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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

K.D.,

Petitioner,

v.

THE SUPERIOR COURT OF THE CITY
AND COUNTY OF SAN FRANCISCO,

Respondent;

SAN FRANCISCO HUMAN SERVICES
AGENCY,

Real Party in Interest.

A139039

(San Francisco County
Super. Ct. No. JD12-3018)

K.D., the mother of N.D., age one, petitions this court to set aside the juvenile court’s order setting a permanent plan hearing pursuant to Welfare and Institutions Code¹ section 366.26. She contends that there is insufficient evidence to support the trial court’s finding that she received reasonable reunification services, and the finding that that there was no substantial probability that N.D. could be returned to her if reunification services were extended. We deny the petition.

I. FACTUAL BACKGROUND

Five days after N.D.’s birth in January 2012, the San Francisco Human Services Agency (the Agency) removed him from mother’s care. The Agency filed a section 300 petition alleging that N.D. was at risk of harm due to mother’s extensive child welfare

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

history in Colorado, which resulted in the removal and failure to reunify with four children, her mental health and anger management issues, and a history of violent relationships. On January 23, 2012, the court ordered N.D. detained and placed in foster care.

The dispositional and jurisdictional hearing was held on April 4, 2012. Mother submitted to the amended allegations of the section 300 petition, which stated that she had mental health issues, an extensive child welfare history resulting in her failure to reunify with four children, and that the father of N.D. was unknown.² The court thereafter declared N.D. to be a dependent of the court and ordered reunification services for mother.

On November 15, 2012, the Agency filed a report for the six-month review hearing recommending that mother continue to receive reunification services although it had concerns about mothers' judgment, lack of stability and inconsistent visitation of N.D. Three different visiting agencies had terminated mother's visitation due to missed visits and last-minute cancellations. Mother, however, had completed a parenting education class and a psychological evaluation but had not been consistent with drug testing. She was still looking for housing and was living at Next Door Shelter. Mother continued to live with R.C., the father³ of her four other children, of whom she had lost custody in the dependency court in Colorado.⁴ Although mother and L.G. had a verbally abusive relationship, mother had not utilized any domestic violence resources that were provided. The report also noted that mother suffered from cognitive deficits, neuropathy and seizure disorder and often used a walker or wheelchair. On August 8, 2012, she told the Agency that she wanted to terminate her rights to N.D. She changed her mind a

² Mother told the Agency that N.D. was the product of a rape.

³ The father, R.C., is now known as L.G. We will use L.G. in the remainder of the opinion. A Department of Social Services report indicates that L.G. appears to be transgender. Mother refers to L.G. as her sister.

⁴ N.D.'s father's whereabouts are unknown. Mother also has two other children that were the subject of a dependency case in Texas. Their whereabouts are unknown.

month later. Mother's psychiatrist recommended individual therapy for mother, opining that her ability to adequately parent N.D. was likely to be compromised as she would likely struggle with emotional issues and the responsibilities attendant to parenting. N.D. continued in the care of his foster mother who had expressed an interest in adopting him.

The contested six-month review hearing was continued to January 28, 2012. The court found that mother regularly visited with N.D. and that her progress toward mitigating the causes that necessitated placement was "minimum moving to adequate." The court ordered that reunification services be continued.

The Agency's reports for the 12-month review hearing dated March 5, 2013 and May 21, 2013, recommended that reunification services be terminated because the likelihood that N.D. could be returned to mother was minimal. The Agency continued to have concerns regarding mother's judgment and lack of insight to N.D.'s needs. Mother continued to rely on the support of L.G. who had verbally abused her. She told the Agency that she was looking for housing with L.G. She did not yet have permanent housing and continued to reside at Next Door Shelter. Mother also continued to miss some visits with N.D. either due to illness or because she did not confirm her visits with the visitation centers. Since February 2013, mother had attended 27 visits and missed 13 visits. Further, she had missed several medical appointments and had not obtained the appropriate medical care to address her neuropathy and seizure disorder. The Agency found that mother's attempts at engaging in reunification services were slow in the first six months of N.D.'s dependency and she had only begun to take advantage of services recently, which was too late given N.D.'s need for permanency.

The 12-month review hearing was held on June 6, 13, and 14, 2013. Van Luong, the Agency's supervisor for the Family Services Unit, testified that he supervised N.D.'s case beginning in April 2012. He reviewed the status reports prepared by the two social workers assigned to the case. Amelia Lum was assigned to the case from April 2012 to March 2013. Luong testified that mother did not begin participating in services until September 2012 with the exception of sporadic visitation. Mother was offered services in the Infant-Parent Program (IPP) but she declined. Luong, however, testified that the

service was not appropriate for mother in any event. The program is based at San Francisco General Hospital and provides services to infants and toddlers who receive Golden Gate Regional Center (GGRC) services, have developmental delays or failure to thrive issues, or those who are “fussy” babies. N.D. was not appropriate for the program because he is not developmentally delayed and does not receive GGRC services. Luong also testified that the Agency would not have added more services to her case plan when she was not engaging in the services already provided to her. The Agency was not able to permit mother’s therapist to observe mother’s visits with N.D. because it was not an authorized service provided by Foster Care Mental Health nor was the therapist authorized for family or child therapy. Moreover, the therapist’s request to observe visits between mother and N.D. was not made until after the Agency filed its report for the 12-month review hearing recommending that reunification services be terminated.

