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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION ONE

K.B. and D.N.,
Petitioners,

v.

THE SUPERIOR COURT OF CONTRA
COSTA COUNTY,

Respondent;

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

Real Parties in Interest.

A137009

(Contra Costa County Super. Ct. No.
J11-00524)

K.B. (Mother) and D.N. (Father) seek extraordinary relief from orders of the Contra Costa County Superior Court, Juvenile Division, entered November 1, 2012, which terminated their reunification services after a 12-month permanency hearing (see § 366.21, subd. (f)),¹ and which set a hearing under section 366.26 to select a permanent plan for their daughter A.N. (born Aug. 2009). Mother and Father both contend the juvenile court erred in finding that the return of the minor to their care would create a substantial risk of detriment to the child's safety, protection, or physical or emotional well-being. (See § 366.21, subd. (f).) Father also suggests the court abused its discretion by failing to continue services under a family maintenance plan, given his substantial

¹ Further statutory references are to the Welfare and Institutions Code.

progress with his case plan. (See § 366.21, subd. (f).) We conclude substantial evidence supports the challenged finding, and find no abuse of discretion in the court's failure to continue services, whether under a plan of reunification or family maintenance. Accordingly we deny on the merits Mother's and Father's writ petitions.²

BACKGROUND

The parents agreed to a Voluntary Family Maintenance plan on March 29, 2011, after Martinez police took the minor into protective custody after finding both parents to be under the influence of substances and unable to care for the minor, then under two years of age. On April 20, the assigned social worker (SW) appeared at the home for a scheduled visit, and found the parents evidently under the influence of prescribed medication for their pain, which they both reported rendered them drowsy. The voluntary plan called for them to make arrangements with a family member to care for the minor in such an event. The SW thus asked the parents to call a family member and the SW awaited his arrival before leaving. The following day the SW conducted an unscheduled visit to the home, and informed the parents she would be filing a dependency petition.

The Contra Costa County Bureau of Children and Family Services (Bureau) filed a petition on behalf of the minor on April 25, 2011, pursuant to section 300, subdivision (b). The minor was not detained at this time, but the juvenile court ordered formal detention the next day. The little girl was subsequently placed with a maternal aunt.

The petition, as ultimately sustained on May 31 pursuant to a mediated agreement, stated Mother and Father had prescription drug problems impairing their ability to care adequately for their daughter A.N. According to the dispositional report—which recommended reunification services—the parents' use of prescription drugs stemmed from incapacitating work-related spinal injuries that each had separately suffered.

² Section 366.26, subdivision (l)(1)(A), bars review on appeal if the aggrieved party has not made a timely writ challenge to an order setting a hearing under section 366.26, and encourages the appellate court to determine such writ petitions on their merits. (§ 366.26, subd. (l)(4)(B).)

On July 1, the court entered dispositional orders continuing the minor in out-of-home custody and adopting the Bureau's recommended case plans. These called for both parents: to complete parenting education classes; to consult with a pain management physician and engage in pain management treatment; to take prescribed medication "exactly as prescribed;" to refrain from the use of alcohol or non-prescription drugs; to submit to random drug testing; to participate successfully in a twelve-step AA/NA program; to complete an approved outpatient drug abuse treatment program; and, to complete an inpatient treatment program if recommended by the outpatient program, or in the event of testing positive for drug abuse.

In the report prepared for the six-month status review hearing, dated November 3, 2011, the SW noted the parents had made "moderate progress" but expressed "significant" concerns about their continuing "substance abuse issues." During this period, Mother had verbally agreed, with noted reluctance, to engage in a residential treatment program. The SW recommended further services. A subsequent memorandum report from the SW, dated December 29, noted Mother had entered residential treatment and would remain there for a total of six months to address substance abuse and anger management issues. The additional component of anger management was based on reports the Bureau had received concerning incidents of domestic violence between the parents, in which Mother was the aggressor, typically when she was under the influence of alcohol and/or prescription medication. The SW concluded the Bureau was "willing" to offer additional services so long as the parents agreed actively to engage in them. At the conclusion of the contested six-month hearing, held December 29, the juvenile court rejected this recommendation, terminated the parents' services, and set the matter for a hearing under section 366.26.

On March 12, 2012, Father's counsel filed a petition under section 388, alleging Father had made progress with his reunification plan, and seeking a modified order for family maintenance services and/or continued reunification services. Mother, on March 16, submitted her own section 388 petition, alleging similar progress and seeking similar relief. On April 26—the date set for the section 366.26 hearing—the juvenile court held

an evidentiary hearing on the section 388 petitions. The court granted both petitions, and directed the Bureau to offer or provide both parents with an additional five months of reunification services. In connection with this ruling the court found both parents' progress to have been "substantial." At this time the court adopted updated case plans that called for Mother and Father to engage in couple's therapy, to address the reported incidents of domestic violence. They were also to participate in individual therapy to address their denial of their substance abuse issues, which had contributed to the court's intervention, and, on Mother's part, to address her anger management issues. The court continued the matter for review after this extended period of services.

