

Not Officially Published
(Cal. Rules of Court, Rules 8.1105 and 8.1110, 8.1115)
2005 WL 348173
Only the Westlaw citation is currently available.

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Court of Appeal, Fourth District, Division 2, California.

GINA J., Petitioner,
v.
The SUPERIOR COURT of the County
of San Bernardino, Respondent;
San Bernardino County Department of
Children's Services, Real Party in Interest.

No. E036743. | (Super.Ct.Nos. J-188722,
J-188724 & J-195946). | Feb. 14, 2005.

ORIGINAL PROCEEDINGS; petition for extraordinary
writ. [A. Rex Victor](#), Judge. Petition denied with directions.

Attorneys and Law Firms

Law Offices of Sally Anne Cox and [Sally Anne Cox](#) for
petitioner.

No appearance for respondent.

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Opinion

OPINION

[GAUT](#), J.

1. Introduction

*1 In this petition for extraordinary writ under [California Rules of Court, rules 38 and 38.1](#) (formerly rule 39.1B), mother Gina J. challenges the juvenile court's order setting the [Welfare and Institutions Code section 366.26](#) hearing.¹ Mother claims that insufficient evidence supported the juvenile court's jurisdictional findings in regards to her son Adam J. and the findings of detriment under section 366.21, subdivision (f) in regards to her other children, Rodney

M. and Hannah C. Because the record reveals substantial evidence to support the court's findings, we reject mother's claims and deny her petition.

¹ All further statutory references will be to the Welfare and Institutions Code unless otherwise stated.

2. Factual and Procedural History

On May 25, 2003, a neighbor found mother's two children, Rodney M. and Hannah K., wandering around the neighborhood almost naked and without adult supervision. Three-year-old Rodney was wearing only a diaper and two-year-old Hannah was wearing a sunsuit. A deputy sheriff arrived on the scene and discovered mother sleeping in her home. Inside the home, the deputy encountered five other adults and found drug paraphernalia and plastic containers with possible methamphetamine residue. The neighbor informed the deputy that mother had allowed the children to wander the streets on two prior occasions. The San Bernardino County Department of Children's Services also responded to the call and removed the children. DCS initially placed the children in shelter care and ultimately placed them with their respective grandparents.

On May 28, 2003, DCS filed dependency petitions under section 300, subdivisions (b) and (g), on behalf of Rodney and Hannah. DCS alleged that mother neglected her children, as indicated by the current incident, and had a history of child neglect. DCS also alleged that mother was incarcerated and had a drug problem, both of which prevented her from being able to provide the children with adequate care. DCS reported that it had filed a previous petition in 2000 on the grounds of neglect and drug abuse. After making the appropriate findings, the court detained the children under the petitions.

At the pretrial settlement conference on July 11, 2003, mother signed a waiver of rights and the court adopted true finding on the allegations of neglect and drug abuse. The court made no finding on the allegation that mother was incarcerated. As recommended by the social worker, the court ordered mother to participate in reunification services.

After the settlement conference, mother enrolled in an inpatient drug treatment program. Mother, however, failed to complete the program. On September 10, 2003, the social worker had mother tested for drugs by applying a drug patch. Mother later informed the social worker that the patch had come off. In January of 2004, the social worker told mother to take a urine test, which mother failed to do.

Later that month, mother enrolled in another inpatient drug treatment program, where she began to show progress by participating in parenting classes, drug treatment, and drug testing. Consequently, at the six-month review hearing, the court ordered DCS to provide mother with six additional months of services. Mother completed the program in April of 2004.

*2 In June of 2004, the social worker provided mother with another drug patch test. The results of the test were positive for methamphetamines.

That same month, mother gave birth to another son, Adam J. DCS filed a petition for Adam under section 300, subdivisions (b) and (j). DCS alleged that mother was unable to provide the child with appropriate care as the result of her drug problem and that Adam's siblings had been removed for the same reason. As ordered by the court, upon locating the child, DCS removed him from mother's custody and placed him in foster care.

