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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

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

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A.P.,

Petitioner,

v.

THE SUPERIOR COURT OF SAN  
MATEO COUNTY,

Respondent;

SAN MATEO COUNTY HUMAN  
SERVICES AGENCY et al.,

Real Parties in Interest.

A136512

(San Mateo County  
Super. Ct. No. 81909)

A.P. (mother) petitions this court for an extraordinary writ pursuant to Welfare and Institutions Code section 366.26 and California Rules of Court rule 8.452, seeking review of the juvenile court's order terminating her reunification services and setting the matter for hearing to implement a permanent plan for her son, A.O. (minor).<sup>1</sup> Mother seeks this relief on the ground that there was insufficient evidence in the record to support the juvenile court's finding no substantial probability existed, if reunification services were

<sup>1</sup> Unless otherwise stated, all statutory citations herein are to the Welfare and Institutions Code, and all references to rules are to the California Rules of Court.

extended, minor would be returned to mother within 18 months. We deny the writ petition, as well as mother's related request for a stay of these proceedings.

### **FACTUAL AND PROCEDURAL BACKGROUND**

On June 23, 2011, a petition was filed in Los Angeles County pursuant to section 300, subdivisions (a), (b) and (g), alleging that minor, born in October 2008, had suffered or faced substantial risk of suffering serious physical harm inflicted nonaccidentally by a parent; had suffered or faced substantial risk of suffering serious physical harm or illness due to parents' illicit drug use and mental and emotional problems that precluded them from providing for minor's regular care; and had been left without provisions for support necessary for his physical health and safety (hereinafter, section 300 petition).

Specifically, the section 300 petition alleged mother suffered from mental and emotional problems, including depression and bipolar disorder; mother and a male companion had engaged in violent altercations in minor's presence; mother had a history of illicit drug abuse and had recently been arrested for possession of drug paraphernalia; mother and minor were residing in the home of a male companion known to use illicit drugs; and parents had a history of domestic violence that included one incident during which father threatened mother with a gun in minor's presence.<sup>2</sup>

Also on June 23, 2011, the juvenile court found, among other things, a prima facie case had been established with respect to the allegations in the section 300 petition, and that no reasonable means were available to protect the minor's health and safety without removing him from parents' physical custody.

On August 14, 2011, minor was moved from a shelter care home to the home of his paternal aunt in Brentwood, California. The next month, both parents moved to San Mateo County.

On November 4, 2011, the juvenile court sustained allegations in the section 300 petition with respect to subdivisions (a) and (b). In addition, the court adopted a case

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<sup>2</sup> Father is not a party to this appeal. Accordingly, the circumstances leading to minor's removal from his physical custody are discussed only in passing.

plan requiring mother to, among other things, participate in a complete drug and alcohol treatment program, a domestic violence support group, parenting classes, and individual counseling; to take all prescribed psychotropic medications; and to engage in monitored visitation with minor. Finally, the court ordered the matter transferred to San Mateo County, where both parents were living.

An interim review hearing was scheduled for January 17, 2012. In anticipation of this hearing, Katherine Odle, social worker for real party in interest, San Mateo County Human Services Agency (the agency), prepared an interim review report. Among other things, the report gave notice that, because minor was under three at the time of his removal, “parents only have up to twelve months to reunify with him. . . . [Further], the Family Reunification Six-Month Review Hearing should be held no later than May 4, 201[2].” The report also stated that Odle had reviewed the case plan with mother on December 20, 2011, calling her attention to this shortened timeline. Other significant information in Odle’s report included the following.

With respect to mental health, Odle noted mother did not currently have a therapist or psychiatrist and “adamantly denied” having been prescribed psychotropic medications or diagnosed with any mental health issue. Nonetheless, Odle referred mother to counseling services, as well as substance abuse services. In addition, Odle noted that she had discussed mother’s mental health with mother’s former social worker in Los Angeles, who told Odle that mother could be very combative and denied having a history of mental health or substance abuse problems (despite having tested positive for methamphetamines). According to the Los Angeles social worker, mother had threatened to kill a colleague who had been involved in moving minor to the paternal aunt’s home. The social worker believed that, while mother was not dangerous, she had “a lot of mental health issues.”

With respect to domestic violence, mother told Odle she had not participated in any services for domestic violence victims. Finally, with respect to parenting and visitation, mother told Odle she was, and intended to continue, participating in a parenting program. However, mother did not believe the class was beneficial. Further,

Odle initially could not schedule visitation because mother failed to contact her between the December 8, 2011 transfer-in hearing and December 20, 2011. Then, on December 20, mother told Odle she did not want to schedule a visit until the following week, on December 27, 2011. Mother missed the next scheduled visit on January 3, 2012, and the following visit, on January 9, 2012, was interrupted because parents were arguing in front of minor. On January 17, 2012, the court granted the agency discretion to delegate supervised visitation to other approved relatives; however, mother expressed discomfort about visitation being supervised by the paternal aunt or grandfather because she had, in the past, engaged in a physical altercation with another paternal aunt.

