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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

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

E. L.,

Petitioner,

v.

SUPERIOR COURT OF CONTRA
COSTA COUNTY,

Respondent,

CONTRA COSTA COUNTY CHILDREN
AND FAMILY SERVICES BUREAU, et
al.

Real Parties in Interest.

A136184

(Contra Costa County
Super. Ct. No. J10-01107)

I. INTRODUCTION

Appellant E. L. (Mother) has filed a petition for an extraordinary writ in which she challenges the juvenile court’s order scheduling a hearing pursuant to Welfare and Institutions Code 366.26.¹ She argues that the trial court erred because it denied her request for unsupervised visits with L.L.

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise noted.

II. FACTUAL AND PROCEDURAL BACKGROUND

L.L. first came to the attention of the Contra Costa County Children and Family Services Bureau (Bureau), on August 7, 2010, after Mother took her to the emergency room with the unfounded belief that L.L. had been molested. At the time, L.L. was four months old. Two days later, the Bureau interviewed Mother, as well as Mother's brother-in-law, sister, and grandfather. The Bureau discovered a serious history of mental illness and substance abuse by Mother, and L.L. was removed from Mother's custody.

In its detention/jurisdictional report filed October 20, 2010, the Bureau noted that Mother suffered from mental illness including bipolar disorder and schizophrenia and had stopped going to counseling and taking her medications. An interview with Mother's sister revealed that Mother might also have a problem with alcohol abuse.

In a disposition report dated November 16, 2010, the Bureau noted that Mother was receiving supervised visits of one hour a week with L.L. The Bureau provided bus tickets to Mother, referrals to parenting classes, a drug testing program, and referrals for therapy at a local clinic. The Bureau expressed concern that Mother continued to find non-existent physical ailments with L.L. at every visit, behavior which was consistent with Mother's mental illness. The Bureau recommended continued placement of L.L. with a foster family and supervised visits for Mother.

On December 7, 2010, the Bureau requested that Mother's visitation be decreased to two hourly monthly visits. The Bureau noted that, in the previous two visits, Mother had outbursts and was hostile towards county workers and that her behavior distressed L.L. In an order dated December 7, 2010, the court admonished Mother "not to make any verbal abusive comments or . . . any further hostile comments or gestures," toward county workers during these visits.

On December 29, 2010, the Bureau informed the court that Mother had been asked to leave the "Love a Child" shelter where she had previously been residing after she got into a domestic violence dispute with another resident. Mother also admitted to being aggressive towards L.L.'s alleged Father, C.T.

A dispositional hearing was held on January 11, 2011. At that time, the court ordered L.L. a dependent child, found that reasonable efforts had been made to prevent the need for L.L.'s removal from the home, that removal from the home would not create a substantial risk to L.L.'s well being and also found clear and convincing evidence that there was substantial danger to L.L. if she was returned home, and there were no reasonable means to protect L.L. without removal of physical custody from Mother. The court ordered supervised visitation of one hour two times a month. A reunification plan was adopted. The court informed Mother that if she was unable to resume custody of L.L. within six months, then a permanent plan, including termination of her parental rights, could be made. Mother did not appeal this order.

The Bureau filed a status review report for the six month review hearing on August 15, 2011. The Bureau reported that Mother was living with her sister. Mother continued to suffer from paranoia and was not taking all of her medications. Mother, however, contended that she had been taking her medications as prescribed. Mother had seen L.L. on all her scheduled days except for one on June 8, 2011. Mother had been offered numerous services, including: bus tickets, supervised visits with L.L., referrals to parenting classes, referrals to Pittsburg Mental Health Clinic, and referrals for random drug testing. Mother was visiting L.L. twice a month and believed she had complied with all the requirements of the court. However, the Bureau was still concerned with Mother's mental health. Mother continued to see nonexistent ailments in L.L. when she visited her. In addition, Mother's sister had reservations about Mother's ability to care for L.L. The Bureau reported that Mother's lack of compliance with her prescribed medication regime and living situation made her unable to care for L.L. Mother had also not completed her parenting classes and her interactions with L.L. were not age appropriate. The Bureau requested that Mother's visitation be decreased to one hour once a month and that a section 366.26 hearing date be set.

In an order filed September 1, 2011, the court found that returning L.L. to her Mother would present a substantial risk to her health and safety and ordered additional services to be given to Mother, including a "Nurturing Parenting Program" and referrals

to therapy. Mother was specifically ordered to attend individual therapy, to secure treatment for her mental health illnesses, and to continue her participation in the bipolar support group at Contra Costa Mental Health. The court found that Mother participated in the case plan, and regularly contacted and visited L.L., and that if services were extended until October 7, 2011 there was a likely probability that L.L. would be returned to Mother. Visitation was kept at two hourly monthly visits. The court also found that the Bureau had provided reasonable services, a finding Mother did not challenge. Mother was informed that if she was unable to resume custody of L.L. by October 7, 2011, the court could make permanent plans for L.L. A 12-month hearing was set for September 26, 2011.

