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

MICHELLE T.,  
Petitioner,

v.

THE SUPERIOR COURT OF DEL  
NORTE COUNTY,

Respondent;

DEL NORTE COUNTY DEPARTMENT  
OF HEALTH AND HUMAN SERVICES  
et al.,

Real Parties in Interest.

A137200

(Del Norte County  
Super. Ct. No. JVSQ12-6069)

Minor Gordon K. was removed from the custody of his mother, petitioner Michelle T. (Mother), after methamphetamines and cannabinoids were found in his system shortly after his birth. Reunification services were terminated at the six-month review hearing. Mother challenges the termination of reunification services, arguing that she was denied reasonable services. We deny her petition.

**I. BACKGROUND**

Both Mother and her son, Gordon K., tested positive for amphetamines and cannabinoids within a few days of Gordon's birth in late March 2012. Mother admitted smoking marijuana on the day of Gordon's birth, but denied using methamphetamines during her pregnancy and reported taking " 'something like Sudafed' " shortly before his birth. She acknowledged a March 2011 arrest was for simple possession of marijuana

and methamphetamine and for possession of narcotics for sale. Those charges were still pending when Gordon was born. Mother said she was participating in the Alcohol and Other Drugs (AOD) program as part of her criminal case. Her mother (Grandmother) said Mother had been using methamphetamine for approximately seven years, since age 17, and had refused Grandmother's offer to pay for an in-patient rehabilitation program. Mother lived with Gordon's father, Michael K. (Father), who told the Del Norte County Department of Health and Human Services (Department) he smoked marijuana for pain (although he did not have a medical marijuana card). He denied using methamphetamines.

On April 4, 2012, the Department filed a juvenile dependency petition on behalf of Gordon pursuant to Welfare and Institutions Code section 300, subdivision (b).<sup>1</sup> The petition alleged (as relevant here) that Mother and Gordon tested positive for drugs at Gordon's birth, Mother had not obtained regular prenatal care during her pregnancy, and Mother had been arrested for drug possession in March 2011.

The Department offered Mother and Father (Parents) five hours of supervised visitation a week (five days a week, one hour per day). Parents cancelled an April 3, 2012 visit because they were sick and they missed scheduled visits on April 4, 5 and 6. Neither parent appeared at the April 5 detention hearing and only Father appeared at the continued hearing the next day. At that hearing, the Department reported that Mother's whereabouts were unknown. The court ordered Gordon detained.

Despite a change in the timing of the visits to accommodate Father, Parents did not show up for scheduled visits on April 9, 10 and 11, 2012. On April 11, the Department gave Parents gas vouchers to help them attend visits and they both attended a visit on April 12. Neither visited Gordon between April 12 and May 4, and Mother had no contact with the Department during that time. Father did not follow through on a promise to submit to drug testing.

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

In a May 4, 2012 jurisdiction report, the Department wrote that Mother had a criminal history of narcotics use, possession and sale spanning from 2005 to 2011. She was sentenced to 36 months of probation for a 2009 charge, she served seven days in jail for a probation violation in 2010, and she was sentenced to 180 days in jail for a failure to appear in January 2011. As a result of her March 2011 arrest, Mother was “facing a mitigated term of 2 years and is currently in the process of attempting to work out a deal with the DA.” It was not clear whether Parents were still living together, as Father said Mother was staying with a friend in Crescent City.

Mother appeared at the May 11, 2012 contested jurisdiction hearing and submitted on the report. The court sustained the allegations of the petition as modified by a finding that Parents were no longer living together.

In its May 23, 2012 disposition report, the Department wrote that Mother had “expressed some interest in completing a case plan and getting [Gordon] back.” She had spoken with the social worker on May 17 and attended a visit with Gordon on May 18 (her second visit with Gordon since he left the hospital), but had missed her next visit. The Department imposed a requirement that Mother call one half hour before a scheduled visit to confirm she would attend. Mother was homeless and staying with friends. She told the Department she initially moved out of Father’s home to increase Father’s chances of reunification. However, she eventually learned that Father abandoned the effort following the jurisdiction hearing. Father’s last appearance in the case was on May 4, 2012.

The Department recommended a case plan for Mother that included the following: consistently visiting Gordon and acting appropriately during visits; obtaining a mental health assessment and following through on recommended treatment; completing a parenting class; abstaining from drugs; completing AOD group treatment; and submitting to drug tests on request. Visitation continued to be provided for a minimum of five hours a week. Mother said she did not want to participate in an AOD group because she worked better one-on-one; however, she agreed to take parenting classes and obtain mental health treatment.

