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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

In re D.C., a Person Coming Under the
Juvenile Court Law.

NICOLE G.,

Petitioner,

v.

THE SUPERIOR COURT OF SONOMA
COUNTY,

Respondent;

SONOMA COUNTY HUMAN
SERVICES DEPARTMENT et al.,

Real Parties in Interest.

A137444

(Sonoma County
Super. Ct. No. DEP-4010)

INTRODUCTION

Petitioner Nicole G. (mother), mother of three-year-old D.C. (minor), seeks review by extraordinary writ, pursuant to California Rules of Court, rule 8.452,¹ of the juvenile court’s order denying her reunification services and setting the matter for a permanency planning hearing pursuant to Welfare and Institutions Code section 366.26.² Mother challenges the court’s denial of reunification services pursuant to section 361.5, subdivisions (b)(10), (b)(11), and (b)(13), and the court’s determination that reunification

¹ All further references to rules are to the California Rules of Court.

² All further references to statutes are to the Welfare and Institutions Code.

would not be in minor's best interests. We conclude the juvenile court's findings are supported by substantial evidence, and therefore affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Mother was born in 1981. When she was a teenager, she became a dependent of the juvenile court due to abuse by her own mother (minor's grandmother). At the age of 17, mother ran away from the home where she was then residing. At the age of 18, mother had her first child, a daughter, by a man to whom mother was married until 2009. About two years later, mother gave birth to twin girls, fathered by the same man. When the twins were only two months old, their father physically assaulted one of them, causing severe injuries. As a result, all three children were declared dependents of the juvenile court, and mother was convicted of child cruelty. Neither mother nor the children's father received reunification services as to the twins, and they were ultimately adopted. Mother received reunification services as to the older girl, including partially completing a domestic violence program and attending Al-Anon meetings and parenting classes. However, the reunification was not successful, and the older girl was eventually adopted as well.

Meanwhile, mother became involved with another man who was so violent and aggressive that when mother gave birth to a fourth daughter in 2004, she immediately relinquished the child for adoption in order to protect her. In April 2005, mother was arrested for possession of a controlled substance, and later went to a recovery program in lieu of going to jail. In December 2006, mother was ordered to register as a drug offender.³

Minor was born in the summer of 2009. At the time, mother was not sure which of two men, D.C. or B.B., was minor's father. D.C. was listed as the father on minor's birth certificate, and minor was given his surname. However, paternity testing later showed that B.B. was minor's biological father. D.C. appeared in the juvenile court

³ Mother denies having been ordered to register as a drug offender. The issue is not material to this appeal.

proceedings, but ultimately waived reunification. B.B.'s whereabouts were never ascertained. Neither man is a party to this writ proceeding.

Before minor's first birthday, mother was referred to respondent Sonoma County Human Services Department (the Department) on two occasions due to her apparent neglect of minor. However, the Department did not initiate dependency proceedings on either occasion.

Between minor's first and second birthdays, mother was arrested repeatedly for drug-related offenses involving methamphetamine; probation violations, and loitering for the purpose of prostitution. In July 2011, shortly before minor's second birthday, mother was ordered by the court to participate in drug treatment. She declined residential treatment, and did not participate consistently in the outpatient program in which she enrolled. When minor was two, mother was referred to a parenting psychologist, who concluded that she was under the influence of drugs when she appeared for her intake appointment. Mother did not follow up with the treatment plan that the psychologist recommended.

In January 2012,⁴ as a result of mother's failure to comply with the drug treatment conditions of her probation, mother was ordered by the court to enter a residential drug treatment program, Women's Recovery Services (WRS). She completed the residential program in April, and then enrolled in an outpatient drug treatment program, but failed to complete it. Mother contended that she could not complete the outpatient program because of childcare issues; however, mother was offered subsidized childcare for minor, and apparently did not take full advantage of it.

In June, a benefits worker concluded from mother's behavior that mother was using drugs, and mother agreed to obtain treatment, but did not do so. In late June or early July, mother was referred to "detox" due to her methamphetamine use. Mother contends that she went, but she was unable to provide any verification. In August,

⁴ All further references to dates are to the year 2012 unless otherwise noted.

mother was convicted of possession of drug paraphernalia, and placed on probation again. Minor's third birthday occurred shortly thereafter.

On August 28, the Department received a report that mother had tested positively for "substances" and had been asked to leave a treatment program in which she had been ordered to participate. The reporting party also suspected that mother was engaged in prostitution, and stated that mother "has no explanation as to where the minor is during these times."

