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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

In re N.D. and N.I.D., Persons Coming
Under the Juvenile Court Law.

L.B.,

Petitioner,

v.

THE SUPERIOR COURT OF ALAMEDA
COUNTY,

Respondent.

ALAMEDA COUNTY SOCIAL
SERVICES AGENCY et al.,

Real Parties in Interest.

A137682

(Alameda County
Super Ct. Nos. OJ12018848,
OJ12018849)

L.B., mother of N.D. and N.I.D.,¹ seeks extraordinary writ review of the respondent juvenile court’s order terminating her reunification services (Welf. & Inst. Code, § 388, subd. (c)²), and setting a permanency planning hearing (§ 366.26.) She also seeks a temporary stay of the dependency proceedings pending a ruling on her petition. Mother challenges the court’s findings that she had been provided reasonable

¹ The children’s father is not a party to this writ proceeding.

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

reunifications services but would not successfully reunify with the children if the court extended those services. She contends the court abused its discretion in terminating services because she demonstrated a capacity to complete her case plan and continuation of services would have been in the children's best interests. Real party in interest Alameda County Social Services Agency (the agency) opposes the petition and stay request. We conclude mother's contentions have no merit. Accordingly, we deny the petition on its merits and deny the stay request as moot.

FACTS³

A. Background

On April 30, 2012, the agency filed a joint petition asking the juvenile court to take jurisdiction of then seven-year-old N.D. and six-year-old N.I.D. The children had been detained after mother failed to pick them up at school and failed to later contact anyone regarding the children or return to their residence at a shelter. In the petition asserting jurisdiction under section 300, subdivision (b) (failure to protect), it was alleged, among other things, that the whereabouts of the children's father were unknown and the children were at substantial risk of harm due to mother's history of substance abuse, which periodically interfered with her ability to parent the children.

On May 15, 2012, at the jurisdictional hearing, the juvenile court sustained the allegations in the petition after mother submitted on the agency's report. At that time, mother submitted a copy of a letter from Serenity House, a residential drug treatment program, confirming her enrollment there since April 30, 2012, and compliance with the program's rules and regulations. Mother planned to remain in residential drug treatment for the next nine months. Mother also planned to continue taking certain prescribed psychotropic medication and to receive mental health treatment for "chronic depression." Starting May 3, 2012, the agency arranged for weekly supervised visits between the children and mother at Serenity House.

³ We set forth only those facts necessary to resolve this writ proceeding.

A dispositional hearing was held on June 13, 2012. At that time, mother was still in residence at Serenity House and the children had supervised visits with her at the facility. The juvenile court declared the children dependents of the court and removed them from mother's custody. The agency was ordered to provide family reunification services, and mother was ordered to cooperate with the agency's social worker and to participate in all aspects of her case plan. Mother's case plan required her to participate in parenting education and extensive services to address her mental health and substance abuse issues, including evaluation and monitoring of her psychotropic medications and participating in an inpatient substance abuse program and random drug testing. The agency was ordered to arrange visits "as frequently as possible consistent with [the children's] well being." A six-month review hearing was scheduled for November 28, 2012.

B. Section 388 and Six-Month Status Review Proceeding

On November 9, 2012, the agency's social worker Leslie Calhoun filed a section 388 request (for each child) to change the court order to terminate reunification services. By that time, the children had been placed in the home of their second cousin (hereafter referred to as their caregiver) and her partner. The agency requested termination of reunification services because mother had not visited the children since July 12, 2012, and mother had made no contact with Calhoun. Calhoun further indicated the change would be better for the children because mother had not actively worked to get the children back despite the agency's support since July 2012, and terminating reunification services would allow the children to receive permanency through legal guardianship with their caregiver and her partner. Calhoun also filed a six-month status report, recommending that the children remain in their placement, and that the court terminate mother's reunification services and set a section 366.26 hearing to resolve the children's permanent placement in a legal guardianship with their caregiver and her partner. In the status report, Calhoun addressed mother's progress at Serenity House. A Serenity House staff member reported that on April 30, 2012, mother had enrolled in the facility's inpatient program but she left the program on July 13, 2012. While at the program,