The next interim review hearing occurred February 23, 2012, a report for which was prepared by social worker Cecilia Alarcon. This report noted that a meeting had occurred between mother and an agency intern, during which mother denied having ever used drugs or alcohol, having had mental health problems or been prescribed psychotropic medications, or having exposed minor to domestic violence. Mother further stated that she did not know why minor was removed from her custody.

This report also noted that mother's counselor had expressed confusion as to mother's treatment needs, as mother denied having any substance abuse problems and insisted she was only attending the program to comply with the case plan. In addition, while visitation was mostly appropriate, mother was in denial about her son's speech and language delays and had withheld approval for her son to participate in a special education program, insisting "the reason why [minor] does not want to talk is because he is not happy about living with his aunt and . . . misses his mother."

On March 28, 2012, the juvenile court granted the caregivers' request for de facto parent status and continued mother's request for increased visitation (which she later withdrew). In addition, mother agreed to submit to whatever treatment was recommended following a mental health evaluation.

The six-month review hearing was held April 26, 2012, in anticipation of which two reports were filed. One report included mother's written psychological evaluation. This report, among other things, noted that mother "did not appear to be a credible

historian due to the amount of denial, omissions, and inconsistencies in her account of events compared to collateral sources.” “Test results are positive for the presence of chronic stimulus overload, persecutory ideation, marked self-preoccupation, underlying insecurity, emotional dysregulation, mild to moderate impairments in perception and logic, inflexible thinking and a mild sense of lethargy.” Further, “[t]est data . . . demonstrate a longstanding pattern of pervasive distrust and suspiciousness in her interpersonal interactions.”

According to this report, mother’s psychological evaluation identified “paranoid and narcissistic personality features,” as well as character traits suggesting reluctance to admit flaws or mistakes or to alter viewpoints, negative behavior towards treatment providers, and preoccupation with upholding her own credibility at the expense of self-improvement. With respect to mother’s parenting abilities, the evaluation noted that her “personality traits suggest that she might be more concerned about maintaining her own agenda than in attending to [minor’s] needs,” and that her misperceptions and faulty reasoning could “adversely impact her ability to care for [him].” Based on the foregoing, the evaluation concluded that any decision regarding unsupervised visitation “should be contingent on [mother’s] successful completion of a four to six month course of psychotherapy to address these personality problems.”

The second report submitted for the six-month review hearing was a status review report dated April 26, 2012. Among other things, this report noted mother’s continued participation in parenting classes, drug testing and a women’s recovery group. However, the report added that the agency had “multiple concerns about the mother’s mental health status as demonstrated by [her] tendency to believe everybody wants to hurt her,” as well as “her level of denial and lack of understanding about the conditions that brought her to the attention of the Court . . . .” The agency ultimately recommended continuation of reunification services. Further, a subsequent case plan update called for minor to be returned home by October 25, 2012.

On June 1, 2012, the juvenile court held a hearing, after which it issued findings that the agency had offered reasonable services, that parents had made adequate progress

with the case plan, and that a substantial probability existed that minor would be returned to their physical custody within six months. The court then set the 12-month review hearing for August 14, 2012.

The status review report for the 12-month review hearing stated the mother had entered a residential treatment program in Los Angeles in June of 2012, but refused to provide information about this program to the social worker, telling the social worker that she would give this information directly to the court and that the social worker should stop “threatening” her. The report further stated that a criminal case in Los Angeles involving mother had been dismissed on June 28, 2012; however, mother did not thereafter contact the agency to reinstate visitation (which had been suspended when she entered the residential treatment program). Several service providers, including mother’s therapist and her substance abuse counselor, told the agency that mother’s participation had been irregular and/or incomplete. Mother had also failed to complete a domestic violence program.

Based on these shortcomings, and in particular mother’s failure to consistently participate in court-ordered services and therapy and her failure to adequately communicate information to the agency, social worker Alcaron concluded mother had “exhausted . . . reunification time and . . . failed to demonstrate [the] ability to overcome the reasons that brought [her] to the attention of the Juvenile Court.” As such, social worker Alcaron recommended terminating reunification services and setting a case plan goal of adoption for minor.

The 12-month review hearing started on August 14, 2012, and continued on September 5, 2012. Before the continuance, the juvenile court ordered the agency to make new referrals for mother with respect to therapy, domestic violence and substance abuse, because she was now living in Southern California with her family. The agency made the new referrals, but continued to recommend termination of reunification services.