On the following day, August 29, Amy Wyse, a social worker with the Department, went to a social services agency, Sonoma Works, where mother had an appointment later that day. Wyse met with Carlyne Sybelle, a worker at Sonoma Works who was familiar with mother. Sybelle expressed concern that mother had not been bringing minor to her meetings with Sybelle in recent months, and had told Sybelle that she was leaving him at friends' houses rather than at the day care facility in which mother was supposed to have enrolled minor. The Sonoma Works employee with whom mother was scheduled to meet, Diana Banthrall, also expressed concern about minor's wellbeing, because mother was homeless and thus unable to maintain a stable home environment for him.

When mother arrived for her appointment with Banthrall, minor was with her, and Wyse observed an L-shaped mark near one of minor's eyes. During the meeting, mother admitted having taken drugs twice since leaving WRS in April, but denied she was addicted or engaged in prostitution, and refused to submit to drug testing or enroll in outpatient treatment. Eventually, while speaking with Wyse and Banthrall, mother became so agitated that minor appeared frightened, asked Banthrall what was wrong with mother, and hid under a chair. Meanwhile, Wyse called another Department worker, had him bring the police, and obtained a warrant authorizing the Department to detain minor immediately. Wyse took minor to the doctor, where the little boy explained that the mark near his eye had been caused by a friend of his mother's hitting him with a plastic hanger. Minor was then placed in a temporary foster home.

On August 30, the Department filed the dependency petition from which these proceedings arise. The petition alleged that minor had suffered, or was at risk of suffering, serious physical harm due to mother's neglect and substance abuse (§ 300, subd. (b)), and that minor's half-siblings had been abused or neglected, and minor was at risk of abuse or neglect (§ 300, subd. (j)). On August 31, the day of the detention hearing, mother was tested for drugs, and the test was negative. Nonetheless, minor's detention was continued.

In early September, mother contacted WRS and asked to be placed on their waiting list for treatment, but later failed to follow up with the program. On September 17, the Department filed an amended petition alleging that mother's ability to care for minor was impaired by her substance abuse and failure to comply with treatment programs, as well as her homelessness and multiple arrests, and that mother had failed to prevent a friend from assaulting minor (§ 300, subd. (b)). The petition also elaborated on the original allegations with regard to the neglect and abuse of minor's older half-siblings (§ 300, subd. (j)). The juvenile court held a jurisdictional hearing on September 17, found jurisdiction, continued minor's foster care placement, and set a disposition hearing.

During September, two of mother's drug tests indicated that she had provided a diluted sample, and she missed one test. In addition, mother appeared to a social worker to be under the influence when the worker met with mother immediately after one of mother's visits with minor. Mother again showed signs of being under the influence during another visit with minor on September 25. The following day, she tested positive for methamphetamine. During another visit, mother insisted on braiding minor's hair for an hour and a half, ignoring his resistance.

On October 1, mother tried to start residential treatment at WRS, but was turned away and sent to detox because she was under the influence. Three days later, she completed the detox process and began the WRS residential program. On October 16, the WRS program manager reported that mother was not doing well in treatment, and was not complying with the program rules. On the same day, the Department social worker informed mother that the Department planned to recommend that reunification

services be denied, whereupon mother became so irate and agitated that the meeting had to be terminated.

The Department's disposition report was filed on October 29. As mother had been informed, the Department recommended that no reunification services be provided. The disposition hearing was continued several times, and did not actually occur until December 18.

At the disposition hearing, the court received into evidence a letter from the WRS director indicating that mother's initial resistance to treatment had passed, and that the WRS staff had seen marked improvement in mother's compliance with the WRS program. The court also took judicial notice of portions of the file in the dependency proceeding relating to minor's oldest half-sister, in which mother was given reunification services, but ultimately lost her parental rights with regard to the minor.

The Department presented the testimony of a social worker, Vanessa Azevedo, as an expert witness regarding the assessment of risks to children and the provision or bypass of reunification services. Azevedo noted that during mother's efforts at reunification with minor's oldest half-sister, mother denied or minimized her problems and failed to comply fully with her case plan. In Azevedo's opinion, mother was still engaging in denial with regard to her criminal history and drug use in the current case. Historically, except for a brief period several years before minor was born, mother had not demonstrated an ability to remain drug-free and avoid involvement in the criminal justice system when mother was not in a residential treatment program.

