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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

In re T.M. et al., Persons Coming Under the Juvenile Court Law.

ALAMEDA COUNTY SOCIAL SERVICES AGENCY,

Plaintiff and Respondent,

v.

TIFFANY B.,

Defendant and Appellant.

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A133993

(Alameda County Super. Ct. Nos. OJ09013607, OJ09013608)

Tiffany B. mother of T.M. (girl) and M.B. (boy), appeals from the juvenile court's order terminating reunification services and dismissing dependency jurisdiction. Mother contends the court erred by dismissing the dependency because: (1) she did not receive adequate reunification services; (2) she was entitled to additional reunification services; (3) dismissing the dependency was not in the children's best interest; and (4) the court violated her due process right to present evidence on the reasonableness of services.

We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Detention, Jurisdiction, and Disposition

Girl was born in 2002 and boy was born in 2006. In an October 2009 petition, the Alameda County Social Services Agency (Agency) alleged mother's mental illness rendered her unable to supervise and care for the children (Welf. & Inst. Code, § 300, subd. (b)).[1] The petition alleged the children were defecating outside the residence they shared with mother and that mother had had a nervous breakdown after giving birth to boy but refused to take medication. The court detained the children and placed boy with his maternal grandmother and girl with her father. Mother submitted to jurisdiction and the court determined the children came within section 300, subdivision (b). Boy was later released to his father. The parties agreed on a schedule for mother to visit the children.

In July 2010, and following a contested dispositional hearing, the court declared the children dependents of the court and placed each child with his or her respective family members. The court ordered family maintenance services for boy and girl's respective fathers and reunification services for mother.[2] The court further ordered supervised visitation between mother and the children to continue weekly and the Agency was granted discretion to increase supervised visitation.

Interim Review Hearings

In various interim review reports, the Agency provided the court with information about the nature and quality of the visits between mother and the children. In September 2010, the court modified mother's visitation schedule to require the Agency to supervise all visits and did not authorize the Agency to increase supervised visits. At an October 2010 interim review hearing, the court ordered visitation to be supervised by a third

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[1] Unless otherwise noted, all further statutory references are to the Welfare and Institutions Code. In October 2009, Mother was diagnosed with "Major Depressive Disorder, Recurrent Episode, Unspecified." Mother was later diagnosed with "Psychotic Disorder" and "Mild Mental Retardation."

[2] At the dispositional hearing, the court denied mother's motion for a directed verdict and mother appealed. In March 2011, this court dismissed the appeal.

party.[3] In February, April, and May 2011 review reports, the Agency recommended dismissing dependency jurisdiction and terminating mother's reunification services. The Agency reasoned that the children "are residing with their non-offending fathers and their basic needs are being met. . . . despite [mother']s efforts with her case plan, she has limitations that prevent her from providing appropriate care (i.e. bringing pudding and cupcakes to the visits despite the fact that [boy] is highly allergic to milk and eggs). . . . It is also concerning that [ ] mother becomes so easily irritated and agitated. . . ." with the children.

At a May 2011 interim review hearing, the court ordered therapeutic visitation between mother and the children to occur "on a regular basis" and directed the Agency to arrange for make-up visits. The court ordered the parties to research the issue of "reasonable services." In June 2011, the Agency filed a brief urging the court to dismiss the dependency and contending "reasonable services" was not a "necessary inquiry." The children — joined by girl's father — filed briefs requesting the court dismiss the case. Mother did not submit a brief.

At a June 2011 review hearing, the court indicated it was inclined to "dismiss this case . . . to informal family maintenance" because there was "no evidence up to this point of any safety risks to these children. . . ." Counsel for mother objected.

July and November 2011 Interim Review Hearing

The Agency's July 2011 interim review report recommended dismissing dependency jurisdiction, terminating mother's reunification services, and providing supervised visitation to mother during the family maintenance period. At the July 2011 interim review hearing, the children's social worker testified about mother's visitation with the children. Counsel for mother cross-examined the social worker. The court continued the hearing to November 2011.[4]

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[3] Shortly thereafter, mother filed two section 388 petitions requesting custody of the children. The court denied the petitions in December 2010.

[4] In October 2011, mother filed a section 388 petition requesting unsupervised visitation with girl. At the continued review hearing in November 2011, the court

At the continued review hearing in November 2011, the court dismissed dependency jurisdiction. It explained, "there are no safety risks at this time regarding the children staying with their[,] and being in the custody of their respective fathers, so there is no safety risk. Dependency should be terminated and will be this afternoon." The court determined mother received "adequate and appropriate visitation" and that she received reasonable reunification services. Over mother's objection, the court terminated mother's reunification services and ordered supervised visitation for mother with both children and additional unsupervised visitation with girl. The court dismissed the dependency to informal family maintenance and returned the children to the sole legal custody of their respective fathers.

