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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

D.C.,

Petitioner,

v.

THE SUPERIOR COURT OF CONTRA  
COSTA COUNTY,

Respondent;

CONTRA COSTA COUNTY CHILDREN  
AND FAMILY SERVICES BUREAU et  
al.,

Real Parties in Interest.

A142263

(Contra Costa County Super.  
Ct. Nos. J1201555 & J1201556)

Petitioner D.C, mother of 12-year old B.C. and 11-year old S.M., files a timely writ petition seeking to set aside the juvenile court’s June 24, 2014 order terminating her reunification services and setting a hearing, pursuant to Welfare and Institutions Code section 366.26.<sup>1</sup> We deny the petition.

**FACTUAL AND PROCEDURAL BACKGROUND**

Real party in interest Contra Costa County Children and Family Services bureau (CFS) filed juvenile dependency petitions on November 14, 2012, seeking to protect

<sup>1</sup>All further unspecified statutory references are to the Welfare and Institutions Code.

minors B.C., S.M., and their half-brother, S.T.<sup>2</sup> The petition followed an incident on October 14, when the children's father, C.M., Jr., was violent with petitioner, and the father of the children's half-brother and another man intervened. At the time, petitioner was living with both of the fathers of her children.

On November 15, 2012, the children were detained and were initially placed in a licensed facility. The court found, with respect to both children, that there was a "substantial danger to the physical health of the child[ren] or the child[ren] [were] suffering severe emotional damage, and there [were] no reasonable means by which the child[ren]'s physical or emotional health [could] be protected without removing [them] from the physical custody of the parent or legal guardian." Petitioner was granted supervised visits.

At the January 10, 2013 jurisdictional hearing, the parents entered no contest pleas and the juvenile court sustained the charges that petitioner had engaged in domestic violence with the children's father in the presence of the children, thereby placing them at risk.

The CFS disposition report, prepared for the February 7, 2013 hearing, noted that the parents had first received family maintenance and family reunification services from September 12, 2003, through February 15, 2005. At the conclusion of the reunification period the juvenile court granted petitioner full physical custody of the children and returned legal custody to both parents. During a second dependency from September 26, 2007, through October 20, 2008, both parents again participated in services. Petitioner, however, missed a number of drug tests over a period of months and tested positive for alcohol while the children were visiting with her for a week. The report also noted that petitioner had been convicted of being under the influence of a controlled substance in 2001 and of reckless driving in 2002. She also had a second drug-related offense in 2001, for which she was placed in a diversion program. The 2013 disposition report summarized petitioner's background:

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<sup>2</sup> No appellate writ petition was filed in S.T.'s case. His case is not before the court.

[Petitioner] was born in Cleveland, Ohio, in 1967. She is a forty year old Caucasian female. She was raised by her mother and moved to California, when she was three years old. She and her mother moved up and down the west coast and finally settled in Antioch when she was twelve. [Petitioner] attended Antioch High School. Although she dropped out of school in the eleventh grade, she did complete the High School Equivalency Test that same year. She has completed some college at Los Medanos Community College and Marysville College. She has been employed in the fast food industry and customer service. [Petitioner] currently lives in Antioch.

[Petitioner] stated she first used drugs at the age of sixteen. She used methamphetamine at that time but stated she did not use that drug 'seriously' until 1998. She participated and completed New Connections, as the result of the Prop 36 program, resulting from some time she spent in jail for 'possession.' She also participated and completed Wollam House and Ujima East.

At the time of the hearing, minors B.C. and S.M. lived with their paternal grandparents. B.C. was in the fifth grade and S.M. was in the fourth. Both were developmentally appropriate for their ages. They were performing at grade level in school and were both excellent readers. B.C. expressed anger and sadness about not being with her mother, and often targeted her anger at her grandmother. She tended to become especially upset when she had had no contact with her mother for more than a week. S.M. also expressed sadness about not being with his mother.

At the conclusion of the February 7, 2013 hearing the court found that reasonable efforts had been made to avoid removing the children from their home and ordered social services to provide reunification services to both parents. Petitioner's case plan required her to remain substance free, to enter and complete individual counseling, complete a parenting education class, participate in an Alcoholics Anonymous/Narcotics Anonymous program, undergo random drug testing with all tests to be negative for six months, and have bi-monthly visitation with her children. In addition, the court specified that if the mother missed a test or tested positive, she was to enter inpatient treatment.

A six-month review hearing was held on October 2, 2013. CFS's Status Review Report indicated that B.C. and S.M. were still living with their paternal grandmother. At

the time petitioner had participated “in every aspect of her case plan,” including outpatient programming, random drug tests, a parenting class, a domestic violence support group, and weekly individual therapy. Petitioner believed she had fulfilled the requirements of her case plan and that her children should be returned to her care. CFS recommended that all of petitioner’s children be returned to her and that she receive family maintenance services. The juvenile court agreed, awarded petitioner physical custody of the children subject to the court’s supervision, and ordered that services be provided. A review hearing was set for March 19, 2014.