At the May 25, 2012 disposition hearing, Mother was not present and her attorney reported that she had yet to keep any appointments with him. The hearing was continued to June 1 and Mother was present on that date. She submitted on the report, the court approved the proposed case plan, and a six-month review hearing was set for November 16. The judge advised Mother that he saw “ambivalence on her part at this point which concerns me.”

Mother attended scheduled visits on June 19, 20, 26, 27 and 29, July 9, and August 14, 2012. On July 9, Gordon was placed with Grandmother and her husband, who ultimately planned to adopt him if reunification was unsuccessful.

Mother was incarcerated on August 22, 2012, and expected to be released in about six months. Mother met with a social worker in September and asked for visitation. The Department refused and informed Mother she would have to seek a court order. The Department immediately notified Mother’s counsel of the cessation of visitation. On October 11, Mother filed a request for visitation. On October 26, the court ordered “up to 3 one hour visits between now and 11/16/12[, the date of the six-month hearing]. The Social Worker will terminate the visit if the child is in any distress.” Mother also attended one parenting classes and some Alcoholics Anonymous (A.A.) or Narcotics Anonymous (N.A.) meetings in jail.

In its November 16, 2012 status review report, the Department recommended termination of services. Mother contested the recommendation and further hearing was held on November 20, 2012. The following evidence was presented at that hearing.

*Visitation.* Social worker Heather Friedrich testified that Mother attended only nine of a possible 100 visits before she entered jail. Mother testified she had difficulty attending visits at that time because she had no vehicle, she often lacked a phone, and the scheduled visits often conflicted with her court hearings. She acknowledged that she did not submit to drug tests, which at one point were a condition of visitation, but denied that she was using drugs during that period. Mother said she refused to test because she did not believe it was ordered by the court. Drug testing, however, was part of her case plan as of June 1, 2012. When she was asked, “So you chose not to visit instead of taking a

drug test that you would have passed and being able to see your child? Is that the choice you made?" she said, "I guess." After Mother entered jail, as noted, the Department stopped visitation. Mother did not file her motion for visitation until October 11, 2012. Friedrich testified that the visits that had taken place in jail went fine, but Mother did not have a parental bond with Gordon; their relationship was similar to a babysitter-child relationship.

*Drug Testing and Treatment.* Mother admitted that she had used amphetamines twice late in her pregnancy. She denied using marijuana during her pregnancy. Before her incarceration, she attended one AOD meeting, one AOD class, and no A.A. or N.A. meetings. As noted, she did not submit to drug testing. After her incarceration, the Department gave Mother an AOD packet (or packets, the record is not clear as to the number) she could complete in jail and return by mail. Mother first returned a packet at the November 20, 2012 hearing. Mother testified that she attended weekly A.A. or N.A. meetings in jail when they were available to her. In October, she sent the Department documentation of attendance at four such meetings. Mother claimed that she had documentation in her jail cell of attendance at an additional 10 meetings.

*Parenting Classes.* Before jail, Mother did not register for parenting classes. While in jail, she attended a parenting class on September 26, but the classes were then cancelled until November 14. Mother said she had attended a second class before the hearing.

*Mental Health Treatment.* Friedrich testified that before her incarceration Mother did not contact the mental health center and the center was unsuccessful in attempting to reach her. Mother testified that she went to the mental health center twice and had an initial meeting there. She was supposed to return in a week but the appointment conflicted with a criminal court date. The center rescheduled one meeting, but then insisted she attend meetings as scheduled. Mother said she was not able to do so because they conflicted with additional court hearings.

*Housing.* The Department reported that it was difficult to contact Mother before her incarceration because she did not appear to have stable housing and her phone

frequently was not working. Mother acknowledged she did not have a place to live after her release from custody. “[M]y mother is the only one that lives here, and I can’t go stay with her because Gordon is with her.” Mother’s attorney asked, “[I]f the department assisted you in getting rehab, you could live there; correct?” and she agreed. She said a condition of her probation was supposed to be “get[ting] into rehab or the clean and sober.” There is no other information in the record about the Mother’s effort to obtain drug treatment upon her release.

*Motivation to Reunify.* Friedrich testified that Mother “has not displayed very much motivation to reunify. She has said that she’s happy with Gordon being with [Grandmother]. . . . [¶] . . . [¶] I think her attitude . . . has changed a little bit since she’s been in custody. She might be clean now. And she’s . . . has [*sic*] some time to think about reunifying with her son, but as far as [reunification] being a possibility, I do not see that.”

