Filed 10/3/06

CERTIFIED FOR PARTIAL PUBLICATION[*]

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re TABITHA W., a Person Coming Under the Juvenile Court Law.	
RIVERSIDE COUNTY DEPARTMENT OF CHILDREN'S SERVICES, Plaintiff and Respondent, v. ROYCE W. et al, Defendants and Appellants.	E039935 (Super.Ct.No. RIJ111217)
CLAUDIA W. et al., Petitioners, v. THE SUPERIOR COURT OF RIVERSIDE COUNTY, Respondent; RIVERSIDE COUNTY DEPARTMENT OF PUBLIC SOCIAL SERVICES,	E039796 (Super.Ct.No. RIJ111217) OPINION

[*] Pursuant to California Rules of Court, rules 976(b) and 976.1, this opinion is certified for publication with the exception of parts I and III.B.

Real Party in Interest.

Appeal and petition for writ of mandate from the Superior Court of Riverside County. Becky Dugan, Judge. Appeal dismissed. Petition for writ of mandate denied.

Diana W. Prince under appointment by the Court of Appeal for Defendant, Appellant, and Petitioner Claudia W.

Christopher R. Booth under appointment by the Court of Appeal for Defendant, Appellant, and Petitioner Royce W.

Joe S. Rank, County Counsel, and Julie Koons Jarvi, Deputy County Counsel, for Plaintiff and Respondent and Real Party in Interest.

No appearance for Respondent Superior Court of Riverside County.

Valerie N. Lankford, under appointment by the Court of Appeal, for Minors.

Claudia W. and Royce W. each appeal the juvenile court's decision to deny them visitation with Tabitha W. and T.W.[1] They also each petition for a writ of mandate to overturn certain orders of the juvenile court. Claudia seeks reversal of the order denying her reunification services and the order denying her visitation on the grounds that there

[1] The family members will hereafter be referred to simply by their first names, not out of any familiarity or disrespect, but to ease the burden on the reader. (See, e.g., *In re Marriage of Schaffer* (1999) 69 Cal.App.4th 801, 803, fn. 2.)

was no substantial evidence to support the orders and that the juvenile court failed to make the required express findings. Royce seeks reversal of the order taking jurisdiction, the order removing T.W. from his custody, the order denying reunification services and the order denying him visitation on the grounds that the juvenile court could not make true findings as to allegations involving Tabitha since he is only her stepfather, substantial evidence did not support the findings, and the juvenile court failed to make the required express findings. We dismiss the appeals as improperly taken from an order made at a hearing in which a Welfare and Institutions Code section 366.26 hearing was set. (Welf. & Inst. Code, § 366.26, subd. (*l*)(1).)[2] Finding that the juvenile court made the required findings, which are supported by substantial evidence, and did not abuse its discretion, we deny the petitions for writ of mandate.

I

FACTS

The Riverside County Department of Public Social Services (DPSS) became involved with the family on December 11, 2005, when law enforcement responded to a report that the sibling of the instant children, J.W. was missing. J.W., then age 5, was subsequently found deceased in a neighbor's swimming pool. Police requested DPSS to respond to the family home. A detective reported that J.W. had been diagnosed with SOTO's syndrome, which he believed to be a form of gigantism, and had a history of escaping from the home. The child had been developmentally impeded. Blood was

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[2] All further statutory references are to the Welfare and Institutions Code unless

found in J.W.'s anus, which could have resulted from the drowning, but anal tearing was also possibly present. The detective also informed the social worker that Tabitha had a large bruise on the left side of her head that the parents could not explain, other than stating that possibly her deceased brother had done it, and for which she had received no medical treatment.

The social worker observed the home to be "unkempt and filthy" with the kitchen covered in dirty dishes and trash, clothing and debris everywhere, and a foul odor. Tabitha's room smelled of urine and feces. When the social worker attempted to interview T.W. she found that he had minimal communication skills and could not provide any information about his parents, his siblings or himself. He was wearing a diaper and did not appear to have any injuries. The chaplain, who responded that morning, indicated that T.W. fondled the chaplain's groin area while he was in the home and that the parents showed no response to the child's behavior. Claudia told the social worker that Tabitha did not speak English, but offered to translate. The child had been born in Indonesia and had been staying with her family there. While in Indonesia, Tabitha had been involved in a fire that claimed the lives of her two siblings and had also been sexually abused by one of her cousins. Claudia could not explain why Tabitha could not speak English after having been in this country for two years. The child had not been sent to school and reportedly exhibited "odd" behaviors such as going to the bathroom in the middle of the floor and keeping her feces in plastic zipper bags in her

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otherwise indicated.

room. The mother could not explain this behavior either. Tabitha also had tantrums. The social worker observed that Tabitha had a significant injury to the left side of her head, marks on her neck and bruising in her ear, which the parents could not explain and had not sought treatment for. The child could not be interviewed because she was nonresponsive, as she had reportedly been all day.

Royce, the biological father of J.W. and T.W., stated that he had medical and life insurance for his family through his employer. He identified a clinic where the children were seen for their medical needs. He last saw J.W. at 6:00 a.m. when Royce went to bed. He reported that because of J.W.'s propensity to get out of the house, he had put locks on every window and exit from the house and yard. (The fence enclosing the rear yard was in disrepair, however.) He had observed J.W. and Tabitha fighting and he believes J.W. hit his sister with a plastic baseball bat. He described J.W. as having been extremely aggressive, with excessive strength because of his disorder, which also made it hard for him to communicate and gave him poor impulse control.

Claudia stayed home with the children. She disciplined the boys by placing them in front of the television with the remote control until they calmed down, then they were allowed to return to what they had been doing. However, because Tabitha had behavioral problems she got spankings on the buttocks. Royce confirmed that they mostly used time outs for discipline, but had spanked Tabitha for stealing and biting and had also spanked the boys. The parents and children were calm as the children were removed from the home. As soon as she was out of the house Tabitha spoke to the social worker in English, asking her to drive by the house with pretty lights, and telling her that J.W. had hit her

with a baseball bat, but J.W. was dead, "like rubber." At the police station Tabitha began to cry and mumbled rapidly about the day's events, reporting that J.W. had hurt her ear. She stated that he got out of their bedroom window and out of the fence. Tabitha and T.W. were observed to be aggressive with each other in play and were "silly" when it was time to use the restroom. They were placed together in a foster home.

DPSSe-mailed photos of Tabitha's injury to a doctor who requested that she be brought in for assessment immediately. At the emergency room, Tabitha refused to get out of the car and medical staff had to remove her. She was hysterical and punched two adults. It was determined that she would be admitted to the hospital. She was given a sedative and was speaking in full English sentences.