Azevedo acknowledged that mother had "begun to take steps in addressing her drug use," but indicated that at least through October, mother still had "a considerable amount of denial around the severity of her use." In the present case, mother had initially failed to comply with referrals to services, and had "continued to demonstrate hostile, aggressive behavior." Azevedo noted that mother was neglectful of minor's needs, at times leaving him in the care of people who were not safe and whom minor did not know (including grandmother, who abused mother as a child); had never yet taken minor to the dentist even though he was three years old; and by mother's own admission, had been

exposed only to men who were “bad to him and to his mother in front of him.” Mother tended to minimize the danger and negative effects of this behavior for minor. Azevedo was also concerned that mother was still involved in violent relationships, because Azevedo had observed bruises on mother’s arm that looked like they resulted from someone grabbing it hard, although mother denied this, and gave another explanation.

Azevedo also opined that minor exhibited some “attachment concerns” with respect to mother. For example, the first time Azevedo met minor, during one of mother’s visits with him, minor fled away from mother and hid behind a chair when Azevedo entered the room, whereas a child with a healthy attachment would normally go to their parent for comfort if frightened by a stranger. In addition, Azevedo had observed that minor did not react in the way a child normally would when mother exhibited abnormal behavior, and allowed near-strangers to remove him from mother’s presence without resisting. Azevedo indicated that this showed minor and mother had a dysfunctional relationship. Due to minor’s references to going to motels with mother for an hour, and hiding under furniture during that time, Azevedo was also concerned that mother had been exposing minor to her prostitution activities.

Azevedo acknowledged that mother had reentered the WRS residential treatment program on October 4, but described mother’s initial entry into the program as “forced and reluctant.” Based on a report from WRS’s director in mid-October, Azevedo characterized mother’s attitude as reflecting “a sense of entitlement” and “not taking responsibility.” At that point, mother was doing poorly in the program, and was not following the rules even though she knew them. The WRS intake coordinator reported that mother told her the Department had taken minor away from her for no reason, and when the worker opined that there must have been a reason, mother responded by acknowledging that she had “a couple dirty tests.” As of early November, WRS staff reported that mother “was still having trouble following the rules there.”

Azevedo concluded that mother “was still struggling with giving herself into treatment wholeheartedly until, approximately, the middle of November.” Even then, mother was still guarded about her children, and was “not opening up on many topics,”

such that the case worker felt that mother was not being honest or truthful about her life experiences, and was not taking responsibility for her current involvement with the Department. Mother's attitude during a meeting with Azevedo and the WRS case manager in mid-November was so aggressive and hostile that the meeting had to be terminated after 20 minutes. Mother also minimized her substance abuse problems, and denied being an addict even when she admitted to using drugs.

As of early December, mother's case manager at WRS reported that mother was "more positive," "had been engaging more," and was "being supportive of other residents." However, mother was still being guarded, particularly when discussing her children.

Azevedo concluded that it would not be in minor's best interest to provide services to mother, because mother had been given many opportunities to better her life and minor's life before minor was removed from her custody, and had "blatantly refused" them. Azevedo acknowledged that mother had recently begun to participate in her residential treatment program. She discounted this, however, because mother had completed the same program in the recent past, yet had disregarded the attempts to help her that were offered to her after that, and was still continuing to minimize the severity of her drug use and its effect on minor. Azevedo also believed that mother might have mental health issues due to the abuse mother suffered as a child, the loss of her children, her domestic violence relationships, and her codependency issues, but mother had not yet received the mental health therapy she appeared to need. Also, while mother's visits with minor had been positive since she reentered the WRS program, the visits that occurred before then had indicated that mother and minor did not have a healthy relationship.

Mother testified that her attitude had changed since she first entered WRS, and she was now trusted to support other women in the program. She admitted she was a methamphetamine addict, saying she had realized that about a year and a half earlier, and admitted that she had relapsed after completing the WRS program for the first time, having used drugs four times between May and her reentry into WRS. She averred,

however, that things were different now, because she wanted to “stay clean.” She had a sponsor, but that relationship had only been in place for a little over a month.

Mother acknowledged that she was ordered to go to a treatment program in the summer of 2011, and did not complete that program. Mother’s explanation was that minor would become so upset after a few hours at daycare that she would have to leave the program to pick him up, and she had no other resources to care for him. She denied ever having been a prostitute, and contended that the police arrested her on that charge because they were looking for minor’s father, who had an outstanding arrest warrant, and wanted to search her hotel room. She explained that minor developed the habit of hiding while in motel rooms as part of a game she played with him when they stayed in hotels, which they often did because she was homeless.

Mother denied that she would ever leave minor with someone who would hurt him, including her own mother, who had only babysat minor “maybe five times.” She denied there was any domestic violence between her and her current boyfriend.