mother was on psychotropic medications and she also tried to get high using Benadryl. Since placement with their caregiver at the end of June 2012, the children had two supervised visits with their mother at Serenity House before she left the program on July 13, 2012. The caregiver reported mother appeared to be high during those two visits. Because the caregiver had not been told that mother had left the program, the children were brought to Serenity House for a scheduled visit on July 19, 2012. The children cried a lot when they learned they would not be visiting their mother that day. Calhoun also described her efforts to locate mother. During the months of July, August, September, October and November, 2012, Calhoun contacted the children's current caregiver about mother's location. After she left Serenity House, mother called the children's caregiver several times to ask to visit the children and was told each time that she had to arrange for visits through Calhoun. Mother claimed she called Calhoun and the visits had been approved. However, Calhoun reported mother had never contacted her to arrange visits with the children. Also, on August 31, 2012, Calhoun put in a request with the agency's search unit. On October 11, 2012, the search unit reported that mother's whereabouts were unknown and that reasonable efforts had been made to ascertain her location. Calhoun also reported that the children were "thriving in their relative placement," and their foster care parents loved the children and were committed to being legal guardians. A hearing on the agency's section 388 petition and the six-month review report was scheduled for January 16, 2013.

On January 15, 2013, Calhoun filed an addendum report, maintaining her recommendations that the children remain in their placement, and that the court terminate mother's reunification services and set a section 366.26 hearing to determine the children's permanent placement. Calhoun reported that she met with mother for the first time on November 28, 2012. Calhoun told mother that the Serenity House counselor had said that mother needed to be in an inpatient drug treatment program. Mother stated she did not want to enter an inpatient program and she felt she could fully recover by attending Serenity House's outpatient program. The Serenity House counselor reported on mother's progress in the program. Mother was required to drug test every two weeks

but she did not take the tests when requested to do so. Mother tested for drugs for the first time on January 8, 2013, which revealed a positive drug test for cocaine and marijuana. Mother was also expected to participate in the program four days a week, but she did not regularly attend the program. From November 28, 2012 through January 8, 2013, mother had attended four half-days and two full days. Mother was trying to enter a new program at the House of Change. The Serenity House counselor expressed concerns about mother's decision because the new program was more lax and clients could come and go as they pleased. Calhoun also had arranged for mother to see the children. Mother had supervised visits with the children on December 7, 2012, and December 28, 2012. After the December 7 visit, the children told Calhoun that they had seen their mother on Thanksgiving day 2012. Mother initially denied seeing the children, but later admitted she had seen the children. The children's caregiver reported that the family's Thanksgiving celebration had been held at her home. Mother had shown up without permission and the caregiver did not want to make a scene and did not ask mother to leave. For most of the December 28, 2012, visit, mother talked with the children's caregiver, while the children played in another room. After this visit, the children's caregiver said she no longer felt comfortable supervising visits. Calhoun found a location and a counselor to supervise future visits, which would initially be bimonthly and would occur after school for one-and-a-half hours. Calhoun described her efforts to assist mother in meeting her case plan requirements. On November 28, 2012, mother was given copies of her case plan and the agency's status review report for that date. On December 19, 2012, Calhoun gave mother transportation money to visit the children, and several documents, including referrals for a parent advocate and housing support, and a list of outpatient and inpatient drug treatment programs. On January 8, 2013, Calhoun sent mother another copy of her case plan.

On January 16, 2013, the juvenile court held the hearing on the agency's section 388 petition and the six-month status review. The court considered and reviewed the agency's reports prepared for the hearing, and heard testimony from mother and Calhoun.

Mother testified that two days after the children had been removed from her care, she voluntarily entered the Serenity House inpatient drug treatment program and remained there until early July 2012. During the time she was at Serenity House, mother saw the children once a week for an hour. After mother stopped living at Serenity House, she intermittently returned to stay connected but she did not resume participation in their treatment program on an outpatient basis until the end of November “around Thanksgiving.” Mother did not visit the children, from the time she left Serenity House in July until Thanksgiving day, when she saw the children at their placement without permission. Between Thanksgiving day 2012 and January 9, 2013, mother attended either an “AA” or “NA” meeting every day except Friday. On January 9, 2013, mother entered an inpatient program at the House of Change, described as “a sober living environment” facility that provided counseling and substance abuse treatment. Mother planned to attend classes at both Serenity House and the House of Change. However, she would not be able to attend classes at Serenity House for 30 days because she could not go anywhere without supervision as a requirement of her residency in the House of Change.