A medical report dated December 12, 2005, indicated that Tabitha, despite Claudia's report that the child did not speak English, had spoken fluently while at the hospital. She was found to have a large area on the left side of her skull with red, blue and yellow bruising. The left ear was also bruised, as were the back of the head near the hairline, the area behind the right ear, the left side of the neck extending toward the chest, and the left upper arm. Her left skull was possibly fractured. Her hair was thin and of multiple lengths. She had several teeth with cavities and a healing red area at the upper frenulum. This was later described as a tear of the tissue under the upper lip next to the gum line, which would have bled profusely. She had several circular scars as well as a four centimeter linear "train track" scar on her back. She also had circular scars on her right forearm and left thigh. The doctor concluded that the scalp bruise was not consistent with having been hit with a plastic bat. There was an impact site on the left ear

and skull. Some of her wounds were consistent with severe hair pulling, which might also have caused the neck bruising. However, that bruise was also consistent with strangling or another impact. The bruising on the arm could also have been inflicted. The circular scars were consistent with bite marks, and the linear scar on her back was consistent with an inflicted injury. The doctor opined that Tabitha had been severely traumatized, psychologically and physically, such that "extensive and comprehensive counseling" was strongly recommended, and that "children left in the same environment where the abuse occurred are at risk of further injury including death." X-rays revealed that Tabitha had a healing midshaft fracture in her right arm, which would have been very painful such that Tabitha would not have used her arm. The doctor also opined that the burn scar patterns, which were being reviewed, may not be consistent with burns obtained in a house fire and may also have been inflicted.

In the jurisdiction/disposition report filed on January 30, 2006, DPSS reported that Tabitha had been nonverbal during a Riverside Child Assessment Team interview as well as with the social worker and refused to make eye contact. The exception was that, when asked about her parents, she "blurted out a loud 'No' and exited the [interview] room." T.W. was unable to provide any pertinent information regarding the investigation.

Claudia had been cooperative during her interview. She reported that Tabitha was not in school because of her behavior problems, consisting of urinating on her bed and pillows, in her "little kitty" bag and on her brothers' stuffed toys, keeping her feces in plastic zipper bags and calling it chocolate and keeping dirty food dishes hidden in the futon in her room. Tabitha told Claudia that her grandmother told her how to do these

things. Claudia did not know about the bruise on Tabitha's head because the child only came out of her room when everyone was asleep, including to eat. She bathed and dressed herself and always wore long sleeves and long pants. Claudia claimed that she never saw the child and asked then how she would notice the bruise.

About five months prior to Jason's death, Tabitha told Claudia that she was sexually abused, but Claudia was not sure it had occurred because the child "always changes the story." Claudia did not know how to get help for Tabitha's behavioral problems or her emotional trauma from having been a rape victim and having been in a house fire where her two brothers perished. She was told by family and friends to try putting the child in a foster home or in a mental institution. They did not have much money and she did not know the American way of doing things. Claudia admitted leaving Tabitha in the car when she took J.W. and T.W. to the doctor, and despite the doctor's recommendation that she call the number on the insurance card regarding getting help for Tabitha, she did not because she was unaware that Tabitha could speak English. Claudia repeated that she did not send Tabitha to school because of her behavioral problems. She also said that the children did not go to school because she did not know how to use the bus, her husband was too tired to take them, and they didn't have a babysitter.

Claudia stated that when the social worker was there the house was dirty because she had not yet gotten around to doing the cleaning and housework on her schedule and because the sink was "messed up" because she had put rice in it. Royce told her to take everything out of the sink and he would fix it the next day.

Regarding Jason's death, Claudia stated that Royce came home at 2:00 a.m. and she was asleep in the living room. Royce played with T.W. and J.W., tried to fix the sink and watched a movie. He then woke Claudia up so he could go to sleep. At 6:30 a.m. J.W. said "'mommy go night-night'" so she lay down with him but he did not want to sleep. At ten minutes to eight T.W. woke her and told her J.W. was outside. She thought everything was locked and began to look for J.W. T.W. pointed to Tabitha's room where the window was open and Tabitha told her J.W. was "'out.'" Claudia searched the neighborhood and could not find J.W. so she came home and woke Royce who also could not find J.W. and told her to call 911. T.W. then told her that Tabitha took J.W. out and told him to go back home.

Royce was also cooperative with DPSSduring his interview. He too claimed not to have seen Tabitha's head injury but stated that Claudia was aware of it and told him, after Jason's death, that she had seen J.W. hit Tabitha with a wash wand several times, but there was no bruising. Royce offered that when he first saw the bruising he indicated to the police that it appeared to have the same pattern as the wash wand, which was against the wall in the back yard. He stated that he did not see the bruising and suggested that maybe it wasn't there when he last saw her since bruising doesn't happen right away. He also suggested that there had been no bruising on the back of her neck so that might have happened when she struggled with hospital staff. Royce had seen circular scars on Tabitha's back once, but believed them to be from the fire. He also explained that Tabitha covered herself up, maybe because of her scars from the fire, and stated that he "tended to steer clear of Tabitha" more so once Claudia told him of the sexual abuse. He

"really didn't want to have anything to do with her" so as not to further traumatize her. He also reported that Tabitha would urinate and defecate on the floor. Claudia told him that Tabitha said she could not wake up at night so they put her on a pallet by the bathroom door but she would still go on the floor. When Claudia made her clean up after herself she shoved her feces down the sink. He again stated that he "did not want to push the issue" with Tabitha who shied away from him, so he did not have much contact with her. The children did not go to school because T.W. was not old enough and Tabitha had behavioral issues. T.W. was very talkative with Royce but quiet around others. Royce called his insurance regarding getting help for Tabitha but he did not know that she could speak English as she never did at home. As there was no Indonesian therapist to send her to, they were contemplating sending Tabitha to a boarding school in Indonesia so she could get help. They were not getting any good suggestions and did not know where to go for help with her. He stated that the foul odor in the house was from Tabitha urinating and defecating everywhere. The dishes could not be done because Claudia had plugged up the sink with a pot of rice. He told her to empty everything out from below the sink so he could repair it the next day. He tried that night when he got home but was unable to and then went to watch a movie. Both boys were up with him through the night. Claudia had also told him that the children had broken a board in the fence, but he couldn't repair it because he had to go to work.

Regarding J.W.'s death, he stated that he had placed extra locks in the house and had they caged the child to keep him safe they would have been in trouble. He did not know how Tabitha had gotten the lock off of her window as he had tightened it down so

tightly with pliers that he could not get it off, and had placed a large dresser in front of it, which the children could not move. He believed that Tabitha had gotten the lock off because T.W. told Claudia that Tabitha got the window open and helped J.W. out. He and Claudia believe that Tabitha took J.W. outside and came back in. Two neighbors told them that they had seen J.W. at about the same time T.W. woke Claudia to tell her J.W. was gone.

Tabitha was placed in a psychiatric hospital and while initially uncommunicative and displaying selective muteism and fits of rage, she had begun to open up to certain staff. In her counseling Tabitha disclosed that both she and her brother had been spanked with a belt, that her head had been held on the floor, that her hair was pulled and that her mother had bitten her. She showed no signs of the reported toileting issues and used English in an age-appropriate manner. She had poor eye contact and sometimes reverted to muteism; she had tantrums and threw things or otherwise acted out but showed improvement over time and with interaction such that she was discharged after 10 days. While she missed her parents she did not want to return to her family.