A status report was prepared for the September 26, 2011 hearing.² The Bureau reported that L.L. showed stress when leaving her foster parents to see Mother, and that continued placement with the foster family was in L.L.'s best interest. Additionally, L.L. had started to hide when the social worker picked her up to see Mother. Even though Mother could have started individual therapy as early as February 14, 2011, she did not start until September 19, 2011. Because she was noncompliant with her oral medications, Mother was prescribed bi-monthly injections, which she did not begin until August 16, 2011. Mother continued to see nonexistent physical ailments in L.L. and exhibited paranoid behavior during her visits with L.L. Mother's sister had reservations about Mother's ability to care for L.L. and stated that Mother spent all day at home sleeping and did not help out around the house. However, after being informed that L.L. might be permanently taken away, she changed her statement and told the Bureau that Mother was fine and could care for L.L. Mother's mental health physician noted that Mother was following up with her appointments because she wanted to regain custody of L.L. and not because she believed she could benefit from mental health treatment. Additionally, Mother's attendance at her bipolar support group was inconsistent. Mother was

² Due to continued continuances the hearing was not held and a combined 12- and 18-month hearing was held on April 23, 2012.

completely reliant on her sister for money and a place to live and yet had alienated her sister and the rest of Mother's family. Additionally, Mother had not made her mental health a priority. Throughout Mother's supervised visits with L.L., the case workers observed "delusional behavior, lability, and thought derailment." On two occasions, a public service officer had to remove Mother from the building where the visits took place.

Services provided to Mother included transportation of L.L. to Mother's parenting class, bus tickets for Mother, supervised visits, face to face interviews with Mother, referrals for individual therapy, referrals for random drug testing, and referrals to the Pittsburg Mental Health Clinic.

The Bureau recommended that reunification services be terminated, that the court determine reasonable services have been provided and that the matter be set for a section 366.26 hearing.

The Bureau filed a status report for the combined 12- and 18-month hearing on April 16, 2012 and the combined 12- and 18-month review was conducted on April 23, 2012.³ In its report, the Bureau noted that Mother had started individual therapy and continued to receive bi-weekly injections of Risperdal to control her mental health illness. However, the Bureau remained concerned about Mother's financial inability to provide independent care for L.L. as well as her inability as a parent to respond to L.L.'s social cues. During her visits with L.L., Mother was still not completely engaged with L.L. and did not speak to her in an age appropriate fashion. The report also indicated that L.L. became fretful when she was taken on her visits to Mother. In a recent visit, Mother turned on a toy dinosaur that appeared to scare L.L. into running away and hiding in the social worker's lap. Mother repeated the action after L.L. calmed down and again scared the child. Mother became angry when the social worker admonished her.

³ The hearing was conducted over the course of several months. In addition to the April 23, 2012 hearing, hearings were conducted on May 3, 2012, June 5, 2012, and July 16, 2012. All hearings will be collectively referred to as the "April 23, 2012 hearing."

At the April 23, 2012, hearing, Mother's counsel introduced evidence that Mother had successfully completed the Nurturing Parenting Program and received a positive letter of recommendation from the Child Development Coordinator, Toni Robertson. Robertson's letter reported that she never observed Mother acting inappropriately with L.L. Mother's caseworker confirmed that Mother had started attending individual therapy on September 19, 2011, and was regularly attending therapy, but had missed 10 sessions between September 19, 2011, and April 24, 2012. The caseworker also testified that she received reports that Mother missed some of her injections in January and March 2012 and Mother admitted to missing approximately one, of her required two, injections per month.

The caseworker testified that Mother had made some progress in terms of parenting L.L., through working with Denah Hanson at Alternative Family Services. She also testified that based upon the positive recommendations Mother had received, Mother had made progress in the last six months towards controlling her mental health issues although no mental health professional had had the opinion that it would be safe to return L.L. to Mother. Neither had any of the mental health providers suggested giving Mother unsupervised visits with L.L.

On June 20, 2012, after testimony was concluded but before closing arguments commenced, Mother's counsel asked the court, "Is there any possibility of mom getting some expansive visits at the aunt's house?" The court responded, "I don't think so. I don't think so. Okay, whatever visitation scenario it is now, let's continue it." Counsel responded, "All right."

Closing arguments were held on July 16, 2012. The court expressed concern with the fact that "no mental health professional would render an opinion the child would be safe if returned to her mother." With regard to Mother's compliance with her case plan, the court noted that "mother did her best to complete that plan. I don't, for a moment, question her commitment and her concern, albeit very late in the process, because that's exactly what it is. It's late in the process." The court found that there was not a

substantial probability that the minor would be returned to Mother and that it was in L.L.'s best interest that the matter be set for a section 366.26 hearing.

This petition was filed September 7, 2012.