By March 19, however, things were not going as planned. CFS filed a supplemental petition alleging that petitioner had failed her family maintenance plan after she missed seven drug tests between November 2, 2013, and March 3, 2014, and she failed to ensure the children’s regular attendance at school. When asked about her children’s irregular attendance at school, the report indicated: “[Petitioner] acted as though she is helpless to do anything about the situation, saying ‘I try to get them up.’ She takes no responsibility as the parent of the children for this problem.” CFS recommended that family maintenance services be continued and a six-month review hearing be set. It admonished petitioner that future missed drug tests might result in the children’s removal from her home.

The juvenile court declined to follow CFS’s recommendation and detained the children. Although it found that reasonable efforts had been made to prevent or eliminate the need to remove the children, it also found that CFS had not provided reasonable services to the minors. Other than supervised telephone contact, all petitioner’s visitation with the children was suspended.

On April 9, 2014, petitioner entered a no contest plea to the allegations of the supplemental petition that she had neither consistently tested for drugs nor ensured the children’s attendance at school. At a May 29, 2014 hearing petitioner tested positive for

amphetamine. In addition, evidence of possible sexual abuse in the home came to light, requiring investigation.<sup>3</sup>

A combined 18-month review and disposition hearing on the supplemental petition took place on June 24, 2014. The CFS report indicated that the minors had adjusted well to living with a paternal aunt. Petitioner anticipated interviewing with a residential drug treatment program and was hoping to enter treatment the following week. The report noted that with respect to B.C. and S.M. petitioner had “no time left for services” and recommended the court set a section 366.26 hearing.

Evidence was introduced showing that petitioner had not tested on four separate occasions in May and June 2014. Her counsel represented that she would be starting residential treatment in a week, albeit at a different program than the one petitioner had previously hoped to enter. The court found clear and convincing evidence that the welfare of the minors required termination of their parents’ physical custody for substantial danger to their physical health if they were returned home. It ordered that reunification services for petitioner not be provided, it terminated maintenance services, and set a hearing, pursuant to Welfare and Institutions Code section 366.26 for October 20, 2014. When it did so the court noted that petitioner “is entrenched in substance abuse issues.”

The juvenile court found that petitioner “has not even begun to address the issues that bring her and her children before this Court. To the contrary, she continues to engage in her substance abuse. To the great detriment of these children, Mom has chosen essentially to absent herself from the lives of her children by continuing down the path that she has been on for [some time] now.” The court explained, “I cannot possibly make a finding that there’s a substantial probability that the children will be returned to her within the 24-month date, which would be November, since she hasn’t even gotten herself into treatment and she continues to miss her testing. [¶] Nor can I find that continuing reunification services to be in the best interest of the children given that these

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<sup>3</sup>The possible abuse concerned petitioner’s child who is not a party to the writ before us.

children have been in the state of limbo for a significant period of time. They deserve permanence. They deserve to feel that they are in a place where they are safe and loved and their needs are being met and that they don't have to constantly wait by the door to see if Mother is going to get engaged here and assume her parental responsibilities in a safe and appropriate way.”

On June 25, 2014, petitioner filed a notice of intent in the juvenile court to file a writ petition. Petitioner's primary argument is that CFS failed to provide reasonable services during the family maintenance period. The petition points out that the children were returned to their mother's custody in October 2013 with family *maintenance* services. The children were then removed from their mother's custody in March 2014. At the June 24, 2014 hearing, the court did not find that reasonable reunification services had been provided since when the children were removed, this was not a reunification case, but a family maintenance case. Thus, the court found that “the agency has complied with the Case Plan in making reasonable efforts to return the child[ren] to a safe home and to complete any steps necessary to finalize the permanent placement of the child[ren].” Petitioner argues, however, that the standard for assessing whether reasonable reunification services have been offered should be applied to the juvenile court's finding that CFS's maintenance services complied with the case plan.

### **DISCUSSION**

We agree with petitioner that even though we are assessing family maintenance services, our review should be guided by the standard applicable to determining whether CFS provided reasonable reunification services. Both reunification and maintenance services require an agency to address the circumstances which necessitated its intervention into a family's life. (See § 16501, subd. (a); 16501.1, subds. (a), (b), (e), & (f).) Here the family reunification and family maintenance plans had substantially similar components, focusing on drug treatment and testing, counseling, and parenting skills. Furthermore, by law physical custody of a child by a parent does not toll the running of the allowable time period for completion of reunification services. (§ 361.5, subd. (a)(3).) Thus, applying different standards to review of reunification and maintenance

services would pose practical difficulties because their respective time frames can overlap. Procedurally, this case is similar to *Carolyn R. v. Superior Court* (1995) 41 Cal.App.4th 159, 167 where the proceedings were past the 18-month review when the court sustained a section 387 petition that removed the children from their mother for the second time and ruled no further services were appropriate. Further services are ordinarily not an option at such a late stage of proceedings. The only exceptions to the general rule that the return of the minors to the parent's physical custody does not toll the allowable period to receive reunification services are when (1) no reunification plan was ever developed, (2) reasonable services were not offered, or (3) it is in the children's best interests that services be continued. (*Ibid.*) Here, petitioner argues that reasonable services were not offered to her.

