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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

T.B.,

Petitioner,

v.

THE SUPERIOR COURT OF CONTRA  
COSTA COUNTY,

Respondent;

CONTRA COSTA COUNTY CHILDREN  
AND FAMILY SERVICES BUREAU,

Real Party in Interest.

A136706

(Contra Costa County  
Super. Ct. Nos. J11-01094, J11-01095)

Mother seeks an extraordinary writ (Cal. Rules of Court, rule 8.452) directed to the juvenile court’s order issued at a contested six–month review hearing terminating her reunification services and setting a Welfare and Institutions Code<sup>1</sup> section 366.26 hearing as to her two children, both of whom were under the age of three when removed from her custody. She contends the juvenile court “abused its discretion by not providing [her] additional time to participate in reunification services despite a showing of extraordinary circumstances.” We shall deny the petition.

**Factual and Procedural History**

On August 4, 2011, the Contra Cost County Children and Family Services Bureau (the Bureau) filed petitions alleging that the children came within the meaning of section

<sup>1</sup> All statutory references are to the Welfare and Institutions Code unless otherwise noted.

300, subdivisions (b), (g), and (j). The petitions alleged, among other things, that mother had a substance abuse problem that impairs her ability to care for the children, that the mother was involved in a domestic violence relationship that places the children at risk of harm and that mother previously failed to reunify with the children's half-sibling due to her substance abuse despite the provision of services. The petitions alleged that the children had been detained and placed in a foster home as of August 2, 2011. On September 16, the court sustained the allegations in the petition and continued the children in their foster care placement.

In advance of the disposition hearing, the Bureau recommended that no reunification services be provided to mother based on her reluctance to admit she had a substance abuse problem and her prior failure to reunify with the children's older half-sibling. The social worker explained that in the four years that the Bureau had been supervising mother, she had participated in four different treatment programs and that each time she completed the program but relapsed shortly thereafter. The older child was returned to mother's care three times during the prior dependency proceedings before parental rights were finally terminated. By the time the disposition hearing was held in this case in February 2012, mother had been participating in an outpatient treatment program for five months. Based on the positive reports from the program, the court ordered reunification services for mother.

In July 2012, in advance of the six-month review hearing, the Bureau submitted a report regarding mother's progress. The social worker reported that mother's father passed away in January 2012 and that, thereafter, she became homeless. She moved around the Bay Area looking for housing but was unsuccessful and at the time of the report was homeless in Oakland. She had not participated in individual counseling, anger management, or domestic violence services as required by her case plan. She stopped participating in her drug treatment program in March 2012 and, although she had participated in some drug testing, she had missed eight tests. Mother refused the social

worker's recommendation that she enter a residential treatment program, opting instead to make her own plans. Her visits with the children were intermittent, but of good quality. The Bureau submitted an updated memo at the September 9, 2012 review hearing, reporting that at the end of July mother had moved into a shelter in Berkeley that provides substance abuse services for homeless individuals and that she had begun participating in an outpatient treatment program.

At the hearing, Mother acknowledged that she had used methamphetamine "randomly" in May and June because she was "having a moment" and "wasn't quite finished grieving." She testified she began the new out-patient program on August 8 and that since then she had only one positive drug test for marijuana, which she uses to control the pain from multiple sclerosis. She also reported that she missed two tests because she was hospitalized briefly at the end of August.

The court terminated reunification services and set a section 366.26 hearing. The court explained to mother, "[W]hen I look back . . . at your history, . . . what happens is you have ups and downs, but you kind of get it together right before these kind of big review dates, and then after the review date passes and then you get some more time given to you, then you fall into relapse. [¶] It seems to have happened in the case of your previous child[], and it seems to have happened even in the history of this case. Whereas, after disposition, I went and ordered . . . services and – in February, and in March you fail out of the Ujima program. Now you're back in another residential program."

Mother filed a timely notice of intent to file a writ petition.