An odontologist concluded that the bites Tabitha sustained were inflicted within weeks or days of the pictures being taken and were consistent with an adult bite pattern.

Tabitha had not been seen by a doctor or dentist since coming to the United States, some 16 months prior to removal from the home. Some of her developmental skills are delayed, though that may be the result of her mental and emotional issues. Tabitha had been placed in school and was excited and adjusting well, talking about her friends and experiences. No behavior issues had yet been noted by the school. She continued to

have nightmares and difficulty sleeping, appeared fearful of adults and had difficulty forming relationships. She was diagnosed with posttraumatic stress and major depression.

T.W. had last been seen by a doctor in September 2005, and was current on his vaccinations. However, he was also developmentally delayed, as he was not yet toilet trained, had a limited vocabulary and had limited comprehension skills. He had not displayed any mental or emotional issues.

DPSS concluded that it would be detrimental to the children to leave them in the care of their parents as their inability to ensure the safety and well-being of the children was demonstrated by J.W.'s death and Tabitha's condition. It recommended that the parents be denied reunification services because of J.W.'s death and Tabitha's condition. It also recommended closely supervised visitation once per month.

The parents denied the allegations and attempted to provide an explanation for the behaviors that DPSS indicated were inappropriate on their part. They also asserted that some of the information provided by DPSS was erroneous and had been the result of language barriers. They insisted that Tabitha's injuries were either old, having been inflicted in Indonesia, or had been inflicted by her brother J.W. with a wash wand, not a baseball bat, and that she had never spoken English to them. They asserted that they had done everything that they could to prevent J.W.'s escape from the house and had not been negligent in his death.

At the February 1, 2006, hearing, counsel for Royce argued that the parents had taken Tabitha to a physician regarding her toileting issues but the doctor refused to see

her because the problem seemed to be a psychological issue. Finding a therapist was difficult because of the language issue and they were trying to send her back to Indonesia. Tabitha had been told bad things about her mother by her family in Indonesia and did not interact with her mother or behave as part of the family when she arrived here, including failing to communicate her needs and wants. At that time she was five years old. J.W. had received services from the State of California through Inland Regional Center until he was three years old, so the parents claimed they had been caring for his needs. While making additional findings, the juvenile court also set a hearing under section 366.26 to be heard on June 1, 2006.

II

PROCEDURAL HISTORY

DPSS filed a petition under section 300, on December 13, 2005, as to Tabitha, then age 7 and her half brother, T.W., then age 4. DPSS alleged that Tabitha came under section 300, subdivisions (a), (b), (f), and (g), and that T.W. came under section 300, subdivisions (b), (f), and (j).[3]

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[3] "Any child who comes within any of the following descriptions is within the jurisdiction of the juvenile court which may adjudge that person to be a dependent child of the court:

"(a) The child has suffered, or there is a substantial risk that the child will suffer, serious physical harm inflicted nonaccidentally upon the child by the child's parent or guardian. For the purposes of this subdivision, a court may find there is a substantial risk of serious future injury based on the manner in which a less serious injury was inflicted, a history of repeated inflictions of injuries on the child or the child's siblings, or a combination of these and other actions by the parent or guardian which indicate the child is at risk of serious physical harm. For purposes of this subdivision, 'serious physical

On December 14, 2005, the juvenile court found that a prima facie showing had been made that the children came within section 300, subdivisions (a), (b), (f), (g) and (j), and ordered that they continue removed from the home pending a jurisdictional hearing, which was set for January 9, 2006. At that time Royce's attorney reported that Royce was not interested in visiting or reunifying with Tabitha. Reunification services were nevertheless ordered pending that hearing and supervised visitation was to be as directed by DPSS as to T.W., but visitation was suspended as to Tabitha.

An addendum report filed by DPSS on January 5, 2006, requested a four-week continuance to allow for further evaluation and assessment since the case had been delayed due to cooperation with a law enforcement investigation. The juvenile court granted the continuance and set the jurisdictional hearing for February 1, 2006. The

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harm' does not include reasonable and age-appropriate spanking to the buttocks where there is no evidence of serious physical injury.

"(b) The child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child, . . . or by the willful or negligent failure of the parent or guardian to provide the child with adequate food, clothing, shelter, or medical treatment, or by the inability of the parent or guardian to provide regular care for the child due to the parent's or guardian's mental illness, developmental disability, or substance abuse. . . . [¶] . . . [¶]

"(f) The child's parent or guardian caused the death of another child through abuse or neglect.

"(g) The child has been left without any provision for support. . . . [¶] . . . [¶]

"(j) The child's sibling has been abused or neglected, as defined in subdivision (a), (b), (d), (e), or (i), and there is a substantial risk that the child will be abused or neglected, as defined in those subdivisions. The court shall consider the circumstances surrounding the abuse or neglect of the sibling, the age and gender of each child, the nature of the abuse or neglect of the sibling, the mental condition of the parent or guardian, and any

parents requested visitation and supervised visitation with both children was ordered as directed by DPSS.

The jurisdiction/disposition report was filed on January 30, 2006. DPSS recommended that services be denied to both parents pursuant to section 361.5 subdivisions (b)(4) and (6).[4] At a hearing on February 1, 2006, the juvenile court found the allegations true that the children came within section 300, subdivisions (a), (b), (f) and (g) and adjudged them dependents of the court. It made findings under section 361, subdivisions (a) and (c)(1) and (3). It also ordered that no services would be provided to either parent under section 361.5, subdivision (b)(4) and (6) and ordered adoption as the permanency plan. The juvenile court further found that visitation between the children and their parents was detrimental to their well-being and suspended the visitation order.

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other factors the court considers probative in determining whether there is a substantial risk to the child." (§ 300, subds. (a), (b), (f), (g) and (j).)

[4] "(b) Reunification services need not be provided to a parent or guardian described in this subdivision when the court finds, by clear and convincing evidence, any of the following: [¶] . . . [¶]

"(4) That the parent or guardian of the child has caused the death of another child through abuse or neglect. [¶] . . . [¶]

"(6) That the child has been adjudicated a dependent pursuant to any subdivision of Section 300 as a result of severe sexual abuse or the infliction of severe physical harm to the child, a sibling, or a half-sibling by a parent or guardian, as defined in this subdivision, and the court makes a factual finding that it would not benefit the child to pursue reunification services with the offending parent or guardian. [¶] . . . [¶]

"A finding of the infliction of severe physical harm, for the purposes of this subdivision, may be based on, but is not limited to, deliberate and serious injury inflicted to or on a child's body or the body of a sibling or half-sibling of the child, by an act or omission of the parent or guardian, or of another individual or animal with the consent of the parent or guardian; deliberate and torturous confinement of the child, sibling, or half-sibling in a closed space; or any other torturous act or omission that would be reasonably understood to cause serious emotional damage." (§ 361.5, subds. (b)(4) and (6).)

