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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

In re A.S., a Person Coming Under the
Juvenile Court Law.

SAN FRANCISCO COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

T.S. et al.,

Defendants and Appellants.

A135215

(San Francisco City & County
Super. Ct. No. JD10-3215)

Two-year-old A.S. (Minor), who was detained for child abuse and neglect at the age of four months, is a dependent child of the juvenile court. The court terminated parental rights of both parents, appellants T.S. (Mother) and A.S. (Father), and ordered a permanent plan of adoption. Despite acknowledging below they had no legal grounds to challenge termination, both Mother and Father appeal. They contend the juvenile court should have engaged in increased efforts to assist Mother in finding housing. For the reasons we discuss below, we find no merit in the contention and affirm.

I. PROCEDURAL BACKGROUND & FACTS

On June 21, 2010, respondent San Francisco County Department of Children and Family Services (Department), filed a dependency petition on Minor's behalf.¹ The Department alleged that Mother and Father failed to protect four-month-old Minor such that she suffered serious physical harm: fractures of the left clavicle and left femur, a left-sided subarachnoid hemorrhage, and multiple bruises of the face and abdomen, all consistent with inflicted nonaccidental trauma and raising the suspicion of possible physical abuse. (§ 300, subs. (a) & (b).) The Department further alleged Mother and Father failed to protect Minor due to alcohol and substance abuse problems, respectively; had failed to maintain well child health care; and were unable to provide proper care, shelter, and supervision for Minor. (§ 300, subd. (b).) In addition, the Department alleged Mother and Father had failed to protect a child under five from severe physical abuse (§ 300, subd. (e)), and Father was currently incarcerated in the San Francisco County Jail and was unable to care for Minor. (§ 300, subd. (g).)

The record shows Mother left Minor at home at 11:30 on a Friday evening so she could go "bar-hopping" in San Francisco, and did not come home until the following Monday evening. She left Minor in Father's care. When she returned she could find neither Minor or Father. She found Minor under the bedcovers when she noticed the sheets moving. She noticed bruising on Minor's left ear and what seemed to be a diaper rash. She did not think the injuries were severe enough to warrant medical attention.

The next day Mother noticed bruising and swelling on both sides of Minor's head and "really bad" bruising in the diaper area that was "dark, dark purple." Father's brother, who lived in the upstairs part of the home, called 911. Police arrived and took Minor to the emergency room. Mother called Father who denied Minor was injured while in his care. Mother told police she saw evidence that Father had been drinking while she was gone, and that he could become violent when he drank. Father's brother

¹ All dates are in 2010 unless otherwise indicated. All statutory citations are to the Welfare and Institutions Code unless otherwise indicated.

and his girlfriend told police both Mother and Father drank heavily. The police described the home as “filthy and in disarray,” and found over a dozen empty alcohol bottles in a trash can.

Father was arrested on a number of charges including child neglect and inflicting corporal injury on a child. Mother was arrested on outstanding warrants. After the petition was filed, Minor was placed in emergency foster care. Her medical evaluation was consistent with the allegations of the petition and showed a pattern of nonaccidental trauma.

The disposition report noted both parents had long-standing substance abuse problems; Mother had a long criminal history for drug offenses; and Father had a long criminal history for drug offenses, burglary, and attempted robbery. Mother had five other children, all of which had been removed from her care due to substance abuse and/or neglect. The report also included a medical assessment that Minor had been born premature and the parents had not obtained proper pediatric care for Minor.

The Department recommended against social services for either parent, because of the severe injuries to Minor, the lack of adequate care, the parents’ longstanding histories of substance abuse, the removal of Mother’s five other children from her care, and Father’s incarceration for at least two more years. The Department noted that Mother’s sister, whose initials are also T.S. and whom we will refer to as “Aunt,” relocated from Louisiana to care for Minor.

