (*In re Angelia P.* (1981) 28 Cal.3d 908, 924; *In re Jason L.* (1990) 222 Cal.App.3d 1206, 1214.) In making this determination, we recognize that all conflicts are to be resolved in favor of the prevailing party and that issues of fact and credibility are questions for the trier of fact. (*In re Jason L.*, *supra*, 222 Cal.App.3d at p. 1214; *In re Steve W.* (1990) 217 Cal.App.3d 10, 16.) The reviewing court may not reweigh the evidence when assessing the sufficiency of the evidence. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318-319.) The appellant has the burden of demonstrating that the juvenile court's finding or order is not supported by substantial evidence. (*In re Geoffrey G.* (1979) 98 Cal.App.3d 412, 420.)

Further, in reviewing the reasonableness of the reunification services, we "recognize that in most cases more services might have been provided, and the services which are provided are often imperfect. The standard is not whether the services provided were the best that might have been provided, but whether they were reasonable under the circumstances." (*Elijah R. v. Superior Court* (1998) 66 Cal.App.4th 965, 969.) A court-ordered reunification plan must be tailored to fit the circumstances of each family and designed to eliminate the conditions that led to the juvenile court's jurisdictional finding. (*In re Dino E.* (1992) 6 Cal.App.4th 1768, 1777.)

The record in this case reveals that the services provided were reasonable under the circumstances. Mother's original case plan was tailored to address parenting issues, domestic violence issues, and her history of substance abuse. The plan was modified upon revelation of sexual abuse allegations to include therapy relevant to that circumstance. The services were tailored to fit the circumstances and to eliminate the conditions that led to the dependency. (See *In re Jasmon O*. (1994) 8 Cal.4th 398, 424-425; *In re Christina L*. (1992) 3 Cal.App.4th 404, 417.) Although the social worker's recommendation in the report prepared for the May 26 hearing was discouraging, Mother had already received over 12 months of services when she learned of it. In that report, the social worker observed that Mother had failed to regularly attend individual therapy and non-offending parent therapy, which precluded making any significant progress on issues of denial and minimization of the family's problems. Thus, it appears that the problem is not that the services offered were inadequate or that CPS hindered Mother's progress, but that Mother failed to utilize and/or benefit from the services provided. "It is . . . well established that '[r]eunification services are voluntary, and cannot be forced on an unwilling or indifferent parent.'" (*In re Christina L*., *supra*, 3 Cal.App.4th at p. 414.) Regardless of the fact that Mother discontinued all therapy after reading the report, there is no evidence suggesting that, absent the social worker's recommendation, Mother would have made more effort with therapy in the two months left before the July 19 contested 12-month hearing than she did in the preceding 12 months.

B. *Substantial Risk of Detriment*

In addition to determining whether reasonable services were provided, at a 12-month review hearing, the juvenile court must also "order the return of the child to the physical custody of his or her parent or legal guardian unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The social worker shall have the burden of establishing that detriment. . . . The failure of the parent or legal guardian to participate

regularly and make substantive progress in court-ordered treatment programs shall be prima facie evidence that return would be detrimental." (§ 366.21, subd. (f).)

Here, the juvenile court found that Mother had failed to "participate regularly and make substantial progress" in her case plan, and, by a preponderance of the evidence, that returning Amanda to Mother "would create a substantial risk of detriment" to Amanda. The court cited the Assessment/Evaluation section of the social worker's report as the factual basis for its findings. Mother argues these findings were erroneous because she was in full or substantial compliance with all the requirements of her case plan. Once again, our review is for substantial evidence. (*In re Kristin W.* (1990) 222 Cal.App.3d 234, 251.)

The social worker's May 26 interim review report acknowledges that Mother had met several of the requirements of her case plan. Mother had complied with court orders to the best of her ability; she had been willing to meet with the social worker at least twice per month; she had been willing to sign all releases of information; she had maintained appropriate housing; she had cooperated with the COPE family visiting program; and she had consistently tested negative for drugs and alcohol.

