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

J.R.,

Petitioner,

v.

THE SUPERIOR COURT OF DEL
NORTE COUNTY,

Respondent;

DEL NORTE COUNTY DEPARTMENT
OF HEALTH AND SOCIAL SERVICES,

Real Party in Interest.

A137755

(Del Norte County
Super. Ct. Nos. JVSQ12-6041,
JVSQ12-6042, JVSQ12-6043, JVSQ12-
6044, JVSQ12-6045, JVSQ12-6046,
JVSQ12-6047, JVSQ12-6048, JVSQ12-
6049)

J.R. (mother) petitions this court for extraordinary writ review of a juvenile court order terminating reunification services and setting a selection and implementation hearing for her nine children, who currently range in age from three to 17 years old. She argues that the juvenile court applied an incorrect legal standard when it declined to extend reunification services past the six-month review hearing. (Welf. & Inst. Code, § 366.21, subd. (e).)¹ We disagree and deny her petition.

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

I.
FACTUAL AND PROCEDURAL
BACKGROUND

These proceedings began on March 1, 2012,² when the Del Norte County Department of Health and Human Services (Department) filed nine separate juvenile dependency petitions alleging that mother and the children's father, B.R. (father), had abused their children. Specifically, the petitions alleged that father had sexually and physically abused 16-year-old daughter M.R. (the oldest child) and had physically abused 11-year-old son E.R. (the oldest son and fourth-born child). The petitions further alleged that all nine of the children faced a substantial risk of harm. A detention hearing was held the following day, and father was ordered not to return home.

By the time jurisdiction reports were filed a couple of weeks later, M.R. and E.R. were placed in foster care while the other seven children remained with mother. According to the jurisdiction reports, M.R. had claimed that father had slapped and pushed her in late December, and she feared for her safety, telling social workers: “ ‘I can't go back in there! He will kill me! I'm not supposed to talk about what happens.’ ” She also disclosed other incidents of violence against her siblings and mother, as well as sexual abuse by father. The reports also revealed that E.R. had alleged that father burned him with a toaster oven after he failed to finish his homework (E.R. later recanted this allegation), suffered other violence in the home, did not feel safe, and had been instructed not to discuss what happened in the home because he would be “ ‘punished for speaking outside of the family.’ ”

The parents denied all allegations. Father claimed that M.R. was “ ‘making lies up [just to] get out of the home’ ” and was “ ‘mentally ill.’ ” He also denied that E.R. or any other child had suffered abuse. Mother claimed that E.R. and “ ‘all the children’ ” lied,

² All date references are to the 2012 calendar year unless otherwise specified. We commend the juvenile court and the Department for the organization and clarity of the case files in this multiple-party proceeding.

she denied that any of the children had recently suffered physical punishments, and she stated she was not “ ‘an abused woman.’ ”

Mother, M.R., her 13-year-old and 15-year-old sisters, the social worker, and another witness testified at the contested jurisdiction hearing held over four days in May. Although the juvenile court dismissed some of the original allegations regarding abuse of M.R. and E.R., it found that it had jurisdiction over each of the nine children under section 300. Specifically, the court found that M.R. suffered: (1) sexual abuse by father and a failure to protect by mother (subd. (d)); (2) a failure to protect based on physical abuse by father (subd. (b)); and (3) emotional damage by her parents’ failure to seek appropriate mental health services after she tried to commit suicide, and by father telling her that he would kill her and that she would burn in hell for speaking outside the family (subd. (c)). The court found that E.R. and the other seven minors had an abused sibling (M.R.) (subd. (j)), and that the parents had failed to protect the seven minors (those other than M.R. and E.R.) based on their promotion of an unorthodox religious belief system leading M.R. to fear she would burn in hell for speaking outside the family (subd. (b)). Around the time of the contested jurisdiction hearing, the seven minors remaining with mother were removed from the home under voluntary safety plans because of a reported lack of supervision.

In June, the Department filed supplemental petitions (§ 387) as to those seven minors. As later amended, the supplemental petitions alleged that mother suffered from depression and post-traumatic-stress disorder, which impaired her ability to parent effectively and placed the minors at substantial risk of emotional abuse and neglect; that the home smelled of garbage and contained various safety hazards; that father had returned home, which placed the minors at risk of sexual abuse and serious risk of emotional harm; that the parents’ parenting resulted in emotional detriment to the minors; and that the minors were at risk of educational neglect.

