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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

SIMONE C., Petitioner, v. THE SUPERIOR COURT OF SAN FRANCISCO COUNTY, Respondent; SAN FRANCISCO HUMAN SERVICES AGENCY, Real Party in Interest.	A137120 (San Francisco County Super. Ct. No. JD11-3093)

Simone C., the mother of A.C., age one, petitions this court to set aside the juvenile court's order setting a permanent plan hearing pursuant to Welfare and Institutions Code[1] section 366.26. She contends that there is insufficient evidence to support the court's finding that return of A.C. to her would cause a substantial risk of detriment. She also argues that she was denied reasonable reunification services, and that the court abused its discretion when it failed to continue the 18-month review hearing and provide additional services. We deny the petition.

FACTUAL BACKGROUND

A.C. was referred to the San Francisco Human Services Agency (the Agency), after testing positive for methamphetamine at birth. On March 29, 2011, a section 300

[1] All further statutory references are to the Welfare and Institutions Code.

petition was filed alleging that mother failed to protect A.C. due to her long history of substance abuse, and that she and A.C. tested positive for methamphetamines during delivery. The petition further alleged that mother failed to reunify with A.C.'s half-sibling, D.R., who was currently in a long-term placement with a relative. On March 30, 2011, A.C. was detained and placed in foster care.

The dispositional and jurisdictional hearing was held on May 11, 2011. At the time of the hearing, mother was living at Walden House and was enrolled in a residential treatment program. Mother did not contest jurisdiction.[2] The court continued A.C.'s placement in foster care and ordered reunification services.

On September 29, 2011, the court granted the Agency's request to change A.C.'s placement to one which was out of the county. The Agency found a fost-adopt home for A.C. after her initial foster parent declined to consider adoption.

The Agency's report for the six-month review hearing recommended that reunification services be terminated. The Agency reported that mother was discharged from the Walden House program because she was continuing to abuse drugs. She was referred to the Iris Center, an outpatient treatment center, but did not complete the intake. She was also terminated from the Drug Dependency Court due to noncompliance. Since June 2011, mother had tested positive for illicit drugs including a positive test for methamphetamine on October 7, 2011. Mother, however, was in the process of making attempts at enrolling in a residential treatment center. She visited consistently with A.C. and was attentive and caring during visits. The Agency noted that mother suffered from Guillian-Barré Syndrome and was wheelchair bound. She had a long history of mental illness including major depression.

A contested six-month review hearing was held on January 27, 2012. The court found that mother had made substantial progress in the last three months prior to the hearing and granted her an additional six months of reunification services. The court

[2] David C. had previously been declared the presumed father. He appeared at the hearing and also did not contest jurisdiction.

further ordered that she have visitation with A.C. for six hours twice a week. The court terminated father's reunification services.[3]

On March 15, 2012, mother filed two section 388 requests. She sought to change the requirement that she enter a residential treatment program to one permitting an outpatient program. She alleged that she achieved approximately five months of sobriety in an outpatient program. She also sought to have the visitation order changed from supervised visits to unsupervised visits. Over the objections of both counsel for A.C. and the Agency, the court granted both section 388 requests.

The Agency's report for the 12-month review hearing recommended that reunification services for mother be continued for an additional six months given her progress with her service plan. The Agency noted that mother had stable and permanent housing, and visited consistently with A.C. Mother completed Lee Woodard's outpatient drug recovery program, and would continue with the program's services. The Agency, however, had not yet received mother's psychological evaluation despite an outstanding referral from June 2011. The Agency was concerned with mother's ability to maintain her sobriety. A.C. continued to live in her fost-adopt home, was attached to her foster family, and was thriving under their care. She was in good health and was on target developmentally.

The Agency filed an Addendum Report on July 27, 2012, in which the Agency reported that mother now had unsupervised visits with A.C., and that A.C. appeared content and happy during the visits. It further noted that it had received mother's psychological evaluation on May 18, 2012. The evaluation recommended that mother could benefit from in-home parenting services and a medication evaluation.

The 12-month review hearing was held on August 21, 2012. The court found that mother had made substantial progress toward alleviating the causes necessitating

[3] Father had informed the Agency that he wanted A.C. to be afforded the opportunity to be adopted.

placement and extended services until the 18-month review hearing scheduled for September 27, 2012.

On September 7, 2012, mother informed the Agency that she had "slipped up" and used drugs on September 4, 2012. Mother tested positive for methamphetamine. Counsel for A.C. therefore filed an ex parte application to change mother's two unsupervised visits to one supervised visit. The court granted the application.

The Agency's report for the 18-month hearing recommended that reunification services be terminated. It stated that mother had a significant history of substance abuse and mental health issues. Mother continued to minimize her substance abuse addiction and her unresolved mental health issues, and their affects upon A.C. The Agency further reflected that mother's psychological evaluation raised concerns regarding mother's ability to raise and care for a young child. Mother had recently informed the Agency that she now wanted a referral to a residential treatment program despite her earlier opposition to residential treatment. While the Agency opined that mother was in need of intensive long-term care regarding her substance abuse and mental health issues, these issues could not await A.C.'s need for permanency. A.C. had been in the same fost-adopt home for over a year and her foster parents were willing to provide her with a loving and supportive home. The Agency therefore recommended that a section 366.26 hearing be set.