At the conclusion of the disposition hearing on December 19, the juvenile court found by clear and convincing evidence that: (1) minor’s half-siblings were removed from mother’s custody; she failed to reunify with them, and her parental rights over them were permanently severed; and she had not subsequently made a reasonable effort to treat the problems that led to their removal (§ 361.5, subs. (b)(10), (b)(11)); and (2) mother had a history of extensive, abusive, and chronic use of drugs and had resisted court-ordered treatment for the problem during the three-year period immediately prior to the filing of the petition, or had failed or refused to comply with a program of drug treatment described in her case plan on at least two prior occasions, despite the availability and accessibility of these programs (§ 361.5, subd. (b)(13)). The court also declined to find clear and convincing evidence that reunification with mother would be in minor’s best interest. (§ 361.5, subd. (c).)

Based on these findings, the juvenile court adopted the Department’s recommendation that no reunification services be provided, and scheduled a permanency planning hearing under section 366.26 for April 25, 2013. Mother filed a timely notice of

her intent to file a writ petition, and the petition itself was filed on January 24, 2013. (Cal. Rules of Court, rules 8.450(e), 8.452.)

DISCUSSION

A. Applicable Law and Standard of Review

“There is a presumption in dependency cases that parents will receive reunification services. [Citation.] Section 361.5, subdivision (a) directs the juvenile court to order services whenever a child is removed from the custody of his or her parent unless the case is within the enumerated exceptions in section 361.5, subdivision (b). [Citation.] Section 361.5, subdivision (b) is a legislative acknowledgement ‘that it may be fruitless to provide reunification services under certain circumstances.’ [Citation.]” (*Cheryl P. v. Superior Court* (2006) 139 Cal.App.4th 87, 95-96, italics omitted.) “When the juvenile court determines by clear and convincing evidence that one of the enumerated situations exists [citation], reunification services shall only be ordered if ‘the court finds, by clear and convincing evidence, that reunification is in the best interest of the child’ [citation].” (*D.B. v. Superior Court* (2009) 171 Cal.App.4th 197, 202.) “If a court makes the requisite findings to deny reunification, it then ‘fast-tracks’ the minor to permanency planning under section 366.25 or permanency planning and implementation under section 366.26. (§ 361.5, subd. (f).)” (*In re Rebecca H.* (1991) 227 Cal.App.3d 825, 838.)

The statutory sections permitting denial of reunification services are sometimes referred to as “bypass” provisions. (See *Melissa R. v. Superior Court* (2012) 207 Cal.App.4th 816, 821.) “Where the court makes factual findings that a bypass section applies, we review those factual findings under the substantial evidence standard. [Citation.] We do not reweigh the evidence or make credibility determinations. We review the entire record in the light most favorable to the trial court’s findings to determine if there is substantial evidence in the record to support those findings. [Citation.]” (*A.A. v. Superior Court* (2012) 209 Cal.App.4th 237, 242.)

“Despite the applicability of [bypass provisions under] section 361.5, the court retains authority to order services if it finds by clear and convincing evidence they would

be in the children’s best interests. (§ 361.5, subd. (c)⁵.)” (*In re Lana S.* (2012) 207 Cal.App.4th 94, 109.) The parent has the burden of proving that the provision of reunification services, despite the existence of grounds for bypass, is in the child’s best interest. (*Ibid.*)

“To determine whether reunification is in the child’s best interest, the court considers the parent’s current efforts, fitness, and history; the seriousness of the problem that led to the dependency; the strength of the parent-child and caretaker-child bonds; and the child’s need for stability and continuity. [Citation.] A best interest finding requires a likelihood reunification services will succeed; in other words, ‘some “reasonable basis to conclude” that reunification is possible. . . .’ [Citation.]” (*In re Allison J.* (2010) 190 Cal.App.4th 1106, 1116.)

B. Substantial Evidence of Grounds for Bypass

Section 361.5 authorizes bypassing reunification if the criteria set forth in any one of its numbered subsections are satisfied. In the present case, as already noted, the juvenile court relied on the bypass provisions set forth in three of the numbered

⁵ Section 361.5, subdivision (c) provides, as relevant here: “The court shall not order reunification for a parent or guardian described in paragraph . . . (10), (11), [or] (13) . . . of subdivision (b) unless the court finds, by clear and convincing evidence, that reunification is in the best interest of the child.”

subsections: subdivisions (b)(10), (b)(11), and (b)(13).⁶ On review, we need only find substantial evidence to support one of these grounds in order to uphold the juvenile court's order.