According to social worker reports filed in early June, mother and father had shown “verbally and emotionally hostile retaliation” toward M.R., E.R., and their nearly 10-year-old daughter for the roles the parents perceived that those minors had played in

having the Department and court intervene in their lives. The social worker reported problems that occurred during supervised visitation, such as the parents not being aware of some of the minors' basic needs, and mother being unaware that her four-year-old daughter and two-year-old son were even in the visitation room. One visit had to end early, and a sheriff's deputy was called, after mother started screaming at M.R. that she was " 'lying and trying to have my children removed' " and would " 'burn in hell,' " which upset the younger siblings; refused to leave the room after being repeatedly told to do so; and later screamed at the social worker that she, too, would " 'burn in hell.' " The social worker concluded that the parents had demonstrated over five months of supervised visitation that they did not have the ability or desire to meet their children's emotional or physical well-being during visits.

A psychologist who had counseled the parents, E.R., and M.R., and who had observed several visitation sessions, reported that mother suffered from "Major Depression (recurrent) resulting from unresolved long term Complicated Post Traumatic Stress Disorder (PTSD) caused by repeated traumatic events in her life as a child, teenager and young adult; and Dependent Personality Disorder." The psychologist also described the "Biblical Patriarchy" belief system followed by the family, a practice he stated was "akin to an indoctrination under divine rule that isolated the family from conventional social experiences, led to inadequate home schooling for the[] children leading to educational neglect, and a blurring of the boundaries, roles and developing identities of the older R[.] children."

The juvenile court sustained the supplemental petitions filed as to the seven minors after a contested jurisdiction hearing in mid-July.

In late August, the Department filed a disposition report as to all nine minors. According to the Department, many of the children continued to report violence within their family, including violence between the parents and by the parents (particularly father) against the children. The following month, the parents' 10-year-old daughter, H.R., disclosed to her foster parent and her therapist that father had molested her and that she had witnessed father molesting M.R. H.R. stated that father used to get in bed with

her “and they would ‘do it,’ ” and he would also ask her to pull down her pants so he could look at her. The parents told a social worker they believed H.R. was trying to “get back at them for not allowing her to get her ears pierced and because she has been influenced by M[.]”

A dispositional hearing was held on October 2. The juvenile court adjudged the minors to be dependent children after finding by clear and convincing evidence that they should remain out of the parents’ physical custody and ordered family reunification services. Mother and father both timely appealed from the dispositional order, and their appeals are currently pending in this court. These appeals were consolidated with father’s premature appeal of the jurisdictional order. (Appeal Nos. A135645, A136929.)

The parents, and particularly mother, worked to achieve the objectives of their court-ordered case plan, but their success was limited. In October, the parents completed a certified nursing assistant training program and were searching for work. Although the parents lived together in the family home at that time, mother told the social worker that father was moving out so that the juvenile court would permit the return of the minors to her. Mother was receiving counseling, but she complained that she was misdiagnosed as having depression and PTSD. She continued to insist that father did not abuse her, even though several of the older children reported that father had been physical with mother, and community members reported that father had been seen “berating [mother] in a public place for a significant amount of time.”

Both parents completed a parenting course and were undergoing counseling. They acknowledged making poor decisions in the past when disciplining their children, and they stated they had decided to no longer use corporal punishment. Mother attended courses relating to domestic violence education and child abuse prevention. But these services did not appear to result in any behavior or attitude change. The social worker testified that mother could “go through the motions of completing [a parenting] class,” “do the homework,” and “fill a seat,” but did not necessarily benefit from the class. According to staff who led domestic violence courses that mother attended, mother “did

not approach the classes as a victim in her marriage or in her relationship. It was more of she was a victim of the system and her children.”

The Department remained concerned that although the parents had worked to improve their parenting skills and to correct the safety hazards in and around their home, they had done nothing to address concerns related to sexual abuse. The social worker stated that “given the further disclosures of the children [of violence and sexual abuse], the Department is more concerned than ever about the children’s ability to be safe in the home of their parents.” Father failed to complete a “psychosexual assessment,” and the Department was concerned that he was “purposely hiding” information. Mother was described by her children as a “child herself” who was “controlled and manipulated” by father.

The six-month review hearing took place on January 11, 2013.³ In a review report submitted in advance of the hearing, the Department recommended that family reunification services be terminated and that the juvenile court set a selection and implementation hearing under section 366.26. At the time of the report, three of the minors refused to visit with father, and the six oldest minors all had told the social worker that they did not want to return home and wished to remain in foster care. All of the minors’ attorneys concurred with the Department’s recommendation.