The Department argued, “In this case, we have a parent who clearly was not interested in working a case plan. And although she’s testified that she’s done things while she’s been in jail, she certainly has not made great efforts to avail herself of services. She just testified that there are five [AOD] packets she could have done. She finished one packet of those five packets at the end of last week. [¶] . . . [¶] . . . [T]his is . . . a very young child, and she’s done nothing to establish a relationship . . . with him. There’s no plan . . . that she can enunciate to how she would reunify with her child once she’s released. I think her only compliance has been because she’s been in jail and she’s basically sitting there in jail.”

Mother argued she had done “everything she could possibly do in jail for the past three months.” The court disagreed, noting she had not sent an AOD packet until the hearing. Mother’s counsel responded that Mother had been given one packet, not five, had not been given a deadline to complete it, and that her completed work was 20 pages long and “went into great depth with her issues.” When counsel mentioned the denial of visitation for the first two months of Mother’s incarceration, the court commented, “[Mother] chose not to visit [before her incarceration], for whatever reason. [¶] And so

the department, sounds to me, decided that . . . in their estimation it was probably not in the best interest of the child because [Mother] had chosen not to visit her son. [¶] . . . [¶] . . . I think what the department did was reasonable. It's not the decision I would have made, but I think it was reasonable.”

Minor's counsel supported the Department's recommendation for termination of services. “My client seems to be doing well in [Grandmother's] home. This might be a win situation for [Mother] . . . . [I]f things go right . . . , she will continue a relationship, but [Gordon] will have bonded with [G]randmother, has moved on, has been without a mom for his entire life.”

The court ruled: “It's clear to me that [M]other did not make any reasonable efforts to follow the case plan . . . . [A]nything that she did in jail was too little too late. It's just amazing to me that the mother of a newborn baby would not make efforts to see the child. [¶] I find not credible the mother's indication that she only used the amphetamines two times late in her pregnancy. It appears to me from all of the evidence that we've had that [Mother] is seriously into drugs. I think that's the only explanation for why she didn't show up in court for the month after the baby was detained, that she was not making any reasonable or substantial efforts to get into drug treatment. [¶] . . . [¶] . . . I don't disagree that she would like to reunify with the baby. . . . Wanting to do it subjectively, but being prepared to do anything that's necessary to get it done, she just hasn't demonstrated that she was willing to do that. And I have no reason to believe if she was released from custody that anything would change.”

The court found there was clear and convincing evidence that Mother failed to participate regularly in the case plan and the extent of her progress on the case plan was insufficient. It found reasonable services had been offered. “I . . . do wish they [had] provided visitation with [Mother] initially when she went into custody, but I completely understand why they did not. I don't think it was unreasonable for them to require [Mother] to get Court ordered [visitation] under the circumstances.” The court terminated services, but ordered continuing visitation pending the section 366.26 hearing, explaining it had heard no evidence visits were detrimental to the child.

## II. DISCUSSION

When a child under three years of age is removed from his or her parents' care, the parents ordinarily are entitled to receive family reunification services only "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 provided in Section 361.49 unless the child is returned to the home of the parent or guardian." (§ 361.5, subd. (a)(1)(B).) Section 361.49 provides that "a child shall be deemed to have entered foster care on the earlier of the date of the jurisdictional hearing held pursuant to Section 356 or the date that is 60 days after the date on which the child was initially removed from the physical custody of his or her parent or guardian."

Gordon was a few days old when he was removed from Parents' care on April 2, 2012. Sixty days after the removal was June 1. The jurisdiction hearing took place on May 11, 2012. Therefore, Gordon is deemed to have entered foster care on May 11, 2012. (§ 361.49.) The initial disposition hearing took place on May 25, 2012. Six months after the disposition hearing was November 25, 2012. Twelve months after Gordon entered foster care will be May 11, 2013. Therefore, Mother was entitled to receive reunification services only through the six-month hearing (which properly took place on or before November 25, 2012) and ordinarily no longer than May 11, 2013. (§ 361.5, subd. (a)(1)(B).)

At the six-month hearing, "[i]f 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." (§ 366.21, subd. (e).)

We review a juvenile court’s findings for substantial evidence. (*In re Katrina C.* (1988) 201 Cal.App.3d 540, 547.) All conflicts must be resolved in favor of the respondent and all legitimate inferences indulged in favor of upholding the finding. (*Ibid.*) Where the finding must be based on clear and convincing evidence, the clear and convincing test disappears on appeal. (*In re Mark L.* (2001) 94 Cal.App.4th 573, 580.) The reviewing court has no power to weigh the evidence, but must give full effect to the respondent’s evidence, however slight, and disregard the appellant’s evidence, however strong. (*Id.* at pp. 580–581.)