The review hearing that followed this five-month extension of services we deem to constitute a 12-month permanency hearing under section 366.21, subdivision (f). The juvenile court's extension of services implicitly set aside the previously scheduled hearing under section 366.26. Consistent with this conclusion, the SW's report prepared for the review hearing, and completed on September 7, recommended that the court terminate reunification services and set—or rather *set again*—a section 366.26 hearing.

The report completed on September 7 concluded the parents' progress during this period of extended services had overall been "minimal." Mother had completed her six months of residential treatment on April 27, but had delayed beginning her aftercare "intensive outpatient program" until May 16. After six weeks in the latter program, she remained on an "attendance contract" with the treatment provider, due to her lack of regular attendance. As of August 28, she had attended 49 of some 71 classes, a circumstance that her treatment counselor regarded as disruptive both to the group and to Mother's recovery. Mother's outpatient treatment counselor regarded her positive participation to have been "sporadic." Mother eventually responded to feedback about such concerns, but her lack of attendance—particularly her failure to call in or offer excuses for her absences—remained a concern to the counselor. At the end of July Mother had dropped out of the intensive outpatient program and had entered a two-day-per-week program, a change she failed to discuss with the SW beforehand. When confronted by the SW, Mother cited transportation problems as the main hindrance to her

participation in the five-day-per-week program. Mother returned to the more intensive program only after the SW conveyed her concerns that it would be better for Mother's recovery to do so. Mother submitted documentation of attendance at 12-step meetings approximately two to three times a week. Mother's drug testing had been inconsistent, indicating a relapse in May and June, although after that period she submitted samples that all tested negative. The SW judged Mother was "isolating" herself, since she had neither secured a sponsor nor engaged in community recovery activities, and while these were not necessarily violations of her court ordered treatment, were nonetheless "huge risk factor[s]" concerning relapse. Mother was not participating in either individual or couple's therapy as part of her case plan. The SW further noted the maternal great-grandmother had contacted her to express concern that Mother might relapse under the strain of parenting if the minor were returned to her care. Mother had, as recently as August 12, threatened the paternal grandfather to prevent his visits with his granddaughter if he didn't offer Mother more financial assistance. Whereas Mother appeared to be making great efforts with her parenting skills and her relationship with her daughter, she was not, in the SW's opinion, making the same efforts with her recovery.

Father, for his part, had completed a two-day-per-week outpatient treatment program, and continued to participate as an alumnus, documenting attendance at 12-step programs about three times a week. He reported he was working with two sponsors and had twice completed the 12 steps. His participation in drug testing, however, had been inconsistent, suggesting a possible relapse on his part. Father had "struggled with employment" during the review period, although he finally obtained new employment in August at a family owned mechanic shop. During therapeutic visitation with his daughter, Father appeared to be "sending the right message," but did so in a "harsh" manner not appropriate to the little girl's age. Father, too, had not participated in couple's therapy with Mother to address the issues of their reported domestic violence.

In the SW's opinion, both parents "continue[d] to struggle with recovery." Both had missed drug tests, and, in Mother's case, had submitted dilute samples. Neither appeared to have "internalized" their recovery, and neither had attended couple's therapy,

and these factors placed the child “at risk [of harm] should she be returned to their care.” Of additional concern was both parents’ apparent reluctance during the review period to initiate effective contact with the SW. Thus, at the end of period of extended services, the SW saw only a “marginal improvement,” and she accordingly recommended the termination of further services.

The review hearing began on October 17, 2012. Testimony at the hearing indicated, among other things, that Mother and Father had finally started couple’s therapy in September, but had so far only engaged in two sessions. The SW agreed the parents appeared to comply with their case plan requirements “when prodded” but not otherwise. In her opinion, they had not “put enough work into their recovery, and it seem[ed] risky . . . they would relapse.” She felt is also presented a risk that the parents had only just begun to address their reported history of domestic violence through couple’s therapy. At the conclusion of the hearing, on November 1, the juvenile court terminated Mother’s and Father’s reunification services and set the matter for a section 366.26 hearing.

Both parents’ writ petitions followed. (§ 366.26, subd. (l).)

DISCUSSION

I. “*Substantial Risk of Detriment*” Finding

At the 12-month permanency hearing, the juvenile court must order the return of the child to the physical custody of his or her parent unless it finds, by a preponderance of the evidence, that the return of the child to his or her parent would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. (§ 366.21, subd. (f).) The social worker has the burden of establishing such detriment. (*Ibid.*) The court made this finding at the conclusion of its hearing on November 1, 2012.

Both Mother and Father challenge this finding, claiming the Bureau did not meet its statutory burden to establish a “substantial risk of detriment.” (See § 366.21, subd. (f).) In their view, the evidence presented showed they had largely completed the requirements of their respective case plans—inpatient or outpatient drug abuse treatment, participation in 12-step programs, and parenting classes. Mother and Father both urge, or

suggest, they had thereby mitigated, to a great degree, any “risk” that might arise were the minor to be returned to their care, particularly under a plan of family maintenance services and supervision. They both insist the juvenile court erred in failing to give them “passing grades” under the circumstances. (See *David B. v. Superior Court* (2004) 123 Cal.App.4th 768, 790.)