At the hearing, the social worker testified, consistent with what she had stated in her review report, that although mother had participated in various services provided to her and had tried to implement new parenting techniques, she lacked insight into the danger father posed to her children, and she had “taken more of the blame onto herself and ha[d] protected her husband.”

The social worker believed that the parents had not made the changes necessary to parent their children properly, and she did not think that it was probable they would be

³ Because the dispositional hearing was delayed several times, the six-month review hearing was held more than 10 months after the original dependency petitions were filed. As a result, by the time of the six-month review hearing, the parents had received more than six months of reunification services.

able to do so in the next six months, based in part on father's failure to participate in a psychosexual assessment ordered by the court and both parents' unwillingness to address the issue of domestic violence. According to the social worker, the minors did not want to return home, they would not feel safe doing so, and they believed their parents were "putting on a front." Because mother had demonstrated no insight into father's power over her and had not changed her behavior despite having participated in services, the social worker did not believe that additional services would be helpful. The worker also testified that it would be difficult for mother to handle all nine minors on her own, and there were concerns about "her co-dependence issues with the father and her . . . inability to protect" her children.

Mother testified that she had consistently participated in the mental health portion of her case plan, but she had concerns that her therapist was "biased," had not supported her "at all," and was taking the word of her children and the social worker over hers. She claimed that the psychologist who administered a psychological test faked the results by writing down answers different from those she provided. Mother described herself as "very independent" and "very defensive," and she testified that although her own father abused her, she currently would "never allow anyone to abuse me or the children."

Father testified that he had moved out of the family home out of respect for the juvenile court's requirement that he stay away from the residence for the safety of his children. Mother insisted that although she loved father, she would continue to live apart from him in order to have her children returned to her.

The juvenile court terminated reunification services and set a selection and implementation hearing (§ 366.26). Mother filed a timely notice of her intent to seek writ relief. Father also timely filed a notice of intent to file a writ petition but did not timely file his petition in this court. On March 27, 2013, this court denied father's request for an extension of time.

II. DISCUSSION

Mother's sole argument in support of her petition is that the juvenile court applied an incorrect standard when declining to extend reunification services beyond the six-month review hearing. We disagree.

"When a child is removed from a parent's custody, the juvenile court ordinarily must order child welfare services for the minor and the parent for the purposes of facilitating reunification of the family. (§ 361.5, subd. (a).)" (*Tonya M. v. Superior Court* (2007) 42 Cal.4th 836, 843.) If a child is over the age of three when removed from parental custody, the minor generally is entitled to a minimum of 12 months of reunification services, whereas a child who is under the age of three at the time of removal generally is entitled to only six months of services. (§ 361.5, subd. (a)(1)(A)-(B).) In the case of a "sibling group" that includes children in both age categories at the time of removal, the juvenile court may limit services for all siblings to six months. (§ 361.5, subd. (a)(1)(C); *Abraham L. v. Superior Court* (2003) 112 Cal.App.4th 9, 13-14.) The parties here agree that because the youngest sibling was under the age of three when removed from parental custody, all nine minors were part of a sibling group subject to the possible limitation of services.

Section 366.21, subdivision (e), provides that at the six-month review hearing, "the court shall order the return of the child to the physical custody of his or her parent . . . unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent . . . would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child." The social worker has the burden of establishing that detriment, and mother does not dispute that the Department did so here. The statute further provides that if a child was under the age of three at the time of removal or a member of a sibling group with such a child, "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." (§ 366.21, subd. (e).) There is apparently

no dispute that mother participated regularly in her treatment plan. However, mother does not dispute the juvenile court's finding that she failed to make substantive progress in that plan, as contemplated by the statute.

Instead, mother contends that the juvenile court misapplied the correct legal standard in denying an extension of reunification services for another six months and scheduling a selection and implementation hearing. Her argument is based on section 366.21, subdivision (e): "If, however, the court finds there is a substantial probability that the child . . . *may be returned* to his or her parent . . . 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), italics added.) *M.V. v. Superior Court* (2008) 167 Cal.App.4th 166 (*M.V.*), upon which mother primarily relies, emphasized that the standard is whether there is a substantial probability that a child *may* be reunited with the parent in the next six months (§ 366.21, subd. (e)), and not whether the child *will* be reunited with a parent in the next six months (which is the standard applicable at the 12-month review hearing, § 366.21, subd. (g)(1)). (*M.V.* at p. 180.) "Literally, the statute commands the court to determine whether there is a strong likelihood of a *possibility* of return (not simply a strong likelihood the return will in fact occur). The word 'may' alters the typically high burden of 'substantial probability.'" (*Id.* at p. 181, original italics.) "If, at the six-month review, the court finds there is a substantial probability the child may be returned to the parent, the court lacks discretion to schedule a .26 hearing. The court must instead continue reunification services until the 12-month review, and make any necessary modifications to the service plan in the interests of facilitating reunification. [Citations.]" (*Id.* at p. 182.)