In her memorandum in support of the writ petition, mother acknowledges that she resisted court-ordered treatment within the three years prior to the filing of the petition, as provided in section 361.5, subdivision (b)(13). (See *D.B. v. Superior Court, supra*, 171 Cal.App.4th at pp. 203-204 [“a parent who has failed to participate in drug or alcohol treatment ordered directly by the court as a condition of probation in a criminal case may be denied services under section 361.5, subdivision (b)(13) if the other criteria of that provision are met”].) On review, however, mother argues that substantial evidence does not support the juvenile court's finding that she satisfied the other criterion for bypass under that subdivision, i.e., that she has a history of extensive, abusive, and chronic use of drugs. In support of this contention, she points out that there is no evidence she

⁶ Section 361.5, subdivision (b) provides: “Reunification services need not be provided to a parent or guardian described in this subdivision when the court finds, by clear and convincing evidence, any of the following: [¶] . . . [¶] (10) That the court ordered termination of reunification services for any siblings or half siblings of the child because the parent or guardian failed to reunify with the sibling or half sibling after the sibling or half sibling had been removed from that parent or guardian pursuant to Section 361 and that parent or guardian is the same parent or guardian described in subdivision (a) and that, according to the findings of the court, this parent or guardian has not subsequently made a reasonable effort to treat the problems that led to removal of the sibling or half sibling of that child from that parent or guardian. [¶] (11) That the parental rights of a parent over any sibling or half sibling of the child had been permanently severed, and this parent is the same parent described in subdivision (a), and that, according to the findings of the court, this parent has not subsequently made a reasonable effort to treat the problems that led to removal of the sibling or half sibling of that child from the parent. [¶] . . . [¶] (13) That the parent or guardian of the child has a history of extensive, abusive, and chronic use of drugs or alcohol and has resisted prior court-ordered treatment for this problem during a three-year period immediately prior to the filing of the petition that brought that child to the court's attention, or has failed or refused to comply with a program of drug or alcohol treatment described in the case plan required by Section 358.1 on at least two prior occasions, even though the programs identified were available and accessible.”

abused drugs between 2005 and 2010, other than the incident in 2005 when she was found to be in violation of her probation due to the presence of drugs in her hotel room.

As the Department points out, however, there is substantial evidence that mother had a problem with methamphetamine starting no later than mid-2010. Indeed, at the disposition hearing, mother's counsel acknowledged that mother had a record of "approximately, two and a half years of abusive and chronic use of meth[amphetamine]." Between the summer of 2010 and the fall of 2012, mother was arrested for drug-related offenses several times, and repeatedly failed to comply with court-ordered drug abuse treatment. In addition, mother admittedly continued to use methamphetamine even after completing the WRS residential program for the first time in early 2012.

These uncontroverted facts are sufficient to constitute substantial evidence supporting the trial court's finding that mother's methamphetamine abuse was "extensive, abusive, and chronic" within the meaning of section 361.5, subdivision (b)(13). As noted above, this finding alone is sufficient to support the trial court's order denying reunification services.⁷

C. Best Interest of Minor

In the alternative, mother argues that the juvenile court erred in concluding that providing reunification services would not be in minor's best interest. She points to the evidence that during the weeks immediately prior to the disposition hearing, her performance in the WRS program had shown marked improvement.

We agree with the Department and the juvenile court, however, that mother's belated recognition of her need to deal with her methamphetamine abuse was not sufficient to meet her burden to show by clear and convincing evidence that further efforts at reunification would be in minor's best interest. By her own admission, mother relapsed after her first course of residential treatment in the same program in which she

⁷ Because we find ample, substantial evidence supporting the trial court's denial of reunification services under subdivision (b)(13), we need not discuss whether there also is substantial evidence to support the denial of services under the alternative grounds alleged, i.e., subdivisions (b)(10) and (b)(11.)

was enrolled at the time of the hearing. Thus, mother could not demonstrate that she had the ability to sustain her abstinence from methamphetamine outside the context of a residential treatment program.

Moreover, Azevedo's testimony showed that minor's relationship with mother was problematic at best. Azevedo concluded that minor's willingness to allow relative strangers to remove him from mother's presence, and his behavior of hiding rather than seeking comfort from her when he was frightened, showed that he had attachment issues relative to mother. Azevedo expressly opined that reunification would not be in minor's best interest. That testimony, taken together with mother's history of resisting drug treatment and the relative recency of her compliance, constitutes substantial evidence supporting the trial court's finding that providing reunification services would not be in minor's best interest.

DISPOSITION

The petition for extraordinary writ review is denied on the merits. (§ 366.26, subd. (l)(4)(B); rule 8.452(h)(1).) Our decision is final immediately. (Rules 8.452(i), 8.490(b)(3).)

RUVOLO, P. J.

We concur:

REARDON, J.

RIVERA, J.