Because mother had relapsed into drug use, the social worker recommended the termination of reunification services and no additional services in Adam's case.

The court conducted a combined hearing for all three cases, which ended on October 4, 2004. During the section 366.21, subdivision (f), hearing for Rodney and Hannah, the court found that mother had failed to complete her court-ordered treatment plan and terminated her reunification services. In Adam's jurisdictional/dispositional hearing, the court found that the return of Adam into mother's custody would create a substantial risk of detriment. As recommended by the social worker, the court denied reunification services under section 361.5, subdivision (b). The court then scheduled a hearing under [section 366.26](#) for all three children.

3. Drug Problem

Mother claims there was insufficient evidence that she had relapsed into her drug habit to support the court's findings and orders on October 4, 2004.

Each of the findings is subject to review under the substantial evidence test. (*In re Angelique C.* (2003) 113 Cal.App.4th 509, 519 (bypass finding under § 361.5, subd. (b)); *In re James C.* (2002) 104 Cal.App.4th 470, 482 (jurisdictional findings under § 300); *Angela S. v. Superior Court* (1995) 36 Cal.App.4th 758, 763 (detriment finding under § 366.21, subd. (f).) In applying this standard, we consider the entire

record, resolving all conflicts in favor of upholding the ruling, to determine whether it contains substantial evidence. (*Constance K. v. Superior Court* (1998) 61 Cal.App.4th 689, 705; *In re John V.* (1992) 5 Cal.App.4th 1201, 1212.) If supported by substantial evidence, the court's ruling will not be disturbed on appeal absent a clear showing that the court exercised its discretion in an arbitrary, capricious, or patently absurd manner. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318-319; *Constance K.*, *supra*, at p. 705.)

The record discloses substantial evidence to show that mother has failed to resolve her drug problem. In a prior dependency proceeding beginning in 2000, DCS had removed Rodney from mother's care on the grounds of neglect and drug abuse. During the initial incident leading to the child's removal, an officer found drugs and drug paraphernalia in mother's bedroom. After mother completed her drug treatment program and other service requirements, the court returned Rodney to mother's custody. About a year later, DCS initiated the current dependency proceedings after Rodney and Hannah were found wandering the streets alone. As before, the officer found drug paraphernalia with methamphetamine residue in mother's bedroom. DCS again provided mother with drug treatment services.

*3 Early in the reunification period, mother resisted treatment. She repeatedly failed to submit to drug testing. After enrolling in a drug treatment program at St. John of God, the staff discharged her one month later for walking out of the inpatient facility. Mother also was discharged from a second drug treatment program as a result of her failure to attend.

Although mother completed the New House program, the social worker noted that the program was one designed to offer a sober-living environment, rather than one designed to provide intensive inpatient treatment. Nevertheless, even if the New House program was adequate, the record shows that mother's successful completion of the program failed to resolve her drug dependency. In June of 2004, mother tested positive for methamphetamine during a drug patch test.

The crux of mother's challenge, however, is that there was insufficient evidence to establish the reliability of the drug patch test results. Mother specifically argues that DCS failed to show a proper chain of title. The social worker could not explain the delay between June 3, 2004, when the sample was taken, and June 15, 2004, when the lab received the sample. Based on the delay, mother's investigator conducted a hair follicle test to refute the drug patch test results. The hair follicle test showed no signs of recent drug use.

Hair follicle tests present their own problems. In its product manual, Pharmchek, the drug patch manufacturer, states that hair testing has not obtained approval from the Food and Drug Administration. Pharmchek's manual also states that, hair testing may detect chronic drug use, but fails to detect occasional use. Hair washing and treatment also may affect the test results. There was substantial evidence, therefore, to reject the hair test results.

The court, therefore, had no reason to doubt the reliability of the drug patch test results. As noted by the court, nothing in the record showed any tampering between the time DCS sent the drug patch sample and the time the lab received it. The tamperproof seal remained intact upon receipt. The court, therefore, reasonably found the drug patch test results reliable and, hence, that mother used methamphetamine in June of 2004, about four months before the final review hearing.