Mother contends that it is "ambiguous at best" whether the court used the correct standard, and that the court's comments indicate it incorrectly terminated reunification services based on whether the minors *would* be returned to mother in six months, as opposed to *may* be returned to mother. In *M.V.*, it was clear that the juvenile court had applied the "substantial probability" standard applicable to 12-month review hearings even though it was making findings at a six-month hearing, because the court *read*

directly from section 366.21, subdivision (g)(1), applicable at 12-month review hearings, when issuing its ruling. (M.V., supra, 167 Cal.App.4th at p. 178.) The court also specifically stated that it was relying on the three-factor test applicable at the 12-month hearing (whether the parent has maintained regular visitation, made significant progress in resolving the problems that led to the child’s removal, and demonstrated the capacity and ability to complete the objectives of his or her treatment plan and provide for the child’s well-being, § 366.21, subd. (g)(1)(A)-(C)), whereas the court is not required to consider those three factors when deciding whether to continue services past the six-month review.⁴ (*M.V.* at p. 183.)

Here, by contrast, the juvenile court did not specifically rely on the statutory provisions applicable at 12-month review hearings. And although some isolated comments used by the juvenile court during the hearing might suggest that it was contemplating a heightened standard, we conclude—after reviewing the evidence, the arguments, and other comments by the juvenile court—that the correct standard was applied.

In terms of the evidence, a review of the entire hearing transcript reveals that the juvenile court believed that there was no probability that the minors would be returned to mother in another six months, much less a substantial probability that they may be returned. (*M.V., supra, 167 Cal.App.4th at p. 181.*) The court commented at length on the reasons it was denying further reunification services to mother: “[I]t has to do much more with attitude. It’s her failure to recognize and admit the abuse that went on in the family, not just the sexual abuse, but the domestic violence.” The court also stated: “She

⁴ Curiously, mother at one point faults the juvenile court for not applying this three-part test, which is set forth in California Rules of Court, rule 5.710(c)(1)(D), governing six-month review hearings. *M.V.* explained that this test (previously set forth in rule 5.710(f)(1)(E)) came from a substantively identical test contained in section 366.21, subdivision (g), governing 12-month review hearings. (*M.V., supra, 167 Cal.App.4th at p. 177.*) *M.V.* concluded that although a juvenile court may consider evidence pertaining to those factors, it is not required to apply the factors before continuing services. (*Id.* at pp. 180-181 & fn. 8.) It was thus arguably to mother’s *benefit* for the juvenile court to forego applying these additional considerations.

blames herself, blames society, blames her children, does not blame the father. I think she has *no insight* as to what has really been going on in her family. And even though she took the classes and did the things that we asked her to do, there was evidence that her instructor thought that she would benefit from retaking the parenting class, which she did not do. She went to the Dina Dinosaur [class]. She was asked to come and watch the kids to get some role modeling as to how she should deal with children; instead, she was asked not to come back because of her interference in it.” (Italics added.) The court concluded: “It is absolutely clear to me she would have great difficulty in parenting these children for a couple different reasons. One, her attitudes, believing that society is somehow to blame for the problems in the way that her children act and not accepting what the children say. And difficulty of managing nine children appears to be well beyond her means and her capabilities. [¶] I find it absolutely incredible her claims that the psychiatrist faked the [psychological] test results. I’m not sure what she thinks that the social worker committed perjury on, but indicates to me that she is, again, not—she is blaming everybody but herself and her husband. I’ve already indicated that her self-image as somebody who is very independent and not controlled [by father] is not sustained by the evidence.”

In terms of the court’s comments, we acknowledge that during the lengthy exchange between the juvenile court and the attorneys, the court occasionally referred to whether the parents would reunify in the next six months, as opposed to whether it was possible they “may” reunify. For example, the court at one point asked mother’s counsel, “I mean, do you have—have you shown that there’s a substantial probability that any of the children *would be returned* in the next six months.” (Italics added.) At another point, the juvenile court stated, “I’m looking at is there a substantial probability that this mother is *going to reunify*.” (Italics added.) When terminating reunification services, the court stated, “I just find by clear and convincing evidence that [mother] has not made any substantive progress in Court ordered treatment such that there is any substantial probability she would have the children *returned to her* in the next six months.” (Italics added.)