It then set a hearing under section 366.26 to be heard on June 1, 2006. These proceedings followed.

III

DISCUSSION

A. *The Appeals*

After filing notices of intent to file a writ petition, both Claudia and Royce also filed appeals from the orders made at the February 1, 2006, hearing. On our own motion we consolidated the appeals with the writ proceedings for purposes of briefing, oral argument and decision. DPSS argues that the appeals must be dismissed as the juvenile court set a section 366.26 hearing at the same time that it made the challenged orders. We agree.

Section 366.26, subdivision (*l*)(1) currently provides that "An order by the court that a hearing pursuant to this section be held is not appealable at any time unless" a timely writ petition was filed, which "substantively addressed the specific issues to be challenged and supported that challenge by an adequate record" and which "was summarily denied or otherwise not decided on the merits." As recently observed by Division One of this district in *In re Merrick V*. (2004) 122 Cal.App.4th 235, "In *In re Charmice G.* [(1998)] 66 Cal.App.4th 659, the Court of Appeal held section 366.26 subdivision (*l*) bars direct appeals from orders setting a section 366.26 hearing. The appellate court explained that its statutory interpretation is in keeping with recent legislative efforts to expedite finality in dependency proceedings and to achieve permanency for children in the system. (*In re Charmice G.*, *supra*, 66 Cal.App.4th at p.

668.) In *In re Anthony B*. [(1999)] 72 Cal.App.4th [1017], at page 1023, the Court of Appeal extended 'the bar of section 366.26, subdivision (*l*) [to] *all* orders issued at a hearing in which a setting order is entered.' The court in *In re Anthony B*. noted:

'The goals of expedition and finality would be compromised if the validity of these types of contemporaneous, collateral orders were permitted to be raised by appeal from the order itself or from a later permanent planning order and therefore allowed to remain undecided until well after the permanent plan was decided upon. The desired expedition and finality obviously would be most threatened when the permanent plan was adoption and termination of parental rights, the preferred plan which *must* be ordered if the child is found adoptable and the juvenile court cannot make any of the findings set out in section 366.26, subdivision (c)(1)(A) through (D).' (*In re Anthony B*., *supra*, 72 Cal.App.4th at p. 1023.)" (*In re Merrick V*., *supra*, 122 Cal.App.4th at p. 248.)

Because all of the orders that Claudia and Royce purport to appeal from were made contemporaneously with the order setting a section 366.26 hearing, and the provisions of section 366.26, subdivision (*l*) have not been met, the appeals must be and are dismissed.

Claudia cites *In re Natasha A*. (1996) 42 Cal.App.4th 28, 34, for the proposition that this court has observed that a visitation order is separately appealable even if made during the course of setting a hearing under section 366.26. While Claudia is correct, the observation was not the holding of *In re Natasha A*., nor was it necessary to the holding in that case and was therefore simply dicta. (*Ibid*.) The case to which this court referred in *In re Natasha A.* is *In re Elizabeth M.* (1991) 232 Cal.App.3d 553. In that case this

court recognized that it had previously been held by other courts that if a challenge to an order contemporaneous with an order setting a hearing to terminate parental rights did not seek, either directly or indirectly, to overturn the order setting the termination hearing, then it was appealable and not barred by then applicable section 366.25, subdivision (j). (*In re Elizabeth M.,* at pp. 562-563.) Specifically, we held that because visitation may be ordered or denied during the time prior to a hearing terminating parental rights, such an order did not affect the order setting a termination hearing and therefore an appeal of a visitation order made contemporaneously with an order setting a termination hearing was not barred. (*Id*. at p. 564.)

Our review of the decisions of the Courts of Appeal demonstrates that we are the only court to have subsequently cited *In re Elizabeth M*. for this proposition. Further, our review of the decisions of the Courts of Appeal indicates that the majority of them have chosen to follow the holding in *In re Anthony B*. No courts have disagreed with its holding. In addition, while they note the uncertainty of the case law interpreting the writ filing requirement in the past, the more recently recognized rule that all orders made at a hearing in which a hearing under section 366.26 is ordered must be challenged by writ has been adopted by the authors of California Juvenile Courts Practice and Procedure. They urge that such a rule is the only way to ensure that all outstanding issues will have been reviewed by the Court of Appeal prior to the section 366.26 hearing and that it is both conducive to judicial economy and sensitive to the increasing emphasis on the importance of expeditiously achieving finality in dependency matters in the best interests

of the children affected by the process. (Seiser & Kumli, California Juvenile Courts Practice and Procedure (2006) §2.190 [10], pp. 2-368 - 2-369.) We agree.

Although the Legislature has not, in the several revisions of the juvenile dependency laws it has enacted since our decision in *In re Elizabeth M.,* changed the specific wording of the statute with which we are here concerned, it has, through its revisions to the laws as a whole, placed an increasing emphasis on efficiency and expediency in the process. We believe that the development of the case law during the 15 years since we decided *In re Elizabeth M*. reflects this fact. We also conclude that the holding in *In re Elizabeth M*., that some orders made contemporaneously with the setting of a hearing to terminate parental rights (currently a section 366.26 hearing) are appealable, is no longer a correct statement of the law. (See, e.g., *In re Anthony B*., *supra*, 72 Cal.App.4th at pp. 1022-1024; *In re Charmice G*., *supra*, 66 Cal.App.4th at pp. 664-669.) All orders issued at a hearing in which a section 366.26 hearing is ordered are subject to section 366.26, subdivision (*l*) and must be reviewed by extraordinary writ. (*In re Merrick V*., *supra*, 122 Cal.App.4th at p. 248.) The appeals are therefore dismissed.

B. *The Petitions for Writ of Mandate*

1. *Jurisdiction under section 300, subdivisions (a), (b), (f) and (j)*

In his petition for a writ of mandate Royce asserts that the trial court improperly sustained the section 300 petition against him and therefore should not have taken jurisdiction of the children under section 300, subdivisions (a), (b) and (j) because he is not Tabitha's parent and because substantial evidence did not support the true findings.

He also argues that the true findings under section 300, subdivision (f) were not supported by the evidence.

Royce's argument reflects a fundamental misunderstanding of jurisdiction under section 300. By the express language of the statute, jurisdiction is not sustained against anyone, but is rather exerted over the child. As pointed out by the court in *In re Joshua G.* (2005) 129 Cal.App.4th 189, "[t]he purpose of dependency proceedings is to protect children . . . not to punish the parent. [Citation.] Therefore, the court takes jurisdiction over children [citation]; it does not take jurisdiction over parents. Moreover, the court has jurisdiction over the children if the actions of either parent bring the child within one of the statutory definitions in section 300. [Citation.]" (*Id.* at p. 202.) Thus, the fact that Royce is not Tabitha's father has no bearing on whether the juvenile court properly took jurisdiction over her or T.W. under section 300.