The 18-month review hearing was held on November 2 and 9, 2012. Andrea Lego, the Agency's child welfare worker on the case, testified that while mother had participated in reunification services, she had relapsed and abused drugs both in October 2011 and September 2012. Mother had also missed several drug testing dates within the past six months. Lego testified that the Agency had worked with the mother since 2000, that mother had a dependent child in permanent placement, and that she had a significant history and pattern of substance abuse and mental health issues. Lego referred mother for individual therapy and substance abuse services, for a psychological evaluation to Foster Care Mental Health, and for a medication evaluation. Lego also consulted with Dr. Zoe

Collins, a clinical psychologist, on mother's behalf. Lego opined that A.C. would be at physical or emotional risk if she were returned to mother's care.

Dr. Collins testified that she consulted with Lego for approximately eight months concerning mother and A.C. She had previously recommended to the Agency that mother undergo inpatient substance abuse treatment with a mental health component. She reviewed the psychological evaluations prepared by the Agency's psychologist, Dr. Christmas, and the one prepared by Dr. Weiss, mother's evaluator, and the raw data for both of the evaluations that was provided to her. Dr. Collins opined that based on Dr. Weiss's diagnosis that mother suffered from post-traumatic stress disorder (PTSD), mother had difficulty coping, causing her to relapse. Dr. Collins opined that mother's emotional state made her subject to being easily frustrated by stressors including parenting. Dr. Collins further testified that mother's scores showed that her stressors were currently overwhelming her resources, and that placement of A.C. with her would increase her stressors. Dr. Collins opined, "If mom is currently overwhelmed by her resources, then adding a child who is going to be distressed because she is in a new situation and likely have some regression in her behaviors is likely to create more stress." She stated that if A.C. were returned to mother and mother was not able to provide the stability and the predictability needed, A.C. would be at risk for developing an attachment disorder or other emotional problems. In sum, Dr. Collins was concerned about mother's ability to maintain sobriety and create a predictable environment where she could control her emotions and regulate her impulsivity.

Bareerah Khan testified on behalf of mother. Khan is mother's friend and met her through father, who is also the father of Khan's son. She provided in-home support services for mother, about ten hours per week, for over a year. Khan observed that mother had grown emotionally and spiritually and had become stronger. Khan described mother as a happy, very attentive mother, who shines when she is with A.C. Regarding mother's recent relapse, Khan said that mother told her that she went straight to a meeting. If A.C. were returned to mother, Khan would be an active part of their lives.

Dr. Patricia Weiss, a clinical psychologist, testified on behalf of mother. Dr. Weiss completed a psychological evaluation of mother. She diagnosed mother as having PTSD, which is a type of anxiety disorder. Dr. Weiss, however, did not speak with mother's therapist or any of her service providers in preparing her report. She admitted that her report erroneously omitted a diagnosis of substance abuse. Dr. Weiss recommended individual therapy for mother, support groups, and behavioral therapy. She did not meet with A.C. and could not make a recommendation as to whether A.C. should be returned to mother.

The court terminated reunification services, finding that there was not a substantial possibility that A.C. could be returned to mother's care if services were extended an additional six months. The court noted that mother was back to supervised visits with A.C. due to her recent drug relapse in September, just two months prior to the hearing. Further, the court stated that mother was resistant to entering a residential program and successfully changed the requirement to outpatient treatment. Hence, her complaint that the Agency did not provide enough treatment services was not supported by the record inasmuch as the Agency sought to require intensive treatment "which presumably the residential would have and could have and should have done." The court found that return of A.C. to mother would create a substantial risk of detriment to A.C., and set the matter for a section 366.26 hearing.

DISCUSSION

Mother challenges the juvenile court's finding that it would be detrimental to return custody of A.C. to her. We conclude that the record fully supports the court's finding.

The substantial evidence test is the appropriate standard of review. (*In re Henry V.* (2004) 119 Cal.App.4th 522, 529.) " 'In juvenile cases, as in other areas of the law, the power of an appellate court asked to assess the sufficiency of the evidence begins and ends with a determination as to whether or not there is any substantial evidence, whether or not contradicted, which will support the conclusion of the trier of fact. All conflicts must be resolved in favor of the respondent and all legitimate inferences indulged in to

uphold the verdict, if possible.' " (*In re Rocco M.* (1991) 1 Cal.App.4th 814, 820.) We thus apply the substantial evidence test to determine whether the record shows clear and convincing evidence of "a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor . . . and there are no reasonable means by which the minor's physical health can be protected without removing the minor from the [parent's] physical custody." (§ 361, subd. (c)(1); *In re Henry V.*, *supra*, 119 Cal.App.4th at p. 529.)