Mother appeals from the November 30, 2011 order and from "[a]ll orders and findings of the court including the dismissal of dependency by the court and a denial of [her] right to cross examine and confront witnesses and put forth evidence in the contested hearing."

DISCUSSION

Mother's Arguments Regarding Reunification Services Have No Merit

Mother claims the court erred by dismissing dependency jurisdiction because the Agency did not provide her with reasonable services. According to mother, the Agency "was lax in making up missed visits by the fathers and there was a delay over many months in starting therapeutic visitation after the [A]gency was on notice that mother needed such services in order for her to progress to unsupervised visits." We review the court's decision to terminate dependency jurisdiction pursuant to section 361.2 for abuse of discretion.[5] (*In re Austin P.* (2004) 118 Cal.App.4th 1124, 1134-1135.)

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ordered unsupervised visitation between girl and mother pursuant to the parties' agreement.

[5] Section 361.2 applies when a child is removed from an offending parent and then placed with a previously noncustodial parent. (See, e.g., *In re Sarah M.* (1991) 233 Cal.App.3d 1486, 1495 (*Sarah M.*), disapproved on other grounds in *In re Chantal S.* (1996) 13 Cal.4th 196.) Under section 361.2, the court has discretion to order the previously noncustodial parent to assume custody subject to the jurisdiction or

Mother seems to contend a court may not terminate dependency jurisdiction pursuant to section 361.2 unless reunification services offered pursuant to that statute are reasonable. She is wrong. When the court terminates jurisdiction pursuant to section 361.2, the issue is whether continued supervision is necessary, not whether reunification services were reasonable. (*In re Janee W.* (2006) 140 Cal.App.4th 1444, 1455 (*Janee W.*).)

Janee W. is instructive. There, two minors were removed from their mother's home and placed with their father. (*Janee W., supra,* 140 Cal.App.4th at p. 1448.) At the six-month review hearing, the court referred to section 364 instead of section 361.2 when setting future hearings. (*Janee W.*, at p. 1450.) Eighteen months later, the juvenile court concluded the children could not safely be returned to their mother and awarded full legal and physical custody to their father. The court allowed mother weekly visits and terminated jurisdiction. The mother appealed, contending, among other things, that she did not receive adequate reunification services. (*Ibid.*)

The *Janee W.* court held the juvenile court's reference to section 364 was harmless because the uncontroverted evidence demonstrated there was no need for continued supervision. (*Janee W., supra,* 140 Cal.App.4th at p. 1452.) The court stated, "[t]he supposed lack of reunification services does not require a different result" (*id.* at p. 1453) and explained, "even if reunification services are offered to the previously custodial parent, once the dependency court determines that further supervision of the children in the home of the previously noncustodial parent is not required, the failure to provide adequate reunification services to the other parent does not prevent the court from terminating jurisdiction under section 361.2." (*Id.* at p. 1455.)

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supervision of the juvenile court. (§ 361.2, subd. (b)(2), (3).) The court has broad discretion under section 361.2, subdivision (b) to provide reasonable visitation to the offending parent and to provide reunification services to one or both parents. (§ 361.2, subd. (b)(1), (2).) The court also has discretion to determine which parent shall have legal and physical custody of the child and to then "terminate its jurisdiction over the child." (§ 361.2, subd. (b)(1).) The standard for terminating jurisdiction is "whether there exists a need for continued supervision." (*Sarah M.*, 233 Cal.App.3d at p. 1502.)

Therefore, under *Janee W.*, a court may terminate jurisdiction pursuant to section 361.2 even if reunification services provided to the formerly custodial parent are inadequate. As one commentator has explained, "[w]here children have been placed with a previously noncustodial parent, failure to provide reasonable reunification services to the previous custodial parent is irrelevant and does not preclude the termination of jurisdiction under [section] 361.2." (10 Witkin, Summary of Cal. Law (10th ed. 2012 supp.) Parent & Child, § 644, pp. 326-327; see also *Sarah M., supra,* 233 Cal.App.3d at p. 1501 [court did not abuse discretion by terminating jurisdiction pursuant to section 361.2 before mother completed case plan; rejecting the mother's suggestion that services offered were not "designed for the possible return of the child to her custody"].)

Here, the court was not obligated to consider whether reunification services were reasonable before terminating dependency jurisdiction. Nor was the court required to provide mother with an additional six months of reunification services before it terminated jurisdiction. As discussed above, if the child remains in parental custody, the issue at each review hearing is "whether the dependency should be terminated or whether future supervision is necessary. [Citation.] . . . If supervision is no longer required, the court simply terminates the dependency." (*In re Joel T.* (1999) 70 Cal.App.4th 263, 267-268, fn. omitted.)