But other comments eliminate any doubt that the court was applying the correct standard. At one point, the court plainly stated to mother's counsel, "The issue is whether or not there's a substantial probability that the children *could* be returned in the next six months." (Italics added.) We agree with the Department that this was a correct summary of the applicable standard, because "could" is sufficiently similar to "may." Indeed, mother's counsel described the standard in the same way during argument when he told the juvenile court, "If my client is not with father, I think she has met that substantial—I think she *could* reunify. I think that's the pure issue here is her protecting from the allegations of the father. If she has to make it and she has shown she has made a decision because separated from father and, yes, I think there now is a *substantial probability she could* reunify with [her children]." (Italics added.)

In light of the evidence and the juvenile court's findings, it is not reasonably probable that mother could obtain a more favorable result were this court to grant her writ petition and direct the lower court to state more clearly the standard it used in determining whether there was a substantial probability of reunification. (Cf. *M.V.*, *supra*, 167 Cal.App.4th at p. 183.) The fact that the juvenile court found that mother had *no insight* into the very serious problems in her family and had not made any substantive progress to alleviate those problems despite months of services shows that it believed there was no possibility of reunification. Although mother cites evidence in the record supporting a contrary finding, it is clear that the juvenile court considered this evidence and rejected it.

Finally, we reject mother's argument that the juvenile court failed to consider factors applicable when scheduling a selection and implementation hearing for members of a sibling group. Section 366.21, subdivision (e) provides that in making its determination to schedule such a hearing for members of a sibling group, the court "shall review and consider the social worker's report and recommendations. Factors the report shall address, and the court shall consider, may include, but need not be limited to, whether the sibling group was removed from parental care as a group, the closeness and strength of the sibling bond, the ages of the siblings, the appropriateness of maintaining

the sibling group together, the detriment to the child if sibling ties are not maintained, the likelihood of finding a permanent home for the sibling group, whether the sibling group is currently placed together in a preadoptive home or has a concurrent plan goal of legal permanency in the same home, the wishes of each child whose age and physical and emotional condition permits a meaningful response, and the best interest of each child in the sibling group. The court shall specify the factual basis for its finding that it is in the best interest of each child to schedule a hearing pursuant to Section 366.26 in 120 days for some or all of the members of the sibling group.” (See also Cal. Rules of Court, rule 5.710(d).)

The social worker’s report, which was reviewed and considered by the juvenile court, specified where the children were placed and with whom, described the quality and frequency of sibling visits, and summarized each child’s current circumstance. The social worker spoke with all nine children and included in her report a summary of their wishes, with more detail provided for the older children. At the review hearing, the juvenile court acknowledged that “[t]here’s a number of factors you look at,” identified a few of the relevant factors for sibling groups, and stated that “I’ve looked at those factors.” It also asked county counsel to address whether it would be appropriate to continue services to some, but not all, of the minors, a possible option for sibling groups. (Cal. Rules of Court, rule 5.710(d).) The court also specifically found that it was in all nine minors’ best interest to set a selection and implementation hearing in order to provide permanency for them as soon as possible. It is thus not correct, as mother asserts, that the court failed to apply the considerations governing sibling groups.

In sum, it is clear that the juvenile court concluded at the six-month review hearing that “ ‘parental unfitness [wa]s so well established that there [wa]s no longer ‘reason to believe that [a] positive, nurturing parent-child relationship[] exist[[ed]]’ [citation], and the *parens patriae* interest of the state favoring preservation rather than severance of natural familial bonds ha[d] been extinguished.” ’ [Citation.]” (*M.V.*, *supra*, 167 Cal.App.4th at p. 183.) The juvenile court thus had the discretion to terminate reunification services and set a selection and implementation hearing. (*Ibid.*)

III.
DISPOSITION

Mother's petition for an extraordinary writ is denied on the merits. (§ 366.26, subd. (l); Cal. Rules of Court, rule 8.452(h).) This decision shall be final at the conclusion of three court days. (Cal. Rules of Court, rules 8.452(i), 8.490(b)(3).)

Humes, J.

We concur:

Ruvolo, P.J.

Reardon, J.