Mother initially testified she had submitted to random drug tests at Serenity House. On one occasion she refused to test and the Serenity House counselor assumed it was because the test would be “dirty.” Mother did not know how many tests she had taken and her drug test on January 8, 2013, revealing that she tested positive for marijuana and cocaine, was her “first dirty test ever.” Mother later admitted that between July 2012 and the January 8th test, she had not been drug testing and had consumed “illicit substances,” relapsing in September 2012. Mother also testified she had been diagnosed as suffering from “PTSD,” “chronic depression,” “bipolar” disease, “and some other stuff.” She was currently taking five prescribed psychotropic medications on a daily basis. Mother initially testified that she had not seen any doctor during the last month before the hearing and no one was monitoring her use of prescription drugs; she just called and picked up her medication. Mother later testified that her prescribing

physician did question her about the effects of her medication on her well-being. Mother explained her reasons for not signing releases for her treatment information.

Mother conceded that Calhoun had given her information about inpatient drug treatment programs that would satisfy her case plan requirement. However, mother claimed she was not told she had to pick one of the programs on the list. She was only told that she needed to be in an inpatient program. Calhoun also gave mother the names of places that provided parenting education. However, mother claimed “[t]here was a referral needed and there was no referral.” When again asked if Calhoun had given her the name and contact information for parenting education, mother replied, “No. She gave me a thick pamphlet of programs and a piece of paper that said what were the requirements of something she wanted me to do.” When asked if she read the paper given to her, mother replied, “Nope.” Mother admitted she received a housing referral from Calhoun.

Calhoun testified she had been assigned the case in early July 2012. She had unsuccessfully attempted to contact mother by telephone at Serenity House.⁴ Calhoun understood that mother had left Serenity House’s inpatient program without permission, and she returned to attend the outpatient program at the end of November 2012. During the period of July 2012 through the end of November 2012, Calhoun described her attempts to locate mother through the children’s caregiver. Calhoun was not aware that mother had any contact with the children between July 2012 and the Thanksgiving day visit.

On November 28, 2012, Calhoun met with mother and discussed in detail the case plan requirements and why it was important for mother to enter an inpatient drug treatment program. Mother said she was not going to enter an inpatient program. Mother was crying during the discussion so it was not clear if she was going to comply with any

⁴ On rebuttal, mother testified that in July 2012, she had spoken with Calhoun, who had arranged a meeting but then cancelled the appointment and rescheduled it for another time. Mother agreed to see Calhoun at the rescheduled time, but mother did not go to the meeting because she left Serenity House.

of the other case plan requirements. Calhoun set up another meeting in early December 2012 to further discuss mother's options. At that December meeting, Calhoun gave mother a list of inpatient drug treatment programs, outpatient drug treatment programs that provided drug testing, and places offering parenting classes. Calhoun also gave mother referrals for a parent advocate and housing support, even though Calhoun was recommending that mother enter an inpatient drug treatment program. Calhoun stated mother did not need referrals to participate in substance abuse or counseling programs. Mother needed to contact a program, inform Calhoun of the chosen program, and Calhoun would fax a referral to the program. However, mother made it clear she did not want to attend any program except Serenity House and she did not want to enter an inpatient program. Mother admitted that Serenity House did not have parenting classes, and she did not indicate she had participated in any such classes. Mother said she was participating in individual therapy and she was seeing a psychiatrist. Mother said she would provide contact information for her medical providers, but she never did. Mother refused to sign a consent to allow Calhoun to verify that mother was seeing medical providers.

Calhoun believed mother should enter an inpatient drug treatment program because over the last few months mother had not been able to demonstrate sobriety while she was not participating in an inpatient program. Based on Calhoun's experience, she thought that inpatient programs typically suggested treatment for at least six months and then assessed whether treatment should be continued. Calhoun did not consider the House of Change to be an inpatient drug treatment program. The program was not on the agency's list of inpatient programs as it was described as a "sober living environment." Based on Calhoun's experience, a sober living facility was a place to live after a person had completed an inpatient drug treatment program. The facility did not provide actual treatment, but "there is support, encouragement to go to meetings and in some cases there is drug testing as well." Calhoun did not believe that mother's plan to attend Serenity House for treatment and live at the House of Change would be an effective form of treatment for her. Calhoun opined mother was not actually participating actively in the

Serenity House drug treatment program and was not drug testing and when she did drug test the first time she tested positive for cocaine. Without more information, Calhoun did not recommend that mother enter the House of Change.