The initial finding that mother had relapsed into drug use provides ample justification for the court's findings under sections 300 and 366.21, subdivision (f). As to the finding of detriment under section 366.21, subdivision (f), mother's recent drug use indicates that she continues to have a drug problem that compromises her ability to provide Rodney and Hannah with appropriate care and supervision. (See *Angela S. v. Superior Court, supra*, 36 Cal.App.4th at p. 763.) The court, therefore, properly found that the return of the children into parental custody would create a substantial risk of detriment to the safety, protection, or emotional or physical well-being of the children. (§§ 366.21, subd. (f).)

*4 As to the court's jurisdictional findings pertaining to the allegations under section 300 in Adam's petition, the court properly found that mother's unresolved drug problem also negatively impacted her ability to parent her newest child. (§ 300, subd. (b).) The court properly found that there was a substantial risk that Adam would be abused or neglected because his siblings had been removed as a result of mother's drug problem. (§ 300, subd. (j).) Based on mother's repeated failure to provide her children with adequate care and supervision as a result of her drug problem and poor parenting skills, the court reasonably found that these unresolved problems continued to present a risk of danger to all the children, including Adam.

Mother also challenges the court's finding that DCS made reasonable efforts to prevent or eliminate the need for removal, as required under section 361, subdivision (c). Mother argues that no reasonable efforts were made because no services were provided. Based on mother's history of

neglect, however, the court properly concluded that there were no alternatives to removal. Furthermore, mother was not entitled to services under section 361.5, subdivision (b)(10) and (13), because of her failure to reunify with Adam's siblings and her prior resistance to drug treatment. The record shows that mother received 34 to 38 months of reunification services in the past four years, yet failed to resolve the problems leading to the children's removal. Under such circumstances, it would have been fruitless to provide additional services. (See *Letitia V. v. Superior Court (2000)* 81 Cal.App.4th 1009, 1015-1016.)

Also among mother's list of complaints is a vague claim the court erred in adopting the social worker's findings. Mother, however, fails to identify which findings she believes were erroneous. She simply cites pages five through seven of the social worker's addendum report in Adam's case. The report lists 18 different findings, consisting mostly of items that would not provide any cause for controversy. In any event, this court is not required to speculate as to what mother's arguments are and what authority she could have provided to support them. (*In re Daniel M. (2003)* 110 Cal.App.4th 703, 708.)

We conclude that, in Adam's case, substantial evidence supported the court's finding of jurisdiction under section 300, subdivisions (b) and (j). We also conclude that, in Rodney and Hannah's case, substantial evidence supported the court's finding of detriment under section 366.21, subdivision (f).

5. Minute Order

Mother claims the juvenile court erred in finding Adam's removal necessary because of mother's incarceration. The court made no such finding. The minute order, however, incorrectly includes the following statement: The "[c]ourt finds it detrimental to place with mother ... due to incarceration."

An inaccurate minute order must give way to the court's actual pronouncement of judgment as recorded in the reporter's transcript. (*In re Jacob M. (1989)* 210 Cal.App.3d 1178, 1179.) Adam's petition did not include an allegation concerning mother's incarceration. Even in Rodney and Hannah's case, the court did not sustain this particular allegation because mother had been released from jail by the time the court made its jurisdictional findings. During the hearing on October 4, 2004, the court declared jurisdiction over Adam based on the allegations concerning mother's drug problem. The minute order, therefore, must be corrected to

reflect the court's actual decision. (*In re Emilio C.* (2004) 116 Cal.App.4th 1058, 1068.)

6. Disposition

*5 The stay, which was imposed on December 28, 2004, is lifted. Mother's petition is denied. The case, however,

is remanded and the juvenile court is directed to correct the minute order by deleting the reference to mother's incarceration.

We concur: RAMIREZ, P.J., and KING, J.

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