Citing *In re Marquis D.* (1995) 38 Cal.App.4th 1813, 1825, Royce complains that the juvenile court failed to make express findings that subdivisions (a), (b), (f) and (j) applied. In the first place, the juvenile court expressly found that the allegations of the petition were true and that the minors came within section 300, subdivisions (a), (b), (f) and (g).[5] In addition, *In re Marquis D.* involved findings under section 361.2, which

[5] While the juvenile court's order omits the letter (j), our review of the record demonstrates the omission resulted from a typographical error in the jurisdiction/disposition report. The report itself discusses the evidence supporting a finding under subdivision (j) but then simply omits the letter (j) from its recommended findings. It is apparent that the juvenile court simply read DPSS's recommendations into its order. At any rate, insofar as jurisdiction is concerned, the juvenile court found all jurisdictional allegations true, which expressly included subdivision (j).

requires that findings be made (§ 361.2, subd. (c)), while section 300 has no such requirement. (*In re Marquis D*., at p. 1824.) Finally, the court in that case was of the belief that the lower court had failed to apply the newly revised version of the statute and was not convinced by the record that the evidence supported the implied finding that was being urged upon it. (*Id*. at pp. 1824-1825.) That is not the situation here. This argument does not convince us of the existence of reversible error.

The sole question remaining for review on this point is whether the juvenile court properly took jurisdiction based upon substantial evidence in the record that the children fell within one of the subdivisions of section 300. (*In re James C*. (2002) 104 Cal.App.4th 470, 482.) In examining the record, we view the evidence in the light most favorable to the juvenile court's order. (*In re Shelley J*. (1998) 68 Cal.App.4th 322, 329.)

Section 300, subdivision (a) provides that a child that has suffered or is at substantial risk of suffering serious physical harm inflicted nonaccidentally by a parent or guardian may be adjudged a dependent of the court. Royce admits that Tabitha was injured but asserts that there is no evidence in the record that these injuries were inflicted by a parent or guardian. On the contrary, the record demonstrates that Tabitha reported being bitten by her mother and that adult-sized bite marks were found on the child's body. Tabitha further reported that she had been spanked with a belt, had her head held on the floor and had her hair pulled. The medical evidence showed that Tabitha's hair had been pulled so hard that she had bled extensively under the scalp. While the record does not specifically state that Tabitha accused Royce or Claudia of holding her head to the floor or pulling her hair, the accusation can be readily implied from the fact that she

grouped these occurrences with other forms of parental discipline. This evidence is sufficient to support the juvenile court's true finding under section 300, subdivision (a).

Section 300, subdivision (b) provides that a child that has suffered, or is at serious risk of suffering serious physical harm or illness as a result of the parent's or guardian's failure or inability to supervise or protect the child or to provide the child with shelter, food, clothing or medical care, may be adjudged a dependent of the court. Tabitha had a large bruise on the left side of her skull, in her left ear and extending down her left neck toward her chest. It was possible that her left skull was fractured. She also had bruising on the back of her head near the hairline, behind her right ear and on her left upper arm. The scalp bruise was not consistent with being struck with a plastic bat as stated both by Tabitha and by the parents, but was consistent with severe hair pulling. Tabitha's hair was thin and of multiple lengths, also consistent with severe hair pulling. The bruising on her neck was also consistent with strangling. There was soft tissue swelling and bleeding at the base of her skull. She had a healing torn frenulum which would have bled profusely. She also had a healing midshaft fracture of her right arm that would have been so painful that she would not have used the arm. In addition she had several cavities. The doctor who examined her concluded that she had been "severely abused." The parents claim both that they were unaware of the severe bruising and that it must have been caused by the deceased brother, J.W. or by DPSS or hospital staff after Tabitha's removal from the home. They assert that Tabitha pulled out her own hair. They admit that they never took Tabitha to a doctor or dentist for any of these injuries despite having medical insurance.

The parents both reported that Tabitha had severe behavioral issues, yet they had been unable to obtain any treatment for her because they were unaware of the fact that she spoke fluent English. They did not send her to school because of her behavioral issues and her purported inability to speak English, because Claudia did not know how to use the bus, and because Royce was too tired to take her to school when he got home. In reality, Tabitha did not exhibit any of the behavioral issues reported by the parents once removed from the home other than some combativeness and selective muteism that resolved with 10 days of treatment, was able to speak fluent English and was enjoying school.

Claudia reported that she did not assist Tabitha with bathing or dressing and that the child only came out of her room when the rest of the family was asleep, even to eat. She claimed that she never saw the child and therefore could not have noticed any bruising on her. Royce admitted that he avoided Tabitha and wanted nothing to do with her. Such abdication of responsibility to ensure the well-being of a child of such tender years certainly evidences a substantial risk of serious physical harm to the child. Despite Royce's argument to the contrary, the juvenile court could reasonably conclude that the cause of the risk to Tabitha was clearly the abdication of parental responsibility for her care and well-being. Viewing the evidence, as we must, in the light most favorable to the juvenile court's order, we conclude that it is sufficient to support the juvenile court's finding that Tabitha came within the provisions of section 300, subdivision (b).

As to T.W., DPSS admits that he was not yet of school age and therefore did not need to be enrolled in school. However, there is evidence in the record that T.W. had

some developmental delays. Despite being four years old he had minimal communication and comprehension skills, was not toilet trained and was still wearing diapers. The parents had failed to address these issues by failing to obtain any professional assistance for them. While this issue does not support a finding of serious physical harm to T.W. necessary to support a section 300, subdivision (b) finding (*In re Janet T.* (2001) 93 Cal.App.4th 377, 386-389), it is not the only issue alleged.

In addition, the house was found to be in a filthy condition, with dirty dishes, trash, debris and dirty clothes strewn throughout and a foul odor that the parents attributed to Tabitha's using the entire house as a latrine. Tabitha's room had an especially strong odor of urine and feces. Photos showed a carving knife laying on the edge of the sink within reach of the children, despite the parents' claim that they had to keep sharp items away from Tabitha because she was destructive with them. When asked why the house was in such a deplorable condition Royce stated that he had asked Claudia to clean it and even tried to show her how. Claudia reported that it was hard to keep the home clean, that T.W. had dirtied the bathroom and that she had intended on cleaning the house the day that J.W. died. They also reported that the dirty kitchen was a temporary problem caused by a backed up drain in the sink, but this was inconsistent with the other evidence. The dirty home was also attributed to Royce learning 16 months earlier that he almost certainly had bladder cancer, so that he had no energy to help with housecleaning, as well as Claudia's self-reported severe depression from the loss of her mother and children to the fire in Indonesia in 2003 and the difficulty of dealing with Tabitha's and Jason's problems. In another portion of the record Claudia reported that she had a good

relationship with her mother who is a very busy woman and Royce stated that he was in good general health. The juvenile court was entitled to disbelieve the testimony of either parent. And, in our review we must accept the credibility determinations of the lower court. (*In re Tanis H*. (1997) 59 Cal.App.4th 1218, 1226-1227.) The contradictory statements made by the parents as reflected in the record demonstrate credibility issues with the evidence that the parents rely heavily upon in their briefs.