Calhoun testified to the arrangements she made so that mother could visit her children. Mother had two supervised visits since Thanksgiving 2012 and the date of the hearing. Calhoun had found a visitation center and a counselor to supervise future visits. Calhoun had arranged to meet mother on January 11. Although mother agreed to the meeting time, she did not attend the meeting. By that time mother had entered the House of Change and she had previously told Calhoun that she could not leave for 30 days. Calhoun testified that when she made the January appointment, mother did not make clear that she had entered a residential treatment program with a blackout period.

In its order filed on January 17, 2013, the juvenile court found mother had been offered and provided reasonable services but had made only “minimal and unsatisfactory” progress toward alleviating or mitigating the causes necessitating placement of the children. The court terminated mother’s reunification services as to each child after finding by clear and convincing evidence that mother’s inaction had created a substantial likelihood that reunification would not occur due to mother’s failure to visit the children and her failure to participate regularly and make substantive progress in a court-ordered treatment plan. A section 366.26 hearing was scheduled for May 7, 2013. Mother timely filed this petition and related request for a stay.

DISCUSSION

As a general rule, whenever a child is removed from a parent’s custody, the juvenile court must order reunification services for the parent. (§ 361.5, subd. (a).) For a child who is three years of age or older at the time of removal, “court-ordered services shall be provided beginning with the dispositional hearing and ending 12 months after the date the child entered foster care as provided in Section 361.49”⁵, . . . and “may be

⁵ Section 361.49 reads: “Regardless of his or her age, a child shall be deemed to have entered foster care on the earlier of the date of the jurisdictional hearing held

extended up to a maximum period not to exceed 18 months after the date the child was originally removed from physical custody of his or her parent” (§ 361.5, subs. (a)(1)(A), (3).) However, “the court has discretion to determine . . . whether services should be terminated at some point before the applicable statutory period has expired.” (*In re Katelynn Y.* (2012) 209 Cal.App.4th 871, 876.) Specifically, section 388, subdivision (c), provides, in pertinent part: “(1) any party . . . may petition the court” before the hearing scheduled for a three-year-old or older child’s permanency hearing “to terminate court-ordered reunification services provided under subdivision (a) of Section 361.5 . . . if one of the following conditions exists: [¶] (A) It appears that a change of circumstance or new evidence exists that satisfies a condition set forth in subdivision (b) or (e) of Section 361.5 justifying termination of court-ordered reunification services. [¶] (B) The action or inaction of the parent or guardian creates a substantial likelihood that reunification will not occur, including, but not limited to, the parent’s or guardian’s failure to visit the child, or the failure of the parent or guardian to participate regularly and make substantive progress in a court-ordered treatment plan. [¶] . . . [¶] (3) The court shall terminate reunification services . . . only upon a finding by a preponderance of evidence that reasonable services have been offered or provided, and upon a finding of clear and convincing evidence that one of the conditions in subparagraph (A) or (B) of paragraph (1) exists.”

Relying on isolated portions of the record, mother argues the evidence does not support the juvenile court’s finding that she failed to participate regularly and make substantive progress in a court-ordered treatment plan. We disagree. The record demonstrates that mother failed to participate regularly in a court-ordered drug treatment plan and make substantive progress in addressing her substance abuse issue, she continued to use illicit substances during the reunification period, and she did not comply with requests for random drug testing. Thus, the juvenile court had ample cause to question mother’s willingness and determination to meet the objectives of the case plan

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.”

and alleviate the conditions that led to the dependency. Mother planned to attempt to achieve sobriety through an outpatient program and living in a sober living environment facility. However, the juvenile court could reasonably determine that there was not a substantial likelihood that mother's plan would allow her to reunify with her children. In cases such as this where substance abuse is a central issue, the juvenile court has the duty "to evaluate the likelihood that [a parent] would be able to maintain a stable, sober and noncriminal lifestyle for the rest of [the child's] childhood." (*In re Brian R.* (1991) 2 Cal.App.4th 904, 918.)⁶

We also reject mother's challenge to the juvenile court's finding that she received reasonable reunification services. "[O]ur sole task on review is to determine whether the record disclosed substantial evidence which supports the juvenile court's finding that reasonable services were provided or offered." (*Angela S. v. Superior Court* (1995) 36 Cal.App.4th 758, 762.) "In almost all cases it will be true that more services could have been provided more frequently and that the services provided were imperfect. The 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.) Here, the agency prepared a detailed case plan with various requirements that were reasonable and properly designed to prevent a recurrence of the circumstances that led to the children being removed from mother's custody. (See *In re Dino E.* (1992) 6 Cal.App.4th 1768, 1776-1777.) We see no merit to mother's argument that the social worker should have made greater efforts to locate mother from July to November 2012, by contacting the children's maternal grandmother or Serenity House to see if mother had been in contact with the facility. The juvenile