Relying on *In re Calvin P.* (2009) 178 Cal.App.4th 958, 965 (*Calvin P.*), mother claims the Agency had a "duty to provide reasonable reunification services to [her]." Mother's reliance on *Calvin P.* is misplaced because that case did not concern the termination of dependency jurisdiction under section 361.2. In *Calvin P.*, the court held that "[p]roviding family maintenance services for one parent and reunification services for another can be appropriate in certain situations" under section 361.2, but then stated, "[t]his situation is not analogous." (*Calvin P., supra,* at pp. 963-964.)

We conclude the court was authorized to terminate dependency jurisdiction regardless of whether the reunification services offered to mother were reasonable and regardless of whether mother might have been entitled to additional reunification services. Having reached this result, we need not address the parties' arguments

regarding the sufficiency of the evidence supporting the court's finding that the reunification services were reasonable.

Mother's Claim Regarding the Children's Best Interest Fails

Next, mother claims the court abused its discretion by dismissing dependency jurisdiction "under circumstances where the court's continued involvement was both justified and necessary to promote the best interests of the children." Her argument is difficult to follow, but she seems to contend it was in the children's best interest for her to continue to receive reunification services.

There are several problems with this argument. First, it does not appear mother has standing to challenge the dismissal of dependency jurisdiction on the grounds that it was in the children's best interests to continue the dependency. "'Standing to challenge an adverse ruling is not established merely because a parent takes a position on an issue that affects the minor [citation]; nor can a parent raise the minor's best interest as a basis for standing [citation]. Without a showing that a parent's personal rights are affected by a ruling, the parent does not establish standing. [Citation.] To be aggrieved or affected, a parent must have a legally cognizable interest that is affected injuriously by the juvenile court's decision. [Citation.] In sum, a would-be appellant "lacks standing to raise issues affecting another person's interests." [Citations.]' 'Issues which do not affect the parent's own rights may not be raised in the parent's appeal.' [Citation.]" (*In re Noreen G.* (2010) 181 Cal.App.4th 1359, 1377.)

Second, and assuming mother has standing to raise this issue, her claim fails. Mother has not established the court abused its discretion by concluding continued supervision was no longer necessary, nor has she demonstrated insufficient evidence supports the court's conclusion that continued supervision was no longer necessary. (*Sarah M., supra,* 233 Cal.App.3d at p. 1498.) This case is not — as mother contends — like *Austin P., supra,* 118 Cal.App.4th at page 1135, where the appellate court affirmed the trial court's conclusion that "there was a need for continued court supervision" in part because the "[m]other was the only parental figure [the minor] had ever known. He was more bonded with Mother than with Father and he wanted to reunify with her." (*Id.* at

pp. 1134, 1135.) Here, mother is not the only parental figure the children have known: they lived with mother a relatively short time before being taken into protective custody, and both repeatedly stated they wanted to live with their respective fathers.

Mother's Due Process Rights Were Not Violated

Mother's final claim is the court violated her due process rights by preventing her from cross-examining the social worker and presenting evidence on the issue of reasonable services. She concedes, however, that the court has "broad authority" to control proceedings before it and that there is no statutory right to present evidence at a review hearing.

Mother relies on *In re Thomas R.* (2006) 145 Cal.App.4th 726, 734 (*Thomas R.*), to support her claim that she had the right to present evidence and cross-examine the social worker at the hearing where the court dismissed dependency jurisdiction.[6] *Thomas R.* held that "where the parents wish to test whether the agency has met its burden of proof at a section 366.26 hearing, they have a due process right to do so through examination of the agency's witnesses." (*Id.* at p. 734, fn. omitted.) *Thomas R.* does not stand for the proposition that a parent is entitled to present evidence on the issue of reasonable services or conduct cross-examination on that issue at a hearing to dismiss jurisdiction under section 361.2. As a result, *Thomas R.* has no application here.

It was not, as mother contends, the Agency's "burden to prove that reasonable services had been provided. . . ." When deciding whether to dismiss the dependency under section 361.2, the court's only consideration was whether "there exists a need for continued supervision[,]" not whether reunification services provided to one parent were reasonable. (*Sarah M., supra,* 233 Cal.App.3d at p. 1502.) Mother has not cited any

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[6] The court allowed mother to cross-examine the social worker extensively. Counsel for mother admitted he was engaging in direct and cross-examination of the social worker.

authority entitling her to present evidence or cross-examine a witness on an issue bearing no relevance at the hearing to dismiss dependency jurisdiction.[7]

DISPOSITION

The judgment is affirmed.

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Jones, P.J.

We concur:

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Needham, J.

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Bruiniers, J.

[7] The cases mother cites, *In re James Q.* (2000) 81 Cal.App.4th 255, *In re Kelly D.* (2000) 82 Cal.App.4th 433, and *Ingrid E. v. Superior Court* (1999) 75 Cal.App.4th 751, do not support her claimed entitlement to present evidence or conduct additional cross-examination at a hearing to terminate dependency jurisdiction pursuant to section 361.2.