Royce cites *In re Paul E*. (1995) 39 Cal.App.4th 996, 1005, for the proposition that the trial court could not take jurisdiction over T.W. based solely upon a dirty home. In the first place, while that case may stand for the proposition that a child cannot be removed from a dirty but loving home, it does not stand for the proposition that a child may not be adjudged a dependent child of the court on the ground that the home is unsanitary and dangerous. In addition, the true findings in this case were not based solely on the fact that an otherwise loving home was not well kept. Thus, *In re Paul E*., is inapposite. Again, viewing the evidence in the light most favorable to the order, there was substantial evidence to support a true finding under section 300, subdivision (b) as to T.W. as well.

Section 300, subdivision (f) provides that a child whose parent or guardian has caused the death of another child through abuse or neglect may be adjudged a dependent child of the court. Royce asserts that there was no evidence that he or Claudia caused J.W.'s death through abuse or neglect. Both Royce and Claudia were aware that J.W. had a propensity to leave the home and yard. Royce stated that he had put locks on every window and exit from the home to keep J.W. from getting out. He was aware that the

children had broken a board on the fence but Royce had not had time to repair it. On the morning J.W. died Royce woke Claudia so that he could go to sleep. At 6:30 a.m. Claudia lay down with J.W. but he did not want to sleep. She closed her eyes, reportedly so J.W. would go to sleep. Claudia fell asleep and T.W. woke her an hour and 20 minutes later to tell her that J.W. had escaped from the house. Neighbors later reported that around the same time they saw J.W., Tabitha's window was wide open and she said that J.W.was out. Claudia did not wake Royce but took the car to go look for J.W. She did not find him. Upon her return home she woke Royce who also went out to look for J.W. When he returned he told Claudia to call 911. Royce reported that he had tightened the lock on Tabitha's window with pliers so that even he could not get it off, plus he had put a heavy dresser in front of the window that the children could not move. The photos do not evidence a dresser blocking the window. The parents accused Tabitha of having taken J.W. out of the house. Again, the juvenile court was entitled to disbelieve the testimony that a seven-year-old girl removed a lock that an adult male claimed that he could not remove with pliers and therefore could reasonably infer that the house was not as secure as the parents would have the court believe. Based upon this evidence the juvenile court could have properly determined that the parents' failure to properly supervise their special needs child despite knowledge of his propensity to escape the home was the cause of his death by drowning in a neighbor's pool, supporting a true finding under section 300, subdivision (f).

Section 300, subdivision (j) provides that a child whose sibling has been abused or neglected as defined in subdivisions including (a) and (b) and is at substantial risk of

abuse or neglect also may be adjudged a dependent child of the court. Royce asserts that because there was no evidence to demonstrate that Tabitha was abused or neglected as defined in section 300, subdivisions (a) or (b) there could be no true finding under section 300, subdivision (j). Because we have determined that there was substantial evidence that Tabitha is a child as defined in section 300, subdivisions (a) and (b), this argument fails.

Royce also asserts that there is no evidence to support the conclusion that T.W. is at substantial risk of abuse or neglect just because of Tabitha's condition. In determining whether a substantial risk of injury exists, the juvenile court is required to consider the nature of and circumstances surrounding the abuse or neglect, the age and gender of the children, the mental condition of the parent and any other probative factors. (§ 300, subd. (j).) The juvenile court could have reasonably inferred from the parents' purported ignorance of and consequent failure to obtain treatment for Tabitha's injuries, as well as their severe neglect of her (for example, they did not include her at meals and were unaware that she spoke English), that they would be similarly inattentive to any needs that T.W. might develop. The parents' inability to recognize their children's need for care was further evidenced by their apparent failure to recognize T.W.'s developmental deficits. In addition, Tabitha described punishments for her and her brother different from those professed by her parents, which included spankings with a belt. Viewing the evidence in the light most favorable to the order, there is substantial evidence to support the juvenile court's true finding under section 300, subdivision (j).

Because there was substantial evidence to support the juvenile court's finding of jurisdiction over both Tabitha and T.W., Royce has not demonstrated that he is entitled to the relief he requests, to wit vacation of the disposition findings including T.W.'s removal, the denial of reunification services and the denial of visitation on the ground that the juvenile court had no jurisdiction.

2. *Removal of T.W. from Royce's Custody*

Royce next claims that the juvenile court erred when it ordered T.W. removed from his custody because no evidence was introduced that suggested that T.W. would suffer harm or the risk of harm in his care. Section 361, subdivision (c)(1) provides that "a dependent child may not be taken from the physical custody of his or her parents" unless there "is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home, and there are no reasonable means by which the minor's physical health can be protected without removing the minor . . . ." An order that a child should be removed from a parent's care is reviewed for substantial evidence and the rule requiring the reviewing court to give "'full effect to the respondent's evidence, however slight, and'" to disregard "'the appellant's evidence, however strong'" is applied. (*In re J. I.* (2003) 108 Cal.App.4th 903, 911; *In re Heather A*. (1996) 52 Cal.App.4th 183, 193.)

Royce seems to argue that since he was not Tabitha's parent he bore no responsibility for her and therefore his ability to parent T.W. should be viewed in a vacuum as if Tabitha did not exist. He provides no support for this startling proposition. Tabitha had been severely abused, and whether by her parents or her siblings, Royce's

abdication of responsibility for her injuries and treatment seriously calls into doubt his capacity to protect T.W. from harm. The doctor who examined Tabitha opined that if left in the home she was at risk of further injury, including death. That Royce allowed this severe neglect to occur in his home and believed that it was acceptable for Tabitha to be treated (or rather left alone) as she was in the belief that she needed space because of the trauma she had suffered in Indonesia also demonstrates his inability to protect T.W. from harm. In addition, as recited above, there was substantial evidence that Royce's inability to recognize and provide for J.W.'s specific needs, however difficult it may have been to properly care for him, led to the child's accidental death.

This case differs significantly from *In re Henry V.* (2004) 119 Cal.App.4th 522 cited by Royce for the proposition that even abused children can be placed in the home. In that case there was evidence of one potential incident of abuse, and though a psychologist recommended against returning the child home, he did not state that there was a threat to the child's physical safety or emotional well-being. (*Id.* at p. 529.) The parents' participation in and/or neglect of the consequences of the severe abuse inflicted upon Tabitha in this case is a far cry from the single incident in *In re Henry V.* Based upon the evidence in the record the juvenile court reasonably could have concluded that although T.W. appeared to be in good physical condition at the time he was detained from the home, it was only a matter of time before he suffered some serious physical and/or emotional injury as a result of his parents' neglect.