A. *Reasonable Services*

Mother argues in this writ proceeding that the trial court erred in not continuing the case to a 12-month permanency hearing because the Department did not provide her with reasonable reunification services while she was in jail. She specifically faults the Department for stopping visits when she entered jail, but also argues the Department did not ensure her access to parenting classes, did not provide information about mental health services in jail, and did not arrange for her to enter a rehabilitation facility upon her release from custody.

This argument is forfeited. Mother did not argue at the six-month hearing that services should be continued because Mother had been denied reasonable services during the initial six-month reunification period. (See § 366.21(e) [if “the court finds . . . that reasonable services have not been provided, the court shall continue the case to the 12-month permanency hearing”].) Although she referred to the denial of visitation during the first two months of her incarceration, she did not argue this was a ground to continue services and she did not argue the Department failed to provide reasonable services because it did not ensure her access to parenting classes, did not provide information about mental health services in jail, and did not arrange for her to enter a rehabilitation facility upon her release from custody. Mother may not raise these arguments for the first time before this court. (See *In re Erik P.* (2002) 104 Cal.App.4th 395, 402–403.)

In any event, Mother’s argument lacks merit. Services will be found reasonable if the Agency has “ ‘identified the problems leading to the loss of custody, offered services

designed to remedy those problems, maintained *reasonable* contact with the parents during the course of the service plan, and made *reasonable* efforts to assist the parents in areas where compliance proved difficult . . . .’ [Citation.]” (*In re Precious J.* (1996) 42 Cal.App.4th 1463, 1474–1475 (*Precious J.*)). A reunification plan must include visitation between the parent and child “as frequent[ly] as possible, consistent with the well-being of the child.” (§ 362.1, subd. (a)(1)(A); *In re S.H.* (2003) 111 Cal.App.4th 310, 317.) “If the parent or guardian is incarcerated [or] institutionalized, . . . the court shall order reasonable services unless the court determines, by clear and convincing evidence, those services would be detrimental to the child.” (§ 361.5, subd. (e)(1).) Those services may include, but are not limited to, telephone contact with the dependent child, transportation, visitation and services to the child’s caregivers during the parent’s incarceration. (*Ibid.*) The content of services during incarceration must be determined in light of “the particular barriers to an incarcerated [or otherwise] institutionalized . . . parent’s access to those court-mandated services and ability to maintain contact with his or her child.” (*Ibid.*)

We will assume for purposes of argument that the Department erred when it unilaterally stopped visitation when Mother entered jail. (See *Precious J.*, *supra*, 42 Cal.App.4th at pp. 1476–1477 [incarcerated parents have right to services including visitation if feasible]; *id.* at p. 1477, fn. 8 [error for court to delegate complete discretion over visitation to the social services agency]; *id.* at p. 1479 [mother’s failure to attend visits while out of custody did not excuse the agency’s failure to arrange for visitation during incarceration].) The resulting two-month denial of visitation does not compel a finding that Mother was denied reasonable services. The reasonable services 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.) “Clearly, the delay in [visitation] rendered the services provided imperfect, but rarely will services be perfect. [Citation.]” (*Melinda K. v. Superior Court* (2004) 116 Cal.App.4th 1147, 1159.) In a case cited by Mother, where the court reversed a reasonable services finding because of a delay in services, the

services at issue—visitation conditioned on the minor’s prior participation in therapy—were “critical” to the reunification plan. (*In re Alvin R.* (2003) 108 Cal.App.4th 962, 966–967, 972.) “Father had done all that was required of him under the plan. Thus, *one* service, getting Alvin into eight sessions of individual therapy, stood in the way of all measures remaining under the reunification plan, and the Department submitted no evidence of having made a good faith effort to bring those sessions about.” (*Id.* at p. 973; see also *Precious J.*, at pp. 1467–1469, 1476 [although incarceration was sole basis for jurisdiction, agency arranged no visitation while mother remained in jail]; cf. *Denny H. v. Superior Court* (2005) 131 Cal.App.4th 1501, 1508–1509, fn. 2 [distinguishing *In re Alvin R.* because “[h]ere the barrier to reunification was not the children’s relationship with father[;] [r]ather, it was his continued inability to provide housing and financial support”].) Here, jurisdiction was based primarily on Mother’s substance abuse. Mother was offered services to address this problem, but she largely failed to avail herself of those services before her incarceration. She acknowledged that she attended no A.A. or N.A. between Gordon’s birth and the time of her incarceration. She refused to test. Her documented participation in the 12-step programs available in jail was limited to four meetings (although she claimed she attended 10 others). When out of custody, she went for one AOD assessment and never returned. She was given one or more AOD packets to work on while in jail, and did not provide any completed work until November. There was no evidence that she had made any substantial progress in alleviating the drug dependency problem that led to Gordon’s removal, and to her incarceration.