At the hearing, mother testified. Among other things, mother advised the court that she was now working full-time, living with her family, and had gone to two

counseling sessions and many substance abuse sessions. In addition, she had contacted a domestic violence program, but had missed the initial appointment because she lacked money for transportation, and intended to follow up on the drug testing referral. She had visited minor once since the last court hearing. She acknowledged responsibility for minor's removal, explaining that she "was on drugs and wasn't thinking correctly."

Following the September 5, 2012 hearing, the juvenile court found, based on a preponderance of the evidence, that minor's welfare required that custody continue to be assumed by the court, that reasonable reunification services had been provided to parents, but that parents had failed to make substantial progress to alleviate or mitigate the causes underlying minor's removal. Thus, concluding there was not a substantial probability minor would be returned to parents' custody within 18 months of the date of his initial removal, as the law required (§ 361.5, subd. (a)(1)(B); § 366.21, subd. (g)(1)), the court terminated services and set the matter for a permanency planning hearing on December 19, 2012.

On September 5, 2012, mother filed a timely notice of intent to file a writ petition.

### **DISCUSSION**

Mother challenges the September 5, 2012, dispositional order on the ground that the evidence was insufficient to support the juvenile court's decision to terminate her reunification services pursuant to sections 361.5, subdivision (a) and 366.21, subdivision (g)(1). Specifically, mother contends the order must be reversed because the evidence was insufficient to support the trial court's underlying finding that there was no substantial probability minor would be returned to her physical custody within 18 months of the date of his initial removal. The following legal principles are relevant.

When a child is removed from parental custody, the juvenile court must order reunification services to assist the parents in reuniting with the child. (§ 361.5, subd. (a).) However, where, as here, the child is under the age of three at the time of his or her initial removal from the physical custody of the parent, "court-ordered services shall be provided for a period of six months from the dispositional hearing as provided in subdivision (e) of Section 366.21, but no longer than 12 months from the date the child

entered foster care as defined in Section 361.49 unless the child is returned to the home of the parent or guardian.” (§ 361.5, subd. (a)(1)(B).)

“If the time period in which the court-ordered services were provided has met or exceeded the time period set forth in subparagraph . . . (B) . . . of paragraph (1) of subdivision (a) of Section 361.5 . . . and a child is not returned to the custody of a parent or legal guardian at the permanency hearing held pursuant to subdivision (f), the court shall do one of the following:

“(1) Continue the case for up to six months for a permanency review hearing, provided that the hearing shall occur within 18 months of the date the child was originally taken from the physical custody of his or her parent or legal guardian. The court shall continue the case only if it finds that there is a substantial probability that the child will be returned to the physical custody of his or her parent or legal guardian and safely maintained in the home within the extended period of time or that reasonable services have not been provided to the parent or legal guardian. For the purposes of this section, in order to find a substantial probability that the child will be returned to the physical custody of his or her parent or legal guardian and safely maintained in the home within the extended period of time, the court shall be required to find all of the following:

“(A) That the parent or legal guardian has consistently and regularly contacted and visited with the child. [¶] (B) That the parent or legal guardian has made significant progress in resolving problems that led to the child’s removal from the home. [¶] (C) The parent or legal guardian has demonstrated the capacity and ability both to complete the objectives of his or her treatment plan and to provide for the child’s safety, protection, physical and emotional well-being, and special needs. . . .” (§ 366.21, subd. (g)(1).)

Thus, based on the statutory framework set forth above, the juvenile court’s finding that no substantial probability existed that minor would be returned to mother’s physical custody within the extended 18-month time period was premised on an implied finding that mother failed to “consistently and regularly contact[] and visit[]” minor, failed to make “significant progress in resolving problems that led to [minor’s] removal,” or failed to “demonstrate[] the capacity and ability both to complete the objectives of . . .

her treatment plan and to provide for [minor's] safety, protection, physical and emotional well-being, and special needs.” (§ 366.21, subd. (g)(1)(A)-(C).)

On appeal, we review the juvenile court's implied and express factual findings for substantial evidence. (*Elijah R. v. Superior Court* (1998) 66 Cal.App.4th 965, 969, 971; *Jennifer A. v. Superior Court* (2004) 117 Cal.App.4th 1322, 1341.) In doing so, “we may look only at whether there is any evidence, contradicted or uncontradicted, which supports the trial court's determination. We must resolve all conflicts in support of the determination, and indulge in all legitimate inferences to uphold the court's order. Additionally, we may not substitute our deductions for those of the trier of fact.” (*Elijah R. v. Superior Court, supra*, 66 Cal.App.4th at p. 969. See also *In re Stephanie M.* (1994) 7 Cal.4th 295, 318.) Ultimately, our task is to decide whether any reasonable trier of fact, considering the entire record, could properly have made the challenged decision. (*Kuhn v. Department of General Services* (1994) 22 Cal.App.4th 1627, 1633. See also *In re Mark L.* (2001) 94 Cal.App.4th 573, 580-581 [“on appeal . . . the usual rule of conflicting evidence is applied, giving full effect to the respondent's evidence, however slight, and disregarding the appellant's evidence, however strong”].)