Our review of the juvenile court's decision is governed by the "substantial evidence" standard. "Substantial evidence" is reasonable, credible and of solid value. We indulge in legitimate and reasonable inferences to uphold the lower court's ruling. Logical and reasonable inferences may constitute substantial evidence. (*Tracy J. v. Superior Court* (2012) 202 Cal.App.4th 1415, 1424.)

Petitioner argues that when her children were returned at the first disposition hearing the court ordered that if she tested positive for drugs or missed a test she was to enter an inpatient program. Between November 1, 2013 and March 11, 2014, she actually missed seven<sup>4</sup> tests. Although she was eventually referred for inpatient treatment, the March 19, 2014 status review report—prepared after petitioner had missed those drug tests—clearly indicates that petitioner was referred for counseling, drug testing, and an *outpatient* drug program.<sup>5</sup> In other words, CFS does not appear to have acted on the juvenile court's explicit direction that petitioner be referred to an inpatient treatment program if she missed even one drug test. Furthermore, petitioner contends

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<sup>4</sup>The record before us documents seven "no shows" during this time period; the petition references nine. The difference is not significant for our purposes.

<sup>5</sup>At this same time, the children's father was referred for inpatient drug treatment.

that her case worker was to have one in-person monthly meeting with her. Yet the record contains no evidence that these meetings actually occurred. Rather, the record indicates that petitioner did not return phone calls to her social worker regarding the scheduling of visits.

The lack of evidence that CFS conducted the requisite, monthly in-person meetings with petitioner is not evidence of a failure by CFS. The record clearly reflects that the case worker initiated phone contacts to arrange these meetings and that it was petitioner who failed to respond. A social worker has a duty to maintain reasonable contact with a parent, but, in turn, the parent must demonstrate “some degree of cooperation.” (*In re T.G.* (2010) 188 Cal.App.4th 687, 698.) Since she did not respond to the case worker’s attempts to arrange meetings, petitioner cannot now complain about the fact that those meetings did not occur as frequently as intended.

The more troublesome aspect is CFS’s failure to refer petitioner for inpatient substance abuse treatment promptly after she missed the first drug test as directed by CFS’s. The court’s order states that if the mother tests positive or misses a test, “mother [is] to enter inpatient program.” There is no more evidence in this record of petitioner seeking inpatient treatment than there is of CFS referring her to an inpatient program early in the maintenance period.

Even though it does not appear CFS arranged for petitioner’s inpatient treatment following the missed drug tests, we will not reverse the juvenile court’s finding that reasonable services were provided. Petitioner never argued to the juvenile court that maintenance services were unreasonable because she was not promptly referred for inpatient services. Accordingly, this issue is forfeited. (*In re Christina L.* (1992) 3 Cal.App.4th 404, 416, citing *Sommer v. Martin* (1921) 55 Cal.App. 603, 610 [“ ‘ ‘The law casts upon the party the duty of looking after his legal rights and of calling the judge’s attention to any infringement of them. If any other rule were to obtain, the party would in most cases be careful to be silent as to his objections until it would be too late to obviate them, and the result would be that few judgments would stand the test of an appeal.’ ’ ” ].) Petitioner knew she was missing drug tests, and as of the June 2014

hearing was hoping to enter a program the following week. Yet the record does not reflect that she demanded, or even requested, a referral for inpatient treatment, or that she believed the lack of referral or help getting into a program was material.

Moreover, section 366.22, which governs the 18-month status hearing, provides in pertinent part: “After considering the admissible and relevant evidence, the court shall order the return of the child to the physical custody of his or her parent or legal guardian unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child.” (§ 366.22, subd. (a).) Although a court retains limited discretion to determine whether reasonable services have been provided (*In re Elizabeth R.* (1995) 35 Cal.App.4th 1774, 1795–1796), the focus, at this stage of the proceedings, shifts from preserving the family unit to providing the children with stable, permanent homes. (*Id.* at p. 1788.) It was well within the juvenile court’s discretion to decide to terminate reunification services at this late stage of the proceedings.

Petitioner, who had previously been referred for protective services multiple times and who had had her children detained three times, was well aware of the seriousness of her situation. She had an intimate familiarity with inpatient drug services. She had been using drugs since she was 16. She had been through or knew about at least three different inpatient programs—New Connections, Wollam House and Ujima East. She had been referred for drug testing and drug treatment. She was aware that the court wanted her to seek inpatient treatment if she either missed or failed so much as one test. Despite all this, she was not cooperative—failing even to return telephone calls. Given her lack of cooperation with the process, her extensive history with both protective services and drug treatment, and what the juvenile court described as her “entrenched” drug lifestyle—as evidenced, in part, by her very recent positive drug test—the juvenile court’s finding that petitioner had no reasonable prospect of reuniting with her children at 24 months is supported by substantial evidence.

## **DISPOSITION**

For the reasons explained above, we deny the petition for an extraordinary writ and dissolve the stay of the section 366.26 hearing issued October 15, 2014. Our decision is immediately final as to this court. (Cal. Rules of Court, rules 8.452(i), 8.490(2)(a).)

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Siggins, J.

We concur:

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McGuinness, P.J.

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Jenkins, J.