We review the finding by examining the record to determine whether it is supported by substantial evidence. In doing so, we resolve any conflicts and indulge all reasonable inferences in favor of the juvenile court’s ruling. (See *In re Kristin W.* (1990) 222 Cal.App.3d 234, 251.) We do not reweigh the evidence, nor do we revisit credibility determinations. (*Ibid.*)

We have summarized above the reports and testimony on which the SW relied in establishing a “substantial risk of detriment” to the minor’s safety, protection, or physical or emotional well-being if she were returned to Mother’s and Father’s care. The juvenile court acknowledged “this [was] not an easy case.” Yet, despite the steps Mother and Father had accomplished with their case plan, the court remained troubled they had not made sufficient progress to return their child safely to their custody, particularly after the additional five-month period of services that the court had granted to them on April 26.

That Mother and Father may have satisfied *most* of the requirements of their case plans does not necessarily mean they were entitled to custody of the minor regardless of the substantial risk of detriment to minor’s well-being if returned to their care. The focus of dependency law is, ultimately, on the minor’s well-being. (*In re Joseph B.* (1996) 42 Cal.App.4th 890, 901.) The court was under an obligation to consider the parents’ progress and their capacity to meet the objectives of their plans—in this instance, their capacity to avoid a relapse into the prescription drug abuse that had prompted the court’s initial intervention. (See *In re Dustin R.* (1997) 54 Cal.App.4th 1131, 1143.)

Here’s Mother’s treatment counselor had expressed concern about her frequent absences and her sporadic active participation, which she regarded as harmful both to the outpatient group and Mother’s own recovery. There was evidence Mother had missed drug tests and had diluted samples, and had neither secured a 12-step sponsor nor

engaged in activities with a community in recovery, all of which the SW regarded as presenting a “huge” risk of relapse. Father’s drug testing also remained inconsistent, with several missed tests. The parents had only, very belatedly, begun couple’s therapy, and apparently neither had pursued individual therapy to address their substance abuse issues. Both had shown a continuing reluctance to initiate direct or face-to-face contact with the SW, who concluded, overall, that, despite the extended period of services, both Mother and Father still “struggle[d]” with their recovery, and still needed to be “prodded” to participate in services. All these circumstances led the SW to conclude there was a substantial risk of detriment to the minor’s well-being if she were returned to their care.

We conclude such evidence, viewed in the light most favorable to the juvenile court’s ruling, provides substantial support for the finding, under the preponderance of evidence standard of proof, that the return of the child to Mother’s and Father’s care would create a substantial risk of detriment to the minor’s safety and well-being. Despite the completion of some, or even most of their case plan objectives, such evidence sufficiently supports the conclusion that, after well over a year’s worth of services they still lacked the capacity to avoid relapse into the behaviors that led to the court’s intervention. (*In re Dustin R.*, *supra*, 54 Cal.App.4th 1131, 1143.)

II. Abuse of Discretion for Failing to Continue Services

Father appears to suggest the juvenile court abused its discretion in failing to continue his services under a family maintenance plan, given the evidence he had completed “most of his case plan.”

On this point we observe simply that the juvenile court did not have unfettered discretion to continue services. When, as in this case, a minor is under three years of age when initially removed from the parents’ physical custody, the parents are entitled to services for a period of six months from the dispositional hearing, “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[s].” (§ 361.5, subd. (a)(1)(B).) In this case A.N. entered foster care on May 31, 2011, when the court sustained the mediated jurisdictional allegations. (See § 361.49.) Well over 12 months had passed between that

date and the conclusion of the review hearing on November 1, 2012. On the latter date the court found the minor could not safely be returned to her parents, and we have above concluded this finding is supported by substantial evidence.

Further, any continuation of services beyond the 12-month permanency hearing, authorized when the juvenile court makes the findings required under section 366.21, subdivision (g)(1), is limited to the 18-month period following the date the child was originally removed from the physical custody of his or her parents. (§ 366.21, subd. (g)(1); see also § 366.22, subd. (a).) Here, the court ordered A.N.'s detention on April 26, 2011, and 18 months had already elapsed from that date by the time the court concluded its review hearing on November 1, 2012.

Hence, the juvenile court really had *no* discretion to continue Mother's or Father's services at the conclusion of the hearing on November 1, 2012, under the particular circumstances of this case.

DISPOSITION

The petitions for extraordinary writ are denied on the merits. (See Cal. Const., art. VI, § 14; *Kowis v. Howard* (1992) 3 Cal.4th 888, 894; *Bay Development, Ltd. v. Superior Court* (1990) 50 Cal.3d 1012, 1024.) The decision is final in this court immediately. (Cal. Rules of Ct., rules 8.452(i), 8.490(b)(3).)

Dondero, J.

We concur:

Marchiano, P. J.

Banke, J.