⁶ Because the juvenile court found mother failed to participate regularly and make substantial progress in a court-ordered treatment plan, it was not required to also find that mother failed to visit the children. Section 388, subdivision (c)(1)(B), does not require findings on both factors. Consequently, in light of our determination upholding the juvenile court's finding that mother failed to participate regularly and make substantial progress in a court-ordered treatment program, we need not address mother's challenge to the juvenile court's additional finding that she failed to visit the children.

court could justifiably find that once mother left Serenity House, the social worker made reasonable attempts to locate mother by asking the agency's search unit to locate mother, and by repeatedly speaking with the children's caregiver, who was in contact with mother and gave her messages to contact the social worker. "There is nothing in the statutory scheme to support" mother's implicit suggestion that the agency has a "duty to track [a parent] continually throughout the dependency process even after he [or she] ha[s] been identified, contacted by a social worker, apprised of the proceedings, provided with counsel and participated in hearings." (*In re Raymond R.* (1994) 26 Cal.App.4th 436, 441.) "The [agency] has a duty initially to make a good faith attempt to locate the parents of a dependent child. Once a parent has been located, it becomes the obligation of the parent to communicate with the [agency] and participate in the reunification process." (*Ibid.*) Despite mother's mental health issues, we see no evidence in the record demonstrating that she was prevented from contacting the agency and using the agency's resources to complete her case plan requirements. " "Reunification services are voluntary, and cannot be forced on an unwilling or indifferent parent." ' ' (*In re Nolan W.* (2009) 45 Cal.4th 1217, 1233, quoting *In re Jonathan R.* (1989) 211 Cal.App.3d 1214, 1220.) "The requirement that reunification services be made available to help a parent overcome those problems which led to the dependency of his or her minor children is not a requirement that a social worker take the parent by the hand and escort him or her to and through classes or counseling sessions. A parent whose children have been adjudged dependents of the juvenile court is on notice of the conduct requiring such state intervention. If such a parent . . . waits until the impetus of an impending court hearing to attempt to [correct his or her own 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.) If mother felt the social worker was not helping her complete her case plan requirements, she "had the assistance of counsel to seek guidance from the juvenile court in formulating a better plan[.]" (*In re Christina L.* (1992) 3 Cal.App.4th 404, 416.)

We are also not persuaded by mother’s argument that the juvenile court abused its discretion by not considering mother’s capacity and willingness to engage in services, her sincere desire to reunite with the children, and the children’s preference to be reunited with their mother. There is no *express* requirement in section 388, subdivision (c)(1)(B), that the agency make a showing or that the court find that termination of services is in the children’s best interests. Nevertheless, by its ruling that reunification was not substantially likely to occur, the juvenile court implicitly considered the children’s best interests, which “necessarily involve[d] eliminating the specific factors that required [their] placement outside [mother’s] home.” (*In re Angel B.* (2002) 97 Cal.App.4th 454, 463-464.) Mother had failed to participate regularly and make substantive progress towards achieving sobriety while attending both an inpatient program and outpatient programs. Although she had supervised visits with the children from May 5, 2012 to July 12, 2012, once she left Serenity House, she did not visit them for four and a half months, and only began to see them after the agency had filed its six-month status report and the section 388 petition requesting termination of services. On this record, the juvenile court was not required to accept mother’s testimony that she was willing and would be able to reunify with the children if the court did not terminate reunification services. By her arguments, mother “effectively asks us to reweigh the evidence. We decline to do so.” (*In re Zachary G.* (1999) 77 Cal.App.4th 799, 812.)

In sum, we conclude the juvenile court did not abuse its discretion in setting a section 366.26 hearing after determining that reasonable reunification services had been provided and offered but services should be terminated because there was a substantial likelihood that mother would not reunify with the children.

DISPOSITION

The petition for an extraordinary writ is denied on the merits. (§ 366.26, subd. (l); Cal. Rules of Court, rule 8.452(h).) The request for a stay is denied as moot. Our decision is final immediately. (Cal. Rules of Court, rule 8.452(i) and 8.490(b).)

Jenkins, J.

We concur:

McGuinness, P. J.

Siggins, J.