Having considered the record as a whole and in a light favorable to upholding the September 5, 2012 order (*Elijah R. v. Superior Court, supra*, 66 Cal.App.4th at p. 969), we conclude substantial evidence does in fact support the juvenile court's finding that no substantial probability existed that minor would be returned to mother's physical custody within the 18 month period. Most significantly, and without wholly rehashing the relevant facts set forth above, we point first to mother's psychological evaluation, which identifies mother's “paranoid and narcissistic personality features” and character traits suggesting a reluctance to admit mistakes or alter viewpoints, her negative behavior towards treatment providers, and her preoccupation with upholding her own credibility at the expense of self-improvement. Because these “personality traits suggest that [mother] might be more concerned about maintaining her own agenda than in attending to [minor's] needs” and because her faulty reasoning could “adversely impact her ability to care for [him],” the evaluator warned that any decision regarding mother's unsupervised

visitation with minor “should be contingent on [her] successful completion of a four to six month course of psychotherapy to address these personality problems.” However, in this record, there is no evidence mother even began the recommended 6-month psychotherapy course, much less that she successfully completed it.<sup>3</sup>

In addition, we point to the 12-month status review report, which identified several ongoing concerns the agency had regarding mother’s case plan compliance. These concerns related primarily to mother’s refusal to provide information regarding a residential treatment program she entered in Los Angeles in June of 2012, her failure to contact the agency to reinstate visitation after leaving the program, and her irregular and/or incomplete participation in, among other things, mental health therapy, substance abuse treatment and domestic violence programs.<sup>4</sup>

These facts in the psychotherapy evaluation and 12-month status review report demonstrating mother’s ongoing failure to adequately address her mental health and her history of abuse, we conclude, provide substantial evidence in support of the juvenile court’s implied finding that she failed to make “substantial progress” in resolving the problems underlying minor’s removal and failed to “demonstrate[] the capacity and ability both to complete the objectives of . . . her treatment plan and to provide for [minor’s] safety, protection, physical and emotional well-being, and special needs.” (§ 366.21, subd. (g)(1)(C).) As such, under the statutory framework set forth in sections 361.5, subdivision (a) and 366.21, subdivision (g)(1), the juvenile court acted within its discretion in declining to extend mother’s reunification services for an additional six months.

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<sup>3</sup> For example, the agency noted in the report submitted for the six-month review hearing that, while mother had participated in parenting classes, drug testing and a women’s recovery group, there remained multiple concerns about mother’s mental health status because of her “tendency to believe that everybody wants to hurt her” and “her level of denial and lack of understanding about the conditions that brought her to the attention of the Court . . . .”

<sup>4</sup> As stated above, these shortcomings led social worker Alcaron to conclude mother had “failed to demonstrate [the] ability to overcome the reasons that brought [her] to the attention of the Juvenile Court” and should be denied further reunification services.

In reaching this conclusion, we, like the juvenile court, acknowledge recent steps mother has made in furtherance of her case plan goals, including gaining full-time employment, participating in two counseling and several substance abuse sessions, and voicing at least some level of responsibility for the problems that led to minor's removal. However, as explained above, our task in reviewing the juvenile court's order is not to simply consider evidence favorable to her case. Rather, we must consider the record as a whole and in a light most favorable to the juvenile court's order in deciding whether there is sufficient evidence supporting the order. (*Constance K. v. Superior Court* (1998) 61 Cal.App.4th 689, 705, 708, fn. 4.) Thus, based on the substantial evidence already discussed, including the evidence of mother's failure to successfully complete a long-term psychotherapy course and to demonstrate consistent engagement in domestic violence and substance abuse programs, we affirm the order. (Cf. *Jennifer A. v. Superior Court, supra*, 117 Cal.App.4th 1322, 1326, 1341 [granting writ petition and issuing a peremptory writ of mandate directing the juvenile court to vacate its order terminating reunification services and setting a permanency hearing where, among other things, there was "no evidence" mother had a mental illness affecting her parenting skills or could not provide adequate living conditions for the minors].)

Accordingly, mother's writ petition and request for a stay are both denied.

**DISPOSTION**

The petition for extraordinary writ and request for a stay are denied.

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Jenkins, J.

We concur:

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McGuiness, P. J.

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Pollak, J.