Here, although mother made substantial progress in meeting the requirements of her reunification plan including visitation and individual therapy, she was unsuccessful in her efforts to address her substance abuse and mental health issues. The need to address these issues was at the core of mother's reunification plan, for it was mother's use of methamphetamine during pregnancy that led to A.C.'s dependency. Moreover, these issues were long-standing; mother had failed to reunify with D.R., A.C.'s older sibling, who was in a long-term placement.[4] Mother continued to abuse drugs during the reunification period, testing positive for drugs from June to October 2011. Finally, she relapsed on methamphetamine in September 2012, and had missed several drug tests during the months from March 2012 to July 2012. Thus, despite being in an outpatient substance abuse treatment program, mother failed to address the concerns that led to A.C.'s dependency.[5] Although there is no requirement that parents be ideal or perfect (see *David B. v. Superior Court* (2004) 123 Cal.App.4th 768, 789–790), here mother resisted entering a residential treatment program which might have addressed both her substance abuse and mental health issues, and failed to maintain her sobriety. In sum, substantial evidence supports the court's finding that it would be detrimental to return A.C. to mother's care.

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[4] D.R. was removed from mother's care at the age of two months and was reunified when he was age one, only to be removed from mother's care at the age of four due to mother's inability to parent him and to provide safe and appropriate supervision.

[5] The record showed that mother had failed at residential and outpatient substance abuse programs dating back to 2000.

Mother also argues that reasonable reunification services were not provided. In particular, she asserts that the Agency was remiss in failing to timely refer her for key services to address her PTSD and coping skills. The record refutes mother's argument.

"In reviewing the reasonableness of the services provided, this court must view the evidence in a light most favorable to the [Department]. We must indulge in all reasonable and legitimate inferences to uphold the judgment. [Citation.] 'If there is any substantial evidence to support the findings of the juvenile court, [we are] without power to weigh or evaluate the findings.' " (*In re Ronell A.* (1996) 44 Cal.App.4th 1352, 1361–1362.)

Here, the Agency's efforts to provide mother with services were extensive. While mother claims the Agency failed to refer her to an appropriate provider for a psychological evaluation, the record demonstrates that the Agency immediately referred mother for treatment at the start of the dependency but mother resisted the referrals. She was discharged from the Walden House program and sought outpatient treatment programs despite the Agency's preference for a residential treatment program. While the Agency referred mother for a psychological evaluation in June 2011, mother did not follow through with obtaining an evaluation until almost a year later, missing several appointments with Dr. Jane Christmas. Dr. Christmas ultimately completed her report in May 2012. Thus, any delay in diagnosing mother's mental health issues was due to mother. In any event, the record shows that the Agency provided numerous referrals for support services including residential treatment programs, mental health services, and individual therapy. The Agency further referred mother for in-home parenting services in July 2012 following Dr. Christmas's recommendation that infant/parenting therapy would be beneficial for mother. It was not until October 2012, well over 18 months since A.C. was detained, that mother finally sought a referral to a residential treatment program. Her efforts at the 11th hour were inadequate. The Agency provided reasonable services; it

was up to mother to avail herself of the services offered.[6] If a parent "waits until the impetus of an impending court hearing to attempt [to correct her behavior], the legislative purpose of providing safe and stable environments for children is not served by forcing the juvenile court to go 'on hold' while the parent makes another stab at compliance." (*In re Michael S.* (1987) 188 Cal.App.3d 1448, 1463, fn. 5.)

Finally, mother contends that the court should have granted her an extension of reunification services. She argues that the Agency failed to refer to appropriate services and therefore the court abused its discretion in refusing to order additional services for her. We disagree.

While the courts have recognized that reunification services may be continued beyond the statutory 18-month time limit for exceptional circumstances (see § 361.5, subd. (a)(3); *In re Elizabeth R.* (1995) 35 Cal.App.4th 1774, 1793–1796), the present case does not warrant an exception. Here, the court declined to extend the reunification period to 24 months. The court ruled that "[g]iven the information that I have read and heard and listened to from Dr. Weiss and contained in the reports, I don't find that there's a substantial possibility that [A.C.] would be returned to you even if I were to extend services to the twenty-four months. And that's based on the fact that you're having the supervised visits still and you had the relapse as recently as September." The court explained that based on the record, mother still had a long way to go in terms of her recovery both as to her substance abuse and her mental health. The court also noted mother's resistance to a residential treatment program even though the Agency had identified one previously that presumably would have worked had mother entered the program. In sum, there was no evidence of exceptional circumstances justifying an extension of the 18-month limit for reunification services.

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[6] Mother's complaint that she was not provided with services to address her physical disability is without merit. As the Agency points out, mother's physical disability was not an issue that led to the dependency. And, there is no evidence in the record to demonstrate that mother required additional services to address the effects of Guillian-Barré Syndrome.

DISPOSITION

The petition for an extraordinary writ is denied on the merits. (§ 366.26, subd. (*l*). Our decision is final in this court immediately in the interests of justice.

_____
Rivera, J.

We concur:

_____
Ruvolo, P.J.

_____
Reardon, J.