The temporary interruption in visitation during the first part of her incarceration was unhelpful, but it was not a critical factor in Mother’s failure to reunify. Moreover, the temporary interruption in visitation during Mother’s incarceration did not substantially interfere with her bond with Gordon, as the record showed that she had no parent-child bond with him when she entered custody. Until the time of her incarceration, she had forgone substantial available opportunities to visit and bond with Gordon. The court did not find her excuses for failing to visit to be credible. Prior to her incarceration, Mother had a total of nine contacts with Gordon from the time of his birth.

Mother sought in-jail visits, at a time when much of the presumptive six-month reunification period had already passed, to belatedly attempt to *develop* a then nonexistent bond.

Regarding the other services, such as mental health services, Mother claims the Department should have provided during her incarceration, Mother cites no evidence that such services were available to inmates in the facility where she was incarcerated. Certainly Friedrich, who appeared to be well-informed about the availability of parenting classes and alcohol and drug treatment in the jail, did not indicate that other services were available. A social services agency is not responsible for the fact that additional services are unavailable in jail or prison, and the unavailability of additional services in jail or prison cannot preclude a reasonable services finding. (See *In re Ronell A.* (1996) 44 Cal.App.4th 1352, 1363; *Mark N. v. Superior Court* (1998) 60 Cal.App.4th 996, 1013.) The possibility of Mother's entering an in-patient rehabilitation program upon her projected February 2013 release from custody is not directly relevant to the issues before us because the six-month reunification period ended in November 2012. Only if the court had grounds to extend the reunification period would the availability of additional services in February 2013 become relevant.

The trial court found reasonable services had been offered. We conclude the finding is supported by substantial evidence.

#### B. *Termination of Services*

Substantial evidence also supports the court's finding by clear and convincing evidence that Mother failed to participate regularly and make substantive progress in her case plan. For the first half of the six-month reunification period (i.e., before Mother's incarceration in August 2012), Mother failed to substantially comply with any single part of her case plan: she did not maintain regular contact with the Department, she did not enroll in parenting classes, she refused to submit to drug testing, she attended only sporadic visits with her infant son, she attended only one or two AOD group sessions, and did not complete her mental health assessment or treatment. The court found that Mother's explanations for these lapses were not credible. As to drug testing, Mother

claimed she did not comply because testing had not been ordered by the court, even though drug testing was part of her case plan as of May and her visitation with Gordon was conditioned on testing. The court could reasonably infer, as it did, that the true reason Mother refused testing was that she was using drugs at the time. Regarding visitation and the requirement that she obtain a mental health assessment, Mother claimed she missed appointments because she lacked a vehicle or a phone and because the appointments conflicted with her court hearings. The evidence, however, showed that Mother continued to miss visits even after she had a phone and had received bus vouchers and even though she had no conflicting work schedule. Based on Mother's testimony and demeanor at the hearing, the court found that Mother was not a credible witness. The trial court reasonably could have inferred on this record that Mother failed to make these appointments either because she was using drugs or because she was not motivated to reunify with her son.

During the second half of the six-month reunification period (from August to November 2012), Mother apparently took advantage of at least some of the services available to her in jail. However, substantial evidence supports the court's findings that she failed to make substantive progress on her case plan and that there was no substantial probability she could reunify with Gordon within an extended reunification period. Although it was undisputed that Mother attended the few parenting classes available to her, for reasons beyond any of the parties' control she attended only two classes. Mother testified that she also attended all of the A.A. and N.A. meetings available to her, but she was able to produce documentation of attendance at only four such meetings. The court could infer that Mother did not attend all such meetings or that the meetings she did attend were insufficient to make substantial progress in addressing her substance abuse problems. Mother admitted she did not complete an AOD packet until November. Although Mother's counsel argued Mother's pace of work on the packets was reasonable, the court had the opportunity to review the packet and we have no ground to question its implicit finding that her work was "too little, too late." The court did not err in terminating Mother's services.

**III. DISPOSITION**

The writ petition is denied on the merits. Because the section 366.26 hearing is set for March 15, 2013, our decision is immediately final as to this court. (California Rules of Court, rule 8.490(b)(3).)

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Bruiniers, J.

We concur:

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Jones, P. J.

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Simons, J.