### **Discussion**

Section 366.21, subdivision (e), the governing statute at the six-month review hearing, grants the juvenile court discretion to terminate reunification services and set a section 366.26 hearing where, as here, the child was under three years of age at the time of removal and the juvenile court finds by clear and convincing evidence that the parent failed to participate regularly and make substantive progress in a court-ordered treatment

plan. If, however, the court finds there is a substantial probability that the child may be returned to his or her parent within six months, the court shall continue the case to the 12-month permanency hearing.<sup>2</sup> (*Ibid.*)

Mother concedes that the record establishes that she failed to participate regularly and make substantial progress in the court-ordered reunification plan. She also concedes that she could not establish a reasonable probability that the children would be returned to her within the one month remaining before the 12-month review hearing. (See *Tonya M. v. Superior Court* (2007) 42 Cal.4th 836, 846 [where the 12-month date was approximately four months away rather than six, the court was to “consider only what the impact of *those* four months of services would be on the parent[s] and [children]”].) Nonetheless, citing *In re Elizabeth R.* (1995) 35 Cal.App.4th 1774, mother argues that the juvenile court had discretion to provide her with an additional six months of services based on “exceptional circumstances.” She argues that she was entitled to additional time to complete her plan because of her father’s death and her resulting lack of housing.

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<sup>2</sup> Section 366.21, subdivision (e) provides in relevant part, “At the review hearing held six months after the initial dispositional hearing, but no later than 12 months after the date the child entered foster care as determined in Section 361.49, whichever occurs earlier, the court shall order the return of the child to the physical custody of his or her parent or legal guardian unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. . . . The failure of the parent or legal guardian to participate regularly and make substantive progress in court-ordered treatment programs shall be prima facie evidence that return would be detrimental. . . . [¶] . . . [¶] If the child was under three years of age on the date of the initial removal . . . and the court finds by clear and convincing evidence that the parent failed to participate regularly and make substantive progress in a court-ordered treatment plan, the court may schedule a hearing pursuant to Section 366.26 within 120 days. If, however, the court finds there is a substantial probability that the child, who was under three years of age on the date of initial removal . . . may be returned to his or her parent or legal guardian within six months or that reasonable services have not been provided, the court shall continue the case to the 12-month permanency hearing.”

In *Elizabeth R.*, *supra*, 35 Cal.App.4th at pages 1778-1779, the court held that section 352 provides “an emergency escape valve in those rare instances” in which the juvenile court determines the best interests of the child would be served by a continuance of a review hearing beyond the statutorily permissible time limit. In that case, the mother had an “impeccable record of visitation and efforts to comply with the reunification plan” but her efforts were unsuccessful because she was hospitalized for all but five months of the reunification phase of the dependency proceedings. (*Id.* at pp. 1777-1778.) The court concluded that these “unusual facts . . . required exigent judicial intervention.” (*Id.* at p. 1799.)

The Bureau argues that *Elizabeth R.* is procedurally distinguishable in that it involved judicial extension of the 18-month time limit, not the provision of services beyond the six-month review hearing. The Bureau also questions whether the exception remains viable in light of subsequent amendments to section 366.22, including section 366.22, subdivision (b), which now expressly authorizes the extension of services beyond the 18-month deadline if in the best interest of the child. We need not consider these arguments because even if the exception remains, the facts here did not require the court to invoke it.

While the circumstances identified by mother undoubtedly were challenging, they are not so unusual or extraordinary as to render an abuse of discretion the juvenile court’s failure to find them sufficient to support an exception to the clear statutory deadlines. Contrary to mother’s suggestion, her inability to make progress in her case plan was caused in significant part by her own behavior, which was entirely consistent with her lengthy history of drug use. (See *Andrea L. v. Superior Court* (1998) 64 Cal.App.4th 1377, 1388 [“extraordinary circumstances” did not justify extension of family reunification services beyond the statutory limit where failure of the case plan was not caused by an external force over which mother had no control, but by mother’s relapse into cocaine abuse].)

**Disposition**

The petition for extraordinary writ is denied. This opinion is final forthwith as to this court.

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Pollak, J.

We concur:

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McGuinness, P. J.

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Jenkins, J.