The parties reached a settlement agreement regarding jurisdiction, and the Department filed an amended petition alleging failure to protect (§ 300, subd. (b)) due to Mother’s substance abuse problem, for which she was receiving treatment, and Father’s substance abuse problem, for which he required assessment and treatment; and severe physical abuse (§ 300, subd. (e)) for causing Minor’s injuries, which included not only those alleged in the original petition, but also a healing clavicle fracture one to four weeks old. The amended petition also alleged that two of Mother’s other children were previously dependents of the juvenile court and Mother’s parental rights were terminated after a failure to reunify.

The parents submitted to the allegations of the amended petition and the juvenile court found the allegations to be true. Father filed a waiver of reunification services; in addition, the court denied him services under section 361.5, subdivision (b)(4). The court granted reunification services to Mother, which included residential drug treatment; counseling and therapy regarding past trauma, domestic violence, and substance abuse; and an anger management course.

In the six-month review report, the Department reported Mother was making only minimal progress with her reunification case plan. Mother voluntarily left a residential treatment program and was living in a trailer. Mother tested positive for cocaine, only sporadically attended therapy sessions, and had missed a few scheduled visits with Minor. Mother was working with a program to find more stable housing and assistance in enrolling in other treatment programs. She was cooperative and open to services, but needed additional support and services regarding her substance abuse problem before reunification. Minor was a year old and was still living with Aunt. Minor had behavior problems, but was in general good health.

The court accepted the Department's recommendation for another six months of reunification services.

In the 12-month review report, the Department recommended reunification services be terminated for Mother because she was unable to address fully her substance abuse and past trauma issues in time to reunify. Mother had also been diagnosed with alcohol and cocaine abuse, Post Traumatic Stress Disorder, Schizoid Personality Disorder, and self-isolation. She had a history of irritability and aggression which make her a risk of being a danger to others.

Aunt was prepared to adopt Minor should reunification fail.

After a contested hearing, the juvenile court found the Department had made reasonable efforts to provide Mother with reunification services, but Mother had not made substantial progress. The court continued Minor's placement with Aunt. The court found there was not a substantial probability that Minor could be returned to Mother's

care within the next six months; terminated reunification services; and set a hearing under section 366.26 to implement a permanent plan.

In its report for the section 366.26 hearing, the Department recommended adoption as the permanent plan for Minor. The Department recommended Mother's and Father's parental rights be terminated, and Minor be adopted by Aunt.

At the hearing, counsel for both parents objected to the termination of parental rights, but conceded there were no valid legal arguments to contest the termination. The parents did submit information, primarily through statements of counsel, regarding further progress with issues that led to the dependency.

The juvenile court found clear and convincing evidence that Minor would be adopted and terminated the parental rights of both parents.

II. DISCUSSION

Both parents appeal. Mother formally raises one issue and Father joins in her opening brief.

Mother argues the juvenile court should have made further efforts to help her find subsidized housing so that she could make a home with Minor. The exact nature of this argument is not entirely clear. It appears to speak more to the adequacy of reunification services, which are not at issue at a termination hearing and which Mother apparently did not challenge, rather than the validity of termination of parental rights. It also is not entirely clear whether this precise issue was raised below.

In any case, the parents *conceded* below that there was no legal ground to challenge the validity of the termination of their parental rights. Furthermore, once the juvenile court found Minor was adoptable, the parents did not try to show that any of the statutory exceptions to termination applied. (§ 366.26, subd. (c)(1); *In re Jason J.* (2009) 175 Cal.App.4th 922, 936.) Thus, this appeal is without merit.²

² Mother purports to raise an ICWA issue, but does not do so as a formal argument under an argument heading, but in a paragraph in her combined statement of the case and facts. More importantly, Mother does not support this purported argument with any legal authority—as such, we will not consider it.

III. DISPOSITION

The order terminating Mother's and Father's parental rights is affirmed.

Marchiano, P.J.

We concur:

Dondero, J.

Banke, J.