III. DISCUSSION

A. *Reasonable Services*

Mother's only argument appears to be that the court erred when it denied her request for "expansive visits" at the conclusion of the 12-18-month review hearing. To the extent that Mother's argument is that the court denied Mother reasonable services when it denied her last minute request for additional visitation, we disagree.

"Family preservation, with the attendant reunification plan and reunification services, is the first priority when child dependency proceedings are commenced. [Citation.] Reunification services implement 'the law's strong preference for maintaining the family relationship if at all possible.'" (*In re Elizabeth R.* (1995) 35 Cal.App.4th 1774, 1787.) In determining whether reasonable reunification services have been provided, we employ the traditional substantial evidence test. (*In re Precious J.* (1996) 42 Cal.App.4th 1463, 1472.) Under this standard, we review the evidence in the light most favorable to the respondent and make every legitimate reasonable inference to uphold the judgment. (*In re Casey D.* (1999) 70 Cal.App.4th 38, 53.) Substantial evidence is evidence that is "reasonable, credible, and of solid value." (*In re Angelia P.* (1981) 28 Cal.3d 908, 924.)

A welfare agency is required to "identify the problems leading to the loss of custody, offer services designed to remedy these problems, and maintain reasonable contact with the parents to assist in areas where compliance proves difficult" (*In re Joanna Y.* (1992) 8 Cal.App.4th 433, 438.) "[A] reunification plan 'must be appropriate for each family and be based on the unique facts relating to that family.'" (*In re Michael S.* (1987) 188 Cal.App.3d 1448, 1458.) The reunification plan must be formulated and implemented in good faith, with the primary purpose of preserving and strengthening the parent-child bond. (*Hansen v. Department of Social Services* (1987) 193 Cal.App.3d 283, 292-293.)

However, the social worker is not required to “take the parent by the hand and escort him or her to and through classes or counseling sessions.” (*In re Michael S.*, *supra*, 188 Cal.App.3d at p. 1463, fn. 5.) “Reunification services are voluntary, and cannot be forced on an unwilling or indifferent parent.” (*In re Jonathan R.* (1989) 211 Cal.App.3d 1214, 1220.) The issue is not whether “more services could have been provided more frequently and that the services provided were imperfect. The standard is not whether the services provided were the best that might be provided in an ideal world, but whether the services were reasonable under the circumstances.” (*In re Misako R.* (1991) 2 Cal.App.4th 538, 547.)

The denial of Mother’s last minute request for “expansive” visits with L.L. does not amount to a denial of reasonable reunification services. Mother was originally granted four, one-hour, visitations a month. On December 7, 2010, the court granted the Bureau’s request that Mother’s visitation be decreased from four monthly hourly visits to two monthly hourly visits because Mother’s behavior was distressing L.L. On June 27, 2011, the Bureau again requested that the court decrease Mother’s visitation, this time from two hourly monthly visits to one hourly monthly visit because she continued to see non-existent ailments in L.L. during her visits. On September 1, 2011, the court denied that request and kept the visits at twice a month for one hour each. In addition, Mother was offered the opportunity to attend the Nurturing Parents class from August 2, 2011, to January 30, 2012. The Bureau provided transportation of L.L. to Mother’s class to facilitate parent-child bonding. At the April 23, 2012, hearing, Mother admitted to never asking for unsupervised visits. In addition, no mental health professional had ever suggested that Mother be given unsupervised visits.

At the combined 12- and 18-month review hearing, Mother’s mental illnesses still prevented her from engaging with L.L. in an appropriate manner, and L.L. herself appeared to be disturbed by these visits. The court did not, therefore, err in refusing to continue the matter to permit Mother access to further reunification services in the form of “expansive visitation.”

Mother's reliance on *In re Elizabeth R.*, *supra*, 35 Cal.App.4th 1774 is not helpful. In that case, the mother was hospitalized for 13 of the 18 months during the reunification period, and therefore was unable to physically participate in many aspects of the reunification plan. (*Id.* at pp. 1777-1778.) Here, Mother was offered services to address her mental health illnesses and facilitated visitation was offered in order to help Mother develop a bond with L.L. Mother was able to participate in the reunification plan but, unfortunately, was unable to complete it successfully.

In addition, the court in *In re Elizabeth R.*, was unaware that it could extend reunification services beyond the 18-month period, and ordered the 366.26 hearing based on the mistaken belief that the termination of reunification services was required. (*In re Elizabeth R.*, *supra*, 35 Cal.App.4th at pp. 1777-1778.) Here, the juvenile court commissioner was well aware that he could extend reunification services. ~ (RT 358-359.)~The fact that he declined to do so is supported by substantial evidence.

IV. DISPOSITION

The petition is denied on the merits. (Cal. Rules of Court, rule 8.452(h)(1).) This decision is final as to this court forthwith. (*Id.*, rule 8.490(b)(1).)

Haerle, Acting P.J.

We concur:

Lambden, J.

Richman, J.