Heidi Denton, the Agency’s social worker on the case since March 2013, recommended termination of services; she testified that her concerns were mother’s history with her four older children with whom she failed to reunify, and her failure to follow through with her needs. Denton noted that mother had been homeless for nine years, was unable to meet her medical needs, and had unstable personal relationships. Mother had failed to follow through with several medical appointments and continued to suffer from health problems which could affect her parenting. Denton also had concerns about mother’s visitation with N.D. Mother’s visitation had not progressed from supervised to unsupervised and the Portola Family Center had terminated mother’s rights to visit there because she had cancelled four appointments at the last minute. She also had eight missed visits at the Bayview Family Resource Center between February and May 2013. Denton also had concerns about mother’s ability to care for N.D. even in a three-hour visitation period due to her inattention and inability to read N.D.’s cues or his expressions. Denton testified that during the dependency, mother had been terminated from four visitation centers due to inconsistent visitation. Finally, mother’s failure to

secure housing other than a shelter and her intent to live with L.G. were problematic.⁵ Based on the record, Denton believed that there was no possibility that N.D. could be returned within the one month remaining in the 18-month statutory period for reunification.

Craig Cummins, mother's therapist, testified that mother had begun individual therapy in late November 2012. Cummins worked as an independent contractor for Foster Care Mental Health. He sought to help mother with parenting skills, managing stress, and communication skills. In March 2013, he contacted Denton to make arrangements to observe mother during her visitation sessions with N.D. Foster Care Mental Health, however, did not approve funding for the observation.

The court terminated reunification services and set the matter for a section 366.26 hearing. The court found that returning N.D. to mother would be detrimental based on continuing concerns about mother's unresolved medical issues and her mental health. The court noted mother's inconsistent visitation and that there was just one month remaining in the 18-month statutory period for reunification.

II. DISCUSSION

Mother challenges the juvenile court's order terminating reunification services. She argues that the services provided were inadequate because she was not referred to the IPP.

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

⁵ Denton testified that mother is married to a man who lives in Texas but she believed mother no longer had any contact with her husband.

Here, the record shows that the Agency's efforts to provide mother with services were extensive. Lum, mother's social worker, offered the IPP program to mother on February 8, 2013 as an additional parenting resource, but mother declined the referral. Luong, Lum's supervisor at the Agency, however, testified that the referral was inappropriate because the IPP program provides services to those infants that receive GGRC services and have developmental delays. Since N.D. did not receive GGRC services and did not have any developmental delays, the IPP program was not appropriate for him. Even if it had been an appropriate referral, mother's request that it be added to her case plan came after the Agency had made its recommendation to terminate reunification services.⁶ If a parent "waits until the impetus of an impending court hearing to attempt [to correct his or her behavior], the legislative purpose of providing safe and stable environments for children is not served by forcing the juvenile court to go 'on hold' while the parent makes another stab at compliance." (*In re Michael S.* (1987) 188 Cal.App.3d 1448, 1463, fn. 5.) Given the timing of mother's request and the Agency's determination that the IPP program was inappropriate for N.D., we cannot conclude that the Agency failed to provide reasonable services.

Mother also argues that there was insufficient evidence to support the juvenile court's finding that it was not substantially probable that N.D. could be returned to her custody within the one-month period remaining in the 18-month statutory period for reunification. The record fully supports the court's order.

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

⁶ The 12-month review hearing was initially set for March 28, 2013. Mother apparently made the request for the IPP program on that date. The transcript for the hearing, however, is not in the record.

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

Here, although mother made progress in meeting the requirements of her reunification plan including completion of a parenting class, individual therapy sessions, and visitation, her progress was inconsistent. Mother’s visitation was so sporadic that she was terminated from four visitation centers. She had not secured housing and her plan to live with L.G. was of concern since mother had previously experienced verbal abuse from L.G. and chose not to avail herself of domestic violence resources. Mother had not made a strong effort to address her medical issues and continued to miss medical appointments. Moreover, these issues were long-standing. Mother had been homeless for nine years and had failed to reunify with her other six children. While she was beginning to address her mental health issues through individual therapy, substantial evidence supports the court’s finding that there was no substantial probability that had reunification services been extended for another month, N.D. could be safely returned to her custody.

III. DISPOSITION

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

Rivera, J.

We concur:

Ruvolo, P.J.

Reardon, J.