3. *Denial of Reunification Services*

Both Royce and Claudia assert that the juvenile court erred when it denied them reunification services under section 361.5, subdivision (b)(4) and (6). Reunification services need not be provided to a parent when the juvenile court finds that the parent has caused the death of another child through abuse or neglect or when the child is a dependent child based upon severe physical abuse of that child or a half sibling inflicted by a parent. (§ 361.5, subd. (b)(4) & (6).) If the juvenile court finds that either of these subdsections apply, it cannot order reunification services unless it finds, by clear and convincing evidence, that reunification is in the best interests of the child. (§ 361.5, subd. (c).) The burden of affirmatively demonstrating that reunification is in the best interests of the children is upon the parent. (*In re Ethan N*. (2004) 122 Cal.App.4th 55, 66.)

The standard of review for the denial of reunification services is substantial evidence as to the juvenile court's factual findings and abuse of discretion regarding the best interests of the children. (*In re Ethan N*., *supra*, 122 Cal.App.4th at pp. 64-65.) However, neither parent presented any evidence to the juvenile court that reunification would be in the best interests of Tabitha or T.W. Rather, Royce's attorney simply asked that the juvenile court exercise its discretion to provide services since Royce "doesn't feel the other children are at risk if they were eventually returned to his care after receiving services. He admits that they do need help and that they do need services and would benefit from them." Counsel for Claudia agreed that she was "willing to accept any and all services." Having presented no evidence on the point, both Royce and Claudia failed in their burden and hence necessarily failed to establish that reunification would be in the

best interests of the children. Thus, the only question for review is whether substantial evidence supports the application of section 361.5, subdivision (b)(4) or (6).

As to section 361.5, subdivision (b)(4), both Royce and Claudia argue that there was no express finding by the juvenile court that clear and convincing evidence demonstrated that the parents caused Jason's death through neglect or abuse and there was no substantial evidence to support such a finding. Preliminarily, we note that Claudia's emphasis on the clear and convincing evidence standard is misplaced. "The 'clear and convincing' standard is for the edification and guidance of the juvenile court. It is not a standard for appellate review. [Citation.]" (*In re J. I.*, *supra*, 108 Cal.App.4th at p. 911.) Upon review, "the clear and convincing test disappears" and we simply determine whether there is any substantial evidence, whether contradicted or not, to support the juvenile court's findings. (*Ibid*.)

At the hearing counsel reminded the juvenile court that the findings under section 361.5, subdivision (b) needed to be made by clear and convincing evidence. The juvenile court then found that the children were severely neglected resulting in the death of a child and damage to another so severe that it was unknown whether the child could be "fixed." It also determined that "[e]ach allegation in the [section 300] petition is found true by any standard of evidence" and that under section 361.5, subdivision (b)(4) and (6) "services are not in the best interest of the children." As discussed above, the allegation in the petition under section 300, subdivision (f) was that Claudia and Royce had caused J.W.'s death through abuse or neglect, specifically the failure of proper supervision over a special-needs child. We must therefore conclude that the juvenile court did indeed

expressly find that Claudia and Royce had caused J.W.'s death through abuse or neglect. In addition, as discussed above, there is sufficient evidence in the record to support the juvenile court's determination that the parents' failure to properly supervise their special-needs child despite knowledge of his propensity to escape the home was the cause of his death by drowning in a neighbor's pool. We cannot conclude that it was improper for the juvenile court to deny Royce and Claudia reunification services under section 361.5, subdivision (b)(4).

As to section 361.5, subdivision (b)(6), we note preliminarily that Claudia asserts that the juvenile court failed to comply with section 361.5, subdivision (h), which lists factors that it must consider when determining whether reunification services would benefit a child under subdivisions (b)(6) or (7), because it failed to address those factors on the record. However, Claudia points to no authority that requires the juvenile court to reference each of the section 361.5, subdivision (h) factors on the record. An unsupported argument need not be considered by this court. (*Horowitz v. Noble* (1978) 79 Cal.App.3d 120, 139.)

Claudia and Royce argue that the juvenile court failed to comply with section 361.5, subdivision (i), which requires the juvenile court "to read into the record the basis for a finding of . . . the infliction of severe physical harm under paragraph (6) of subdivision (b), and . . . also [to] specify the factual findings used to determine that the provision of reunification services to the offending parent . . . would not benefit the child." Claudia further asserts that there is insufficient evidence from which the required findings can be inferred. Royce contends that DPSS's failure to investigate and report

upon whether it might be in T.W.'s best interests to have reunification services requires reversal of the order denying them. Claudia and Royce also argue that a finding under section 361.5, subdivision (b)(6) applies only to deny services to the parent that inflicted the severe physical harm and that no evidence supports a finding that either of them inflicted harm on Tabitha. In addition, they assert that the evidence is insufficient to support a finding of "severe physical harm" as required.

According to section 361.5, subdivision (b)(6) a finding of severe physical harm may be based upon "deliberate and serious injury inflicted to or on a child's body or the body of a sibling or half-sibling of the child by an act or omission of the parent or guardian, or of another individual . . . with the consent of the parent or guardian; . . . or any other torturous act or omission that would be reasonably understood to cause serious emotional damage." Thus, contrary to the suggestions made by Royce and Claudia, there need not be evidence of a physical act perpetrated upon the child. An omission causing a serious physical injury or emotional damage is sufficient.

The juvenile court stated that "the medical history here is unbelievably awful. This child [Tabitha] has adult bite marks on her. She spent two weeks in a mental hospital." It further observed that neither Claudia nor Royce paid enough attention to the seven-year-old child to know that she spoke fluent English. Claudia admitted that since Tabitha came into her home at age five, she had not assisted her with bathing, grooming or dressing, and was unaware of the child's injuries. The juvenile court also stated that the only reasonable conclusion that could be reached from the evidence before it was that Tabitha had been tortured in the home. These statements are sufficient to meet the

requirement of section 361.5, subdivision (i) that the basis for a finding under section 361.5, subdivision (b)(6) be read into the record. Because the juvenile court did sufficiently state its findings on the record, we need not address Claudia's argument that the evidence is insufficient to support implied findings.

Both Royce and Claudia also complain that the trial court failed to specify the factual findings used to determine that services would not benefit the children as required by section 361.5, subdivision (i). The juvenile court found that services would not be in the children's best interests. As indicated above, neither Royce nor Claudia presented any evidence that reunification services would benefit the children despite it being their burden to do so. (*In re Ethan N.*, *supra*, 122 Cal.App.4th at p. 66.) Thus, the sole evidence on this point was that presented by DCS, which recommended that services be denied to the parents based upon the extreme level of neglect with respect to Tabitha, their lack of interest in or ability to understand the issues that caused their children to be removed from their home and their complicity in J.W.'s death. Given Royce and Claudia's failure to present any evidence on this point, we cannot conclude that the juvenile court's failure to restate DPSS's position on the record warrants a conclusion that the denial of services under section 361.5, subdivision (b)(6) was improper based upon the requirements of section 361.5, subdivision (i).