However, the requirements that Mother engage in individual therapy, non-offending parent therapy, and family therapy were critical aspects of her plan. Mother's participation in individual and non-offending parent therapy was marginal and unenthusiastic. She consistently minimized or denied the issues that led to Amanda's removal and the filing of the amended petition: medical neglect, inadequate supervision and discipline, domestic violence between herself and Father that was witnessed by Amanda, and the allegations of sexual abuse by Father. Mother's failure to recognize anything inappropriate about her own experience having had sex at the age of seven "with an 11 year-old boy so that she could ride his bike" was also a concern noted in the report. Mother referred to this incident not as sexual abuse, but as "her 'first sexual encounter.'" The report also outlines the family's history of minimization, including the prior dependency cases of Amanda's two half-siblings who were removed from Mother's

care and are in permanent plan because of Mother's inability to complete and benefit from services designed to help her appropriately parent those children.

We have no trouble concluding that such facts constitute evidence for the juvenile court to conclude that Mother's progress was not sufficiently substantive, and that consequently the return of Amanda to her care would create a substantial risk of detriment to Amanda's safety, protection, and well-being.

C. *No Substantial Probability of Return*

If, at the 12-month review hearing, the court determines the child cannot be returned to his or her parent's custody, it has three options. The first is to "[c]ontinue the case for up to six months for a permanency review hearing, provided that the hearing shall occur within 18 months of the date the child was originally taken from the physical custody of his or her parent or legal guardian." (§ 366.21, subd. (g)(1).) The court may select this option if it finds "there is a substantial probability that the child will be returned to the physical custody of his or her parent or legal guardian and safely maintained in the home within the extended period of time . . . ." (*Ibid*.)[5] In order to make this finding, the court must also find all of the following: "(A) That the parent or legal guardian has consistently and regularly contacted and visited with the child. [¶] (B) That the parent or legal guardian has made significant progress in resolving problems that led to the child's removal from the home. [¶] (C) The parent or legal guardian has demonstrated the capacity and ability both to complete the objectives of his or her treatment plan and to provide for the child's safety, protection, physical and emotional well-being, and special needs." (*Ibid*.) If the court selects this option, "court-ordered services may be extended up to a maximum time period not to exceed 18 months after the date the child was originally removed from physical custody of his or her parent . . . ." (§ 361.5, subd. (a).)

[5] The court may also select this option if it finds that reasonable services were not provided to the parent. (§ 366.21, subd. (g)(1).) As previously discussed, however, CPS provided reasonable services in this case.

In this case, the trial court found there was no substantial probability that Amanda would be returned to Mother's physical custody and ordered that services be terminated and a hearing pursuant to section 366.26 be held. Mother contends the finding was erroneous and that the evidence established that all the necessary elements support a substantial probability that Amanda would be returned to her.

Our inquiry, however, is not whether the evidence presented would have supported a finding in the juvenile court that there was a substantial probability that Amanda would be returned to Mother within the statutory 18-month period. We properly consider only whether substantial evidence supports the finding the court did make, which was that there was not such a substantial probability. (See *In re Sarah F*. (1987) 191 Cal.App.3d 398, 405.)

Amanda was originally removed from her parents' custody on February 25, 2004. Therefore, the statutory 18-month period expired on August 25, 2005. (See § 361.5, subd. (a).) Thus, by the time of its order of July 19, 2005, the juvenile court could have ordered fewer than six weeks of additional services. We conclude the evidence discussed above, in support of the court's finding regarding a substantial risk of detriment, also constitutes substantial evidence to support the court's determination that there was no substantial probability that Amanda could safely be returned to Mother in the time remaining.

IV. DISPOSITION

The petition for extraordinary writ is denied on the merits. (See Cal. Const., art. VI, § 14; *Kowis v. Howard* (1992) 3 Cal.4th 888, 894; *Bay Development, Ltd. v. Superior Court* (1990) 50 Cal.3d 1012, 1024.) Our decision is final in this court immediately. (Rule 24(b)(3).)

_____
Haerle, Acting P.J.

We concur:

_____
Lambden, J.

_____
Ruvolo, J.