Section 361.5, subdivision (c) provides that for a dispositional hearing "[t]he social worker officer shall prepare a report that discusses whether reunification services shall be provided." As pointed out above, the report submitted by DPSS indicated its recommendation that reunification services be denied, thereby complying with the

statutory requirement. Although he does not cite the specific provision of section 361.5, subdivision (c) to which he refers, Royce asserts that DPSS had a duty to investigate and report on whether services would have been in T.W.'s best interests. There is a provision that states, "[t]he social worker shall investigate the circumstances leading to the removal of the child and advise the court whether there are circumstances that indicate that reunification is likely to be successful or unsuccessful and whether failure to order reunification is likely to be detrimental to the child." (§361.5, subd. (c).) However, that requirement applies only when reunification services are to be denied based upon circumstances described in section 361.5, subdivision (b)(5), which is not applicable here.

Both Claudia and Royce contend that section 361.5, subdivision (b)(6) can only be applied to deny services to a parent who is responsible for inflicting severe physical harm upon the child. By its terms, section 361.5, subdivision (b)(6) operates to dispense with the requirement for reunification services for an "offending parent," in other words, the parent whose infliction, by action or omission, caused serious physical injury or emotional damage to the child or that child's sibling or half sibling. (See also *In re Kenneth M*. (2004) 123 Cal.App.4th 16, 21.) Royce's argument on this ground seems to have merit. Royce is not Tabitha's parent. Therefore, he is not entitled to reunification services as to her. There is no evidence that he inflicted, by his act or omission, serious physical injury or emotional harm to T.W. However, the term "parent" in section 361.5, subdivision (b)(6) refers to Royce's parentage of T.W., not to his status with respect to Tabitha. (*Anthony J. v. Superior Court* (2005) 132 Cal.App.4th 419, 421-422.) If the

evidence demonstrates that he was responsible for the infliction, by action or omission, of serious physical injury or emotional damage to Tabitha, even though she was not his child, services can properly be denied as to his son, Tabitha's half-brother, T.W., under section 361.5, subdivision (b)(6). (*Anthony J.,* at pp. 425-427.) Thus, despite its facial appeal, Royce's contention on this point fails.

Both Claudia and Royce claim that there is no evidence that they were an "offending parent" in that there is nothing to indicate that they were responsible for Tabitha's injuries. On the contrary, at the very least the evidence supports a finding that Claudia was responsible for the bite scars that Tabitha had on her body. In addition both Claudia and Royce admitted to neglect that allowed severe bruising to the head and neck to go unnoticed and untreated, and a broken arm that was still in the process of healing to go unnoticed and untreated. Further, both Claudia and Royce had failed to obtain treatment for Tabitha's severe behavioral and emotional problems because neither of them interacted with her sufficiently to know that she spoke English. Again, section 361.5, subdivision (b)(6) applies both to the parent's acts and omissions. Thus, there was adequate evidence in the record to support the juvenile court's finding that Claudia and Royce were responsible for Tabitha's condition. Because Claudia and Royce were responsible for the severe injuries to Tabitha, T.W.'s half sibling, section 361.5, subdivision (b)(6) was also appropriately applied to deny them both reunification services as to T.W. as well.

Finally, Claudia asserts that substantial evidence does not support a finding that she inflicted severe physical harm sufficient to support a denial of reunification services.

She cites to *Pablo S. v. Superior Court* (2002) 98 Cal.App.4th 292, a case wherein the parents failed to obtain medical attention for their six-year-old son's broken leg for nearly two months resulting in terrible pain and disfigurement. (*Id*. at pp. 294-297.) She makes a similar argument as did the parents in that case, that other cases wherein reunification services were denied under section 361.5, subdivision (b)(6) had much worse harm inflicted on the child. (*Pablo S.,* at p. 300.) The court in *Pablo S*. did not find this argument persuasive, nor do we. It was not unreasonable for the juvenile court to conclude that these acts and omissions on the part of Claudia and Royce were torturous and likely to have caused or at the very least contributed to the severe emotional damage that Tabitha displayed. Further, the medical evidence indicates that the child's broken arm would have caused her constant and severe pain. That arguably more severe injuries have been inflicted on other children as demonstrated by the published case law does not excuse Claudia's and Royce's conduct in this case.

4. *Denial of Visitation*

As a final point, both Royce and Claudia also argue that the juvenile court erred when it denied them visitation because there is no evidence of detriment to the children, particularly with respect to T.W. A denial of visitation is reviewed for abuse of discretion. (*In re J. N*. (2006) 138 Cal.App.4th 450, 457-459.) A juvenile court abuses its discretion when it exceeds the bounds of reason and the standard requires that we "apply a very high degree of deference to the decision of the juvenile court." (*Id*. at p. 459.)

Royce urges that we should ignore *In re J. N.* as wrongly decided because its interpretation of section 361.5, subdivision (f), which is that it permits a juvenile court to allow visitation if there is no finding of detriment to the child, is in direct conflict with the mandate of section 366.21, subdivision (h), which requires visitation unless there is a finding of detriment. On the contrary, as observed by the court in *In re J. N.*, section 366.21, subdivision (h) applies to those instances where reunification services were originally provided and then subsequently terminated, whereas section 361.5, subdivision (f) applies to those cases where reunification services are denied from the outset. The reasons for the difference are clearly elucidated by the court. (*In re J. N.*, *supra*, 138 Cal.App.4th at pp. 458-459.)

Claudia asserts that expert testimony is required to establish that visitation would be detrimental to the children. Again, however, she fails to provide any authority for the proposition. Consequently, we need not discuss the point. (*Horowitz v. Noble*, *supra*, 79 Cal.App.3d at p. 139.) She also urges that Tabitha's statement that she does not want to return to her parents and the juvenile court's finding that "for Tabitha the mention of her parents brings severe behavior problems" are insufficient to support a finding that visitation would be detrimental to her. However, as observed above, there is no requirement that detriment be established in order to deny visitation under section 361.5, subdivision (f). Royce's reliance on comparison to *In re Mark L.* (2001) 94 Cal.App.4th 573, fails for the same reason.

Royce asserts that the absence of visitation will prejudice his interests at the section 366.26 hearing in that he will be less likely to establish that a loving bond exists

between him and T.W. (*In re Monica C*. (1995) 31 Cal.App.4th 296, 306-307.) However, again, as noted by the court in *In re J. N*., *supra*, 138 Cal.App.4th at p. 460, "[a]lthough this reality may be an unfortunate by-product of the court's order, it does not provide a legitimate basis for attacking it."

Neither Claudia nor Royce has attempted to assert that the trial court abused its discretion in refusing to order visitation pending the section 366.26 hearing. As such, they have failed in their burden of demonstrating reversible error. Further, based upon the record we cannot say that the juvenile court exceeded the bounds of reason or acted in an arbitrary or capricious manner when it determined that the needs of the children coupled with the denial of services made it fruitless to order visitation with the parents.

IV

DISPOSITION

The appeals are dismissed. The petitions for writ of mandate are denied.

CERTIFIED FOR PARTIAL PUBLICATION

RAMIREZ
P.J.

We concur:

HOLLENHORST
J.

McKINSTER
J.